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Shī'ī Legal Discourses in Iraq and Lebanon: Exploring the Intersection of Juristic Rulings and State Legal Regimes

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Shī'ī Legal Discourses in Iraq and Lebanon: Exploring the Intersection of Juristic Rulings and State Legal Regimes

M. MEHDI ALI*

I.	INTRODUCTION	250
II.	BETWEEN ACTIVISM AND QUIETISM	253
III.	IRAQ.....	255
	A. <i>Legal and Juristic Background of Iraq</i>	255
	B. <i>Mut'a in Iraq: Legislation</i>	257
	C. <i>Mut'a in Iraq: Juristic Rulings</i>	260
	D. <i>Ayatollah Sistani's Rulings Regarding Marriage</i>	262
	1. Marriage Formula	262
	2. Financial Maintenance.....	264
	3. Inheritance	265
	4. Temporary Marriages with Non-Muslims	266

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	5. Chastity.....	269
IV. LEBANON.....		272
	A. <i>Legal and Juristic Background of Lebanon</i>	272
	B. <i>Mut'a in Lebanon: Legislation</i>	273
	C. <i>Mut'a in Lebanon: Juristic Rulings</i>	274
	D. <i>Ayatollah Fadlallah's Rulings on Temporary Marriage</i>	275
	1. Marriage Formula.....	275
	2. Financial Maintenance and Inheritance....	277
	3. Temporary Marriages with Non-Muslims	278
	4. Chastity.....	279
V. CONCLUSION.....		280

I. INTRODUCTION

It has been reported that two months before the 2003 Iraq War commenced, President George W. Bush did not understand the distinction between the Sunni and Shi'ī sects of Islam.¹ Paul Bremer, the top civilian administrator in Iraq shortly after the invasion,² did not initially grasp the revered position held by Ayatollah Sistani—effectively the most powerful person in the country.³ This was even the case after Sistani issued a religious decree requiring that Iraq's constitution could only be drafted by representatives picked through a general election.⁴ Reflecting on this roadblock to Bremer's plans, who had handpicked the Iraqi Governing

1. Diane E. Dees, *Sunnis and Shiites and Muslims, oh my!*, MOTHER JONES (Aug. 4, 2006), <https://www.motherjones.com/politics/2006/08/sunnis-and-shiites-and-muslims-oh-my/>. Upon learning about the distinction in the context of Iraq, he reportedly exclaimed, "I thought the Iraqis were Muslims!" *Id.*

2. As the head of the Coalition Provisional Authority, Bremer had the authority to rule by decree. Among his notable decrees (and his first two orders of business) were the banning of the Ba'ath party and disbanding of the Iraqi Army. Coalition Provisional Authority Order No. 1: De-Ba'athification of Iraqi Society of 2003 (Iraq), https://www.govinfo.library.unt.edu/cpa-iraq/regulations/20030516_CPAORD_1_De-Ba_athification_of_Iraqi_Society_.pdf [hereinafter Iraq Authority Order 1]; Coalition Provisional Authority Order Number 2: Dissolution of Entities (Aug. 23, 2003), https://www.govinfo.library.unt.edu/cpa-iraq/regulations/20030823_CPAORD_2_Dissolution_of_Entities_with_Annex_A.pdf.

3. Rajiv Chandrasekaran, *IMPERIAL LIFE IN THE EMERALD CITY* 90–91 (2006). Condoleezza Rice, the former U.S. Secretary of State, for whom I worked as a research assistant in connection with her 2011 autobiography, *No Higher Honor*, told me during one of our discussions that Ayatollah Sistani was often viewed as a mystery to the Bush administration.

4. Chandrasekaran, *supra* note 3, at 93. He is also "credited with insisting on the incorporation of Islamic law into the Constitution." Intisar A. Rabb, *'We the Jurists': Islamic Constitutionalism in Iraq*, 10 U. PA. J. CONST. L. 527 (2008).

Council for purposes of drafting a constitution, one former Bremer aide reflected on the U.S.'s severe lack of understanding of Iraq's political and religious dynamics. "The view was, 'We'll just get someone to write another fatwa.'"⁵ The distinctive character of Shī'ī legal theory, which relies heavily on the transnational and transregional power of clerical authority (i.e., the institution of the *marja'īya*),⁶ can be difficult to understand in the modern world.⁷ The *marāje'* are a small group of Shī'ī jurists whose rulings are considered religiously binding for observant Shī'a. The exceptionally hierarchical nature of their power, which often seemingly operates coterminously with, if not outside of, the bounds of the state, provides scholars of law and statehood a unique opportunity to examine the evolution of a pre-modern tradition within a contemporary context.

In this Article, I will explore the interaction between Shī'ī jurists and the state in Iraq and Lebanon, two countries with majority-Shī'ī populations. The dynamic and sometimes fraught relationship between Shī'ī jurists and the state has important implications for legal and political institutions in the broader Middle East. Despite the fact that both Iraq and Lebanon have democratic institutions, jurists wield enormous power in domestic governance and international policy. Legislators often seek their perspectives and blessings before promulgating major decisions, or as a means of bolstering their own political support.

For all their power, however, jurists are not educated in statecraft. The religious credentials required to become a *marja'* consist largely of a traditional training in classical jurisprudence. Iran, a Shī'ī-majority country where the clergy maintains political power, is a notable exception, and will not be a subject of my analysis. There are two reasons for this: (1) the political dynamics of the country have created a unique relationship between Shī'ī law and the state that is not found in other places,

5. Chandrasekaran, *supra* note 3, at 91. The shift in the understanding of Sistani's important role in Iraq among U.S. policymakers is evidenced by former U.S. Secretary of State Mike Pompeo's tweet regarding Sistani's surgery: "My prayers are extended along with the millions of Iraqis to whom he is a source of guidance and inspiration. May God grant him a speedy recovery and long life." Mike Pompeo (@SecPompeo), TWITTER (Jan. 16, 2020, 5:55 PM), <https://www.twitter.com/SecPompeo/status/1217988702133280768>.

6. The literal translation of this word is "source" or "reference." In the context of Shī'ī law, the term *marja'* is used to refer to a source of religious authority (i.e., a learned scholar) who is followed by others.

7. In the Iranian context, the fatwa of one ayatollah forced the collapse of the British cigarette industry overnight. Reese Erlich, *Iran is Losing its Jihad on Tobacco*, FOREIGN POLICY (Jan. 29, 2018), <https://www.foreignpolicy.com/2018/01/29/iran-is-losing-its-jihad-on-tobacco/>. In the Iraqi context, the 1920 Revolution in the country was inspired in part by the encouragement of ayatollahs. For example, Ayatollah Shirazi issued an edict declaring that "none but Muslims have any right to rule over Muslims." Lawrence E. Cline, *The Prospects of the Shia Insurgency Movement in Iraq*, 20 J. CONFLICT STUD. 2 (2000).

and thus any comparison would yield limited insights; (2) there is already a rich body of secondary scholarship on the Iranian religio-legal system, whereas the scholarship on Shī'ī legal authority elsewhere is more limited.

In order to frame my analysis, I will examine the *fatāwa*, or religious edicts, of *marāje'* pertaining to the institution of *mut'a*, usually translated as “temporary marriage” in the West.⁸ By focusing on a widely (religiously) accepted and highly controversial feature of Shī'ī jurisprudence, and locating and analyzing legal rulings against the backdrop of relevant moral, political, and legal discourses and developments taking place across two Shī'ī-majority countries, I hope to demonstrate the complex relationship between classically-trained jurists and contemporary geopolitical developments. In particular, this Article will examine the work of (1) Ayatollah Sistani of Iraq, an erudite scholar with a prolific scholarly output who commands tens of millions of followers and retains enormous religious and political capital, and (2) Ayatollah Fadlallah of Lebanon, a key figure and innovative thinker in the country's spiritual and political life until his death in 2010. My intervention here will be to compare and contrast the delicate balance kept by these jurists in managing multiple competing priorities, including abiding by their religious beliefs, appeasing their political constituencies, and navigating pressures from the state. It is my hope that my analysis of their *fatāwā*, along with my explanation of the political, social, and legal forces driving changes in Shī'ī law and legal theory, will enhance the field's understanding of Shī'ism and law in the Middle East.

In Part II, I will provide a brief overview of the institution of the *marja'īa* and situate it within the context of contemporary geopolitics. In Part III and Part IV, I will examine the legal and juristic background of Iraq and Lebanon respectively. This will include (1) an overview of jurists' involvement with the countries' legal systems since the 20th century, (2) details regarding legislation pertaining to family law, and (3) juristic rulings relating to temporary marriage. My analysis in Part III and Part IV will be based on a review of both Arabic legislative materials and legal manuals (i.e., collections of religious edicts, or *fatāwa*).

8. Although the term *mut'a* is colloquially used in English to refer to temporary marriage, the phrase *Zawj al-mu' aqqat*, which is found in Arabic fiqh discourses, more accurately describes the concept of temporary marriage. As for *mut'a*, for which the correct Arabic technical term is *nikāh al-mut'a*, a more accurate English rendering is “pleasure marriage.” In Persian and Urdu, it is referred to as *sīgheh* and *sīghah* respectively.

II. BETWEEN ACTIVISM AND QUIETISM

In the modern age, the Shī'ī legal tradition has veered in dramatic fashion between political quietism and activism, almost always in direct response to contemporary geopolitical developments.⁹ The ambiguous role of the mujtahid in political matters is a matter of doctrinal debate and contention within Shī'ī circles. Ayatollah Khomeini envisioned the role of a mujtahid as akin to a philosopher-king. In Lebanon, clerics have been active participants in the political system since the 1970s. In Iraq, clerics stayed away from politics completely during the Saddam era. The Najaf school has become a potent force in national and regional politics in recent years, although it has traditionally and self-consciously cultivated an image of aloofness from politics.¹⁰ Recent scholarship has convincingly challenged the notion that Iraqi clerics continue to remain quietist, a belief harbored especially by many believers outside of Iraq. This scholarship instead argues that Shī'ī clerical authority is a highly complex institution for which there are “multiple claimants and potentially centers of power.”¹¹

These “centers of power” refer to a handful of clerics that govern many aspects of the lives of hundreds of millions of people. Under Shī'ī legal theory, a believer is required to follow a marja' al-taqlīd,¹² a status only achieved by a select few legal scholars (often referred to as

9. In his article on Shī'ī clerical authority, Robert Gleave provides an excellent summary of the dominant religio-political trends among 20th and 21st century ulema in Iraq, ranging from activism (including marāje' involved in anti-communist and anti-ba'th activities) to quietism (a hallmark of the hawza in the two decades before Saddam Hussein's downfall). Robert Gleave, *Conceptions of Authority in Iraqi Shi'ism: Baqir al-Hakim, Ha'iri and Sistani on Ijtihad, Taqlid and Marja'iyya*, 20 THEORY CULTURE & SOC'Y 2 (2007).

10. For example, in 2003, the Los Angeles Times asked Sistani several questions, the exchange for one of which I have translated here:

Q: Do you believe that the honorable hawza needs to have a bigger role in Iraqi political life, and especially under the current circumstances?

A: The primary role of the hawza is education, guidance, and religious cultivation, but that does not prohibit religious authorities from expressing their opinions regarding important junctures in people's lives, like the preparation of a permanent constitution for the country.

Press Release, As-ila sahfā Los Angeles Times (Oct. 27, 2003) <https://www.sistani.org/arabic/archive/236/>.

11. Sajjad Rizvi, *The Making of a Marja': Sīstānī and Shi'i Religious Authority in the Contemporary Age*, 6 SOCIO. OF ISLAM 168 (2018). Rizvi further argues that the institution of the marja'iya has adapted such that it has not been at all marginalized. Rizvi focuses on Ayatollah Sistani, noting that he has been successful due to the efficiency of his organization, his excellent transnational network, and the multiple financial sources that allow the institution to thrive.

12. Gleave, *supra* note 9, at 70.

ayatollahs or marājeʿ), or to become a mujtahid¹³ oneself (highly impractical for the majority of the population). This widely agreed upon requirement within the Shīʿī belief system means that marājeʿ wield immense authority over the day-to-day lives of believers, ranging in matters from the method of prayer to the conduct of business. Such power can be contentious at times, especially when it interferes with the power of the state to govern its citizens,¹⁴ and also extends beyond the confines of a mujtahid's country of residence.¹⁵ It is quite common, for example, for Shīʿī communities in Pakistan, India, and the West to closely follow the legal rulings issued by jurists in Najaf and Qom.¹⁶

The importance of Najaf as a center of Shīʿī legal authority cannot be overstated.¹⁷ The city grew in prominence because it is the burial site of the first Shīʿī Imam, and virtually all prominent Shīʿī clerics of the modern age have sought training there, including Ayatollah Khomeini.¹⁸

13. Literally, one who is qualified to perform ijtihād. The term has taken on a technical meaning within the Shīʿī context so that only a person who has completed certain training and is recognized by others to have achieved a certain level of knowledge, can claim to be a mujtahid.

14. Under Saddam Hussein, the Shīʿī ulema were repressed to an extreme level in order to ensure loyalty to the Iraqī state. But even under the leadership of former Prime Minister Nouri al-Maliki, a Shīʿī, there was conflict. See Ali Mamouri, *Ayatollah Sistani for Nobel Peace Prize?*, AL-MONITOR (Mar. 25, 2014), <https://www.al-monitor.com/originals/2014/03/sistani-campaign-nobel-peace-prize.html> (reporting the Prime Minister's "rejection of what he called the 'interference of some foreign religious references. . . Despite our respect for them, this is unacceptable'"). See also, e.g., the fact that the Shīʿī community resisted paying state-mandated zakāt in Pakistan, a decision that spawned the creation of a violent Sunni organization that carried out dozens of attacks on the Shīʿā in the following decades. Syed Shoab Hasan, *Divided we fall*, DAWN (Nov. 2, 2012), <https://www.dawn.com/news/760952/divided-we-fall>.

15. Linda Darwish, *Texts of Tension, Spaces of Empowerment: Migrant Muslims and the Limits of Shi'ite Legal Discourse* (2009) (Ph.D. thesis, Concordia University), <https://www.spectrum.library.concordia.ca/976418/1/NR63456.pdf>. Linda Darwish's Ph.D. dissertation details modern print and online fatāwa geared toward Western audiences.

16. Linda Darwish concludes that significant tensions exist between Western Shīʿī communities, who are increasingly assimilating into Western culture, and the marājeʿ, whose rulings aim to compel followers to replicate non-Western environments. *Id.* Liyakat Takim argues that fatāwa issued by Shīʿī religious scholars based in Iraq and Iran intended for Western Muslims "are casuistic in nature and do not represent a full-fledged legal system." Liyakat Takim, *Marja'iyya and the Juristic Challenges of the Diaspora 2* AUSTL. J. ISLAMIC STUD. 40 (2017). He also notes that these collections tend to differ from traditional collections of edicts, which do not focus on the types of issues found in fiqh al-aqāl'iyya manuals (e.g., inter-gender handshaking, which Takim discusses extensively). Based on the nature of these collections, Takim argues that Shīʿī religious authorities are unaware of, and disconnected from, the issues facing Western Muslims.

17. The influence of Najaf is starting to be understood even outside of Shīʿī circles. In March of 2021, Pope Francis visited Ayatollah Sistani in Najaf. Jason Horowitz & Jane Arraf, *Pope Francis Meets Iraq's Top Ayatollah as Both Urge Peace*, N.Y. TIMES (Mar. 6, 2021), <https://www.nytimes.com/2021/03/06/world/europe/pope-francis-iraq-ayatollah-sistani.html>.

18. See generally Ali Mamouri, *Students at Qom seminary are leaving for Najaf*, AL-MONITOR (Oct. 10, 2018), <https://www.al-monitor.com/originals/2018/10/iran-qom-howza-iraq-najaf-ali-khomeini.html> (noting that "Ayatollah Khomeini lived in Najaf for nearly 15 years, where

This includes Ayatollah Sistani, a native Iranian who resettled in Najaf in the 1950s,¹⁹ and commands the following of the vast majority of the world's Shī'ā, especially those residing outside of Iran.²⁰ In Lebanon, Ayatollah Fadlallah, often called the “spiritual leader”²¹ of Hezbollah, commanded a large following prior to his passing in 2010, and his rulings continue to be followed by many today.²²

III. IRAQ

A. Legal and Juristic Background of Iraq

The history of juristic involvement in Iraq has undergone tremendous change over the past century. The 1920 Iraqi Revolution, which was inspired in part by clerical encouragement,²³ was crushed in horrific fashion by the British government.²⁴ After staying out of mainstream politics for approximately 20-30 years, the ulema once again reemerged as a political force in the 1950s, in large part as a response to communism, which was capturing large segments of the population (including many from

he focused on religious and political activities, taught and wrote religious books, and led the Islamic revolution in Iran”).

19. Abbas Kadhīm, *Forging a third way: Sistani's marja'iyya between quietism and wilāyat al-faqīh*, in IRAQ, DEMOCRACY AND THE FUTURE OF THE MUSLIM WORLD 66, 67 (Ali Paya & John L. Esposito eds., 2010).

20. See generally *id.* at 67–68 (describing Sistani's prominence in Najaf, Iraq).

21. Nada Husseinī, *Hezbollah's spiritual leader in critical condition*, CNN (July 2, 2010), <http://www.cnn.com/2010/WORLD/meast/07/02/lebanon.grand.ayatollah/index.html>; Lee Smith, *Iran and Hezbollah's Spiritual Leader*, THE WALL STREET JOURNAL (July 7, 2010), <https://www.wsj.com/articles/SB10001424052748704862404575350951440367406>.

22. Talib Aziz, *Fadlallah and the Remaking of the Marja'iyā*, in THE MOST LEARNED OF THE SHI'Ā: THE INSTITUTION OF THE MARJ'Ā TAQLID 208 (Linda S. Walbridge ed. 2001) (Despite his popularity, Fadlallah was never unanimously accepted among senior Shī'ī clerics as a marja' al-taqlīd.).

23. Amal Vinogradov, *The 1920 Revolt in Iraq Reconsidered*, 3 INT'L J. MIDDLE EAST STUDIES 135–36 (1972) (Ayatollah Muhammad Taqī Shirāzī issued a fatwa stating that “None but Moslems have any right to rule over Moslems.”).

24. Marek Pruszcwicz, *The 1920s British air bombing campaign in Iraq*, BBC NEWS (Oct. 7, 2014), <https://www.bbc.com/news/magazine-29441383>. After the revolution, the British were wary of any Shiite leadership emerging as a threat to British rule. So afraid were the British of the influence of the ulema that Gertrude Bell, a British colonial administrator, once wrote that “final authority must be in the hands of the Sunnis, in spite of their numerical inferiority; otherwise you will have a mujtahid-run, theocratic state, which is the very devil.” ABBAS KADHIM, RECLAIMING IRAQ: THE 1920 REVOLUTION AND THE FOUNDING OF THE MODERN STATE 149 (2012). As a result, “between 1918 and 1957, the number of students in the Najaf *hawza* fell from 6000 to less than 2000.” Rodger Shanahan, *Shi'a Political Development in Iraq: The Case of the Islamic Da'wa Party*, 25 THIRD WORLD QUARTERLY 944 (2004). Thus, the period between 1920-1950 was one of marked political quietism from the religious leadership in Iraq.

clerical families) and was viewed as an existential threat to Islam.²⁵ When the Communist Party acquired prominence in 1958, one well-known cleric embarrassed the administration by issuing a fatwa associating communism with atheism, and forbidding people from joining the Communist Party.²⁶ Political activity witnessed a marked increase until the early 1980s, although always conducted clandestinely, and often resulting in brutal force being applied against activists.²⁷ In the two decades before the U.S. invasion, the hawza, or Shī'ī seminary, turned to quietism in order to mitigate abuse by the Ba'ath regime.²⁸ In the last 18 years, however, Shī'ī religious authorities have been highly involved with shaping the political culture and makeup of the country. Although Sistani has no official political designation, he periodically issues fatwas expressing his viewpoints, including crucial fatwas in 2003,²⁹ 2009,³⁰ 2013,³¹ 2014,³²

25. Keiko Sakai, *Modernity and Tradition in the Islamic Movements in Iraq: Continuity and Discontinuity in the Role of the Ulama*, 23 ARAB STUDIES QUARTERLY 38 (2001). See also, *Iqtisādunā and Falsafatunā* by Muhammad Baqir al-Sadr, monumental treatises on Islamic economics and Islamic philosophy by a major Shī'ī scholar that engage extensively in polemical discourse against the rising threat of Communism.

26. T.M. Aziz, *The Role of Muhammad Baqir al-Sadr in Shii Political Activism in Iraq from 1958 to 1980*, 25 INT'L J. MIDDLE EAST STUDIES 209 (1993).

27. *Id.* at 218 (Muhammad Baqir al-Sadr, for example, a mujtahid of immense promise, was executed by Saddam Hussein along with his sister).

28. Kadhim, *supra* note 19, at 73 (Kadhim argues that the quietism that did arise in the hawza is not intrinsic to the institution of the marja'īya, but rather was a result of the hawza's effort to ensure its own survival. Kadhim claims that the fatāwa being issued by Ayatollah Sistani after the U.S. Invasion of Iraq served a dual function as both religious edicts as well as political messages, and provides evidence that such fatāwa were being read by the American occupation forces. More broadly, Kadhim argues that Ayatollah Sistani's expert handling of various political crises in the post-2003 era has made him much more than the quietist that he is assumed to be).

29. Press Release, Response Regarding the Preparation for the Writing of the Iraqi Constitution, *Istiftā' hawla Mashrū' Kitābat al-Dastūr al-Iraqi* (Jun. 21, 2003), <https://www.sistani.org/arabic/archive/273/> (Sistani issued a religious decree disagreeing with the plan to have Iraq's constitution drafted by an unelected governing council selected by Americans).

30. Press Release, Ahmad al-Safi, Status of Current Situation in Iraq, *Bayān Maktab Sāmihat al-Sayyid (Dām Zillahu) Hawla Intikhābāt Majālis al-Muhafizāt* (Jan. 18, 2009), <https://www.sistani.org/arabic/statement/1509/> (Sistani issued a statement encouraging citizens to vote).

31. Ali Mamouri, *Sistani Issues Fatwa Against Sectarian Violence in Iraq*, AL-MONITOR (Oct. 11, 2013), <https://www.al-monitor.com/originals/2013/10/iraqi-moderates-manage-sectarianism.html>.

32. Press Release, Sheikh Abdul Mahdi al-Karbalai, Second Sermon from the Holy Shrine of al-Husayni al-Sharif, *Mā Warada fī Khutbat al-Jum'a li-Mumathil al-Marja' al-Dīnīa al-'ilyā fī Karbala' al-Muqaddisa al-Shaykh 'Abd al-Mahdī al-Karbala'ī* (Jun. 13, 2014), <https://www.sistani.org/arabic/archive/24918/> (In 2014, in response to ISIS's rise to power in Iraq, Sistani's representative in Karbala delivered the following message in a Friday prayer sermon: "Citizens who are able to carry weapons and fight terrorists in defense of their country, people, and their holy places, it is [obligatory] on them to volunteer to join the security forces."). Farnaz Fassihi, Ali A. Nabhan, and Tamer El-Ghobashy, *Thousands Heed Call to Arms in Iraq*, WALL STREET JOURNAL (Jun. 13, 2014), <https://www.wsj.com/articles/iraqs-shiite-leaders-issue-call-to-arms-1402665085> (Sistani's

2018,³³ and 2021³⁴ that have dramatically impacted political developments.

B. *Mut'a in Iraq: Legislation*

As a matter of civil law, discussions regarding *mut'a* are usually subsumed within a wider discussion regarding Shī'ī family law. The Iraqi Personal Status Law of 1959 governs family law in Iraq,³⁵ a product of the communist mood sweeping the country at the time.³⁶ Among other things, the promulgation of the law in 1959 meant that civil courts “re-place[d] the Sunni and Ja'afari³⁷ Sharia law courts.”³⁸ Notably, *mut'a* marriage is not contemplated in the legislation, although Saddam Hussein

statement at the time heightened fears about the possibility of further sectarian bloodshed, although this did not ultimately transpire. According to one contemporaneous news report, “Ayatollah Sistani’s call was quickly answered by thousands of gun-toting men, who emerged in Baghdad, Basra and other Iraqi cities to declare their readiness to join a holy war. TV images showed young men lining up behind pickup trucks and outside of military bases.”)

33. Press Release, Statement from the Office of His Eminence Al-Sayyid, *Bayān Maktab Sāmīhat al-Sayyid (Dām Zillahu) Hawla al-Intikhābāt al-Nīyābiya* (May 4, 2018), <https://www.sistani.org/arabic/statement/26025/> (Sistani’s office released a statement prior to the 2018 parliamentary elections confirming that he still believes holding elections is the best way forward for Iraq. “Today, after the passing of fifteen years from that date [i.e., since the date he first called for free and fair elections in Iraq after the fall of the Saddam regime], the marja’ [i.e., Sistani] continues to believe that his opinion was the correct one (in principle) – considered the correct choice and appropriate until the present for the country and its future, and that it [i.e., free and fair elections] is necessary to act as a bulwark against the occurrence of the perils of tyrannical rule and an authoritarian system under any pretext or title.”).

34. Press Release, Al-Sistani, *Bayān Sādir min Maktab Sāmīhat (Dām Zillahu) Hawla al-Liqa’ih bi al-Habr al-a’zam Bābā al-Fātikān*, (Mar. 6, 2021), <https://www.sistani.org/english/archive/26509/> (After a historic meeting between the Pope and Sistani in Najaf, Sistani’s office issued a press release summarizing the meeting, in which Sistani reiterated the important role played by religious figures in protecting minorities. He emphasized his interest in Christian citizens living like all Iraqis in security and peace and with full constitutional rights. He pointed to the role that religious authorities must perform in protecting them and others who suffered oppression and harm in the events of the past years, especially during the period in which terrorists seized vast swathes of territory in several Iraqi provinces, and they practiced criminal acts there.)

35. The Act to Amend the Amended Law (188) of the Year 1959; Personal Status Law, in Iraq Kurdistan Region Act No. 15 of 2008, http://www.ekrg.org/files/pdf/personal_status_law.pdf [hereinafter Iraq Act No. 15] (The Kurdish parliament has amended the Personal Status Law, and thus is not subject to the text of the original legislation). The original amendment is in Kurdish. The quotation is taken from an English-language translation provided as a link to the website of the Kurdish Regional Government’s Representation in the United States.

36. Raghad Kasim, *The Personal Status Law and Political Tensions in Iraq*, 1001 IRAQI THOUGHTS (Feb. 14, 2019), <https://www.1001iraqithoughts.com/2019/02/14/the-personal-status-law-and-political-tensions-in-iraq/>.

37. This is a term used to describe legal positions from a Shī'ī perspective. It is analogous to the use of the terms Hanafī, Shāfi'ī, Mālikī and Hanbalī.

38. Kasim, *supra* note 36, at 2.

banned the practice.³⁹ Religious ceremonies are not considered legally sufficient to demonstrate marriage.

The Personal Status Law has faced numerous legislative challenges to its authority over the years but has managed to survive. In 2003, the Iraqi Governing Council issued “Decision Number 137,” which was designed to supersede the Personal Status Law in favor of Islamic rules that would govern family law.⁴⁰ Paul Bremer, a U.S. official appointed to oversee the Iraqi Governing Council, vetoed the law.⁴¹

In 2014, the Iraqi Council of Ministers approved the Ja’afari Law, a set of personal status laws designed to apply to Iraq’s Shi‘ī citizens,⁴²

39. See *Women’s Groups Blast “Temporary Marriages”*, THE NEW HUMANITARIAN (Jan. 23, 2006), <https://www.thenewhumanitarian.org/report/26074/iraq-women%E2%80%99s-groups-blast-%E2%80%9Ctemporary%E2%80%9D-marriages>. Many secondary sources mention that mut’a was banned under Saddam Hussein, although I was unable to find any primary source materials (e.g., legislation or court cases) confirming that the ban was formally promulgated.

40. See *Ārā’ ukhra hawla Ta’dilāt Aānun al-Ahwāl al-Shakhsīya*, AL-BADĪL AL-‘IRAQĪ, <https://www.web.archive.org/web/20190403062103/http://albadeeliraq.com:80/ar/node/775>.

41. Coalition Provisional Authority Order No. 1: De-Ba’thification of Iraqi Society of 2003 (Iraq), https://www.govinfo.library.unt.edu/cpa-iraq/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf [hereinafter Iraq Authority Order 1] (Paul Bremer was appointed to oversee the formation of a democratic Iraq, with the idea being that he would usher the country into a new era where laws were based on Western constitutional principles. Ironically, Bremer held the power to refuse approval of decisions made by the Iraqi Governing Council). NOAH FELDMAN, WHAT WE OWE IRAQ: WAR AND ETHICS OF NATION BUILDING 111 (2004) (“Regulations and Orders issued by the Administrator shall take precedence over all other laws and publications to the extent such other laws and publications are inconsistent.” He did exactly this with Decision Number 137).

42. The draft legislation sparked widespread outrage, both within Iraq and among the international human rights community. For a spirited essay opposing the legislation, see, e.g., a widely read article by Safia Al Souhail, a former Member of Parliament in Iraq’s Council of Representatives. Safia Al Souhail (trans. Yomna Sarhan), *Iraq’s New Personal Status Ja’fari Law is Sectarian I*, WILSON CENTER (Mar. 11, 2014), <https://www.wilsoncenter.org/article/iraqis-new-personal-status-jafari-law-sectarian>. For an example of concern by the international community, see, e.g., a report written by Human Rights Watch. *Iraq: Don’t Legalize Marriage for 9-Year-Olds*, HUMAN RIGHTS WATCH (Mar. 11, 2014), <https://www.hrw.org/news/2014/03/11/iraq-dont-legalize-marriage-9-year-olds>. Even certain members of the religious establishment did not support the proposed legislation. NPR quotes Ayatollah Jawad al-Khalisi as saying the following in an interview: “There are matters which were mentioned in that law that are really unnecessary for contemporary generations . . . They pertain to old jurisprudence, so they shouldn’t be brought up now and pushed on people.” *Iraq Debates Law That Would Allow Men To Marry 9-Year-Old Girls*, NPR (May 13, 2014), <https://www.npr.org/sections/parallels/2014/05/13/312160466/iraq-debates-law-that-would-allow-men-to-marry-9-year-old-girls>. Sistani is also reported to have “objected over possible violations of minority and human rights.” Mamouri, *supra* note 14. This proposed legislation does not appear to be publicly available. Haider Ala Hamoudi, a former advisor to the Constitutional Review Committee of the Iraqi Legislature, cites to the 2013 draft of the Ja’afari Personal Status Code in a law review article by noting that it is “on file with author.” He also notes that “copies of the draft Code were widely disseminated throughout Iraq in the early part of 2014” and provides a link to a copy that was available on the internet. However, it appears that this link is no longer active since the author last accessed it on May 5, 2016. Haider Ala Hamoudi, *Resurrecting*

including Article 63, which permitted temporary marriage.⁴³ The Iraqi parliament considered the law, although the law ultimately did not pass through a final vote.⁴⁴ In 2017, the Proposed Law to Amend the Personal Status Law,⁴⁵ which would have imposed requirements similar to the 2014 initiative,⁴⁶ was “ratified in principle”⁴⁷ by the Iraqi parliament in October, but was subsequently rejected in December.⁴⁸

As can be seen, there has been a concerted political effort to promulgate Shī'ī family law, including the tenets of temporary marriage, in Iraq. Despite its illegality, the practice appears to take place unabated.⁴⁹ Several media outlets and human rights organizations have reported on the increasing prevalence of the practice, which appears to be driven in

Islam or Cementing Social Hierarchy?: Reexamining the Codification of “Islamic” Personal Status Law, 33 ARIZ. J. INT'L & COMPAR. L. 338 (2016).

43. Haifa Zangana, *Ja'fari law takes the Iraqi government's violation of women's rights to a new level*, THE GUARDIAN (Mar. 14, 2014), <https://www.theguardian.com/commentis-free/2014/mar/14/jafari-law-iraqi-violation-women-rights-marital-rape>.

44. Kasim, *supra* note 36, at 3.

45. Qānūn Ta'dīl Aānūn al-Ahwāl al-Shakhsīyya Raqam 188 li-Sana 1959, ARCHIVE OF THE WEBSITE OF THE IRAQI PARLIAMENT OF THE THIRD ELECTORAL CYCLE 2014-2018 (Sept. 14, 2017), <https://www.arb.parliament.iq/archive/2017/09/14/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AA%D8%B9%D8%AF%D9%8A%D9%84-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%A3%D8%AD%D9%88%D8%A7%D9%84-%D8%A7%D9%84%D8%B4%D8%AE%D8%B5%D9%8A%D8%A9-%D8%B1%D9%82%D9%85-18/> (The text of the proposal is available on an archived section of the website of the Iraqi parliament).

46. *Iraq: Parliament Rejects Marriage for 8-Year-Old Girls*, HUMAN RIGHTS WATCH (Dec. 17, 2017), <https://www.hrw.org/news/2017/12/17/iraq-parliament-rejects-marriage-8-year-old-girls> (“The proposed amendments instead would require the secular courts to apply religious law on marriage, divorce, and inheritance. The amendments also recommend – but do not require – establishing specialized Personal Status Courts, headed by religious judges, to adjudicate family law issues.”).

47. Kasim, *supra* note 36.

48. *Id.*; HUMAN RIGHTS WATCH, *supra* note 46. Note that I did not find evidence of such consideration and rejection on the Iraqi Parliament's website. The only reference to this matter is a publication listing a planned agenda for October 30, 2017. The same publication notes that the session did not take place. *Jūdūl A' māl al-Jalsa Raqam (29) al-Ithnayn 30 Tashrīn al-Awwal 2017*, WEBSITE OF THE IRAQI PARLIAMENT (Oct. 30, 2017), [https://www.ar.parliament.iq/2017/10/30/%d8%ac%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d8%af%d9%88%d9%84-%d8%a7%d8%b9%d9%85%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d8%a7%d9%84-%d8%a7%d9%84%d8%ac%d9%84%d8%b3%d9%80%d9%80%d9%80](https://www.ar.parliament.iq/2017/10/30/%d8%ac%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d8%af%d9%88%d9%84-%d8%a7%d8%b9%d9%85%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d9%80%d8%a7%d9%84-%d8%a7%d9%84%d8%ac%d9%84%d8%b3%d9%80%d9%80%d9%80)

49. *Women's Groups Blast “Temporary” Marriages*, THE NEW HUMANITARIAN (Jan. 23, 2006), <https://www.thenewhumanitarian.org/report/26074/iraq-women%E2%80%99s-groups-blast-%E2%80%9Ctemporary%E2%80%9D-marriages> [hereinafter *Women's Group*] (reporting that, according to one NGO, “more than 300 temporary marriages occur daily in Kerbala, Najaf and Basra, Iraq's three main Shi'ite cities”).

part by the economic and human toll of the 2003 invasion, which has left many without adequate financial means.⁵⁰

C. *Mut'ā in Iraq: Juristic Rulings*

As mentioned earlier in this Article, Ayatollah Sistani, despite his lack of an official political position, is the most powerful man in Iraq.⁵¹ His rulings tend to be followed widely and, as a religious matter, are binding on individual believers.⁵²

Sistani's rulings on *mut'ā* are particularly fascinating when understood in the context of the foregoing historical and political developments. If one were to examine his *fatāwa* collections without any knowledge of broader political debates and historical developments in Iraq, it would be impossible to know that temporary marriage is such a contested issue. This is surprising, given that, with respect to other matters, Sistani has used his platform as a religious leader to encourage important changes in Iraqi society. In doing so, he has often engaged with the Iraqi state, whether to promote its policies or to express his disagreement. For example, when Iraq held its first elections, Sistani issued a *fatwa* encouraging women to participate in the democratic election process.⁵³ This was hailed by some Western pundits as a transformative

50. *Id.*

51. Gleave, *supra* note 9, at 64.

52. *Id.* at 67.

53. I was unable to locate the original press release on Sistani's website. Charles Kurzman cited to the original text in an article titled "Pro-U.S. Fatwas", but that link is no longer active. Instead, a PDF copy of the Arabic *fatwa*, along with an English translation, can be found on the website of Sistani's London office. *The Reply by Grand Ayatullah Sayyid Ali Al-Hussaini Al-Seestani in Response to an Inquiry Made by a Group of Iraqi People Regarding the Preparation of the Next Iraqi Constitution*, LIAISON OFFICE OF GRAND AYATULLAH AL-SAYYID AL-SEESTANI, IMAM ALI FOUNDATION LONDON, (Jun. 26 2003), http://www.najaf.org/english/?&art_id=41 [hereinafter *Reply by Grand Ayatullah*] (noting that "there must be a general election so that every Iraqi citizen – *who is eligible to vote* – can choose someone to represent him" [emphasis mine]). Juan Cole, an expert on Shi'ism, says that Sistani's language "is quite distinctly drawn from the Enlightenment, from Rousseau and from Jefferson." Babak Dehghanpisesh, *What Sistani Wants*, NEWSWEEK (Feb. 13, 2005), <https://www.newsweek.com/what-sistani-wants-122691> (noting that Sistani demonstrates a remarkable understanding of world politics in many of his legal rulings). Press Release, Office of Sayyid Sistani, Los Angeles Times Question 1, (Jul. 2, 2003), <https://www.sistani.org/arabic/archive/237/> [hereinafter Press Release, Los Angeles Times Question] (noting in one of the press releases on his website, where he answers questions posed by the Los Angeles Times, Sistani argues against having the constitution drafted by individuals picked by the United States by pointing to the experience of East Timor, where the constitution was drafted by a council under the supervision of the United Nations). Press Release, Office of Sayyid Sistani, A Message to Egyptian President Mohamed Hosni Mubarak After His Statements About Shiite Loyalty, (Mar. 30, 2006), <https://www.sistani.org/arabic/statement/1495/> [hereinafter Press Release, Message to Mubarak] (noting Sistani's knowledge of contemporary events, Sistani's website includes a letter to Hosni Mubarak, who had claimed that Shi'a are not loyal to their countries).

moment.⁵⁴ It is my view that such an intervention was indeed transformative, although not because of what it indicated about his views on gender and power. I argue that this moment was important because it showed that Sistani was willing to use his platform, as a religious leader, to engage with the state on certain matters, even if such matters were outside the traditional purview of Shī'ī ulema. But as this Article will demonstrate, Sistani's willingness to engage with the rules and institutions of the state is subject to certain limitations. In particular, with respect to temporary marriage, Sistani is reluctant to acknowledge that the state does or should play any role in its regulation.

This is particularly fascinating because, in a response to a question about the requirement for Western Muslims to follow the laws of a non-Muslim country, Sistani has stated that a person must abide by the laws of the country in which he lives.⁵⁵ The only exception is where such laws are "contrary to the sacred laws of Islam."⁵⁶ Engaging with the state when it comes to marital law, especially on matters such as registration requirements, is certainly not a violation of sacred law.

Thus, one of the central arguments of this paper is that Sistani's relationship with, and modus operandi with regard to, Iraq's political system is complex. What drives Sistani's insistence on disregarding the state in marital law matters as opposed to other matters? At least part of the answer lies in the importance he assigns to marriage in helping individuals fulfill religious obligations and avoid prohibited actions. In a 2015 letter responding to a group of college students and social activists (written in English), Sistani advises them "to start a family by getting married and procreating without any delay."⁵⁷ Among other things, marriage is "a defense against forbidden and lowly deeds."⁵⁸ Granted, this is not particularly surprising, given that he is a traditional Muslim jurist, but this perspective is important to understand because it sheds insight into why Sistani may not care too much about burdening individuals with state

54. See, e.g., *Najaf: Top Shiite Cleric Inspires Many to Vote*, N.Y. TIMES (Jan. 30, 2005), <https://www.nytimes.com/2005/01/30/international/middleeast/najaf-top-shiite-cleric-inspires-many-to-vote.html> ("If election day belonged to anyone, that person was Grand Ayatollah Ali al-Sistani.").

55. Al-Sayyid Ali Al-Husseini Al-Sistani, *A CODE OF PRACTICE FOR MUSLIMS IN THE WEST* (Najim al-Khafaji, BA ed., Sayyid Mohammad Rizvi trans., Imam Ali Foundation 1999), <https://www.sistani.org/english/book/46/2051/>.

56. Al-Sayyid Alī al-Husaynī al-Sīstānī, *AL-FIQH LIL-MUGHṬARIBĪN* 33, <https://www.sistani.org/files/lib,11.pdf>.

57. Press Release, Office of Sayyid Sistani, Advice from His Eminence, Sayyid Ali al-Sistani (May the Almighty Prolong His Life) to the Believing Youth (Jan. 8, 2016), <https://www.sistani.org/english/archive/25240/> [hereinafter Press Release, al-Sistani Advice to Youth].

58. *Id.*

registration requirements and laws. In this same letter, Sistani appears particularly concerned about the chastity of women, warning that “women are more affected by the consequences of neglecting [chastity] due to their delicateness.”⁵⁹ He further warns against “casual relationships whose enjoyment ends quickly.”⁶⁰ Neither of these statements is surprising, coming from a Muslim jurist. What is interesting, however, is that *mut‘a* has been criticized precisely for these reasons. In other words, critics often charge that *mut‘a* is a cover for casual relationships. Although this may be empirically true, the important point here is that Sistani is not proactive about noting that *mut‘a* should not be used for these purposes. When forced to address the issue of temporary marriage because of embarrassing media reports, however, Sistani does offer some clarification, although he does not retract his stance.⁶¹

In the pages that follow, I have examined a subset of the *mut‘a*-related *fatāwa* available in Sistani’s books and website.⁶² The discourse found in his writings shows that Sistani writes as if he is operating in a legal vacuum. That is to say, there is virtually no acknowledgment of state requirements. This can be explained partly due to the genre of the writings themselves. But I argue that it is indicative of a broader trend in Sistani’s legal thought, whereby he is very deliberate in engaging with the state in only certain matters, and ignoring them in others. While my case study pertains to temporary marriage, the findings can be applied to his rulings more generally, and thus tells us something about how he conceptualizes his role as a religious leader vis-a-vis the state.

D. Sistani’s Rulings Regarding Marriage

1. Marriage Formula

Within the Shī‘ī tradition, it is standard for collections of *fatāwa* to include a discussion on the mechanics of a marital contract. Perhaps the most infamous feature of contracts for temporary marriage is the requirement of mentioning the length of the marriage. Sistani explains “if he [the husband] does not mention it intentionally, or out of forgetfulness,

59. *Id.*

60. *Id.*

61. Press Release, Office of Sayyid Sistani, Questions from BBC About Some Inappropriate Practices, and the Responses to Them (Sept. 26, 2019), <https://www.sistani.org/english/archive/26348/> [hereinafter Press Release, Response to Questions from BBC] (noting Sistani has provided only limited qualifications to his stance, and those too possibly driven by his view that preserving the reputation of Islam is an important factor when conducting one’s matters).

62. Many other general *fatāwa* related to marriage, which refer to both permanent and temporary marriage, have not been analyzed.

negligence, shyness, or otherwise, the temporary marriage is invalid.”⁶³ Interestingly, Sistani does not care to engage with the criticisms of having a set term in either his legal rulings or his other public-facing statements. Even when he is responding to a critical question from the media, Sistani is very clear that temporary marriage is permitted within the Shī'ī tradition.⁶⁴

The discussion regarding the mechanics of the marital contract includes the exact words that must be stated by each party in order to finalize a marriage.⁶⁵ There are differences of opinion on whether the words must be stated in Arabic,⁶⁶ but the process is not particularly lengthy or difficult. In fact, a marriage is considered sanctioned from a religious perspective even if a cleric is not present.⁶⁷

The entire procedure is markedly different from what is necessary in Iraq to obtain a marriage certificate, which requires parties to appear in front of a judge to submit an application for marriage, conduct a medical examination, and then return to the court with two witnesses.⁶⁸ Nowhere in Sistani's website, including books available in PDF format, does one find a reference to the civil requirements of a country for conducting marriage.

There is a large body of secondary literature that examines the problems faced by Muslims simultaneously navigating civil and religious laws of marriage and divorce.⁶⁹ This problem is particularly acute in the

63. Al-Sayyid 'Alī al-Husaynī al-Sīstānī, *MINHĀJ AL-SĀLIHĪN - AL-JUZ AL-THĀLĪTH (AL-TAB'Ā AL-MUSAHHĪHA WA AL-MANQAHA 1442 H)*, 81 (Fatwa 243) (2021), <https://www.sistani.org/files-new/book-pdf/arabic-menhaj-3-1439.pdf>.

64. Press Release, Response to Questions from BBC, *supra* note 61.

65. Al-Sīstānī, *Al-Juz al-Thālīth*, *supra* note 63, at 78 (Fatwa 231).

66. *Id.* at 77 (Fatwa 229) (stating this is not necessary).

67. Al-Sīstānī, *AL-FIQH LIL-MUGHṬARIBĪN*, *supra* note 56, at 33.

68. *Marriage in Iraq*, U.S. EMBASSY & CONSULATES IN IRAQ, <https://www.iq.usembassy.gov/u-s-citizen-services/marriage-in-iraq/>.

69. See, e.g., Molouk Berry, *Divorce in an Islamic American Context: Muslim Lebanese-American Women Navigating Religious and Civil Legal Systems*, 8 J. OF WOMEN OF THE MIDDLE EAST AND THE ISLAMIC WORLD 1 (2010) (arguing that American Muslims may need to move toward supplementing the traditional marital contract with an addendum, which would stipulate that women have the right to divorce; the article also suggests a new reading of “custom” to take into account the American legal system, and thereby adopt some of the assumptions embedded therein into Islamic divorce jurisprudence); Mahmoud Jaraba, *The Prac. of Khul' in Ger. Pragmatism Versus Conservativism*, 26 ISLAMIC L. & SOC'Y 1-2 (2019) (noting that for couples in Germany who are religiously married but have not civilly registered their marriage, the state remains largely uninvolved with any breakdown in the marriage); Bustami Khir, *The Right of Women to No-Fault Divorce in Islam and Its Application by British Muslims*, 17 ISLAM & CHRISTIAN-MUSLIM RELATIONS 295 (2006) (noting the problem of “limping marriages” in British contexts (wherein a civil divorce may exist, but no Islamic divorce), and documents alternative legal mechanisms sought by British Muslims, including “the recognition of a separate system of personal law for Muslims” and “various methods of alternative dispute resolution to regulate their marriages and

West, where individuals who have not registered their marriages with the state are often able to skirt their civil responsibilities, or alternatively, keep their partner in a state of legal limbo.⁷⁰ In response to this, both European courts, and even some Islamic bodies, are working to address the issue with ad-hoc solutions.⁷¹ However, to this author's knowledge, no such effort is in the pipeline from Sistani or other Shī'ī jurists, for whom a simple marriage formula is enough to validate a marriage.⁷²

2. Financial Maintenance

Another important ruling that intersects closely with the requirements of Iraqi civil law is regarding financial maintenance. From the perspective of Shī'ī jurists, one of the main benefits of a temporary marriage, as opposed to a non-regulated casual relationship, is that a woman is accorded the status of a wife,⁷³ and any children born of the relationship are considered legitimate offspring.⁷⁴ Yet, the status of the woman as a wife, and the status of the children as legitimate, is differentiated from those in a permanent marriage, and are also very different from the corresponding

divorces in conformity with Islamic law"; the article also highlights the work of the Islamic Sharia Council in Great Britain, an Islamic body which deals with thousands of matrimonial disputes and offers no-fault divorces to women); Zahra Ayubi, *Negotiating Justice: American Muslim Women Navigating Islamic Divorce and Civil Law*, 30 J. FOR ISLAMIC STUD. 78 (2010) (suggesting that in the American Muslim context, an alternative framework needs to be developed to address the tensions between civil and religious divorces); Esther Eijk, *Khul' Divorce in the Netherlands: Dutch Muslim Women Seeking Religious Divorce*, 26 ISLAMIC L. & SOC'Y 36 (2019) (examining a European court's attempt to interpret matters of Islamic law and its use of novel legal reasoning that enabled a Muslim woman to achieve an Islamic divorce); Rafidah Cusairi, *Procedure of Issuing Religious Divorce and Resolving Matrimonial Disputes at Sharī'ah Councils in the UK*, 21 ARAB L. Q. 1 (2018) (providing an in-depth look at the Islamic law tribunal system of the Islamic Sharia Council in East London, United Kingdom); Mohammad Fadel, *Political Liberalism, Islamic Family Law, and Family Law Pluralism, in MARRIAGE AND DIVORCE IN A MULTICULTURAL CONTEXT* 164 (Joel A. Nichols ed., 2012) (examining the controversy of Islamic family law tribunals in Western countries, and making a philosophical argument for "a liberal family law" for Muslims as opposed to giving "power directly to religious bodies in the administration of family law"); but see Rozaliya Garipova, *Married or not Married? On the Obligatory Registration of Muslim Marriages in Nineteenth-Century Russia*, 24 ISLAMIC L. & SOC'Y 112-13 (2017) (arguing that state registration of marital acts, including divorce, "came to be seen as acts against shari'a").

70. See, e.g., Jaraba, *supra* note 69; Khir, *supra* note 69.

71. See, e.g., Khir, *supra* note 69; Cusairi, *supra* note 69.

72. Based on anecdotal evidence, there are many clerics in the American Shī'ī community who require a civil marriage certificate in order to facilitate a religious marriage ceremony. Note, however, that a marriage can be completed by two individuals without the presence of a cleric.

73. Muhammad Jawad Mughniyya, AL-FIQH 'ALA MADHĀHIB AL-KHAMSA 366 (1979) ("The Shī'a state: The revocation of temporary marriage has not been established. It was legally permissible and it will continue to be legally permissible until the Day of Judgment.").

74. *Id.* ("The child of a temporary marriage is a legally recognized child. It has all of the rights that legally recognized children have, without exception of any legal or moral rights.").

status under Iraqi civil law. With regard to temporary marriage, Sistani states:

Financial maintenance for the temporary wife is not obligatory upon her husband. If she becomes pregnant from him, she is not entitled to it [i.e., financial maintenance] from her husband except if she made that a condition of the contract of the temporary marriage or it is required pursuant to another contract.⁷⁵

This is radically different from Iraqi civil law, which provides that a wife is entitled to maintenance from her husband.⁷⁶ This is of course the ruling promulgated by Shī'ī jurists regarding permanent marriage as well. Iraq's Personal Status Law does not differentiate between maintenance for a woman who is pregnant and one who is not, although it does separately state that a father must provide for his child.⁷⁷ Again, this is the ruling for permanent marriages as well. The reluctance by Sistani to address the issue of maintenance of a temporary wife beyond the mahr amount is interesting because it further strengthens the charge by critics that mut'a is often used as a cover for illicit sexual transactions, which Sistani has been quick to say is a misuse of the institution.⁷⁸

Sistani further opines that the ignorance of a wife with respect to the lack of a maintenance obligation does not invalidate the marriage: "A temporary marriage contract is valid even if the wife is ignorant of the fact that she is not entitled to financial maintenance. . . and she does not obtain a right on her husband due to her ignorance."⁷⁹

This is a point that is understandably not covered by Iraqi civil law, since ignorance is rarely a defense under most legal codes. Ignorance in religious matters, however, can sometimes serve as a defense, or at least a mitigating factor. In the situation at hand, Sistani is presumably protecting against a scenario where a woman would plead ignorance, and thus try to invalidate a marriage. This could be especially problematic for a man where a child is involved, since a child of such a marriage (i.e., a marriage that is nullified) would not be considered legitimate.

3. Inheritance

The last matter we will examine that intersects closely with Iraqi civil law is inheritance. In his ruling on the subject, Sistani notes the

75. Al-Sīstānī, Al-Juz al-Thālith, *supra* note 63, at 84 (Fatwa 256).

76. Personal Status Law, al-Waqā'i' al-'Irāqīyah [Iraqi Official Gazette] No. 280 of Dec. 30, 1959.

77. *Id.* at Article 59.

78. Press Release, Response to Questions from BBC, *supra* note 61.

79. Al-Sīstānī, Al-Juz al-Thālith, *supra* note 63, at 84 (Fatwa 257).

following: "In a temporary marriage, inheritance between the spouses is not permitted, and if inheritance is a mutual condition or a condition of one of them, then the evidence of the condition of inheritance is not permitted."⁸⁰

In Iraqi civil law, on the other hand, the wife does have the right to inherit (although that is in contemplation of a permanent marriage).⁸¹ This is a conflict that is perhaps even more serious than that of financial maintenance, because the amounts in question are potentially much larger. That inheritance is not considered necessary by Sistani further demonstrates that he is quite committed to ensuring the survival of the institution of *mut'a* independent of state requirements.

One other interesting distinction here: financial maintenance can be a requirement if agreed to between the parties as a requirement of the contract.⁸² Inheritance, however, is invalid, even if pre-negotiated as an element of the contract.⁸³

The rulings discussed above are interesting because they provide a window into the tension between Iraqi civil laws and the laws of temporary marriage as conceptualized by Sistani. One might observe that Iraqi civil laws are based on the Islamic laws of permanent marriage, which might explain several important differences with the laws of temporary marriage under Sistani's system. As I have tried pointing out, however, the object of our analysis should be Sistani's reaction to such laws (or lack thereof), especially in the post-Saddam era, where he has played an outsized political role in the laws of the country. For whatever reason, Sistani is committed to ensuring that the laws of temporary marriage remain intact, and will not even entertain engagement with the state, even if it would be in the public interest or would further preserve the reputation of Islam (a concern of his expressed in multiple legal rulings). However, he is more than willing to change his views on classically held positions when necessary because of the challenges of political governance, including regarding laws relating to banking and democratic participation.

4. Temporary Marriages with Non-Muslims

One of the hallmarks of Sistani's activism in the post-Saddam period has been to increase inter-faith and intra-faith harmony. In the early days of the U.S. invasion, Sistani played a crucial role in preventing

80. *Id.* at 84 (Fatwa 255).

81. Personal Status Law, *supra* note 76, at Article 35.

82. Al-Sistānī, Al-Juz al-Thālīth, *supra* note 63, at 84 (Fatwa 256).

83. *Id.* at 84 (Fatwa 255).

retaliations against Sunnis for unchecked violence against the Shī'ā.⁸⁴ He is also known for brokering a ceasefire between the U.S. army and Moqtada al-Sadr during one particularly sensitive period of the war.⁸⁵ Over the years, he has consistently issued statements regarding the importance of protecting the rights of non-Muslim minorities, including countering the atrocities committed by ISIS.⁸⁶ And perhaps most famously, the Pope visited Sistani in Najaf in 2021, a remarkable display of Sistani's reach in the broader world.⁸⁷

Yet for all these overtures, it is not clear that interfaith marriage is an institution that is thriving in Iraq,⁸⁸ despite being protected by the Personal Status Law. The cleavages between religions and communities have only sharpened in the post-Saddam era. Given the foregoing considerations, Sistani's rulings on temporary marriage with non-Muslims offers fascinating insight into his religious and political priorities. Sistani focuses on a few specific use cases that appear to be of marginal utility, although based on the attention given to them, provide the impression that they are of urgent concern to practitioners.

The first such case that we will examine here is the marriage of Muslim males with non-Muslim females (focusing specifically on Christians, Jews, and Zoroastrians). That Sistani even found it necessary to comment on this issue is an interesting choice, given that up to 98% of Iraq identifies as Muslim,⁸⁹ the Christian population has decreased by up to 90% since 2003,⁹⁰ and there are few Zoroastrians in the country, mostly concentrated in Kurdistan.⁹¹ Take, for example, the following legal ruling:

84. *Iraqi cleric al-Sistani issues call to curb violence*, CBC NEWS (July 21, 2006), <https://www.cbc.ca/news/world/iraqi-cleric-al-sistani-issues-call-to-curb-violence-1.600179>

85. Dexter Filkins, *Militants Leave Shrine as Cease-Fire Deal Appears to Hold*, N.Y. TIMES (Aug. 27, 2004), <https://www.nytimes.com/2004/08/27/international/middleeast/militants-leave-shrine-as-ceasefire-deal-appears-to.html>.

86. See, e.g., Press Release, *supra* note 34.

87. Jason Horowitz & Jane Arraf, *Pope Francis Meets Iraq's Top Ayatollah as Both Urge Peace*, N.Y. TIMES (Mar. 6, 2021), <https://www.nytimes.com/2021/03/06/world/europe/pope-francis-iraq-ayatollah-sistani.html>.

88. According to data published by Pew Research Center in 2013, only 13% of Iraqi Muslims would be very or somewhat comfortable with having their son marry a Christian. Only 4% would be very or somewhat comfortable with having their daughter marry a Christian. Chapter 6: Interfaith Relations in *The World's Muslims: Religion, Politics, and Society*, PEW RESEARCH CENTER (Apr. 20, 2013), <https://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-interfaith-relations/>.

89. *Iraq*, The World Factbook, CIA <https://www.cia.gov/the-world-factbook/countries/iraq/>.

90. *Id.*

91. Zoroastrianism appears to be gaining popularity in Kurdistan over the last few years, partly as a result of the disenchantment caused by the brutal policies of ISIS. One organization that promotes Zoroastrianism in Kurdistan reported that 15,000 people have registered with it. See Bru-neau & Omar, *Zoroastrians Make a Comeback in Northern Iraq, But Still Face Stigma*, REUTERS

“It is permitted for a Muslim male to marry a Jewish female or a Christian female, in a temporary marriage but out of obligatory precaution, it is preferable to avoid a marriage with a non-Muslim woman altogether.”⁹²

Note that, contrary to the positions of the major Sunni legal schools of Islam, most Shī'ī jurists do not permit Muslim males to marry Christian or Jewish females in a permanent marriage. It is standard, however, to permit such a union in the context of a temporary marriage, as Sistani does above.⁹³ Why this distinction? Although Sistani does not elaborate on the legal basis for his conclusion, it is interesting to note that, even though this is the classical position of the Shī'ī school, Sistani does not acknowledge the empirical reality that mut'a is often a front for casual relationships. Thus, it is particularly striking that he endorses marriage with non-Muslims only on a temporary basis, but not on a permanent basis. One is left to wonder whether his decision to adhere to the classical fiqh position is also driven by an embedded social goal (e.g., preserving the Islamic family unit in the context of a permanent marriage).

Elsewhere, Sistani states the following: “As for a non-believing Muslim woman who is not a *kitābiyya*, it is not permitted for a Muslim male to marry her at all, and out of obligatory precaution it is not even permitted with a Zoroastrian, even if only as a temporary marriage.”⁹⁴

Again, this is a curious choice for Sistani to opine on, given the fact that non-kitābis make up an even smaller percentage of Iraq's population.⁹⁵ One may object that outside of Iraq (i.e., especially in the West), the chances of interfaith mixing are higher, and this may explain Sistani's focus on interfaith temporary marriages.

From a substantive perspective, the ruling is not a surprise, as any classical fiqh manual will also prohibit marriage with a non-kitābi. In fact, even Iraq's Personal Status Law prohibits a Muslim man from marrying a non-kitābi.⁹⁶

Lastly, on this topic, the reader may be interested to read the following: “It is not permitted for a Muslim male married to a Muslim female,

(Sep. 30, 2020), <https://www.reuters.com/article/us-iraq-religion-zoroastrianism/zoroastrians-make-a-comeback-in-northern-iraq-but-still-face-stigma-idUSKBN26L336>.

92. Al-Sistānī, AL-FIQH LIL-MUGHTARIBIN, *supra* note 56.

93. *Id.*

94. *Id.*

95. *Interfaith Marriages Still a Rarity in the Muslim World*, DEUTSCHE WELLE, <https://www.dw.com/en/interfaith-marriages-still-a-rarity-in-the-muslim-world/a-50391076> (last visited Mar. 31, 2022).

96. Personal Status Law, *supra* note 76, at Articles 12–13, 17.

to marry a second woman from among the People of the Book, such as a Jew or a Christian, without the permission of his Muslim wife.”⁹⁷

The foregoing ruling regarding temporary marriage with non-Muslims when one is married to a Muslim woman is somewhat puzzling. Why is there a distinction regarding the requirement for permission when the additional temporary wife is a *kitābi*, whereas no such permission is required when the additional temporary wife is a Muslim? One plausible answer is that the ruling derives from a recognition that it may be easier to conduct a temporary marriage secretly when it is outside of one's own community. In order to make such a scenario more difficult, permission from a Muslim wife is required. This also strengthens the argument that Sistani is very concerned about the Islamic family unit within the context of a permanent marriage, as demonstrated by some of the other rulings discussed above. Another plausible answer is that, given the great care Sistani has taken to cultivate relationships with interfaith communities, he is likely interested in preserving the goodwill of members of those communities, and that too in secret. This would obviously be negatively impacted if Muslim men are conducting temporary marriages with members of those communities in secret. But neither of these answers is completely satisfactory. If the rulings are driven by social concerns, then why allow temporary marriage at all? This is something that requires further thought and consideration.

5. Chastity

As alluded to above, Sistani's concern with chastity is curious, and perhaps counter-intuitive, given his wholehearted acceptance of temporary marriage. While temporary marriage is a way to religiously sanction a short-term sexual relationship, one would think that its clear potential for abuse would cause jurists like Sistani some concern.

Sistani's discourse regarding chastity in the context of temporary marriage, however, indicates a concern with an entirely different set of issues. Instead of commenting on the potential of temporary marriages to impinge on such chastity, Sistani opines that the woman with whom one is contracting a marriage should be chaste (there is no commentary on the chastity of the man).⁹⁸

It is recommended that the one with whom a *mut'a* marriage is contracted is a chaste believer, and out of obligatory precaution one should ask about her state before marriage with her, regarding whether she has a

97. Al-Sistānī, *AL-FIQH LIL-MUGHTARIBIN*, *supra* note 56.

98. *Id.*

husband or is in a waiting period (if she is a person accused of this type of thing). As for after marriage, one should not ask; even if he knows something necessary to accuse her; but if he asks and a difference is apparent, he should act according to this ruling.⁹⁹

Based on the foregoing, one could argue that the purpose of this ruling is to prohibit women who are in the profession of selling sex from entering into temporary marriages. But if that is the case, it is a highly indirect method of achieving this objective. The Iraqi Personal Status Law, for example, does not entertain any discussion regarding the chastity of an individual.¹⁰⁰ This is of course possible because temporary marriage is banned altogether.

In another section, Sistani provides a ruling regarding temporary marriage with a woman known for adulterous behavior: “It is permitted to contract a temporary marriage with an adulterous woman. If she was famous for adultery, it is only permitted after she repents.”¹⁰¹

While he permits a marriage with such a woman (note that there is no discussion regarding a man known for adulterous behavior), this is only the case if she is remorseful for her past actions. Again, one could argue that Sistani is prohibiting certain types of individuals (i.e., prostitutes) from engaging in temporary marriage. If that is his intention, however, it is being carried out in a highly inefficient manner.

More broadly, whether or not achieving certain social goals is at the heart of Sistani’s decision-making process when it comes to the discourse on chastity, one is left to wonder about the efficacy and practicality of such technical legal discussions for a matter that has become one of urgent concern for the Iraqi public. As noted above, *mut‘a* is itself a controversial practice because it is a marital contract with a fixed period, which many have compared to legalized prostitution.¹⁰² Since the U.S. invasion, the practice has received significant media scrutiny, culminating in a bombshell 2019 investigative piece where journalists used a hidden camera to record Iraqi clerics offering to facilitate temporary marriages with underage girls.¹⁰³ The BBC team that conducted this investigation posed several questions to Sistani, whose office made his responses public and offers a fascinating insight into his worldview. In this statement, Sistani notes that temporary marriage “is allowed in the

99. Al-Sīstānī, Al-Juz al-Thālith, *supra* note 63.

100. See Personal Status Law, *supra* note 76.

101. Al-Sīstānī, Al-Juz al-Thālith, *supra* note 63, at 85 (Fatwa 261).

102. Press Release, Response to Questions from BBC, *supra* note 61.

103. Nawal Al-Maghafī, *In Iraq, Religious ‘Pleasure Marriages’ Are a Front for Child Prostitution*, GUARDIAN (Oct. 6, 2019), <https://www.theguardian.com/world/2019/oct/06/pleasure-marriages-iraq-baghdad-bbc-investigation-child-prostitution>.

Shia Imamiya school of thought,”¹⁰⁴ but says that it “cannot be used as a means for sex trade as stated, as that would disgrace the dignity of a woman and her humanity.”¹⁰⁵ He goes on to further state:

[I]t is incumbent upon the relevant official authorities to take deterrent legal action against such disgraceful behaviour, wherever that may be. However, what is noticeable unfortunately is the weakness of the rule of law in this country, which has allowed some to carry out a range of illegitimate practices, until it reached the point of running brothels and promoting them.¹⁰⁶

In response to a question noting that prior versions of his fiqh rulings permitted temporary marriage with underage females, Sistani justified the recent removal by noting that:

until recently [underage marriage was] very common in many Eastern societies, and hence the book of religious rulings included some of its rules in its previous versions, but it was observed that it had receded at current times, and that was removed in the latest versions. What we wish to emphasise is that the parent of a girl cannot give permission for her marriage unless it is in her interest, and most often there is no interest in her marriage until she reaches physical maturity and mental preparedness for sexual activity, as it is also not in her interest to marry in contravention to law which would make her liable for unnecessary repercussions and problems.¹⁰⁷

Sistani's response here indicates a delicate balance between upholding a practice that is unequivocally accepted by Shī'ī jurists, and addressing drastic abuses taking place based on his religious rulings within a few miles of his residence. The fact that the rulings addressing underage marriage were removed from the books is interesting, if only because they do not prove anything other than the fact that Sistani does not believe it is necessary to publicize this aspect of the law.

What can we make of the seeming contradiction between, on the one hand, the efforts of Iraqi government officials, human rights advocates, and Islamist political parties, all of whom are engaging directly with the state, and on the other hand, the juristic legal rulings regarding temporary marriage? One response is to chalk up Sistani's rulings to the genre itself, which does not typically engage with local or geopolitical developments. That is a fair answer. But another answer, which is more compelling, is that this is a conscientious choice to hold onto tradition, without being

104. Press Release, Response to Questions from BBC, *supra* note 61.

105. *Id.*

106. *Id.*

107. *Id.*

subject to outside forces. Despite numerous pressures in Iraq, Sistani is able to hold his ground on this matter, and in fact, opines on matters as if he is operating in a vacuum. This is particularly strange when one considers that Sistani is very worldly (as are many top Shī'ī jurists),¹⁰⁸ and in fact, other parts of his writing demonstrate engagement with the state. He is often very proactive and not shy to deviate from his formerly quietist stance.

IV. LEBANON

A. Legal and Juristic Background of Lebanon

The involvement of religious figures in modern Lebanese politics began after the arrival of Ayatollah Musa al-Sadr from Qom.¹⁰⁹ He mobilized the Shī'ī community through a variety of initiatives, including establishing the Supreme Islamic Shia Council and founding Amal, an armed Lebanese group.¹¹⁰ Al-Sadr disappeared under mysterious circumstances en route to a meeting with Gaddafi in 1978,¹¹¹ but the momentum of Shī'ī mobilization did not stop there. With the onset of the civil war, Israel's invasion of 1978, the killing of Imam Musa al-Sadr, and the 1979 Iranian Revolution, Hezbollah was born.¹¹² The party was "loosely organized and largely clandestine" until the mid 1980s.¹¹³ Hezbollah started participating in parliamentary elections in 1992,¹¹⁴ and has since become

108. For example, Sistani references Will Durant and Alfred Hitchcock in his work. Al-Sayyid 'Alī al-Husaynī al-Sistānī, *supra* note 56, at 33 ("The world famous cinema director Alfred Hitchcock said: The Eastern woman is extremely attractive in and of herself, and this attraction gave her a lot of power. But by taking big steps to emulate her Western sister, the Eastern woman gradually abandoned her hijab, and her sexual attractiveness continued to decrease gradually.")

109. See generally FOUAD AJAM, *THE VANISHED IMAM: MUSA AL SADR AND THE SHIA OF LEBANON* 124 (Cornell Univ. Press 1986) (discussing Musa al-Sadr's emergence on the national scene).

110. Nawal Mustafa, *Amal and Harakat Al-Mahrumun: The Rise of Shi'a Social Movements in Lebanon* 2, 21 (May 6, 2008), <https://www.auislandora.wrlc.org/islandora/object/0708capstones%3A235/datastream/PDF/view>.

111. Rick Gladstone, *The Shah of Iran, the Islamic Revolution and the Mystery of the Missing Imam*, N.Y. TIMES (Jan. 14, 2016), https://www.nytimes.com/2016/01/15/world/middleeast/iran-shah-reza-pahlavi-shiite-cleric-moussa-al-sadr.html?_r=1.

112. CASEY L. ADDIS & CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., *HEZBOLLAH: BACKGROUND AND ISSUES FOR CONGRESS* 7 (2011), <https://www.fas.org/sgp/crs/mideast/R41446.pdf>.

113. *Id.* at 8.

114. A. Nizar Hamzeh, *Lebanon's Hizbullah: From Islamic Revolution to Parliamentary Accommodation*, 14 *THIRD WORLD Q.* 321, 324-25 (1993).

a dominant force in Lebanese politics, including its outsized role against Israel in the 2006 invasion.¹¹⁵

B. *Mut'ā in Lebanon: Legislation*

Marriage in Lebanon is governed by The Law of the Rights of the Family 1962.¹¹⁶ Under this system, “there are 15 separate personal status laws for the country’s different recognized religious communities.”¹¹⁷ One of these is Ja’fari law, which is applied to the Shi‘a, as a civil marriage does not exist in Lebanon.¹¹⁸ All marriages must be conducted by a religious authority.¹¹⁹ Marriages are required to be registered, although failure to do so does not invalidate a marriage.¹²⁰ In other words, there is no legislation regarding *mut'ā* in Lebanon; religious authorities have the authority to conduct marriages as they please.

The movement to regulate civil marriage gained steam in the 1990s, culminating with a proposal by then-President Elias Hrawi to permit “optional civil marriage.”¹²¹ This proposal was approved by the cabinet but ultimately rejected due to pressure from religious authorities.¹²² In 2011, another proposal was submitted to parliament, but this failed as well.¹²³

115. *FACTBOX: Costs of war and recovery in Lebanon and Israel*, REUTERS (July 9, 2007), <https://www.reuters.com/article/us-lebanon-war-cost/factbox-costs-of-war-and-recovery-in-lebanon-and-israel-idUSL0822571220070709>.

116. Law of 16 July 1962, art. 1 (Law Regulating the Sunni and Jaafari Sharia Judiciary) (Leb.) (“The Sunni and Ja’fari Sharia courts constitute part of the state’s judiciary organization”). See generally Max Weiss, *Practicing Sectarianism in Mandate Lebanon: Shi‘i Cemeteries, Religious Patrimony, and the Everyday Politics of Difference*, 43 J. SOC. HIST. 707, 710 (2010) (noting that Arrete N 3503 of January 17, 1926, accomplished the formal recognition of the Ja’fari *madhab* as ‘an independent *madhab*’ by decree of the French mandate authorities.”).

117. HUM. R. WATCH, UNEQUAL AND UNPROTECTED WOMEN’S RIGHTS UNDER LEBANESE PERSONAL STATUS LAWS 2 (2015), https://www.hrw.org/sites/default/files/reports/lebanon0115_ForUpload.pdf.

118. *Id.* at 20.

119. *Marriage*, U.S. EMBASSY IN LEBANON, <https://www.lb.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/marriage/> (last visited May 28, 2022).

120. CAROLINE STARKEY & EMMA TOMALIN, *THE ROUTLEDGE HANDBOOK OF RELIGION, GENDER, AND SOCIETY* 228 (2022) [hereinafter *THE ROUTLEDGE HANDBOOK*].

121. Sophie Chamas, *When Weddings Become Protests: The Debate Over Civil Marriage in Lebanon*, DESERET NEWS (Mar. 18, 2015), <https://www.deseret.com/2015/3/18/20560939/when-weddings-become-protests-the-debate-over-civil-marriage-in-lebanon#a-lebanese-activist-holds-a-placard-in-arabic-that-reads-i-want-to-get-married-again-a-civil-marriage-for-sure-as-he-marches-with-others-during-a-protest-demanding-a-law-that-guarantees-any-lebanese-citizen-the-right-to-a-civil-marriage-in-beirut-lebanon-sunday-march-1-2015-civil-marriage-is-banned-in-lebanon-and-only-religious-marriages-are-allowed-ap-photo-hussein-malla>.

122. *Id.*

123. *Id.*

In 2013, the state registered its first civil marriage,¹²⁴ followed by a handful of others; although this policy has now been reversed.¹²⁵

C. *Mut'ā in Lebanon: Juristic Rulings*

Given the fact that religious authorities in Lebanon have the power to regulate marriages as they see fit, juristic rulings on the matter do not face the same pressures as they do in Iraq. For the purposes of my analysis, I will examine the rulings of Ayatollah Fadlallah, a very important Shī'ī figure in Lebanon. Fadlallah was born and completed his religious education in Najaf, where he received training from Ayatollah Hakim and Ayatollah Khomei, among others.¹²⁶ He moved to Lebanon in 1966.¹²⁷ While he was not prominent during Musa al-Sadr's lifetime (and in fact was a critic of his work), Fadlallah established credibility through his involvement in building schools, hospitals, and social centers.¹²⁸ He eventually gained a wide religious following in Lebanon and the West, particularly because of his relatively liberal views regarding women.¹²⁹ There is some question about whether he achieved the unanimous approval which is customary in order to be considered a *marja'*.¹³⁰

Fadlallah died in 2010, but established Shī'ī doctrine holds that followers of a *marja'* can continue to follow him after his death, if they so choose.¹³¹ Fadlallah is also the first major *marja'* to die in the internet age, and so his office's publications since his death have been somewhat of a novelty and possibly an example for others, especially as many of the other major *marāje'* approach their eighties, nineties, and one

124. The first civil marriage was registered in 2013, but subsequent regulatory decisions have discontinued the practice. Jean Aziz, *Lebanon's First Civil Marriage a Sign of Change*, AL-MONITOR (Apr. 28, 2013), <https://www.al-monitor.com/originals/2013/04/lebanon-first-civil-marriage-political-change.html>.

125. Chamas, *supra* note 121.

126. *Life of Sayyed Fadlallah (ra)*, BAYYNAT (Sept. 9, 2011), http://www.english.bayynat.org.lb/Biography/Biography_stages_life.htm.

127. *Id.*

128. Talib Aziz, *Fadlallah and the Remaking of the Marja'iyā in THE MOST LEARNED OF THE SHI'Ā: THE INSTITUTION OF THE MARJ'Ā TAQLID 207* (Linda S. Walbridge ed., 2010).

129. He has gained particular infamy among some Shī'ī communities because of his controversial positions, including one permitting female masturbation. Al-Hukm al-Istimmā' – al-Āda al-Sarīa, BAYYNAT, <http://www.arabic.bayynat.org/HtmlSecondary.aspx?id=9718>.

130. Aziz, *supra* note 124, at 208.

131. Abbas Kadhim & Barbara Slavin, *After Sistani and Khamenei: Looming Successions Will Shape the Middle East*, ATLANTIC COUNCIL (July 2019), https://www.atlanticcouncil.org/wp-content/uploads/2019/07/After_Sistani_and_Khamenei-Looming_Successions_Will_Shape_the_Middle_East.pdf (Abbas Kadhim and Barbara Slavin wrote about the looming succession crisis in the Shī'ī clerical leadership.).

hundreds.¹³² For this reason, I have decided to analyze the rulings of Fadlallah, whose influence is still felt today in Lebanon. Although he has denied links to Hizbullah, Fadlallah was undoubtedly a crucial player in the makeup of the state, given his widespread following and his network of social services.¹³³ For this reason, his rulings on marital law also tell a broader story about the law and statehood in Lebanon.

In the rulings that follow, I will point out some of the key differences that Fadlallah has with Sistani. Some of these differences can be attributed to the environment and influences of each scholar. I argue, however, that their distinctive laws are also a product of alternative visions of the role that a major Shī'ī figure should play in the operation of a state. Sistani sees himself playing an important role, but he is deliberate about what debates he is willing to enter into. Fadlallah, on the other hand, was much more deliberate in working to bring Islamic laws into conformance with developments in the modern state. This is reflected in his discourse on temporary marriage.

D. Fadlallah's Rulings on Temporary Marriage

1. Marriage Formula

Fadlallah's rulings on the mechanics of the marriage formula differ from those of Sistani in a couple of interesting ways. Like Sistani, Fadlallah provides that stating the term of the marriage is a requirement.¹³⁴ Unlike Sistani, however, failure to state the term—whether “out of ignorance or forgetfulness, or intentionally”—does not invalidate the contract.¹³⁵ Instead, the marriage is deemed to be permanent.¹³⁶ It is difficult to say whether the two competing views on the validity of the contract speak to competing social goals. What is clear, however, is that Fadlallah's formulation solemnizes the marital relationship, whereas Sistani's formulation results in a non-legitimate relationship.

Interestingly, the ease with which each scholar facilitates a marital relationship is reversed when it comes to the actual marriage formula. In the case of Sistani, the marital formula can be recited in a language other than English, provided that the individual being married has a rough

132. *Id.*

133. *See id.*

134. AL-SAYYID MUHAMMAD HUSAYN FADLALLAH, AHKĀM AL-SHARĪ'A 499 (Fatwa 1449) <http://www.arabic.bayynat.org.lb/Client/%20Resources/Books/Files/ahkamshariaa.pdf>. Note that this edition of his rulings was published after his death.

135. *Id.*

136. *Id.*

understanding of what the Arabic language formula says.¹³⁷ For Fadlallah, on the other hand, the formula must be recited “in correct classical Arabic.”¹³⁸ Presumably, the consequences of a failure to do so would make such a contract invalid, although it is hard to imagine the validity of a marriage being questioned on this point, especially in an Arabic-speaking country.

More interestingly, under both Sistani’s and Fadlallah’s formulation, the contract can be verbal.¹³⁹ As noted above, under Lebanese law, the fact that a marriage is not registered has no impact on its validity.¹⁴⁰ In fact, Shī‘ī religious authorities are given broad latitude by the state to govern their religious matters as they see fit. With that being the case, it is not surprising that Fadlallah’s *fiqh* ruling does not engage with the matter of the state. What is interesting, however, is that in a 2007 press release, Fadlallah recommended that “the religious courts should register this marriage, because certain practices have produced negative results owing to the absence of any regulation.”¹⁴¹

I argue that this intervention by Fadlallah is monumental. Fadlallah’s advocacy of registering this marriage with the state is a stark contrast with Sistani, who has not made any comment of this nature despite numerous opportunities to do so. In fact, it is an even more striking position because, unlike Iraq, the failure to register a marriage in Lebanon does not invalidate the marriage.¹⁴² I interpret this statement by Fadlallah as indicative of a broader social goal. One interpretation is that Fadlallah wants to reduce the tendency to conduct these marriages in secret. I think that is certainly one plausible answer and is further supported by his statement that “any marriage based on exploitation, that is using the woman as a means, is invalid.”¹⁴³ However, I think that a more compelling perspective is that Fadlallah views his role as a religious leader to be quite expansive, and this includes close interaction with the state. This would make sense, given his extensive experience in coordinating with non-profit organizations that perform state-like activities in delivering aid to

137. Al-Sīstānī, Al-Juz al-Thālith, *supra* note 63, at 77 (Fatwa 229).

138. FADLALLAH, *supra* note 134 (Fatwa 1449).

139. See Al-Sayyid Ali al-Husayni al-Sistani, ISLAMIC LAWS (Mohammed Ali Ismail trans., Islamic Educ. Dep’t of The World Fed’n, 3d ed. 2017), <https://www.sistani.org/english/book/48/2329/> [hereinafter ISLAMIC LAWS 2387]; FADLOLLAH, ISLAMIC RULINGS: A GUIDE OF ISLAMIC PRACTICE 311, http://www.english.bayynat.org.lb/Books/Islamic_Rulings.pdf.

140. See THE ROUTLEDGE HANDBOOK, *supra* note 120, at 228.

141. Fadlallah calls for Registering the Muta’a marriage in the legal courts, BAYYNAT (July 5, 2007), http://www.english.bayynat.org/Archive_news/05072007.htm.

142. See THE ROUTLEDGE HANDBOOK, *supra* note 120, at 228.

143. *Id.*

needy families.¹⁴⁴ In this way, registering temporary marriages is also something that would be an important part of adding legitimacy to his own religious platform.

This recommendation by Fadlallah is also interesting because it counters the media narrative that religious leaders in Lebanon are promoting this practice in an effort to keep Hezbollah fighters happy. Several media articles over the past decade, for example, have pointed to the increasing prevalence of the practice, which purportedly serves as an added incentive to keep members engaged in resistance against Israel.¹⁴⁵ If the guidance from Fadlallah were to be followed, the process of the marriage would be more cumbersome.

In any case, whether or not imputing such an intention to Fadlallah is possible, it may be a fruitless endeavor. Given the stigma around temporary marriage and the social mores of the Middle East, it is doubtful that individuals would willingly register such a marriage. This is notwithstanding the fact that the practice appears to be gaining increasing acceptance among youth in religious communities.

2. Financial Maintenance and Inheritance

Under Shī'ī personal law in Lebanon, in a permanent marriage, a husband is required to pay financial maintenance for a wife for the duration of the marriage.¹⁴⁶ It should be pointed out, however, that there is no further obligation on the husband.¹⁴⁷ In other words, as Human Rights Watch has noted, Lebanon's laws (like those of most Islamic countries) do not "recognize a wife's . . . non-economic contributions to the marriage, including the value of her unpaid domestic labor, or the concept of marital property."¹⁴⁸

For temporary marriages, a wife has even less rights. Fadlallah's view is consistent with that of Sistani: "the temporary wife has no right

144. *Life of Sayyed Fadlallah(ra)*, *supra* note 126.

145. See, e.g., Hanin Ghaddar, *The Militarization of Sex: The Story of Hezbollah's Halal Hookups*, FOREIGN POL'Y (Nov. 25, 2009, 8:25 PM), <https://www.foreignpolicy.com/2009/11/25/the-militarization-of-sex/>.

146. FADLALLAH, *supra* note 134, at 319.

147. See *id.* At 318–20.

148. HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH SUBMISSION TO THE CEDAW COMMITTEE OF LEBANON'S PERIODIC REPORT 62ND SESSION (Feb. 2015), UN Treaty Body Database, https://www.tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LBN/INT_CEDAW_NGO_LBN_19385_E.pdf. [hereinafter HRW SUBMISSION TO CEDAW COMMITTEE]; For a more general discussion on the differences between classical Islamic law and modern liberal perspectives regarding gender equality in marriage, see M. Mehdi Ali, *Ijtihad Through the Lens of Critical Theory*, 15 RUTGERS J.L. & PUB. POL'Y 399 (2018), <https://www.rutgerspolicyjournal.org/sites/jlpp/files/Ali.pdf>.

of financial maintenance.”¹⁴⁹ However, similar to Sistani, Fadlallah requires financial maintenance of a wife if it is explicitly mentioned as a condition of the contract.¹⁵⁰ Nor does a temporary wife have the right to inheritance. Again, similar to Sistani, even “if inheritance is a condition, the condition is invalidated but the contract is valid.”¹⁵¹

Fadlallah’s stance makes more sense when considered in the context of a magazine article where his perspective is further elaborated:

The aim of temporary marriage is getting pleasure and not establishing a house and making a family. What should men in their twenties or thirties do with their sexual instincts if they do not have the chance of permanent marriage? How should we help these men? Should we recommend that they seek permanent marriage, knowing that the circumstances do not allow them to do so?¹⁵²

Given Fadlallah’s clear belief that temporary marriage is, in fact, purely a transactional interaction, and not something that is to be used in building an Islamic family unit, it is no surprise that financial maintenance and inheritance are not deemed necessary features of the marital contract. The one irony here, however, is that many younger Shī‘a do not understand that temporary marriage is designed to be purely a pleasure marriage. Anecdotal evidence across the Shī‘ī world, including in Lebanon, demonstrates that at least some individuals are using the institution as a prelude to permanent marriage.

3. Temporary Marriages with Non-Muslims

Lebanon differs markedly from Iraq in terms of religious diversity and pluralism. Over a dozen religious sects exist in the country.¹⁵³ Unfortunately, official statistics on the latest demographic makeup of the country are not available. All that being said, it is much more likely that inter-faith relationships would occur in Lebanon than in Iraq. Thus, on one level, Fadlallah’s opining on this matter makes more sense in the broader context of his country.

149. FADLALLAH, *supra* note 134 (Fatwa 1456).

150. *Id.*

151. *Id.*

152. Fatema Makki, *Temporary Marriage from A to Z*, BAYYNAT (Jan. 29, 2013), http://www.english.bayynat.org/FiqhLaws/Fiqh_TemporaryMarriage.htm. Note that this article was published after Fadlallah’s death on his official English-language website by an individual purporting to express views that are in accordance with Fadlallah’s jurisprudence.

153. Alexander D.M. Henley, *Religious Authority and Sectarianism in Lebanon*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Dec. 16, 2016), <https://www.carnegieendowment.org/2016/12/16/religious-authority-and-sectarianism-in-lebanon-pub-66487>.

With regard to non-Muslims, Fadlallah allows temporary marriage with Jews and Christians,¹⁵⁴ although he notes that “it is preferable to stay away from marrying a woman from the People of the Book . . . because it might impact the religious and spiritual stability of the family.”¹⁵⁵ Zoroastrians are also prohibited as a matter of obligatory precaution.¹⁵⁶ These views are also in line with those of Sistani.

Fadlallah’s broader rhetoric regarding the importance of temporary marriage in mitigating the rampant sexual desires of men on the one hand, and his role in promoting interfaith harmony on the other hand, are both difficult to reconcile with his perspective on the permissibility of temporary marriage with Jews and Christians. It is difficult to surmise whether some sort of social goal is being achieved here, or if Fadlallah is sticking purely to the classical positions. One thing is clear: in other areas of the law, Fadlallah has not been shy to deviate from accepted practices when necessary to promote the rights of women.

4. Chastity

Unlike Sistani, the section on temporary marriage in Fadlallah’s legal manual (in fact, even the section on permanent marriage) does not have a section discussing the importance of the chastity of a woman.

This makes sense given Fadlallah’s view discussed above, which amounts to an acceptance and recognition of the transactional nature of the institution of temporary marriage. It is perhaps also reflective of his broader stance on women, in which he tends to take positions which are considered more modern and practical.¹⁵⁷

Nor is there a discussion regarding marrying a woman who is famous for adultery. Interestingly, Fadlallah actually pushes the envelope when it comes to women’s sexual rights. For example, his view is that the husband is obligated to provide sex to his wife upon demand¹⁵⁸ – in other words, he has made mutual a right that is usually reserved just for men. He also has multiple sections of his website dedicated to justice in marital relations.

154. FADLALLAH, *supra* note 134, at 451 (Fatwa 1324). Fadlallah does not allow this if the person was formerly a Muslim (i.e., a *murtad* to Judaism or Christianity). *Id.*

155. *Id.* At 300.

156. *Id.*

157. See Al-Marji’ Fadl Allah, Press Release, Yajuz Al-Mara’ al-Difa’ ‘An Nafsiha Did ‘Anf al-Rajul, , BAYYNAT (Oct. 27, 2007) (Arabic), <http://www.arabic.bayynat.org.lb/NewsPage.aspx?id=17095> (issuing a fatwa against honor killings in 2007).

158. Haq al-Zawja ‘ala Zawjha, BAYYNAT (Arabic), <http://www.arabic.bayynat.org/HtmlSecondary.aspx?id=9819>.

V. CONCLUSION

This Article has explored the intersection of law and state through the lens of two prominent Shī'ī jurists in Iraq and Lebanon. In particular, I have tried to show the ways in which Shī'ī political culture in the Middle East is unique in its dependence on powerful religious personalities, even if certain countries are governed in principle by democratic institutions. The role of the jurist has been contested throughout Islamic history, but the conflict is ever more poignant in the contemporary Shī'ī world, where legal scholars can yield tremendous influence. Through an examination of religious edicts regarding temporary marriage, I have shown that, despite their outsized role in governance, neither scholar feels obliged to appease the state where there are other competing priorities, including compelling classical jurisprudential positions. In fact, in these cases, the jurists may ignore the requirements and laws of the state entirely, which in itself tells us something about how the jurists conceptualize their role within the state.

As more Iraqi governmental records become available, further research will need to be done. I often found it difficult to locate certain legislative materials due to missing documents on the website of the Iraqi parliament, including the decisions of the Iraqi Governing Council. The early days of the 2003 U.S. invasion yielded a treasure trove of legal developments which need to be further explored in conjunction with Sistani's religious edicts, a subset of which I have examined in this Article. In Lebanon, further research needs to be done on the continuing role that Fadlallah plays in the state, more than a decade after his death.

With all that being said, the future of Iraq and Lebanon is headed toward an extended limbo. As Sistani continues to age, there is no clear successor to his role. Nor has anyone emerged in Lebanon who matches Fadlallah's charisma. It will be interesting to see how the next generation of jurists impact the legal and political developments of the Shī'ī Middle East.