

HOUSE OF OBEDIENCE: SOCIAL NORMS, INDIVIDUAL AGENCY, AND HISTORICAL CONTINGENCY

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ABSTRACT

Based on 14 months of fieldwork, this paper examines the influence of social norms, individual agency, and historical contingency on the practice of House of Obedience (bayt al-ta'a) in the shari'a courts of the Gaza Strip. It argues that the text of Islamic family law is only one dimension in the administration of House of Obedience. Aspects concerning the wider sociopolitical context are crucial, notably the preeminence of the notion of family honor (sharaf), the mutually constitutive relation between the shari'a court and the community, and the specificities of court cases. As an ideological construct, the law does not necessarily correspond to a social milieu full of inconsistencies, oppositions, contradictions, and tensions. Thus, the practice of law has always been characterized by pluralism, flexibility, and a degree of ambiguity, whereas the text remains characterized by rigidity, restriction, stability, and in some aspects, superficial clarity.

The main argument developed in this paper is that the application of the House of Obedience (*bayt al-ta'a*) provision¹ does not depend only on the text of family law or the heritage of *fiqh*² and interpretation; rather, contextual elements such as the sociopolitical milieu, litigants'

power, and judges' discretion are decisive. The paper further contends that the judiciary and extra-judicial actors in the *shari'a* court do not operate in separate universes; rather, they mutually constitute each other's degree of influence and modes of action.

I will begin with a discussion of the relation between the *shari'a* court and the community in which the law is applied. This is followed by a review of the Qur'anic roots of the concept of marital obedience and its contemporary legal conceptualization. The paper then examines the historical transformation of the practice of House of Obedience (henceforth HoO) in the Gaza Strip. Interviews with practitioners will be presented and court cases discussed with special emphasis on their broader social context. Before concluding, the paper provides a brief synthesis of the field data.

SHARI'A COURTS IN PALESTINE

Shari'a courts in historical Palestine underwent significant differential transformation in the course of the twentieth century. Under the declining Ottoman Empire, they constituted a broad-based and plural institution, representing the state in social, administrative, legal, educational, religious, and charitable matters. However, as in many other Muslim-majority countries, the courts' sphere of intervention was progressively reduced and ultimately limited solely to the management of personal status issues (also known as family law). Still, as the *shari'a* judiciary's institutional prerogatives shrank, its effective sphere of jurisdiction, although territorially fragmented after 1948, widened in social terms, reaching beyond the towns into the countryside and then into the refugee camps.

The relative decline of the *shari'a* judiciary notwithstanding, the judge, as a public figure, may still claim a degree of moral influence that transcends the scope of his administrative and legal attributes. In contrast to his Ottoman predecessor, who was transferred every year to preclude his local involvement, he tends to be a full member of the community in and for which he applies Islamic family law. The implications of his decisions reach beyond the domain of personal status, affecting significant aspects of social practice. In adjudicating, he exercises "active authority... in rendering legal decisions in lawsuits between kin as well

as the discursive authority of Islamic legal norms in setting the parameters for the negotiation of power and property relations between kin." Through the judge's arbitration, the "mutually constitutive relationship between kin and court [is] revealed" (Doumani 2003a, 174).

However, the centrality of court-kin ties should not lead us to underestimate either the importance of networks that crosscut or overarch the kinship-based relations of litigants or the role of bonds of patronage and dependency. There are several authorities or actors to whom individuals can turn for assistance before asking the judge to intervene. These include individual kin, friends, neighbors, family or lineage elders, including *makhṭir* (sing. *mukḥṭar*),³ extended family councils (*maq'ad*, plur. *maq'ad*), police, relations of influence in the Palestinian Authority or, of late, Hamas-dominated institutions in the Gaza Strip. In recent years, civil society organizations have also come to play a role in supporting the weak, notably by affording legal or material assistance to women and children. Equally, women's organizations have been campaigning for family law reform and a more gender-neutral Islamic family law. This activism might not have changed the conduct of judges, but it has tended to diversify the options and strategies of women plaintiffs.⁴

The fieldwork from which data for this paper are derived was conducted during 14 months between December 2001 and February 2003, and was grounded in observation of the legal and social universe of the *shari'a* courts of Gaza City.⁵ I combined a partly open-ended ethnographic approach with semi-structured interviews with judges, lawyers, litigants, and court personnel. I took into account a wide spectrum of constraints, ranging from judges' power to litigants' interventions. The court is situated in its (often volatile) sociopolitical setting. While both judges and parties are actors in a shared field of social relations, they approach litigation from different positions of power. In studying a given case, I have assessed this asymmetry by following actors into the social networks that condition access to situational knowledge, which may be used publicly or suppressed so as to influence the course of pre-trial negotiations, court proceedings and, ultimately, adjudication.

Within this complex of power relations, litigants do not remain passive. Their strategies reveal multiple, sometimes hidden, motivations. It should be stressed that women appear in court as plaintiffs more frequently than as defendants (see, for example, Layish 1975; Welch-

man 2000; Doumani 2003b; Shehada 2005). A suit may prove to be no more than a legal maneuver meant to record an intrafamilial agreement already concluded out of court;⁶ it may be filed to obtain something not explicitly requested from or stated to the judge;⁷ it may be seen as a last resort when all informal modes of conciliation and mediation have failed;⁸ or it may be introduced to obtain rights denied, by making a silenced conflict public or simply threatening to do so.⁹

Islamic family law regulates marriage and divorce, and determines the transmission of lineage and property from generation to generation. Through the marriage contract or custody arrangements, gendered relationships are affirmed and consequently sustain the gender asymmetry in the society as a whole. In this framework, gender appears as cross-cutting all levels and forums of negotiation and litigation linked to the management of personal status issues. Among Palestinians today, gender mediates in a salient fashion between the sphere of kinship and networks of proximity, not least residential, as well as shared experiences.

As the focus of this article is the HoO, I will now briefly explore the roots of the concept of marital obedience and the contemporary legal texts applied in Gaza. The textual origin of the concept of marital obedience is found in the well-known Qur'anic verse (IV:34) which establishes the grounds upon which Muslim jurists founded their views on gender. It reads:

Men are in charge of [are guardians of/are superior to/have authority over] women (*al-rijalu qawwamuna 'ala al-nisa'*) because God has endowed one with more [because God has preferred some of them over others] (*bi-ma faddala Allahu ba'dahum 'ala ba'din*) and because they spend of their means (*wa-bi-ma anfaqu min amwalihim*). Therefore the righteous women are obedient, guarding in secret that which God has guarded. As to those from whom you fear rebellion, admonish them and banish them to separate beds, and beat them. Then if they obey you, seek not a way against them. For God is Exalted, Great. (cited in Stowasser 1998, 33)

Despite their differences over issues related to the nature of the Qur'an and the methodology required to read it, medieval *mufassirin* (exegetes) were in agreement regarding their *tafsir* of gender roles and relations.¹⁰ For example, paraphrasing al-Tabari (d. 923), who belonged

to the traditionalist school, "This verse is primarily concerned with the domestic relations between husband and wife. It legislates men's authority over their women, which entails the male's right to discipline his women in order to ensure female obedience both toward God and also himself" (Stowasser 1998, 33). Another Islamic *mufasssir*, Baydawi (d. 1286?), who belonged to the rationalist school, compared men's superiority to that of rulers over their subjects. In his view, male superiority is justified by men's innate abilities and their acquired qualities (Stowasser 1998, 33).

Mufasssirin from both schools drew on Sura IV:34 to establish their conservative views on gender as exemplified above in the opinions of the traditionalist Tabari and the rationalist Baydawi. Other *mufasssirin*, including Ibn Hazm and Ibn Abbas, identified the conditions under which wives could be declared disobedient. Both stipulated that the wife's obedience is related to sexual enjoyment. The man declares his wife's disobedience only when she refuses to have sex with him (see Nashwan 1998, 10). Al-Razi as examined by Mubarak (2004, 273) "goes so far as to qualify what constitutes disobedience based on mere speculation."¹¹ Sura IV:34, therefore, is the bottom line of the hegemonic discourse on gender in medieval Islam. It still constitutes the essential basis of contemporary conservative discourse, whether Islamist or traditionalist (for further details, see Stowasser 1998; Mubarak 2004).

The marriage institution is "textually" established on a fundamental balance of rights and duties: maintenance is the duty of husbands; wives, in return, should be obedient (see Welchman 2000). The rights and duties of each spouse have been further elaborated by Muslim jurists of different schools. Upon signing the marriage contract, the wife should receive the payments due to her (*mahr* and *nafaqa*) and, in exchange, she has to be obedient. One interesting observation in the jurists' texts is that all schools of Islamic jurisprudence (*madhahib*) link the *nushuz* (rebellious act) instrumentally with its financial consequence; no *nafaqa* is due to a wife declared *nashiza*.

Regardless of his *madhhab*, the man has clear rights vis-à-vis his wife: *ta'a* (obedience), *ta'dib* (chastisement), and the duty of the wife to stay home (summarized by Samara 1987). When the equation is disturbed by the wife's disobedience, chastisement is required through disciplinary action, beginning with advice, then *hajr* (sexual abandonment), then beating.

Beating, it is advised, should not humiliate the wife; nor should it leave marks on her body. If the man exceeds the limits, the wife has the right to petition the *qadi* for *tafriq* (repudiation by judicial divorce).¹²

The adjective *nushuz* is derived from the noun *nashz*, which means “high place” or “high position.” *Nushuz* thus means that the wife is acting in a way that assumes she has a higher social position than that of her husband. It is in this regard that she is considered disobedient (Hashiyt Ibn ‘Abdeen 3/631, quoted in Samara 1987, 218). The declaration of the wife as *nashiza*, and thus the *suqut* (lapse) of her *nafaqa*, are entailed by the following acts:¹³

1) Leaving the house without the husband’s permission. Even if the wife leaves the house for reasons related to worship, she will be considered *nashiza* if she has not first received her husband’s permission. Leaving the house for work is considered *nushuz* because it is forbidden for reasons considered more important than work.

2) Disobedience in sexual matters; that is, when the wife does not surrender herself (*tusallim nafsaha*) to her husband sexually.

3) The Shaf‘ites also consider that obedience should be continuous and consistent: she should obey her husband day and night. If she obeys at night and disobeys during the day (or vice versa), she is considered *nashiza*. This means that if the wife leaves the house for work during daytime, even if she fulfills her sexual duties at night, she is still considered *nashiza*.¹⁴

4) Refusing to accompany the husband when he travels.

CONTEMPORARY LEGAL TEXTS ON MARITAL OBEDIENCE

Despite the profound changes that Muslim-majority societies underwent during the twentieth century, family law reform was rather slight. Processes of modernization, urbanization, and education, and fundamental shifts in demographic patterns such as decreasing rates of fertility, polygyny, and early marriage, led to growing conflict between the legal regulation of family law and new socioeconomic realities. The equation of obedience and maintenance continues to provide the ground on which the marital relation is established. In this framework, complementarity is stressed, by which gender roles are emphasized and their spheres of activity separated (see Higgins 1985; Kandiyoti 1991; Mojab 1998). This could be exemplified by

propositions such as: “women are created of men and for men”; “women are inferior to men”; “women need to be protected”; “men are the guardians and protectors of women”; “marriage is a contract of exchange”; and “male and female sexuality differ, and the latter is dangerous to the social order.” (Mir-Hosseini 2004, 3)

To examine the modern legal articulation of obedience and *nushuz*, I will briefly introduce the codified Islamic family law regulating the issue of marital obedience in the Gaza Strip. Article 39 of the 1954 Law of Family Rights (LFR)¹⁵ applied in the Gaza Strip states that “the husband is obliged to prepare a fully equipped *maskan shar‘i* [a house that meets the legal requirements] for his wife in a place of his choosing.” Article 40 specifies that,

after receiving her dower, the wife is obliged (*mujbara*) to live in the husband’s *shar‘i* house and to travel with him to any other place (*bal-da*) if there is no reason for not doing so. The husband has to treat his wife well and she has to obey him in permissible (*mubaha*) matters.

Article 66 states that “if the wife becomes *nashiza* and leaves her husband’s house, she has no right to *nafaqa* during the period of her disobedience.”

It is remarkable that the 1954 LFR applied in Gaza does not refer explicitly to the sexual rights of the husband, while the Book of Personal Status Rulings (BPSR), which is frequently used by judges and lawyers, very clearly stipulates the sexual rights of the husband upon contracting the marriage and paying the *mahr* (dower). Article 212 of the BPSR specifies that “[she] should respond to him when he calls her to bed (*yad‘uha li-l-firash*) unless she has a *shar‘i* reason.”

While Article 40 of the 1954 LFR makes the wife *obliged* (*mujbara*) to live in her *shar‘i* house, Article 37 of the Jordanian Law of Personal Status (gazetted in 1976), applied in the West Bank, says, “The wife *should live* in her husband’s house.” Welchman (2000, 231–2) notes that the difference between *obliged* and *should live* is a matter of revision, not of translation or language. Thus it is no longer legal to *oblige* or *force* (*ijbar*) the wife to go to her husband’s house, even through police intervention, once a *ta‘a* case has been won.¹⁶

In the LFR applied in Gaza, the term *obliged* (*tujbar*) still exists.

However, in practice, wives are not forced to go to their *shar'i* house when a *ta'a* case is won. This is due to differences in the law applied in the Gaza *shari'a* courts. The Code of *Shar'i* Jurisdictions of 1965 clearly identifies the limits of legal execution: Article 219 of the Code states that “keeping the child with his/her custodian... is compulsory (*qahran* [that is, by using force]) except in *ta'a* cases; when the wife refuses to comply, she is considered disobedient (*tu'tabar nashiza*).” This means that she will be considered *nashiza* but will not be forcibly taken to the HoO.

Lawyer Khalid al-Tayyib gave me an insight into why women cannot be forced to obey the court's order in this matter:

The Israelis, with their overwhelming power, could not penetrate the social fabric of Gaza. How then is it possible for an institution such as the *shari'a* court to force a woman to go to her husband's house? That is inconceivable. This is even beyond the judge's comprehension. The wider social implication of such an act of force would be more dangerous than executing a judgment. Article 219 is in conformity with the social norms of Gaza. And we should be aware that this law was produced by the Egyptian governor who ruled Gaza for 17 years; the Egyptians knew what Gaza is like.¹⁷

The social milieu of Gaza should indeed be taken into account. Gazans in general are reluctant to resolve marriage disputes in this way, partly because the institution of marriage is not simply a relationship between individuals but also a bond between extended families. An HoO case would be humiliating not only to the wife as an individual, but also to her relatives, who are usually also relatives of the husband.

I will now provide a brief exposition of the HoO cases between 1927 and 2001, which I studied in the *shari'a* court archives. This will be followed by a brief account of current legal practice. Before concluding, I will situate the concept of marital obedience in the contextual setting of Gaza.

SOCIOPOLITICAL TRANSFORMATION

The massive influx of refugees into the Gaza Strip after 1948 negatively and irreversibly impacted people's social and economic life as well as legal practice. When Palestinians fled their villages and towns for the Gaza Strip, their economic integration and absorption was almost impossible.

Gaza is small, circumscribed, and isolated. It has meager resources. As Roy (1995, 81) points out, “with no raw materials, no mineral deposits, no access to markets except across 200 miles of the Sinai Desert, and a limited amount of land and water, the Gaza Strip offered little economic potential.” In 1948 and subsequent years, the Gaza Strip did not even have enough building stone to construct houses for the hundreds of thousands of refugees fleeing their lands in the aftermath of the war (81). It was only six years after the 1948 tragedy that tents were gradually replaced by poorly built camps provided by the United Nations Relief and Works Agency (UNRWA). Dislocation affected not only the refugees but also the already impoverished indigenous population of Gaza. Their living conditions declined further after 1948; they became “economic refugees” (Roy 1995, 79). After 1948, Gazans, whether indigenous or refugees, relied on the UNRWA to provide food, kerosene, education, and healthcare.

These profound changes in Gaza explain why, after 1948, the practice of calling a wife to the HoO declined sharply. When a man can provide no shelter whatsoever, he is unlikely to ask a court to confine a “disobedient” wife to a legitimate house (*maskan shar‘i*). These structural elements played a great role not only in reducing the number of HoO cases but also in shaping the identity, purposes, and motivations of applicants.

Table 1 confirms that petitions for an HoO order were not filed frequently at the Gaza City *shari‘a* courts during the twentieth century. While the total number of cases escalated sharply in 1949 (from 148 cases in 1948 to 236 in 1949), the percentage of HoO suits initially increased only slightly (by approximately 1%) and then declined radically, from 11.8% in 1949 to 2.4% in 1950. The increase in the total number of cases might be explained by population increase. On the eve of the 1948 war (*nakba*), the population of the Gaza Strip numbered 70,000, but the influx of refugees increased it by 250,000 (Roy 1995). Most of the newcomers had fled towns and villages around Jaffa and Bir al-Saba‘ in the Negev.¹⁸ What is now designated as the Gaza Strip covers only 27% of the area of Mandate Gaza (Roy 1995). The sudden population increase in this reduced territory explains the sharp rise in the total number of cases. The subsequent decline in HoO cases, however, appears to have been related to the socioeconomic and political upheaval that occurred

Table 1
House of Obedience petitions filed at Gaza City *shari'a* courts, 1927–2000

Year	Cases Filed	HoO Cases	HoO Cases as % of Cases Filed
1927	150	30	20.0%
1937	159	17	10.7%
1947	135	14	10.4%
1948	148	16	10.8%
1949	236	28	11.8%
1950	406	10	2.4%
1966	361	13	3.6%
1967	181	12	6.6%
1977	288	16	5.5%
1978	250	9	3.6%
1986	217	1	0.5%
1987	224	Nil	Nil
1996	712	4	0.6%
1997	935	10	1.1%
1998	605	7	1.1%
1999	604	3	0.4%
2000	624	7	1.1%
2001	548	4	0.7%

Source: Gaza City *shari'a* court records.

in Gaza after the 1948 war, with refugees still living in tents because no housing was available. It is hard to imagine that men who were searching for shelter for their families would petition for an HoO order.

Between 1977 and 1987, HoO cases as a percentage of the total number of cases dropped from 5.5% to nil. Continuing change in socioeconomic circumstances could explain this decline: the generation following the *nakba* attained formal education, people's living conditions improved, and the number of trained and employed women grew. UNRWA played a vital role in providing rations, education, jobs, and health services to the refugees, who constituted the majority of Gaza's inhabitants. The year 1987 was politically significant in the lives of Palestinians: the first *intifada* erupted and no HoO suit was registered at the *shari'a* court.

To petition for an HoO order, the husband must be financially able not only to own or rent a separate house with appropriate physical and

non-physical characteristics, but also to meet the financial obligations set by the court regarding his wife. Poverty in Gaza explains the finding by Welchman (2000) that, over a four-year period, only five cases were registered at the Gaza city *shari'a* courts, compared with 17 and 20 in Nablus and Ramallah, respectively.

These statistics also raise another question: if HoO is bound to disappear due to “modern” modes of conduct, why are there more HoO cases in Ramallah and Nablus, especially since their population is smaller than that of Gaza City, and the West Bank is perceived as being more socially sophisticated or “modern”? This apparent contradiction is probably due to oversimplification of notions such as “backwardness,” “sophistication,” “modern,” or “traditional,” which fail to account for the complexities of societies. There are interrelated and contextual elements characterizing the application of HoO across time and space, to which we will now turn our attention on the basis of observations recorded in 2002–03.

LEGAL PRACTICE

Legal obligations and rights do not operate in a vacuum, but in a social world, and thus refer to a regime of power relations in which class, gender, and social status are of utmost importance. Once a conflict over matters of obedience reaches the court, litigation takes place, but in a specific context and against the background of socioeconomic and political factors that influence its mode of operation as well as outcomes.

The *shari'a* courts in Gaza are very strict regarding the suitability of the HoO. According to clerk Abu Khalid, who works at the Gaza City *shari'a* courts and has frequently been appointed by judges of the court of first instance to examine such houses,

Getting the court's approval of the HoO is very difficult.... The house should be in an area that is not remote. All equipment needed by the wife should be available. The house should be secure in terms of its doors and windows. If the man's economic status is good, then the house should meet his standard of living.... When we do the *kashf* (examination of the house), we search for the slightest reason that leads us to consider the house illegitimate. We can always find such defects. The lack of baking flour or of secure windows are our frequent

excuses.... To declare the house as not *shar'i*, we sometimes hide behind the gloominess of the house, which is a subjective criterion (*taqdir shakhsi*).¹⁹

This strictness makes it difficult for the man to get his wife back against her will. If the man does succeed in providing the house, she has to comply. If she fails, she is declared disobedient, but force cannot be used to ensure her compliance. However, there are other factors that create pressure for her to submit. The status of disobedience means that the woman is still married but neither living with her husband nor receiving maintenance (*nafaqa*). Above all, she is not allowed to remarry because her marriage contract has not been dissolved. If the husband wishes to do so, he can maintain his wife's status of disobedience (*nashiza*) for the duration of her life.

Although judges tend to maintain a sharp division of gender roles, they either avoid using the HoO provision or make it difficult for the husband to implement it. They know that when a dispute reaches the stage of a HoO case, the relationship has turned bitter and the man's action is likely to be taken out of revenge. While the judges do not pronounce on the intentions of the parties involved, they do use their discretion to determine the real reasons behind the case. They also seem to prefer to use their judicial power to settle disputes through compromise and agreement.

Sometimes judges are criticized by men as being sympathetic toward women. These critics either disparage the judges' knowledge of *fiqh* or simply accuse them of being "powerless" vis-à-vis female litigants. This can be seen in the following case, in which the wife's lawyer won a *nafaqa* suit but the husband did not want to pay. The husband protested:

My wife is not in my house now, so why should I pay her *nafaqa*? She left the house without my permission and she is now living in her family's house.... She is *nashiza*... she does not deserve *nafaqa*. How can I pay her while she is away? I am not getting anything from her [referring to his sexual rights].

The judge outlined the basis of the judgment:

The woman cannot be declared disobedient without your giving her

her full financial rights (*kull huquqha al-maliyya*). You have to give her *nafaqa* and complete prompt dower. If she does not come back to your house, then you have the right to file a house of obedience case here in the court. And if *we* [the court] are convinced that it is a legitimate (*shar'i*) house, we will order her to reside there. If she refuses, then it is the court, only the court, *not you*, who declares her disobedient. This is an absolute rule that cannot be impinged upon while you still owe your wife *nafaqa* and full prompt dower.

He then pointed out the options:

Now the ball is in your court. What do you want to do? Do you want to solve the problem? You can do so by sending her the *nafaqa* and prompt dower you owe her; or by making a better deal, getting some mediators to find a way to resolve your dispute. If you choose the first route, you should remember that you will pay no less than JD 50 every month because your salary is 260.... Is that all right with you?

The husband then impugned the judge's impartiality and knowledge of Islamic law:

No, that is not all right at all. I will not pay her anything as long as she is not in my house. I am a Muslim, I know the *shari'a*, *fiqh*, and the law. What you are saying is wrong. You are rewarding her for her rebellious action. This is not Islamic.

The judge became upset and replied sardonically, "All right, we are not as knowledgeable as you are, but we will see who concludes this case." He then adjourned the case to the following week. A lawyer unconnected with the case intervened to calm the judge down: "People speak stupidly due to their ignorance; please forgive them." The usher ran out to warn the man that he was going to lose his case because of his disrespectful comments. The man returned and apologized to the judge:

Tell me, what can I do with this woman? She has made a hell of my life.... She sucked my blood with her endless demands and every now and then she brings her brothers to scold me. I want to discipline her (*'arrabiha*) and teach her brothers a lesson.

The judge did not respond to the question, but merely asked the

man to return to court the following week.²⁰

One of the judges with whom I interacted during my fieldwork, Judge al-Karmi, believes that “men do not choose this route out of love and respect toward their wives,” rather, they mean “to offend and to put the wife’s nose down.” He told me that even if the house prepared by a husband is truly in conformity with legally stipulated standards (*shar’i*), the court does not favor this “legal” method of constraint:

Forcing a woman to go to her husband’s house without her consent leaves a bad taste. Such an act wounds the relationship between them and it is unlikely that the dispute will be solved by such forceful action. On the contrary, it may widen the gulf between the couple and further embitter relations between their families.

This desire to favor socially accepted solutions over producing legal judgments informs the judge’s action.

For the house to be legitimate, Judge al-Karmi told me, it should be located in the same area where the family used to live; that is, if the husband used to reside in Gaza City, he should not rent a house located in a refugee camp or a remote village. Legally, the HoO should be located in a neighborhood where there are neighbors, in case the wife needs help. In addition, no member of his natal family is allowed to live with her (or even to visit her) without her consent. However, she is allowed to invite members of her family of origin to visit her, provided they are her *maharim*.²¹ Further, before the man’s application is accepted, his accounts with respect to the wife’s financial rights have to be settled. These factors constitute the starting point for the court to accept the case; the husband has no right to sue if he has not paid the wife’s full dower. The second step is procedural; when the clerks examine the house, they seek even trivial shortcomings as reasons for rejecting it. Judge al-Karmi recalled several such cases:

Once we sent our clerks to examine a house. One came back with a report that the house was not *shar’i* because it did not have dried okra for use in winter when there are no fresh vegetables to cook. In another case, the house did not have needles and thread which the wife might need to mend her clothes. There was also a case where the house lacked an electric oven, which women need to bake bread.

These are, of course, trivial issues, but we always use them to break the husband's will to humble his wife. If the man has appointed an experienced lawyer, he will warn him about all these matters, but even then our experienced clerks search for any defect to make it difficult for the husband to humiliate his wife.

If the HoO is declared legitimate, the court orders the wife to dwell in it. However, the judge does not force her to go to the house. As Judge al-Karmi said,

Shari'a does not propose coercion. If the wife accepts [the judgment], then she will go there and sign before the implementation officer (*ma'mur al-tanfith*) that she agrees to dwell in the house. The case will thus be declared over. But if she refuses, the court will declare her disobedient (*nashiza*).²²

Lawyers observe that HoO cases are filed less frequently than others. Lawyer Khalid al-Tayyib confirmed that the complications created by the court discourage men from resorting to the HoO provision. According to him, when a man applies for an obedience order, he knows that he has to prepare a better-equipped house than the one where his wife used to live:

When things go well between the couple, the wife bears life under difficult circumstances, such as living with her husband's family or accepting his financial difficulties; but when the court is invited to intervene, things change and [the new situation] may dash the man's original hopes. For example, the husband should be the owner of all the furniture, and if he happens to use part of the furniture belonging to her, the judge dismisses his claim.²³

Lawyers warn their male clients that the HoO is binding not only on the wife but also on the husband. As stated earlier, after the man prepares the HoO and the court approves it, the wife must either comply with the court's decision or be declared *nashiza*. If she defies the ruling, she is no longer entitled to *nafaqa*. However, she remains married. The corollary is that the man is also "imprisoned" by the court's judgment, since he has to maintain the house without being able to use it. His natal family cannot live in it, nor can he sell it or rent it, because once the wife

finds out that the husband has violated the terms, she can immediately apply for *nafaqa* or *tafriq* (judicial divorce).²⁴ The court will then declare the house illegitimate, and if the man wishes to continue he needs to go through the application procedures again.

The above description shows the gulf between the richness of social reality and the dryness of legal texts, which in turn generates continuous tensions and unresolved conflicts. People are less responsive to “fixed” texts than to their concrete needs, no matter how they perceive or articulate them—if, when, and how they decide to take them to court. The “fixed” law itself contains areas of indeterminacy, ambiguity, and uncertainty. HoO is “fixed” as an inviolable right. Yet the HoO provision, despite its alleged procedural clarity, does not clearly establish how, when, and why men decide to use it. Similarly, women may exploit both the fixity and the indeterminacy of HoO provisions for various reasons and motives, as is shown by the following case.

At issue was the tendency of a wife’s brother to force his sister to leave her marital house whenever he had a conflict with her husband. The husband, wife, and a lawyer then hatched a strategy to use the threat of an HoO petition to make the brother change his ways. The wife pointed out to her brother that if she was ordered to go to the HoO, it would tarnish the family’s reputation. The brother then let her return to her husband.²⁵

A combination of threat and mediation persuaded the brother to send his sister back to her husband’s house. This innovative use of a legal provision was possible because not everyone was aware of the implications of legal action, particularly with regard to the HoO. The provision could neither have led to any sanction against nor affected the economic well-being of the brother or his sister. The brother’s decision to return his sister to her husband was probably also informed by the perception that filing the case would entail a “social scandal.” Thus, the HoO provision, often a tool of women’s oppression and humiliation, was used for negotiation, accommodation, and power redistribution.

Women operate within a complex matrix of relationships, where loyalty and attachment are subject to continuous reconfiguration. How and when they identify themselves with their families is contingent on their interests. They choose to attach themselves to their brothers and natal families when they feel the need to counterbalance the power of

their husbands and in-laws. However, that does not preclude repositioning. When women find that their loyalties and attachments to their natal families are being abused to the point where their individual future is at risk, as in the above case, they choose to reposition and identify themselves with their own nuclear families (see Moors 1995).

SOCIAL ORDER AND AMBIGUITY

The codification (*taqin*) of personal status laws was a complex historical process involving the interplay of social, political, and religious elements, which necessitated the integration of often contradictory frames of reference. This process involved a strong articulation of state hegemony, on the one hand, and on the other, a particular recognition of the social change underway at the turn of the twentieth century (Botiveau 1997). Its intention was to transform the *shari'a* into a written and binding law that claimed to be comprehensive, accessible, and applicable to all Muslim citizens. All these elements had to be cautiously projected into the new law. Codification thus became a process of integrating different *madhahib* (though inconsistently presented and legalized) as well as a means of exercising *ijtihad*.

“Obedience,” the main concept dealt with in this paper, is meant to maintain a social order based on gender hierarchy. For various *madhahib*, cutting maintenance and declaring the woman disobedient sufficed to control rebellious women. When the *shari'a* was codified, the legislators had to find a legal avenue for complying with the gender discourse of the *madhahib* on the one hand, and compelling gender hierarchy on the other. In many contexts, including the West Bank, suspending maintenance did not prove sufficient to maintain the social order. Therefore, the lawmakers not only conceived the HoO provision but also established mechanisms of enforcement. According to Jordanian Law No. 92 of 1951, applied in the West Bank, the police can force a woman to comply with the court’s judgment. Later, in Jordanian Law of Personal Status No. 61 of 1976, this mode of enforcement was replaced by the judge’s intervention to get couples to the negotiating table, either by restoring their marriage or by dissolving it. In Gaza, compelling a woman to move to her husband’s house is legally forbidden, but there are other enforcement mechanisms, to which we shall return shortly.

The question thus arises as to why these legal attempts were made. Why do women have to be forced to return to married status or to divorce? The answer lies in the ambiguity of the status of rebellious women. The *nashiza* woman is neither married nor divorced. She remains a wife because the marriage contract is still valid, but in reality she does not practice her marital life. Ambivalence is undesirable in any law. One of the fundamental objectives of law is to protect a given social order (see Griffiths 1992, 175), and to achieve this, the law defines and fixes a clear-cut personal status. The vagueness of *nushuz* destabilizes the social order and thus prevents the law from accomplishing its fundamental purpose. Therefore, at one point force was used to ensure the wife's compliance with the court order, leaving no ambiguity. Later, the task of resolving ambiguity was devolved to the judge. However, the law is founded on gender asymmetry, symbolized by the "maintenance versus obedience" equation. The legal code thus generates ambiguity and will continue to create such aberrations as the status of "rebellious woman." The mechanisms for preserving gender hierarchy might be modified, but the basic feature of asymmetrical power distribution will remain unaffected as long as the law's informing gender discourse obtains.

There are two interrelated aspects to the ambiguous status of the *nashiza* wife: spheres of authority and gender hierarchy. When the husband takes the private dispute into the legal sphere, he effectively transmits his authority over his wife to the court. The court then acts in the husband's name, demanding the wife's submission. If she does not comply, the court lets the husband suspend her maintenance. While this process appears to increase the power of the husband, in reality transmitting marital rights to the court carries a cost: the husband is no longer able to chastise the disobedient wife and it is the court that has the authority to define the course of action on the basis of its legal mandate. In other words, for the husband, delegation of the *wilaya* (guardianship) to the court actually means social disempowerment. All his extra-legal options for action on which gender relations are based, however socially sanctioned, are placed in limbo. Thus, control over the wife's movement, contacts, and accessibility to the public sphere are all removed from his sphere of authority.

Legally, the transference of *wilaya* from the husband to a public

institution implies—at least theoretically—a form of “freedom” for the wife from the husband’s authority. Therefore, by her mere disobedience she not only gets to live away from her husband but is also liberated from his authority. Moreover, she continues to be independent of the authority of other agnates since she is still legally married and no other male is allowed to exercise *wilaya* over her.

The social consequence of such an exceptional personal status is that power and control based on gender hierarchy can no longer be applied, which could pose a threat to the stability of the social order. Because of this danger, the judge, agnates, and the husband all try to use various social mechanisms to avoid a declaration of *nushuz*.

This analysis leads to two interrelated questions. First, why is the HoO provision the only requirement that is not enforceable (by force)? Second, why do people resort to it infrequently? An answer to the first question is suggested by a practicing lawyer: “The wider social implication of such a forcible act is more dangerous than not executing a judgment.” In other words, the shame attached to alien intervention, whatever its nature, by police or otherwise, has wider social ramifications than failure to preserve the force of law. Therefore, judges discourage the husband from filing the case and thus forcing them to declare a woman *nashiza*.

Gaza is a small area. It is metaphorically depicted by its inhabitants as a house with thin walls: “If I cough in the north, those in the south will hear me” is a common expression among Gazans, describing the forced proximity of their relations arising from their distorted historical trajectory. Everyone appears to know everything about everybody else (and is eager to do so). It is thus not only the *hamula* (clan) system and its imposition of sanctions on its members that impel people to comply with socially acceptable codes of conduct. The whole of the Gaza Strip appears to be a large *hamula* in which inhabitants are accountable to each other, especially with regard to their moral reputation (*sum’a wa sharaf*). In times of both rest and strain, Gazans often say, “We lost everything and were left with nothing but our reputation (*sum’a*).” *Sum’a* and *sharaf* are nowhere more critical than in the field of personal conduct. If a man’s wife is declared *nashiza*, she will be socially stained as an “unfit woman” (*mara mush mniha*), but the husband will be labeled a weak man or not a man at all (*mush zalama*). In a context in which

reputation plays a great role in determining one's weight in society, the shame attached to *nushuz* must be avoided.

Another dimension which needs to be highlighted is the interplay of social norms and values on the one hand, and the actions of judges on the other. Judges are not detached from the values embraced by their community. Not only do they share the locality of their litigants, but they are also well informed about "who is who" and "what is what" in the community and have strong contacts with community members. Judges' decisions thus take into account not only the history of cases filed, but also, more importantly, the potential consequences of their judgments on the individual litigants and the larger community behind them (Rosen 1989). Further, the judges' adherence to the notion of "justice" is not informed by a desire to compensate for gender asymmetry. Like all members of society, they are influenced by the dominant gender discourse, which legitimizes the asymmetric division of rights and duties within the family. They thus promote justice as long as their "just" solution neither disturbs the community's norms nor questions the gender asymmetry inherent in law and social practice.

CONCLUSIONS

This paper has examined some legal and social issues regarding the roots and application of *bayt al-ta'a*, with special attention to its practice in the *shari'a* courts of Gaza. It began with a discussion of the mutually constitutive relation between the *shari'a* court and the community in which the law is applied. It then reviewed the Qur'anic roots of the concept of marital obedience and its interpretation by various medieval exegetes. The aim was to clarify the current law with reference to its historical source and to study the relation obtaining between the conceptualization of obedience in the gender discourse of classical exegetes and its transposition into a "fixed" legal text organizing gender relations between husband and wife in a contemporary Muslim society. The paper also drew attention to the Law of Family Rights articles that specify when, how, and under which conditions a man may call his wife to the House of Obedience. A number of interviews and analysis of HoO cases showed that the text of the law is only one dimension in the administration of HoO. Aspects related to the wider social context, notably the pre-eminence of the notion of family

honor (*sharaf*), historical trajectory, and the specificities of the cases appear to be crucial.

There is a persistent discrepancy between the practice and the text of family law. Practice has undergone significant change without the letter of the law being modified. This paradox of text versus practice is likely to remain a permanent feature of the application of family law as long as the text and legislators only pay lip service to structural changes in society. The practice of law has always been characterized by pluralism, flexibility, and a degree of ambiguity, whereas the text continues to be characterized by rigidity, restriction, stability, and in some aspects, superficial clarity. As law is ideologically conceptualized (Moore 1978), it does not necessarily correspond to a social system full of inconsistencies, oppositions, contradictions, and tensions. In the *shari'a* courts, as we have seen in this paper, complex individual and situational disparities emerge. These indicate that social change is continuous, notwithstanding great variations in pace and degree (Moore 1978).

To summarize, what we see in Gaza is a combination of complex elements that needs to be carefully unpacked in order to understand the dynamics of HoO. There are norms to be recognized, individual agency of judges and litigants, and finally, historical contingency related to the 1948 tragedy, the *nakba*. All these elements intertwine to produce the particular social reality in which the *shari'a* courts of Gaza operate.

NOTES

1. *Bayt al-ta'a* is the house to which a wife is legally ordered to move when her husband wins a case of obedience against her in the *shari'a* court.

2. In the scholarship on Islamic law, one finds many (and often contradictory) definitions of *fiqh* and *shari'a*. For example, Powers (1992, 318) points out that *shari'a* "represents God's plan for the proper ordering of all human activities" and "the narrative reports (*ahadith*, sing., *hadith*) that embody the model behavior (*sunna*) of the Prophet and his Companions." Given that these two sources "proved inadequate to the needs of a dynamic and changing society, [the] remainder of the *shari'a* was discovered by the jurists, who derived from the Qur'an and the *hadith* the solutions to new problems, challenges, and issues." In this sense, Powers includes *fiqh* in his definition of *shari'a*. Another contrasting view is held by Mir-Hosseini (2007) who confines the *shari'a* to the Revelation of God and the sayings of Prophet Muhammad. On the basis of reviews of Kamali (1989, 216) and Abou El Fadl (2001, 32–5), she argues that "the *shari'a* is the 'the way.' Muslim belief is the totality of God's will as revealed to the Prophet Muhammad. *Fiqh*, jurisprudence, literally 'understanding,' is the process of human endeavor to discern and extract

legal rules from the sacred sources of Islam: that is, the Qur'an and the Sunna (the practice of the Prophet, as contained in *hadith*, Traditions). In other words, while the *shari'a* is sacred, eternal and universal, *fiqh* is human and—like any other system of jurisprudence—mundane, temporal and local” (Mir-Hosseini 2007, 85). This is in conformity with Dupret’s distinction between *shari'a* and *fiqh*; he makes it clear that “*shari'a* is understood as Islamic law as revealed by God (in the *Qur'an* or Koran) through His Prophet Muhammad (*Sunna* or Prophetic Tradition), whereas *fiqh* is the knowledge of this Law and the body of jurisprudence that originates in it” (Dupret 2007, 89).

This paper does not engage in these debates, but endorses Mir-Hosseini’s view because it allows challenge to the often gender-biased interpretation of medieval jurists.

3. Literally, the “selected person.” In contemporary Palestine one must distinguish between *makhahir* designated according to the principle of locality and those designated on the basis of descent. The former act within a given quarter (*hayy*) on behalf of the *shari'a* court and the civil authorities, mainly to certify that potential marriage partners are not related in a forbidden degree or to help the court mediate between spouses involved in a lawsuit or administrative procedure. The latter, not recognized by the authorities, are designated by their kin to mediate in conflicts within and between wider patrilineal descent groups (*hamayil*, sing. *hamula*; see Rothenberg 1998–99).

4. Between 1996 and 1998, the Palestinian women’s movement took the lead in campaigning for family law reform. This triggered various reactions from different political and social groups, which led to intense discussion of family law to the point that it was defined as the first major social debate in Palestinian history. The religious establishment was effectively engaged in the debate but not as a monolithic bloc; some of its members realized the need to remedy certain gender-based injustices of family law, while others viewed the women’s movement initiative in a negative light. In Shehada (2005), I explored in detail the differences between the ideological stances held by the various actors involved in the debate on reforming family law and the more practical views held by the judges of the *shari'a* courts.

5. To preserve the privacy of my informants, I have used pseudonyms.

6. For example, when an agreement on *mukhala'a* (mutually agreed divorce) is decided between the couple, the role of the court is just to render such out-of-court agreement, legal.

7. Litigants may initiate suits to achieve goals that are only indirectly linked to the ostensible object of the court procedure. Mir-Hosseini (1993) and Shehada (2005) show, for example, that women’s claims in the *shari'a* court often reflect a dual motivation: while the manifest meaning is formal, juridical, and tailored to match the legal rules, there is a deeper, hidden motivation determined by individual circumstances.

8. Examples of such legal acts are the pleas of wives for *tafriq* (repudiation by judicial divorce) due to strife and discord (*niza' wa shiqaq*).

9. In some familial conflicts, wives approach the court to force their husband to pay them their “unpaid” prompt dower. But that is only to put pressure on the

husband to get other, perhaps non-financial demands. They often drop the case later without receiving their dower.

10. Mubarak (2004) examines in detail the “misogynistic” reading of Sura IV:34 by the classical Muslim exegetes.

11. Al-Razi writes, “*nushuz* could be words or action... [it is] an action, for example, if she used to rise when he would enter, or would rush to his command, or would pleasantly proceed to his bed if he touched her [intimately], and then she [suddenly] changed from that. These would be signs that indicate her *nushuz* and disobedience” (cited in Mubarak 2004, 273).

12. Mubarak (2004, 272) points out that even when later commentators such as al-Razi or Ibn Kathir “tried to regulate or restrict the practice of ‘wife beating’ by inserting prophetic traditions that opposed it, they never challenged the paradigm of male supremacy that gave men the prerogative to discipline their wives.”

13. As summarized by Samara (1987, 121); also in Abu Zahra 1957 and Musa 1958.

14. This view is also endorsed by Article 169 of the Book of Personal Status Rulings (see note 15 below) which states that the professional woman who remains outside her home during the day in spite of having been forbidden to do so by her husband (*‘asathu*), but remains with her husband at night, receives no *nafaqa* as long as she continues to go out.

15. It is worth noting here that *shari‘a* courts in the Gaza Strip rely on two legal references for the application of family law: *Qanun huquq al-‘a‘ila* (Law of Family Rights) of 1954, issued by the Egyptian Governor-General of the Gaza Strip by Order Number 303 (Special Official Gazette, May 22, 1965); and *Kitab al-ahkam al-shar‘iyya fi al-ahwal al-shakhsiyya ‘ala madhhab al-imam Abu Hanifa* (Book of Personal Status Rulings according to the School of Imam Abu Hanifa), compiled by Muhammad Qadri Pasha (1875). The BPSR, compiled during Ottoman times, is still widely used in the West Bank as well as in Gaza (Welchman 2000). In Syrian *shari‘a* courts, where I conducted fieldwork in summer 2008, judges often refer to the BPSR when Syrian family law does not provide an adequate answer. For the texts of the BPSR and the LFR, see Dahduh, Muhanna, and Sisalim 1996, 2–107 and 108–22 respectively.

16. In 1967, the Egyptian Ministry of Justice issued a decree not to force a woman to *ta‘a* (Rispler-Chaim 1992).

17. Interview with lawyer Khalid al-Tayyib in Gaza City *shari‘a* court, August 2002.

18. The refugees were distributed among eight camps along the boundaries of the Gaza Strip. In 1948, there was only one *shari‘a* court in the Gaza Strip. In 1949, a new court was established in Khan Younis to serve the population in south Gaza (interview with Judge Muhammad Juda, February 2002).

19. Interview with Abu Khalid at Gaza City *shari‘a* court, July 2002.

20. The case was observed in the *shari‘a* court of Gaza City in February 2003. I was not present at its conclusion because my fieldwork ended before then.

21. *Maharim* is the plural of *mahram*, a person whose degree of consanguinity precludes a marriage relation.

22. Interview with Judge al-Karmi at Gaza City *shari'a* court, September 2002.
23. Interview with Khalid al-Tayyib at Gaza City *shari'a* court, August 2002.
24. A *tafriq* suit can be filed if the man does not pay the *nafaqa*.
25. Space constraints do not allow a detailed description of the case here.

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