The Middle Eastern Studies Students’ Association’s Subcommittee of
Publications at
The University of Chicago
Spring 2014 Staff

Executive board:

Adam Zeidan - Editor-in-Chief
Michael Peddycoart - Managing Editor
Hannah Ridge - Submissions Editor
Rachiny Samek - Graphics Editor
Sarah Furger - Web Design Editor
Kyle Clark - Review Editor
Brian Watts - Review Editor

Line Editors:

Adam Zeidan
Armaan Siddiqi
Alex Taylor
David Ridge
Teagan Wolter
Peer Reviewers:

Kyle Clark
Carol Rong Fan
Golriz Farshi
Sarah Furger
Areeba Hasan
Hannah Ridge
Jose Revuelta
Mohammad Sagha
Samee Sulaiman
Michael Payne
Michael Peddycoart
Elizabeth Pinto
Andrew Ver Steegh
Adam Zeidan
Patrick Zemanek

Faculty Advisors:
Dr. Fred M. Donner and Dr. John E. Woods
Table of Contents

Economic and Historical Influence on the Application of Capital Punishment in Turkey and Saudi Arabia
Hannah Ridge .................................................................................................................................. 1
Hannah Ridge is a Master of Arts candidate in Middle Eastern Studies at the University of Chicago. She earned her Bachelor of Arts in Political Science at the University of Chicago in 2013, where she also majored in Near Eastern Languages and Civilization and minored in Human Rights. She studies law and society, religion in politics, and nationalism.

Defying the State: Hizbullah’s Damaging Effects on the Lebanese State
Cooper Klose .................................................................................................................................. 32
Cooper Klose is a second year Master of Arts candidate at the University of Chicago’s Center for Middle Eastern Studies. He received a BA in 2011 from The George Washington University in International Affairs with a concentration on the Middle East and a minor in History. He has developed an interest in contemporary political developments of the Levant region and is currently focusing on President Bashar al-Asad and the Syrian Ba’th Party.

Regionalism and Modernism in Turkey and Iraq through the work of Sedad Eldem and Rifat Chadirji
Lydia Harrington.......................................................................................................................... 42
Lydia Harrington will receive her Master’s from the Department of Near Eastern Languages and Civilization at the University of Washington in June 2014. Her thesis is a comparative study of the urban development of modern Ankara, Turkey and Baghdad, Iraq. She is interested in the relationship between nationalism and the built environment, particularly in the Ottoman Empire, Turkey and the Arab World. She holds a BA from Hampshire College.

Temporary Marriage in Contemporary Shi`ite Jurisprudence
Patrick Zemanek .......................................................................................................................... 57
Patrick Zemanek is a Master of Arts candidate in Middle Eastern Studies at the University of Chicago. He received his Bachelor of Arts in English from the University of California, Berkeley in 2008. He is interested in the evolution of Shi`ite jurisprudence and the role of Shi`ism in contemporary social and political events.
Economic and Historical Influence on the Application of Capital Punishment in Turkey and Saudi Arabia

The erroneous belief that Muslims are determined to institute Islamic law, particularly the aspects of Islamic law that are violent or differ from current American and European practices, has supported unnecessary Islamophobia in contemporary America.\(^1\) States have responded to their fear with efforts to remove the influence of shari’a domestically and discourage its presence in the developing legal systems in the Middle East.\(^2\) The effort to ban shari’a as a method of combating the spread of Islam, jihad, or terrorism suggests the belief that the practices of Muslims and Muslim-majority states are direct functions of Islamic law. The reality of politics and law in Muslim-majority states challenges the underlying assumption that the behavior of Muslim-majority states is primarily determined by the presence of Muslims or by Islamic law. In order to demonstrate that other factors influence the behavior of Muslim-majority states, this paper examines the way in which two Muslim-majority states – Turkey and Saudi Arabia – enact or refrain from enacting capital punishment, irrespective of the mandates of Islamic law. It will present the extra-religious factors that have influenced the politics of those states, primarily history, international relations, and economics.

While Islamic law is multi-faceted and designed to influence every aspect of Muslim living, for the sake of brevity, this paper will focus on one aspect, capital punishment, for several reasons. First, historically, criminal law has fallen under state purview, so focusing on state punishment limits the discussion to influences on the state.\(^3\) Secondly, capital punishment, due to related international movements, has received more review, thus making more data relating to internal state practice available. Incidentally, the data is also more distinct, as the terminal nature of the application makes enumerating cases more practicable. Thirdly, arguments relating to the opposition to shari’a often cite the violence of Islamic law, which is encapsulated well in the consideration of capital punishment.

The featured states have been chosen to include a variety of relationships between Islam and the state. Turkey has a primarily Sunni Muslim population but has a secular, republican government with a codified penal code. Saudi Arabia, which is a monarchy, is also predominantly Sunni and uses Islamic law as its legal code.

This research speaks to the perception that Islamic law is violent and that all Muslims seek to enact Islamic law through the state. It will show, through its consideration of Islamic

\(^1\) Former Speaker of the House Newt Gingrich has said, “I believe Shariah is a mortal threat to the survival of freedom in the United States and in the world as we know it,” and “Stealth jihadists use political, cultural, societal, religious, intellectual tools; violent jihadists use violence […] But in fact they’re both engaged in jihad, and they’re both seeking to impose the same end state, which is to replace Western civilization with a radical imposition of Shariah” (Shane, 2012). Congresswoman Michelle Bachmann has claimed that the Muslim Brotherhood is taking over the American government: “The influence today of the Muslim Brotherhood at the highest levels, from the White House, to the Pentagon, to the FBI, even to our United States military, truly is breathtaking and people have to know about it” (Sommerhauser, 2012). Presidential candidate Herman Cain stated “many of the Muslims, they are not totally dedicated to this country. They are not dedicated to our Constitution. Many of them are trying to force Sharia law on the people of this country” (Cavuto, 2011).

\(^2\) Fourteen states have either laws or bills that ban the use of Islamic law in their courts (King, Murphy).

legal texts that, though Islamic law mandates capital punishment, it also promotes clemency. The Turkish case will show that there are Muslim-majority countries in which Muslims have created secular states that do not seek to enforce Islamic law. Both Turkey and Saudi Arabia demonstrate that Muslim-majority states will forego capital punishment, whether motivated by religion, historical precedent, or public will, if the economic incentive and international pressure are great enough, despite a state’s previous rejection of international human rights agreements or disapproval. As such, in Muslim-majority states, economic and historical relationships with the West have a great impact on the role or significance of Islamic law in legal decisions and contemporary political practices.

**Methodology**

The first part of this paper discusses Islamic law in theory. After a brief overview of Islamic legal structure and jurisprudence, it presents Qur’an and Ḥadīth texts relating to capital punishment. Subsequently, the paper considers the enactment of capital punishment in each state and the extra-religious factors influencing the application of capital punishment in those states. As the number of death sentences carried out each year is not publicized by the states, these accounts will rely heavily on human rights and non-governmental organizations for this information. Media sources are used to highlight specific cases.

**Shari‘a**

Islamic law is a complicated field. Islamic law is complicated by the relationship between the theoretical and the practical, the variety of sources of Islamic law, the centuries of interpretation, and the divisions of interpretation and religious tradition that have developed since the inception of Islam. Though scholars have devoted books to shari‘a and these complications, for the purposes of this paper, the discussion of shari‘a will be brief.⁴

Shari‘a can be understood in two ways. The first is theoretical, which is to say, shari‘a is Islamic law as God intends and mandates it. Islamic jurisprudence, fiqh, is then an attempt by humans to understand and enact this divine law. The second is Islamic law as it is practiced by Muslims for centuries. Islamic jurisprudence, in this definition, is the developmental process behind Islamic law. This section will consider the first definition – Islamic law relating to capital punishment in theory. The country-specific portions, where applicable, will consider the second definition – Islamic law as it is applied.

In both senses, Islamic law is explicated in several sources. The primary sources of Islamic law are the Qur’an and the Ḥadīth, sometimes referred to as the sunnat al-nabī, the behavior of the prophet.⁵ The Qur’an is the holy book of Islam. Muslims consider it the literal word of God as it was related to the Prophet Muhammad over approximately two decades in the early 7th century in the Ḥijāz, which is in modern-day Saudi Arabia. The Ḥadīth is accounts of the life of the prophet and his family detailing from which Muslims extrapolate appropriate conduct.⁶ These statements were collected and recorded after the death of the prophet and

---

⁴ A few of many such works are Wael Hallaq’s *Shari‘a: Theory, Practice, Transformations* (Cambridge, 2009), Knut Vikor’s *Between God and the Sultan: A History of Islamic Law* (Oxford, 2005), and Noel Coulson’s *Conflicts and Tensions in Islamic Jurisprudence* (University of Chicago, 1969).


⁶ Quotes in this paper from the Ḥadīth will be drawn from the Center for Muslim-Jewish Engagement translation. Citations list the compiler, book, and number.
include both a description of the prophet’s action – the *matn* – and the chain of transmission of the ḥadīth – the *insād*. The assumption is that the prophet would not violate Islamic law and is an example to follow. In Islamic law, these sources are of equal validity, and both may be drawn on in questions of legal interpretation – *ijtihād*.

Over centuries of interpretation, schools of legal understanding have developed around these texts. There are four predominant schools of legal interpretation, referred to as *madhhab*. The Ḥanafī school formed in Iraq in the middle of the 8th century. It is now practiced primarily in Turkey, Syria, Lebanon, Iraq, Jordan, Egypt, Sudan, and Indonesia. The Mālikī school formed in Arabia at the end of the 8th century. It is primarily used in North, West, and Central Africa. Both of these schools allow judges to use their own opinion in cases to which the legal texts do not speak clearly and vary somewhat based on the cultural differences between the communities in which they arose. The Shāfi‘ī school, which formed in the early 9th century, allows the use of analogical reasoning based on the Qur’an and Ḥadīth, in addition to the texts. It is primarily practiced in East Africa, Southeast Asia, and the southern part of the Arabian Peninsula. The Ḥanbalī school formed in the middle of the 9th century and relies strictly on the Qur’an and Ḥadīth, not juristic reasoning, for legal decisions. This school is used in Saudi Arabia. The Ḥanafī and Ḥanbalī schools are thus relevant to this discussion by virtue of the countries considered, Turkey and Saudi Arabia respectively. Though the schools agree on a great many aspects of religious law, they differ on particulars. In such cases as those details are relevant to the law of capital punishment, this paper will note the distinctions in its discussion.

**Trials in Islamic Law**

Shari’a courts, apart from state interference in structure, have one judge, referred to as a *qāḍī*. His rulings are not binding beyond the willingness of the parties or the state to enforce the decision.

Under Islamic law, the burden of proof lies with the prosecutor or the claimant. Charges are proved by evidence or the testimony of two witnesses, of which the claimant may be one. Witnesses must be adult, Muslim men of good character. Two women may fulfill the role of one male witness. Sex crimes are the exception to this rule in that they require four adult, male, Muslim witnesses. Witnesses must testify to their personal knowledge of the truth, not hearsay or speculation. Circumstantial evidence generally is not admissible; however, the Mālikī school permits pregnancy to be admitted as evidence of sex in trials for *zinā*. When evidence is only preponderant, not beyond a reasonable doubt, the defendant may swear an oath of denial. If he refuses, the plaintiff may swear an oath, which turns the ruling in his favor.

---


7 Schools of legal interpretation are part of Sunni Islam, which is the majority practice in the countries this paper considers. Shi’a Islam, instead, allows for rulings by imams and marj’ al-taqlīd – sources of imitation – as forces in legal interpretation, which impacts the legal systems in those Shi’a majority states. Neither of the countries in this discussion are Shi’a-majority states, however, so *madhhab* are more pertinent to the discussion.

8 Coulson, 21, 22, 24.
9 Coulson, 61.
10 Coulson, 78.
11 Coulson, 62.


12 Peiffer, 515; Coulson, 62.
13 Coulson, 63.
Confessions are admissible. They must be made in open court and without coercion. The confession can be withdrawn at any time and becomes inadmissible.\textsuperscript{14} Confessions may be used as the only evidence in criminal cases.

**Capital Punishment in Shari’ā**

The focus now shifts to the regulation and proscription of capital punishment in Islamic law. As capital punishment results from several classes of crimes, this discussion will be subdivided by the type of crime. Then, it will note the crimes in each class of crime.

Islamic law, despite popular conceptions, does not favor death or violence. In fact, Islamic law places a great value on human life. The value of mercy, in the eyes of God, is given equivalent value in goodness as murder is in evil: “[W]hosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind.”\textsuperscript{15} Nonetheless, that value does not bar capital sentencing. In the Qur’ān, God’s clear opposition to murder has exemptions: “And slay not the life which Allah hath forbidden save with right.”\textsuperscript{16} Capital punishment is permitted to the state, despite the value of life.

Islam places two further restrictions on capital sentencing. First, the person’s guilt must be established beyond a reasonable doubt. Second, the crime must have been committed in knowledge of its illegality.\textsuperscript{17} The Ḥadīth exempts from punishment children, the mentally insane, and those whocommit crimes while sleeping.\textsuperscript{18} Thus, it can be seen that the same texts that permit capital punishment in Islamic law do not favor it and that the assertion that Islam does not value human life is without merit.

**Ḥudūd Crimes**

*Ḥudūd* crimes are the crimes delimited in the Qur’ān and the Ḥadīth and for which the punishments are prescribed, some but not all of which are capital crimes. While the Ḥadīth categorizes the capital crimes in three groups,\textsuperscript{19} this discussion will be divided more specifically based on the several names given the variety of capital crimes.

**Unlawful Sex (Zinā)**

The term *zinā* is often translated as adultery or fornication, but it refers generally to unlawful sex. While some acts of *zinā* are capital crimes, not all *zinā* is.

The Qur’ān states that men and women guilty of pre-marital sex should be publically flogged one hundred lashes and exiled for one year.\textsuperscript{20} They are not permitted to marry except other such men and women or amongst the non-believers.\textsuperscript{21} This enumeration of their post-punishment behavior indicates that not all those found guilty of *zinā* are to be executed.

Adultery is a capital offense. According to the Ḥadīth, the punishment is stoning.\textsuperscript{22} Stoning is conducted by digging a pit in the sand, burying the man up to the neck or the woman up to the breast and striking the person with stones. After the person is dead, the body is washed,

---

\textsuperscript{14} Peiffer, 516.
\textsuperscript{15} 5:32.
\textsuperscript{16} 17:33.
\textsuperscript{17} Peiffer, 516.
\textsuperscript{18} Abu Dawud 38: 4389.
\textsuperscript{19} Abu Dawud 38: 4339 divides capital crimes into *zinā*, murder, and waging war against God.
\textsuperscript{20} 24:2; Sahih Muslim 17: 4196, 4209.
\textsuperscript{21} 24:2,3.
\textsuperscript{22} Abu Dawud 38: 4421.
shrouded, and buried according to custom. The Ḥadīth confirms that it is the marital transition that changes the punishment from flogging to stoning.\(^{23}\)

Rape is also punished by stoning. According to the Ḥadīth, the prophet ordered a man stoned based on a woman’s saying that he raped her and the man’s confirming it.\(^{24}\) The enhanced punishment may reflect the fact that the crime had a victim, in addition to the threat it posed to the community.

Homosexual sex is another form of unlawful sex under Islamic law. According to the Qur’ān, Sodom and Gemorrah were destroyed as punishment for “lust unto men instead of women.”\(^{25}\) It also advises men against leaving their wives for men.\(^{26}\) A man convicted of sodomy, be he married or unmarried, is to be stoned to death.\(^{27}\)

The Ḥadīth uses several examples from the lifetime of the prophet to illustrate the nuances of punishing zinā.\(^{28}\) In terms of seriousness, the Ḥadīth says the crime puts one so far out of the community that the prophet would not pray over the body of the executed. In delineating zinā, it indicates that anything short of sexual intercourse is insufficient to warrant capital punishment. In trial, one can testify against oneself, but the confession is only sufficient if one testifies four times, and the confession may be withdrawn. If an accused denies the accusation, he is not punished.

The different madhāhib have different requirements in regards to the application of the punishment. The Ḥanafī, Mālikī, and Shāfi’ī schools only include the stoning. The Ḥanbalī school requires flogging be instituted before the stoning. The Ḥanbalī, Mālikī, and Shāfi’ī schools require the unmarried committers of zinā be exiled for a year.\(^{29}\)

Stoning has religious significance. According to the Ḥadīth, the stoning so purifies the soul that even the adulterer can enter Paradise.\(^{30}\) That point explains the social value of fulfilling the sentence and why so many in the Ḥadīth testify against themselves.

**Apostasy (Ridda)**

Apostasy is the crime of leaving Islam. The Qur’ān promises “wrath from Allah,” the “curse of Allah and of Angels and of men,” and damnation to Hell for apostates.\(^{31}\) Those who are forced to confess apostasy but continue to believe are spared this judgment.\(^{32}\) It also says that the curse will be removed if, and only if, the apostates “repent and do right.”\(^{33}\) Muslims are not punished for their disbelief before Islam. However, those who leave the faith are punished: “Whoever changed his Islamic religion, then kill him.”\(^{34}\) The Hadith mandates death for those who “join the infidels.”\(^{35}\) Thus, it is clear that apostasy was a capital offense.

Different madhāhib have different regulations for apostasy. The Ḥanafī school does not allow the execution of female apostates. The Shāfi’ī and Mālikī schools allow repentance prior to

\(^{23}\) Abu Dawud 38: 4424.
\(^{24}\) Abu Dawud 38: 4366.
\(^{25}\) 7:80-81, 27:55.
\(^{26}\) 26:165-166.
\(^{27}\) Abu Dawud 38: 4447-4448.
\(^{28}\) Abu Dawud 38: 4364, 4385, 4407, 4412-14, 4420-21, 4423-24, 4429.
\(^{29}\) Peiffer, 510.
\(^{30}\) Abu Dawud 38:4414.
\(^{32}\) 16:106.
\(^{33}\) 3:86-89.
\(^{34}\) Sahih Bukhari 84:57.
\(^{35}\) Abu Dawud 38: 4345.
They also consider it the religious obligation of Muslims to encourage apostates to
return to Islam. These distinctions might reflect the fact that, though the prophet reputedly
stated the punishment, he never exercised it.

**Blasphemy**

The Qur’an and Hadīth do not make explicit reference to a ban on blasphemy. However,
in the Hadīth, it is stated that no blood price is owed for those killed as punishment for such
speech. Religious legal scholars sometimes connect this punishment with the punishment for
apostates, to which they connect blasphemy.

**Rebellion or Corruption (Baghy)**

Baghy is a complicated term that encompasses both corrupting the community of
believers and waging war, physically, spiritually, and economically, against God, the apostle,
God’s law, or the community of believers. While the texts are not specific about what constitutes
baghy, states have created their own lists. Many scholars include terrorism in this area. Armed
robbery and highway robbery – hiraba – which make the roads unsafe, are frequently interpreted
as part of the waging of war.

The Qur’an mandates that baghy be punished by death, amputation, or exile from the
Muslim world: “The only reward of those who make war upon Allah and His messenger and
strive after corruption in the land will be that they will be killed or crucified, or have their hands
and feet on alternate sides cut off, or will be expelled out of the land. Such will be their
degradation in the world, and in the Hereafter theirs will be an awful doom.” Thus, though the
crime is not solely capital according to the Qur’an, the potential is clearly there.

Additionally, the Hadīth includes a pronounced punishment for an attack on the prophet:
"The punishment of those who wage war against Allah and His Apostle and strive with might
and main for mischief through the land is execution or crucifixion." Another Hadīth suggests
that those who wage war on God may be exiled from the Muslim world instead of being
executed.

As the methods of waging war against God come in various degrees, so do the
punishments in the Qur’an. Less violent or committed versions can be given less absolute
sentences. Additionally, the nature of the rebellion can influence sentencing. In the Mālikī
school, only religious rebellion is capital; the other schools allow political and religious
rebellions to lead to execution. When any of the actions considered baghy result in a death, all
schools of Islamic law permit execution.

The execution may be averted. Some scholars argue that if a group commits the crime
and one member cannot be executed, then none may be executed. Those who surrender during
the rebellion or who are captured after having been wounded may also not be executed.

Muslims are exhorted to forego the punishment for those who repent: “Save those who repent

---

36 Rehman, Javeid. *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the ‘Clash of
37 Peiffer, 512.
38 Rehman, Javeid. “Freedom of expression, apostasy, and blasphemy within Islam: Sharia, criminal justice systems, and modern
39 Abu Dawud 38: 4348.
40 5:33.
41 Abu Dawud 38: 4357.
42 Abu Dawud 38: 4339, 4359.
43 Peiffer, 513-515.
before ye overpower them. For know that Allah is Forgiving, Merciful.” \(^{44}\) Here again the value of mercy and preserving life in Islamic law is shown. Furthermore, the Qur’an makes it the obligation of Muslims to encourage the repentance, to reunify of the community of believers, and to “fight ye that which doeth wrong till it return unto the ordinance of Allah.” \(^{45}\) Thus, the preference of Islamic law is to avert the execution in this case in favor of sustaining the community from transgressors through reunification, not capital sentencing.

**Murder (Qatl)**

The Qur’an forbids murder: “And slay not the life which Allah hath forbidden save with right.” \(^{46}\) In prescribing retaliation for the murdered, the Qur’an dictates capital punishment. \(^{47}\) The Qur’an circumvents the suggestion that capital punishment is murder with the note that life may be taken “with right,” and grants, in the Ḥadīth, that executors of shari’a punishments must not be punished for fulfilling God’s will. \(^{48}\) The Qur’an also gives power to the victim’s family to determine whether to use capital punishment. All the same, it counsels against rash executions: “Whoso is slain wrongfully, We have given power unto his heir, but let him not commit excess in slaying.” \(^{49}\) Thus, even though Islamic law allow capital punishment, it encourages mercy.

**Qiṣṣās**

Qiṣṣās are crimes against individuals, not Islam. Primarily, they are issues of bodily harm, and the punishments are matters of retribution.

The Qur’an supports retributive justice: “The life for the life, and the eye for the eye, and the nose for the nose, and the ear for the ear, and the tooth for the tooth, and for wounds retaliation.” The Qur’an also states that the variety of person killed for the victim should be of similar social standing – child or adult, slave or free, male or female. \(^{50}\)

The victim and family members of the victim have the right to mitigate the punishment. According to the Qur’an, forgiving the criminal expiates some of the forgivers’ sins. \(^{51}\)

**Assault**

Assault is the most obvious crime in this field, which would result in bodily harm and be avenged. However, as anything short of death of a victim will not trigger an execution, this crime is not germane to this research.

**Murder (Qatl)**

Murder is placed in this category by some scholars, despite the aforementioned ḥadīthic and qur’anic prescription. Murder is often grouped in this category because the family can accept a blood price – *diyya* – in exchange for forgoing the punishment, which suggests that it is a bodily harm issue. The schools differ on the rules for the *diyya*. According to the Mālikī and Ḥanafī schools, willful murder cannot be expiated by *diyya*, though the execution may be

---

44 5:34.
45 49:9.
46 17:33.
47 2:178.
48 Abu Dawud 38: 4363.
49 17:33.
50 2:178.
51 5:45.
pardoned; the Shāfī’ī and Ḥanbalī schools allow diyya for intentional murder. Only the Ḥanafī school allows a Muslim to be killed for the murder a non-Muslim/Christian/Jew.\textsuperscript{52}

\textit{Hiraba}  
\textit{Hiraba} is often translated as highway banditry. As was seen in the qur’anic citation in that discussion, punishment can vary. The variation with punishment reflects the seriousness of the crime. The Ḥanafī school invokes banishment for “troubling the roads” or theft without murder. The Shāfī’ī school allows banishment or imprisonment. The Mālikī school allows amputation or execution.\textsuperscript{53}

\textit{Taʿzīr} Crimes  
\textit{Taʿzīr} crimes are not covered by ḥudūd or qiṣāṣ; they are judicially imposed. The purpose of these regulations is to deter unaccepted behavior. \textit{Taʿzīr} rulings are usually applied to actions that do not quite meet the specifications of \textit{ḥudūd} or \textit{qiṣāṣ} crimes, when there are extenuating circumstances, when actions are condemned in the Qur’an, are “contrary to public welfare” but are not \textit{ḥudūd} or \textit{qiṣāṣ} crimes, or violate social norms. Should the crime have a victim, the victim may petition the ruler or judge for a pardon.\textsuperscript{54} Many capital crimes in Muslim-majority countries fit this category, with each state setting its own.

Different schools of Islamic law approach the severity of these crimes differently. Typically, they are not perceived as capital crimes. However, the Ḥanafī and Mālikī schools allow execution for recidivists, as do some states. Owing to the decreased severity, the standard of proof is lower for \textit{taʿzīr} crimes. Also, confessions may not be retracted.\textsuperscript{55}

\textit{Theft}  
The punishment for theft is delineated in the Ḥadīth. It is usually punished by the cutting off of an appendage. The Ḥadīth indicates, though, that repeat criminals may be killed.\textsuperscript{56}

\textit{Alcohol Use}  
According to the Ḥadīth, the consumption of wine to intoxication is punished by flogging. However, repeat offenders – four times and more – may be executed.\textsuperscript{57} Different communities interpret the regulations regarding alcohol and different types of alcohol differently.

\textit{Turkey}  
Turkey’s relationship with Islamic law and with capital punishment has been shaped by Turkey’s secularism. State secularism, though not independently sufficient for abolition, smoothed the way for Turkey to abolish capital punishment, despite the prevalence of capital punishment in Islamic law and the presence of capital punishment in the criminal code that Turkey’s secularism prompted it to adopt. European Union accession aspirations in Turkey’s leadership, particularly Prime Minister Erdoğan, were the driving factor behind Turkey’s abolition of capital punishment in Turkey. Though this decision has been tested and disputed, based on public opinion and by Islamic and nationalist factions in Turkish politics, Turkey’s

\textsuperscript{52} Peiffer, 517, 518.  
\textsuperscript{53} Peiffer, 513.  
\textsuperscript{54} Peiffer, 518, 519.  
\textsuperscript{55} Peiffer, 519.  
\textsuperscript{56} Abu Dawud 38: 4396.  
\textsuperscript{57} Abu Dawud 38: 4467, 4469, 4470.
economic interest has stifled applications of capital punishment, despite Islamic law and the prevalence of Islam in its population.

**Turkey as a Secular State**

Though Turkey is a Muslim-majority country, the history of the Republic of Turkey has been marked by the development of a secular state. Thus, its use of capital punishment was not religiously motivated. The Republic of Turkey was founded in 1923 after the destruction of the Ottoman Empire during WWI. Mustafa Kemal, the political founder of Turkey commemorated as Atatürk, established an authoritarian, single-party regime that instituted a sweeping array of social, political, and legal reforms in order to deconstruct the “social despotism” created by the Turkish-Muslim traditionalists and ‘ulamā through “political despotism.”

Kemalism, which features secularism as a central principle, has had a profound influence on Turkish politics since the state’s inception. The six primary tenets of this reformation were republicanism, statism, populism, secularism, nationalism, and reformism. Though secularism was initially instituted to prevent Islam’s directly influencing the state and the exploitation of religion for political gain, the secularism platform became a means of asserting state control over religion. In 1937, the new constitution of Turkey adopted the Kemalist principles.

The enforcement of secularism had particularly profound social and political ramifications in Turkey. Islam had previously provided the justification for the Ottoman Empire’s government and a great source of social unification, especially during WWI. Kemal’s nationalist agenda was thus served by the subjugation of the religious authority to the new nation-state system.

The most important secularism-based political changes were in the adoption of new legal codes. In 1926, shari’a was replaced with the Swiss Civil Code, the German commercial code, and most importantly for this discussion – the Italian Criminal Code of 1889. Certainly the capital punishment the Italian code contained was separate from Islam. Ultimately, although this adoption enshrined capital punishment, the subjugation of religious law and leadership in favor of secular rules that these changes represent eventually opened the door to abolition.

The secularist tenet of Kemalism had the greatest influence on Turkish social order. Without the religious links, divisions formed between the Turkish Muslims and the non-Turkish Muslim populations and between the Westernized elites and the traditionalist populace. A combination of Kurdish nationalism and Islamic revivalism led to a Kurdish rebellion in 1925, at which point the government granted the president expanded powers to suppress the uprising. The treatment of Kurdish and other ethnic minorities continued to play an important role Turkish domestic and international politics, including capital punishment.

---

61 Cleveland, 181.
63 Tunçay.
64 Cleveland, 182.
With the development of other political parties, some aspects of Kemalism fell in and out of favor. Military coups combated perceived abandonment of secularism and were often linked to executions, showing that, at least in Turkey, pursuit of secularism, not Islamization, increased capital punishment. In 1960, a coup occurred against the Democratic government citing deviation from Kemalism. In 1961, power was returned to the civilians, and Prime Minister Menderes and two of his cabinet members were sentenced and hanged in September. A new constitution was created in July 1961 that reasserted the commitment to secularism. Between 1965 and 1973, the military seized control from the Justice Party in the face of public violence. Another coup to uphold secularism occurred in 1980. The new constitution, written in 1982, demonstrates the desire to perpetuate Kemalist secularism and to avoid the rallies and minority parties that had spurred the previous regimes and coups. The current constitution references Kemal and commands respect and loyalty to the “the reforms and principles introduced by him,” including that Turkey is a secular republic and that “there shall be no interference whatsoever of sacred religious feelings in State affairs and politics.”

The constitution, though, was not the end of the fight for secularism. In 1983, the Motherland Party – a mix of Islamic revivalists and secular liberals – took power and instituted economic reforms. In the 1990’s, “the void created by the repression of the political Left was filled by reformist Islamic-oriented political groups that offered the only remaining challenge to the comfortable alliance between business interests and the existing political establishment.” The Welfare Party – the largest Islamist party – formed. In 1995, the Welfare Party won 21% of the vote by emphasizing Turkey’s “Islamic character.” The Islamist victory, though, was short lived. In 1997, the Military High Command pressured Necmettin Erbakan, the party leader and the prime minister, to resign. Such action, though seemingly undemocratic, was affirmed by the Constitutional Court in 1998. Secularism, thus, appears to have had a higher constitutional place in Turkey than democracy. The influence of Kemalism and its secular principles is demonstrably still present in Turkish politics.

The Turkish relationship with secularism, though it opens the door to the abolition of capital punishment, does not, in isolation, explain the abolition, as it still used capital punishment throughout its secularist history.

**Turkey and the European Union**

Turkey’s abolition of capital punishment reflects Turkey’s interest in strengthened ties with Europe and admission to the European Union. This fact is demonstrated in the way in which Turkey abolished capital punishment and the public framing of the decision by politicians.

In 2002, the Justice and Development Party (AKP) under Recep Tayyip Erdoğan took control of parliament. Erdoğan “placed great importance on Turkey’s future membership in the

---

65 Initially, there was only one political party, the party of Ataturk – the Republican People’s Party (Cleveland, 179). The Democratic Party, formed in 1946 and took control by a 408 to 477 majority in 1950 (Cleveland, 278).
66 Cleveland, 280-281.
67 The NSP was demanding the reinstitution of shari’a (Cleveland, 282, 284).
68 New regulations tightened control of universities, unions, the press, and denied parliamentary representation to parties not receiving more than 10% of vote (Cleveland, 285).
70 Cleveland, 285.
71 Cleveland, 528.
72 Cleveland, 529.
73 The AKP claimed to be a “secular party with Islamic roots” and Erdoğan claimed to support increased freedoms of religion and expression. Notably, though, Erdoğan was arrested in 1997 for “Islamic sedition” (Cleveland, 532).
Though Erdoğan’s leadership was plagued with concerns about the future of Turkish secularism, Erdoğan retained power, secularism was again affirmed by the Turkish Constitutional Court, and the European Union accession efforts continued.

In 2005, Turkey began accession negotiations with the European Union. Membership was rejected initially owing to asserted human rights violations, questions as to the democratic nature of Turkish politics, and economic underdevelopment. Abolishing capital punishment is explicitly required of all new European Union member states. Thus, Turkey’s EU aspirations motivated a shift in Turkish domestic law, especially with respect to capital punishment. Thereby, one can see that, even in a Muslim-majority state, Islam was not a sufficient motivation for the people to perpetuate capital punishment.

Abolition of Capital Punishment

Capital punishment has been part of Turkish law since the Republic’s inception, adding a historical dimension to Turkey’s capital punishment debate. Because of the aforementioned secular bent in Turkish law, shari’a was not the factor regulating capital punishment. Instead, the new laws and criminal code drove the use of capital punishment, and international pressure and aspirations, particularly related to the European Union, have guided Turkey’s abolition thereof.

Initially, Turkey applied capital punishment for a wide variety of crimes. The death penalty was included in the Turkish Criminal Code (1926), the Military Criminal Code (1930), the Law on the Prohibition of Smuggling (1932), the Forest Law (1956), the Code of Execution of Criminal Sentences, and the Constitutions of 1924, 1961, and 1982. These laws were all created by the strictly secular state, not shari’a, especially the Criminal Code, which was adopted from Italy, not retained from the Ottoman Empire. While it may have targeted some of the same crimes as shari’a, it did not use shari’a as the reason or source. Furthermore, its willingness to gradually abandon capital punishment refutes a shari’a association, as shari’a had not changed.

Turkey has been moving towards abolition for decades. As the Criminal Code was amended, the capital punishment provisions were converted to life imprisonments without parole. By 1984, only twenty-five crimes were subject to capital punishment. In 1990, only twelve articles still required capital sentencing. Along with a legislative movement away from capital sentencing, Turkey had fewer executions. From 1973 to 1980, there was a moratorium on capital punishment. After the military coup and the drafting of a new constitution, only two

74 Cleveland, 532.
75 Cleveland, 534.
77 CIA … “Turkey.”
80 Sokullu-Akinci, 162.
81 1973 was the re-institution of civilian control after the military coup. During the coup, leftist leaders were hung.
incidents of capital punishment occurred. Subsequently, although capital sentencing continued, it was not carried out, leaving forty-seven people on “death row.”

As Turkish interest in joining the European Union increased, Turkey began to formalize its moratorium on capital punishment. In October 2001, the Constitution of 1982 was amended as part of fifty-one reforms instituted in order to facilitate EU accession. Under the new provision, capital punishment was prohibited for “all ordinary crimes.” Under the new Article 38 regulation, “the death penalty may only be imposed in time of war and for crimes of terrorism,” a crime for which Turkey particularly wanted to maintain capital punishment and for which Turkish history and public support the capital punishment. Some scholars have suggested that Turkey took so long to formalize the moratorium on capital punishment because of its interest in maintaining capital punishment for terrorists and insurgents. In August 2002, in another collection of reforms targeting EU accession, Turkey’s parliament abolished capital punishment for all crimes in peacetime. The relationship of abolition to the EU accession is evident in the discussion of the reforms by Deputy Premier Mesut Yılmaz. Instead of framing the reforms as an independent action by the Republic, he described them as part of the accession effort: “Turkey has taken a giant step on the road to the EU.”

These restrictions, though, were still not sufficient for entrance to the European Union. The European Commission responded that it viewed the reforms “as an important signal of the determination of the majority of Turkey’s political leaders towards further alignment to the values and standards of the European Union” but insisted that the reforms must be “carefully analysed in order to fully assess [their] impact.” The EU Commission, though, did note that the abolition was a “significant step on its way to becoming a fully fledged democracy.” However, some in the EU headquarters still believe Turkey is too much under military control and lacking popular accountability to enter the EU. Other officials have suggested that its being a Muslim-majority country is a limiting factor in its European Union accession efforts, despite Turkey’s fastidiously enforced secularism.

To better satisfy the Commission of Turkey’s readiness for EU membership, Turkey, under Erdoğan, signed two European protocols that abolished capital punishment, despite the

---

82 The coup was an aberration from the abolitionist pattern. During the coup, 48 people were executed. 23 were executed for political crimes; 25 were executed for “common crimes.” (Hood, 48, 49; Shafak; Sokullu-Ankinci, 162).
84 In 1984, there were two executions for politically motivated homicides (Hood, 48).
85 Capital cases are heard by three judge panels that rule by majority vote. The Supreme Court reviews convictions. Next, the Turkish Grand National Assembly must ratify capital punishments before they can be enacted, which has not happened since 1984.
86 Hood, 49; Sokullu-Ankinci, 162.
87 Frantz.
88 Hood, 48.
91 “Turkey agrees.”
fact that Erdoğan favored reinstating capital punishment.97 The first protocol ratified was Protocol 6 of the European Convention on Human Rights, ratified in 2003.94 Through this ratification, Turkey affirmed Article 1: “The death penalty shall be abolished. No one shall be condemned to such penalty or executed.”95 With this protocol, Turkey agreed not only to the perpetuation and legal affirmation of the de facto moratorium that was already in effect, but it agreed to no longer sentence criminal defendants to capital punishment, foregoing even the nod to Turkey’s historic sentencing requirements that an unenforced sentence offered. Turkey’s amended its constitution to reflect its international obligations in 2004: “The death penalty and the penalty of general confiscation shall not be imposed.”96 Turkish domestic law was altered to reflect these accords. The Turkish Criminal Code of 2005 did not contain capital punishment at all. Instead, it states, “The punishment to be imposed as sanction against the offenses are imprisonment and judicial fines.”97 In 2006, Turkey ratified Protocol 13 of the European Convention on Human Rights.98 Not only did Turkey reaffirm the Protocol 6 Article 1 ban in Protocol 13, it also affirmed the removal of the “time of war” exemption, which surpassed the then requirements of Turkish domestic and constitutional law. Turkey’s developing domestic law, particularly in law opposed to the requirements of shari’a and Turkey’s historical use of capital punishment, demonstrates the role that European Union aspirations and international pressure have had in influencing Turkey’s practice.

Put to the Test

Turkey’s commitment to abolition and the predominating influence of international pressure have recently been tested. A recent criminal case has drawn on Turkey’s secularism, popular support for capital punishment, Turkey’s history with ethnic minorities, international concerns about terrorism and violence, and Turkey’s EU interests. Turkey’s response, though, has affirmed the role international relations can and do play in determining the domestic practices of independent states, even in Muslim-majority countries.

The greatest test case in Turkey’s abolition movement has been that of Kurdish Worker’s Party (PKK) leader Abdullah Öcalan. In 1999, Turkish forces captured Öcalan in Kenya. He was sentenced to death, within Turkish law and with great popular support.99 With the aforementioned modifications of Turkish law, Öcalan’s sentence was commuted to life imprisonment.

Though Turkey is still interested in entering the European Union,100 Turkey’s advancement in European Union accession had faltered after the initial concessions. After facing opposition from France and Germany, Erdoğan shifted focus from the EU to Turkey’s regional

---

95 Ibid. Art. 1.
96 Article 2 of the protocol allows an exemption for acts committed during war or in “imminent threat of war.”
97 “Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances” amended the EHCR in 2002 (Vilnius, 3.5.2002).
98 Öcalan was charged and convicted based on his role in the 16-year guerilla war staged against Turkish authorities that killed 30,000 people and for treason (“Turkey agrees”; Frantz).
99 Hood, 48; Cleveland, 531
100 Erdoğan stated in October 2012 that he “still strongly believed in EU membership” (Shafak).
power and threatened to reverse some of Turkey’s EU commitments. As one journalist noted, “The more the EU forgets about Turkey, the more Turkey forgets about the EU.” It is unclear whether Turkey was acting from independent intention or if Turkey’s leadership was attempting to reinvoke its relationship with the EU by suggesting rebellion. Either way, Erdoğan’s suggestions certainly gained European Commission admonitions and ultimately reaffirmed Turkey’s subordination to the European Union regulations.

The primary commitment he proposed reversing was the EU-inspired ban on capital punishment. The ensuing debate highlighted the central factors, largely separate from Islam, that Turkey’s government considers in its capital punishment deliberations. Following an upsurge in Kurdish militant violence and increased popular pressure on the government to respond, Erdoğan said at an AKP meeting, “In the face of deaths, murders, if necessary the death penalty should be brought back.” He cited the use of capital punishment in developed states, including the United States, Japan, Russia, and China and public opinion polls favoring the reinstatement, especially in the case of Öcalan. In citing public support, Erdoğan shows another extra-religious factor at work in Turkey’s debate about capital punishment. Furthermore, he suggested that capital punishment was more just than life imprisonment and that the families of the victims, groups of whom have opposed the ban since its inception, should be involved in the decision.

Erdoğan’s position could also be an attempt to garner rightwing support in the 2014 elections. One AKP politician, similarly citing terrorism and violence as state concerns, noted that, though there are no plans currently being enacted to reinstate capital punishment, the AKP would be doing so without EU approval or merely by assuming international support: “[Erdoğan] would not hesitate to bring back the death penalty if necessary. Since Turkey is currently trapped by terrorism, it would not be difficult to explain such a thing to the European Union.” Thus, the government apparently focused on victims’ rights, public opinion, and prevention of terrorism, all motivations distinct from Islam and found in other states.

European Union and European leaders, though, pressured Turkey to maintain its abolitionist agreements with the EU, which would mean favoring economic gain over all other factors, including Islamic law. A spokesman for EU enlargement commissioner Stefan Fule stated, “When the Commission monitors compliance by candidate and potential candidate countries with the political criteria, it looks at the legal provisions on the death penalty. The abolition of the death penalty is one of the major political reforms achieved by Turkey in its

---

102 Shafak.
103 Ibid.
104 Ibid.
107 Groups for the families have been outspoken against the abolition since its initial consideration. Said Mehmet Guner, director of an organization for survivors of soldiers and police officers, “Ending capital punishment should not be a precondition to enter the European Union. If they like us, they better accept us the way we are” (Frantz).
108 “We do not consider the state has the authority to forgive the killer. This authority belongs to the family of the victim, it cannot belong to us” (Butler).
109 Reinstating capital punishment could, for instance, increase support from the Nationalist Movement Party (MHP) Bozkurt; Shafak.
European integration process.” European officials were clear that reinstating capital punishment would prevent Turkey’s entering the European Union.

**Result**

Although a Muslim-majority country, Turkey has abolished capital punishment. From having utilized capital punishment since its inception, Turkey decreased its usage both in practice and in law. Turkey’s history of state secularism shows that even its initial use of capital punishment was not religiously motivated. It was Turkey’s European Union aspirations that motivated Turkey’s codification of its capital punishment moratorium. While this practice has been contested by nationalist and Islamic groups, victims and family advocates, the political right, and public opinion, under European pressure, Turkey has favored European Union regulations to domestic desires. Thus, Islam and Islamic law are not influential in this state’s considerations, and, in fact, non-religious interests have directed Turkey’s regulation in opposition of shari’a prescriptions.

**Saudi Arabia**

Saudi Arabia’s application of capital punishment, on the other hand, has been marked by its development as an Islamic state. Much of its practice of capital punishment is associated with shari’a regulation, either explicit or oblique reasons. Unlike Turkey, it has specifically avoided international agreements that would inhibit its internal application of capital punishment. Nonetheless, Saudi Arabia has demonstrated a propensity to yield to commutation efforts in the face of international pressure, especially economic interest.

**Saudi Arabia as an Islamic State**

The history of Saudi Arabia has been marked not just by the development of a Muslim-majority state but also by the development of an Islamic and Islamically justified state. Such can be seen in the methods used to create the state and the explanations of the state’s structure and authority employed by state’s leaders.

Warrior statesman Abdul Aziz Ibn Sa’ud revived the Wahhābī movement in the Arabian Peninsula at the beginning of the 20th century and founded his state on its teachings. Through military force, negotiation, marriage, and religious unity, Abdul Aziz grew from a “minor tribal chieftain to international stature as the ruler of a kingdom that bore his name” and combined the secular office of tribal leader with religious position of head of the Wahhabi order.  

He started in 1902 by overtaking Riyadh and naming it the capital. On September 23, 1932, Abdul Aziz officially established the Kingdom of Saudi Arabia as an Islamic state that would use the Qur’an as its constitution. As king, King Abdul Aziz reduced the independence of the religious authority in the state, aggrandizing the state’s position as the purveyor of secular

---

110 Butler, Gültaşı.  
112 Cleveland, 21, 231, 233.  
114 Information… “History.”
control and religious legitimacy and capacity. He built mosques for communities and sent state-sanctioned `ulamā throughout the state to spread the Wahhabism that buttressed his authority and that he claimed to represent. At the same time, he eased the `ulamā out of policymaking. He put the religious authorities on state payroll, convinced them to acknowledge the legitimacy of the Sa‘ud family as Islamic rulers, and removed their influence on foreign policy.\footnote{115 Cleveland, 232, 461, 462.}

King Abdul Aziz, though, was not himself the force that united the kingdom, and religion, despite his subordination of the `ulamā, continued as the governing force and mechanism of Saudi Arabia. At the time of his death in 1953, Saudi Arabia had no political constitution or political parties: “Islam was the ideology through which Ibn Sa‘ud legitimized the right of his family to rule. The Quran was the constitution, and the shari‘ah was the law.”\footnote{116 Cleveland, 452.} The power of Islam in the state did not die with him. Subsequent monarchs perpetuated the relationship between Islam and Saudi Arabia, including forming the Muslim World League\footnote{117 Information…“History.”} and the Organization of Islamic Cooperation,\footnote{118 Information…”History.”} and the primacy of the shari‘a in its government. King Faisal stated, “Sa‘udi Arabia has no need for a constitution because it has the Quran, which is the oldest and most efficient constitution in the world.”\footnote{119 Cleveland, 459, 460} Evidently, the Kingdom of Saudi Arabia spent the first forty-three years of its existence solidifying the presence of Islamic law within its government and state, developing its international connections on the basis of Islam, and promoting Islam and shari‘a globally.

Subsequently, though, leaders focused on economic development and international power. This wealth and the associated increased connection to the West created by the Oil Crisis of 1973 influenced Saudi Arabia’s foreign relations and affirmed again internationally the control of the royal family.\footnote{120 Ibid.} Increased connection with the West was underscored by the import of foreign workers and technology and the increase in Western university education for the children of the middle class and the elites. The royal family persisted in its refusal to permit the formation of labor unions or political parties.\footnote{121 Ibid.} The economic developments increased the state’s secular power by increasing the monarchy’s wealth and international recognition, neither factor relying on the state’s religious claim to authority.

That strengthening, though, should not be interpreted as a weakening of the state’s Islamic foundation. After King Faisal’s death, the Morality Police, under control of the `ulamā, grew in power. Originally, their purview was limited to the monitoring of Islamic observance, such as observing Ramadan and prayers or wearing appropriate clothing in public. In the early 1980s, the Morality Police increased their jurisdiction to include foreigners, propagated Islamic law in rural areas that were previously sparsely controlled, and employed stricter behavioral controls.\footnote{122 Cleveland, 461, 462.} Additionally, although Saudi elites were increasingly attending foreign universities, the government was not. Members of the royal family educated abroad were left out...
of government, which continued to be run by just the reigning monarch and select members of the family who served as his advisors. During and after the Gulf War, pro-Islamic and anti-foreign sentiments flourished. The presence of an American mixed-gender army in Islam’s holiest cities spurred protests that “condemned the spread of Western cultural influences and demanded that the state cut its ties with the West and reshape its policies and practices to conform to Islamic guidelines.” In response, reforms were instituted to promote shari’a and increase the role of the ‘ulamā. One such reform seems to have been the creation of a Saudi constitution, known as the Basic System of Government for the Kingdom of Saudi Arabia, in 1992 by King Fahd. This constitution underscores the Islamic nature of the state and justifies the state and the al-Sa’ud government by Islam: “The government in the Saudi Arabian kingdom derives its power from the book of God Almighty and the sunna of his Apostle. They are the governors over this regime and all the regulations of the state.” King Fahd, in developing the document, had no intention of its detracting from or altering any principles of Islamic law: “[T]he basis of the program of Islam is fixed and is not subject to subject to change or alteration.” Thus, the constitution was the enshrining of shari’a law in the Saudi government, not a replacement.

Thus, from the way in which Saudi Arabia was created and justified and the ways its subsequent leaders discuss its government, one can see that Saudi Arabia developed as an Islamic state.

**Saudi Arabia’s Government and Court Systems**

Saudi Arabia is an absolute monarchy, hereditary in the al-Sa’ud family. The monarchy is accompanied by a consultative council that advises monarch and can propose, but not pass, laws. Members are appointed by the king and serve four-year terms. This body, the Majlis al-Shūrā, was created in 1992 by King Fahd and contained sixty members, later increased to 150. The constitution empowers the Kingdom of Saudi Arabia to derive laws from shari’a and to enforce Islamic law within its borders: “The Saudi Arabian kingdom is an Islamic state, completely sovereign. Its religion is Islam. Its constitution is the book of God Almighty and the sunna of his apostle, blessings of God and peace be upon him…The state protects the faith of Islam, applies its shari’a, orders the good and forbids the evil, and undertakes the obligation of the call to God.” As such, constitutionally, the legal system of Saudi Arabia is shari’a.

The Saudi court system is left, in the constitution, to be determined by statutory regulation. In Saudi Arabia, a defendant is innocent until proven guilty. To establish such guilt, courts hear witness testimony in accordance with Islamic law as described above. The court system has three levels. The lowest level of courts – the summary judgment courts, referred

---

123 Cleveland, 453.
124 Cleveland, 493.
126 Peiffer, 519, 520.
128 Chapter 6 [Authorities of the State] Article 68.
131 Peiffer, 524.
to as qaḍī al-amūr al-mustaʿjala — does not try capital cases. The High Court of the Shariʿa judges cases based on ḥudūd or qiṣṣās. Normally, only one judge presides; however, for capital crimes, three judges hear the case. These judges examine evidence and hear witnesses before issuing a verdict. Trials are not open to the public, and, frequently, convictions are based on confessions. Their decision is subject to appeal in the Court of Cassation, in which a five-judge panel determines if due process was followed. The Supreme Judicial Council and the king review all capital cases. As ḥudūd sentences are Qur’ānically mandated, those sentences are not under review, only the guilt is. In taʿzīr cases, review of penalty is a possibility.

The next question becomes how capital punishment factors into this system.

**Saudi Arabia and Capital Punishment**

Saudi Arabia is one of the world’s leaders in capital punishment, which it justifies under Islamic law. That status, though, does not indicate state affection for capital punishment. Indeed, the Saudi government seeks, within Islamic law, to reduce capital sentencing rates.

By the numbers, Saudi Arabia’s execution rates are high. According to Amnesty International, between 2003 and 2006, 256 people were executed in Saudi Arabia. In 2012, Amnesty International reported 79 executions; Human Rights Watch reported only 69. Extrapolating from these numbers, though, based on an average of 65-67 executions a year, Saudi Arabia accounts for only about 4.5% of global executions, which calls into question the preoccupation with capital punishment in Muslim-majority states. Despite the hypocrisy or irrationality of Western preoccupation with Islamic capital punishment, this study continues.

Structurally, capital punishment is part of the Saudi judicial system, which is constitutionally required to enforce shariʿa and systemic law. The king is responsible for assuring that rulings are enacted. The most common method beheading by sword. Executions are public. The legal guardian of a victim has the right to perform the execution, but there are no reported cases of this prerogative’s being exercised. Saudi law allows for the execution of those under the age of eighteen, but this provision has only been applied once since 2000.

---

132 Literally, this title translates as “the judge of the urgent affairs.”
133 Peiffer, 520.
134 Hood, 219.
135 Hood, 219.
136 Amnesty International has asserted that Saudi Arabia allows the use of confessions gained under duress or deception.
137 Peiffer, 520, 521.
138 Amnesty International has asserted that Saudi Arabia allows the use of confessions gained under duress or deception.
139 In 2001, there were 1,457 known executions. 90% were in China, Iran, Saudi Arabia, and the United States.
141 Hood, 149.
142 In 2001, there were 1,457 known executions. 90% were in China, Iran, Saudi Arabia, and the United States.
143 Hood, 149.
145 In Saudi Arabia, the judicial system is independent, subject only to the control of the religious texts (Chapter 6 [Authorities of the State] Article 46). The King appoints judges to it after they are selected by the High Council of Justice (Chapter 6 [Authorities of the State] Article 52).
146 Chapter 5 [Rights and Duties] Article 38.
147 Chapter 6 [Authorities of the State] Article 50.
148 Hood, 156, 165.
149 Hood, 167.
150 Islamic law sets age of majority lower than the West or international law. While not fixed, it is around puberty. Hood, 190.
The Saudi legal system “applies Islamic law in its entirety,” and it is that law that delineates the Saudi use of capital punishment.\textsuperscript{146} Saudi Arabia therefore applies capital punishment for the \textit{hudūd} crimes of murder, \textit{zinā},\textsuperscript{147} sodomy, homosexuality,\textsuperscript{148} robbery with violence,\textsuperscript{149} and apostasy. For \textit{hudūd} crimes, the application connects to Islamic law. The non-performance would be the deviation from shari’a prescription, and, thereby, Islamic law.

\textit{Hiraba} creates some tensions in Saudi law, despite the ḥadīths. Saudi Arabia has been known to execute even those robbers who have not murdered, as permitted in the Ḥadīth.\textsuperscript{150} Additionally, under Saudi law, those who surrender to justice are pardoned the \textit{hudūd} punishment and left only to make amends to the victim, as a \textit{qiṣāṣ} punishment. Those who do not confess and repent may be executed under Saudi law. Judges are also permitted to consider, in their rulings, whether the robbery included “abduction for sexual purpose.”\textsuperscript{151} These executions, some religious scholars argue, violates the justice and proportionality that are central to Islamic criminal justice. Also, the expansion of the definition of \textit{hiraba} is considered by some scholars deviation from Islamic law. Furthermore, the discretion granted to the judges has struck some as arbitrary, which is contradictory to the nature of \textit{hudūd} regulations.\textsuperscript{152} In the other crimes, though, there is no grey area. Thus, it is not in these areas that Saudi Arabia’s capital punishment faces the greatest questions of religious exactness or that one anticipates great intervention by extra-religious factors.

Such concerns are greatest in the other capital crimes. Capital punishment has been legislated for several \textit{ta’zīr} crimes, including espionage, drug trafficking, blasphemy, heresy, abduction, and sorcery.\textsuperscript{153} Recidivists may also be executed.\textsuperscript{154} Most \textit{ta’zīr} executions are justified by the idea that those crimes are instances of corrupting the earth or the al-ʿumma al-Islāmiyya, which Saudi Arabia treats as a capital crime. Corruption has also been known to include “aggression against persons and private or public property such as the destruction of homes, mosques, schools, factories, bridges, ammunition dumps, water storage tanks, resources of the treasury such as oil pipelines, the hijacking and blowing up of airplanes.”\textsuperscript{155} It is these crimes that hold the greatest potential for supposedly deviating from Islamic tenants.

As was discussed in the treatment of shari’a in theory, corruption of the earth or waging a war on Islam is a capital offense. It is in the delineating of those crimes, which is done by the state, that complication arises. By describing crimes as attacks on the Islamic religion, people, or state, Saudi Arabia effectively grants itself carte blanche to use capital punishment. Considering the value Islam places on life, the great capacity this interpretation allows Saudi Arabia seems

\footnotesize
\begin{itemize}
\item[\textsuperscript{146}] Hood, 71.
\item[\textsuperscript{147}] For \textit{zinā}, when capital punishment is the \textit{hudūd} requirement, in accordance with shari’a, Saudi Arabia uses stoning (Hood, 141,142).
\item[\textsuperscript{148}] Some interpreters consider homosexuality to be \textit{zinā}, which would make it a capital offense as a \textit{hudūd} crime, not as a \textit{ta’zīr} crime. Hood lists sodomy as a \textit{ta’zīr} offense. The creation of a law against it suggests it may be both \textit{ta’zīr} and \textit{hudūd}. In either case, it is punished by death in Saudi Arabia (Hood, 72, 141, 150).
\item[\textsuperscript{149}] Capital punishment is optional for robbery with violence, but when death results from the crime, capital punishment is invoked (Hood, 140).
\item[\textsuperscript{150}] Under \textit{ta’zīr}, judges can impose capital punishment without murder having been committed (Peiffer, 525).
\item[\textsuperscript{151}] Peiffer, 521-523.
\item[\textsuperscript{152}] Peiffer, 523.
\item[\textsuperscript{153}] Hood, 151, 72; Peiffer, 522.
\item[\textsuperscript{154}] Trafficking is a capital offense under Fatwa Number 85 issued in 1981 (Peiffer, 522). It includes, producing, trading in, or possession with intent to distribute, as marked by the possession of large quantities (Hood, 137, 279, 280). Capital punishment, though, is typically reserved for recidivist drug traffickers or smugglers, as they are the greatest corruption and seem undeterred by imprisonment (Hood, 138).
\item[\textsuperscript{155}] Peiffer, 522.
\item[\textsuperscript{155}] Hood, 135.
\end{itemize}
incongruous. Especially considering some of the crimes aforementioned, such as destroying homes or espionage, it may appear that Saudi Arabia is overzealous in its application of capital punishment. However, that value is weighed against the threats perceived to the religion and the people should the state not enforce the religion’s regulations or permit actions deemed to damaging to the public. Instead of undermining religion, Saudi Arabia is seeking to protect it through this observance of religious law.

The attempts to enforce shari’a include not only the crimes for which capital punishment is applied but also the regulations delimiting the application. In accordance with Islamic law, in cases of murder or crimes resulting in death, capital punishment is not applied without the consent of the victim’s heirs.156 Heirs, in place of capital punishment, can accept diyya. In the cases that the victim had family to whom appeals could be made, the Saudi government actively seeks commutation: “According to a Saudi Arabian source, the government ‘does its utmost, before the execution of Qesas to convince the relatives of the victim to commute the Qesas into … Diyya.’”157 In fact, one Saudi citizen is pardoned for each six that are executed.158 This number is particularly strong when one considers that diyya is only available for murder, which means that 14% of all capital sentences are commuted, not just 14% of the ones in which commutation is possible. Thus, though the government cannot, under Islamic law and, therefore, under the Saudi constitution, prohibit capital punishment, the Saudi government is acting, within its power, to reduce it.

These regulations and practices evince Saudi Arabia’s intention and effort to enact shari’a capital punishment. It is interesting, then, to consider how Saudi Arabia has fared in the face of international movements against capital punishment.

**Saudi Arabia v. the International Abolition Movement**

Saudi Arabia’s response to international159 efforts to abolish capital punishment is religiously motivated. This statement is not to suggest that the foreign policy is based on Islam or Islamic law; Saudi Arabia has a secular approach to international relations.160 Nonetheless, Saudi Arabia has defended its use of capital punishment on religious grounds and, in doing so, has opposed international efforts to restrict its domestic practice.

These efforts have primarily been proposed in the United Nations, of which Saudi Arabia has been a member since October 24, 1945.161 In the 1950’s and 1960’s, as the United Nations’ Third Committee drafted the International Covenant on Civil and Political Rights (ICCPR), Latin American countries attempted to insert “right to life” provision that would ban capital punishment. Saudi Arabia, along with other Arab states, opposed the provision, which ultimately was not included in the bill, without explicit reference to Islamic law.162 In the 1980’s, the

---

156 Hood, 174.
157 Hood, 72.
158 Hood, 151.
159 While one might consider, as was the case in Turkey, as domestic interest in eliminating capital punishment, the movement is not discernibly large. Actually, opposition to the enforcement of shari’a ordained capital punishment could be seen as corruption or apostasy, which are themselves capital crimes (Hood, 71). Thus, this paper will focus on the much larger international movement of which the state has demonstrated awareness.
162 Schabas, 225.
Notably, Article 6 includes a right to life, but it grants an exception in “countries which have not abolished the death penalty.”
discussion revived. The Saudi representative, in 1984, expressed support for capital punishment during a debate about abolition protocols; in 1985, Saudi Arabia “joined a consensus in the Commission on Human Rights concerning drafting of the protocol, but also declared that it would maintain the right not to abolish the death penalty, as this would run counter to Islamic law.”

In 1988, the draft resolution was submitted to the General Assembly, where Muslim-majority countries’ representatives opposed it, citing the Qur’an and shari’a. Saudi Arabia, in particular, cited the retributive value of capital punishment considered in shari’a. Despite their commentary, the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty – which would only apply to ratifying states – was put to the General Assembly for ratification. Saudi Arabia, along with almost all Arab and Muslim-majority states, voted against it. A general capital punishment ban was floated again in the General Assembly in 1994 by Italy. The ban, after opposition from several Muslim-majority states, including Saudi Arabia, did not pass. The issue was raised again in 1998 at the Rome Diplomatic conference. This time, the suggestion worked in the opposite direction. Several Muslim-majority countries, including Saudi Arabia, petitioned the international community to permit capital punishment in the International Criminal Court. Alternatively, they suggested that capital punishment ought possibly to be meted out by the court for such crimes that would merit capital punishment were they committed in those states, especially Muslim-majority states, in accordance with their laws, especially Islamic law. In their turn, they were unsuccessful at swaying international opinion.

In Saudi Arabia’s recurrent resistance to efforts by the international community to abolish capital punishment and its defense thereof internationally, it is evident that Saudi Arabia has not historically intended to forgo capital punishment, even in the face of international disapprobation, merely for the sake of forgoing it, to gain international approval, or to bend to international will. Instead, Saudi Arabia has consistently protected globally its legal right to perpetuate shari’-a-based capital punishment and has even attempted to gain international recognition for the practice. The general international challenge has thus been no match for Saudi Arabia’s religious conviction with regard to capital punishment.

**Put to the Test**

The discussion turns now to how Saudi Arabia responds when its use of capital punishment is challenged in specific instances. These challenges tend to arise from the sentencing of foreign nationals. It is straightforward enough for Saudi Arabia to apply its laws and religious justifications domestically, whereupon it may face down international opposition with national sovereignty. The strength of Saudi law’s religious determination is more evident in its willingness to perpetuate those laws in the face of international objection and secular threats. During opposition, however, Saudi Arabia’s sociopolitical interests, primarily economic interests, can motivate the state intervention in cases of capital punishment despite religion.

---

163 Schabas, 227, 228.
164 Hood, 32; Schabas 228.
165 This proposal followed another UN move against capital punishment in Muslim-majority state. Earlier in 1994, the Special Rapporteur on the Sudan told the United Nations Commission on Human Rights that stoning for adultery violated Article 7 of ICCPR on torture and cruel or degrading punishment (Schabas, 229).
166 Schabas, 229, 230.
The execution of foreign nationals is common in Saudi Arabia. In the 1990s, half of those executed in Saudi Arabia were foreigners. In 2005, two-thirds were foreigners, most of whom were migrant workers.\footnote{Hood, 233.} In 2012, 27 of 79 executed persons were foreign nationals.\footnote{Mullen, Jethro. “Outrage over beheading of Sri Lankan woman by Saudi Arabia.” CNN. January 11, 2013. http://www.cnn.com/2013/01/10/world/meast/saudi-arabia-sri-lankan-maid. [Source hereafter referenced as Mullen]} The relative treatment of foreigners in the Saudi legal system has been the subject of scholarship and international outrage. For instance, group such as Amnesty International assert that foreign nationals are denied legal assistance until after questioning or confession.\footnote{Hood, 243.} Such a situation is problematic in a country where confessions for some capital crimes cannot be withdrawn. Additionally, foreigners enjoy less mercy in the Saudi system. One foreigner is pardoned for every eighty-four executed, as opposed to one for six among Saudi nationals.\footnote{Hood, 243.} While that discrepancy might reflect merely the types of crimes for which they are sentenced, as only bodily injury crimes can be pardoned, it is also possible they receive harsher treatment. Either way, the governments and countries of the executed have historically objected to the executions, particularly in the face of perceived rights violations. The ability of countries to interfere, though, has varied. To understand the power of economic engagement, this paper juxtaposes three cases of foreign nationals in capital cases. In the first, powerful economic incentives resulted in a pardon; in the second, a lack of economic interest gave no motive to deviate from Islamic law. The third case shows the principle of the power of economics also applies to non-Western states.

In one case, a British national, tried and convicted for murder, was saved from capital punishment by Saudi Arabia’s economic engagement with England. In December 1996, an Australian nurse employed at the King Faud Military Medical Complex, Yvonne Gilford, was beaten with a hammer, stabbed four times, and suffocated with a pillow by two British nurses, Lucille McLauchlin and Deborah Parry. Signed confessions, amongst other evidence, were used by a three-judge panel to convict them.\footnote{Duncan, Mary Carter. “Playing by their Rules: The Depth Penalty and Foreigners in Saudi Arabia.” Georgia Journal of International & Comparative Law 27 (1998-1999): 231-233.} Five days after the arrest, the British consulate was granted access to the women and helped them secure a Saudi lawyer. He attempted to retract their confessions on the grounds that the confession was secured under the understanding that the women would be deported and tried in England, not Saudi Arabia. Parry was found guilty of intentional murder, and McLauchlin was convicted as accessory to murder.\footnote{Duncan, 233, 234.}

During the case, the Saudi government and court system intervened on behalf of the women. Recognizing the international implications, the British Foreign Secretary, Robin Cook, and the Saudi Foreign Minister, Prince Saud al-Faisal, worked jointly for a solution.\footnote{Duncan, 235.} The judges repeatedly adjourned the case for weeks at a time for the women’s lawyers to petition Gilford’s family for clemency. Ultimately, Gilford’s brother accepted £850,000 as diyya.\footnote{Most of the money was donated to charity in memory of Gilford. “Saudi murder nurse appeals to Gilford.” BBC, Oct. 26, 1998. http://news.bbc.co.uk/2/hi/uk_news/201457.stm.; Duncan, 234.}

The primary motive for this interference seems to have been economic. England has £2.5 billion in exports to Saudi Arabia, primarily weapons.\footnote{Duncan, 237} Saudi Arabia, 90% of whose income...
derivates from exports, exports £750 million of goods to England, mostly oil.\(^77\) Both countries and businesses could face dire economic consequences from a political standoff, a threat that motivated conciliation on both sides. The strength of economic power in ameliorating such disputes is seen in two aspects of the case. First, the diyya was paid not by Parry or her family but by British businesses fearful of losses caused by soured international relations.\(^78\) It can also be seen in the resolution for the second defendant, Lucille McLauchlin. In a move to spare her life, the court agreed to sentence McLauchlin to 500 lashes and eight years in prison.\(^79\) The punishment, though, was unfulfilled. Instead, she, with Parry, was released after seventeen months in jail, after Prime Minister Blair petitioned King Fahd for her release.\(^80\) Despite the fact that nothing in Islamic law suggests the buying out of those committed of non-murder crimes, the Saudi government, in favor of international cooperation with a major economic partner and allowed her release. Thus, the case demonstrates the power of economic interaction in swaying even shari‘a-dominated Saudi Arabia.

Such practice is not limited to Parry and McLauchlin. Through a combination of victim’s family clemency and state intervention, no American or European has been executed under Saudi law.\(^81\) Thus, the power of economics in mitigating the application of Islamic law is shown in American and European nationals experience in Saudi Arabia.

The second case shows that a lack of economic engagement and power can have the opposite effect in efforts to assert international control on Islamic law. In January 2013, Rizana Nafeek, a Sri Lankan national working in Saudi Arabia as a nanny, was executed in Dawadmi for the 2005 murder of her employer’s four-month-old son.\(^82\) The three-judge panel found her guilty and sentenced her to death in 2007. Human rights groups and the Sri Lankan government, including a personal appeal from President Mahinda Rajapaksa to King Abdullah, arguing that the death was an accident and that Nafeek was a minor when the crime was committed, petitioned the Saudi government for leniency.\(^83\) They cited many of the accusations against the Saudi legal system, stating that Nafeek had no lawyer during questioning and that she signed her confession under duress. Furthermore, they noted that the family could grant clemency or accept diyya.\(^84\) The family, according to a government spokesman, despite requests from “authorities,” refused.\(^85\) Sri Lanka’s government, despite its requests to King Abdullah, did not enter into negotiations with the family to arrange diyya, though it might have been successful owing to its greater access to resources than a maid’s family from Sri Lanka possessed.\(^86\) Instead, Sri Lanka appears to have relied on the Saudi government to deviate from its laws.

Sri Lanka’s government, unlike those of the United States or Europe, does not have the economic bargaining power that would compel Saudi authorities to manipulate their laws in such a case. Sri Lanka’s GDP is approximately 5.4% that of the United Kingdom, and Saudi Arabia is


\(^{178}\) Duncan, 235.

\(^{179}\) Duncan, 234.


\(^{181}\) Duncan, 235.

\(^{182}\) Mullen.


\(^{184}\) Mullen.

\(^{185}\) “Saudi … rejects.”

not a major import partner of Sri Lanka. While it is a large supplier of the five million foreign nationals staffing Saudi Arabia’s oil and service sectors and such incidents have spurred discussion about regulating the ability of Saudi Arabia to recruit from other Southeast Asian states, Sri Lanka’s economic and international influence is limited. Thus, unlike in the British case, when the family refused diyaa, the Saudi government accepted their decision. The economic incentive for increased government intervention was lacking, and there was no business sector to independently compensate or promote diyaa. Thus, Islamic law moved forward in the form of hudūd sentencing.

A third case demonstrates that race and geography were not the decisive factors. In 2012, an Indonesian maid was in a similar situation. However, in that case, the Indonesian government raised the diyaa - $534,000. Subsequently, Indonesia has begun restricting the recruitment of Indonesians to work in Saudi Arabia, reducing economic engagement with Saudi Arabia in awareness of the role of Islamic law in Saudi Arabia and Indonesia’s willingness to suborn Saudi Arabia’s execution of its citizens. Indonesia, though, with a GDP half the size of the United Kingdom and ten times that of Sri Lanka, was in a much stronger position economically to intervene. This case shows that government’s willing to marshal their economic resources and leverage can influence Saudi Arabia’s implementation of capital punishment.

Through these cases it can be seen that Saudi Arabia’s use of capital punishment is not above international scrutiny and reproach. Also, it is seen that, when challenged, international economic interest plays an important role in the flexibility of Saudi application of shari’a-based capital punishment and the involvement of the Saudi government in the case. The greater the economic power of the challenging state and the economic interdependence, the more likely it is that the capital sentence will be commuted.

Result

Saudi Arabia’s history as an Islamic state and with capital punishment demonstrates the power of extra-religious factors on Saudi Arabia’s application of capital punishment. The foundation of Saudi Arabia in the Sa’ud line, the religious justification of its government, and its legal system show that the government Saudi Arabia could not readily throw off shari’a without fundamentally damaging the legitimacy of the monarchy and altering the foundations of the legal system. Saudi Arabia’s refusal of international ligatures in regards to capital punishment, especially refusals in the name of shari’a, demonstrate Saudi Arabia’s professed intention of and success at perpetuating its Islamic legal system, despite the will of the international community, expressed either in international agreements or by international abolitionist groups. History, though, also shows that Saudi Arabia is not immune to extra-religious considerations. Case studies have shown that when economic interests are at stake, the Saudi government will intervene, forgoing the hudūd punishment to promote international economic ties, and that international business has been more effective at curtailing capital punishment in Saudi Arabia than international human rights groups and some foreign governments.

189 CIA…”Saudi Arabia.”
190 McElroy.
Conclusion

Several factors apart from Islamic law, especially history, economic interest, and international relations, have played significant roles in the application of capital punishment in Turkey and Saudi Arabia. In Turkey, the history of the state is the history of enforcing secularist government. That secularism led to both the adoption of European legal codes, which included capital punishment, and to opportunity for the state to abolish capital punishment, despite Islamic law. Subsequently, the state reduced capital punishment, but it was not until potential for economic gain associated with entering the European Union became available that Turkey abolished capital punishment. When tested, Turkey favored economic gain over Islamic law, public opinion, and vengeance. Thus, Turkey demonstrates that history and economic integration have more power in determining the role of capital punishment more than the religion of the population. In Saudi Arabia, the history of the state and its legal system is based in the defense and propagation of Islam and shari’a. Nonetheless, in the face of economic consequences, Saudi Arabia has bent to international political and economic pressure. However, its willingness to do so only in cases of great economic relations indicates that the decision does not reflect an inclination to forgo the Qur’anic prescription but a readiness to defer to socio-political and economic gain. Thus, between an Islamically-justified regime and a secular state, both of which have majority Muslim populations, the influence of history on how capital punishment is applied and the power of international relations and economics on how it is not applied are evident.

These factors, then, not the presence of Muslims, are the great determinants of capital punishment and the influence of Islamic law.

This fact is evident in the tenets the countries are willing to bend for economic and international pressure. It might seem that the most stringent shari’a commands, ḥudūd crimes, would be the requirements that Muslim-majority states would be most likely to observe. However, those are not the crimes for which the state most closely follows shari’a. For economic and political gain, Turkey abolished the entire institution, even for ḥudūd crimes. Saudi Arabia has also shown willingness to manipulate and interfere in ḥudūd sentences. Notably, ta’zīr crimes, where the court and the society have more discretion, are not the crimes for which sentences are averted. It is because those are not the sentences that are receiving attention from economically or politically powerful states.

Unfortunately for the human rights movement, the behavior of these countries suggests there are three ways to lure Muslim-majority states away from capital punishment, but they are not means readily available to these actors. The abolitionists could (1) secularize a state’s culture and government, (2) establish sufficient economic ties between all countries that capital punishment is a costly risk to the disruption to trade, or (3) buy off the family or victim in each incident in order to avert executions with diyya. Human rights groups and non-governmental organizations cannot achieve the first or second and cannot afford the third. Thus, this research suggests that abolitionist NGOs cannot be successful independent of state actors.

As to assertions that Islam and Islamic law are fundamentally violent, that belief requires a limited view of Islam. Certainly, Islamic law contains violent aspects, including capital punishment; however, this research has shown in its consideration of the Islamic law related to capital punishment that Islamic law also has a great predilection for peace and values limiting the use of violence and capital punishment. As for the notion that Muslims everywhere are attempting to institute shari’a, the example of Turkey and its strongly enforced state secularism speaks to the erroneousness of that claim. Furthermore, even in states where the objective is
somewhat realized, in which the state attempts to enforce shari‘a, the concern is overhyped. Even Saudi Arabia, with a government justified by religion and constitutionally bound to enforce shari‘a, is sensitive to international pressure and is rationally flexible in pursuit of its self-interest. Thus, these cases show that the perception of Islamic law as destructive and the desire of Muslims to have it enforced everywhere is, at best, only qualifiedly accurate in some respects, and, at worst, patently false on several accounts.

The relative role Islam has played in the development of capital punishment in these states and the relationship between Muslims and the operationalization of shari‘a is evidently generally misunderstood. This research, though, has shown that, even in Muslim-majority states, history, international politics, and economics play a more substantial role in determining to what degree tenets of Islamic law are enforced in a state. Going forward, hopefully Western states and citizens will focus on those factors and not simply on religion when discussing Muslims and Islam in society and government. Then, maybe, non-Muslim-majority states and politicians and non-government organizations could more readily accept Muslims in their own populations and more effectively engage with Muslim-majority states on capital punishment and social issues.
Bibliography


Principles Relating to Offences and Penalties (The Constitution of the Republic of Turkey, as
amended) Article 38.


http://www.guardian.co.uk/commentisfree/2012/nov/16/turkey-death-penalty-mixed-signals.


   


   

   


In the late twentieth and early twenty-first centuries, a growing trend towards the emergence of internal armed groups has presented many problems to the modern state. These groups typically contest many of the state’s important functions and institutions while regionalizing state authority through political, social, or violent methods. Since the founding of one of these movements, the Islamic militant group Hizbullah (Party of God), the organization and its objectives and motivations have transformed over the last three decades into a multifaceted, influential group increasingly involved in the political and security issues of Lebanon. The political aspirations and social programs of Hizbullah have somewhat benefited the Shi’a dominated areas of Southern Lebanon, but on a comprehensive scale the organization has intensified the weaknesses of Lebanon as a modern state and continues to push the country towards collapse and the label of a “failed state.” Additionally, Hizbullah as a case study provides an interesting assessment of the role of armed groups in international affairs.

**Hizbullah’s Ambition**

Hizbullah first surfaced during the weakest moment of Lebanon’s short history as an independent state: near the end of a bloody, decade-long civil war. After Israel invaded Lebanon on June 5, 1982 to confront terrorist elements of the Palestine Liberation Organization (PLO), it did not withdraw after completing the mission and was promptly viewed by many as an oppressive occupying force. The combination of animosity towards the Israeli invasion and the 1979 Islamic Revolution in Iran provided the appropriate environment for the establishment and prosperity of Hizbullah. The early members (including a 22-year old Hassan Nasrallah) were young Shi’a revolutionaries committed to defending Lebanon’s sovereignty from Israel and strengthening Islamic values in the country.¹

A state inherently fragile from bitter sectarian tensions within society and the central government, Lebanon was too occupied in rebuilding the war-torn country to keep Hizbullah’s growth in check.

During its early existence, Hizbullah endeavored to present itself as major force set against Israel and the Western superpowers involved in affecting policy and spreading influence in the Middle East. They perceived the United States as an imperial force attempting to colonize Lebanon and subjugate its people using Israel as its proxy. The movement established a strict rejection of compromise or negotiation with Israel and a stance of constant struggle against imperialism. Hizbullah’s “Open Letter” in 1985 clarified the group’s ideology and goals and set the tone for all future actions by the group. Among many topics, the document discussed the influence of the Iranian revolution on the group, its justification of violence, and its view of the corrupt political system of Lebanon.² However, the letter avoided the critical issue of the group’s political aspirations for the country. The only mention of politics claimed that if the Lebanese people were allowed to pick their own governance system under a Hizbullah controlled government, they would choose an Islamic state.³

---

² Ibid., 36.
³ Ibid., 39.
After over twenty-five years of existence within Lebanon and constant organizational shifts, Hizbullah created a new document to replace the outdated and obsolete “Open Letter”: The new manifesto was released in November 2009. This manifesto maintained the same 1985 aggressive view towards the oppressive Israel and U.S. but altered Hizbullah’s negative view towards Western NATO and EU countries. The manifesto made significant additions to its political agenda. It stated that Hizbullah was not a secessionist movement and had no interest in creating an Islamic state. The document also argued for reforming the governance structure created by the 1989 Ta’if Agreement that ended the civil war and divided ruling responsibility along sectarian lines. Hizbullah instead demanded a democratic national unity government created through partnerships and coalitions among the diverse Lebanese sects. The pragmatism and realism apparent in the 2009 manifesto signified Hizbullah’s new political responsibility, larger base of support, and more extensive organizational structure.

Hizbullah’s evolution from 1982 to today has created an intricate structure that provides a multidimensional problem for Lebanon. Although there is plenty of room for inaccuracies, the most recent estimates assert that Hizbullah is comprised of six hundred full-time combatants with three to five thousand fighters ready to be mobilized and ten thousand combatants in reserve. In addition to paying a militia, Hizbullah supposedly also employs five to six thousand non-combatants, including the top-level executive leaders, members of an advisory council, and its members of parliament. If they continue to take part in politics, how does one define the role of Hizbullah in the Lebanese state? What is the nature of this unique and increasingly complicated role?

Many international governments struggle to label Hizbullah because it represents the characteristics of many types of non-state rebel groups and its goals do not neatly fit into one category of armed groups. The group’s leadership explained their purpose in the early 1990s during the signing of the Ta’if Agreement that required all militias to disband after the civil war. They refused to disarm by justifying their function in Southern Lebanon as an “Islamic resistance” movement. In their minds, they were not a militia subject to demilitarization agreements because they served the state by defending Lebanon from Israeli occupation. At a time when Israel was viewed by many Lebanese as aggressors and trampling on their national sovereignty, Hizbullah retained widespread support for its unwavering position. However, unlike most resistance movements around the world, Hizbullah is not a separatist movement, mostly because its main goal is not struggling against or “resisting” the central state, but rather an external force and reforming the state.

Since Hizbullah possesses a large supply of weapons and has carried out violent attacks, they can certainly be labeled as a national militant group. However, Hizbullah has attacked several international targets and threatened other global targets, traits dissimilar to an insurgency movement that continually seeks to terrorize objectives within state borders and more representative of an international terrorist organization. Hizbullah also strives to only target military figures with its attacks, unlike insurgents that use violence against civilians as leverage to achieve its objectives. The similarities between a group under the control of a warlord and

---

5 Alagha, Hizbullah’s Documents, 32.
7 Norton, Hezbollah, 83.
Hizbullah present an interesting comparison. In his piece “Warlords as Alternative Forms of Governance,” Paul Jackson states that the major characteristics of warlords are the collapse of centralized authority, use of violence to capture local authority, replacement of governance structures, and an international economy. The argument to define Hizbullah as a warlord group can be made when one realizes that Hizbullah meets all of these measures.

Hizbullah took advantage of the weak confessional system of government in Lebanon created by the Ta’if Agreement by using the Shi’a community as a support base to compete in politics at the local and national level. In order to gain this support base, Hizbullah needed to assert control over the southern territories of Lebanon in a fashion that looked a lot like Jackson’s characteristic of the “use of violence to capture local authority.” After the departure of Israeli troops from Lebanon in May 22, 2000, the Southern Lebanese Army (SLA) was left to provide security for the region. Without the support of Israeli soldiers, the feeble SLA rapidly dissolved as Hizbullah guerillas pushed into South Lebanon and cleared every village house by house of any “Israeli collaborators,” while, at the same time, establishing military and civil control of the south.

Hizbullah additionally resembles a warlord group in its provision of government services typically provided by the central state. This topic will be covered more thoroughly in the later section on its social programs but, in general, Hizbullah’s delivery of vital services to the largely Shi’a population in South Lebanon weakens the state’s complete patronage of its own citizens. Hizbullah also utilizes global trade networks to smuggle and sell drugs in Israel, South America, and Mexico to finance its operations. They have also been linked throughout the last ten years in several cases of money laundering, such as in Canada where profits from selling cars in West Africa were funneled through banks back to Hizbullah.

On the other hand, Hizbullah is missing some key aspects of a warlord rebel group, such as an actual warlord. While Hassan Nasrallah is the undisputed secretary general, he has been in hiding for several years and is more of a spiritual figurehead than the group’s primary leader. According to Jackson, warlords replace formal structures with primitive governing cultures defined by gang mentality. However, after asserting control over Southern Lebanon, Hizbullah maintained and even expanded the political and social structures within the group to attain greater legitimacy. The group also pursues a political and ideological agenda that is uncharacteristic for military warlord groups that typically are not concerned with the oversight of the population they control. Indeed, it can be argued that Hizbullah is a unique variety of rebel group representative of a diverse range of different types of non-state organizations.

The many challenges perpetrated by armed rebel groups against a modern state can be examined through the work of Charles Call. In his article “Beyond the ‘failed state’: Toward conceptual alternatives,” Call divides the weaknesses of a weak or failed state into what he calls a capacity gap, a security gap, and a legitimacy gap. To analyze Hizbullah’s effect on the

---

12 Avon, Khatchadourian, and Todd, Hezbollah, 69.
13 Call, Charles T, “Beyond the ‘Failed State’: Toward Conceptual Alternatives,” in European Journal of International
Lebanese state, Call’s categories can be applied to the group’s many deleterious activities as the armed group and political party continue to destabilize the country and present diverse problems for the government.

**Hizbullah and Lebanon’s Capacity Gap**

According to Call, a gap in a state’s capacity occurs when “the institutions of a state are incapable of delivering minimal public goods and services to the population.” The capacity gap is therefore exacerbated by rebel groups when they provide these goods and services to the public instead. In Hizbullah’s case, the Lebanese government does not offer any meaningful social welfare programs for its citizens, especially outside of greater Beirut. In the rural areas of the south, large swaths of the Shi’a population live in hardship and poverty without state support services. Lebanese – especially Shi’as – who feel abandoned by the central government turn to Hizbullah, which acts as the state apparatus in caring for parts of the population.

The range of social services delivered to Hizbullah’s clients includes construction companies, health care, schools, and even financing initiatives to provide loans. The group’s social programs began in 1982 with the founding of al-Shahid and al-Jarih, providing compensation sometimes up to $12,000 for the families of wounded or killed Hizbullah fighters. These programs eventually grew to include free clinics, hospitals, and companies like Jihad al-Bina, which is dedicated to public works projects, rebuilding structures destroyed in conflicts, and offering affordable housing for low-income families. In some extreme cases, such as in the Shi’a-dominated Beirut suburb of Dahiya, Hizbullah has supplied almost all of the drinking water for residents. While much of the financing for these programs is supplied by local-fundraising and rich Shi’as living abroad, a majority percentage comes from Iran subsidies, estimated to be about $100 million a year.

The greatest investment by Hizbullah into the community is in education. By replacing the Lebanese state in providing social services, Hizbullah also has the ability to control scholarship for its constituents. Under the Mobilization of Education, Hizbullah runs fifteen schools that are each led by a different party leader. Hizbullah has a strict recruitment process for hiring teachers and controls the “Islamization” of the curriculum for the institutions in order to uphold traditional Shi’a values in the community. While Lebanon debated over forming a single universal textbook for the country, Hizbullah defied the state yet again and instituted its own history book called “History and Us.” Hizbullah’s comprehensive control not only creates territorial divisions between South Lebanon and Beirut and the north, but, as evident in the nature of its institutions, a societal partition between populations led by two dissimilar systems of governance. Even more detrimental, the militant group has created a profound sense of identity and community among the Shi’a population in Southern Lebanon who have lost faith in

---

19. The book can hardly be called historical when chapter one discusses Adam and Eve and the modern day “conflict” between Christians and Muslims is discussed in reference to the Christian Crusades. Ibid., 62.
a central government, inherently hurting any opportunities in Lebanon of achieving essential national unity.\(^{20}\)

**Hizbullah and Lebanon’s Security Gap**

The next category of weakness Charles Call discusses is a gap in the security abilities of the state. With a security gap, the state does not have the capacity and/or will to provide basic security for its citizens, especially during confrontations with armed groups. These armed groups present a distinctive problem for the central state to “address the concerns of the civilian population that sees such groups as representing their interests.”\(^{21}\) Hizbullah is the quintessential example of how an armed group can exacerbate a security gap. With an already significant security gap that materialized in Lebanon after the civil war, Hizbullah’s social programs continue to draw parts of the state’s population away from the central government while the paramilitary wing of group presents a constant security threat to the country, region, and international community.

Hizbullah has been problematic for state security beginning in 1989 with the Ta’if Agreement and through the many UN resolutions that have all demanded for the armed group to disband. Even with the assistance of a massive reinforcement of the United Nations Interim Force in Lebanon (UNIFIL), the Lebanese Armed Forces (LAF) is incapable of disarming Hizbullah, much less preventing weapons from being smuggled into the country.\(^{22}\) Hizbullah has frequently been blamed for attacking Lebanese citizens and assassinating political officials, but without strong evidence or any disciplinary action from the state. In the summer of 2011, the Special Tribunal for Lebanon issued arrest warrants for four senior members of Hizbullah involved in the assassination of the former Prime Minister Rafic Hariri in 2005, but the group refused to turn over the members and the Lebanese government could not carry out the warrants.\(^{23}\) Even Walid Jumblatt, a leading political leader of the Druze community in Lebanon, has stated that Hizbullah is “involved in one way or another in some, if not all, of the assassinations.”\(^{24}\)

In response to any aggression towards the group, Hizbullah has shown itself capable of defending its institutions and carrying out devastating attacks. In 2008, when the central government cut off the group’s extensive and illegal telephone communication lines, the Hizbullah militia swiftly moved into West Beirut, easily defeated the ruling Future Movement militia, and destroyed the headquarters of the Future Movement’s TV station. The LAF passively intervened to end the conflict but only after over eighty people were killed.\(^{25}\) The Lebanese government’s attempts at building stability and security have also been constantly interrupted by Hizbullah. Rafic Hariri promised the international community in early 2001 that Lebanon was on the path to stability, but this promise was undercut when Hizbullah initiated an operation against Israel, leading to an Israeli reprisal that killed civilians and damaged infrastructure. In 2006, after Lebanon experienced a rare stretch of peace, Hizbullah attacked an Israeli patrol and took the survivors as prisoners. Israel, in response, launched a 34-day campaign that bombed the Beirut

---


\(^{21}\) Call, “Beyond the ‘Failed State’,” 307.

\(^{22}\) Avon, Khatchadourian, and Todd, *Hezbollah*, 84.


\(^{24}\) Ibid., 86.

\(^{25}\) Ibid., 90-91.
International Airport, set up a naval and air blockade of Lebanon, and killed thousands of civilians. These conflict-inducing actions by Hizbullah cost the state not only in repairing the damaged infrastructure, but also on a humanitarian level as numerous civilians were killed or wounded and many others are displaced by the conflicts.

Hizbullah’s advantage over opposing forces attempting to defeat the group and its tenacity in retaining its large supply of weapons is due to outside support from Iran and Syria. Using Syrian territory and resources, Iran smuggles weapons and supplies to the armed group and provides monetary funding for the many programs and institutions of Hizbullah. Following the 2006 conflict between Israel and Hizbullah, the security gap in Lebanon was amplified when Iran resupplied Hizbullah with a more sophisticated arsenal including heavy weapons and rockets, anti-aircraft equipment, and long range missiles capable of striking several major cities in the region from Southern Lebanon. A security and sovereignty problem for the Lebanese state in dealing with Hizbullah is compounded with Hizbullah’s invitation and acceptance of support from external actors that supply Hizbullah with “more rockets and missiles than most governments in the world [have].”

Hizbullah and Lebanon’s Legitimacy Gap

The final grouping Call presents in his article is a legitimacy gap in the state. While admitting that this category is difficult to apply, Call defines a legitimacy gap as situation in which large portions of the state’s population and political elite reject the current administration’s power and authority. A lack of political freedoms, individual rights, and group cohesion is also included in the explanation of a state’s legitimacy gap. In order to further illustrate how Hizbullah weakens the Lebanese state, this paper will add the delineation of a low level of government effectiveness and utility to the definition of a legitimacy gap. If citizens view their government as ineffective and unreliable, rebel movements will gain greater legitimacy in their efforts to displace the government.

The greatest pressure Hizbullah exerts on the central government, and therefore the greatest challenge of the state’s legitimacy, is through its political wing called the “Loyalty to the Resistance Bloc.” Surprisingly, while attempting to undermine the Lebanese state through violence, the group participates in the political process. As mentioned before, Hizbullah’s first entrance into the political realm of Lebanon was in the elections of 1992, where Hizbullah won eight seats in Parliament while its non-Shi’a political allies won four more. Continuing the early success, Hizbullah gained nine parliamentary seats in 2000, eleven seats in 2005 and twelve seats in the most recent 2009 elections. Of the twenty-seven seats reserved for Shi’as in Lebanon, Hizbullah and the Amal Movement, another Shi’a group in the south, have routinely dominated the national Shi’a vote since 2005. With the approaching 2013 general elections, Hizbullah looks to achieve greater political success in a government filled with Hizbullah allies and society pressuring for the liberation of Israeli occupied zones in Lebanon.

---

26 Ibid., 72.
28 Call, “Beyond the ‘Failed State’,” 308.
29 Avon, Khatchadourian, and Todd, Hezbollah, 44-45.
Hizbullah’s political wing has also performed well in municipal elections. Since 1998, Hizbullah has dominated the electoral slate in Beirut’s many suburbs, illustrating the group’s broad capacity to govern locally. According to Norton, their success at the municipal level is a true measure of the group’s widespread popularity and their great pragmatism in bargaining politically with “ideological opposites, such as the openly secular Syrian Social Nationalist Party and even the Communist Party.”\(^{30}\) With this growth in political power, Hizbullah has used its new influence as leverage in manipulating the central government to its will in the last decade.

In addition to the election successes, Hizbullah received its biggest legitimacy boost in 2005 in the form of a coalition with some of the largest political parties in Lebanon. Named after the demonstrations in downtown Beirut thanking Syria for its involvement in Lebanon, the March 8\(^{\text{th}}\) Alliance includes Hizbullah, the Amal Movement, the Progressive Socialist Party, and the Free Patriotic Movement. Opponents of the March 8\(^{\text{th}}\) Alliance have criticized Hizbullah and its political allies for supporting Syria’s intervention in Lebanon and claim they have attempted to sabotage the national government. After the Free Patriotic Movement signed a “Memorandum of Understanding” with Hizbullah in 2006 and the Progressive Socialist Party left the rival March 14\(^{\text{th}}\) Alliance in 2011, Hizbullah’s coalition gained majority control over the Lebanese Parliament for the first time and nominated Najib Mikati as the new Prime Minister.\(^{31}\)

The accusations of Hizbullah attempting to disrupt the Lebanese government are not unfounded. After disagreements between Hizbullah and the government under Prime Minister Fuad Siniora, all of the March 8\(^{\text{th}}\) members of Siniora’s cabinet walked out on November 13, 2006, hoping to “take away its legitimacy, since, according to the Taif Agreement, all the major communities had to be represented in the government.”\(^{32}\) When the government was not completely paralyzed as Hizbullah had planned for, they turned next to a campaign of civil defiance in objection to the national unity government. In 2007, Hizbullah staged massive violent protests, set up roadblocks with burning tires, and installed a tent city in downtown Beirut, effectively seeking to obstruct government officials and normal citizens. The collateral damage of Hizbullah’s behavior was crippling: over two hundred businesses were forced to shut down and hundreds of people faced unemployment for more than fifteen months.\(^{33}\) Tensions between Hizbullah and the government majority leaders of the March 14\(^{\text{th}}\) Alliance eventually steered Hizbullah, in the 2008 conflict, to “do what Hassan Nasrallah had sworn Hizbullah would never do, which is turn its arms against the Lebanese people…”.\(^{34}\) In 2011, Hizbullah attempted the same tactic of leaving the cabinet positions over new accusations of the armed group’s ties to the assassination of Rafic Hariri. This time, it resulted in a complete collapse of the unity government and the resignation of Prime Minister Saad Hariri.

While Hizbullah rendered the Lebanese government ineffective with its actions and challenged the authority of the state to rule, its unrelenting support for Syria similarly intensified the problem of a legitimacy gap in Lebanon. Syria’s occupation of Lebanon during the civil war and throughout the Israeli invasion was a serious violation of Lebanese sovereignty, but, after withdrawing in 2005, the Syrian government was not ready to relinquish all control of Lebanon. With the support of Hizbullah’s political alliance, Syria began to use the Syrian Social

\(^{30}\) Norton, *Hezbollah*, 103.


\(^{32}\) Ibid., 87.

\(^{33}\) Ibid., 86-87.

Nationalist Party (SSNP) as a proxy to operate in the Lebanese parliament. Part of Syria’s methods included trampling civil liberties in Lebanon. After the Cedar Revolution in 2005 that forced Syria out of Lebanon, Syria banned the publishing of newspapers the next day. When Yasser Arafat entered into negotiations with Israel in 2002, Syria blocked his speech and the news from being transmitted into Lebanon. Even to this day, Syria maintains its mukhabarat or intelligence services in Lebanon for reconnaissance and spying purposes.\(^\text{35}\)

Hizbullah is in many ways a unique rebel group compared to the numerous groups that have emerged around the world in the last two or three decades. Their goals also differ from most rebel groups that aim to violently overthrow a government and control the state with their own governance system using military methods. However, the negative consequences of Hizbullah’s existence for the Lebanese state do not present a unique case. Hizbullah, like many rebel groups, seeks to gain popularity and steal support away from the central government by appealing ideologically to citizens and drawing them towards their own programs and institutions that resemble those of the central government. Once citizens connect with a rebel movement or rely on them for assistance, the group can more effectively challenge the state’s ruling legitimacy.

Hizbullah, similar to many cases of rebel groups operating within a country’s territory, weakens the state through the aggravation of capacity, security, and legitimacy gaps. The complexity of Hizbullah’s situation in Lebanon is further complicated by Iran’s military and financial funding of Hizbullah and the armed group’s political support of greater Syrian interference in Lebanon’s national affairs. Hizbullah’s cooperation with Iran and Syria permits them to infringe on the legitimacy and sovereignty of the Lebanese government, and as long as Hizbullah aligns itself with external actors and challenges the authority of the Lebanese government, the “Party of God” will continue to hamper Lebanon’s endeavors for genuine autonomy and stability.

---

\(^{35}\) Avon, Khatchadourian, and Todd, *Hezbollah*, 75.
Bibliography


Regionalism and Modernism in Turkey and Iraq through the work of Sedad Eldem and Rifat Chadirji

In order to get on to the road toward modernization, is it necessary to jettison the old cultural past which has been the raison d’être of a nation…? […] There is the paradox: how to become modern and to return to sources; how to revive an old, dormant civilization and take part in universal civilization. -Paul Ricoeur, *History and Truth*

As new nations in the Middle East in the 20th century, Turkey and Iraq were faced with the question of negotiating modernity and tradition; architects such as Seddad Hakki Eldem (1908-1988) and Rifat Chadirji (b. 1926) addressed this question in terms of the built environment. The new concepts of nation-state and citizen brought with them questions of what national identity and culture were in Turkey and Iraq. How does a Turkish citizen live? Where does an Iraqi citizen work? These two countries were met with the double-layered issue of how to merge traditional and modern, foreign-originated architecture to create something new. It is significant that Paul Ricoeur positions “becom[ing] modern” against “return[ing] to sources” and “old, dormant civilization” against “universal civilization.” Architects in this region experimenting with the national identity issue both had to take into account the temporal aspect of modernity that left their local culture “behind” and the geographical aspect of civilization that the West had set itself as a model of. Eldem and Chadirji, considered the fathers of their respective national architectures, endeavored to create a modern vernacular that foreign and local architects in Turkey and Iraq had tried and not yet succeeded to develop.

Introduction

This paper will compare Eldem’s and Chadirji’s writing and works in their national and architectural contexts. I use Eldem’s work in Turkey from the 1940’s to 1970, when he completed one of his last major commissions. I reference Chadirji’s projects from the 50’s to 70’s; but use only his writing after 1980, when he left Iraq and produced much literature and few buildings. I chose Turkey and Iraq for comparison for several reasons. Both are parts of the former Ottoman Empire, which experienced huge foreign influence in different ways without having been formally colonized. Turkey was briefly occupied by the British 1918-23 but had been undergoing modernizing reforms by its Western-educated elites since the mid-19th century. Mesopotamia came under British occupation during WWI and part of it became a British mandate in 1920, ruled by the British-established Hashemite king Faisal. British control continued officially until Iraq was given its independence in 1932; the Hashemite dynasty endured a series of coups against it until 1958. This study also fills a gap in the lack of comparative study between modern Turkey and Iraq.

---


2 The definition of ‘vernacular’ I use is equivalent to Ricoeur’s definition of idiom: “having a distinct identity and being associated with an identifiable group” and Frampton’s “peculiarities of a particular place.” Specifically I refer to a style—associated with a locality—that is adopted as a national one. See Frampton’s ‘Prospects for a Critical Regionalism’ in *Perspecta: The Yale Architectural Journal* 20 (1983): 147-62.
Eldem and Chadirji faced similar questions that they had different answers to: Eldem drew his inspiration from houses of rural Anatolia while Chadirji referenced Abbasid and Sassanian monumental structures. Eldem’s and Chadirji’s commissions were both mainly for federal buildings and private homes rather than public housing; they built for the government and elite families rather than the general public. This paper will address national identity formation outside the West, specifically the hegemonic way in which the state defines citizens and its own history through the built environment. It problematizes common architectural terms that are used with Euro-centric bias (i.e., modernism, international) and rethinks them in terms of a modern architecture outside of the West in general, not just limited to Turkey and Iraq (while keeping in mind that ‘West’ and ‘Middle East’ are terms created in Europe). Besides development of a modern vernacular style, this paper is concerned with how the works of each architect’s works address the concept of regionalism. Comparison of their texts allows us to see what Eldem and Chadirji considered to be the main problems facing a fledgling Turkey and Iraq and how each saw himself also as an architect of national history. Reading their buildings and texts together gives a more holistic view of the political and cultural context in which they built, shows certain difficulties of designing in these two contexts and demonstrates both the limitations and possibilities of designing modern architecture outside of the West in the 20th century.

Literature Review

The primary scholars of 20th century Turkish architecture are Sibel Bozdoğan, who identifies ways in which the government in the Early Republican Era controlled and produced its definition of national identity through the built environment, and Esra Akcan, who identifies architecture between Germany and Turkey as a fluid conversation between the two (albeit not one on equal terms). There is less of a comprehensive body of works on 20th century Iraqi architecture, thus I use sources on a variety of smaller topics, including Sandy Isenstadt’s Modernism and the Middle East, Caecilia Pieri’s Baghdad Arts Deco: Architectural Brickwork 1920-50, and Chadirji’s own works on architectural education and regionalism. On nation building and capitals, Lawrence Vale writes that the modern capital was a combination of the principles of modernism (rationality, functionality and harmony with the surrounding environment) and modernity (rationality and secularism). As in the Paris model, modern capitals were designed for more efficient government control, to celebrate the culture of the nation and to impress the observer with power of the state. Regarding nationalism, Eric Hobsbawm’s idea of the invention of tradition is pertinent to my argument since statesmen and architects drew on influences far removed (i.e., temporally or geographically) from the urban dweller that they wanted to shape into the ideal citizen. This paper focuses on modernity as a contested idea: on the one hand, feasible in Muslim countries through top-down reforms, on the other “a […] doubt

---

3 Although Hassan Fathy of Egypt is perhaps better known for developing a ‘vernacular modern’ style in the Arab world, and his lifetime and works span the same time as Eldem’s, I did not choose him for comparison. He worked mainly on public housing, unlike Eldem and Chadirji, although his attitude towards citizens for whom he was building demonstrates a similarly patronizing attitude towards those he felt should collaborate with him on and inhabit his projects (namely his failed New Gourna). Timothy Mitchell identifies Fathy as an example of “the new hubris of planning [which] embodied a contradiction, the oxymoron of planned individuality.” Timothy Mitchell, Rule of Experts: Egypt, Techno-Politics, Modernity (Berkely and Los Angeles: University of California Press, 2002): 190. Also see Hassan Fathy, Architecture for the Poor: an Experiment in Rural Egypt (Chicago: University of Chicago Press, 1973).
4 For more on this discursive division, see Zachary Lockman, Contending Visions of the Middle East: The History and Politics of Orientalism, 2nd Ed. (Cambridge: Cambridge University Press, 2010).
about the universalistic claims and aspirations of modernization theories.”

Thus modernization as a success story varies from the perspective of social and political elites to the broader population who were objects of reforms.

The issue of modernization extends to the built environment, particularly on the local level in a globalized world. Regionalism is, according to Alexander Tzonis: “the awareness of a regional architecture as an idiom having a distinct identity and being associated with an identifiable group, and having this association used for further manipulating the group’s identity.” He gives Vitruvius’s example of the local Roman architects’ assertion of their local identity which was chauvinist and uncritical. His colleague Liane Lefaivre remarks on critical regionalism, a term she and Tzonis had coined in the 1980s: “[I]sn’t regionalism always, by definition, critical? No matter what its political associations are, since the Renaissance it has always been critical of an outside power wishing to impose an international, globalizing, universalizing architecture against the particular local identity, whether the identity is architectural, urban or related to landscape.”

She cites scholar Lewis Mumford: “Mumford did not see an opposition between what he called the ‘local’ and the ‘universal,’ between what we would call today the ‘regional’ versus the ‘global.’ He saw regionalism not as a way of resisting globalization, or rather, not completely.” Thus his own regionalism is a partial resistance of the global and an assertion of the local. There are two layers to the problem which were mentioned before: I distinguish between global/local generally, and the privileged global north/global south, Turkey and Iraq being at the intersection of the two axes. Tzonis, Lefaivre and Mumford address urgent questions about maintaining a local identity in the context of globalization; however, architects outside of West were posing similar questions several decades earlier. Eldem and Chadirji embraced modernism and saw themselves as modernists; at the same time, both were critical of their own work and that of their contemporaries. Even though they were in the difficult position of having to blend different styles and methods of production—partly created by Western hegemony—they themselves became hegemonic through creation of a national architecture that did not always draw on the culture of the citizens at large but rather on sources that supported official, government-approved histories. Thus this paper demonstrates how in these two contexts the relationship between nationalism and architecture is a reciprocal one.

Sedad Eldem and Turkey

Sedad Eldem was born in Istanbul in 1908 to a wealthy, established family involved in arts and government at the very end of the Ottoman Empire. His great-uncle was Osman Hamdi Bey, the Ottoman statesman, painter and founder of two major Istanbul institutions: the Academy of Fine Arts (today Mimar Sinan Fine Arts University) and the Archaeology Museums. As was typical for a young man of his background, Eldem was given an education that emphasized Western European language and culture. In the 1920s, the first years of the Turkish Republic, he studied a heavily Beaux-Arts curriculum at the Academy of Fine Arts. During this time he wandered the streets of the city making drawings of the old, wooden Ottoman houses he came across. He also visited the Anatolian countryside, sketching and making watercolors of houses there. Esra Akcan elaborates on Eldem’s formative years:

---

9 Lefaivre, 34.
10 Ibid.
Eldem’s work to modernize Turkish buildings rather than to “Turkify” modern buildings, as was in vogue in the first quarter of the 20th century, was certainly unique. His urbanization of the Anatolian house foresaw much of the work he did for the rest of his life. And his adoption of the Anatolian house for a national style and renaming it “Türk Evi” or “Turkish house” demonstrates his own hegemony over local architecture culture and is part of a broader reformation of local, pre-existing culture as nationalist. Eldem then studied under the most influential architects of the time—Vedad Tek Bey in Turkey and then Le Corbusier while in Paris and Berlin. He settled in Turkey to teach at the Fine Arts Academy and lead a National Architecture Seminar—which became the “center of opposition to the so-called kübik [cubic] style”—for decades. In addition to designing, he produced numerous books, such as Plan Types of the Turkish House (1968) and Turkish House (1987), which “go back to the origins of typologies in their historical vernacular existence.” The latter, his four-volume, 1,500 page masterwork, still has not been published in its entirety, and is best known for its volume on houses in the Ottoman Period. Eldem retired in 1978 and continued to write until his death in 1988.

Turkey has a long architectural history to draw upon, from the Hittites (18th-12th c. BC), Romans (27th c. BC-5th c. AD), Byzantines (4th-15th c. AD), Seljuks (11th-12th c. AD), and Mongols (13th-14th c. AD), to the Ottomans (1299-1923). Starting in the Early Republican period (1923 to 1946), everything from museums to history books to preservation efforts—all of which were controlled by the state—emphasized various historical influences while overlooking others to support Turkish national identity and thus the state. For example, the one-party Kemalist government of the Early Republic ignored Ottoman history since the empire was viewed as a recent failure, whereas today’s AK Party embraces Ottoman and Islamic history after decades of strict secular rule. Eldem’s model for his Turkish house, while perhaps not intentionally political, could certainly support the official nationalist ideology and history because of its association with the geography of modern Turkey rather than with a previous empire.

His choice was not totally based on local culture—he drew parallels between the Anatolian house and American Frank Lloyd Wright’s recent Prairie House that he discovered while in Europe. Eldem reconciled “Turkish” with “modern” partly by finding the roots of

---

12 Sibel Bozdoğan, et.al, Sedad Eldem: Architect in Turkey (Singapore and New York: Concept Media/Aperture, 1987), 158-159.
13 Ibid.
14 Ibid.
15 Adalet ve Kalkınma Partisi, or Justice and Development Party, an Islamist party which first won the majority of seats in Turkish Parliament in 2002 and has been in power since.
Wright’s houses in Anatolia. Sibel Bozdoğan argues that Eldem saw a modern rationality in the form he chose and the thought process behind his choice—but his secular, nationalist background (and clients) must have pushed him towards the Anatolian house as a model rather than, say, a Selçuk or Ottoman mosque. In 1980, Eldem recalled:

I believed I had discovered some important elements of the Turkish house of the future in these designs. The long, low lines, the rows of windows, the wide eave and the shape of the roofs were very much like the Turkish house I had in mind. These romantic, naturalistic houses were far more attractive than the box-like architecture of Le Corbusier. The use of rough-hewn stone and natural wood increased their effectiveness.16

Eldem did not see contradictions between Wright’s work and the Anatolian houses. He differentiated between Le Courbusier’s and Wright’s work, finding more emotion and a connection to nature in that of the latter. So Eldem had not wavered in his dedication to modernism, but rather sought a style that adapted to the local environment. While the similarities he found between the Prairie House and Anatolian house seem to be both pre-existing (or even coincidental), Eldem identifies the former as a model for the Turkish house by identifying therein “some important elements of the Turkish House of the future.”17 Furthermore, it is important to recognize that Eldem used a still-existing house form not only for private houses but also for many of his works open to the public, including the Taşlık Oriental Coffeehouse and the Social Security Complex, whereas Chadirji primarily used historical monumental architecture as his model.

There was a gradual shift in Eldem’s attitude towards national identity that is observable through his architecture and writing. He designed using the Corbusian, “box-like” style for bank and government commissions until at least the 60s, but used his Turkish House model for private commissions. As early as the 40s he expressed a critical attitude toward outside influence, particularly foreign architects in Turkey, going so far as to claim that their intervention had been an obstacle to the development of a modern Turkish architecture.18 He did not imply that foreign architecture itself was bad for Turkey, but that only Turkish architects were capable of developing their own modern architecture. Thus there is an obvious nationalist sentiment here and the suggestion that “modern” did not strictly mean “foreign.” Local culture could be expressed with both rational modernity and architectural modernism—any contradictions would weaken the legitimacy of the nationalist project.

17 Ibid.
18 Ibid.
Taşlık Oriental Coffeehouse (1947-8) (above left) was Eldem’s early attempt at a modern vernacular while he was growing increasingly disaffected with the coldness and placelessness of cubism. He describes his appropriation of the Anatolian house: “The issue here is a two thousand years old Anatolian house type reinterpreted for contemporary requirements and with modern materials. It could have been mud-brick or stone. It is not a stylistic search; instead, it is the constructional logic which yields the form.”\(^\text{19}\) Here Eldem relies on logic rather than emotion to legitimate his choice of the Anatolian house as his model for the European-style coffeehouse (the Amcazade Köprülu Hüseyin Paşa Yalı [above right] in particular was also a major inspiration for the coffeehouse). This building is an example of his use of the traditional house form and modern materials present in much of his other work. The strategic combination of certain aspects of traditional and modern architecture support the nationalist project and legitimate a modern vernacular. However, the use of non-local materials contradicts critical regionalist principles.

Eldem’s later Social Security Complex involves some of the same issues of locality with more attention to a rapidly changing Istanbul cityscape.

The Social Security Complex (SSC) (above left) (1962-70), for which Eldem won the Aga Khan Award in 1986, is widely recognized as Eldem’s landmark contribution to Turkish architecture. He modeled the complex after the typology of urban, wooden houses of the city of Bursa (above right), using a “reinforced concrete frame with block infill and concrete slabs,” creating a site that provided an excellent transition from a historical neighborhood to a major, recently-constructed thoroughfare in Istanbul.\(^\text{20}\) According to one critic, this project merited the award because, “[t]he overall scheme illustrates that it is the modern architects’ responsibility to engage in questions of scale and character, particularly in the Third World where the socio-

\(^{19}\) Ibid, 55.
economic dynamics gravely threaten the cultural continuity of the urban fabric.”21 While Turkey does not quite fit the “Third World” categorization it can serve as an example to other non-Western urban centers.

Rifat Chadirji and Iraq

Rifat Chadirji, one of just three architects to receive the Aga Khan Lifetime Achievement Award (in 1986), dealt with many of the same issues as Eldem within a different national context. Chadirji, was born in Baghdad in 1926 (and like Eldem) into a wealthy, secular family with artistic and political connections. He was educated at the Hammersmith School of Arts and Crafts in London and returned to Baghdad in 1952 as part of the firm Iraq Consult.22 The post-Ottoman British mandate period (1920-32) and the next quarter-century of British influence saw many British and then, in the post protectorate era, American and European architects working in Iraq who either did not complete their projects, or produced failures that did not adapt well to the local styles and environment, similar to what Turkey experienced in the same period.23 Prominent foreign architects of the time, such as Frank Lloyd Wright, also relied on their preconceived notions of the “Orient.” Influential Iraqi architects had a similar background as Chadirji and included Mohamed Saleh Makiya, whose work had a more traditional emphasis, and Hisham A. Munir, whose work addressed contemporary needs.24 Chadirji was then appointed as director of the government Waqaf department to preserve historical buildings.

While Eldem took the Anatolian house as his model, Chadirji referenced monumental architecture from the Persian Sassanid Empire (3rd-7th c. AD) and the Arab-Islamic Abbasid Caliphate (8th-13th c. AD). Other major works include the Monument for the Unknown Soldier in Baghdad, which the government commissioned him to build in 1960 (above right). He chose a structure from the Sassanid Palace of Ctesiphon (near Baghdad) built in 531 AD (above left), the reason being simply: “[w]e thought that we would like to work within a field that the people would understand and like.”25 Chadirji made a name for himself by designing the first houses in Iraq seen as a truly modern vernacular, such as the Hana Villa (1965) (below) and the H. H. Hamood Villa (1972). Among his other works were large government commissions, such as the Central Post, Telegraph & Telephone Offices (1970). None are monumental works, but all reference the Abbasid Al-Ukhaidir Fortress of Samarra (below), the capital of the Abbasid caliphate, also near Baghdad. They are not religious works, but draw on history of a major

21 Ibid, 85.
23 Ibid, 54.
24 Ibid.
25 Ibid, 58.
Islamic empire, marking the architectural identity of the secular Iraqi Republic as (in part) Islamic.

Despite enjoying a successful career, Chadirji’s family’s political connections resulted in his imprisonment by Saddam Hussein in Abu Ghraib Prison starting in 1978 for 20 months. He was then released and given unlimited resources by Hussein to replan Baghdad.\(^{26}\) After working on this, Chadirji left Iraq during the devastating Iran-Iraq War (1980-1988), and has since taught at Harvard and lived abroad between the US, the UK and Lebanon, producing many books on his life and field, yet little architecture. He has returned once to Baghdad, in 2009, and hopes to help rebuild the war-torn city.\(^{27}\) It is hard to tell how much of his work survived the Iran-Iraq War and the U.S. invasion.

Even given these restrictions, it is possible to infer more about Chadirji’s thoughts on a modern vernacular in Iraq. In 1983, Chadirji was on a panel committee for a new state mosque that would demonstrate the national identity that Hussein wanted to reflect through the built environment. From Chadirji’s subsequent writings we know he is very secular (to the point of seeing modernity and religion as contradictory and incompatible\(^{28}\)), but the conditions for project

---


\(^{28}\) Rifat Chadirji et al., *Conference comments*, in *Architectural Education in the Islamic World*, ed. Ahmet Evin (Singapore: Concept Media/Aga Khan Award for Architecture, 1986).
entries for a mosque of course require some religious content. One excerpt reads: “It is the intention […] that diverse and expert teams of architects and historians from both in and outside of Islam, and Iraq, will synthesize and propose architectural concepts and solutions reflecting a creative understanding of the needs and uses of a State Mosque in Baghdad, in Iraq, in Islam.”

There is a request for both Iraqi and non-Iraqi. Muslim and non-Muslim architects, but it is implied that the references should be Iraqi and Islamic. There is in fact no clear distinction between Iraqi and Islamic. To continue, the mosque should be “[f]irst in it’s ‘Religiosity’ and the formality of its position as major mosque in the hierarchy of mosques in the nation; and second, in the formality and monumentality of its position as State Mosque—a national monument and one of the great centres of the Arab Nation.”

There is a consistent allusion to the nation and state as well as Ba’athist pan-Arabism (“Arab Nation”) in addition to religion. It is as if Hussein wanted to make a statement about nationalism through the built environment in general, and he just happened to be doing so this time through a mosque. The competition guidelines conclude that the mosque should: “[r]epresent the continuity of the heritage of the architecture of Iraq, and [correspond] with or [be] compatible to the indigenous architecture of Iraq and the region, and [ensure] the continuity of the educational, scholarly, and other cultural and social heritage.”

Emphasis on the continuity of the nation placed the new state and Hussein’s Ba’ath Party in a smooth trajectory of history. Although Turkey and Iraq in the cases presented here were quite different, the manipulation of history and group identity for political aims in each case was similar.

Chadirji’s major text, *Towards A Regionalized International Architecture* (1986) argues that the current problem with art is that humans are no longer a personal part of production. According to Walter Benjamin, “The technique of reproduction detaches the reproduced object from the domain of tradition.” Benjamin’s question of authenticity is an interesting point here because, although authenticity is also crucial for Chadirji’s projects, it is hard to see how building houses in urban Baghdad that reference a seventh-century fortress is in any sense “authentic.” This brings up another challenge both architects faced: how to “regionalize” foreign-originated buildings types as was the case with projects such as Chadirji’s Central Post, Telegraph & Telephone Offices and Eldem’s Social Security Complex. Chadirji’s book also argues that there is a “cultural gap” between “international” and “local” culture that must be fixed in order to develop a modern vernacular in Iraq. In Iraq’s case, international culture is a “positive” pole and local culture is a “negative” one that must strive to meet the positive pole. Chadirji points to Iraq’s lack of a recent Renaissance and its current religious and turmoil as reasons for this dilemma. Eldem’s books, on the other hand focus mainly on houses of Anatolia, demonstrating his historicization of the Ottoman Period and categorization of such buildings instead as Turkish. This makes his interest in the Anatolian house as a model for all Turkish forms more straightforward than Chadirji’s very theoretical ideas on international versus local architecture. Their writing reflects themselves not only as products of a Western education and

---

30 Ibid.
31 Ibid.
nationalist context but as individuals trying to navigate the position of rejecting ideas of their training and upbringing that suggested their cultures were inherently static and backwards.

Two vernaculars

What do Eldem’s and Chadirji’s references imply about their views of national identity? Eldem mostly used the Anatolian house, emphasizing the territoriality of Turkey, rather than ethnic or religious aspects. His extensive published studies of architecture of the Ottoman Period—while referencing it rather as “Anatolian” or “Turkish” in his work—demonstrates his appreciation of “Ottomaness” as historical only and not relevant to contemporary times. Some of Eldem’s interiors even drew on Selcuk and Central Asian designs. This reflects how in the Early Republic the Turkish state rejected Ottomanness and embraced the somewhat contradictory combination of Anatolian territoriality and Turkic heritage. Chadirji, meanwhile, drew entirely on pre-Ottoman, Arab and Persian history. By referencing not only Arab history, but also Persian, he, like Eldem, emphasizes the territoriality of the state. The terms “Turkish” and “Iraqi” laid the basis of the legitimacy of the elite groups who created these states and they continue to be highly contested terms today. In the early years of these states, rallying citizens to take part in the nationalist project had its difficulties since there had existed no such concepts, as Jacques Dauphin, a correspondent with the French Press Agency, wrote about Baghdad: “Let mots: juifs, musulmans et chrétiens n’ont aucun sense quand on parle en patriote. Il y a seulement un pays, l’Irak; tous ses habitants sont des Irakiens… Tout le monde doit se pénétrer de l’idée qu’il ne peut y avoir dans ce pays de majorités et de minorités.” Dauphin succinctly conveys the complex and oftentimes painful realities of nation and nationalism that faced the heterogeneous populations of cities like Baghdad and Istanbul at the death of the Ottoman Empire.

The debate over national identity leads to another question, that of religion. Eldem and Chadirji were secularists and there is no evidence of them having completed any mosque projects, but they both handle religion differently. Eldem did not discuss religion and made no explicit references to religious architecture. This is quite in line with Kemalist policies, which relegated religion out of public spaces to the mosque and the home. Chadirji’s explicitly anti-religious stance suggests that he references Abbasid architecture more as a nationalist gesture than a religious one. And it can be inferred from his personal history that his participation in the mosque competition committee was not (at least wholly) voluntary. It isn’t surprising that Ba’athist Hussein emphasized Arabness; perhaps he wanted to emphasize pan-Arab sentiment in all his architecture, including mosques. Chadirji, a staunch secularist, stated explicitly his view that faith is an obstacle to a modern vernacular. This topic demonstrates both the limitations of what Eldem and Chadirji chose to say or not say in their respective political contexts and the limitations of the researcher in concluding what each meant through his writing and projects.

Both architects’ written works further reveal their position on how to achieve a modern vernacular. Eldem’s texts demonstrate a gradual shift in how he thought national identity could be expressed through architecture. As early as the 40’s, Eldem became very critical of foreign architects practicing in Turkey and claimed that they had been an obstacle to the development of a modern Turkish architecture. He saw a native culture that could be expressed with both

---

36 Bozdoğan, 33.
rational modernity and architectural modernism. Some of his works, such as the SSC, are a balance between global/modern and local/traditional that meet the immediate needs of the location and population. Others, such as the Hilton Hotel project (1955) for which Eldem designed the “flying carpet” entryway canopy, demonstrate the “surface kitsch” which Nathaniel Owings described in his memoirs: “like a meteor in the sky came an Arabian Night’s job: the Istanbul Hilton ... The result is a salubrious blend of strong Turkish architecture and American plumbing and heating.”37 This reflects the ongoing Orientalist influence of European and American architects in the region, from the anticommunist aims of both Conrad Hilton’s hotel in Istanbul38 and Constantinos Dioxiadis’ plan for Baghdad39 to Wright’s comparison of “the opportunity to assist Persia [as] like a story to a boy fascinated by the Arabian Nights Entertainment [...]”40

Chadirji saw international and local culture compatible by filling the “cultural gap.” In addition to Towards A Regionalized Architecture, he produced texts like Architectural Education in Iraq: a Case Study (1986), which covered Iraqi architecture from World War I to the 1970’s. He specified one failure of education of young Iraqi architects as exposure to modern architecture to the point that they were out of touch with local traditions and techniques, which ruined their projects and resulted in the decline of the craftsperson.41 He asked questions which demonstrate criticalness, but not rejection, of globalization and criticalness of his own work. Rather than taking for granted that a modern vernacular could exist, he constantly questioned the interaction between global and regional, asking questions about the relationship between technology and aesthetic values and how might a nation mediate the two “in a world of globalised production.”42 Moreso than Eldem, he thought on a global and theoretical scale. While he may not have produced structures as elegant nor as eloquently synthesizing international/modern and local/traditional as Eldem had, Chadirji certainly has contributed to the study of regionalism through his writing and criticism of other architects. As professors and mentors, both individuals were deeply concerned with the futures of their students and their national architectures.

Conclusion

In light of the search for a vernacular modern in the past, today, and for the future, Gülşüm Baydar Nalbantoğlu poses several questions: “Can we conceive of non-Western architecture, nonarchitecture without the categories of surplus and lack? Can we attribute a productive plenitude rather than lack to the prefix ‘non’? To what extent is it possible to undo the architectural gaze? Is there any way to look at architecture differently?”43 She addresses the current situation of architectural studies in which we use terms such as “non-Western” as a primary reference to the majority of world architecture, demonstrating the persistence of

37 Lefaivre, 33.
38 Lefaivre, 32-33.
42 Ibid, 120.
Eurocentricism in the field. Although neither Eldem nor Chadirji offer a completely satisfying solution to this problem, their writing and architecture demonstrates that there are at least as many possibilities as limitations in the development of regional architecture, and their strategies are examples for the development of such in any locality. Eldem wrote:

The chief aim of my fifty years of professional life has been to create a regional architectural style. I have approached the problem from various angles, not all of which have been appropriate or successful. With time I have become even more convinced that internationalism in architecture is not a productive choice. World architecture is in a state of crisis. The various ‘isms’ such as functionalism and internationalism, are no longer valid. We now face a new ‘ism’: regionalism.44

Eldem admits that he was not always correct in his choices or designs and expressed the realization that regionalism was finally a more pressing issue than internationalism. He goes beyond his own regionalism to convey concern about “world architecture,” by which he means as a whole and as parts, all of which affect one another. A breakthrough in one part can, in our global system, positively influence other parts. Chadirji actually takes a similar view, expressed much differently:

There are those who speak of the modern architecture of our part of the world as a product of new ideologies and as being strongly influenced by what is considered to be a search for unity. Personally, I do not believe there is such a thing as unity. When I design, I […] derive inspiration from the forms that surround me, a tradition that I would like to live with and see continue. […] I create […] to preserve my identity and individual character within the context of international cultural development; nor is it with the intent of rejecting internationalism that I design, rather with a view to contributing towards it by enriching it with variety and colour.45

By unity, Chadirji means a uniform, global architecture. He rejects it being imposed on him, but would like to “enrich” something that is both an international style and culture with his own contributions. So he sees answers to Eldem’s “state of crisis” on a regional level. His “identity and individual character” are both architectural and personal. Analysis of the writing and works of Eldem and Chadirji demonstrate that both architects were both highly critical of the styles and techniques in which they were trained and are examples for architects who are designing in new states and in anti-imperial struggles in a globalized world. This idea of contributing to architecture “from below” on a regional scale reflects the contemporary goal to make the relationship between those who design and those who they design for a more reciprocal one.

44 Bozdoğan, 171.
45 Chadirji, Comments, 22.


-----, Arkitekt Journal: Sosyal Sigorta Kurumu.
Arkitekt Journal: Taşlık Kahvesi.


Türk Evi Plan Tipleri (Plan Types of the Turkish House). Istanbul: Istanbul Technical University, Architecture Faculty, 1968.


The Shīʿite jurisprudential vision of Islam describes a religion that is both circumscribed by the *shari‘a* and responsive to human nature (*fitra*). Excluding the permissibility of relations with slaves, which is irrelevant to modern practice, marriage and sexual intercourse are indivisible from one another. Any sexual encounter outside these boundaries is fornication (*zinā*). Some sects in Islam, most prominently the Twelver (*Ithnā‘ashariyya*) Shīʿites, thus reconcile the law and human nature in regard to these urges with the institution of temporary marriage (*mut‘a*). *Mut‘a* arouses controversy even within the Twelver community and persists as a point of contention among other sects of Islam. The following analysis has three objectives. The first aim is to outline the technicalities of both permanent and temporary marriage in Islam. Thereafter, it delineates *mut‘a’s* historical basis and development, specifically how the practice and perception thereof have evolved. The final sections address the rulings of contemporary marājiʿ on the subject of temporary marriage and how these opinions relate to the historical and contemporary cultural environments.

### The Structure of Marriage in Islam

In Islam, permanent marriage (*nikāḥ*) is a civil contract, as opposed to a holy sacrament.¹ The formula for marriage is as follows: the woman states that she accepts marriage in return for a specific dowry (*mahr*) and the man consents to these conditions.² This contract stipulates that, in exchange for a dowry, a man receives proprietary rights over a woman’s genitalia for sexual and reproductive purposes.³ The Qurʾān describes it as a covenant (*miḥāq*) between husband and wife in which mutual consent between these parties (or their representatives) authenticates the agreement.⁴ Whereas Sunnīs require two witnesses to the marriage,⁵ Twelver Shīʿites view these witnesses as advisable but not mandatory for the contract’s validation.⁶ Permanent marriage also entails certain rights for both parties involved in the contract. In addition to legalizing intercourse, marriage establishes inheritance rights between husband and wife.⁷ Among other privileges, the husband receives dominion over his wife (insofar as his commands are reasonable) and the exclusive access to his wife for copulation.⁸ In return, the wife’s rights include her dower, an apartment for her and her husband’s private use, and general sustenance provided by her husband.⁹ Divorce (*talāq*) is a male prerogative, presupposing but not always necessitating a valid justification.¹⁰ A female-initiated marital nullification (*khulʿ*) produces the same outcome as divorce but has several limiting caveats. For instance, the husband must agree to dissolve the marriage, and the wife procures her freedom through a monetary transaction, the amount of which being agreed upon by the two parties.¹¹

A man may wed up to four permanent wives, presuming that he provides for each equally. As implied above, the marriage contract limits a woman to a single husband. Islamic law permits a Muslim man to marry women who are Muslim, Christian, Jewish, and sometimes Zoroastrian; by contrast, a

---

⁵. Ibid.
⁸. Ibid.
⁹. Ibid.
¹⁰. Ibid.

57
woman may only marry a Muslim man. If the marriage dissolves, either by divorce or death, the woman must observe ʿidda, a period of abstinence that varies according to situational factors, before remarriage. Although contemporary Muslim clerics glorify the nuclear family centered on the mother, this domestic archetype coalesced after the jurists outlined the legal aspect of matrimony. Importantly, the pre-modern model marginalized the parental relationship and children, focusing heavily on the man’s dominion (milk) over his wife’s sexuality in return for a dowry and her upkeep. Etymologically aligned with the early practice, the word nikāḥ indicates sexual intercourse and derives its connotation as a marriage contract from the Qurʾān’s exclusive use of the word in that context.

In addition to permanent marriage, Twelver Shiʿītes recognize mutʿa, which is also known by the Persian term sigheh. Mutʿa is an Arabic word derived from the root (مَثَا), which typically is associated with “enjoyment, pleasure, [and] delight.” Significantly, the word for “merchandise” (mātāʾ) shares this triliteral root. In Islamic law, nikāḥ mutʿa, commonly translated as “temporary marriage,” denotes a marriage for the purpose of pleasure. Like permanent marriage, mutʿa is a legal arrangement. Either party may initiate the negotiations for mutʿa, and, like permanent marriage, the contract is formulaic: one person proposes the duration of the marriage and the bride-price to which the other party consents. Hence, the only systematic difference between the contract for permanent and temporary marriage is the fixed interval, which may range between an hour and ninety-nine years. This formula may be recited in any language, as long as both parties are aware of the terms upon which they agree. Commensurate to Shiʿite rulings on permanent marriage, mutʿa may be negotiated privately and does not require additional witnesses to be valid. Unlike permanent marriage, in which a man is limited to four wives, a man may have an unlimited number of temporary wives. Despite the absence of divorce (talāq) in mutʿa, the man may gift the remaining time of the contract to the woman, effectively achieving that outcome. By contrast, the woman does not share this privilege and may not prematurely dissolve the union unilaterally. Assuming the union concludes naturally upon the expiration of the arranged time, the man and woman may elect to continue the relationship with the arrangement of a new contract and additional dowry.

---

12. Ibid., 36.
13. Y. Linant de Bellefonds, Encyclopaedia of Islam, 2nd ed., s.v. “ʿidda,” accessed May 30, 2013, http://referenceworks.brillonline.com.proxy.uchicago.edu/entries/encyclopaedia-of-islam-2/idda-SIM_3476?s.num=0&s.f.s2_parent=s.f.book.encyclopaedia-of-islam-2&s.q=%CA%BFidda. The ʿidda changes dependent on several factors, including her age (and whether or not she menstruates), whether or not she is pregnant, and the legal school that she observes. In general, the ʿidda constitutes around three menstrual cycles. In the case of a woman being widowed, the ʿidda lasts four months and ten days.
23. Ibid.
24. Ibid., 2.
27. Ibid.
A common objection to mut’a is that it is merely a form of prostitution. 29 Early Western scholarship frequently correlated the two institutions. For example, Orientalist Julius Wellhausen (d. 1918) disregarded the notion of pre-Islamic mut’a as an Arabian custom and deemed it to be unequivocal prostitution; similarly, Leone Caetani (d. 1935) argued that it originated as pre-Islamic, ritual prostitution in Mecca, although in this case stark physical and historical evidence exists to support his hypothesis. 30 Indeed, mut’a omits many defining characteristics of Islamic marriage. The husband has no compulsion to provide for his wife under the standard mut’a agreement and, unless the parties stipulate otherwise in their contract, husband and wife do not stand to inherit from one another in the event of either person’s death. 31 Thus, at its most nondescript, mut’a does possess prostitution’s formula of a financial transaction for intercourse. These facts acknowledged, mut’a retains restrictions that distinguish it to a degree from a basic sex-for-money exchange. Most importantly, children born from such a union are legitimate and afforded equal rights to children from permanent marriage. 32 Commensurate with stipulations in permanent marriage, mut’a also limits men’s choices to women from ahl al-kitāb and those of women to Muslim men. 33 As in Shi’ite permanent marriage, contraception, traditionally coitus interruptus (’azl), may be practiced at the man’s discretion. 34 Additionally, men are expected to only contract mut’a with chaste women, 35 although “chaste” is an admittedly ambiguous term. Whereas such aspects do not preclude mut’a’s appropriation as a cover for prostitution, doctrinal foundations distinguish the former from the latter.

It should be noted that, in practice, marriage laws and individual rights in matrimony differ widely throughout predominantly Muslim states both historically and contemporarily, deviating from Islamic law at various points. 36 From the above shari’a perspective, however, the balance of power in both types of marriage skews convincingly toward the male participant. Moreover, from this perspective, there is little difference between permanent and temporary marriage. Considering that nikāh lacked centralized domestic overtones at the advent of Islam, it may have been closer to mut’a insofar as the husband-wife dynamic was concerned, although this no doubt would have varied from marriage to marriage and is admittedly difficult to ascertain beyond speculation.

**History and Sectarian Views**

Historically, temporary marriage has provided a constant point of disension (and occasional strife) between Sunnis and Twelver Shi’ites. 37 Though it remains a contentious subject in contemporary Islamic jurisprudence and practice, temporary marriage likely has its roots in pre-Islamic Arab culture. Many historical documents attest to the existence of temporary marriage during the jāhiliya. In his Kitab al-Aghānī, the historian Abū al-Faraj al-Iṣfahānī (d. 967 C.E.) observes that the practice of temporary marriage predates the advent of Islam, existing as early as the fourth century C.E. 38 Although writing with a palpable bias against the “Saracens,” the Roman historian Ammianus Marcellinus (d. circa 395 C.E.) corroborates this assertion when he describes a marriage custom in which Arab men hire their wives for a set period, these wives offer a spear and a tent to their husbands as a dowry, and the women have the right to terminate the arrangement “after a fixed day.” 39 Although the description does not align perfectly with

30. Ibid.
31. Ibid.
33. Ibid., 52.
34. Ibid., 40.
35. Ibid., 52.
38. Musleb-ud-Din, *Mut’a*, 3
the precepts of *mutʿa*, the account suggests a form of provisional marriage in Arab culture prior to Muḥammad’s revelation. Likewise, some Arabian peoples evidently forged temporary unions between a man and a woman when the former sought protection from the latter’s tribe. This alliance, with political overtones, integrated the man into the group via familial ties.

Temporary marriage, however, is not an institution specific to this particular geo-cultural milieu. Variations of the practice exist or existed in locations as diverse as New Zealand, Hawaii, Canada, and Indonesia, among other places. Typically, these marriages answer cultural concerns. In New Zealand, for example, Māori custom dictated that a socially notable guest be sent temporary wives as a gesture of hospitality. Among several indigenous groups in Australia, due to the frequent difficulty in finding a wife or the occurrence of men marrying women many years their senior, tribal customs permit a man to obtain sexual gratification by contracting the use of another man’s wife, which addresses the problem without violating normative morality. This latter example demonstrates how temporary marriage serves a pragmatic function by addressing sexual behavior while taking pains to observe customary ethics. Without glossing traditions that developed independently of one another, it seems plausible that, in addition to fostering an individual’s alliance with a tribe, the pre-Islamic Arabic institution may have served similar carnal needs. Indeed, Marcellinus opines that the “Saracen” arrangement is an illusory marriage centered around an “eagerness...[for] matrimonial pleasures.” Despite his lack of objectivity, his description insinuates that this arrangement makes intercourse permissible by framing the contract in matrimonial terms, thus staying within boundaries of acceptable behavior.

The spread of Islam in the seventh century C.E. led to the redefinition of this acceptable behavior. Consequently, *mutʿa* became a contested issue between groups of adherents. Traditionally, Sunnīs maintain that the Qurʿān deals solely with permanent marriage and does not mention *mutʿa*. According to Shiʿite tradition, however, the Qurʿān plainly permits it. For example, the pre-Hijra Sūrat al-Maʿārij, states:

> And those who preserve their chastity, save with their wives and those whom their right hands possess, for thus they are not blameworthy; but whosoever seeketh more than that, those are they who are transgressors.

The later, post-Hijra Sūrat al-Nisāʾ includes:

> And lawful to you are all others beyond these, provided that you seek them in marriage with gifts from your property, desiring chastity, not unlawful sexual intercourse. So for whatever you enjoy of marriage from them, give them their due compensation as an obligation.

The justification for temporary marriage hinges on the verb used in Sūrat al-Nisāʾ indicating “to enjoy,” *istamaʾ tum*, which possesses the same root as *mutʿa*. In Twelver reasoning, the revelatory sequence of

---

42. Ibid.
45. Ibid.
46. Ibid., 120.
47. Ibid., 227.
51. Qurʿān, 70: 29-31. (wa al-ladhīna hum līsūrājihim ḥāfīẓūn / illā alā azwājihim aw mā malakat aymānuhum faʾinnahum ghayru mašāʾīna / ṣafanī ibtāghā warā a ḥālīkum maṣīla / ika humu al-ʿādīna)
52. Qurʿān, 4:24. (wa nīlilla lakum mā warā a ḥālīkum bi amwālikum muḥṣīnīna ghayra musāʾīkīna famā istamtaʾ tum biḥi minhunna faʾ āṭāhuunna ʿijārahunna faridātan)
these *suwar* substantiates temporary marriage. Sūrat al-Maʿārij clearly prohibits intercourse with women other than slaves and wives. From the time between its revelation and the Hijra, evidence suggests that *mutʿa* was a common practice in the proto-Muslim community.\(^{54}\) It logically follows that *mutʿa* would not have been continuously practiced during this interval if those described as transgressors included those contracting temporary marriage.\(^{55}\) Moreover, Twelver *ʿilamāʾ* hold that the subsequently revealed Sūrat al-Nisāʾ permits *mutʿa* outright.

Regardless of sectarian disputes regarding its Qurʿānic approval, both Sunnī and Shīʿī *ahādīth* acknowledge the initial permissibility of *mutʿa*. For example, the Sunnī *muhaddith* Muslim b. Al-Ḥajjāj (d. 875) records the Prophet allowing fixed-time marriage in exchange for a garment\(^{56}\) or other dower.\(^{57}\) In one example, Muhammad permits *mutʿa* when he and his companions are on a campaign, away from their wives, and the companions’ solution to the dilemma of lust is castration.\(^{58}\) In another, the Prophet allows *mutʿa* briefly after the conquest of Mecca.\(^{59}\) The circumstances under which the Prophet permits *mutʿa* in these *ahādīth* imply the pragmatic aspect of the institution. Two features merit consideration. Firstly, whether explicitly or tacitly, both *ahādīth* portray the absence of nikāḥ wives during campaign. Secondly, a variant of the verb “*ghazāʾ*”\(^{60}\) which indicates conquering in an Islamic context, animates the situation in both narratives. Collectively, these circumstances generate an environment in which Muslims propagating Islam face the prospect of violating Islamic law via fornication; in the former *hadīth*, these men view castration as preferable to transgression. In a similar, castration-centric *hadīth* reported by al-Bukhārī, the Prophet permits *mutʿa* and admonishes the believers to “[m]ake not unlawful the good things which Allah has made lawful for you, but commit no transgression.”\(^{61}\) Importantly, *ahādīth* attributed to the Prophet encourage marriage\(^{62}\) and discourage celibacy.\(^{63}\) Thus, *mutʿa* arises to answer the threat of castration, an irreversible abstinence, which, like fornication, signifies unacceptable behavior. Notably, the verb “*nakḥaʾ*” (to marry) recurs throughout these *ahādīth*, and the marriage is never termed *mutʿa*, thus downplaying direct correlation between marriage and personal indulgence. Instead, these situations insinuate that the Prophet allowed *mutʿa* to deter worse alternatives overtly proscribed by Islamic law. Furthermore, although Muslim provides one account of ‘Umar abrogating *mutʿa* during his caliphate,\(^{64}\) the majority relate Muhammad forbidding it. Usually this decree occurs after a particular conquest. For example, a *hadīth* attributed to Sabra b. Maʿbad states it was banned after the conquest of Mecca (630 C.E.), while another accredited to Ṭālib b. ‘Abd Allāhṭālīb names the subjugation of Khaybar (629 C.E.) as the occasion of the Prophet’s interdiction.\(^{55}\) While tentative due to the existence of contradictions, Muslim’s collection suggests that temporary marriage in the Sunnī tradition was allowed by the Prophet when faced with a particular dilemma and that it was revoked after his conquest was concluded, having served its practical function.

By contrast, Twelver Shīʿītīs subscribe to the belief that ‘Umar banned *mutʿa* during his caliphate, and as ‘Umar’s leadership was categorically invalid, so too was his decree.\(^{65}\) Various

---

55. Ibid., 215.
57. Al- Qushayrī, Mukhtasar Ṣaḥīḥ Muslim, 418. (bi al-qabdati mina al-tamri wa al-dāqiqi)
58. Ibid., 417. (kunna najzawma raʾasa allāhī, sallā Allāhu ʿalayhi wa sallām, laysa lanāʾ nisāʾ in fa quhā allā nastakhfī fa nahanāʾ an dhālika)
59. Ibid., 418. (jahāda Makkata)
60. Ibid., 417-418.
62. Al- Qushayrī, Mukhtasar Ṣaḥīḥ Muslim, 411. (yā ma sharah al-shabāb mani istaʿā a minkum al-bāʾa uta fāl yatatawawwāj)
63. Ibid., 412. (arāda Uthmānu bīn Māzī ʿānaʾ ra ṣayyā Allāhu ʿanahu an yatabattala fa nakhāʾ raṣūlī Allāhī)
64. Ibid., 418.
65. Ibid., 418-419.
explanations exist as to why 'Umar implemented this ban. One account states that 'Umar merely enacted an order of prohibition originally issued by the Prophet. In another narrative, 'Umar enacts this sanction as a personal vendetta against 'Afi, who allegedly contracted a temporary marriage with the caliph’s sister. In any case, Twelver traditions include those aligned with the pragmatic character of those reported in Sunnī collections. Distinctly, however, numerous Twelver ahādīth extol the virtues of the practice. A hadīth attributed to Jaʿfar al-Ṣādiq exemplifies the perceived religious merit of mutʿa. According to al-Ṣādiq, a man who contracts a temporary marriage with the intent of pleasing God, observing the tradition of the Prophet, or defying 'Umar’s interdiction will be absolved of all his sins and receive blessings equal to the hairs on his body touched by water during the post-coital ablutions. In a less effusive hadīth, al-Ṣādiq states that he does not like a man to leave the world without contracting mutʿa at least once. These statements exemplify a trend in traditional Shīʿite discourse in which mutʿa becomes an act of utmost piety rather than the pragmatic exercise in the aforementioned Sunnī ahādīth. In contrast, the narratives espousing spiritual recompense demonstrate justifications in light of sectarian tensions that reinforce confessional righteousness.

For example, the first of the above cited ahādīth embodies the Shīʿite principles of solidarity (tawallā) and disassociation (tabarrā). Succinctly describing these values, a hadīth attributed to the Prophet states: “Religion is love and hate for the sake of God.” Historically, these concepts manifested as adulation for the family of the Prophet (ahl al-bayt) and the condemnation of the enemies of that family, respectively. Tabarrā included cursing the first three caliphs; other practices were particularly virulent toward 'Umar. Hence, as a distinctly sectarian practice, it seems plausible that mutʿa reinforced community boundaries using the tawallā-tabarrā dynamic. Pleasing God, the first motivation, is not one particular to Shīʿites. Likewise, following the tradition of the Prophet does not indicate a practice exclusive to Shīʿites, but may incur a particular resonance in the Shīʿite context as a reflection of tawallā. Flouting 'Umar, however, represents a routinized aspect of tabarrā implemented elsewhere in religious practice. Thus, while temporary marriage continued to fulfill a perceived sexual necessity, it seems to have obtained supplemental importance by palpably denouncing 'Umar. Notably, some post-Revolutionary Iranian ulamāʾ continued to espouse the aspect of mutʿa’s “religious reward,” tacitly equated with “disobey[ing] 'Umar” and “pleas[ing] God,” despite other clerics shifting their rhetoric to emphasize its practical benefits (see below). Thus, temporary marriage may concurrently satisfy physical needs, offer spiritual rewards, and castigate ideological dissidents depending on the context in which an individual engages in the act.

Importantly, not all Shīʿite subdivisions approve of temporary marriage. In his Daʾāʾir al-Islām, the renowned Fātimid Ismāʿīlī jurist al-Qāḍī al-Nuʿmān (d. 974) reported several traditions that abrogated the practice. One bluntly states that Muḥammad “declared temporary marriage (mutʿa) to be forbidden.” Jaʿfar al-Ṣādiq reaffirms this in a subsequent hadīth, averring that mutʿa is a type of fornication (zināʾ) and only immoral people engage in such behavior. Immediately, this deviates from Twelver ahādīth, which often depict al-Ṣādiq as a proponent of mutʿa, typically promising religious bounties for its

69. Ibid., 7.
performance. In fact, the opposite holds true in Ismāʿīlī doctrine. According to ʿAlī, an unblemished reputation (iḥsān) comes via unity through marriage, a category from which ʿAlī explicitly disqualifies mutʿa. Thus, Ismāʿīlī doctrine perceives temporary marriage in a manner antithetical to Twelver rulings in regard to both its spiritual rewards and physical pragmatism. Like the Ismāʿīlīs, the Zaydi Shiʿītes prohibit mutʿa. Hence, mutʿa emphasizes intra-sectarian Shiʿīte divisions.

Yet, despite the accolades and laudable qualities from the Twelver juristic perspective, mutʿa’s prevalence and acceptability among this constituency, let alone the greater Muslim population, have fluctuated over time. At least in the modern era, cultural factors have consistently relegated mutʿa to a status lower than nikāh. Within the Sunnī community, temporary marriage was banned by the time of al-Maʾmūn’s (d. 833) caliphate. Al-Maʾmūn, sympathetic to facets of Shiʿīte belief, reinstated mutʿa but later rescinded this decree when faced with strong opposition from the Sunnī ulamāʾ. The injunctions against temporary marriage recorded by al-Nuʾmān indicate its prohibition at least as early as the Fāṭimid era (909-1171 C.E.) among the Ismāʿīlīs. Although sub-sects within the Zaydi community continued to observe its validity, Zaydi doctrine prohibited mutʿa in the eighth century. Hence, the Twelvers seem to have been the only group to doctrinally countenance its legitimacy, and until the Šafavīs converted the Persian populace, no principally Twelver state existed. Thereafter, trends in Persia (and later, Iran) varied. During the mid-1800s, the Qājārs’ predilection for and indulgence in mutʿa led to its popularity.

Interestingly, in early twentieth-century Persia, mutʿa and sigheh seem to have denoted slightly different practices in the colloquial parlance. Sigheh women contracted marriages, usually with bazāari men, for the financial benefit. This practice was easily exploited. Women would often contract temporary marriages with several men concurrently; although religiously invalid under these circumstances, men, who often appear to have known of their “co-husbands,” considered their religious obligation fulfilled by their contract. Contrarily, wealthy divorcees and widows contracted mutʿa, usually for sexual gratification. Accepting this distinction, future critics and champions of temporary marriage both had some legitimate basis for their arguments. The practice could be simultaneously exploitative and liberating for women, but its positive or negative consequences for a woman often seem to have mirrored her socioeconomic standing prior to entering a contract.

Contrasting the Qājārs, the succeeding Pahlavi dynasty considered mutʿa to be a regressive institution, and, while fear of popular backlash prevented an official prohibition, the regime led Iranians to believe it had been outlawed. This misdirection resulted in mutʿa being contracted furtively; as a result, cultural opinion of temporary marriage degenerated further. Moreover, class stratification affected this cultural perception. Educated and Westernized middle-class Iranians living in urban areas began to denounce mutʿa as religiously-licensed prostitution. In particular, women of this demographic advocated that perspective. Additionally, female senators and feminist-oriented magazines decried it for exploiting women and called for its abolition. The clerical response vehemently contested these claims, calling temporary marriage one of Islam’s most progressive institutions and contrasting it with the

78. Nuʾmān ibn Muhammad, The Pillars, 452.
82. Haeri, Law of Desire, 1.
84. Ibid.
86. Afary, Sexual Politics, 63.
87. Ibid.
88. Ibid., 63-64.
89. Ibid., 64.
91. Ibid.
92. Ibid., 351.
93. Ibid.
94. Ibid., 354.
debauched Western practice of “free love.”Interestingly, mut’a again became a sectarian marker through which the ideological “other” could be confronted. In this case, the “other” was not a traditional, intersectarian rival but the culturally alien West.

As aspects of Western culture began to pervade Iran, mut’a provided an extant religious practice that provided a legitimate alternative to that culture’s perceived hedonism and reaffirmed communal identity. From the ‘ulamā’ standpoint, mut’a continued to address physical necessity and sociopolitical dissention. The rhetoric with which clerics promoted mut’a, however, began to emphasize its practical benefits as opposed to its otherworldly rewards. Plausibly, this shift occurred, especially after the 1979 Revolution, as the subject of exclusion took the form of the West as opposed to the Sunnīs. Importantly, Ayatollah Khumaynī ignored sectarian divides and saw the Muslim population as a monolithic community separated by boundaries imposed by foreign powers. Mut’a endorsements that were vitriolic toward ‘Umar potentially served to undermine the regime’s pan-Islamic message. Concurrently, as the cultural dichotomy was reconfigured to place superficial Islamic and Western paradigms in opposition to one another, censuring Western intemperance while providing a pious alternative conceivably took precedence over sectarian polemic from a juristic rationalization standpoint.

For example, Ayatollah Sha’rī atmādārī (d. 1986) advanced the idea of mut’a as serving emergency purposes not unlike medicine, and his opposition to the Islamic regime precludes a political agenda consciously servicing it. Moreover, segments of the clerical class continued to argue that defying ‘Umar was the religiously correct reason to contract mut’a. Noting these aspects, it seems reasonable that the clerical rhetoric regarding mut’a shifted, at least in part, to vindicate Islam vis-à-vis alternative Western practices. This is not to suggest that other factors did not occasion the change in discourse, or even to assert that the discourse changed significantly. After all, “rationalism” abounds in aḥādīth regarding mut’a. On the other hand, fulsome benefits of the practice, such as mut’a as amnesty for all sins, seem subduced in modern discourse. To emphasize the pragmatism behind the institution in practice, contemporary temporary marriages in Iran serve a variety of non-sexual functions as well. As mut’a generates kinship bonds that remain even after the contract’s expiration, people may use temporary marriage as a jurisprudential tool with a wide range of possible applications, from acceptably integrating unrelated men and women in casual settings to facilitating gamete donation for infertile couples.

Likewise, those opposed to temporary marriage have utilized anti-Western arguments. For example, during a November 1990 khutba, then-President Rafsanjānī endorsed mut’a as a practical answer to sexual urges enflamed by the age of marriage rising, qualifying his advocacy on the “scientific” grounds that self-deprivation is damaging. In response, the feminist magazine Zan-i Ruz critiqued temporary marriage as indistinguishable from short-term, licentious relationships in the West before arguing that love is critical to a marriage. Naturally, recalling the definitions for nikāḥ and mut’a, one finds no reference to science or love. Instead, this debate evinces the interplay between Islamic law and normative cultural expectations and how the latter necessarily leads to the re-contextualization of the former.

Moreover, a practice’s official permissibility or prohibition does not account for cultural factors that often influence a person’s decision regarding temporary marriage despite the religious opinion on the matter. Exhibiting this notion is the fact that, despite its official impermissibility, a number of Sunnīs in the West engage in mut’a. In the Shi’ite community, the contemporary benefits of temporary marriage

---

95. Ibid., 351.
98. Ibid., 167.
99. Ibid., 89.
102. Ibid., 345.
seem to depend upon the geographical and cultural context in which they are considered. Hence, in Iran, even its practitioners note temporary marriage’s uncomfortable similarity to prostitution in the cultural consciousness, despite its long acceptance in Shīʿite religious doctrine. Thus, notwithstanding many Iranians expounding the theological and salubrious benefits, people continue to contract temporary marriages surreptitiously to avoid cultural stigmatization. By contrast, temporary marriage in Senegalese Shīʿite communities is socially accepted and practiced as a result of economic factors: couples who cannot afford a wedding, in addition to the community at large, venerate the institution. Furthermore, it seems that women may end the union in Senegal unilaterally without incurring social penalties. These two factors provide evidence of variance, both logistically and culturally, to the practice in Iran.

Furthermore, female abrogation of the contract in the Senegalese interpretation of mutʿa demonstrates that localized facets without apparent doctrinal basis may become institutionalized in their own right. As an extension of this notion, from the female perspective, social, political, and economic factors seem to affect whether mutʿa begets autonomy or the deprivation thereof. Temporary marriage’s acceptability in Iran versus Senegal evinces the importance of societal contextualization. In Iran, a woman’s prior knowledge or ignorance of mutʿa and its regulatory laws typically correlate with the marriage’s success or failure, respectively, relative to the woman’s intention when entering into the arrangement. Thus, women who anticipate temporary marriage as a stable relationship, or the gateway to permanent marriage, are potentially exploited when this transition never occurs, whereas women who understand the institution and have no expectations beyond what is guaranteed to them by doctrine (or their contracts) fare better. Consequently, educated expectations are more likely to be fulfilled. Finally, though self-evident, it is important to note that each individual mutʿa will vary based on its participants; the skeletal outline provided in jurisprudence leaves a considerable deal to be negotiated and executed by the practitioners. Temporary marriages may differ greatly based not only on ambient factors but on the intentions of the people involved.

**Contemporary Twelver ʿUlamāʾ Opinions of Mutʿa**

Perhaps unsurprisingly, considering the range of opinions on mutʿa in the contemporary Shīʿite community and the pluralistic Shīʿite jurisprudential tradition itself, modern clerical opinion varies about when the practice becomes permissible. The following rulings result from a series of e-mails between the author and the offices of numerous marājī. Some of these questions were submitted from a female persona to test gender bias. The jurists were chosen according to the offices that responded most comprehensively and promptly. This delineation includes four marājī; in the interest of balance, two residing in Iran and two residing in Iraq were selected. It should also be noted that responses originated from the offices of the marājī, not necessarily the marājī themselves. This analysis assumes a given response to accurately represent the corresponding marājī’s opinion; there is always the chance that the respondent has unintentionally misrepresented a marājī’s view under these circumstances. Nevertheless, these opinions communicate contemporary developments that contrast with tradition in some instances. Furthermore, these developments may reflect cultural attitudes toward the institution. After all, despite being religious scholars, the ʿulamāʾ are also subject to the cultural conditioning of their environments.

As an advocate of female equality, Grand Ayatollah Yūsuf Ṣānāʾī (b. 1937) seems particularly relevant when considering modern mutʿa in light of the practice’s traditional gender inequality. Ṣānāʾī

---

105. Ibid., 8.
110. Ibid., 202.
avers that mut'a originates from the Qurʾān and the Imāms’ ahādīth, and he stresses the rigidity of the formula: the dowry (mahr) and length must be set beforehand and the vows must be recited in Arabic. If the woman is a virgin, her father (or legal guardian) must approve; without this approval, even if the other conditions are followed, the mut'a is invalid. Šānaʾī’s ruling includes the additional step of having a public notary to register the mut’a, noting that the failure to do so is a sin. The final sentence of the ruling stresses that “temporary marriage is only permissible while in distress and hardship or [if there are] special circumstances in terms of sexual needs.” Mut’a exists to service a practical need, but is not to be contracted for “lawful revelry and pleasure.” The arrangement occupies a lower stratum of relationship than nikāh, and if one has recourse to a wife from a permanent marriage, mut’a is forbidden. Unsurprisingly then, arranging mut’a through the internet is impermissible to Šānaʾī. When asked about ahādīth that describe God’s reward for religious merits of mut’a, Šānaʾī’s opinion remains consistent, reinforcing that mut’a exists not as legalized “revelry or pleasure” but for cases in which permanent wives cannot fulfill their sexual obligations. In any situation in which a man’s permanent wife or wives are available for these purposes, Šānaʾī prohibits temporary marriage. For both men and women, the use of contraceptives is an individual’s prerogative, but Šānaʾī does not specify acceptable forms of birth control. When asking about contraceptives from the female perspective, Šānaʾī again stressed that a virgin woman must have her guardian’s consent to contract mut’a. In regard to a woman’s prerequisite age, Šānaʾī acknowledges that none exists but that an arrangement “not in her best interests will be void and impermissible.” When asked about knowledge of a woman’s chastity as a condition for a man to marry her, he states that knowledge of her marital status suffices. In a sharp break from tradition, Šānaʾī has no issues against women marrying men who are not Muslim, as long as they are ahl al-kitāb.

Despite his reputation as a relatively progressive mujtahid, Supreme Leader of Iran Ṭāhir Khāmeneʾī (b. 1939) does not grant women the same confessional leniency with temporary husbands, restricting their prospective spouses to Muslims. Khāmeneʾī rules by obligatory caution that a man should obtain permission from a virgin’s father before contracting mut’a with her, but a woman does not have to be of a particular age for him to marry her. Contraception is permitted for both genders,

---

112. The Office of Grand Ayatollah Yusuf Šānaʾī, e-mail message to the author re: Legal Basis for Mut’a, May 18, 2013.
114. Šānaʾī, re: Conditions for Valid Mut’a Contract.
115. Ibid.
116. Ibid.
118. Šānaʾī, re: Personal Motivations for Contracting Mut’a.
120. The Office of Grand Ayatollah Yusuf Šānaʾī, e-mail message to the author re: Religious Merit of Mut’a, May 22, 2013.
121. Šānaʾī, re: Religious Merit of Mut’a.
124. Šānaʾī, re: Female Use of Contraceptives.
125. The Office of Grand Ayatollah Yusuf Šānaʾī, e-mail message to the author re: Prerequisite Age of Woman for Mut’a, May 18, 2013. Emphasis added by the author.
126. The Office of Grand Ayatollah Yusuf Šānaʾī, e-mail message to the author re: Woman’s Reputation, May 18, 2013.
128. The Office of Grand Ayatollah ’Alī Khāmeneʾī, e-mail message to the author re: Female Mut’a with Ahl al-Kitāb, May 19, 2013.
129. The Office of Grand Ayatollah ’Alī Khāmeneʾī, e-mail message to the author re: Permission of the Father for a Woman to Contract Mut’a, May 23, 2013.
130. The Office of Grand Ayatollah ’Alī Khāmeneʾī, e-mail message to the author re: Prerequisite Age of Woman for Mut’a, May 23, 2013.
but a woman must have the permission of her husband.\textsuperscript{132} Whereas it is recommended (mustahabb) to ascertain a woman’s chastity before marriage, attempting to determine her character after the contract has been formalized is detestable (makrûh).\textsuperscript{133} Notably, although Khâmene’î views mut’a with a prostitute to be reprehensible, he does not forbid it.\textsuperscript{134} When asked about the religious merits of mut’a featured in \textit{ahâdîth} attributed to Ja far al-Šâdîq, Khâmene’î notes that mut’a is recommended (mustahabb) but not obligatory.\textsuperscript{135} Furthermore, in any situation in which temporary marriage would lead to corruption or conflict, it becomes impermissible.\textsuperscript{136}

Unlike Sânâ’î and Khâmene’î, Grand Ayatollah Bashîr al-Najafî (b. 1942) resides in Najaf. When asked about the religious reward as a motivation for temporary marriage, al-Najafî outlines several benefits: fulfillment of male and female sexual desires, removal of social barriers in various contexts, and preventing prostitution.\textsuperscript{137} By contrast, al-Najafî explains that although there may be reward (thawâb) for mut’a, he bases his opinions on these more mundane factors.\textsuperscript{138} The contract may be arranged through various methods, including internet correspondence, but the contract itself must be recited orally.\textsuperscript{139} If a man intends to marry a virgin for either oral or vaginal sexual purposes (rather than to alleviate social barriers), she must be an adult (bâiligh),\textsuperscript{140} and the father’s permission must be obtained.\textsuperscript{141} No paternal consent is required with non-virgins.\textsuperscript{142} Because a man may permanently marry a known fornicatrix, al-Najafî allows mut’a with women renowned for prostitution, although it falls upon the husband to curb her obscenity during the time of the marriage.\textsuperscript{143} Despite this, the better alternative is to marry a woman with a good reputation.\textsuperscript{144}

Grand Ayatollah Muhammad Sa’îd al-Ḥâkim (b. 1936), also a prominent figure in the Najaf \textit{ḥawza}, reiterates the standard contract as a prerequisite, but notes that it may be recited in any language.\textsuperscript{145} It must be recited verbally; failure to speak the contract renders the mut’a incorrect.\textsuperscript{146} He rules that all sexual acts, save intercourse itself, are permissible for a virgin without guardian consent.\textsuperscript{147} In the case of a widowed or divorced woman, al-Ḥâkim rules no guardian consent to be necessary.

\begin{itemize}
\item 131. The Office of Grand Ayatollah ‘Alî Khâmene’î, e-mail message to the author re: Male Use of Contraceptives, May 28, 2013.
\item 132. The Office of Grand Ayatollah ‘Alî Khâmene’î, e-mail message to the author re: Female Use of Contraceptives, May 28, 2013.
\item 133. The Office of Grand Ayatollah ‘Alî Khâmene’î, e-mail message to the author re: Woman’s Reputation, May 23, 2013.
\item 136. Khâmene’î, re: Religious Merit of \textit{Mut’a}.
\item 138. al-Najafî, re: Religious Merit of \textit{Mut’a}.
\item 139. The Office of Grand Ayatollah Bashîr al-Najafî, e-mail message to the author re: Internet Contracts, June 3, 2013.
\item 140. The Office of Grand Ayatollah Bashîr al-Najafî, e-mail message to the author re: Prerequisite Age of Woman for \textit{Mut’a}, May 22, 2013.
\item 141. The Office of Grand Ayatollah Bashîr al-Najafî, e-mail message to the author re: Permission of the Father for a Woman to Contract \textit{Mut’a}, May 22, 2013.
\item 142. al-Najafî, re: Permission of the Father for a Woman to Contract \textit{Mut’a}.
\item 144. The Office of Grand Ayatollah Bashîr al-Najafî, e-mail message to the author re: Woman’s Reputation, May 22, 2013.
\item 145. The Office of Grand Ayatollah Muhammad Sa’îd Al-Ḥâkim, e-mail message to the author re: Conditions for Valid \textit{Mut’a} Contract, May 21, 2013.
\item 147. The Office of Grand Ayatollah Muhammad Sa’îd Al-Ḥâkim, e-mail message to the author re: Prerequisite Age of Woman for \textit{Mut’a}, May 21, 2013.
\item 148. The Office of Grand Ayatollah Muhammad Sa’îd Al-Ḥâkim, e-mail message to the author re: Permission of the Father for a Woman to Contract \textit{Mut’a}, May 21, 2013.
\end{itemize}
Contraception is only permitted if it is reversible and approved by the husband. A woman’s reputation seems functionally irrelevant as long as she understands that mut'a is a religiously valid marriage. Noting this, a man may not marry an agnostic or atheist woman; she must be ahl al-kitāb. Furthermore, she must understand and have the intention of observing the validity of the contract in “its true sense.” Unless stipulated in the contract, a wife may not gift the remaining time to her husband, thus concluding the arrangement. Regarding the religious merit of mut'a, al-Hakīm comments that, like nikāh, mut'a is recommended (mustahabb) but not obligatory. When questioned about stigmas resulting from mut'a historically, al-Hakīm attributes it primarily to classism (i.e. a woman marrying a man of lower social standing) and other cultural issues that have no shari’a basis.

Apparent Trends in Modern Mut’a

Whereas it is impossible to comment upon universal trends vis-à-vis fiqh by analyzing selected opinions of four marāji’, especially without data regarding actual practice as it relates to these opinions, these clerical attitudes may be useful as a commentary on the interaction between jurisprudence and cultural outlook. Foremost, the surveyed clerics do little to dispel the cultural associations between prostitution and temporary marriage. Although all seem to view marrying a prostitute unfavorably, as long as the woman in question is unwed, there is no sanction against it. Furthermore, a “don’t ask, don’t tell” policy seems to be effected regarding the chastity of a woman: fiqh discourages a man from marrying an immoral woman, but does not require that he determine whether or not his potential wife prostitutes herself or routinely fornicates. Whereas this does not preclude a man from contracting mut’a with an ill-reputed woman with intent other than sexual gratification, the potential to legally mask prostitution with mut’a exists concomitantly in the jurisprudence.

At least from the above rulings, reciting the marriage formula with a prostitute and setting a short-term duration results in a situation ostensibly indistinct from prostitution in a secular context. As long as this possible outcome exists, it seems little wonder that the Iranian collective perception disparages the institution insofar as it includes sexual intercourse. Whereas confessional restrictions exist regarding potential temporary spouses, their practical restrictions seem limited. Among locales with sizable Twelver demographics, Iran’s non-Muslim minority comprises approximately 2% of the total population; Iraq’s minority is 3%. Lebanon’s constituency, which is more varied, is approximately 60% Muslim and 39% Christian. Although other factors, such as age and gender distributions, must be considered alongside these confessional percentages to definitively gauge religion’s practical restrictions

on temporary marriage, at first glance, it seems reasonable to posit a minimal amount of interference. Other restrictions, such as the necessity to verbalize the contract, implausibly limit arranging mutʿa for sexual purposes, as vocalization can be addressed via the physical proximity necessary for intercourse. Correspondingly, it seems reasonable that such restrictions carry little value when debating the perception of mutʿa being analogous to prostitution on grounds of religious constraints.

The rights of women afforded by mutʿa are more complicated. The institution itself continues to favor male prerogatives over those of the female, despite the existence of circumventive possibilities that grant women additional rights. A ruling made by al-Hakīm demonstrates this notion: he upholds the tradition that women may not conclude the relationship prematurely but states that she may if that privilege was agreed upon in the initial contract establishing the marriage. No provision intrinsic to mutʿa prevents such arrangement, but its inclusion correlates with a woman’s education on the subject and foresight to stipulate her rights as a condition to the contract. From this ruling, barring knowledge of fiqh, a woman stands at a distinct disadvantage in that regard. Khāmeneʿī and al-Hakīm indicate a woman must have her husband’s permission to use (reversible) contraceptives; Ṣāḥibī does not indicate that the husband’s permission is necessary. Excluding Ṣānaʿī, woman’s protection from sexually transmitted infections and pregnancy seems left to her husband’s determination as a default scenario. It remains plausible that her right to use contraceptives be implemented contractually, but this, again, requires prior understanding of the institution. Additionally, according to the above rulings, only divorcees and widows may arrange mutʿa totally independent of guardian consent, which indicates the deprivation of a woman’s agency in her own affairs. This stated, Khāmeneʿī’s ruling indicates obligatory caution, which permits seeking the opinion of a different marājiʿ in regard to that question. Given his strong opinions on gender equality, Ṣānaʿī’s strict rulings to legitimize mutʿa, including mandating the contract be spoken in Arabic (despite his residence in a Persian-speaking country), the necessity of the guardian’s permission for all virginal mutʿa, and notarizing the contract, seem counterintuitive to female autonomy. However, this strictness may indicate Ṣānaʿī’s regard for cultural stigmas and his attempt to protect women from the possible negative outcomes by ensuring a vigorous process to formalize the marriage. Admittedly, this postulation is speculative, and a thorough examination of Ṣānaʿī’s methodology would be required to ascertain its validity.

Finally, the above marājiʿ (and others consulted but not explicitly featured above) consider mutʿa as a pragmatic aspect of Islam rather than a spiritual panacea. Although Khāmeneʿī and al-Hakīm both describe it as mustahabb, neither explicitly promotes it as a practice that grants divine recognition. Al-Najafi, while not dismissing the prospect of thawāb, articulates that his rulings originate in pragmatic concerns: facilitating interpersonal action, satiating physical desires, preventing prostitution, and so forth. They emphasize tangible benefits as opposed to incorporeal merit. Furthermore, Ṣānaʿī forbids mutʿa if one has recourse to a permanent wife, as an available spouse obviates the need for temporary marriage. In this sample, the clerical opinion of mutʿa seems to mirror the larger societal ambivalence. Additionally, the surveyed marājiʿ indicate the trend of intersectarian unity; of the four figures, only Ṣānaʿī was not a signatory of the 2009 Amman Message, a document proclaiming the equal validity of various Sunnī and Shīʿī madhāhib and denouncing takfīr against the sects listed in that text.159 This reinforces the notion that anti-ʿUmar rhetoric undermines Islamic unity in the contemporary world, although it seems plausible that this rhetoric continues to exist on levels further removed from the international stage.

**Conclusion**

As an institution, mutʿa seems to have undergone subtle changes throughout its history, although culture, rather than doctrine, seems to have reoriented people’s perceptions of temporary marriage. Whereas difficult to aver, the practice seems to have been pre-Islamic and may have been permitted to serve the function of nikāḥ during ghazi campaigns in which wives and slaves were unavailable. Its continued existence in Shīʿīsm plausibly reinforces or contributes to the tawallā-.tabarrā ideology, although contemporary developments in the Islamic world seem to have provoked a withdrawal from this rhetoric, at least among high-ranking ʿulamāʿ, in an effort to discourage intersectarian divide. In light of

---

the doctrinal sparseness, however, the institution remains largely characterized by the participants and takes a variety of forms among individual parties. It is equally capable of denoting a stable marriage or thinly-veiled prostitution, depending upon the context in which one observes it.
Appendix

Questions answered by marājiʿ:

Re: Conditions for Valid Mutʿa Contract

Question: Is there a proper format or structure for a contract when arranging a temporary marriage other than agreeing on a bridal price and setting a length of time for the marriage or is an informal verbal agreement between the two parties sufficient?

Al-Hakīm: The woman can say: “I marry myself to you on a dowry of so-and-so and for the duration of so-and-so.” and mention the amount of dowry and the duration of marriage and then the man accepts by saying: “I accept”. He can start the contract by saying: “I marry you on a dowry of so-and-so and for the duration of so-and-so” the woman then accepts by saying: “I accept”. This can be in any language. (May 21, 2013)

Ṣānaʾī: In temporary marriage, it is necessary to specify Mahr as well as the term, and to pronounce the vows (formula) in the Arabic language. It is also necessary to obtain the girl's father (or guardian)'s consent if she is virgin. Without his consent, even if the formula is pronounced, the marriage will not be valid and correct. To get the formalities of temporary marriage done and have it registered, the parties should go to a notary public and if they refuse to do so, it will be a sin and they will regret that. On top of all, temporary marriage is only permissible while in distress and hardship or special circumstances in terms of sexual needs. (May 18, 2013)

Re: Female Mutʿa with Ahl al-Kitāb

Question: Is it permissible for a woman to enter into a temporary marriage with a man who is Ahl al-Kitab?

Khāmeneʿī: That is impermissible and the marriage is void. (May 19, 2013)

Ṣānaʾī: Having observed all the conditions of marriage contract, it will be permissible. (May 14, 2013)

Re: Female Use of Contraceptives

Question: If I enter a temporary marriage with a man, is there any form of birth control that I am permitted to use in order to prevent pregnancy?

Khāmeneʿī: There is no objection to using a contraceptive method provided that the wife does it with the permission of the husband and one should avoid haram looking and touching. (May 28, 2013)

Ṣānaʾī: It is up to you, by the way Temporary marriage of a virgin girl without her father’s permission is null and void (Batil) and there is no difference between reciting it or not. (May 25, 2013)

Re: Internet Contracts

Question: Is it allowed for me to arrange a temporary marriage on the Internet with a woman that I have never met?

Al-Najafi: In the name of Allah: It is permissible to arrange marriage on net, but via voice not writing. Also, for the virgin girl, there must be a permission taken from the father or the grandfather from the father's side when it is intended to have sexual intercourse. (June 3, 2013)
Re: Legal Basis for Mut'ā

Question: I read Surat al-Nisa, and I do not understand where it makes temporary marriage permissible. Does temporary marriage appear in the Qur’an or does it come from the hadith?

Ṣāna’t: The sources for extracting, inferring, and deducing rules are the verses of the Quran and the traditions quoted from the Infallible (Peace Be Upon Them). (May 18, 2013)

Re: Male Use of Contraceptives

Question: If I have a temporary marriage with a woman, but do not want her to become pregnant, is it permitted for me to use contraceptives to prevent such a pregnancy?

Khāmene’ī: There is no objection to that by itself. (May 28, 2013)

Ṣāna’t: Yes it is permitted to to [sic] use contraceptives. (May 25, 2013)

Re: Permission of the Father for a Woman to Contract Mut’ā

Question: I wish to enter into a mutah with a man I have known for some time. Is it necessary for my father to approve it, or is it permissible for the mutah to be known only to me and this man?

Al-Hakīm: In the name of Allah, the most Gracious, the most Merciful and Praise be to Him. If the woman is virgin and she wanted to conduct a marriage contract and consummate the marriage then it is condition in the correctness of her marriage contact to get the permission of her guardian, father or parental grandfather. If she is a virgin then it is permissible to marry her temporarily without her guardian’s consent and all sexual acts are permitted except sexual intercourse. The latter is permissible with the guardian’s permission. If she is a widow or divorced then it is permissible for her to conduct temporary marriage and consummate the marriage without the father’s permission. (May 25, 2013)

Khāmene’ī: The marriage (be it permanent or temporary) of a virgin girl should, by obligatory caution, be contracted with the permission of her father or paternal grandfather. (May 23, 2013)

Al-Najafi: In the name of Allah: my daughter, if you intend to have sexual intercourse with him from either side, and you are virgin, then you must take permission from your father or your grandfather from your father's side. If you are not virgin, then you don't have to take such permission, you are free. (May 22, 2013)

Re: Personal Motivations for Contracting Mut’ā

Question: I understand that mut’ā is a temporary marriage for pleasure. Does that mean that physical attraction and lust are permissible reasons to enter into such a contract, or are there other prerequisite motivations that one must have before two people can enter into this arrangement?

Ṣāna’t: Basically in Islam, the temporary marriage is used to meet the necessary needs and conditions and it is not used for lawful revelry and pleasure or to be in the same level of the permanent marriage. So according to the view of Grand Ayatullah Saanei (d), for those who have their wives near themselves and
they can fulfill and extinguish their sexual needs with their own wives, then the issue of temporary marriage not only has problem but it is condemned to be prohibited and not permissible. (May 16, 2013)

**Re: Prerequisite Age of Woman for Mutʿa**

Question: When arranging a temporary marriage, how old must the woman be?

Al-Hakīm: If the woman reached the age of religiously recognized adulthood, it is permissible for her to conduct marriage contract; if she is virgin, then she can do that even without the permission of her father and all sexual acts are permissible then except for sexual intercourse. Sexual intercourse would be permissible with the permission of the father. (May 21, 2013)

Khāmeneʿī: By itself, no special age is conditional. (May 23, 2013)

Al-Najafī: In the name of Allah: if you mean to have intercourse from either side, then the woman must be adult (Baligh). (May 22, 2013)

Ṣānaʿī: Even thought [sic] Islam has not prescribed a specific minimum age for marriage, to temporarily marry a minor girl while it is not in her best interests will be void and impermissible. (May 18, 2013)

**Re: Religious Merit of Mutʿa**

Question: I have read several ahadith attributed to Imam al-Sadiq in which he says that performing mutʿa results in rewards from Allah. As an example, I came across a hadith in which the Imam says that, in a temporary marriage, every drop of ablution water after intercourse transforms into seventy angels who will testify on behalf of he who has performed mutʿa on the Last Day. Is mutʿa really a practice for which Allah gives special rewards or forgiveness or does it exist to address our physical needs alone?

Khāmeneʿī: In spite of the fact that temporary (mutʿah) marriage is permissible, or rather mustahabb, in Shia fiqh, it is not obligatory. Then if it would lead to struggle, accusation or corruption a matter which is not wanted by the Holy Legislator, one is not allowed to conclude such a marriage. (May 27, 2013)

Al-Najafī: In the name of Allah: there is no doubt that most of people intend to marry (temporary or permanent) in order to fulfill sexual desires in men or women. There are cases like commercial, economical or humanitarian in which social contact might happen with the women. For such reason, both types of marriage are used. The temporary marriage is used in order for the prostitution to be prevailed. The Imam refers to such wisdom and not to the reward (Thawab) specifically. Allah knows best. (June 3, 2013)

Ṣānaʿī: Basically in Islam, the temporary marriage is used to meet the necessary needs and conditions and it is not used for lawful revelry and pleasure or to be in the same level of the permanent marriage. So according to the view of Grand Ayatullah Saanei (d), for those who have their wives near themselves and they can fulfill and extinguish their sexual needs with their own wives, then the issue of temporary marriage not only has problem but it is condemned to be prohibited and not permissible. (May 22, 2013)

**Re: Woman’s Reputation**

Question: I wish to arrange a temporary marriage with a woman. Although I know her, I am not familiar with her sexual reputation and do not know if she is promiscuous. Is this information necessary for me to know before entering into a temporary marriage contract?
Al-Ḥakīm: It is permissible to conduct temporary marriage and one is not obliged to investigate her if she understands that she is conducting a marriage contract and intends it as a religiously recognized marriage relationship. (May 25, 2013)

Al-Najafi: In the name of Allah: although it is permissible not to pay attention to the reputation of the woman when marry her contemporary marriage, it is better to marry the woman who has a good reputation contemporary marriage. (May 22, 2013)

Khāmeneʾī: It is not necessary to ask her. However, it is mustahabb to be chaste woman and to ask her before concluding marriage if she is married or not or if she is in the periods or not. But inquiring about that after marriage is makruh. It is not necessary to get other information for mutʿah to be correct. (May 23, 2013)

Ṣānaʾī: You do not need to know everything about her. It will suffice to know whether or not she is married. If she is single, observing all other conditions for marriage, marrying her will be permissible and in order. (May 18, 2013)


