



Institutionalizing Sectarianism: The Lebanese Ja‘fari Court and Shi‘i Society under the French Mandate

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Abstract

The French Mandate authorities in Greater Lebanon formally recognized the Ja‘fari *madbhab* in January 1926. As a result, state-led *shari‘a* courts in Beirut, South Lebanon and the Bekaa Valley, the Lebanese Ja‘fari court, were authorized to adjudicate matters of personal status—marriage, divorce, *nafaqa*, inheritance and property. As the first Lebanese Shi‘i institution to enjoy communal autonomy granted by the state, the records from the Ja‘fari courts provide insight into the everyday life-worlds of ordinary Shi‘i Muslims in Lebanon during a period of gradual social change. Through a close reading of some unique cases—dealing with inheritance, *maṣlaḥa* and *zinā*—this article invites a consideration of how both the bureaucratization and practice of Shi‘i law in these courts were central to the institutionalization of a new kind of Shi‘i sectarianism in Mandate-era Lebanon.

Keywords

Lebanon, Shi‘ism, French Mandate, personal status law, Ja‘fari court

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* Max Weiss is a Junior Fellow at the Harvard Society of Fellows. Research for this article was supported by the Fulbright-Hays Commission, the Social Science Research Council-International Dissertation Research Fellowship, and the Stanford University History Department; writing and revision was made possible thanks to a postdoctoral fellowship in the Department of Near Eastern Studies, Princeton University. I am most grateful to Professor David S. Powers for taking the time to work with me on several drafts of this essay and to Professor Ahmad Dallal for suggesting that I submit my work to *ILS*. I would also like to extend my gratitude to the three anonymous readers for their helpful and incisive comments on an earlier version.

The formal recognition of the Jaʿfari *madhhab* in Lebanon in January 1926 and the subsequent development of a state-led court system by the French Mandatory authorities effectively reoriented Shiʿi society towards Beirut and dramatically changed the character of relationships between the Shiʿa and other Lebanese sectarian communities. Shiʿis in Jabal ʿAmil (South Lebanon), the Biqaʿ Valley and Beirut were brought into direct contact with the apparatus of the modern state for the first time. If the institutionalization of Shiʿism opened up new vistas on the negotiation of juridical, social and political issues within the Shiʿi community, the intervention of the state—by way of the court apparatus—into the lives of ordinary Shiʿi individuals and families was an unprecedented, perhaps even revolutionary, innovation in Lebanese Shiʿi life.

The empirical backbone of this article consists of court records as well as correspondences internal to the court staff and between ordinary people and the court representatives from the “archives” of the Jaʿfari courts in Beirut, Nabatiyya, Sidon and Tyre dating to the 1920s and 1930s.¹ These records provide the historian with access to undiscovered worlds of ordinary Shiʿi life, laying bare the everyday challenges and effects of personal status lawmaking, a key component of the institutionalization of Shiʿism in Lebanon. These records, which have never been systematically read or analyzed, also constitute an untapped source for historians of the Lebanese Shiʿi community under the Mandate. Although court records can make a significant contribution to our understanding of the Shiʿi community in Lebanon during this period, they do so in a very particular way. Court records capture moments of conflict and negotiation, which is obviously not the only way in which Shiʿis—or anyone else—relate to one another, at present or in the past. The absence of other kinds of written records documenting the historical experience of ordinary Shiʿi Muslims in Lebanon has resulted in an attendant historiographical neglect. Apart from a number of works

¹ I use the term “archive” advisedly because there are no dedicated archives to speak of, just back rooms or file cabinets used for the purpose of storing folders, files and notebooks. These were parts of functioning courts, sources for ongoing, current cases and not spaces devoted to historical research.

of theology, *fiqh*, and philosophy by notable religious scholars from Jabal ‘Amil, this is a society that has left the historian few written traces. Islamic court records, therefore, are historical sources that document the accumulation of small-scale changes in Shi‘i identity, social relations and juridical practice over time.²

This article begins with a brief history of the Ja‘fari court up until the 1930s.³ Then it moves to a detailed exploration of several cases that help to shed light on the political and historiographical significance of this colonial institution. By intervening in the everyday life of ordinary Shi‘i Muslims, the state clearly contributed to the remaking of sectarianism in Lebanon. At the same time, however, ordinary people also participated in shaping that process.⁴

The Establishment of the Ja‘fari Court

On January 27, 1926, the French Mandatory authorities formally recognized the “Ja‘fari *madhhab*” (legal school) as an “independent *madhhab*” through Arrêté 3503. This might be said to represent the birth moment of a visible Shi‘i community in Lebanon. The colonial state originally sanctioned the operation of Ja‘fari tribunals in Beirut, Sidon, Tyre, Nabatiyya, Marja‘yun, Ba‘lbak and Hirmil.⁵ The separation of personal status matters from civil law and other jurisdictions

² The most comprehensive history of Shi‘i ‘*ulama*’ from Jabal ‘Amil during the late Ottoman and Mandate period is Sabrina Mervin, *Une réforme chiite: Ulémas et lettrés du Jabal ‘Amil, actuel Liban Sud, de la fin de l’Empire ottoman à l’indépendance du Liban* (Paris: CERMOC and IFEAD, 2000).

³ A comprehensive analysis of all the cases that were brought before the courts during this period still needs to be done. Such a project would have to confront significant obstacles, including the physical damage done to the records, not to mention getting the requisite permissions to make all of those documents accessible to the public. The incompleteness of the documentary record would also render any statistical analysis partial, at the very least.

⁴ My access to these sources was facilitated by the gracious accommodation of the leadership of the Ja‘fari court in Lebanon, particularly President Hassan ‘Awwad—but also many others, who shall remain nameless—under the condition that all those who appear in those records would remain anonymous. I have honored those requests—with a number of noted exceptions—by substituting fictitious names for the originals.

⁵ Muhsin al-Amin, *Khiṭat Jabal ‘Amil* (Beirut: Matba‘at al-inṣāf, 1961), 111.

was one means by which French colonial rule integrated Shi‘i tradition and local custom into the burgeoning state system. Juridical reorganizations in Mandatory Syria and Lebanon gave rise to what Elizabeth Thompson aptly termed a “dual legal system.”⁶ The extension of Shi‘i autonomy over personal status matters strengthened the exercise of Shi‘i agency but also gave rise to a struggle over communal sovereignty. Until the mid-1930s, the higher court in Beirut oversaw the district courts in a relatively informal manner. Subsequently, the French administration set about reforming the court system through an increase in state oversight and the imposition of a legal structure that was patterned after the institutions of French civil law.

The Ja‘fari court system was two-tiered. When a case could not be resolved in a court of first resort (*al-mahkama al-bidā’iyya*, equivalent to the French *cour de première instance*), it was sent up to the *mahkamat al-tamyīz* (court of clarification), also known as “*al-mahkama al-‘ulyā*” (the highest court).⁷ In clarifying the case, however, the president of the Ja‘fari court and his advisers would rarely go beyond the confirmation or disconfirmation of a given ruling. During this early stage, the higher court could hardly affect the terms of legal adjudication. It was effectively licensed to send a thumbs-up or thumbs-down ruling to the lower courts. The earliest and only higher court records that I came across were in a folder dealing with the period from 1940–1943.

Court workers—judges, clerks, scribes, experts and assistants (but not lawyers, witnesses, or other legal representatives)—were state-appointed and salaried employees. From 1926 until he fell ill in 1947, Munir ‘Usayran served as court president along with two legal “advisers,” Yusuf al-Faqih and ‘Ali al-Zayn.⁸ His salary was fixed at

⁶ Elizabeth Thompson, *Colonial Citizens: Republican Rights, Paternal Privilege and Gender in French Syria and Lebanon* (New York: Columbia University Press, 2000).

⁷ Colonial courts set up in the French Soudan had a structure that paralleled the system instituted under the Mandate. See Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895–1912* (Portsmouth, NH: Heinemann, 2005).

⁸ For more on Munir ‘Usayran, see Max David Weiss, “Institutionalizing Sectarianism: Courts, Religious Culture and the Making of Shi‘i Lebanon, 1920–47.” (Ph.D. Diss.,

140.5 Lebanese Lira (L.L.) per month and his two advisers earned 95 L.L. per month. These salaries were lower than the salary of the Sunni court president and his advisers, who earned 227 L.L. per month and 140.5 L.L. per month, respectively.⁹ The first judges appointed to the court in Beirut included Muhammad Ibrahim al-Husayni, Muhammad Yahya Safi al-Din al-Husayni, and ‘Ali Fahs al-Husayni. After Munir ‘Usayran left his post as judge at the Ja‘fari court in Sidon for Beirut to serve as president of the court system, he was replaced by Asadallah Safa, ‘Ali Fahs al-Husayni (who was later transferred to Beirut) and Nur al-Din Sharaf al-Din. In Tyre, Habib Mughniyya served as judge throughout the Mandate period. In Nabatiyya, Muhammad Rida al-Zayn served as judge until the 1940s. Court records attest to the fact that both Mughniyya and al-Zayn had been employed as Shi‘i judges in Tyre and Nabatiyya, respectively, since the late Ottoman period, from as early as 1912, even though the Ja‘fari *madhhab* was not formally recognized until January 1926.¹⁰ Although all of these men came from notable Shi‘i families in Jabal ‘Amil, they did not all have the same scholarly credentials. Most did not have the *ijāza* (license) granted by the Shi‘i theological seminary at Najaf to students who had reached the scholarly rank of *mujtahid*, which would have bolstered their claim to hold such positions of authority and prestige. At times this was a point of heated contestation within the Shi‘i community.

Stanford University, 2007), chapter three. Faqih replaced ‘Usayran as second president when the latter fell ill in 1947; Faqih was replaced by Muhammad Jawad Mughniyya, perhaps the best known Lebanese Shi‘i religious scholar in mid-20th century Lebanon after Imam Musa al-Sadr.

⁹ Ministère des Affaires Étrangères-Nantes (hereafter, MAE-Nantes), Carton N° 456, “Le Directeur de la Justice à Monsieur Le Délégué du Haut Commissaire auprès de la République Libanaise,” Beirut, January 27, 1936. In response to his request for “clarification”, the Lebanese Minister of Justice Sami al-Khoury wrote to the French Director of Justice about the inequality in pay scales for Sunni and Shi‘i court staff. Over the next several years, Shi‘i judges lobbied the state to equalize the salary scales, which was achieved in 1937.

¹⁰ Given the contested origins of these court records and the institutions that housed them, my reading is a partial and speculative one. There are still outstanding questions regarding the transformation of Shi‘i legal culture during the transition from Ottoman to French Mandate rule.

The historical understanding of the lives and experiences of ordinary Shi'i Muslims in Lebanon can be greatly expanded through a reading of the Ja'fari court records, a virtually untapped source for Shi'i social history. The court records are handwritten documents maintained in modern, industrially produced folders and not on the oversized parchment typical of Ottoman and some other Islamic courts.¹¹ The *kātib* (scribe) who wrote these documents kept separate folders for each type of case: inheritances in one; marriages, maintenance (*nafaqa*) payments and divorces in another. Unfortunately, there is no complete or comprehensive collection or catalog of the Ja'fari court records.¹² Although the opinions of a specific judge were often grouped together, more than one judge might appear side-by-side in the same folder. This suggests that the folders were either passed around or that the judges rotated in and out of their posts. One of the major difficulties confronting any historian who uses these sources is the fact that these cases were often written down before they were fully resolved. This means that there were no summaries or digests but continuous reporting of what was going on in court and what was planned for the near future. Unfortunately, since there is not a complete collection of court records from the pre-independence period, the thread of some cases that dragged on beyond the length of a single *daftar* (folder) might, and often did, get interrupted or lost.

Be that as it may, the formal recognition of the Shi'i community in Lebanon effectively resulted in the bureaucratization of Shi'i law. To the extent that there is a record of ordinary Shi'i life in Mandate-era Lebanon, it can be found in the records of the Ja'fari court. The incorporation of such broad sectors of society into the state apparatus fundamentally reconfigured Lebanese Shi'i self-understandings in new juridical terms. This collision between "traditional" jurisprudential

¹¹ Although some files are being stored on computers in some of the Ja'fari courts, including Beirut, the court's attempts to computerize its entire collection are still at a very early stage.

¹² Some courts have more complete records than others. For example, the Nabatiyya court has a remarkably rich fund of documents, whereas the Sidon and Beirut courts are much spottier. But not even the administrators of the courts are certain what exactly is housed in their "archives."

authority and methods, on the one hand, and new legal institutions of colonial modernity, on the other, resulted in the transformation of Shi'i religious politics and cultural identities in Lebanon. The problematic of “collaborating” with temporal authority, in the form of the Lebanese state, had become a practical matter and, therefore, was no longer simply a matter of theoretical controversy.

Defining Ja'fari Jurisdiction

In his illuminating ethnography of Islamic courts in Malaysia, Michael G. Peletz speaks about what he calls “the cultural logic of judicial process.” Peletz deploys this concept to explain the “negotiation, compromise, and reconciliation” he witnessed first-hand during his participant-observation fieldwork in Malaysian *shari'a* courts. He distinguishes this fluid environment from the Weberian notion of Islamic law, which posits the uncomplicated application of an ideal-type, monolithic and authoritarian *Kadijustiz*, imposed in such a way that is “capricious, ad hoc and irrational.”¹³ To be sure, the specific cultural logic of the judicial process in Malaysia is distinct from that found in Mandate Lebanon, or anywhere else for that matter, as Islamic legal culture has adapted over time and illustrated a great deal of flexibility. In this regard, it is the task of the social historian to attend to the particularities of local contexts when analyzing the theory and practice of Islamic law without losing sight of larger, potentially comparative issues.

As with other Islamic family court systems administered by a non-Muslim state, the jurisdictional framework of Ja'fari courts in Greater Lebanon was limited to matters of personal status—marriage (*nikāḥ*), divorce (*ṭalāq*), dower (*mahr*), maintenance payments (*nafaqa*), pious endowments (*awqāf*, s. *waqf*), and inheritance (*irṭh*). The vast

¹³ Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton: Princeton University Press, 2002), 48, 277. For another critique of Weberian interpretations of authority in Islamic jurisprudence, see David S. Powers, “Kadijustiz or Qadi-Justice? A Paternity Dispute from Fourteenth-Century Morocco,” *Islamic Law and Society* Vol. 1, No. 3 (1994), 332–66. As the Ja'fari court records are fragmentary, the presence of something like what Powers calls “the art of judicial narrative” must emerge through the process of historical reconstruction.

majority of cases called on the court to help women recoup unpaid dowries or alimony payments. Typically, a woman would take her intransigent husband to court for refusing to pay her *mahr* or to make *nafaqa* payments. Other common cases deal with contested inheritances, the appointment of an overseer (*nāẓir*) for *waqf* property, land disputes, or the appointment of a legal guardian (*waṣī*) to care for underage children.

The institutionalization of Jaʿfari law raised numerous questions about the adjudication of everyday life disputes and the integration of the Shiʿi community into the Lebanese state apparatus. Such unprecedented bureaucratization of Shiʿi law and jurisprudence—the introduction of a state judiciary and its attendant cadres—raised new epistemological questions regarding the sacred and the profane with respect to the practical applications of Shiʿi law and theology in a modern nation-state context. When the Jaʿfari *madhhab* was first recognized, lawyers and religious scholars like Rida al-Tamir, Munir ʿUsayran and others helped to delineate the theoretical jurisdiction of Lebanese Shiʿi personal status law. The practical boundaries of the court’s jurisdiction were also negotiated during the first two decades of the court’s operation by judges, lawyers and ordinary people alike.

The fluid boundaries of the court’s jurisdiction point to the shifting categories of Shiʿi personhood and citizenship during this period. The contradictions of Shiʿi inclusion and exclusion were epitomized by the institutionalization of sectarian difference. In 1931, for example, a woman from South Lebanon tried to recoup *nafaqa* arrears owed by her ex-husband at the Beirut court.¹⁴ Not only did the defendant wish to avoid paying her *nafaqa*, but he also sought to acquire exclusive custody of their daughter. On October 15, 1931, the husband’s legal representative (*wakīl*) asserted that the plaintiff raised a *mahr* and *nafaqa* claim simultaneously, which was illegal, so both cases should be thrown out; he insisted that each claim should have been brought before the court separately. Moreover, the defense continued, the law (*sunan al-qānūn*) required the case to

¹⁴ Al-Mahkama al-Jaʿfariyya al-Sharʿiyya fi Bayrut (hereafter, MJB), 370/1931, October 15, 1931.

be tried in Tyre, where both parties had resided until recently, and not in Beirut, where this woman had recently moved. This woman's father appeared in court as her representative and argued that she had decided to live in Beirut and that it was her *right* to raise such claims wherever she resided. When she failed to appear again in court on January 9, 1932, the court ordered her to drop her *nafaqa* claims and convey custody over her daughter to her ex-husband.¹⁵

Although we cannot know with certainty the circumstances that prevented this woman from returning to appear in court, in his reflections on the case, Judge Muhammad Ibrahim al-Husayni makes some observations that bear upon the institutionalization of Ja'fari law in Lebanon. Husayni argued there is "no jurisdiction (*ṣalāḥiyya*) except that of the *mujtahid*." Once the Ja'fari *madhhab* had been recognized by the French colonial state, Husayni continued, the Shi'i court enjoyed an institutional status equivalent to that of a *mujtahid mutlaq*—a Shi'i religious scholar with the requisite religious training and erudition to produce authoritative and binding interpretations of Islamic law.¹⁶ According to this understanding of the relationship between law and society in Shi'i Lebanon, Ja'fari law (*al-qānūn al-ja'fari*) located religio-legal authority (*marja'iyya*) in the Ja'fari court as it functioned in practice. In other words, "traditional" learning and theoretical jurisprudential questions would be modulated by the dictates of legal practice.

On the one hand, this argument was a means of authorizing the court, which was still a new and somewhat controversial institution, to represent the Shi'i community. On the other hand, the implications of this argument are instructive for our understanding of the key role played by the court in terms of the institutionalization of Shi'i presence in Lebanon. Al-Husayni effectively argued that the court was institutionally invested with the power to adjudicate jurisprudential affairs of the Shi'i community, but with a difference. Shi'i jurists subsequently interpreted Arrêté 3503, which recognized the sovereign rights of Shi'i Muslims over their communal legal sphere,

¹⁵ Ibid., January 9, 1932.

¹⁶ Ibid., November 4, 1931.

to accord court judges special privileges, including the ability to pass legal judgments that “only the *mujtahid*” could pass, even if the judges serving within the court’s offices were not technically *mujtahids* themselves. This may begin to explain some of the tension within the Shi‘i community regarding the legitimacy of this national institution and the loyalties of all its employees.

Of perhaps even greater consequence was the fact that such an understanding of the Ja‘fari court moved beyond the recognition of precedent *within* the court by according its rulings and opinions a greater degree of authority within Lebanese Shi‘i society more broadly. The practice of Ja‘fari law in Mandate Lebanon gave rise to a new kind of institutional memory that would guide the application of personal status law in the future. The implications of such institution building have extended beyond the walls of the courts, as a certain kind of institutionalized Shi‘ism was made increasingly Lebanese. The Ja‘fari court established precedents—in both the legal and institutional senses—in lasting ways that would become increasingly influential in determining the character of the Shi‘i presence in Lebanon.

The ambiguities and controversies surrounding the formation of the Ja‘fari court were addressed in piecemeal fashion even as Shi‘i law was being re-defined and hammered out in practice. Articles 2 and 3 of Arrêté 3503 recognized the rights of Shi‘i Muslims to seek counsel before the Shi‘i *qadi* in their province (*muhāfaza*) or in the nearest province with a Shi‘i *qadi*, if theirs didn’t have one. There was no explicit legal stipulation determining whether a case had to be tried in the home province or place of residence of either the plaintiff or the defendant; or, what to do in cases in which those two places did not match up. Consequently, mundane questions of administration and procedure came up regularly. As mentioned above, Judge Muhammad Ibrahim al-Husayni ruled against the claim of a woman for her *nafaqa* arrears outside of her natal province. In that same ruling, though, al-Husayni supported the right of a woman to raise a claim against her husband in court, even if she no longer lived in her home province and even if he was living somewhere else. Women’s mobility and agency seems to have earned some recognition, if only a tacit one.

If a dispute was raised in both the Ja'fari and the Sunni *shari'a* courts, the court immediately endeavored to squelch sectarian tension. For example, a man from Ba'lbak appeared in the Beirut court to verify that he had been married according to the precepts of the Ja'fari *madhhab*.¹⁷ His wife denied this, claiming that they had been married "according to the traditions of Abu Hanifa" in the Sunni *shari'a* court before the marriage in the Ja'fari court took place; any legal disputes, therefore, must be adjudicated in the Sunni *shari'a* court.¹⁸ This woman decided that it was in her best interest to move the case to the Sunni court even as her husband argued that the case should be heard in the Ja'fari court. Her husband went so far as to claim that the marriage contract from the Sunni court was little more than a forgery concocted by the bride's father.

Rather than interpreting the dispute as pitting one Islamic sect against another, the Ja'fari court ruled that there was "legally no difference" between establishing a marriage contract in a court that follows "any sect of the Muslim Imams." The judge, Muhammad Yahya Safi al-Din, called for immediate reconciliation between the two parties. Without having found whether this case was subsequently taken up at the *shari'a* court, either court would have probably ordered this wife to "follow" the tradition of her husband; the case most likely would have been returned to the Ja'fari court anyhow. Even more important, it seems to me, is how the judge attempted to downplay the sectarian claims of the litigants, insisting that there was no difference between Muslim sects as far as the application of *shari'a* law was concerned. The court downplayed sectarian difference even as it claimed the right to such difference in other contexts.¹⁹

¹⁷) Legally establishing one's marital status was required in order to raise any other cases (relating to divorce, inheritance or custody) before the judge.

¹⁸) MJB, 164/1938, September 20, 1937.

¹⁹) On the history of *taqrib*, see Mervin, *Une réformisme chiite*, esp. chapter seven; and Rainer Brunner, *Islamic Ecumenism in the 20th Century: The Azhar and Shiism between Rapprochement and Restraint* (Leiden: Brill, 2004).

House Calls and “Extra-Judicial Interventions”

During its first two decades of operation, the jurisdictional boundaries of the Lebanese Ja‘fari court were fluid. One of the surprising things about the court is that it occasionally oversaw specifically religious matters, e.g., it formally sanctioned and oversaw conversions to Shi‘ism. Previously, conversion ceremonies (*ibdāl al-dīn* or, exchange of religion) took place in private—in the home of a learned religious scholar or within the walls of a mosque or *husayniyya*, a venue where commemorations of the martyrdom of Imam Husayn were held on the occasion of ‘Ashura. The performance of such a conversion ceremony in the communal court, within the purview of the state—rather than in the “autonomous” religious space of a mosque or the “private” home of a religious authority—demonstrates the increasing importance of the court and the complex process through which Shi‘ism became institutionalized in Lebanon. Although such cases were rare, the prospective convert would appear before a judge or court assistant and publicly pronounce his or her fealty to the “Ja‘fari *madhhab*,” both “by desire and by choice.” The practice known as emulation (*taqlīd*) in modern Shi‘ism requires each individual to choose to follow, or emulate, the judicial and moral opinions of a highly educated and respected religious scholar, or “source” (*marja‘*) of emulation, in matters of religious practice and theology.²⁰ The prospective convert, then, would pronounce aloud his or her intention to “emulate” Imam Ja‘far al-Sadiq “by way of” a particular *marja‘*, such as *al-mujtahid al-akbar* al-Sayyid Abu al-Husn al-Isfahani, the Iraqi *mujtahid* of the age. As such, the convert thereby entered into a relationship not only with a religious representative of the Shi‘i community in Lebanon, but also with the state.²¹

At the same time as religious ceremonies were being brought into court, Ja‘fari law was exported beyond the court walls. Let us consider a case in which Muhammad Rida al-Zayn, the erstwhile judge of

²⁰ For theoretical and historical insight into the institution of *taqlīd*, see Linda Walbridge (ed.), *The Most Learned of the Shi‘a: The Institution of the Marja‘ al-Taqlid* (New York: Oxford University Press, 2001).

²¹ Mahkamat al-Tamyiz (hereafter, MT), 563/1941.

Nabatiyya, intervened in an inheritance dispute in the village of ‘Arabsalim. One group of heirs to a certain deceased man claimed that another group of heirs had misconstrued the will (*waṣīyya*). Because the second group, which had been summoned to the Nabatiyya court by the first, failed to show up, al-Zayn made a personal “house call”: he set up a session (*majlis*) in the village, divided the inheritance and then sent the paperwork back to Beirut. The Higher Court argued that this was a legitimate course of action, notwithstanding the unorthodox methods and the fact that al-Zayn took a sizable commission for his services (250 Syrian liras). Al-Zayn informed Munir ‘Usayran and his advisors that this inheritance dispute might have led to “fighting (*qitāl*) and bloodshed (*safak dimā*)” if he had not intervened. Indeed, Munir ‘Usayran suggested that al-Zayn should be commended for his activities, which prevented “vengeance and aggression” (*al-ḍaghīna wa’l-‘adāwa*). The higher court nevertheless recommended that if the situation required a return to the court at a later date, then the case would have to be heard in Marja’yūn rather than Nabatiyya. Al-Zayn exercised his legal prerogative of mobility to distribute an inheritance in the rural south, expanding the scope of state Shi’i institutions and personally profiting at the same time.²²

Although massive rural-urban migration did not occur until the 1950s, Shi’is were increasingly moving to Beirut as early as the 1920s. Despite the enduring political connections between Shi’i migrants in Beirut and their home villages, many Shi’is noticed an increasing estrangement between their lives in Beirut and life back “at home” in their ancestral villages. Residents of Beirut often perceived “the South” as a place of lawlessness, chaos, and violence. In 1935, the notable ‘Abd al-Latif al-As‘ad sent a personal letter imploring ‘Abd al-Husayn Muruwwa to intervene in another familial dispute in the south that was rapidly escalating out of control and that might result in violence and bloodshed.²³ As‘ad complained that such backwards behavior was entirely inappropriate for a “sect

²²) MT 645/1942, November 10, 1942.

²³) Lokman Slim, Private Papers, Beirut, “Letter from ‘Abd al-Latif al-As‘ad to ‘Abd al-Husayn Muruwwa.” May 23, 1935.

of 200,000” that wished to be taken seriously by the rest of the country. This sense of interconnectedness served as a bedrock against which Shi‘i politicians, judges and ordinary people had to make sense of their new reality under the Mandate. During the early 1940s, Eric Pruneaud, *Conseiller Administratif* of South Lebanon, sought to more effectively link the tactics of rule in Jabal ‘Amil to the burgeoning Shi‘i milieu in Beirut. He noted the increasingly visible Shi‘i presence in and around Beirut, and pointed out how, “with the goal of obtaining their demands, the majority of Shi‘is in Beirut are [now] registered [to vote] in the capital.”²⁴ Even as the relationship between the Lebanese center and its peripheries was being negotiated, As‘ad’s plea and Pruneaud’s remark can be understood in terms of an increasing sense of Shi‘i visibility in Lebanon.

Legal practices outside the court did not necessarily entail travel over long distances. On one occasion, Beirut judge Muhammad Yahya Safi al-Din was accompanied by the court scribe, Kadhim al-Husayni to visit a sick man from Nabatiyya convalescing at the French hospital in Khindiq al-Ghamiq. This man was unable to leave his hospital bed and appear in court so that he could have his will notarized. The court literally “delivered” its opinion to this ailing man. Safi al-Din recalled,

At 1 PM on Saturday, August 26, 1939, I showed up at the French hospital in Khindiq al-Ghamiq, accompanied by the scribe of this court, Sayyid Kādhim al-Husayni, at the request of Haj ‘Abdallah Haydar Jabir from the residents of Nabatiyya, who [was] in fact present in the aforementioned hospital. I found Hajj ‘Abdallah in a sick condition [but] he had his wits about him. After I had spent a few moments with him, he requested that I record his will so that he might sign it with his [own] hand.

What followed was a verbatim transcription of Haj ‘Abdallah’s last will and testament: Haj ‘Abdallah pronounced the *shahāda*; witnessed that Muhammad was the servant (*‘abd*) of God, His prophet who sent with “divine guidance” and “the religion of truth”; proclaimed

²⁴) MAE-Nantes, Carton N° 1111, Information N° 132, Conseiller Administratif du Liban-Sud (E. Pruneaud). January 28, 1943.

that ‘Ali was the “Commander of the Faithful” and the “Imam of the Pious,” and that the Imams were “truly” the “successors” to the prophet; and witnessed that “heaven is real,” that “hell is real,” and that “the Day of Judgment is coming, no doubt” (*al-sā‘a ātiya lā rayb fihā*). He requested that his grave be prayed over after he died and that certain prayers be recited for a fixed number of days. He asked that his son and his daughter divide the remaining possessions in his house in Nabatiyya, but that only his son should inherit his collection of couches and rugs. Finally, he declared that his two brothers and his nephew should be responsible for executing this will and testimony after he died. With the judge, the scribe and two additional witnesses present, the will was certified.²⁵

The Ja‘fari court was an active force in the management of everyday life in Shi‘i Lebanon. Such legal house calls were part and parcel of the emerging legal and religious infrastructure that structured the relationship between the Lebanese state and Shi‘i society. The Ja‘fari court increasingly intervened in the daily lives of ordinary Shi‘is. In turn, ordinary Shi‘is could marshal the institutional weight of the Lebanese state to their advantage in matters of personal status law, through the entry point of the Ja‘fari court. I now turn to three cases heard before the Lebanese Ja‘fari court. Each one provides a slightly different perspective on accounts of the politics and practices of everyday life among Lebanese Shi‘is under the Mandate, for whom the Ja‘fari court was an active and vital force. Even as these sources shed light on transformations in juridical terms, they also present the historian with insight into the texture and nuance of Shi‘i Lebanon during a period of gradual social transformation. The Ja‘fari court brought multiple sectors of Shi‘i society in Lebanon together under the same roof and, consequently, the relationship between Ja‘fari law and Shi‘i society was reconfigured.

²⁵) MJB, 27/1939, August 26, 1939.

Adjudicating Shi'i Society (I): The Squandered Inheritance of Nazih al-As'ad

Some historians claim that the primary historical function of Islamic law has been to preserve the *status quo* in the social order.²⁶ As such, *shari'a* courts are thought to represent an institutional way of maintaining tradition through the work of religious scholars and jurists but also as a means of cementing social peace. However, such a reading can obscure the extent to which Islamic courts also served as engines for social change.²⁷ The Ja'fari court in Mandate Lebanon brought its jurisdiction into the realms of everyday life. On the one hand, such interventions were oriented towards protecting the “welfare” or the “interest” of the weak, the indigent, the mentally unfit, or underage and irresponsible individuals. On the other hand, ordinary Shi'is in the South and in Beirut perceived the Ja'fari court as playing a key role in the protection of Shi'i patrimony and property, which were regarded as analogously vulnerable to dangers posed by rival communities or the state. Struggles to protect religious patrimony often revolved around a communally and juridically defined notion of *maṣlaḥa*, often rendered into English as the “common good.”²⁸

The concept of *maṣlaḥa* has a long and circuitous genealogy in the annals of Islamic law. Felicitas Opwis argues that “*maṣlaḥa* as a means for legal change has many facets and may be used for different purposes. To understand the potential of *maṣlaḥa* to expand and adapt the law, it is necessary for scholars of Islam and Islamic law to look closely at the way a jurist integrates this concept into the legal system as a whole.”²⁹ Indeed, *maṣlaḥa* refers to a variety of principles and meanings; *maṣlaḥa* in theory does not always coincide with *maṣlaḥa* in practice. Therefore, historians must remain

²⁶ See, for example, Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998).

²⁷ Allen Christelow, *Muslim Law Courts and the French Colonial State in Algeria* (Princeton: Princeton University Press, 1985).

²⁸ *Public Islam and the Common Good*, ed. Armando Salvatore and Dale F. Eickelman (Leiden: Brill, 2004).

²⁹ Felicitas Opwis, “*Maṣlaḥa* in Contemporary Islamic Legal Theory,” *Islamic Law and Society*, Vol. 12, No. 2 (2005), 223.

attentive to the ways in which jurisprudential opinions and juridical practices are institutionalized into specific legal regimes.

During its first two decades, the Jaʿfari court drew upon the concept of *maṣlaḥa* in several different ways. First, the court monitored, negotiated and regulated the burgeoning relationship between the Shiʿi community and the state, arrogating to itself exclusive rights to represent the Shiʿi community and to determine its collective interests in the eyes of the colonial state. Second, the court was the highest formal arbiter of marriage, divorce, property, and *waqf* disputes among Shiʿi individuals and families or other sectarian communities. Third, the court intervened in the daily lives of ordinary Shiʿis by attempting to support the maintenance of proper family or social relations.

Property disputes, which were less common than other kinds of cases during this period, fell within the jurisdiction of the Jaʿfari court, which could be called upon, for example, to help preserve the inherited wealth of minors. In 1929, a young man named Nazih al-Asʿad appeared before the Sidon Jaʿfari court alongside the venerable *mujtahid* Husayn Mughniyya, who, at that time, was still president of the Association of ʿAmili ʿUlama, and arguably the most respected religious scholar in Jabal ʿAmil. Hailing from the seaside city of Tyre, the Asʿad family traced its lineage back to the Al al-Ṣaghīr clan, which retained a unique symbolic place in ʿAmili cultural memory on account of its connections to Nassif Nassar, the valiant rebel leader who struggled against the Ottoman governor Ahmad Pasha al-Jazzar during the late 18th century. During the Mandate, the Asʿad clan was one of the most powerful clans in South Lebanon and its members held parliamentary office since the inception of Greater Lebanon.

With Mughniyya as his guarantor, Nazih sought to establish that he had reached the age of maturity and should therefore no longer remain subject to the guardianship (*wiṣāya*) of his elder brother, ʿAli Nusret Bey al-Asʿad, a notable figure in their high-profile family.³⁰

³⁰ *al-ʿIrfan* reported that ʿAli Nusret Bek al-Asʿad was appointed a consulting member of the Beirut *maḥkamat al-istiʿāfa* to replace Yusuf Bey Mukhaybir Haydar, *al-ʿIrfan* 9/1, (October 1923), 102.

The fact that Nazih was of age was sufficient justification for him to declare personal independence from his brother's supervision. In addition, Husayn Mughniyya's presence in court and testimonial recommendation was regarded by Judge Asadallah Safa as strong evidence of Nazih's independent status and ability to oversee his own affairs. He therefore ruled in favor of Nazih.³¹

The case did not end there. Once granted his majority, Nazih was accused by his older brother of behaving immaturely and of engaging in activities that called into question his ability to make responsible choices. Both the Sidon and Beirut Ja'fari courts were called upon to help monitor Nazih. The court learned, for example, that Nazih had wanted to sell shares of property he had inherited from his father, the notable magnate Shabib Pasha al-As'ad, in his ancestral home of Zrariyeh, a predominantly Shi'i village in Sidon province. To that end, on March 1, 1932, one 'Ali Fakhri had dispatched his younger brother, Hasan Majid, to purchase on his behalf some of those pieces of land—known as “The Red Field with the Wintry Eyes” (*al-marj al-aḥmar bi-l-'uyūn al-shitwiyya*) and “The Fields” (*al-Hawākir*). The state land registry office rejected Hasan Majid's request owing to the fact that he was underage. However, Judge Asadallah Safa furnished the Fakhri brothers with a written “legal permission” (*idhn shar'i*) for the underage brother to complete the transaction, thereby effectively subverting the authority of a state agency.³² The court had flexed its institutional muscle to help conclude this property transaction, opposing the decision of a state institution: the communal court trumped the state. In addition to calling Nazih to account for his financial transactions between 1929 and 1932,

³¹ Al-Maḥkama al-Ja'fariyya al-Shar'iyya fi Ṣayda (hereafter, MJS), Sijill al-Da'āwa (Safha 18, Jalsa 5, Sijill 24), December 28, 1929. The role of witnesses should not be undervalued. If the witness was “known” to the court, his testimony (and only males testified) was deemed trustworthy, whereas Shi'i jurisprudence technically demands four male witnesses for verification. In the case of Algerian colonial Muslim courts as Allen Christelow has pointed out, “The term “witnesses” poorly conveys the meaning of “shuhud” here, for these were not people who offered evidence in the case, but rather legists who lent their moral reputation and political weight to the judgment.” Christelow, *Muslim Law Courts and the French Colonial State in Algeria*, 58. As we will see in the case of purported *zinā* below, witnesses were also drawn from broader sectors of society.

³² MJS, ḍabt 4, safha 98, sijill 4, March 1, 1932.

‘Ali Nusret Bey al-As‘ad appeared before the Beirut court to request its assistance in ensuring that Nazih’s finances and property were properly managed and maintained. He argued that Nazih’s recklessness was endangering his family’s wealth. On April 30, 1932, ‘Ali Nusret complained that Nazih sold properties below their market value and spent an “excessive amount” of his savings. He therefore asked the court to put a stop to his brother’s “transactions...pursuant to the jurisdiction of the *shari‘a*”; to execute a comprehensive “accounting” of the value of the properties that had been sold by Nazih; and, finally, to place him under the court’s “supervision.” The court agreed to track the sale or purchase of land and other substantial holdings that passed through Nazih’s hands.³³

On May 10, 1932, Nazih declared to the judge that he remembered selling property whose estimated value was approximately 600 Ottoman liras. ‘Ali Nusret countered that Nazih had in fact sold those properties for a mere 100 liras, accusing him of casually frittering away his inherited wealth. Nazih retorted that he had spent the money he earned from those transactions only on what he considered to be “reasonable, necessary things,” including 60 Ottoman liras to pay for school supplies and some suits that he needed for a trip to Paris. The judge asked Nazih a barrage of questions regarding the financial benefit of his actions and whether he truly considered the decisions he had made defensible.³⁴

As the court pored over these details of Nazih’s lifestyle and spending habits in search of an appropriate mechanism to enforce greater fiscal responsibility, Nazih continued to defend his actions. Accused by his brother of other morally unacceptable behavior such as gambling, Nazih countered that he didn’t have a gambling “problem,” that he didn’t sit around “the green table” or “gamble with the gamblers,” although he may have played cards from time to time with his friends from school; he admitted to playing cards with some Frenchmen on occasion and losing fifty Syrian liras. After a period of study, the court reported that the properties sold by Nazih included: the property known as “The Red Field with the

³³) MJB, 98/1932, April 30, 1932.

³⁴) *Ibid.*, May 10, 1932.

Wintry Eyes,” which was sold for 100 Ottoman gold liras to the Fakhri family on February 24, 1932; two other properties in Zrariyeh that were sold for 15 Ottoman gold liras to Mustafa b. Muhammad ‘Abbas on April 20, 1932; and another piece of land on the same day to one ‘Ali b. Ahmad Talib.³⁵ In the end, the court declared that he had spent his money in a way that was mildly inappropriate, although his behavior did not necessarily amount to carelessness that could be legally termed unreasonable spending (*suffh*).³⁶ The court therefore ruled that Nazih’s financial life henceforth would be monitored and that any financial transaction he wished to execute would have to be approved by the court before he would be allowed to proceed.³⁷

The institutional weight and authority of the court was leveraged to intervene in intimate family matters of wealth and property. The court not only adjudicated personal status debates, but also actively participated in monitoring the private lives of Shi‘i individuals and families. Even an influential politico like ‘Ali Nusret Bey al-As‘ad saw value in making use of the court. He sought formal legal assistance from the Ja‘fari court in managing his family’s wealth. Although the court records do not give us clear answers to exactly why people like ‘Ali Nusret chose this course of action over others, such questions point to some of the ways in which the significance of the court extended beyond the rote application of personal status law.

Adjudicating Shi‘i Society (II): Can a Temporary Wife Inherit?

Social historians have shown how property relations are at heart social relations, that disputes over property should also be understood

³⁵) MJB 98/1932, May 18, 1932.

³⁶) As Oussama Arabi points out, “there is no direct or obvious connection between *safah* and unreasonable spending. And yet it was this sense of the word that came to prevail in mainstream classical Sunni jurisprudence, where a semantic equivalence was established between the *safih* and the *mubadhdhir*, the spendthrift.” Arabi, “The Interdiction of the Spendthrift (*Al-Safih*): A Human Rights Debate in Classical *Fiqh*,” *Islamic Law and Society*, Vol. 7, No. 3 (2000), 301.

³⁷) MJB 98/1932, May 25, 1932.

as social disputes.³⁸ The Ja‘fari court records shed light on some of the specific issues, social customs, and family relationships that constituted Shi‘i society under the Mandate. In this connection, for example, temporary marriage (*mut‘a*) is one of the most often cited yet misunderstood features of Shi‘i Islam. A *mut‘a* marriage, or temporary contract (*‘aqd munqati‘*) is technically no different than an ordinary marriage contract (*‘aqd dā‘im*), except that the contract is for a fixed period of time, after which the marriage is automatically dissolved. Although scholars have discussed its theoretical and jurisprudential dimensions, less attention has been paid to the question of *mut‘a* in practice.³⁹ If some cases adjudicated in the Ja‘fari court demonstrate the exercise of women’s agency, other cases serve as a powerful reminder of how women’s agency could also be circumscribed.

A woman—call her Jamila—concluded a marriage contract for a period of twenty years with a man—call him Hasan—whose first wife had given birth to twelve of his children. From Nabatiyya, Jamila later moved to Beirut, where she gave birth to one child with Hasan. After Hasan passed away, his large family appeared in court to divide the inheritance. The will was legally verified and read in the Sidon court on March 21, 1927. After the inheritance had been appropriately divided, a group of notables from Nabatiyya were summoned to confirm that Jamila had been “released from [her second husband’s] matrimonial authority upon his death.” Jamila denied this, avowing that the court’s “declaration (*taqrir*) was untrue” because “in fact I...am a legal wife of the deceased.” Therefore, she

³⁸) For histories of property devolution in Palestinian, Syrian and Lebanese families, see Beshara Doumani, “Endowing Family: Waqf, Property and Gender in Tripoli and Nablus, 1800-1860,” *Comparative Studies in Society and History*, Vol. 40, No. 1 (1998), 3-41; Margaret Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770-1840* (Austin: University of Texas Press, 1999); and Annelies Moors, *Women, property, and Islam: Palestinian experiences, 1920-1990* (New York: Cambridge University Press, 1995).

³⁹) Shahla Haeri, *Law of Desire: Temporary Marriage in Islam* (Syracuse: Syracuse University Press, 1989); Arthur Gribetz, *Strange Bedfellows: Mut‘at al-nisa’ and Mut‘at al-hajj: A Study Based on Sunni and Shi‘i Sources of Tafsir, Hadith and Fiqh* (Berlin: Klaus Schwarz Verlag, 1994); and ‘Abd al-Husayn Sharaf al-Din, “Nikāḥ al-mut‘a,” *al-Irfan*, Vol. 36, No. 10 (October 1949), 1014-21.

continued, “I have the right to the wife’s share.” She went on to declare—shocking those in attendance—that one of the deceased’s twelve children was actually hers and not born to his first wife. On November 12, 1930, she cited a ruling from the higher court confirming those assertions. Jamila requested that two of the children appear in court so that the matter might be discussed further and the inheritance could be re-distributed in view of her rights as a second permanent wife of the deceased.⁴⁰

Jamila failed to attend the scheduled session because, as her son, Muhammad said, she was injured after stepping on a nail, a strange bit of descriptive detail. After the case was rescheduled, she again failed to attend, but this time sent a doctor’s note to the court on her behalf requesting a postponement, which was granted. After this second absence, however, the defendants requested that the charges be dropped since Jamila had failed to provide a legitimate excuse for not attending and seemed to be wasting the court’s time.⁴¹ On February 14, 1935, judge Muhammad Yahya Safi al-Din al-Husayni noted that the *mahkamat al-tamyiz* had already begun looking into the matter and postponed the case until the higher court came to a decision.⁴²

The case resumed one week later, after the *mahkamat al-tamyiz* ruled against a change of venue or any further postponements.⁴³ The defense lawyer argued that Jamila still had not verified her binding temporary marriage contract with Hasan. In the absence of such a contract, hers would remain “just a verbal claim” (*qawl mujarrad*), in the words of the defense lawyer. Jamila modified her story, arguing that the marriage was temporary at first but was made permanent subsequently. One of the witnesses pointed out that if Jamila produced a valid temporary marriage contract, she would be entitled, as a second wife, to a larger share of the inheritance. Nevertheless, Jamila continued to insist that she had been legally married to the deceased under a permanent marriage contract although she never managed to deliver any proof of such a claim.

⁴⁰) MJB 48/1934-35. November 5, 1934.

⁴¹) MJB 48/1934-35. November 8, 1934.

⁴²) MJB 48/1934-35. February 14, 1935.

⁴³) MJB 11/1935. February 21, 1935.

Her lawyer argued that the “evidence” (*bayyina*) supporting Jamila’s case was to be found somewhere in the home of the deceased, which was also apparently where the contract had been executed. In a subsequent court session, Jamila acknowledged that Hasan had been “insane and mentally impaired” at the time the contract was drawn up, a point confirmed by medical reports submitted to the court. Thus, even if a permanent marriage had in fact taken place and Jamila could verify it, it would not be valid due to the fact that the deceased was mentally unfit at the time to engage in such action. Jamila’s lawyer claimed she had been married to Hasan for about a month before he died, which would place their marriage within the period after he fell ill. Hasan had been diagnosed with a terminal illness at around the same time that the will was drawn up. The case was eventually thrown out by Muhammad Yahya Safi al-Din al-Husayni.⁴⁴

According to a French survey of Shi’ism in Lebanon, “temporary marriages are a source of conflicts, in particular with regard to the children who are born from them and who the presumed father refuses to recognize. The *shari’a* courts of Tyre and Sidon are said to have dealt with such cases frequently.”⁴⁵ The French report expresses an implicit moral judgment of the social problems resulting from such a cultural practice. As temporary marriages are contracted without witnesses, the verification of their existence is difficult and attempts to make them public are quite rare. Moreover, in my reading, *mut’a* cases appear in the records of the Ja’fari court only occasionally. However salacious the idea of *mut’a* may have been to foreign observers, problems of paternity, social responsibility as well as the moral imperative for the court to intervene in such family matters were far more common with respect to permanent marriages.

⁴⁴ MJB 11/1935, 27 February 27, 1935. The higher court (*mahkamat al-tamyiz*) upheld the ruling several months later. MT 301/1935, December 18, 1935. Reproduced with MJB 11/1935, February 27, 1935.

⁴⁵ J. Darché, “Les chiites du Liban.” Rapport du CHEAM (Centre des Hautes Études sur l’Afrique et l’Asie Modernes (CHEAM)) N° 108, 1937, 21.

Adjudicating Shi‘i Society (III): A Problem of *Zinā*

In the early 1930s, a man from the village of al-Qamatiyya (Ba‘lbak province)—I’ll call him Jawad—appeared in the Beirut court to accuse his wife Reem of illicit sexual activity (*zinā*). In broad strokes, the story Jawad related is the following. Reem and Jawad had been married in late July 1932. Jawad claimed that he wrote a *kambiyāla* (bill of exchange) for the portion of her *mahr* paid up-front and that he had bought her clothes and furniture ten days before the wedding was slated to take place. He had assumed she was a virgin, but after they were married and went home together, Jawad “discovered” that another man had impregnated her recently. Jawad was outraged. In court, Reem swore under oath that another man, and *not* Jawad, had impregnated her. Under the conditions of the *khul’* divorce that Jawad demanded, Reem would have to give up her rights to half of her *mahr*, any and all *nafaqa* payments, and there would be no provisional waiting period (*‘idda*) during which the divorce could be annulled. Consequently, they were divorced, on August 12, 1932.⁴⁶

Four days later, on August 16, Reem returned to court to argue that a mistake had been made in the execution of that divorce. According to Reem, Jawad forced her into having intercourse with him, impregnating her, and then divorced her shortly after they were married, without paying her *mahr*, *nafaqa* or child support. Furthermore, he had falsely accused her of being a woman who engaged in *zinā* (*zāniyya*). According to Reem’s narrative, Jawad took her from the house of her father—who was in prison at the time—and held her against her will for four days before bringing her to court to get divorced. Reem claimed that he threatened her (*tabdīd wa-wa‘īd*); witnesses who appeared in court in her defense also testified that he kicked her in front of a group of women while they were visiting Beirut.⁴⁷

⁴⁶ MJB, 176/1932, August 30, 1932. The *‘idda* is the prescribed length of time a woman must wait after getting a divorce in order to be considered ritually pure once again, typically three menstrual cycles.

⁴⁷ MJB, 176/1932, August 16, 1932.

Reem returned to court on September 19 with her lawyer and a number of witnesses to continue pleading her case. When Jawad failed to show up, Reem requested that the case proceed in his absence, because her witnesses were present. Just as the testimony of witnesses was about to begin, Jawad barged into the courtroom an hour and a half late, without the formal proof required to authorize his lawyer as his legal representative. Reem scoffed that they had waited for a long time, that she and her witnesses had spent “large sums of money” to get there, and that they had all “got bored from waiting.” The hearing continued. Some of her witnesses claimed to have heard firsthand that the couple had engaged in premarital sexual relations. Others had heard a rumor about Reem’s fiancée getting her pregnant. One witness claimed that as she was on the way to get water from the village well, she passed by Reem’s father’s house; the door was shut but the windows were open and the witness claimed to have seen Jawad “stuck” (*mulāziman*) against Reem even as she tried to push him away. The witness went home for about a half hour and then returned to the well, where she ran into Reem, and asked her if her fiancée had the right to “fool around” with her like that. Reem replied that he had forced himself on her, tearing her clothes in the process. When this witness advised Reem to inform her mother of what had happened, Reem demurred, saying that Jawad would kill her if he ever found out that she had revealed what he had done. Within a week, word spread throughout the village, so Jawad and Reem went down to Beirut to buy supplies for a shotgun wedding. After Jawad had taken her to his house for three days, he tricked her into going to court and threatened to divorce her.⁴⁸

Reem argued that her testimony at the time of the divorce had been made under “compulsion” and “threat” from Jawad. Another witness called into court on Reem’s behalf claimed that Reem had confided in her on the day of her wedding, plainly informing her that Jawad had “married her by force” and that she had no say in the matter. Following the testimonies of six witnesses, all of whom confirmed Reem’s version of the story, Reem’s lawyer cited the

⁴⁸ Ibid. September 19, 1932. This folder ended in the middle of this case.

following Qur'anic verse: "And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by God that they are solemnly telling the truth" (al-Nūr 24:6).⁴⁹ He also quoted a phrase that is attributed to 'Ali bin Abi Ṭālib after a man who had engaged in *zinā* sought 'Ali's counsel. The man pleaded:

Oh, Commander of the Faithful, I committed *zinā*, purify me. And he ['Ali] turned his head from the man and didn't hear him, so the man repeated it a second time, but [again] 'Ali didn't turn towards him. The man repeated [his confession] a third and a fourth time. Finally, 'Ali said there is no strength or power except in God, and recited the *shahāda* four times.

The lawyer reflected on how 'Ali had dealt with such a man by asking how a pious person such as his client could commit such a heinous crime; he added that four repetitions of the confession would be required in order for it to be legally valid and binding. Reem's lawyer then recited another verse from the aforementioned *sūra*: "Those who slander chaste women, indiscreet but believing, are cursed in this life and in the Hereafter: for them is a grievous Penalty" (al-Nūr 24:23).⁵⁰

From this perspective, because Reem had not confessed four times to committing *zinā*, and because four witnesses had not confirmed that she had in fact done so, Jawad should be held to account for mistreating Reem in the first place and then falsely accusing her of committing *zinā*. Reem's lawyer sought to turn the case on its head, arguing that it was Jawad's honor—and not Reem's—that was at stake. He described his client as a pious girl who had "not reached the age of mental maturity" (*ghayr bāligha sinn al-rushd*, although we never learn how old Reem or Jawad actually were) and who had been "tempted" by her husband, an older man. In this narrative, the most significant piece of evidence submitted by Reem was her testimony that Jawad had already known she was pregnant on that

⁴⁹ Translation from Abdullah Yusuf Ali, *The Holy Qur-an: Text, Translation and Commentary* (Lahore: Shaykh Muhammad Ashraf, 1938), 897-98.

⁵⁰ *Ibid.*, 902.

Saturday afternoon in late July or even earlier, that is, before he married her and took her home with him.

Reem's lawyer argued that it was not legally permissible to hear the case after Jawad had already lived with her for three or four days (the testimonies vary), knowing full well that she was a *zāniya* who had been impregnated by another man. Moreover, once Reem publicly confessed to being pregnant, Jawad lost all his rights to raise the charge of *zinā* against her because, at that point, there could be no way of knowing for certain who was, in fact, the father. Furthermore, the divorce should have been considered revocable (*raj'i*) rather than consensual (*khul'*), which meant that Reem was still entitled to her dower (*ṣadāq*). After the child was born, it would have to undergo a blood test. Reem's lawyer closed his argument by saying, as "the unborn child...has not yet been born," the court must rule, "the false accuser (*rāmī*) is this husband." If the child ended up being his, Jawad would be obligated to pay all of the child's expenses. On the other hand, if it was determined that the child was not his, Jawad would still have to pay child support, but he would be forbidden from including the child in his lineage (*nasab*). It was demanded that Jawad pay the remaining advance *mahr* of fifty Ottoman liras in addition to fifty Syrian liras per month as *nafaqa*. Finally, the unborn child should be legally attached to its legitimate father, no matter who he turned out to be. Judge 'Ali Fahs adjourned the case for two weeks in order to review all the relevant information.⁵¹

The court ruled in Reem's favor. On October 4, 1932, Judge 'Ali Fahs explained why Reem could not have been guilty of *zinā*. Once the marriage had been consummated, there would have been no logical reason for Reem to confess of her own free will that Jawad was not responsible for impregnating her. Therefore, the court concluded, her confession must have been made out of "fear related to a plot (*khadr'a*)" on his part. Reem's lawyer reminded the court that even if another man had impregnated her, Jawad would still be the child's legal guardian, in accordance with the Sunna of the Prophet, "The child [belongs] to the marriage bed (*al-walad li-l-firāsh*) and

⁵¹) MJB, 176/1932, September 22, 1932.

the fornicator gets the stone.”⁵² Under this interpretation, a child remains the responsibility of the legally recognized father even if it is not confirmed that he is also the biological father.⁵³ Jawad had “agreed to a blood test for the child after the birth and if [the child’s] blood matches his [father’s] blood, he will be [legally] attached to him.” Jawad was ordered to pay the full amount of Reem’s dower, to take on guardianship of the child, to pay monthly maintenance support amounting to six Syrian liras until she gave birth, and, after the child was born, to renegotiate a fair payment schedule. Under the terms of their divorce, Jawad would have the right of invalidating the divorce—returning to Reem—up until the child was born.⁵⁴

Jawad challenged the ruling by appeal (*i’tirād*). Still seeking to prove his version of events, Jawad retained new lawyers who opened with the argument that Reem had told Jawad that her pregnancy resulted from having intercourse with another man. When he heard this news, Jawad immediately sought a divorce, on August 2, 1932. As of that date, Reem had already confessed before the judge that Jawad had never had intercourse with her, at which time the judge confirmed the integrity of the divorce, without any provisional waiting period or *nafaqa* payments. It was only on August 16, 1932, Jawad’s lawyers continued, that Reem returned to the court with a new story, claiming that it was Jawad who was father of the child; that her previous confession was made “under threat”; and that she was entitled to a retrial according to national law.⁵⁵

⁵² “*Al-walad li-l-firāsh wa li-l-‘ābir al-hajar.*” Uri Rubin points out that *hajar* has also been interpreted in the figurative sense of “nothing”. “Al-Walad li-l-Firash”: On the Islamic Campaign against “Zinā,” *Studia Islamica*, No. 78 (1993), 5-26. On changing historical opinions on how to deal with the child born from such illicit sexual behavior within Shi‘i Islam, see Etan Kohlberg, “The Position of the *Walad Zinā* in Imami Shi‘ism,” *BSOAS*, 48 (1985), 237-66.

⁵³ Reem’s lawyer cited the following *hadith*: “*al-ilhāq bihi yakūn mā ṣāḥibihī ilayhā wa law lam yatabaqqaq dukhūlahu ‘alayhā.*”

⁵⁴ MJB, 176/1932, October 4, 1932.

⁵⁵ MJB, 231/1932-33, November 12, 1932. Evidence of the divorce transaction was requested from the higher court (*maḥkamat al-tamyīz al-shar‘iyya*) and proof of the divorce was brought and confirmed.

Jawad's lawyers tried to portray Reem as sexually reckless and, therefore, untrustworthy. In response, Reem's lawyer repeated his earlier arguments, adding that Jawad had never legally demonstrated any illicit behavior on Reem's part. Refuting the claim that Reem had perjured herself, which technically would have entailed a stiff penalty, her lawyer repeated that Reem had been "compelled" to make her confession regarding Jawad's paternity. The only contradictory testimony in this case, according to his understanding of the events, was that given by Jawad. Reem's lawyer continued, "And Verily the Great Imams said that the [male responsibility that comes with] pregnancy extends from the seventh month until the third year." Jawad's claim that this other man had sex with Reem was also doubtful, Reem's lawyer argued, "because it is legally known [and] it appears in the glorious *Mecelle* that a confession outside the wise tribunal is invalid. This is with respect to the text, religiously [speaking]." The second point made by Reem's lawyer was that, "the solid mind and consciousness do not concede that a bride being wed to her husband [would] be present in his [i.e. Jawad's] house" before their wedding had even taken place. Finally, Reem's lawyer reiterated that even if she had confessed one time to committing *zinā*, her confession would have been insufficient "because [the] confession of *zinā* must be [stated] four [times] according to Ja'fari law and according to Abu Hanifa (may God be pleased with him), [it] must be four [times] and in four [separate] tribunals."

In December 1932, the court heard additional testimony from more witnesses. The first, an ironer (*makwajī*) from Ba'lbak, claimed that two weeks before the wedding he spoke with Reem's father, who more or less told him that Jawad had deflowered Reem in his house. Although this witness also heard some people in the village claim that it "is not appropriate" to go forward with the marriage under such circumstances, he participated in the wedding festivities anyway. He had also been present in court on the day of their divorce. Although he didn't tell anyone else about what Reem's father had told him, he didn't believe that Reem had been forced into testifying. Four more witnesses confirmed Jawad's version of the story; none believed that Reem had been forced into doing or saying anything, except perhaps getting pregnant. All of these testimonies were used by Jawad's legal representatives to demonstrate that Jawad

had not falsely accused Reem but divorced her out of respect for her honor.⁵⁶

On February 9, 1933, the sixth witness, who had been living in the Ghobeiri neighborhood of Beirut, appeared in court. He testified that he had also been present in court when Reem and Jawad were divorced. When Jawad's *wakīl* asked him whether she had been threatened or forced or afraid, he said that he did not know, that she had not said anything to him about it, and that the only other person from her family present with her at the time was her maternal uncle. When Reem's *wakīl* asked him whether he knew who was responsible for getting her pregnant, he said he had heard first-hand from some townspeople (*ahl al-balad*) that it was her husband who deflowered her and got her pregnant. Jawad's lawyer asked for details regarding this supposed first-hand information: how had he come by the news if he had been living in Ghobeiri? The witness answered that he returned to his village frequently. Jawad's lawyer asked the judge to make the witness swear on a number of issues: did he have any direct contact with Reem when she came to the court to get a divorce? Did he ask her how she could accept the divorce if she was pregnant? And did she herself tell him who impregnated her? The witness swore that he had not asked her at the time because there were so many people around (*li-kathrat al-nās*).

In conclusion, Jawad's lawyer made two final points. First, Jawad had divorced Reem and she had accepted that divorce, acknowledging that he had never consummated the marriage with her. Second, only Reem's testimony and that of the person who ostensibly had intercourse with her was of any "value" (*ibra*) because "matters such as this occur unseen without the involvement of a third person" and, therefore, "every firsthand knowledge and claim and estimation from someone else will be based on opinion (*ẓann*)." Essentially, Jawad's lawyer claimed that any other evidence brought to support her own "personal testimony" was little more than "hearsay" (*aqāwīl*) of the type that "usually happens in small villages"; according to Jawad's *wakīl* such evidence was inadmissible.

⁵⁶ Ibid., December 22, 1932.

Reem's lawyer responded with a litany of specific issues about which he was still seeking clarification. First, had the supposed divorce been made "equivalent to a ruling"? Second, was there any "contradiction" in the original case, or was the contradiction to be found in the subsequent appeal? Third, was it true that Reem had been compelled to come to court? Fourth, if Reem in fact had been pressured into the divorce, could she still be formally accused of being a *zāniya*? And should the unborn child then be separated from its legal father? Fifth, according to the Ottoman *Mecelle* and the state *sharī'a* code, did not Reem retain the right to appeal her divorce, even if it had been confirmed as a legal judgment (*ḥukm shar'ī*)? Reem's lawyer claimed that there was no inconsistency in her claim of compulsion: she had made two statements, claiming in the second how she had been forced to give untruthful testimony in the first. Reem's lawyer insisted that it was Jawad who was inconsistent (*al-mutanāqid*). On August 30, he claimed that he had been aware of her pregnancy on that Saturday in late July the day before their wedding, but nevertheless took her with him to his house the very next day. On November 12, he argued that he had not known that she was not a virgin until he brought her home to consummate the marriage. His testimony must be thrown out, Reem's lawyer continued, because there was no way for him to resolve his two stories. Reem's *wakīl* cited the Ottoman *Mecelle*, which stipulates that no statement made under compulsion is admissible as testimony, and that lying is grounds for an automatic dismissal of the case (*radd al-dā'wa*). Reem's lawyer insisted that their evidence was neither opinion (*ẓann*) nor suspicion (*takhmīn*) and that Jawad was at fault for knowing about Reem's pregnancy but not behaving accordingly. In short, "Why did he [Jawad] consent to bring her to his house" if he knew she was not a virgin at the time?

Reem's lawyer went on to cite a story from unnamed "*fiqh* manuals," in which it is written that a jester (*hazzāl*) came to the Prophet Muhammad and confessed that he had committed *zinā*. The Prophet told him, "Perhaps you have not." The man persevered, "No, I committed *zinā*." Then the Prophet said, "Perhaps you just kissed her." The jester repeated his confession and the Prophet continued asking him until he swore four times, and the Prophet finally was persuaded that he had, in fact, committed *zinā*. Reem's

lawyer also cited Abū Hanīfa again, who argued that a ruling of *zinā* requires a formal statement before four tribunals on four separate occasions.⁵⁷ Since she had confessed to being a *zāniya* on only one occasion and then claimed that the first confession had been pronounced under compulsion, Reem's case clearly did not satisfy those conditions. Therefore, in the eyes of the court and in the eyes of the state, the unborn child technically still belonged to Jawad. And because Jawad had testified that he had prior knowledge of her pregnancy when she moved in with him, he lost the right to claim that someone else had impregnated her.

In conclusion, Reem's lawyer tried to sort out a number of unresolved issues. Why had Jawad behaved like this in the first place? Would he have behaved with such insolence if Reem's father had not been in prison at the time? And how could Reem have done what Jawad claimed she had done? He argued, "If she knew that her husband did not know of her *zinā*, it does not stand to reason" that she willingly would have gone to his house, with full knowledge of her pregnancy and knowing that he was not the father. It was implausible, according to Reem's lawyer, that he would have welcomed her so easily if she had admitted to being pregnant by another man even if she had apologized for being a *zāniya* at that point.

Jawad's lawyer, by contrast, told the story of an honest man who had been jilted. When Reem told Jawad that she was pregnant, at first he thought it was a lie (*iftirā'*). Even though he was "heartbroken," Jawad was so well-intentioned that he took her home with him anyway. After he learned that another man had gotten her pregnant and that she was no longer a virgin Jawad wanted a divorce; he was not planning to say anything publicly, "to protect her reputation." At this point, the judge asked for a recess in order to review all the details of the case.⁵⁸

⁵⁷ Ottoman law manuals also confirm this way of dealing with cases of *zinā*. See Colin Imber, "Zina' in Ottoman Law," in *Studies in Ottoman History and Law*, ed. Colin Imber (Istanbul: Isis Press, 1996), 175-206. See, too, the brilliant analysis of a sixteenth-century case of *zinā* from a provincial town in the Ottoman Empire in Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, CA: University of California Press, 2003), 351-74.

⁵⁸ MJB, 231/1932-33, February 9, 1933.

In early February 1933, Reem gave birth to a boy. On February 20, 1933, Judge ‘Ali Fahs al-Husayni rejected Jawad’s appeal and upheld the original ruling. As for Jawad’s claim that he was not the man who had impregnated Reem, the court ruled that the claim was “incorrect” (*ghayr sadīd*). As for Jawad’s claim that Reem’s testimony was contradictory and unreliable, which would also invalidate her witnesses’ testimony, the court also deemed that claim unconvincing. Jawad’s request to throw the case out *in toto*, moreover, was “illegal (*ghayr qanūniyya*).” The judge not only ruled in favor of Reem, but also added insult to Jawad’s injury, pointing out that there had been no need to hear the argument in defense of Reem a second time, “even if it might have strengthened what we are saying in some respects.”⁵⁹

Institutionalizing Sectarianism

The practical application of personal status law involved the policing of moral boundaries and right conduct as well as the preservation of social peace. Norms of honor and responsibility defined and policed by the community were designed not only for women, but also men, shaping the tenor and nature of gendered social relations. In the case of Reem and Jawad, a disputed case of contested paternity pointed up moral issues pertaining to honor, honest communication, and premarital sexual relations. Indeed, one of the most compelling legal arguments made in court was that Jawad was as obligated as Reem to shoulder responsibility for the maintenance of proper norms of moral conduct. How could it be, Reem’s lawyer asked, that Jawad knew his betrothed had been impregnated by another man and then, the very next day, whisked her off to his house to live with her? The defense deftly shifted the burden of responsibility from this individual woman to a more broadly conceived sense of communal respect in which the enforcement of male responsibility and honesty was as important as the protection of a woman’s honor. Considering the compromised position of this underage woman, whose father was in jail, and who apparently could not confide in her mother,

⁵⁹ Ibid., February 20, 1933.

it is remarkable—and a testament to the power of the social forces on her side—that Reem managed to win such a ruling.⁶⁰

The success of the prosecution's argument may be attributed in part to its subtle use of argumentation and evidence. Sayings of the Prophet Muhammad (*ḥadīth*, known in the Imami Shi'i tradition as *akhbār*) and stories attributed to Imam 'Ali (also known as *akhbār*) intermingled with the opinion of Abū Hanīfa, the Ottoman *Mecelle* and the Lebanese state personal status law codes. The language employed in court was steeped in a religious vernacular and the Ja'fari court was a site in which the sayings of the Prophet and the Imams were taken to be the governing legal principles of the case, considered not only part and parcel of practical legal reasoning, but also the operative rules of evidence, determining what could be counted as evidence regarding matters of *zinā* and parenthood.

Of course, the power of moral considerations in legal disputes is limited. Beyond establishing the facts of a particular case, moral discourse in court (about *zinā* or anything else, for that matter) is bound up with more general concerns about the need for transparency and social stability. Comments reputed to have been made “in front of people” (*amām al-nās*), or in the village, were accepted as legal testimony in court, despite the attempt by Jawad's *wakīl* to dismiss such statements as “unmodern” or “traditional” forms of evidence and, therefore, inappropriate and inadmissible. Such convention indicates the persistent value of public knowledge and social truth as well as the power of custom and local practices within the walls of the Ja'fari court.

According to Fuad Khuri, “while Sunni qadis approach problems of marriage and divorce contractually, the Shi'a add to it an element of morality, bringing to the forefront the weight of the immediate community.” In other words, Khuri continues, “what is achieved

⁶⁰ For the sake of argument, it might be conceded that Reem was coerced into appearing and making her admission merely to get Jawad off the hook. On the other hand, one can also imagine that Reem knew the law, namely that such a claim of *zinā* needed to be made four times in court and that she wouldn't have to stand behind it for good, in which case she could remain under the protection of Jawad no matter what she said on that first occasion.

‘informally’ and ‘intimately’ at the court level in Shi‘i communities is achieved at the family level in Sunni communities.”⁶¹ Although this distinction may be overstated, there was more than a small element of morality at work in the Ja‘fari court during this period, especially insofar as moral norms were integrated into the relevant legal interpretation. This article is part of a larger study of Ja‘fari court records under the Mandate, which will introduce some of the inheritance, divorce, maintenance and property dispute cases heard in the Ja‘fari courts of Beirut and South Lebanon during the 1920s and 1930s; certainly, there is still much work to be done using these historical sources. Muhammad Qasim Zaman observed, “even in matters of personal status, the application of the shari‘a under colonial rule was in fact far from uniform.”⁶² As an institutional environment, the Ja‘fari *shari‘a* court also facilitated a great deal of legal interpretation and dynamism. The language employed in the court was varied, extending to certain modern forms of legal argumentation and Islamic jurisprudential sources and methods even as law in practice at the Lebanese Ja‘fari court transcended and contradicted such purported antinomies of “modernity” and “tradition.” The jurisdiction of the Ja‘fari court was still being defined.

Social historians have demonstrated how court records capture the texture and flavor of everyday life in various Muslim societies. These records portray illiterate peasants, urban workers and other historical actors in the context of the family and social networks that shaped their lived experience; they also make possible the recuperation of women’s voice and women’s agency.⁶³ Shi‘i in-

⁶¹ Fuad I. Khuri, “Secularization and ‘Ulama’ Networks Among Sunni and Shi‘i Religious Officials,” in *Toward a Viable Lebanon*, ed. Halim Barakat (London, Washington: Croom Helm; Center for Contemporary Arab Studies, Georgetown University, 1988), 89.

⁶² Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton: Princeton University Press, 2002), 23.

⁶³ Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006); Beshara Doumani, “Palestinian Islamic Court Records: A Source for Socioeconomic History,” *MESA Bulletin* (1985), 155-172; Peirce, *Morality Tales*; and Yvonne J. Seng, “Standing at the Gates of Justice: Women in the Law Courts of Early-Sixteenth Century Üsküdar, Istanbul,” in *Contested States: Law, Hegemony and Resistance*, ed. Mindie Lazarus-Black and Susan F. Hirsch (New York: Routledge, 1993), 207-30.

dividuals, men and women alike, appeared in the Ja‘fari court as shapers of their own destinies, as historical agents who brought autonomy and power to bear on the management of their daily life. Women not only raised cases before the *shar‘i* judge, but also held fast to their rights despite staunch opposition from their family, the court, or the state. To be sure, the voices of Reem and Jamila and many other women are filtered through their legal representatives, through the judges and through the legal machinery of the state: they are mediated subjects. Nevertheless, the appearance of women in court alerts historians to more subtle transformations in gender roles and gendered boundaries taking place within families and communities throughout Shi‘i Lebanon during the first half of the 20th century.⁶⁴

As incomplete and fragmentary as Shi‘i Islamic court records may be in Lebanon, they shed light on what I have been calling the history of Lebanese Shi‘i society. By attending to how Jawad’s accusation of Reem’s engaging in *zinā* could boomerang on him, I showed the extent to which court records often shed light on moral issues as well as more narrowly defined legal questions. The case of Jamila and the ambiguities of *mut‘a* signals one way in which the Ja‘fari court dealt with specifically Shi‘i issues. Other historians may wish to consider how “anxiety about intercourse out of place was only a subset of a more general fear of moral and political disorder.”⁶⁵ Here were stories recounting the lived experiences of ordinary people,

⁶⁴ The violence or repression that these women may have experienced at the hands of their own families is difficult for the historian to verify or quantify, even as women in both rural and urban society continued to suffer deprivation, denial of full rights and social discrimination. As Daisy Hulse Dwyer put it, “the problem entailed in weighing women’s disabilities under the law concerns defining the role of law in the total array of social control forces that subordinate women in any given society.” Dwyer, “Outside the Courts: Extra-Legal Strategies for the Subordination of Women,” in *African Women & the Law: Historical Perspectives*, ed. Margaret Jean Hay and Marcia Wright (Boston: Boston University, African Studies Center, 1982), 90. On some aspects of the cultural politics of gender in Shi‘i Lebanon during this period, see Max Weiss, “The Cultural Politics of Shi‘i Modernism: Gender and Morality in Early Twentieth-Century Lebanon,” *International Journal of Middle East Studies*, Vol. 39, No. 2 (May 2007): 249–70.

⁶⁵ Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000), 30.

stories that provide historical perspective on “what happens when ordinary, often subordinate people appeal to the state, specifically the legal system, to help them repair or reconfigure their relationships with others.”⁶⁶ These sources, therefore, offer a fascinating look into the historical experiences of people who generally left behind few written records.⁶⁷

The Ja‘fari court played an increasingly central role in the administration of Shi‘i society from the 1920s onward, bringing elites and ordinary people under the same roof, institutionalizing Shi‘ism and helping to cement Shi‘i presence within Lebanon. The administration of personal status law was one means by which the state attempted to manage Shi‘i life during this formative period. Sectarian Shi‘i citizens-in-the-making took advantage of the court in their efforts to secure specific individual and communal rights. Throughout this period, demands for access to state resources and arbitration within the Ja‘fari court continued to bubble up “from below.” The Ja‘fari court played a distinct institutional role at the point of contact between Shi‘i society and the Lebanese state, redefining the place of the Shi‘a even as they were increasingly defined and came to understand themselves in new sectarian terms. The empowerment of certain sectors of Lebanese Shi‘i society through this institutional transformation signals a broader process, still in need of greater scholarly recognition, through which the Shi‘i community was gradually transformed from a “sect-in-itself” to a “sect-for-itself.”

⁶⁶ Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: The University of Chicago Press, 1998), 245.

⁶⁷ Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985).