Out of Jahiliyya: Historic and Modern Incarnations of Polygamy in the Islamic World

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Whenever we have a disagreement, he often says to me, "Remember your place, I can always marry another, and then you'll know [the consequences]. You can agree or you can be without a husband — the choice is yours". What kind of a choice is this?¹

I. INTRODUCTION: WOMEN DURING JAHILIYYA

And stay quietly in
Your houses, and make not
A dazzling display, like
That of the former Times
Of Ignorance: and establish
Regular Prayer, and give
Regular Charity; and obey
Allah and His Messenger.
And Allah only wishes
To remove all abomination
From you, ye Members.²

Sūrah four of the Holy Qur'ān, entitled Al Nisā', "The Women," contains many of the revelations Allah imparted upon the Prophet Muhammad regarding the treatment of women, girls, and orphans, who also were quite frequently female.³ These standards of treatment departed significantly from those employed in the Arab world prior to the entrenchment of Islam,⁴ a time

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3. Id. at Sūrah 4.

4. See In Islamic Nations, the Veil Is Lifting, BOSTON GLOBE, Mar. 29, 1998, at A11. During Jahiliyya women were sold or stolen into slavery and female infanticide was common, sometimes carried out in such gruesome acts as burying girl babies alive. Id. The Qur'ān condemns these practices. See ‘ALI, supra note 2, at 16:57 n.2082 ("Some of the Pagan Arabs
that the Qur'an refers to as *Jahiliyya*, the "Times of Ignorance" or the "Days of Ignorance." In order to reverse the immoral practices of pagan Arabia, the Qur'an specifically condemns the practices of female infanticide, incest, marrying the former wives

called angels 'the daughters of Allah'. [sic] In their own life they hated to have daughters . . . . They practised [sic] female infanticide. In their state of perpetual war, sons were a source of strength to them; daughters only made them subject to humiliating raids!"

5. 'ALI, supra note 2, at 33:33 (translating *Jahiliyyah* as the "Times of Ignorance"); see CYRIL GLASSE, THE CONCISE ENCYCLOPEDIA OF ISLAM 204 (1989) (defining *Jahiliyyah* as "the time of ignorance or Arab paganism preceding the revelation of Islam, during which the society suffered from oppressive paganism, and general decadence").

6. 'ALI, supra note 2, at 5:50 (translating *Jahiliyyah* as "the Days of Ignorance"); *Id.* at n.763 ("The Days of Ignorance were the days of tribalism, feuds and selfish accentuation of differences in man. Those days are really not yet over. It is the mission of Islam to take us away from that false mental attitude, towards the true attitude of Unity. If our Faith is certain (and not merely a matter of words), Allah will guide us to that Unity.").

7. *Id.* at 16:57-59.
   When news is brought
   To one of them, of (the birth
   Of) a female (child), his face
   Darkens, and he is filled
   With inward grief!

   With shame does he hide
   Himself from his people,
   Because of the bad news
   He has had!
   Shall he retain it
   On (sufferance and) contempt,
   Or bury it in the dust?
   Ah! what an evil (choice)
   They decide on?
   To those who believe not
   In the Hereafter, applies
   The similitude of evil:
   To Allah applies the highest
   Similitude: for He is
   The Exalted in Power,
   Full of Wisdom.

   *Id.* at 16:58-59. See also *Id.* at n.2084 (explaining the foregoing passage: "The practice of female infanticide is condemned in scathing terms. Female children used to be buried alive by the *Pagan Arabs*").

8. *Id.* at 4:23.
   Prohibited to you
   (For marriage) are —
   Your mothers, daughters,
   Sisters; father's sisters,
   Mother's sisters; brother's daughters,
   Sister's daughters; foster-mothers
   (Who gave you suck), foster-sisters;
   Your wives' mothers;
   Your step-daughters under your
of family members,\(^9\) and the practice of \(zihār\).\(^{10}\) In a similar spirit, it has been interpreted to admonish the practices of child marriage\(^{11}\) and polygamy.\(^{12}\)

Guardianship, born of your wives
To whom ye have gone in .

\(\text{Id.}\)

9. \(\text{Id. at 4:22.}\)
   And marry not women
   Whom your fathers married .

\(\text{Id.; id. at 4:23.}\)
   Prohibited to you
   (For marriage) are . . .
   (Those who have been)
   Wives of your sons proceeding
   From your loins;
   And two sisters in wedlock
   At one and the same time .

\(\text{Id.}\)

10. \(zihār\) was the practice by which pagan Arab men quasi-divorced wives that they no longer desired. It consisted of a married man uttering the words “Thou are to me as the back of my mother” to his shunned wife. Customarily these words set the man free from his responsibilities to her but did not similarly set her free to leave his home or re-marry. \(\text{Id. at 58:1 n.5330; see also id. at 58:2:}\)
   If any men among you
   Divorce their wives by \(zihār\)
   (Calling them mothers),
   They cannot be their mothers:
   None can be their mothers
   Except those who gave them
   Birth. And in fact
   They use words (both) iniquitous
   And false . . . .

11. \(\text{Id. at 4:25.}\)
   If any of you have not
   The means wherewith
   To wed free believing women,
   They may wed believing
   Girls from among those
   Whom your right hands possess
   . . . when they
   Are taken in wedlock,
   If they fall into shame,
   Their punishment is half
   That for free women.
   This (permission) is for those
   Among you who fear sin;
   But it is better for you
   That ye practise self-restraint.

\(\text{Id.}\)

12. \(\text{Id. at 4:3.}\)
   If ye fear that ye shall not
   Be able to deal justly
   With the orphans,
Following the battle of Uhud, Allah revealed, to the Prophet Muhammad, permission for Muslim men to take multiple wives:

To orphans restore their property
(When they reach their age),
Nor substitute (your) worthless things
For (their) good ones; and devour not
Their substance (by mixing it up)
With your own. For this is
Indeed a great sin.

If ye fear that ye shall not
Be able to deal justly
With the orphans,
Marry women of your choice,
Two, or three, or four;
But if ye fear that ye shall not
Be able to deal justly (with them),
Then only one . . . .

These verses lend themselves to multiple interpretations of Allah's law regarding polygamy, but considering them in the historical context in which they were recorded reveals that some interpretations may stretch the intent too far.

In 625 C.E., three thousand pagan warriors from Mecca invaded Medina and attacked the Muslim community there in the Uhud hills, just beyond the city's borders. The Prophet Muhammad mustered only about one thousand Muslim men to resist the pagan attack, three hundred of whom deserted the forces just before battle and only one hundred of whom wore armor. Ten percent of the seven hundred men who went to battle with the pagans were killed at the Battle of Uhud. This left many women and children in the Muslim community of Medina.
without husbands and fathers to support them. In this context, the Prophet recorded the revelation from Allah that permitted Muslim men to take plural wives.

Throughout history the governments and the peoples of the Islamic world have interpreted this permission differently. This paper will consider three societies that present especially interesting studies of polygamy: the Ottoman Empire and its harem world of women; Iran and the practice of temporary wifery; and Iraq's newly developing democratic society in which certain factions of conservative Islamic women support including polygamy in the nation's new constitution.

II. POLYGAMY IN THE OTTOMAN EMPIRE

The center of the Ottoman Empire was in modern-day Turkey. Its influence stretched throughout southeast Europe and the Middle East. While the greatest warriors, who fought on behalf of the Ottoman Empire and conquered an enormous swath of territory, were mostly Christians, the Empire itself was Islamic. Unlike the Western world, the Muslim leaders of the Ottoman Empire did not employ primogeniture to determine the transference of power from one Sultan to the next. This meant that if a leader died without any or with several male heirs, then succession to the throne was not preordained and would often result in violent struggles and even inter-family murder. In order to counteract this violence, in the early years of the empire, "all male relatives of a newly crowned sultan were put to death," but this policy was later replaced with the practice of imprisoning those relatives for life.
a. The Harem World of Women

The Arabic word *harām* is translated to mean “unlawful,” “protected,” or “forbidden.” This word provides the root for *harem*, which refers generally “to the separate, protected part of a household where women, children, and servants live in maximum seclusion and privacy.” The word may also be used to refer to a wife herself, and it is sometimes translated as “House of Happiness.” Harems, inasmuch as they functioned as separated living quarters for women, have existed in Asia throughout history. In the Ottoman Empire, according to Islamic principles, men and women were strictly separated as a result of Qur’ānic mandates that women should be hidden away from men because of their unconscious seductive qualities:

> And say to the believing women: That they should lower Their gaze and guard Their modesty; that they Should not display their Beauty and ornaments except What (must ordinarily) appear Thereof; that they should Draw their veils over Their bosoms and not display Their beauty except To their husbands, their fathers, Their husbands’ fathers, their sons, Their husbands’ sons, Their brothers or their brothers’ sons,

**BEHIND THE VEIL** 29 (1989) (referring to the chamber in which the princes were imprisoned within the Grand Harem as “the Golden Cage”).

27. COURTIER, supra note 26, at 17 (“The sacred area around Mecca and Medina is haram, closed to all but the Faithful.”).

28. Id.

29. Id. (revealing that “House of Happiness” is a “less-than-religious acceptance of the master’s exclusive rights of sexual foraging, a place where women are separated and cloistered, sacrosanct from all but the one man who rules their lives.”).

30. Id. at 13 (giving examples of where these cloisters have existed, in India, called purdah or “curtain,” and in Persia enderun, or zenane.” In China, there was a harem in Peking, The Forbidden City).

31. Id. at 20 (“As for Islam, it imposed segregation and the veil upon women, claiming they could not be trusted and had to be kept away from men (other than close relatives), whom they could not help but seduce. The need for special, secluded dwelling places for women became imperative — not to protect their bodies and honor, but to preserve the morals of men.”).
Or their sisters’ sons,
Or their women, or the slaves
Whom their right hands
Possess, or male servants
Free of physical needs,
Or small children who
Have no sense of the shame
Of sex; and that they
Should not strike their feet
In order to draw attention
To their hidden ornaments.
And O ye Believers!
Turn ye all together
Towards Allah, that ye
May attain Bliss. 32

Placing women in harems was the ultimate expression of this separation, and inside the Ottoman Sultan’s Topkapi Palace, which was known in the West as the “Grand Seraglio” or the “Sublime Porte,” in Istanbul, lay the ultimate harem. 33

In 1453, Sultan Mehmed II led Ottoman forces to conquer the Byzantine capital of Constantinople, and he renamed the city Istanbul. 34 Mehmed, impressed with some of Constantine’s practices for organizing society, most importantly to this study the 
gynaeceae of Empress Helen, imitated those structures in his “more opulent” replica of Constantinople. 35 The gynaeceae were women’s apartments in Constantine’s Imperial Palace: they were located in a remote part of the palace where women were categorized and segregated according to their functions. 36 This cloistering of women, coupled with the acceptance of polygamy set forth by the precepts of Islam, lent itself easily to the creation of the Grand Seraglio. 37

The sultans of the Ottoman Empire kept women in the Grand Seraglio from 1540 until the early twentieth century, 38 when

32. ‘ALI, supra note 2, at 24:31.
33. CROUZIER, supra note 26, at 11-13 (“... the most highly and extensively developed harem was that of the Grand Seraglio. What happened there came to be seen as the paradigm of all harems.”). This paper will refer to the harem itself as the Grand Seraglio.
34. Id. at 24; see also Sansal, supra note 20.
35. CROUZIER, supra note 26, at 24 (“Mehmed himself adopted such Byzantine customs as the sequestering of royalty, establishing a palace school, and the keeping of household slaves.”).
36. Id.
37. Id.
38. Id. at 11.
harems were declared illegal in 1909.39 Not until the 1970s were the chambers of the harem opened for the public to view.40 Its nearly four hundred rooms were located in a secluded, highly protected portion of the palace and were centered around the Courtyard of the Valide Sultana, the sultan’s mother,41 in between the sultan’s own apartment and the quarters of the Chief Black Eunuch.42

b. The Women of the Grand Seraglio

The slave market was one of my favorite haunts . . . . One enters this building which is situated in a quarter the most dark, dirty and obscure of any at Cairo by a sort of lane . . . . In the center of this court, the slaves are exposed for sale and in general to the number of thirty to forty, nearly all young, many quite infants. The scene is of a revolting nature; yet I did not see as I expected the dejection and sorrow as I was led to imagine watching the master remove the entire covering of a female — a thick wollen cloth — and expose her to the gaze of the bystander.43

Women came to live in the Grand Seraglio through means that modern society would certainly condemn and would likely term “trafficking in persons” or “forced sexual slavery.”44 The Sultans tended to have a predilection for non-Muslim females with “fair, doe-eyed beaut[y].”45 Many of these girls came from the Caucasus region — Circassians, Georgians, and Abkhasians were preferred because they were considered to be “proud mountain girls . . . . descendants of the Amazon women who had lived in

39. Id. at 9.
40. Id. at 11.
41. Id. at 24.
42. Id. at 28.
43. 1838 statement of William James Muller, a British Orientalist painter, in reaction to having visited one of the two main slave markets, reprinted in CROUTIER, supra note 26, at 21.
44. For an exposition of modern United States and international laws designed to curb the crime of trafficking, see Susan W. Tiefenbrun, Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad, 11 WM. & MARY J. WOMEN & L. 317 (2005).
45. CROUTIER, supra note 26, at 30.
Scythia near the Black Sea in ancient times." These girls were sold into slavery by their parents, who believed that they were providing luxury and ease to their daughters, or were kidnapped into slavery. The following excerpt from a 1790 report details the ages and values of different sorts of women and girls at the slave markets: “Circassian girl, about eight years old; Abyssian virgin, about ten; five-year-old Circassian virgin, Circassian woman, fifteen or sixteen years old; about twelve-year-old Georgian maiden, medium tall negro slave, seventeen-year-old Negro slave. Costs about 1000-2000 kurush.” In the latter part of the eighteenth century, “one could buy a horse for around 5000 kurush.” The most beautiful of these girls would be purchased for the sultan by governors, allies, or the Valide Sultana.

If a slave girl presented to become a resident of the Grand Seraglio were determined satisfactory by the guards and the Valide Sultana, she would be stripped of her Christian name, renamed something Arabic that reflected some of her physical characteristics, converted to Islam, and trained in “palace etiquette and Islamic culture.” At this point she became an odalisque. This term for harem women derives from the Arabic word for “room,” oda, and is literally translated “woman of the room.” This new label merely implied that the girl was a slave in the Sultan’s service, not that she was no longer a slave. The most beautiful or talented odalisques received more training

46. Id.
47. Id.
48. Id. (quoting a customs declaration from 1790).
49. Id.
50. Id. (explaining that the Sultan’s mother had the pleasure of presenting her son with a slave on the Eve of Kurban Bayram, an annual sacrificial day).
51. Id. (“... her Christian name would be changed to a Persian one that suited her particular qualities. If, for example, a young girl had beautiful rosy cheeks, she might be called Gulbahar, Rose of Spring.”).
52. This was necessary in order for the Qur’anic mandate that those women a man takes as his wives, whether they are slaves or not, should be Believers. See ‘Alli, supra note 2, at 4:25.

If any of you have not
The means wherewith
To wed free believing women,
They may wed believing
Girls from among those
Whom your right hands possess . . . .

Id. (emphasis added).
53. CRUTIER, supra note 26, at 30.
54. Id.
55. Id. at 30-31.
56. See generally id. at 30-33.
to become the sultan's concubines; they learned to "dance, recite poetry, play musical instruments, and master the erotic arts." Those odalisques who were not converted into concubines may have been given by the Sultan to one of his pashas, or they may have been assigned as servants to the Valide Sultana, the Sultan's wives (kadins), his daughters, or the chief eunuchs. Not every odalisque remained at the harem. If, for example, she was not talented or ended up expressing "undesirable qualities," an odalisque would be returned and re-sold as a slave at the market.

The status of "concubine" was not, however, the height of a harem woman's "career." She may have become a "cabinet minister," being placed in charge of an oda within the harem. She may have served as "mistress of the robes, keeper of baths, keeper of jewels, reader of the Koran [sic], keeper of the storerooms, mistress of sherbets, head of table service, and so on." This hierarchy of work assignments was paralleled by a sexual hierarchy in which women climbed to higher rankings according to how much of the Sultan's favor they were able to curry. The Sultan could sexually engage whatever woman he chose, no matter her status within the harem, but it was not until she became one of his "favorites," a status labeled ikbal, that she would be given her own apartment away from the odalisque dormitories, a barge, a carriage, and her own slaves. Only at this point would her relationship with the Sultan become public information. An ikbal advanced to the next level when she gave birth to the Sultan's

57. Id. at 32 (citing GIO MARIA ANGIOLELLO, HISTORIA TURCHESCA (1480)). Angiolello was an Italian boy who was captured by Mehmed II and kept at the palace until Mehmed's death. He wrote that odalisques who were training to be concubines took lessons in writing and religion, as well as "a great many skills, including sewing, embroidery, playing the harp, and singing").

58. Id. at 33 ("If he were pleased, the sultan kept them for himself or ultimately gave them as gifts. Among the greatest honors he could bestow upon one of his pashas was to present him with an odalisque who had adorned his palace but had not yet become his concubine. According to the Moslem etiquette, the pasha had to free the girl and make her his wife.").

59. Id.

60. Id.

61. Id.

62. Id.

63. Id.

64. See generally id. at 33-36.

65. Id. at 33.

66. Id. Previously any encounters between the two would have been secret, with the Chief Black Eunuch escorting the odalisque to the Sultan's chambers. Id.
child, thus becoming a kadin or haseki sultana.\textsuperscript{67} Finally, a haseki sultana took on the most coveted of positions within the harem hierarchy, Valide Sultana, if the child she produced with the Sultan was a boy and became the successor Sultan.\textsuperscript{68} The harem women were all tied inextricably to the Sultan under whose authority they were placed into the Grand Seraglio; the Valide Sultana was the only woman who could remain in the harem when the crown changed hands. All the other women were relocated to the Old Palace, called the “Palace of the Unwanted Ones” or the “House of Tears,” and their old apartments in the harem were torn down and replaced to be filled by the new Sultan’s women.\textsuperscript{69}

III. POLYGAMY IN MODERN ISLAM: TEMPORARY WIFERY IN IRAN

\begin{quote}
Among His Signs is this,
That He created you
From dust; and then —
Behold, ye are human beings
Scattered (far and wide)!

And among His Signs
Is this, that He created
For you mates from among
Yourselves, that ye may
Dwell in tranquility with them,
And He has put love
And mercy between your (hearts):
Verily in that are Signs
For those who reflect.\textsuperscript{70}
\end{quote}

Shi’ia Muslims recognize three types of marriage: nikah, permanent marriage; mut’a, temporary marriage; and nika ul-ima, slave marriage.\textsuperscript{71} Iran, subscribing entirely to the Shi’a school of

\begin{itemize}
\item \textsuperscript{67} Id.
\item \textsuperscript{68} Id.
\item \textsuperscript{69} Id. at 36.
\item \textsuperscript{70} \textit{‘Ali, supra note 2, at 30:20-21.}
\item \textsuperscript{71} Tamilla F. Ghodsi, Note, Tying a Slipknot: Temporary Marriages in Iran, 15 Mich. J. Int’l L. 645, 660 (1994). Nikah “literally meant sexual intercourse, although it was also used in the Koran [sic] to mean contract.” Id. n.82 (citing Vern L. Bullough et al., The Subordinated Sex: A History of Attitudes Toward Women 118 (1998)). Mut’a means “(a) ‘that which gives benefits, but for a short while’; (b) ‘enjoyment,’ ‘pleasure, i.e., to saturate; and (c) ‘to have the usufruct of something’ in Arabic. Id. n.83 (citing ShaHla Haeri, Law of Desire: Temporary Marriage in Shi’a Iran 50 (1988)).
\end{itemize}
thought, has always included temporary marriages in its laws, allowing time-limited, contractual unions between Muslim men and Muslim women, in an attempt to provide a "pragmatic way for individuals to satisfy their sexual desires within legal confines." A valid temporary marriage must fulfill the legal requirements for a contract, it must be for a set duration, and it must detail the consideration paid by the "husband" to the "wife." The first component of the temporary marriage requires that the confines of contract law be met; under Islamic law, and as in all Islamic marriages, this means there must be evidence that an offer was made and accepted. However, these rules are more lenient in the case of temporary marriages, allowing for the parties to perform both the contractual formalities and the "wedding" ceremony on their own, without witnesses or registration of the contract.

The duration of a mut'a may be as little as one hour and as long as ninety-nine years. The important thing is that the contract contain a specified duration for the "marriage"; in fact, that time must be precisely quantified from the outset. It would be inappropriate for such a contract to contain duration language such as "for the lifetime of" either of the parties or for a certain number of sexual encounters, but there is debate over whether failure to include a duration clause invalidates the contract in its entirety or simply converts it into a permanent marriage contract. When properly formed, without ambiguity as to the length of time for which the marriage should last, the mut'a contract simply ends upon the expiration of that time period, and the law need not supply any mechanisms for divorce in these types of marriages; however, it does allow the "husband" to rescind or unilaterally terminate the contract.

Finally, consideration for the mut'a must be paid to the "wife," and the amount of this consideration must be detailed on the

72. Id. at 645.
73. Id. at 665-66.
74. Id. at 665 (citing SHAHLA HAERI, LAW OF DESIRE: TEMPORARY MARRIAGE IN SHI'IA IRAN 51 (1988)).
75. Id. (citations omitted).
76. Id.
77. Id.
78. Id. (citing SHAHLA HAERI, LAW OF DESIRE: TEMPORARY MARRIAGE IN SHI'IA IRAN 52 (1988)).
79. Id. at 665-66 (citing Jane Khatib-Chahidi, Sexual Prohibitions, Shared Space and Fictive Marriages in Shi'ite Iran, in WOMEN AND SPACE: GROUND RULES AND SOCIAL MAPS 112, 126 (Shirley Ardener ed., 1981)).
80. Id.
contract with specificity comparable to that required of the duration clause. Failure to provide or detail in the contract a valuable exchange of consideration invalidates the contract altogether.

a. Theological and Legal Bases for Temporary Marriage

Since the family is the fundamental unit of Islamic society, all laws, regulations, and pertinent programmes [sic] must tend to facilitate the formation of a family, and to safeguard its sanctity and the stability of family relations on the basis of the law and the ethics of Islam.

The Iranian constitution reflects the government's and the religious authority's placement of family at the pinnacle of social development. Those institutions justify the existence of temporary marriages by explaining that it assists with the formation and continuation of the Islamic family unit. Shi'a religious authorities claim that the Prophet Muhammad authorized temporary marriages for four reasons:

(1) they provided a legal framework for individuals to engage in sexual relations in times of war when men were separated from their families; (2) they satisfied individuals' sexual needs; (3) they represented a way for widows of wars to be provided for; and (4) they provided legitimacy and thus inheritance rights to children born to individuals engaging in extramarital relations.

Indeed, the practice is described in the Hadith as being condoned, at least for a time, by the Prophet Muhammad after the Battle of Humain, in 628 C.E. The Prophet allowed his men to take temporary wives when they were away from their families for fifteen days, admonishing them to dower the women they chose,

81. Id. at 666.
82. Id.
84. See id.
85. See Ghodsi, supra note 71, at part IV.B.
86. Id. at 672 (citing SHAHLA HAERI, LAW OF DESIRE: TEMPORARY MARRIAGE IN SHI'I IRAN (1988)).
87. See e.g., SAHIH MUSLIM, KITAB AL-NIKAH 705-09.
88. See Important Historic Dates of Islam: Taken from Islamic Sources, at http://www.faithfreedom.org/Articles/dates.htm (last visited Apr. 21, 2005).
which they did with the clothing they wore or goods and foodstuffs that they carried. Sahih Muslim's Hadith collection goes on to provide that the Prophet disapproved of the practice of temporary marriage after this period in Mecca and that it was later prohibited by a Caliph. Though it is unclear from the Hadith during precisely what time period the practice was employed and when it ended, it is clear that at some point the Prophet Muhammad condoned temporary marriages, and Iranian lawmakers and theologians, ulama, hold onto that approval to continue condoning the practice today.

Policy reasons underlying the Iranian government's promotion of temporary marriage as a viable option include the attitude that women, especially single women, represent too great a temptation for men's uncontrollable sexuality. It is also seen as a viable alternative to permanent marriage for young men to fulfill their sexual desires without inhibiting their education or career development, a means for men to explore their sexual fantasies without committing the crime of zina, and especially a mechanism through which the government attempts to provide protection to the institution of family and social stability. Unlike Christianity and Judaism, Islam holds no regard for celibacy as a virtue; in fact:

Celibacy . . . is considered evil and unnatural . . . [Islam's] objective is to minimize human suffering and to satisfy not just the yearnings of the spirit but also the burnings of the flesh. Acknowledging the pleasures of the flesh, the Shi'i ulama simultaneously view it as dangerous and disturbing to the social order [and believe that] it must be legally contained and morally guided.

89. See, e.g., MUSLIM, supra note 87, at 706.
90. See id. ("Yes, we had been benefiting ourselves by this temporary marriage during the lifetime of the Holy Prophet (may peace be upon him) and during the time of Abū Bakr and 'Umar"). But see id. (claiming that Umar, the second Caliph, was the one who prohibited temporary marriage. "We contracted temporary marriage giving a handful of dates or flour as a dower during the lifetime of Allah's Messenger (may peace be upon him) and during the time of Abū Bakr until Umar forbade it in the case of 'Amr b. Huraith.").
91. Ghodsi, supra note 71, at 673.
92. Zina is the crime of adultery, for which the Qur'ān mandates a punishment of one hundred lashes. 'Alī, supra note 2, at 24:2.
93. Ghodsi, supra note 71, at 673-74.
94. Id. at 675 (quoting SHAHLA HAERI, LAW OF DESIRE: TEMPORARY MARRIAGE IN SHI'IA IRAN 5 (1988)).
One scholar explains:

In the Muslim social order it is not expected that an individual should strive to eradicate his sexual desires or to control them simply for the sake of control, but he must use them according to the demands of religious law. Furthermore, if these desires are suppressed or used wrongly, they are a recognized threat to the Muslim order.\textsuperscript{95}

Even though sexuality is encouraged, it is strictly prohibited outside of the confines of the marriage relationship — any sexual contact outside of marriage, whether adultery or fornication, is punishable as \textit{zina}.\textsuperscript{96} For this crime, the Qur'an would impose a punishment of one hundred lashes, but the Iranian penal code provides the death penalty for adultery in certain circumstances.\textsuperscript{97} In an attempt to be realistic about human (read: "male") nature, suppress sexual urges, and prevent any \textit{harām} extramarital sexual relations, the Iranian ulama employ several mechanisms to discourage any presence of sexuality within society.\textsuperscript{98} Women are strictly segregated from men in every aspect of life.\textsuperscript{99} In fact, the only men with whom women may interact are their husbands or those whom they are prohibited from marrying.

\begin{footnotes}
\item[95] Id. at n.161 (quoting Farah Azari, \textit{Sexuality and Women's Oppression in Iran, in Women of Iran} 90, 92 (1983)).
\item[96] See supra note 92.
\item[97] See \textsc{Penal Code of the Islamic Republic of Iran}, art. 83, available at \url{http://www.flygninge-i-fare.dk/law8adu.htm} (last visited Apr. 21, 2005).
\end{footnotes}
such as their fathers, brothers, and sons.\textsuperscript{100} Veiling regulations are strictly enforced.\textsuperscript{101}

\begin{quote}
100. \textit{Id.} at 676; \textit{see also} 'Ali, supra note 2, at 4:22-24.
And marry not women
Whom your fathers married —
Except what is past:
It was shameful and odious —
An abominable custom indeed.

Prohibited to you
(For marriage) are —
Your mothers, daughters,
Sisters; father's sisters,
Mother's sisters; brother's daughters,
Sister's daughters; foster-mothers
(Who gave you suck), foster-sisters;
Your wives' mothers;
Your step-daughters under your
Guardianship, born of your wives
To whom ye have gone in —
No prohibition if ye have not gone in —
(Those who have been)
Wives of your sons proceeding
From your loins;
And two sisters in wedlock
At one and the same time,
Except for what is past;
For Allah is Oft-Forgiving,
Most Merciful —

Also (prohibited are)
Women already married,
Except these
Whom your right hands possess:
Thus hath Allah ordained
(Prohibitions) against you:
Except for these, all others
Are lawful, provided
Ye seek (them in marriage)
With gifts from your property —
Desiring chastity, not lust.
Seeing that ye derive
Benefit from them, give them
Their dowers (at least)
As prescribed; but if,
After a dower is prescribed, ye agree
Mutually (to vary it),
There is no blame on you,
And Allah is All-Knowing,
All-Wise.

\textit{Id.}

101. See Ghodsi, supra note 71, at 675-77 (citing Shahla Haeri, \textit{Women, Law, and Social Change in Iran}, in \textit{Women in Contemporary Muslim Societies} 209, 216 (Jane I. Smith ed., 1980)). “Once outside of their homes, women needed another protective device to
The "implicit theory" of female sexuality as revealed by Imam Ghazali, and echoed by some of the Iranian Muslim thinkers, such as Motahari, casts the woman as the hunter and the man as the passive victim. Thus the social order has been constructed so as to subjugate the woman's power and neutralize its disruptive effects. It is necessary to restrain and cover women because:

1. Women are seen as being temptresses, and men are seen as possessing extremely weak wills, thereby being incapable of resisting the temptation created by women. It logically follows from these views that women present a threat to the smooth functioning of society and therefore it would be better if they were kept out of men's sights and in the seclusion of their homes.

Additionally, in order to discourage "extramarital" sexual relations and protect the family unit, the ulama encourage men to engage their sexual desires through temporary marriages. This is only possible because of the allowance for polygamy within the Qur'an. If polygamy were harām, "forbidden," by Islamic law, then there would be no assumption that marriages in addition to a man's primary marriage could provide satisfaction that the primary marriage does not supply, and temporary marriages, like zina, would likely also be harām.

keep the segregation of the sexes intact. The veil replaced the protective walls and became woman's shield in public." *Id.*

102. *Id.* at n.163 (quoting Farah Azari, Islam's Appeal to Women in Iran: Illusions and Reality, in WOMEN OF IRAN, THE CONFLICT OF FUNDAMENTALIST ISLAM 94-95 (F. Azari ed., 1983)).

103. *Id.* (quoting Alexandra J. Zolan, The Effect of Islamization on the Legal and Social Status of Women in Iran, 7 B.C. THIRD WORLD L.J. 183, 186 (1987)).

104. *Id.* at 675-77.

105. See *supra* note 13 and accompanying text.


Considering the fact that permanent marriage does not satisfy the instinctive sexual urge of certain men and that adultery and fornication are according to Islam among the most deadly poisons, destroying the order and purity of human life, Islam has legitimized temporary marriage under special conditions of which it becomes distinct from adultery and fornication and free of their evils and corruption).
b. Justifying Participation in Mut'a

Traditionally there has been a social stigma associated with the "sigheh" for women... The result has been that mainly women from working class or peasant origins have consented to this type of marriage and then usually to men of higher social status and wealth than themselves.¹⁰⁷

Iranians use temporary marriages quite creatively to overcome the rules against interaction between men and women. The first of these uses reflects the sexually obsessed nature of the ulamas' reasons for implementing the practice. That is, men use the service as a way to legally have multiple sexual partners without having to permanently marry multiple women.¹⁰⁸ For this reason, the institution of mut'a carries a relatively pervasive social stigma for the women who are involved in it.¹⁰⁹ In fact, Sunni Muslims, who also practiced temporary marriage in accordance with the Sunnah until the Caliph Umar forbade the practice,¹¹⁰ do consider it harām.¹¹¹ The stigma attached to the institution discourages even Iranians, who are legally permitted to, from participating in it.¹¹² For the most part, they "reject this institution as religiously illegitimate and morally reprehensible. Some have even likened the institution to 'legalized prostitution.'¹¹³ For the most part, those women who are willing to become temporary wives are working class or needy women, who engage it as a means of support, and the men who contract with them are from higher social strata.¹¹⁴ Those descriptions bear uncanny resemblance to the typical images of prostitutes and johns in the United States.

There are some seemingly more legitimate uses for mut'a than this thinly veiled harlotry. "The mut'a contract can be used fictively in order for devout Moslems [sic] to overcome the barriers to male-female interaction imposed by the mahram-namahram

¹⁰⁸. See Ghodsi, supra note 71, at 673.
¹⁰⁹. Id. at 670.
¹¹⁰. See supra notes 87-90 and accompanying text.
¹¹¹. See supra notes 87-90 and accompanying text.
¹¹². See Ghodsi, supra note 71, at 645.
¹¹³. Id.
¹¹⁴. Id. at 670-72.
distinction.”\textsuperscript{115} Mahram, literally translated, means “forbidden” or “taboo.” It is a term used to refer to those individuals whom the Qur’ān forbids a man or a woman from marrying, thus allowing them to freely associate with one another.\textsuperscript{116} Namahram, the converse of mahram, signifies that two people could potentially marry and thus should not associate with one another unless they are, in fact, married to each other.\textsuperscript{117} Female servants, for example, occupy namahram status for men within a household in which they work.\textsuperscript{118} Some individuals use the institution of temporary marriage, not for sexual gratification in any sense, but to overcome this status, creating a “marriage” contract that transforms the woman servant from a namahram stranger to a mahram wife, daughter-in-law, sister-in-law, aunt, etc., to the men in a household, allowing her to work in the home without violating qur’ānic mandates of segregation.\textsuperscript{119}

Additionally, parents may allow their children to enter into mut’a contracts, with the intent that the contractual relationship will remain nonsexual, when they are dating or engaged to be permanently married.\textsuperscript{120} Otherwise, those people could never spend time together before marriage, which, at least to the western mind, seems to contradict the nature of courting and engagement. These uses for the temporary marriage contract provide more legitimate justifications for the existence of the institution than the immediate impression it gives as an excuse for legalized prostitution.

IV. THE FUTURE OF POLYGAMY IN ISLAM — THE IRAQI CONSTITUTIONAL PROCESS

Under Saddam Hussein, Iraqi women were among the most free in the Middle East, with many rights equal to those of men. Conservative Shias say that the code that ensured those rights is an alien secular one that belongs to the old regime and should be dropped.\textsuperscript{121}

\textsuperscript{115} \textit{Id.} at 677-78.
\textsuperscript{116} \textit{Id.; see also supra note 100 and accompanying text.}
\textsuperscript{117} See Ghodsi, supra note 71, at 677-78; \textit{see also supra note 100 and accompanying text.}
\textsuperscript{118} See Ghodsi, supra note 71, at 678.
\textsuperscript{119} \textit{Id.; see also supra note 100} (quoting the Qur’ān’s list of mahram women, which also indicates which men occupy that status for Islamic women).
\textsuperscript{120} See Ghodsi, supra note 71, at 678.
\textsuperscript{121} Catherine Philip, \textit{Iraq’s Women of Power Who Tolerate Wife-Beating and Promote}
The United States and its allies overthrew Saddam Hussein's regime in Iraq in March 2003 as part of the "War on Terror."\textsuperscript{122} It immediately placed great importance on structuring a constitution for a new democratic Iraq.\textsuperscript{123} To ensure that this goal came to fruition, the United States retained control over the nation's sovereignty through the Coalition Provisional Authority, which created the Iraqi Governing Council to "organize a constitutional convention to write a new, permanent Iraqi constitution" and organize an election under the new constitution before governmental control over the nation would be returned to the Iraqi people.\textsuperscript{124} This plan failed in late 2003, and the Coalition Provisional Authority transferred power to a interim government that has operated under the Temporary Administrative Law, an interim constitution,\textsuperscript{125} to hold elections for a National Assembly according to the mandates of that interim law.\textsuperscript{126} The interim constitution requires that nearly one-third of the National Assembly representatives be women.\textsuperscript{127} This Assembly, including its quota number of female representatives, is currently drafting a proposed permanent constitution for Iraq, which is scheduled to be voted upon by referendum by October 15, 2005.\textsuperscript{128}

One of the most surprising phenomena that has taken place in the process to democratize Iraq has been the prevalence of the reactionary, conservative movement within the women who hold many of the eighty-nine women's seats in the National Assembly.\textsuperscript{129} More than half of the female members of the Assembly belong to the United Iraqi Alliance,\textsuperscript{130} a conservative, Shi'i

\textsuperscript{124}Id. at 695-96 (citing Coalition Provisional Authority, Iraqi Governing Council, available at http://www.cpa-iraq.org/government/governingCouncil.htm (last visited Apr. 21, 2005)).
\textsuperscript{126}See Stilt, supra note 123, at 695-96.
\textsuperscript{127}See Stilt, supra note 123, at 696.
\textsuperscript{128}See Philip, supra note 121.
\textsuperscript{129}See Philip, supra note 121.
dominated political organization that also holds more than one half of the total number of seats in the newly elected governing body.\footnote{131} The Alliance, including its female members, has committed to implementing Shari’a law as part of the new constitution.\footnote{132} This includes institutionalized inequality,\footnote{133} tolerance for domestic violence,\footnote{134} and legalization of polygamy.\footnote{135} One of the new laws that these women back is one that will follow the Qur’ānic permission for men to marry up to four women.\footnote{136} This ignores the Qur’ān’s express limitation on that permission:

\begin{quote}
But if ye fear that ye shall not
Be able to deal justly (with them),
Then only one \ldots \footnote{137}
\end{quote}

and the later admonition that:

\begin{quote}
Ye are never able
To be fair and just
As between women,
Even if it is
Your ardent desire \ldots \footnote{138}
\end{quote}

Liberal women’s organizations and other female representatives in the National Assembly complain that these

\footnote{Shahristani, some independent Sunni representatives and representatives of the radical cleric Moqtada Sadr, a leader of disaffected Shi’a who is suspected by American occupational authorities of having ordered the 2003 murder of Ayatollah Abd al-Majid al-Khoi. The coalition is generally believed to be supported by senior Ayatollah Ali al-Sistani, the most widely respected religious figure in Iraq, and although the Ayatollah has offered no official endorsement, many in the Iraqi public refer to the UIA as “al-Sistani’s list.”}

\footnote{\textit{Id.}}

\footnote{See Philip, \textit{supra} note 121.}

\footnote{\textit{Id.} (recalling an interview with Jenan al-Ubaedey, one of the new female members of the Assembly: “When Dr. Ubaedey took her seat at last week’s assembly opening, she found herself among an increasingly powerful group of religious women politicians who are seeking to repeal old laws giving women some of the same rights as men and replace them with Sharia, Islam’s divine law.”).}

\footnote{\textit{Id.} (“If you say to a man he cannot use force against a woman, you are asking the impossible \ldots So we say a husband can beat his wife, but he cannot leave a mark. If he does that, he will be punished.”).}

\footnote{\textit{Id.} (“On the subject of polygamy, the former paediatrician [sic] turned politician says: ‘If you don’t allow your husband to take another wife, he’d have an affair anyway \ldots I’d rather know my husband has another wife that I know about.’”).}

\footnote{\textit{Id.}}

\footnote{\textit{‘Ali, supra note 2, at 4:3.}}

\footnote{\textit{Id. at 4:129.}}
conservative women are puppets of the male leaders from the Shi'i parties.\textsuperscript{139} Progressive women and organizations see these women as undermining their efforts to secure rights for women under the new constitution and laws that will govern the Republic of Iraq.\textsuperscript{140}

V. CONCLUSION

Out of Jahiliyya, the "Times of Ignorance," the Prophet Muhammad delivered the Islamic world from the barbaric practices that the Qur'\={a}n characterizes as particularly atrocious for women and girls.\textsuperscript{141} One of the practices that Allah allowed to remain, although supposedly checked by a desire for fairness among women, was polygamy. Throughout history, nations in the Islamic world have employed this institution with varying degrees of adherence to the limitations set forth in the Qur'\={a}n. The Ottomans employed the permission for polygamy to justify allowing the ruling class to own literally hundreds of women at a given time. The harem at the Grand Seraglio focused on the sexual fulfillment of one man, the Sultan of the Ottoman Empire.

In Iran, the practice of mut'a, or temporary marriage, likewise focuses on the sexual fulfillment of men. The ulama intended this institution to allow men to contract for sex outside of the traditional marriage without facing the consequences for committing the crimes subsumed under the umbrella of zina. While the Iranian people tend to disapprove of mut'a, even as it could be used for legitimate purposes, it continues to exist as essentially sanctioned prostitution. This is more sophisticated than but not terribly dissimilar to the availability of women in the slave markets in the time of the Ottoman Empire.

Finally, as the United States shapes a newly freed Iraq into the first true democracy in the Middle East, it remains unclear whether polygamy will continue to hold a place in the laws of the modern Islamic state. The reactionary movement within Islam, pushing for a return to "traditional" and "anti-Westernized" values, is finding support in many of the women who might otherwise be the catalysts for feminization of the Islamic legal system and adherence to limitations on polygamy set forth in the Qur'\={a}n.

\textsuperscript{139} See Philip, \textit{supra} note 121.
\textsuperscript{140} \textit{Id.}
\textsuperscript{141} See \textit{supra} notes 3-12 and accompanying text.
\textsuperscript{142} See \textit{supra} part I.