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The Practice of Shi'i Jurisprudence in Contemporary Lebanon

by

Jean-Michel Landry

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Anthropology

and the Designated Emphasis

in

Critical Theory

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Saba Mahmood, Chair
Professor Wendy L. Brown
Professor Charles K. Hirschkind
Professor Hussein Ali Agrama

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The Practice of Shi‘i Jurisprudence in Contemporary Lebanon
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Abstract

The Practice of Shi'i Jurisprudence in Contemporary Lebanon

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Jean-Michel Landry

Doctor of Philosophy in Anthropology

and the Designated Emphasis in Critical Theory

University of California, Berkeley

Professor Saba Mahmood, Chair

Drawing on ethnographic and archival research conducted in Lebanon and France between 2012 and 2014, this dissertation discusses Shi'i methods of legal reasoning (*ijtihad*), and considers their incorporation into state juridical apparatuses. Since its colonial inception in 1926, the Lebanese state has harnessed the shari'a tradition to regulate the family life of its Shi'i citizenry. In order to properly grasp the ethical and epistemological transformations underlying the state's appropriation of Shi'i legal discourse, I suggest we first examine the training judges, clerics, and jurists receive in traditional *hawza* seminaries. This dissertation's first three chapters show that learning to perform authoritative shari'a reasoning requires not only developing a mastery of the sacred texts, but also submitting oneself to the discipline of the Shi'i moral tradition.

The remaining chapters examine what Islamic legal reasoning becomes when it gets entangled with the judicial functions of a modern nation-state. To this end, I shift the ethnographic focus toward Beirut's Shi'i family courthouse, where *hawza*-trained judges are appointed by the Lebanese state to adjudicate familial disputes. I show that under the institutional and conceptual conditions of state legality, the Islamic legal tradition is divested of many of its interpretative possibilities and oriented toward the purpose of governing marital relationships uniformly. What accounts for this reorientation, I argue, is not so much the volition of individual judges, but the grammar of procedural norms and legal mechanisms through which these judges perform their work. While making this argument, I discuss the social and gender consequences of the Lebanese state's appropriation of Shi'i legal thinking.

À Fabienne

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Introduction

In December 1891, a prominent Shi'i thinker disrupted British commercial hegemony by prohibiting tobacco use on the authority of an invisible religious figure called the "Hidden Imam."[1] It was a gesture of defiance: the year before, the English Imperial Tobacco Company had secured exclusive rights to the entire tobacco crop of Iran—a particularly valuable one, since Iranians cultivated varieties that were prized on foreign markets.[2] With the annual rent of £15,000 paid for this trade monopoly, the Iranian regime hoped to restore its precarious finances.[3] But among the masses of cultivators, traders and ordinary smokers, the government's sell-out stirred a deep sense of outrage. Protests broke out, leaflets criticizing state policy circulated, and numerous traders closed their shops. One southern merchant even burned his entire inventory of tobacco, claiming that he had sold it to God.[4] Clerics also agitated against the monopolistic concession. Some interrupted their teaching activities, while others led mass demonstrations that erupted as the British agents of the Imperial Tobacco Company arrived in the provinces.

The decisive blow, however, came from Mirza Hassan Shirazi, the most authoritative Shi'i thinker of the time. In solidarity with the Iranian protestors, Shirazi issued a shari'a ruling forbidding Muslims to use tobacco. The document specified that smoking tobacco was tantamount to war against the Hidden Imam. Issued in the Iraqi city of Samarra and transmitted through the new telegraph network stretching from London to Bombay, the shari'a-based call to boycott reached Teheran in no time. Thanks to the nascent hectographic technology, a hundred thousand copies were quickly printed and distributed across Persia. Shirazi's ruling was posted outside mosques and read as part of Friday-prayer sermons. Within a few weeks, the popular revolt developed into the first successful mass movement in modern Iranian history: a generalized tobacco boycott.[5] Historians say that even the Prime Minister's wives refrained from smoking, while his personal servants refused to light up his water pipe.[6]

The boycott was so strictly observed that, in January of the following year, the Iranian Prime Minister was forced to repurchase the tobacco concession to avoid a national

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[1] Throughout this dissertation, I use "Shi'i" as an adjective (*e.g.*, "Shi'i Muslims"), "Shi'is" as a plural (*e.g.*, "65 Shi'is") and "Shi'a" as a collective noun (*e.g.*, "the Shi'a of Lebanon").

[2] Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran*, 215.

[3] In addition to the annual rent, the English company agreed to pay the regime a "quarter of the annual profits after the payment of all expenses and of a five per cent dividend on the capital." See: Keddie, *Religion and Rebellion in Iran: The Iranian Tobacco Protest of 1891-1892*, 35; and Lambton, "The Tobacco Regie: Prelude to Revolution."

[4] Moaddel, "Shi'i Political Discourse and Class Mobilization in the Tobacco Movement of 1890-1892."

[5] Keddie, *Religion and Rebellion in Iran: The Iranian Tobacco Protest of 1891-1892*, 1.

[6] Luizard, *Histoire politique du clergé chiite. XVIIIe - XXI siècle.*, 84; and Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran*, 218.

insurrection. And to do so, he had to contract another humiliating loan from the British Imperial Bank. Meanwhile, on the 26th of the same month, the public crier in Teheran announced that Shirazi had issued a ruling permitting the use of tobacco.[7] Iranians began smoking again.

Nineteenth-century Iranian smokers lie far from the Lebanese shari'a jurists and family law litigants with whom this study is concerned. Nonetheless, this story of tobacco crops and popular protests captures the political resonance of the practice I explore in the following chapters: the formulation of shari'a rulings on behalf of the Hidden Imam, a Shi'i eschatological figure who lives in concealment and speaks through the agency of learned scholars. In Islamic terminology, the reasoning practice by which qualified Shi'i clerics uncover the Imam's view on current affairs is called *ijtihad*.

This dissertation is an ethnographic study of *ijtihad* reasoning. Throughout the world today, Islamic clerics continue to perform *ijtihad*, thereby establishing ethical guidelines that help Muslims confront the questions of our times. Naturally, these questions go well beyond tobacco use; they concern virtually every aspect of contemporary living. Is it permissible to get a mortgage for a first home? Does the shari'a allow infertile couples use in-vitro technology? Are sex-reassignment surgeries licit?[8] *Ijtihad* reasoning enables clerics to disclose the opinion of the Hidden Imam on such issues.

Although this Imam is invisible to our human eyes, clerics do not try to reach him through mystical visions or divine illuminations. Instead, they engage in scrupulous examinations of the Islamic scriptures. In traditional Shi'i seminaries [*hawza*] such as those where I conducted fieldwork, clerics use Aristotelian deductive logic and scholastic methods to derive a framework of prohibitions and recommendations for the faithful. It is only by following meticulous reasoning procedures, I will show, that one can reveal the voice of the Hidden Imam. The bulk of my work in this dissertation, however, will be devoted to drawing out the ethical and epistemological claims embedded in the practice of *ijtihad* reasoning.

To many, the prestigious seminaries of Iran and Iraq might seem the natural sites for studying Shi'i legal thinking—yet the Lebanese context enables me to push my analysis much further. Specifically, it enables me to approach *ijtihad* not only as an object of study, but also as a lens through which to explore the state's regulatory capacities over religious and family life. One reason for this unique lens is that *ijtihad*, in Lebanon, is not restricted to scholarly circles and religious institutions; it is also a legal device by which state judges regulate the marital relationships of a large portion of the country's citizenry. This point is worth elaborating.

In Lebanon, like in most countries of the Middle East, Muslim marital disputes (*e.g.*, matters of marriage, inheritance or filiation) are settled in state courts enforcing shari'a-

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[7] Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran*, 218

[8] On this, see Najmabadi, *Professing selves. Transsexuality and same-sex desire in Contemporary Iran*.

derived laws. But while the family affairs of Iranian and Iraqi Shiʿis are adjudicated within a fixed legal code, no such code has ever bound the Shiʿa of Lebanon. Although Sunni Lebanese are subject to family law codes, French colonialism's encounter with Shiʿism (analyzed in chapter 4) yielded a judicial situation wherein Shiʿi Lebanese are subject to rulings that judges derive from scriptural sources. Whether a woman can divorce, keep custody of her children, or inherit often hinges on the performance of *ijtihad*.

Thus, while this dissertation provides an account of Shiʿi shariʿa reasoning, it also uses this account as a framework for understanding how a modern state reconfigures a divinely ordained discourse into a legal instrument for governing family life. Indeed, one of my goals in writing this dissertation is to bring into sharp relief the extent to which the Lebanese state has transformed the Shiʿi tradition by incorporating it in its judicial machinery. At a time when shariʿa law is regarded as one of the primary causes for the persistence of gender inequality and sectarian tensions in the Middle East, it is necessary to stress how the modern state shapes what is enforced as Islamic law.[9] The aim is not to transfer blame to the nation-state, modernity or secularity; rather, it is to get a clearer sense of what kind of amalgam we refer to when we talk about "shariʿa law" today. The dissertation also serves to remind us that the conditions under which Middle Eastern societies currently live were forged by Euro-Atlantic engagements, through political forms and ideals that are highly familiar to the West.

The enforcement of shariʿa law in state legal apparatuses has been the focus of many anthropological studies since the late eighties. By paying attention to the routine practices by which Islamic law is applied, debated and transformed, anthropologists have provided a crucial corrective to Orientalist scholarship that portrayed the shariʿa as an ossified system of doctrine for centuries.[10] So far, anthropological efforts have coalesced in three different directions. A first approach has been to highlight the "legal agency" of litigants (and especially the underprivileged ones), who often manage to use state shariʿa courts to their advantage. Several studies in this vein have described the strategic ways in which women and marginalized minorities use Islamic norms and concepts to improve their daily conditions.[11] Other anthropologists have pursued a second avenue, combining ethnographic and historical research to show how legal codification has transformed the shariʿa and the practices that sustain it. These contributions stress that the adoption of modern legal tools (*e.g.*, the law code and the secular court) have eliminated the open-

[9] On this, see Mahmood, *Religious Difference in a Secular Age. A Minority Report*.

[10] See, for instance, Coulson, *A History of Islamic Law*; and Schacht, *An Introduction to Islamic Law*.

[11] The following texts are representative of this approach. Antoun,"Litigant Strategies in an Islamic Court in Jordan"; Hirsch, *Pronouncing & Preserving. Gender and the Discourses of Disputing in an African Islamic Court*; Mir-Hosseini, *Marriage on Trial. Islamic Family Law in Iran and Morocco*; Peletz, *Islamic Modern. Religious Courts and Cultural Politics in Malaysia*; Osanloo, *The Politics of Women's Rights in Iran*; and Stockreither, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar.*

endedness and flexibility that had long characterized the Islamic legal tradition.[12] More recently, a number of ethnographic researches have forged a third approach by remarking that the shariʿa often cohabits with other "normative orders" (*e.g.*, professional obligations or civil laws), especially in state courts. What at first glance appears to be an Islamic judgment, these anthropologists argue, often results from norms and standards that have little or nothing to do with Islam.[13]

This scholarship has taught us much about how Islamic law is interpreted and applied in diverse situations. My concern, however, is that all three approaches leave undisturbed what seems to matter most in the contemporary context: namely, how state-imposed procedural requirements redefine both shariʿa adjudication and the way family law develops. Indeed, while living in Lebanon, it became apparent to me that most questions raised by current events (and often by litigants themselves) cannot be fruitfully explored by highlighting the "agency" of judges or litigants. Why, for instance, is Sunni family law easier to reform than its Shiʿi counterpart? Why have Shiʿi clerics long opposed the establishment of an Islamic Appellate Court? Why do state judges keep overriding divorces pronounced by the country's most authoritative clerics?[14] These questions one encounters today in Lebanon have less do to with the shariʿa itself than with the state's management of this legal tradition. Existing studies rightly stress that the process of codification transformed Islamic adjudication; but in focusing on how state codes limit the shariʿa's flexibility, they often overlook the work performed by legal procedures derived from the civil law tradition and imposed by the state. A number of anthropologists have touched on the topic of civil law procedures, but in analyzing them as "normative orders" coexisting alongside Islamic rules, they fail to problematize how this procedural framework reshapes shariʿa judicial reasoning [*ijtihad*]. What is needed, therefore, is not a description of the various normative orders, but an inquiry into shariʿa reasoning's ongoing subjection to the grammar of civil law procedures—as well as an understanding of what this reshaping involves for ordinary litigants.

To this end, I adopt a different approach. The five chapters comprising this study shift the analytical focus away from issues of agency or flexibility, and towards questions of epistemology and ethics. I posit that to understand what shariʿa law becomes when it is transplanted into state courts, we must first dwell on Islamic legal reasoning [*ijtihad*], and

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[12] The writings of anthropologists Brinkley Messick and Laurence Rosen provide good examples of this scholarship. Messick, *The Calligraphic State. Textual Domination and History in a Muslim* Society; and Rosen, *The Anthropology of Justice. Law as Culture in Islamic Society*. Note that a number of historians (chief among them Wael Hallaq and Judith Tucker) has also shown how the process of codification have transformed the Islamic legal tradition. See Hallaq, *Shariʿa: Theory, Practice, Transformations*; and Tucker, *Women, Family, and Gender in Islamic Law*.

[13] The following texts illustrate this approach. Bowen, *Islam, Law, and Equality in Indonesia*; Dupret, "What Is Islamic Law? A Praxiological Answer and an Egyptian Case Study"; and Stiles, *An Islamic Court in Context. An Ethnographic Study of Judicial Reasoning.*

[14] Though these are not my research questions, my hope is that by the end of this dissertation, the reader will be better equipped to pursue them.

particularly on the conceptions of truth and ethics internal to it. This study therefore begins in traditional *hawza* seminaries, where future Shi'i clerics and family law judges are trained to discover the Hidden Imam's opinions on our current time. Working alongside scholars and seminarians, I examine the framework of concepts and concerns through which they perform *ijtihad* and issue shari'a rulings. It is from the standpoint of these seminaries that I analyze how the premises of legal reasoning shift when it is performed within state judicial apparatuses, such as Shi'i family courts. Each of the following chapters advance particular claims about law, ethics and authority; as a whole, the dissertation argues that when *ijtihad* is transferred into the hands of a secular state, its purpose is reoriented away from serving the everyday concerns of pious Muslims and toward ensuring the legal authority of the state. The upcoming chapters detail the set of procedures, operations and instruments through which this process of reordering happens.

In making this argument, I follow avenues of inquiry opened up by other anthropologists. Chief among them is Talal Asad, who first conceptualized the articulations of law and ethics as an entry point into colonial and post-colonial operations of power.[15] The ethnographic work of Saba Mahmood and Charles Hirschkind on practices of self-cultivation has provided a conceptual ground for my analysis of *hawza* training; specifically, it allows me to cast a light on the ethical dimension of *ijtihad* reasoning.[16] Mahmood's more recent writings on political secularism, especially her analysis of how nation-states reorder religious life, informs my own approach to the Lebanese state.[17] The anthropologist whose work bears most directly on this dissertation is Hussein Agrama, whose insightful conceptualization of the continuity between ethics and authority provides theoretical starting points for my own study. Equally important is his argument that *ijtihad* is not so much a means to adapt the shari'a to modern life, but rather a means to secure shari'a's authority amid current circumstances.[18] The reader will see this argument resonate throughout the following pages. Morgan Clarke's work on Lebanon's family courts provided a useful complement to Agrama's reflections. Clarke's sensitive analysis of the tension between shari'a judges' pastoral function and state's legal requirements oriented my exploration of Shi'i family courts.[19]

Map of the Dissertation

This dissertation is divided into two parts. The first analyzes the moral dispositions, epistemological propositions and collective aspirations that inform the practice of *ijtihad*

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[15] Asad, "Reconfigurations of Law and Ethics in Colonial Egypt." See also: Asad, "The Idea of an Anthropology of Islam" and Asad, "Thinking About Tradition, Religion, and Politics in Egypt Today."

[16] Mahmood, *Politics of Piety. The Islamic Revival and the Feminist Subject*; Hirschkind, *The Ethical Soundscape. Cassette Sermons and Islamic Counterpublics.*

[17] Mahmood, *Religious Difference in a Secular Age. A Minority Report*.

[18] Agrama, "Ethics, tradition, authority: Toward an anthropology of the fatwa"; and Agrama, *Questioning Secularism. Islam, Sovereignty and the Rule of Law in Modern Egypt.*

[19] Clarke, "The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts."

in contemporary Lebanon. Chapter 1 describes *hawza* seminaries, the traditional academies where Shi'i scholars develop the capacity to discover the views of the Hidden Imam on current affairs. The historical trajectory of these seminaries and the shari'a scholarship they produced over the last millennium illuminate the distinctive features of these learning centers. To clarify, however, this study is neither panoramic nor encyclopedic in scope. The second half of this first chapter is illustrative of my approach: it revolves around a cluster of *hawza* seminaries, located in the Southern suburb of the Lebanese capital. Delving into this erudite milieu, I show that the performance of *ijtihad* (and the training thereof) is often driven by social and political hopes specific to Lebanon and the ills that befall this country: gross economic inequalities and continuing patterns of discrimination. But I also argue that these very ills pose important obstacles to those who make Shi'i legal thinking their primary business.

Chapter 2 analyzes the forms of moral discipline enabling Shi'i scholars to constitute themselves as dedicated deputies of the Imams. Historians and social scientists have so far described *ijtihad* as a highly rational exercise, predicated on honed analytical skills and an exhaustive grasp of the scriptures. Without denying this assessment, I supplement it by examining the moral underpinnings of contemporary Islamic legal thinking. Briefly put, my argument is that, while no one can aspire to articulate shari'a norms without properly acquired erudition, the binding quality of these norms often relies on the moral exemplarity of the scholars who establish them. Being a Shi'i scholar, I argue, involves being worthy of moral emulation. Yet in making this argument, I also caution that something crucial is lost when we understand the ethical practices inherent to *hawza* scholarship as "techniques of the self."[20] I stress that for the jurists with whom I worked, the cultivation of an exemplary self is not an end in itself, but rather a means to achieve a just and pious community.

The ethics embedded in Islamic legal reasoning is approached from a different angle in chapter 3, which focusses on the academic training *hawza* seminarians undergo in order to become authorized interpreters of the shari'a. Over the last nine centuries, Shi'i thinkers have developed a sophisticated conceptual toolbox enabling them to formulate judicial precepts appropriate for the conduct of contemporary life. In order to gain an insight into this web of concepts and methodologies, I first consider the distinct conceptualization of "doubt" that underlies Shi'i legal epistemology as well as the curriculum of *hawza* seminaries. Then, I examine how seminarians learn to problematize the era they inhabit, how they frame the contemporary questions to which shari'a-based answers must be provided. These questions cover a broad spectrum of concerns (ranging from DNA technology to premarital sex and party politics) that scholars and seminarians vigorously debate. In analyzing these debates, I show that the moral framework I describe in chapter 2 does not only help seminarians gain authority, but also allows them to raise the questions they seek to answer through Islamic legal reasoning. I suggest, in other words, that to grasp the moral underpinnings of *ijtihad*, we should not only direct our

[20] On the techniques of the self, see Foucault, "Les techniques de soi."

focus to the answers this form of reasoning helps formulate, but also to the questions it makes possible.

What *ijtihad* becomes when it gets entangled with the judicial functions of a secular state is the subject of the second part of this dissertation. Since 1926, Shiʿi shariʿa scholarship has been the official grounds upon which the Lebanese state adjudicates the familial disputes among Shiʿi citizens. Chapter 4 narrates the key episodes through which the French colonial administration incorporated shariʿa law into the judicial machinery of a secular nation-state. In order to pursue the line of questioning I opened in the first chapters, I debunk the widespread idea that Lebanon has developed a "dual legal system," split between a state-run secular law and a religious family law controlled by clerics.[21] To this end, I turn to the French colonial archives, showing how the regulation of Shiʿi marital affairs was taken from the province of independent clerics and relocated into the state legal system. Since the establishment of the colonial Republic of Lebanon, most family disputes are no longer settled in the houses of private clerics, but in state family courts. Importantly, however, I show that the judges presiding over these courts do not adjudicate their co-religionists' marital affairs within a legal code, since (unlike Sunni and Druze family law) Shiʿi law was never formally codified. To this day, the family disputes of Shiʿi Lebanese are settled through the *ijtihad* of the *hawza*-trained scholars issuing decisions on authority of the state.

In chapter 5, I explore several of the questions that this situation raises. What happens to a practice of pastoral care like *ijtihad* when it is performed on behalf of the state? What kind of knowledge (legal, procedural, administrative) underlies the practice of state law? How is the unresolved legal discourse developed by Shiʿi shariʿa scholars transformed into enforceable law? How does the invisible authority of the Hidden Imam sit with the exigencies of state legality? What can we learn about the regulative capacities of the modern secular state by looking at how it transforms the religious concepts and practices on which it relies? In order to pursue these questions, I shift the ethnographic focus from communal Islamic institutions (*e.g.*, *hawza* seminaries, private judges' houses) to Lebanese Shiʿi family courts. I first describe the routine functioning of this state apparatus by exploring the different legal settings it comprises, paying attention to distinct arrangements of space, knowledge and authority that sustain each of them. Then, building on the framework I developed in the first part of this dissertation, I show that under the institutional and epistemological conditions of state legality, Shiʿi legal tradition is divested of many of its interpretative possibilities and oriented toward a different purpose. What accounts for this reorientation, I argue, is not so much the agency of individual judges, but the procedural norms and legal mechanisms through which these judges perform their work.

The epilogue is a reflection on the implications of this reorientation for those subject to it. I close this study by juxtaposing two recent legal mobilizations led by ordinary

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21 On the notion of "dual legal system," see Thomson, *Colonial Citizens. Republican Rights, Paternal Privileges, and Gender in French Syria and Lebanon* (especially part 3).

Lebanese (one by Sunnis, the other by Shi'is) and aimed at modifying the family laws governing the allocation of child custody. Quite remarkably, these demands were formulated through the framework of shari'a jurisprudence and endorsed by some of the country's most authoritative Islamic jurists. Despite all of this, I show that the fate of the citizens' shari'a-based demands was determined neither by learned scholars nor by *hawza*-trained judges, but by secular politicians. I show that within the current configuration of power, the Lebanese state exercises implicit veto power over the development of the Shi'i legal tradition.

The remainder of this introduction sets the stage for what follows by providing background information necessary to understand the stakes of my project. This dissertation find its greatest point of leverage in the Shi'i legal tradition and the enduring problem it addresses: the *invisible* authority of the last Imam. Since the seminarians, scholars and judges who populate the following pages all aim (in different ways) to respond this invisibility, I begin with a brief description of this legal tradition. Then, in the last section, I discuss the shifting mixture of opportunities, limits and fears that characterized my research experience in Lebanon between 2012 and 2014.

Invisible Authority and Uncertain Laws

The initial split between Sunni and Shi'i Islam arises from a dispute over the choice of the Prophet's successor. On the death of Muhammad (632 CE), a group of notables from Medina nominated Abu Bakr, a companion of the Prophet, as the leader of the Islamic community [*umma*].[22] A number of persons, however, opposed this nomination on the grounds that only members of the Prophet's lineage can rightfully guide the community. Muhammad's cousin and son-in-law, Ali Abi Talib, was in their view the only legitimate leader. Initially known as *shi'at 'Ali* [the party of Ali], they claimed that Ali was Muhammad's immediate successor, thereby inaugurating Islam's second most important branch: Shi'ism.

Although this historical episode is well-known, retellings often fail to emphasize that underlying the schism is a deeper disagreement over the nature of prophetic succession. The difference between the Sunni and Shi'i legal traditions stems from this disagreement. The Sunni conception of succession is grounded in the conviction that the Prophet's death marks the end of Islam's legislative period—the period during which the shari'a was revealed and expounded. Sunni Muslims therefore hold that Muhammad's successors (the Caliphs) can apply the divine law, but unlike the Prophet, they cannot elucidate it. The authority of the Caliphs was, in other words, restricted to worldly matters. The Shi'a approached the problem of succession from a different angle. While they agreed that Muhammad alone could reveal shari'a law, they cautioned that allowing imperfect humans to apply the law without divine guidance would lead the community into chaos. Accordingly, they held that in order for the shari'a to remain reliable and applicable in the

[22] To maintain consistency, all the date/year in this work correspond to the Gregorian calendar.

Prophet's absence, it must be consistently elucidated by God-appointed leaders. Thus, from a Shi'i perspective, succeeding the Prophet means both leading the community and expounding the shari'a with infallible certainty.[23] It involves being a temporal and a spiritual ruler.

Shi'i Muslims call these infallible rulers "Imams." While Sunni practitioners use this term to describe worship leaders, the Shi'a reserve it for the descendants of Muhammad chosen by God to guide the faithful. In contrast with worldly rulers like the Caliphs, the Imams are not seen as deputies of the Prophet, but rather as substitutes taking on most of his functions.[24] Appointed by God, they are sinless and perfect. But throughout the last millennium, the different branches of Shi'ism have come to disagree over the number and identity of the Imams. Among the branches existing today are the Zaydis (or Fiver Shi'a), who hold that five Imams succeeded the Prophet and the Isma'ilis (or Sevener Shi'a), who contend that the world has seen seven Imams. This dissertation, however, focuses exclusively on the tradition of Twelver Shi'ism, followed by the vast majority of Shi'i Muslims today. Twelver Shi'a account for 15 percent of the world's Muslim population, and make up a religious majority in countries such as Iran, Iraq, Bahrain and Azerbaijan.[25] In Lebanon, a country with no religious majority, they constitute the largest denomination.[26]

The designation "Twelver" refers to the belief that a total of twelve Imams have succeeded the Prophet and elucidated the shari'a. But it also involves the conviction that the last member of this holy lineage still lives on earth—though God has concealed him from the eyes of the living. Twelver Shi'a (henceforth "Shi'a") hold that the last Imam was born in 869 near the Iraqi town of Samarra, sixty miles north of Baghdad. Known as Muhammad al-Mahdi, he began his extraordinary long life under the Sunni Abbasid Caliphate (750-1258). But when he was only five years old, the Imam entered a cave beneath one of Samarra's mosques and vanished into occultation [*ghayba*] through a small well.[27] According to Shi'i accounts, the Imam will restore justice and equity on earth upon his return. But in the meantime, he lives in hiding to avoid falling into the hands of

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[23] Eliash, "The Ithna'ashari-Shi'i Juristic Theory of Political and Legal Authority," 22

[24] *Ibid*. See also Hallaq, *Shari'a: Theory, Practice, Transformations*, 115.

[25] Amir-Moezzi and Jambet, *Qu'est-ce que le shî'isme?,* 76. See also Pew Research Center, "Mapping the Global Muslim Population."

[26] The most recent account of Lebanon's religious demography (based on the voter registry) suggests that the Shi'a represent 29 percent of Lebanon population. "Lebanon, Census and Sensibility," *The Economist*, November 4, 2016. In 1932 (year of the last official census), Shi'i Muslims were 17 percent of the Lebanese population. For a critical analysis of the 1932 census, see: Maktabi, "The Lebanese Census of 1932 Revisited. Who are the Lebanese?" Sociologist Elizabeth Picard also notes that many Shi'i Lebanese were not taken into account by the 1932 census. Picard, "The Lebanese Shi'a and political violence in Lebanon."

[27] The cave where the last Imam disappeared is today a site of pilgrimage. See: Halm, *Shi'ism*, 35; and Momen, *An Introduction to Shi'i Islam*, 163.

enemies.[28] For about seventy years, the Imam managed to communicate with his followers through four succeeding ambassadors [*sufara* sing. *safir*] who knew his location and corresponded with him. Yet when the last of these ambassadors died in year 941, faithful Shi'a lost contact with this quasi-prophetic figure. Thus began a period of hardship known as the "Great Occultation," which extends to the present.

Since the Twelfth Imam retains ultimate authority over human affairs, his vanishing created a severe paradox for the Shi'i community. "On the one hand," writes historian Joseph Eliash, "the Twelfth Imam is alive, and therefore the infallible origin of legislation and infallible guidance are deemed to be uninterrupted and everlasting. On the other hand, he is considered to have been inaccessible to believers and unreachable."[29] Unsurprisingly, this predicament raised a host of difficult questions. How can the Shi'a obey a hidden figure? How can one even access the shari'a precepts formulated by a vanished Imam? In short, how can an invisible authority remain authoritative?[30]

Over the past centuries, a consensus emerged among Shi'i Muslims that properly trained scholars can serve as deputies [*na'ib*] of the Hidden Imam. As long as the last divinely appointed leader remains invisible, the scholars alone are responsible for guiding the Shi'a. The history of the debates, concessions and arguments by which scholars acquired the authority to act on behalf of the Twelfth Imam is beyond the scope of this dissertation.[31] For the purposes at hand, however, two points need to be stressed.

The first is that Shi'i clerics' authority to adjudicate disputes and administer communal affairs is derived from the authority of the last Imam—who resides among them incognito. These clerics bear different titles indexing their rank in the scholarly hierarchy (*e.g., marja'*, *ayatollah*, *mullah*, *faqih*, *mujtahid*), but all are representatives of the Hidden Imam. Pious Muslims consult them to know what the Imams would decide on a particular case or to understand how to obey shari'a law in circumstances that the Prophet had not encountered. Can we use DNA technology to determine the filiation of a child? Can a woman authoritatively interpret the scriptures? Is abortion licit? Shi'i clerics answer these questions by uncovering the opinions of a divine specter who lives in their midst.

The second point worth noting is that clerics reveal the Hidden Imam's opinion by performing a contextualized interpretation of Islam's sacred texts. I mentioned above that this practice is called *ijtihad.* I also specified that it is not a prerogative of Shi'i Muslims: Sunni scholars, too, articulate shari'a jurisprudence [*fiqh*] by means of interpretative reasoning. But because of their fundamental disagreement about prophetic succession,

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[28] On this episode, see Sachedina, *Islamic Messianism: The Idea of the Mahdi in Twelver Shi'ism.*

[29] Eliash, "The Ithna'ashari-Shi'i Juristic Theory of Political and Legal Authority," 27.

[30] On the notion of authority, see Arendt, *On Revolution* and "What is Authority?"

[31] For an excellent discussion of this history and its implications, see Rasekh, *Agents of the Hidden Imam: Shiite Juristic Authority in Light of the Doctrine of Deputyship*. See also Momen, *An Introduction to Shi'i Islam* (especially chapter 10).

Sunni and Shiʿi Muslims conceptualize *ijtihad* differently. For Sunni Muslims, the Prophet Muhammad was and remains the only true executor of the shariʿa. Since his death, no other religious authority has taken on his pastoral function. In performing *ijtihad*, Sunni scholars therefore attempt to interpret a divine law that Muhammad alone articulated. The Shiʿa, by contrast, hold that God has appointed twelve infallible guides to help the faithful live in accordance with the shariʿa. But since the last Imam has become a specter and is no longer directly reachable, scholars must turn to the sacred scriptures to discover his views on current affairs.

Hence, what distinguishes the Shiʿi juridical tradition from others is that its practitioners perform legal reasoning [*ijtihad*] in order to echo the voice of an invisible authority who lives among them. A series of consequences arise from this characteristic. The first is that Shiʿi Muslims are prohibited from following shariʿa rulings formulated by jurists of previous eras. While Sunnis commonly invoke the jurisprudence of 8th and 9th century scholars, the Shiʿa maintain that a jurist's work is only binding during his lifetime. A dead jurist, they assert, cannot speak on behalf of a living Imam.[32] Put differently: since the last Imam is alive and acquainted with the issues of our age, his opinions cannot be accessed by drawing on the legal scholarship of previous centuries. This should not be taken to mean, of course, that the shariʿa knowledge developed in earlier times no longer matters. On the contrary, Shiʿi scholars learn to perform *ijtihad* by reviewing the work of their forefathers and using a methodology they inherited from their predecessors. For the faithful public to remain under divine guidance, however, the necessity of obeying living jurists implies that every generation must produce a class of learned interpreters acting as conduits linking the ordinary believers to the Imams.

This first part of this dissertation examines how one becomes such an intermediary. We already know that clerics uncover the last Imam's opinions by deciphering a scriptural corpus comprising God's revelation to Mohammed [the Quran] and accounts of how the Prophet, his youngest daughter and the Twelves Imams embodied this revelation [the *hadith*]. But while clerics derive contemporary legal rulings based on historical accounts, we will see that *ijtihad* does not so much bridge the gap between past and present as it disrupts the very temporality dividing past, present and future. For the past, in a Shiʿi perspective, is never shut off from the present; it inhabits the present through the Hidden Imam—who is said to travel "between the times."[33]

The second part of the dissertation asks what can be learned about state legal authority by examining how this interpretative practice is remade into a source of family law. To what extent is Islamic reasoning reshaped when performed under the institutional and conceptual conditions of a secular state's legal apparatuses? How is the uncertain and short-lived knowledge produced by Shiʿi scholars remade into positive and enforceable state laws? What are the consequences of this transformation for those who are subject to

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32 See Richard, *Shiʿite Islam* (especially chapter 2). Sachedina, *Islamic Messianism: The Idea of the Mahdi in Twelver Shiʿism.*

33 Corbin, *En Islam Iranien*, volume 1: 78.

these laws? In the last three chapters of this dissertation, I take up these questions though a combination of ethnographic and historical research.

Ethnography / History / Car Bombs

This study is based on 22 months of fieldwork carried out in Lebanon, with additional historical research conducted in French national archives. Before closing this introduction, I wish to describe the particular position I came to inhabit within the constellation of social forces that shaped my sites of ethnographic inquiry between 2012 and 2014. This position was not of my own volition; I was in many regards assigned to it. In the context of this dissertation I use the word "fieldwork" as a shorthand term to denote the various encounters, observations and conversations that this position enabled.

A significant part of my field research was carried out in Lebanon's foremost *hawza* seminaries, all of which are located in the popular quarters that form Beirut's Southern periphery. One of these seminaries, however, will receive more attention throughout the following chapters. Called the *Ma'had,* it was founded by Mohammed Hussein Fadlallah in 1967. Although I visited other seminaries, the *Ma'had* is where I attended the training that enables committed Shi'is to constitute themselves as agents of the Hidden Imam. Yet this should not be taken to mean that I have been trained as a shari'a scholar myself. There are obvious limits to what PhD students can accomplish on their field sites: the minimum coursework and mentorship required to perform qualified legal reasoning [*ijtihad*] adds up to nine years, and I had two years to complete fieldwork research.

But even though I did not aspire to become a Shi'i jurist, I could not evade the challenges that such a lengthy process poses to anyone seeking to understand it ethnographically. Thankfully, the pursuit of knowledge (whether Islamic, ethnographic or technical) is a highly valorized endeavor in the seminaries where I worked.[34] At different stages in my fieldwork, *hawza* scholars and advanced seminarians helped me find effective strategies to document the multifaceted training to *ijtihad* within the constraints of my project. In light of their advice, I decided to attend the classes designed for first-year seminarians during a period of four months, and thereafter, advance to a higher level every two months. This research trajectory enabled me to explore various phases of the learning process, but also to work with seminarians of different levels. Seeing me literally fly through the *hawza* curriculum, many of them started calling me "Sheikh Jean." Jokingly, of course.

The second set of challenges associated with studying *hawza* training came as a surprise. Before I began attending the *Ma'had*, several friends and fellow researchers warned me that conducting fieldwork in such a setting would involve constant pressure to convert to Islam. Though I have no doubt that my classmates would have liked to see me embrace their faith, things did not quite turn out as my friends had anticipated. Because I was baptized into Catholicism at two months old (like most French Québecois of my

[34] This does not mean that all knowledge have the same value. For examples of how they articulate these different types of knowledges, see chapter 3.

generation), *hawza* seminarians regarded me as a Christian Catholic. Though none ever prompted me to convert, they instead asked me countless questions about Christianity. "Do Christians in Canada pardon each other before eating the holy bread, as Lebanese Maronites do?" "Could Paul actually have written the Godspell of Luke?" These are not very difficult questions. But nine times out of ten, I found myself unable even to begin articulating a cogent answer. Although I was instructed on Christian tenets at a very young age (catechesis was taught in Québec's public elementary schools until 2007), I had not thought about many Catholic notions and conventions since then.

Shiʿi scholars and seminarians never pushed me to embrace Islam, but they did expect me to know the religious tradition into which I was baptized. This expectation was perhaps most obvious during classes on Christianity, when teachers turned to me to validate their claims. Thus, in order to provide teachers and seminarians with decent answers (within a reasonable delay), I felt compelled to revise what often I had learned as a child. Reading about Christian practices and beliefs did not only help me satisfy my classmates' curiosity, however. After I left Lebanon, while analyzing my fieldnotes, it became clear to me that my routine efforts to answer the questions of my interlocutors enabled me to begin interacting with teachers and seminarians in a variety of settings. Our conversations about Catholicism, Christianity and Islam led us to the *hawza* dormitories, surrounding mosques, cafés and bookstores, where I learned about the ambitions, worries and expectations driving young Shiʿi to embark upon shariʿa training—elements that play an important role in my analysis.

My second main site of inquiry—the Shiʿi family law courts—called for a different approach. While *hawza* seminaries bring together a continuous cohort of persons who interact with one another day after day, Lebanese shariʿa courts (like all law courts) are crowded with people who do not know each other and had no previous contact with judicial apparatuses: plaintiffs, defendants, witnesses. These courts also belong to a vast system of legal institutions ranging from the parliament to local police stations. To be sure, only a small segment of Lebanon's judicial system operates using Shiʿi jurisprudence. But this segment alone nonetheless comprises 21 courts, which together employ more than 250 people (judges, attorneys, staff members), all appointed by the state. Although I visited different local courts, this study focuses on the largest and most influential of these tribunals: Beirut's Shiʿi courthouse, located in the western part of the Lebanese capital.

I began exploring this courthouse in a piecemeal fashion. While I immersed myself in shariʿa training daily from the start, I first approached family law courts by attending the weekly hearings of the low court (held on Tuesdays) as well as those of the high court (held on Thursday). For a relatively long time, I managed to observe how *hawza*-trained judges perform their pastoral vocation in state apparatuses while maintaining my research commitments in seminaries. *Hawza* classes ran between 7 and 11 am, and at 11:30 am court hearings were barely starting. So, on every Tuesday and Thursday, I would leave the *Maʿhad* right after the bell rang, and cross the city in a cab to reach family courts in time for the hearings. Once arrived, I would quietly take my place in the public section of the

courtrooms, open my pocket notebook and record as much information as I could on both the lawsuits and their treatment by Shi'i judges. Thus, week after week, I followed the judicial unfolding of many stories about divorce, child custody and inheritance—often sad ones.

Over time, I started collecting the judicial decisions [*hukum*] pertaining to the disputes that I had followed most closely. These hand-written documents typically detail the empirical facts that prompted the lawsuits and the arguments that led to the court's judgment. But since I was interested in the reasoning underlying this argumentation and its implications for those subject to it, my understanding of Lebanon's postcolonial legal regime would have remained limited without the assistance of many judges, lawyers, and litigants. Three judges in particular helped me construct the framework of assumptions, constraints and possibilities within which one performs *ijtihad* in modern state apparatuses. One of them carefully walked me through his own jurisprudence each week in his living room, in exchange for French lessons I provided to his youngest son. Lawyers specialized in family law and litigants enabled me to appreciate the social, gendered and material inequalities underpinning many family law disputes, but also how their adjudication in state legal institutions sometimes aggravates these inequalities.[35]

Shi'i family courts eventually became my main sites of inquiry after a tragic course of events forced me to leave *hawza* seminaries. The field research supporting this study was conducted on a terrain marked by the Syrian Civil War (2011 to present). Despite the geographic proximity and political connections between Lebanon and Syria, relatively few spillovers occurred during most of my residency. But after Hezbollah became openly involved in the Syrian conflict (in May of 2013), a number of combatant factions threatened to attack the Shi'i regions of Lebanon. Chief among those was Beirut's southern suburb, where most *hawza* seminaries are located. On July 9, 2013, a car bomb exploded a few meters away from the *Ma'had*, injuring 53 civilians.[36] A few weeks later, the largest explosion since the end of the Lebanese Civil War (1975–1990) rocked the same neighborhood. It killed twenty-seven people.[37] After this first wave of attacks, I decided to stop attending *hawza* seminaries, though I remained in contact with scholars and seminarians by phone. Leaving the seminaries was first and foremost a question of personal safety, but to the few senior researchers who claimed that it was business as usual in Lebanon, I explained that it was an ethical one too. I felt that in these difficult times, *hawza* scholars had other things to do than feeding the curiosity of an anthropologist.

Because of its religious composition, the neighborhood where the Shi'i family courts are located was not directly targeted by combatants. I was able to conduct research there until March 2014. When I left, however, heavy fences were installed around the courthouse building to protect it from potential attacks. Although this particular building

[35] In the framework of this dissertation, the product of this labor is confined to the epilogue, where I analyze a mobilization led by Shi'i litigants regarding the adjudication of child custody disputes.

[36] "Car Bombing Injures Dozens in Hezbollah Section of Beirut," *New York Times*, July 9, 2013.

[37] "Deadly Blast Rocks a Hezbollah Stronghold in Lebanon," *New York Times*, August 15, 2013.

was never attacked, other parts of the country continued to suffer car bomb explosions after I resettled in France to study the colonial history of the Lebanese judicial system. This historical research was conducted in French national diplomatic archives (Nantes, France); it provided me with the material on which chapter 4 is based.

As I write these lines, Lebanon has remained a relatively safe territory for almost a year. Yet as Aleppo (115 miles north) is agonizing, and Gaza (112 miles south) remains an open-air prison, this internal peace cannot but be fragile. Unfortunately, there is good reason to think that the seminarians, litigants, judges, and activists whom the reader will come to know in this dissertation will only be able to lead safe lives when a *just* peace prevails in Syria and in Palestine.

Chapter one
Territories of Learning

Perched on the height of Jabal 'Amil, nestled in the heart of South Lebanon, the village of Aynatha is surrounded by terraced farmland and planted in a stony, limestone soil. The air is crisp and fresh up here. The landscape is serene, although the omnipresence of the UNIFIL troops (the United Nations Interim Force in Lebanon) reminds one that this region of Galilee is highly vulnerable to geopolitical tensions. Unfortunately for the first-time visitor, though, nothing from Aynatha's bygone glorious times seems to remain amidst the spectacular panorama or in the narrow streets of the village.

But some residents know the proud story of their village. Between the mid-15th century and the mid-16th century, Aynatha and its surrounding country constituted the foremost center of Shi'i authority. The village was a constituent of the *hawza* [seminary] of Jabal 'Amil, which stretched like an archipelago over the modest summits of the region, but whose history remains obscure.[1] Lebanon is today known for having housed a prominent Roman law school: *Berytus*, whose ruins are believed to lie underneath Beirut's present-day downtown.[2] It is also recognized as the birthplace of Christian missionary schools in the Middle East.[3] However, the group of elders who met me upon my arrival in Aynatha were proud to recall Lebanon's role in the elaboration of a third tradition, that of Shi'i Islamic thinking. As the conversation proceeded, I nonetheless noticed that my interlocutors were more eager to talk about the everyday resistance under the Israeli occupation than any centuries-old history—not surprising given that the very recent history of the region is notable for the virtually complete absence of sustained peace. After fifteen years of civil war (1975-1990), a war of liberation of ten years (1990-2000), and the bloody re-engagement with invading Israeli forces in the July War (2006), the details of the village's earlier glory may have faded in the local memory.[4]

This is the first of three chapters concerned with today's practitioners of the scholarly tradition once circulating through the village of Aynatha. Over the last four decades, new Islamic seminaries have emerged in Shi'i Lebanon. These centers of higher education aim to perpetuate a shared legal heritage (the shari'a) by training new generations of jurists to revisit and enrich this heritage such that it stays responsive to the times. Detailed analysis

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[1] Other locations that formed the *hawza* of Jabal 'Amil include Mays al-Jabal, Juba' and Jizzin. See Abisaab, "Shi'ite Beginning and Scholastic Tradition in Jabal 'Amil in Lebanon"; and Adel, Elmi, Taromi-Rad. *Hawza-yu 'ilmiyya.*

[2] Kassir, *Histoire de Beyrouth*; and Hall, *Roman Berytus: Beirut in late antiquity*.

[3] Fortna, *Imperial Classroom.*; and Makdisi, *Artillery of Heaven.*

[4] Slackman, "Memo from Beirut. Where Outsiders, and Fear, Loom Over Daily Life."

of the learning process—its ethics, its epistemology, its temporality—will be presented in chapters two and three.

The present chapter traces the historical trajectory that *hawza*s seminaries followed over the last millennium, stressing how these seminaries recently came to embody the social and political hope of many young Shi'i Lebanese. In the first half of the chapter, I discuss the distinguishing features of Shi'i higher learning, approaching this task through a critical engagement with historical scholarship on Islamic education. I argue that *hawza*s are distinct insofar as they train seminarians primarily to revise existing jurisprudence [*fiqh*] and reinterpret the sacred texts in light of questions raised by contemporary living. This aspect of *hawza* education responds to a chief characteristic of Shi'ism: the faithful are not allowed to follow the rulings of dead jurists. From a Shi'i perspective, shari'a interpretations lose their authority after the scholar who articulated them has died. Every generation of believers must therefore ensure that young scholars are trained to derive from the scriptures a binding—but time-bounded—set of shari'a rules to which they can conform. *Hawza* seminaries offer such a training. To illustrate this point, I turn to current forms of Shi'i instruction in Iraq, Iran and Lebanon.

The second half of the chapter focuses on one particular *hawza*, the Islamic Legal Institute [*al-Ma'had al-shar'i al-islami*], where I conducted the bulk of my fieldwork.[5] While exploring this educational space, I stress that the craft of *hawza* scholars is bound up with social and political hopes: by articulating new shari'a norms and reviving old ones, the scholars with whom I work aspire to address some of the ills that befall their country (corruption, social injustice, sectarian politics). What drives them to undertake painstaking scriptural research is not so much the job of aligning Shi'i legal scholarship with contemporary living—as though shari'a reasoning aimed to adapt Islam to whatever arises during a given era—but rather the prospect of advancing a just society. I close this chapter insisting that the forms of knowledge (and forms of life) elaborated by *hawza* seminarians and scholars are nonetheless increasingly difficult to sustain under the economic and political conditions of present-day Lebanon. Looking at the daily social and political struggles waged by these Shi'i students, I dispute the claim (made by several historians) that *hawza*s are independent from state power.

In sum, this chapter describes the *hawza,* the traditional institution responsible for training dedicated Shi'i Muslims to uncover the Imams' opinion on the myriad issues of our times. By mapping the historical trajectory of these seminaries and the social forces in which they operate today, I aim to introduce some of the key terms (*e.g.*, *fiqh*, *ijtihad*, *marja'*) through which the argument of this dissertation unfolds. However, I also aim to show that *hawza* scholars and seminarians conceive Shi'i legal reasoning [*ijtihad*] not

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[5] The word *hawza* functions slightly differently in Lebanon than it does in Iran and Iraq. In Lebanon, the word is used to describe a seminary, like the Islamic Legal Institute. In Iran and Iraq, the word most often describes a group of seminaries. As Rula Abi-Saab noted, one "speaks of the Najaf *hawza* or the Qom *hawza,* each of which comprises a number of different and independent schools, rather like the colleges of Oxford." Abisaab, "The Cleric as Organic Intellectual: Revolutionary Shi'ism in the Lebanese Hawza," 231 n1.

only as a way to modify shari'a scholarship, but also as a way to construct a different kind of present. To begin this exploration, I return to my brief sketch of the historical journey of the *hawza*.

Historical sources tell us that the *hawza* of Jabal 'Amil thrived during the 15th century, despite the pressure that Ottoman authorities maintained against Shi'ism on the Eastern shore of the Mediterranean.[6] Throughout this century, the high plateaus of today's South Lebanon produced the most advanced Shi'i scholarship of the time. Cohorts of students left Persia and Mesopotamia to join the prestigious schools scattered on the dry hills of the region. Before the rapid disintegration of its seminaries around the mid-16th century, this small area had already attracted more than 400 students, and produced at least 158 licensed scholars.[7]

To be sure, the scholarly grandeur of Jabal 'Amil represents only a short segment of the long and zigzagging journey of Shi'i learning centers—a journey beginning about a millennium ago, when the Shi'i pioneer Abu Ja'far al-Tusi founded the *hawza* of Najaf (Iraq) in 1056. Najaf remained a fertile ground of shari'a scholarship throughout the 11th century, but it quickly descended into stagnation when a rival knowledge center emerged in the city of Hilla, about sixty kilometers north. In the following century, the locus of Shi'i legal authority moved from Najaf to Hilla; since then, it has never stopped traveling.[8]

The *hawza* of Hilla stayed a bustling hub of educational activities until 1453, when it was sacked and burned by the Mongols.[9] It was then that Jabal 'Amil became the primary center of shari'a scholarship, remaining so until the scholars [*'ulema*] of the region migrated to Iran, where Shi'ism had been declared the official religion of the new Safavid Empire. In Iran, the Safavid emperors (1501–1722) established Shi'i learning centers in Isfahan, Mashhad, and Teheran, among others. Following the fall of the Safavid dynasty, however, the center of teaching excellence shifted back toward Najaf—where the local *hawza* recovered from its centuries-long stagnation, and began its golden age.[10] Najaf's undisputed supremacy as the locus of Shi'i scholarship came to an end in the first half of the 20th century with the emergence of the *hawza* of Qom (Iran). Undoubtedly, the city of Qom was an important site during the formative years of Shi'ism, but it was only upon

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[6] Al-Amin, *Autobiographie d'un clerc chiite de Gabal 'Amil*; Abisaab,"The Shi'ite 'Ulama, the Madrasas, and Educational Reform in the Late Ottoman Period"; Mallat, "Aspects of Shi'i Thought From The South Of Lebanon"; and Shanahan, *The Shi'a of Lebanon*.

[7] Abisaab, "The Shi'ite 'Ulama, the Madrasas, and Educational Reform in the Late Ottoman Period"; Chalabi, *The Shi'is of Jabal 'Amil and the New Lebanon.* See also Momen, *An Introduction to Shi'i Islam,* 123 (table 5).

[8] For a detailed description of the journey of the various Shi'i center of scholarship, see Adel, Elmi, Taromi-Rad. *Hawza-yu 'ilmiyya.*

[9] Momen, *An Introduction to Shi'i Islam.*

[10] Nakash, *The Shi'is of Iraq*; and Litvak, *Shi'i Scholars of Nineteenth-Century Iraq.*

the arrival of the eminent jurist Abdul-Karim Ha'eri Yazdi in 1921 that its seminaries began to rival those of Najaf. This rivalry persists today, creating an important tension to which we will return later in this chapter.

Figure 1. The Lebanese village of Juba was another constituent of the 16th Century *hawza* of Jabal 'Amil. Source: Momen, *An Introduction to Shi'i Islam*.

Shari'a Academies: Shi'i *Hawza*s and Sunni *Madrassa*s

The itinerary followed by Shi'i learning centers over the last millennium helps sketch out the lineaments of *hawza* education. The Arabic word "*hawza*" is the diminutive form of "*hawza 'ilmiyya*," meaning "territory of learning."[11] Historians have often depicted these territories as circles of students congregated around an erudite Shi'i scholar.[12] One such scholar defined the *hawza* for me as the territory on which blossoms "a circular relationship binding together teachers, books and students."[13]

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[11] Meir Litvak notes that the literal meaning of *hawza* (*i.e.,* territory of learning) also signifies "community of learning." Litvak, *Shi'i Scholars of Nineteenth-Century Iraq*, 2.

[12] Compared to other educational institutions (such as the Sunni *madrassa* and the *kuttab*), *hawzas* remain remarkably understudied. Anthropologist Michael Fisher has produced an ethnography of Qom: Fischer, *Iran. From Religious Dispute to Revolution*. Historical work on the *hawza* include the following titles. Abisaab, "Shi'ite Beginning and Scholastic Tradition in Jabal 'Amil in Lebanon"; Abisaab, "The Cleric as Organic Intellectual: Revolutionary Shi'ism in the Lebanese Hawza"; Abisaab, "The Shi'ite 'Ulama, the Madrasas, and Educational Reform in the Late Ottoman Period"; al-Gharawi, *al -hawzah al-'ilmiyyah fi al-Najaf al-Ashraf*; Litvak, *Shi'i Scholars of Nineteenth-Century Iraq*; Mervin, "La quête du savoir à Nagaf"; Mervin, "La hawza à l'épreuve du siècle"; Mottahedeh, *The Mantle of the Prophet*; and al-Salihi, *Al-Hawzah al-'Ilmiyyah fi al-Aqtar al-Islamiyyah.*

[13] Interview with a *hawza* scholar, conducted on February 27, 2013.

In working toward an accurate picture of *hawza* training, it is useful to start with what Palestinian historian Abdul Latif Tibawi (1910–1981) identified as the fundamental aim of Islamic instruction: “to direct the conduct of the individual and the community according to God’s commands.”[14] Sunni *madrasa*s [colleges] have so far been the natural site to study how future clerics and scholars develop the dispositions necessary to guide faithful Muslims.[15] While Shi‘i higher education also aims to enable aspiring clerics to provide pastoral care, they conceptualize this task differently. Hence, before delving into the daily craft of Shi‘i seminarians, it is appropriate to clarify how *hawza* seminaries differ from other Sunni learning institutions—and sometimes defy conventional understandings of Islamic education. In this section, I focus on how Sunni and Shi‘i learning centers approach shari‘a scholarship, as well as how they relate to government apparatuses. We will see that these two sets of differences have important implications for seminarians working in contemporary *hawza*s.

To begin, it is worth stressing that Sunni and Shi‘i institutions share some important commonalities. In both traditions, for instance, the transmission of shari‘a knowledge depends on specific mentorship relations. What drives seminarians to migrate over long distances is neither the locations themselves nor their prestige, but the reputation of the scholars inhabiting them. Although Sunni education flourished in comparatively fixed venues (*e.g.*, Cairo’s Al-Azhar and Tunis’s Ez-Zitouna), historians have remarked that interpersonal patronage ties and face-to-face interactions have precedence over institutional forms of belonging.[16] Islamic education, as historian Jonathan Berkey notes, is judged “not on *loci* but on *personae*.”[17] Another important similarity between Sunni and Shi‘i higher learning is the emphasis on legal scholarship. Georges Makdisi has long insisted that Islamic law represents the “queen of the Islamic sciences.”[18] By this, he means that legal scholarship predominates over other forms of knowledge (such as theology, Quranic hermeneutics and Islamic philosophy). Although several strands of Makdisi’s analysis have come under criticism lately, recent work on classical and contemporary forms of Islamic education support his claim about the centrality of legal

[14] Tibawi, A. L., “Philosophy of Muslim Education,” 187

[15] Among the most important on the Sunni *madrasa* works are: Berkey, *The Transmission of Knowledge in Medieval Cairo*; Bulliet, *The Patricians of Nishapur. A Study in Medieval Islamic Social History*; Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350*; Leiser, “Notes on the Madrasa in Medieval Islamic Society,” Makdisi, *Muslim Institutions of Learning in Eleventh-Century Baghdad*; Makdisi, “Madrasa and University in the Middle Ages,” Makdisi, *The Rise of Colleges. Institutions of Learning in Islam and the West.* Pederson, *The Arabic Book*; Tibawi, “Origin and Character of ‘al-madrasah’”; Tibawi, “Philosophy of Muslim Education.”

[16] Chamberlain, *Knowledge and Social Practice in Medieval Damascus*; Messick, *The Calligraphic State*; Makdisi, *The Rise of Colleges.* Nome and Vogt, “Islamic Education in Qom: Contemporary Developments.”

[17] Berkey, *The Transmission of Knowledge in Medieval Cairo*, 23; emphasis in the original.

[18] Makdisi, *The Rise of Colleges,* 24.

sciences in the overall curriculum.[19] Meanwhile, various accounts of *hawza* instruction suggest that Islamic law is also the primary focus of Shiʿi teaching efforts.[20]

Although Sunni and Shiʿi education both revolve around legal scholarship, the two Islamic traditions nonetheless conceptualize the divine law differently. In his classic study of medieval Sunni colleges, Makdisi points out that the shariʿa has always represented "a conservative force."[21] Historian Gary Leiser further explains that the first Sunni *madrasas* served as "ideological tools" helping religious authorities confront the doctrinal challenge posed by the "Shiʿi threat."[22] These colleges not only centralized shariʿa scholarship, but also turned it into a means to protect the Sunni tradition from the heterodoxy of Shiʿism.[23] Since then, several historians of Islam have understood the protective role assigned to the first Sunni *madrasas* as a general feature of Islamic education, whether medieval or modern. Muslim education, writes one of them, is "a pillar of *stability*, rather than a force of *change*" (emphasis in original).[24]

Hawza seminaries challenge this general assessment, as well as the binary oppositions (stability/change, conservative/innovative) underpinning it. Unlike Sunni learning centers, *hawza*s were not established to guard the tradition against the assaults of heterodoxy. Their emergence responded to a distinctively Shiʿi set of imperatives—key among them

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[19] Berkey, *The Transmission of Knowledge in Medieval Cairo*; and Chamberlain, *Knowledge and Social Practice in Medieval Damascus*; Messick, *The Calligraphic State.*

[20] Litvak, *Shiʿi Scholars of Nineteenth-Century Iraq*, 193 (especially table 11); Mervin,"La quête du savoir à Nagaf"; Mottahedeh, *The Mantle of the Prophet*; and Steward, *Islamic Legal Orthodoxy*. Litvak notes that "the works written by 69 leading *mujtahids* of the ʿAtabat [*i.e.* the cites of Najaf and Karbala] during the 19th century shows that *fiqh* works constituted 62.3% of the titles in the survey and *usul* works constituted 22.5%, altogether amounting to 84.8%. Scholarly works in eleven other fields, which served mainly as auxiliary sciences, constituted only 15.2%" (2001: 75). Litvak, "Madrasa and Learning in Nineteenth-Century Najaf and Karbalaʿ," 75.

[21] Makdisi, *The Rise of Colleges,* 282. Makdisi regards the establishment of Sunni colleges in the 11th century as a landmark event in the process by which traditionalist jurists came to monopolize the exercise of Sunni legal authority. "These institutions," he writes, "came to embody the ideal of traditionalist Islam, foremost among which was the primacy of the law." Makdisi, *The Rise of Colleges,* 9. Controlled by traditionalist jurists, the new colleges played a pivotal role in the consolidation of the four Sunni schools of law, "in an attempt to prevent what was seen as a rationalist encroachment on religious interpretation at the expense of reliance the scripture." Steward, *Islamic Legal Orthodoxy*, 27. On the formation of the Sunni schools of law, see Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.*

[22] Leiser writes that "Shiʿi propagandists were active throughout the Islamic domain and had many institutions, such as the famous al-Azhar in Cairo and numerous dar al-ʿilm, in which they received special training. Mahmud of Ghazna, perhaps the leading defender of Sunnism at the time, saw the *madrasa* as an institution to revive, strengthen, and promote Islamic Sunni law governing all aspects of life, and as an effective means of thwarting the Shiʿi threat. […] For the new defenders of orthodoxy, madrasas became the primary ideological tool for rooting out Shiʿism." Leiser, "Notes on the Madrasa in Medieval Islamic Society," 18. On this, see also Makdisi, *The Rise of Colleges.*

[23] *Ibid.* See also, Hallaq, *Shariʿa: Theory, Practice, Transformations* (especially chapter 3).

[24] Berkey, "Madrasa Medieval and Modern: Politics, Education, and the Problem of Muslim Identity," 46.

the necessity of coping with the last Imam's occultation. As I noted in the introduction, Shi'i Muslims regard the Prophet's cousin Ali Ibn Abi Talib and his twelve descendants (the twelve Imams) as the rightful successors to Mohammed and the only infallible [*ma'sum*] interpreters of the Quranic message.[25] Yet in 941 AD, when the Twelfth and last Imam disappeared, the Shi'i community found itself bereft of direct divine guidance. Following the occultation, Shi'i learned scholars inherited the authority to guide the community—a task they fulfill by discovering God's commands, prohibitions, and recommendations as communicated through the Quran and the hadiths.[26] Although the first generations of scholars repudiated human attempts at revealing God's will (instead championing strict imitation of the Imams' behavior), the contradictions in the work of early scholars led subsequent generations to recognize that the divine shari'a was "in a state of doubt."[27] The recognition that human interpretations of God's will does not offer order and stability, but actually remains "uncertain, shifting, and doubtful" led, in turn, to the elaboration of a methodology helping scholars uncover the shari'a from the Shi'i scriptural corpus.[28]

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[25] The Imam, for Shi'i Muslims, is not a prayer leader or a political head of state. As Robert Gleave notes, the Imam is "the source of religious knowledge for the community, and the legitimacy of any political and religious policy is dependent on its correspondence with the Imam's wishes." Gleave, "Conceptions of Authority in Iraqi Shi'ism : Baqir al-Hakim, Ha'iri and Sistani on Ijtihad, Taqlid and Marja'iyya," 65.

[26] Momen, *An Introduction to Shi'i Islam.*

[27] Calder "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of Ijtihad," 68. About the early debates regarding the possibility to exercise *ijtihad*, see Modarressi, *An Introduction to Shi'i Law. A bibliographical study*, especially chapter 4.

[28] *Ibid.,* 66.

In Islamic terminology, the practice of uncovering the shari'a is called *ijtihad*.[29] *Hawza*-trained scholars perform *ijtihad* by deriving from the scriptures a framework of rules governing the social and devotional life of the Shi'a. Though Sunni jurists also extrapolate rulings from the shari'a, their efforts at interpretation often draw on the jurisprudence established by medieval jurists.[30] Shi'ism, by contrast, disallows scholars to accept the interpretation of their predecessors as conclusive. Since the last Imam is alive and (invisibly) present in the world, only living thinkers can extrapolate his views on contemporary issues. Thus, until the Hidden Imam returns from concealment, *hawza* scholars and seminarians must take on the task of elaborating shari'a rulings that respond to current problems and circumstances.[31]

How seminarians assume this responsibility will be explored in subsequent chapters; for now, two things need to be stressed. First, the legal pronouncements [*ahkam al-shari'a*] issued by Shi'i jurists always remain uncertain and temporary.[32] Although these jurists do indeed exert considerable influence on the faithful, none can claim a monopoly on jural truth, and their authority as jurists is bound to the duration of their lifetime. After their demise, it falls upon a next generation of *hawza* graduates to reinterpret the sacred sources. Second, it would be wrong to understand the Shi'i prohibition on following the

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[29] The Arabic word *ijtihad* literally means exerting oneself; it is constructed from the 7th form of the root *jahada*, which connotes the accomplishment of an effort. Exercising *ijtihad* constitutes a rewarded practice: even if mistaken, a scholar attempting to discover God's law should be rewarded in the world to come; if he is right, he should be doubly rewarded. On this see Makdisi, *The Rise of Colleges*, 2. It is also assumed that each epoch must bring forth a sufficient number of practitioners of *ijtihad* (*i.e. mujtahids*) in order to assure the well-being of the community. For that reason, it is incumbent upon the Shi'i community to train an adequate number of scholars capable of uncovering the Imams' perspective on contemporary issues. Before it became the primary engine of Shi'i Islamic law, *ijtihad* was already a central element of Sunni juristic though, conceptualized most famously in the writings of the early ninth century jurist al-Shafi'i. See Gleave, "Conceptions of Authority in Iraqi Shi'ism : Baqir al-Hakim, Ha'iri and Sistani on Ijtihad, Taqlid and Marja'iyya," 65. Several scholars of Islam have long argued that Sunni Muslims abandoned the methodology of *ijtihad* in the later years of the ninth century. The conventional wisdom, however, came under severe criticism in the last decades. Rudolf Peters and Wael Hallaq have each shown that Sunni jurists continually exercised *ijtihad* throughout the ages. Peters, "Idjtihad and Taqlid in 18th and 19th Century Islam"; and Hallaq, "Was the Gate of Ijtihad Closed?" In response to Peters and Hallaq, Barber Johansen wrote: "it cannot be proved that the debate on [Sunni] *ijtihad,* after the tenth century, had any practical influence on the development of new legal ordinances within the normative systems of [Sunni] Islamic law" Johansen, "Legal literature and the problem of change : the case of the land rent," 30. Johansen argues that although Sunni jurists had introduced numerous changes within their legal doctrine between the 10th and the 19th century, those were not brought about under the rubric of *ijtihad*. Whether the uninterrupted importance of *ijtihad* among Sunni jurists (documented by Peters and Hallaq) translated into legal changes therefore remains an open question.

[30] On this see Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries*.

[31] Lambton, "A Reconsideration of the Position of the Marja' al-Taqlid and the Religious Institution," 127.

[32] Amanat, "From Ijtihad to Wilayat-i Faqih: The Evolution of the Shiite Legal Authority to Political Power"; and Hallaq, *Shari'a: Theory, Practice, Transformations*, 110. On the division between certain and uncertain forms of knowledge see Calder "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of Ijtihad," 70-71.

precepts of dead jurists as the expression of a desire for change, innovation and renewal. The Shi'a are not allowed to follow the rulings of dead scholars, not in order to facilitate legal change and adaptation, but because the Hidden Imam is still alive.

Hence, because *hawza* training aims to produce scholars capable of challenging and revising the jurisprudential rulings of their predecessors, it can hardly be defined as a "pillar of stability." Yet it also cannot be described as a "force of change," as this iterative process of reinterpretation seeks to establish continuity between the present, the past (as recollected in the scriptures) and the foreseeable future. At once conservative and transgressive, *hawza*s are perhaps best viewed as communal institutions where circumstances from contemporary life are problematized—within the framework of the Quranic texts and the statements, deeds and tacit consent of the Prophets and the Imams [*hadiths*].

Another key difference between Shi'i and Sunni seminaries concerns their relationship with state apparatuses. Several historians observe that most Sunni *madrasa*s emerged from within governmental technologies of power, and that licensed scholars often joined the ranks of the ruling elite.[33] The very first *madrasa*s, writes Leiser, were established to "create loyal cadres for the new administration."[34] Some dispute this claim, pointing out that a number of medieval Sunni colleges were not subject to political regulation.[35] But most historians agree that the advent of colonialism and the concomitant rise of the nation-state led Sunni *madrasas* to fall under tight governmental control.[36] Shi'i seminaries followed a different trajectory. Unlike Sunni colleges, *hawza*s have traditionally been founded (and funded) by scholars rather than by rulers or notables.[37] Most of them thus grew from below. Yet, in order to escape governmental regulation (if not persecution), Shi'i learning centers often had to migrate between Persia, Mesopotamia, and the Eastern Mediterranean, as illustrated in the brief historical sketch above.[38]

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[33] Chamberlain, *Knowledge and Social Practice in Medieval Damascus*; Goldziher, "Education (Muslim)"; Hallaq, *Shari'a: Theory, Practice, Transformations*; and Makdisi, *The Rise of Colleges.*

[34] Leiser, "Notes on the Madrasa in Medieval Islamic Society," 18.

[35] See, for instance, Berkey, "Madrasa Medieval and Modern: Politics, Education, and the Problem of Muslim Identity."

[36] Fortna, *Imperial Classroom*; Hefner, "Introduction: The Culture, Politics, and Future of Muslim Education"; Starrett, *Putting Islam to Work*; and Zeghal, "The 'Recentering' of Religious Knowledge and Discourse: The Case of al-Azhar in Twentieth-Century Egypt." The history of Al-Azhar offers a rather illuminating example of what Robert Hefner calls the "etatization of Islamic education. " Hefner, "Introduction: The Culture, Politics, and Future of Muslim Education," 13. On Al-Azhar, see also Zeghal, *Gardiens de l'Islam : les oulémas d'Al-Azhar dans l'Egypte contemporaine*; and Zeghal, "Religion and Politics in Egypt: The Ulema of al-Azhar, Radical Islam, and the State (1952-94)."

[37] Chamberlain, *Knowledge and Social Practice in Medieval Damascus*; and Litvak, M., *Shi'i Scholars of Nineteenth-Century Iraq.*

[38] Abisaab,"From the Shi'ite hawza to Marxism"

The fact that most *hawza*s have grown outside the purview of the state should not, however, be taken to mean they are independent from it. The *hawza*s of Beirut, for instance, though founded by religious leaders, are enmeshed in national and transnational strategies of power. Similarly, the struggle waged by the scholars of Najaf against the nationalist Iraqi regime, and the tug-of-war between the seminaries of Qom and the modernizing regime of the Shah, illustrate that *hawza* can be turned into highly effective political platforms.[39] At the end of this chapter, I will revisit the relationship between the *hawza* and the state in light of my ethnographic material. In the meantime, however, we need to look at how Shi'i higher education is delivered today in three of its main locations.

Qom, Najaf, Beirut

My Beiruti classmates referred to Qom and Najaf as "*hawza*s *um*" (parent *hawza*s). With more than 30,000 students, the former is currently the largest Shi'i learning and research center in the world.[40] Today, the *hawza* of Qom governs an international network of affiliated institutions (which arouse the envy of countless Muslim seminarians).[41] Though most Shi'i seminaries have historically remained distant from governmental apparatuses, however, the Iranian Revolution of 1979 prompted a decisive shift in the relationships between the *hawza* and the state. Specifically, it transformed Iranian *hawza*s into "an important resource for government and state bureaucracy."[42] Whether the old learning center of Qom has sold its soul to the Iranian regime is a topic of endless debate among

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[39] On the conflicts between Iraqi and Iranian *hawza*s against secular and oppressive political regimes, see Cole, *Sacred Space and Holy War*; and Luizard, *Histoire politique du clergé chiite*.

[40] Mervin,"Introduction." In 2004, the director of the *hawza* of Qom (*Houze-ye 'elmiye*) estimated the number of students to have reached 50,000. By comparison, when the Pahlavi regime was established (in 1925), Qom had about 5,000 students. In 1975, they were 6,500. Nome and Vogt, "Islamic Education in Qom: Contemporary Developments," 42-43.

[41] Located in South Beirut, the *hawza al-rasul el-akram* (see below) is the Lebanese branch of the Al-Mustafa International University (*Jaami'a al-Mustafa al-'ilmiyya*), a university-style Shi'i seminary network established in Qom in 1979. For a study of this *hawza* and its relationship with Qom, see Abisaab, "The Cleric as Organic Intellectual"; and Mervin, "Muhammad Husayn Fadlallah, du 'guide spirituel' au *marja'* moderniste."

[42] Nome and Vogt,"Islamic Education in Qom: Contemporary Developments," 36.

Lebanese seminarians, but suffice to say that it is today entrenched in the Iranian Ministry of Higher Education.[43]

The modern *hawza* of Qom, however, was established sixty years prior to the Revolution.[44] With the arrival of the prominent Islamic thinker Abdul-Karim Ha'eri Yazdi, Qom started to challenge the hegemony of Najaf as the center of Shi'i scholarship. During the 15-year residence of Ha'eri in Qom, the number of seminaries in the city eventually peaked at 700.[45] Yet after his demise (in 1936), and until the coming of the epoch-making jurist Sayyid Hussein Borujerdi (in 1944), the *hawza* suffered the aggressive modernization policies of the Shah's Western-backed regime. With Borujerdi at its head, however, Qom regained its momentum and sapped the dominance of Najaf, attracting increasingly large cohorts of students.[46] The political tensions that roiled Iran throughout the second half of the 20th century did nothing to curb this spectacular ascent. In 1963, following the launching of Western-inspired reforms (an episode often referred to as the White revolution), the *hawza* engaged in an open confrontation with the regime, ending in 1979 with the overthrow of the Shah. Meanwhile, the importance of Qom as a locus of Shi'i shari'a scholarship continued to grow.[47]

Anthropologist Michael Fisher and historian Roy Mottahedeh have both painted lively tableaus of this pivotal episode in the history of Iranian *hawza*s.[48] After the establishment of the Islamic Republic, the *hawza* of Qom underwent a process of

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[43] Adel, Elmi and Taromi-Rad. *Hawza-yu 'ilmiyya.* Nome and Vogt note that although the Iranian *hawza* often acts has a "think tank of the state," the seminaries have their own system, and do not "belong to the state." Nome, and Vogt, "Islamic Education in Qom: Contemporary Developments," 51. Zaman argues that while professing to be convinced of keeping the *hawza* independent from the state, Ali el-Khamenei (the current Supreme Leader of Iran) "calls on those associated with the hawza to reorient their scholarly activities." Zaman, "Epilogue: Competing Conceptions of Religious Education," 250. Khalaji remarks that following the revolution, Khomeini "eliminated and suppressed" several *hawza* scholars who did not support the theocratic principles of the regime. Khalaji, "The Last Marja. Sistani and the End of Traditional Religious Authority in Shi'ism," 26.

[44] The term "modern" is often used to distinguish the current *hawza* of Qom from that the center of learning that was established there in the 13th century, and revived under the dynasties of the Safavid (1501-1722) and the Qajar (1794-1909). On that, see Zaryab, "Education v. the Madrasa in Shiite Persia"; and Adel, Elmi and Taromi-Rad. *Hawza-yu 'ilmiyya* (especially chapter 1).

[45] Adel, Elmi and Taromi-Rad. *Hawza-yu 'ilmiyya.*

[46] Nakash remarks that "the number of students in Qom, which may have been about 1,000 around 1937 when Ha'iri died, increased to over 5,000 during Borujerdi's time. This increase is all the more significant when compared to the sharp drop of Najaf's student population from 8,000 early in the 20th century to 1,954 in 1957. Nakash, *The Shi'is of Iraq*, 259. See also Mervin, "Introduction."

[47] Nome and Vogt, "Islamic Education in Qom: Contemporary Developments." See also Cole, *Sacred Space and Holy War*; and Luizard, *Histoire politique du clergé chiite.*

[48] See: Fischer, *Iran. From Religious Dispute to Revolution*; and Mottahedeh, *The Mantle of the Prophet.*

bureaucratization, and was soon directed to train the new regime's religious cadres.[49] Today, Qom hosts the "Iranian directorate council of *hawza*," which supervises more than two hundred and seventy schools.[50] Among them is the Al-Mustafa International University, which has several international branches, including one in Lebanon.

If Qom nourishes the imagination of seminarians who dream of a religious education with academic contours, Najaf commands the utmost respect and nostalgia. Various teaching strategies hinge on its powerful image: conjuring up visions of Najaf (its students, its ambiance, its history) lends a degree of authority to one's claim, advice, or admonition. Home to the bejeweled Imam Ali shrine, Najaf is the third holiest site in Shi'i Islam.[51] But this one-million-strong city is also the birthplace of Shi'i shari'a scholarship, and one of the oldest Islamic institutions in the world.[52] In the 19th century, and especially during the tenure of eminent jurist Murtada Ansari, Najaf reached the zenith of its glory. It was during this golden age that the structure and content of *hawza* training "achieved their final shape, which has remained largely in effect to this day."[53]

Najaf began to decline in the second half of the twentieth century. What accounts for this decline, however, is not so much Qom's meteoric rise, but rather that the Iraqi city lay at the crossroads of several struggles that shaped the century. From 1917 to the early 1920s, Najaf was a stronghold of anti-colonial resistance and, as such, suffered a 46-day blockade by the British occupiers.[54] The war that Shi'i clerics waged against the colonial powers culminated in a revolution, whose demands included the teaching of Islamic jurisprudence in law schools.[55] But the 1920 Iraqi Revolution failed, and Marxism became the main analytical frame through which the Iraqi Shi'a accounted for their oppression.[56] And as communists embraced secular Arab nationalism, clashes erupted between the Shi'i seminarians and the nationalist Ba'ath regime established in 1968.[57] Intimidation, repression, and assassinations intensified after the Iranian Revolution, as the Iraqi state collaborated with its Western allies to ensure that the revolutionary spirit did

[49] Nome and Vogt, "Islamic Education in Qom: Contemporary Developments"; and Mervin, "Introduction."

[50] Adel, Elmi and Taromi-Rad. *Hawza-yu 'ilmiyya.*

[51] For Shi'i Muslims, Najaf is the third holy city, after Mecca and Medina.

[52] The *hawza* of Najaf is also the fourth oldest Islamic institution: the University of Zitouna in Tunis, the University of Qarawiyyin in Fes, and al-Azhar in Cairo preceded it. Europe's oldest University, the University of Bologna, was founded about 20 years before the emergence of the *hawza* of Najaf. Norton, "Al-Najaf: Its Resurgence As a Religious and University Center."

[53] Litvak, *Shi'i Scholars of Nineteenth-Century Iraq*, 1.

[54] On this see Luizard, *Histoire politique du clergé chiite* (especially chapter 6).

[55] Abisaab, "From the Shi'ite hawza to Marxism"

[56] *Ibid*; and Mervin, "La quête du savoir à Najaf"

[57] Cole, *Sacred Space and Holy War*; and Luizard, *Histoire politique du clergé chiite.*

not spill over the borders of Iran.[58] By 1985, the number of students and scholars in Najaf had shrunk from 3000 to 150.[59]

In the wake of the Iraqi army's defeat in Kuwait (and the 1991 uprising), the state's noose tightened around the Shi'a even further. State-sponsored massacres multiplied, and Najaf's most authoritative scholar, Ali al-Sistani, was held under house arrest.[60] The 2003 American invasion, which toppled the Ba'ath regime, brought its own share of devastation and bloodshed to the holy city.[61] While, in the last decade, Najaf has remained peaceful relative to other Iraqi cities (*e.g.*, Baghdad, Fallujah or Mosul), during my residency in Lebanon, it was considered risky, perhaps even foolhardy, to study there.

The scholarly milieus of Qom and Najaf exert immense influence over Beiruti seminarians—not without reason: after the 16th-century rise of Safavid Iran, the institutions that had nested on the height of Jabal 'Amil quickly turned moribund.[62] Despite the efforts of a handful of clerics to reverse this decline in the 19th century, Shi'i religious scholarship in Lebanon remained sparse at best, unable to rival the intellectual production of Qom and Najaf.[63]

The situation started shifting in the 60s and 70s, when a few Najaf-trained Lebanese established seminaries in South Lebanon and in Beirut. These new teaching institutions emerged in a stormy atmosphere; they were simultaneously the products and the vehicles of the vast political transformation sweeping Shi'i Lebanon at the time. In response to a constellation of factors converging in the 50s and 60s, the Lebanese Shi'a rose up against the institutionalized practices of discrimination targeting their sect and their lands.[64] Foregrounding this popular mobilization was a sense of belonging with clear religious

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58 Norton, "Al-Najaf: Its Resurgence As a Religious and University Center."

59 Nakash, *The Shi'is of Iraq.*

60 Kadhim, "The Hawza and Its Role in Post-War Iraq."

61 One key episode was the US siege of the Imam Ali shrine, where supporters of the young cleric Muqtada al-Sadr had established their bastion of resistance

62 Abisaab, "The Cleric as Organic Intellectual: Revolutionary Shi'ism in the Lebanese Hawza."

63 Abisaab, "Shi'ite Beginning and Scholastic Tradition in Jabal 'Amil in Lebanon;" and Mervin, *Un réformisme chiite.*

64 Norton cites the following numbers taken from a 1971 study: "the average Shi'i family's income was 4,532 Lebanese pounds (lires, L£) [...] in comparison with the national average of 6,247 L£; the Shi'a constituted the highest percentage of families earning less than *1,500 L£;* they were the most poorly educated (50 percent with no schooling vs. 30 percent state-wide); and the Shi'a were the *least* likely, in comparison with their cohorts from other recognized sects, to list their occupation as professional/technical, business/managerial, clerical or crafts/operatives, and the most likely to list it as farming, peddling, or labor. Chamie quoted *in* Norton, *Amal and The Shi'a*, 17-18.

overtones.[65] What retrospectively came to be called the "Shi'i awakening" was partly prompted and largely led by the Iranian-born cleric Musa Sadr.[66] The movement was also accompanied by the emergence of numerous public religious figures, among whom were Mohammed Hussein Fadlallah, Mohammed Mahdi Chameseddin and, a generation later, Hassan Nasrallah—all of whom were trained in Iraqi and Lebanese *hawza*s.

By 1993, fifteen *hawza*s existed in Lebanon. Out of those, four were located in Beirut's southern suburbs, locally known as *Dahiyeh*.[67] Famous for its pious atmosphere, and beautifully depicted by anthropologist Lara Deeb, *Dahiyeh* was said to host ten *hawza* in 2000.[68] Twelve years later, my informants claimed that the area includes no more than five seminaries. What accounts for these variations is not a sudden change, but a local disagreement over what count as a *hawza*. For the seminarians and scholars I worked with, a venue consisting of a single cleric teaching the rudiments of Shi'i Islam is not a proper *hawza*; they call those "*dakakin*" [storehouses; non-standard institutions]. The name *hawza* is reserved to institutions enabling students to exercise *ijtihad*.

In 2012–2013, three Beiruti *hawza*s stood above all: the *Hawza al-rasul al-akram*; the *Ma'had chahid al-awal*, and the *Ma'had al-shar'i al-islami.* All three maintain a careful distance from the Lebanese state, and do not receive governmental funding. Meanwhile, the Ministry of Education refuses to recognize the licenses and credentials they issue, in stark contrast to the government's recognition of Sunni religious schools' diplomas.[69] This distance, however, is no guarantee of political neutrality. The first of these seminaries is often referred to as the "Hezbollah's *hawza.*" Founded in 1983-4 by Lebanese and Iranian scholars, the *Hawza al-rasul al-akram* [*Hawza* of the Noble Prophet] is a branch of the Al-Mustafa International University, an organ of the Iranian State. Notoriously close to Hezbollah officials, it is often seen as serving the "social and political goals" of the party.[70]

[65] On the religious dimension of the "Shi'i awakening," see Ajami, *The Vanished Imam: Musa al Sadr and the Shia of Lebanon.* Roschanack Shaery-Eisenlohr has analyzed the social and historical construction of the Lebanese Shi'i identity in relationship with Maronite nationalism (*i.e.* Libanism), and argued that the Shi'a broke with the content of Libanism, but not with the form. Shaery-Eisenlohr, *Shi'ite Lebanon*. For a history of Libanism, see Hakim, *The Origins of the Lebanese National Idea*; and Makdisi, *The Culture of Sectarianism*.

[66] See Ajami, *The Vanished Imam: Musa al Sadr and the Shia of Lebanon*.

[67] Abisaab notes that "four were located in the southern suburbs of Beirut: one in Bir al-'Abid in Beirut, four in the Beqaa Valley (of which one in Baalbek), and seven in the South." Abisaab, "The Cleric as Organic Intellectual: Revolutionary Shi'ism in the Lebanese Hawza," 231.

[68] These figures are given by Fadil *in* Mervin, S., "La *hawza* à l'épreuve du siècle: la réforme de l'enseignement religieux supérieur chiite de 1909 à nos jours." About Beirut Southern Suburb, see also: Deeb, *An Enchanted Modern*; and Deeb and Harb, *Leisurely Islam.*

[69] The only answer I got about the fact that Lebanese state recognizes Sunni religious diplomas and not Shi'i one is that the former have an academic outlook. Historian Rula Abisaab also note that "the Lebanese state with its secular foundation rejects *hawza* credentials categorically in job employment or professional recognition." Abisaab, "The Cleric as Organic Intellectual" 247-248.

[70] On the *Hawza al-rasul el-akram*, see Abisaab, "The Cleric as Organic Intellectual;" and Mervin, "La *hawza* à l'épreuve du siècle."

In the streets of *Dahiyeh*, it elicits both praise and criticism. Some admire its academic profile, others regard it as a recruitment center for the political party, though all acknowledge that it offers better student funding than its two rivals—an important consideration given the harsh economic conditions under which most Lebanese seminarians live.

The first of these rivals, the *Ma'had chahid al-awal* [Institute of the First Martyr] was founded in 1978 in response to the plight of Najaf under the thumb of the Ba'thist regime. The school draws part of its funding from the Lebanese Supreme Islamic Shi'i Council (SISC), the official representative body of Lebanon's Shi'a.[71] Despite its claim of political neutrality, it is an open secret that the second largest Shi'i political party—*Harakat Amal*—holds sway over the SISC, and consequently over the religious seminary. Because of its proximity to SISC the *Ma'had chahid al-awal* enjoys ties with most Shi'i family-law judges, a privilege denied to the oldest of the current *hawza*s, the *Ma'had al-shar'i al-Islami,* to which I now turn.[72]

A Little Pink House

In Aynatha and across the region of Jabal 'Amil, memories of the renowned scholar Najib Fadlallah (1863-1916) still circulate. On three separate occasions, I was told the perhaps legendary story of his rebuke to the injustices and excesses of the local Ottoman governor. The story holds that the governor fell at the scholar's feet, imploring him to shake his hand, lest he would cut it off as evidence of his newly recognized impurity. Historians noted that the son of this legendary figure, Abdul Ra'uf Fadlallah (1907-1963), migrated from Jabal 'Amil to Najaf with the finest minds of his generation.[73] In Najaf, Abdul Ra'uf had five sons. The oldest, Mohammed Hussein Fadlallah (1935-2010; henceforth "Fadlallah"), studied under the most prominent Shi'i thinkers of the age, while exploring some of the revolutionary undercurrents sweeping through the young Iraqi Republic. He read Marx, Nietzsche, Franz Fanon, Paolo Freire, and in 1958, founded the Iraqi *Dawa* party with the Islamic activist Mohammed Baqir al-Sadr.[74]

In 1966, Fadlallah left Najaf for his father's native Lebanon, settling down in Nab'a, an impoverished Muslim suburb on the Eastern outskirts of Beirut. In keeping with the political struggle waged by Lebanese Shi'a since the previous decade, he opened a *hawza*

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[71] On the SISC, see Norton, *Amal and The Shi'a.* For an analysis on the role played by the SISC in the construction of the Shi'i sectarian identity, see Weiss, *In the Shadow of Sectarianism* (especially the epilogue).

[72] For example, several of the current family law judges taught at this *hawza* before to be recruited as judges. On this the academic trajectory of Shi'i judges, see chapter 5.

[73] Al-Amin, *Autobiographie d'un clerc chiite de Gabal 'Amil*; and Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader.*

[74] In Najaf, Fadlallah studies under the tutelage of Abu al-Qasim al-Kho'i and Mushin el-Hakim, among others. On Fadlallah's early intellectual life, see Aziz, "Fadlallah and the Remaking of the Marja'iya;" Mervin, "Muhammad Husayn Fadlallah, du 'guide spirituel' au *marja'* moderniste;" and Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader.*

named *Ma'had al-shar'i al-Islami* (tr. The Islamic Legal Institute; henceforth "*Ma'had*") in order to compensate for the lack of educational opportunity among the downtrodden.[75] He believed, if carefully studied and mindfully practiced, Islam could help Shi'i Lebanese to achieve their political aspirations and break through their economic marginalization. At a time when Islam was largely absent from public discourse, the *Ma'had* aimed to "light up a candle" by offering ordinary Lebanese the opportunity to approach Islam "word by word, idea by idea."[76] In 1967, the *Ma'had* started offering advanced Shi'i legal training to young Lebanese, some of whom became key figures in the Shi'i Islamic movement—such as Hezbollah's current Secretary General, Hassan Nasrallah.[77] But less than a decade after the *Ma'had* was established, Lebanon plunged into a 15-year civil war that cleaved the capital into two sectors. Each sector was controlled by a separate militia, leaving a predominantly Muslim West-Beirut pitched against a predominantly Christian East-Beirut.[78] The impoverished suburb hosting Fadlallah's teaching activities fell on the Eastern side of the divide; Christian militias besieged and shelled what they considered a Shi'i enclave in their territory. As the Muslim population was forcefully expropriated, Fadlallah turned his young *hawza* into a makeshift hospital and temporary morgue, as he and others sought to resist the siege.[79]

In 1976, at the height of the siege, Fadlallah was compelled to leave and resettle in *Dahiyeh*, Beirut's south suburbs, which by the bloody logic of the civil war belonged to West Beirut. Since 1976, the *Ma'had* occupied multiple locations in South Beirut.[80] Eventually, it established itself in the neighborhood of Haret-Hreik, where I encountered it in 2012.

Mapping the trajectory of Shi'i higher education prior to analyze its current practice carries a risk. Undeniably, the memory of 15th century Jabal 'Amil, the anti-colonial

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[75] Brochure entitled *nafidhat 'ale al-hawza al-'almiyya al-ma'had al-shar'i al-Islami,* Beirut (undated), 4. Regarding the lack of educational opportunity among the Lebanese Shi'i citizenry, Michael Hudson notes in his classic study of Lebanon that in the two regions where Shi'i Muslim predominate, the Beqaa Valley and South Lebanon, the percentage of students in the population (about 13 percent) lagged by as much as five percentage points behind Lebanon's other regions. Hudson, *The Precarious Republic. Political Modernization in Lebanon*, 77.

[76] Brochure entitled *nafidhat 'ale al-hawza al-'almiyya al-ma'had al-shar'i al-Islami* Beirut (undated), 5. On the place of Islam in the Lebanese public discourse during the 60s and 70s, see: Ajami, *The Vanished Imam: Musa al Sadr and the Shia of Lebanon*; and Norton, *Amal and The Shi'a.*

[77] Mervin, "Muhammad Husayn Fadlallah, du 'guide spirituel' au *marja'* moderniste."

[78] Kassir, *La Guerre du Liban. De la dissension nationale au conflit régional.*; and Makdisi, *Beirut Fragments*.

[79] Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader.* The important book *Al-Islam wa Mantiq al-Quwa* [Islam and the Logic of Force] is Fadlallah intellectual account of this siege.

[80] Upon being forced out of what during the war was known as "Eastern Beirut," the *Ma'had* first resettled in a neighborhood called Bir el-'Abid. From there it moved to Hayy el-Sallom, then to Bir-Hassan, and finally to its current location, in Haret Hreik. All these neighborhoods are part of *Dahiyeh*, namely Beirut's southern suburb.

struggle of 19th century Najaf, and the prestige of 20th century Qom inform the everyday life of the *Ma'had.* But approaching this complex pedagogical life-world as one instance of "*hawza* education" would be reductive and inaccurate. Shi'i seminaries do share a common heritage, but this very heritage depends on the contingent and situated practices that redeploy it in the world. To bring these practices into focus, and to avoid the risk of apprehending the *Ma'had* as a "Lebanese Najaf," it is best to approach this space as I first encountered it—as a little pink house.

Nothing predestined this small house to attract seminarians from all over the world. Until the recent reconstruction of the neighborhood (following Israeli shelling), this modest concrete structure was the Fadlallah family's own home.[81] After his office was rebuilt, Fadlallah vacated the house, leaving it for the *Ma'had* to take up residence. To reach the *hawza*'s main entrance, one must walk through the front garden, where students often enjoy the shade of the walnut trees and the rippling sound of the fountain. The building comprises two stories. Introductory and intermediate classes meet on the second floor, accessible through a carpeted staircase that seminarians climb after having removed their shoes (as one does upon entering a Mosque). Upstairs, the classrooms are deceptively plain. The concrete walls have a simple white cladding, and a cheap white board hangs behind the teacher's desk, which faces four rows of student desks. The floor is covered with a carpet, and natural light filters through the windows. As I learned to navigate this learning space, I was constantly surprised by the conspicuous absence of religious ornamentation. With the exception of the advanced seminary room (which also serves as a prayer area), and the few portraits of Fadlallah hanging on the walls, the physical environment in which the *Ma'had* rests is not marked by religious imagery of any sort. This absence is all the more striking given that the streets of the surrounding neighborhood are saturated with Islamic symbols and religious iconography.[82]

On any given weekday, around 6:30 am, one can see cohorts of young men negotiate a maze of narrow streets and alleys to reach this house.[83] Well-groomed, dressed in casual yet formal attire (white shirt, dark pants, leather shoes, for most), they arrive on foot and often half-awake; classes begin at 7 am. Over the next four hours, the seminarians located on the second floor study a variety of topics including logic, rhetoric, ethics, grammar, philosophy, and jurisprudence [*fiqh*]. The student body is divided into annual cohorts, each

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[81] On the reconstruction of the neighborhood, see: Fawaz, "La reconstruction de Haret Hreik (Beyrouth)."

[82] On this, see Deeb, *An Enchanted Modern* (chapters 1 and 3).

[83] While Iraqi and Iranian seminaries are closed on Thursdays and Fridays, Lebanese *hawza*s hold classes on these days, and close on Saturdays and Sundays. Likewise, Lebanese *hawza*s also deliver instruction during the two first weeks of the month of *Muharram* (*i.e.* the first month of the Islamic calendar, during which Shi'i Muslims organize collective session of mourning), whereas these weeks are official holidays in Iraqi and Iranian *hawza*s. On Iraqi and Iranian *hawza* calendars, see Sindawi, *Hawza Instruction and Its Role in Shaping Modern Shiite Identity: The Hawzas of al-Najaf and Qumm as a Case Study*. On the rituals of Muharram, see Deeb, "Living Ashura in Lebanon: Mourning Transformed to Sacrifice"; and Mervin, "Les larmes et le sang des chiites : corps et pratiques rituelles lors des célébrations de 'Âshûrâ' (Liban, Syrie)."

of which has its own classroom.[84] Seminarians attend four different classes per weekday, each of them beginning and ending with the loud ringing of a bell. In addition to the seminarians attending courses upstairs, a second body of students is kept busy on the first floor. They are advanced students pursuing individual research [*bahth harij*] on specific provisions of the shari'a. In 2012 and 2013, there were thirty-five at the *Ma'had* renewing Shi'i scholarship; on weekdays, they split their time between the *hawza*'s library, the teachers' offices, and the advanced seminary room.

Around 11 am, when classes end, the second floor empties, the student body spilling out in various directions. Some leave for the workplace, others go to fulfill obligations at secular teaching institutions (universities or professional schools), yet many spend the rest of the day working out the lessons of the day in the library or under the walnut trees in the front garden. For those, Levantine *manakish* are served for lunch, and the *hawza*'s environment changes considerably: divisions by classroom and floor no longer indexes the advancement of students, and the school bell remains silent.[85] Study-circles emerge here and there, debates erupt (about the news or a particular aspect of the shari'a), teachers give informal lectures, advanced seminarians spend time clarifying intricate notions of jurisprudence and obscure grammar rules for beginning students. Until the end of the day, time is structured by calls to prayer.

Seminarians attending the *Ma'had* are between 20 and 40 years old, though some are considerably older. In 2012 and 2013, a third of them were born outside of Lebanon: Iraqis, Bahrainis, Ivorians, Guineans, and Indians. The *hawza* provides them a place in the dormitories, a modest stipend, and a student visa. The cost of instruction and student's living expenses are covered by donations from the Shi'i faithful (*zakat* and *khums*), making shari'a training the only form of free education in Lebanon.[86]

While most seminarians seek to become jurists [*fuqaha*, plural of *faqih*] or generalist scholars [*'ulema* plural of *'alim*], others join the *Ma'had* to complement their academic curriculum with training in the Islamic sciences. A few simply wish to learn more about

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[84] The training offered by this *hawza* (and the forms of discipline underlying it) will receive due attention in subsequent chapters.

[85] *Manakish* (sing. *manousheh*) are made from a pizza-like dough then topped with thyme, cheese, or ground meat. They are usually folded and served for breakfast or/and lunch. On the management of time in Shi'i seminaries, see Sindawi, *Hawza Instruction and Its Role in Shaping Modern Shiite Identity,* 836.

[86] The community supports the *Ma'had* through the payment of religious "taxes"—more especially the "*khums*"—to Fadlallah. Islamic religious taxes include *zakat* and *khums.* None of them are controlled and collected by the state. *Khums* means "a fifth," a fifth that Shi'i Muslims conceive a "the share of the Imam." The *khums* was first paid directly to the Imams; nowadays, religious authorities (such as Fadlallah) collect it in their capacity of representative of the last Imam (*na'ib al-Imam*). On the infrastructures of Fadlallah, see below. For an overview of the financial aspects of Shi'i religious leadership, see Luizard, *Histoire politique du clergé chiite*; Momen, *An Introduction to Shi'i Islam*; and Walbridge, *The Most Learned of the Shi'a. The Institution of the Marja' Taqlid.* On the more specific question of *hawza* funding, see Sindawi, *Hawza Instruction and Its Role in Shaping Modern Shiite Identity,*. Sunni shari'a training is also free of charge.

Islam and Shi'i thinking. In fact, what brings these young men together is not so much a career orientation, but rather a common array of concerns. All who embark on this journey seek to emerge as better practitioners of Islam. They often articulate this desire by drawing attention to passages of the Quran and the hadiths suggesting that the pursuit of knowledge [*'ilm*] is incumbent upon them as Muslims.[87] Reading, researching, and memorizing are the same, they say, as worship—just as the knowledge they acquire every day helps them master other forms of worship (*e.g.* the prayer, the fast, the pilgrimage) with greater skill.[88]

But there is another order of concerns that brings these students to Shi'i higher education in general, and to the *Ma'had* in particular: their profound discontent with the society in which they live. Historians and anthropologists specializing in Lebanon have noted that the political emancipation of the Shi'a gave rise to various forms of "public piety," easily noticeable through the massive display of religious symbols, slogans and sounds in neighborhoods such as Beirut's southern suburb.[89] Banners and posters featuring Shi'i iconography are indeed ubiquitous, and various kinds of Islamic social services have surely emerged in the last decades. The seminarians with whom I worked do not underestimate this transformation of the Lebanese landscape, but it leaves them dissatisfied. I was often taken aback by how harshly they judge their political, religious and social environment. The public practices of piety discussed by scholars of Lebanon are, in their view, highly insufficient, and often superficial. Many point out that behind the façade of symbols and slogans, social inequalities continue to grow, sectarianism is rampant, and corruption endemic. They stress that everywhere around them the "social and political climate is unwholesome," and "conducive to corruption."[90]

This rather bleak assessment is not exclusive to *hawza* students; it can be heard in various corners of the country. But note that it is not predicated on the idea that secularism (or *laïcité*) would alleviate sectarian tensions, eradicate political clientelism, and

[87] The most often referred textual evidences are Quran (2: 282) "And fear God (so that) He will teach you," and a quote attributed to the Prophet Mohammed, saying that "seeking knowledge is incumbent upon every Muslim, male and female." This quote is extracted from *Bihar al-Anwar*, the comprehensive collection of hadiths compiled by the Shi'i scholar 'Allama al-Majlisi (1616-1698), vol 1, 177.

[88] On Islamic conceptions of knowledge, see Lambek, *Knowledge and Practice in Mayotte: Local Discourses of Islam, Sorcery and Spirit Possession.*

[89] On the visibility acquired by Shi'i religious slogans and symbols, see Deeb, *An Enchanted Modern. Gender and Public Piety in Shi'i Lebanon* (especially chapters 1 and 3). On the working of Shi'i social services and charities, see Catusse and Alagha, "Les services sociaux du Hezbollah. Efforts de guerre, ethos religieux et ressources politique"; Fawaz, "Action et idéologie dans les services: ONG islamiques dans la banlieue de Beyrouth"; and Le Thomas, *Les écoles chiites au Liban. Construction communautaire et mobilisation politique.* On pious sites and forms of entertainment, see Deeb and Harb, "Sanctioned Pleasures"; Deeb and Harb, *Leisurely Islam*; and Harb, "Pious Entertainment. Al-Saha Traditional Village."

[90] Interviews with a *hawza* seminarian, conducted on February 8, 2013

deliver social justice. [91] On the contrary, the seminarians with whom I worked believed (like Fadlallah before them) that Islam provides a critical leverage to further social and political changes. Consider, for instance, the following statement made by Bashir, a fourth-year *hawza* student.

> None in the country justify the socio-economic plunder, the bribery, and corruption. But in a capitalist system, as soon as you find a way to evade state law [*qanun*], you can continue business as usual. In Islam, however, there is no escape. God is there and keeps you accountable. If we can institute in people the fear of God, we could reduce the plunder and corruption very effectively. Today, with a good lawyer, you can escape the juridical system [*qada*]; in Islam, this is not possible. No one can escape God.[92]

At stake here is the enduring question of the relationship between law, force and authority, one taken up by Montaigne, Pascal and Derrida.[93] But note how Bashir articulates it: secular laws [*qanun*, plural: *qawanin*] derive their force from the state. They are, as we say, "enforced" by the state. Yet, their force vanishes as soon as one succeeds (alone, or with the help of "a good lawyer") in sheltering oneself from the mechanisms of legal enforcement deployed by the state. The legal authority of the state is, in other words, entirely contingent on its successful enforcement. Islam, Bashir argues, presents a different structure of authority: unlike secular state law, the shari'a rests on an authority that no pious Muslim can escape—hence its force.

Other *hawza* students add that the authority of Islamic jurisprudence rests, in turn, on its capacity to tackle contemporary issues. In order to remain relevant and authoritative across generations, the divine shari'a must address the demands of the day (and those of

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[91] At the time of fieldwork (2011, 2012-2014), activists groups advocating the implementation of secular rule (*e.g.* The Civil Society Movement, Laïque Pride, *Kafa*, *Le mouvement social*, etc.) had monopolized the public critique of the political, juridical, administrative and social forms of segregation based on religious belonging, *i.e.* sectarianism. One important consequence of this discursive monopoly is that secularism and sectarianism were increasingly seen as opposite terms, which in turn constructed secularism as an antidote against sectarian tensions, and foreclosed the possibility of addressing the problems generated by those tensions on religious grounds.

[92] Interview with a *hawza* seminarian, conducted on April 25, 2013.

[93] Montaigne, Pascal and Derrida have all underscored the uncertain force of secular law. In his *Essays*, Montaigne observed that secular laws derive their force not from the perspective of justice, but from their status as laws. "The law maintains their credit, he writes, because they are laws. This is the mystical foundation of their authority; they have no other." Montaigne, *Essays,* 353. Pascal responded to Montaigne a century later, arguing that "justice without force is powerless; force without justice is tyrannical [...] So justice and force must be combined; and this requires that the just should be strong, or the strong just." Pascal, *Pensées. Notes on religion and other subjects*, 53. More recently, Derrida asserted that by "justice," Pascal in fact meant "law," and went on to argue that both law and justice maintain an "internal" relationship to force. Therefore, he added, we cannot judge if legal force is just or not, since it is preceded neither by law nor justice. Derrida, *Force de loi*, 31-32. Bashir also recognize the problematic relationship between force and secular law [*qanun*]. Yet, by contrast with the above thinkers, he addresses the problem by turning to another structure of authority, namely shari'a law, whose force is not dependent on successful enforcement by the state.

the expected future). The founder of the *Ma'had*—M.H. Fadlallah—himself contended that *hawza* seminarians must "question any aspect of widely held religious views and come up with new understandings of Islamic laws or develop new methodologies in jurisprudence."[94] Muhammed, an advanced student born in Najaf, articulated a similar point with these words:

> It is necessary to forge an Islamic approach to our contemporary human and social issues. [To do so] we must reformulate and establish new perspectives. It is thus incumbent upon us here to extract [*istikhraj*] these perspectives from the tradition [*turath*], that is, from the Quran and the hadith.[95]

It is important not to confuse the insistence on novelty displayed here ("new understandings," "new methodologies," "new perspectives") with the project of renewing Islam that reformist thinkers have pursued by since the 19th century, or with the widespread idea that Islam must evolve.[96] Instead, this insistence must be understood in conjunction with a point a stressed earlier: that Shi'i Islam prohibits the faithful from following the precepts of dead scholars, unless these precepts have been examined and reestablished by living jurists. Thus "new perspectives" are needed, not because the old ones are necessarily flawed or outdated, but because pious Shi'is must abide by current interpretations of the shari'a. In the next chapters, I will show how seminarians draw on the work of their predecessors to advance these "new perspectives." For now, it suffices to say that they accomplish this task by researching sacred texts, including the Quran and accounts of the lives led by those who embodied the shari'a in its full glory: the Prophet, his daughter Fatima, and the Twelve Imams.[97] Mobilizing a set of hermeneutical tools and logical principles, they learn to derive (or "extract") from this corpus a time-bound jurisprudence [*fiqh*]: a set of legal norms designed to address the issues of our age, and those of the foreseeable future.

This process has often been described as an exercise in reason and persuasion.[98] It is true that, Shi'i jurists regard the faculty of reason [*'aql*] as a source of *ijtihad*.[99] Yet despite this, the two forthcoming chapters will draw out the ethical infrastructure of this practice. The remainder of this dissertation (chapters 4 and 5) will show how *ijtihad* is being

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[94] Aziz, "Fadlallah and the Remaking of the Marja'iya," 212.

[95] Interview with a *hawza* seminarian, conducted on February 14, 2013.

[96] On 19th century reformist projects, see Hourani, *Arabic Thought in the Liberal Age 1798-1939*; and Massad, *Desiring Arab*.

[97] These transmitted accounts are known as the "hadith".

[98] See Amanat, "From Ijtihad to Wilayat-i Faqih: The Evolution of the Shiite Legal Authority to Political Power"; Calder, "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of Ijtihad"; Gleave, *Inevitable Doubt. Two Theories of Shi'i Jurisprudence*; Lambton, "A Reconsideration of the Position of the Marja' Al-Taqlid and the Religious Institution"; Mervin, S. 1995. "La quête du savoir à Nagaf." Modarressi, *An Introduction to Shi'i Law. A bibliographical study*; Pelissier, "Introduction à la jurisprudence islamique"; Steward, *Islamic Legal Orthodoxy*.

[99] Momen, *An Introduction to Shi'i Islam*; and Mottahedeh, *The Mantle of the Prophet*.

reconfigured as Lebanese state mobilizes it to govern family life. Even though *hawza* seminarians do not actively challenge the current legal order, we will see that their daily craft helps highlight the ways in which modern states reconfigure religious traditions when they appropriate them for purpose of legal governance.

Figure 2. A pink house: the *Ma'had* in 2012. Source: brochure entitled *al-hawza al-'almiyya al-ma'had al-shar'i al-Islami*

The Highs and Lows of a Lebanese *Hawza*

Despite its modest size, its unimpressive exterior, and unembellished interior, the *Ma'had* is the intellectual heart of a network of social and legal institutions. Following the outbreak of the Lebanese civil war, and the fall of Eastern Beirut to Christian right-wing militias, Fadlallah established a continuum of social services: schools, orphanages, library, and hospitals. "Sayyid Fadlallah," the *hawza* director once told incoming students, "worked from the ground up; rather than building spectacular edifices, he worked with the people [*al-nass*] in order to build a set of institutions to address their needs."[100] Indeed, instead of erecting mosques and *hussaynniyas* (as many clerics would have done), Fadlallah opened a network of welfare services meant to serve the neediest segments of Lebanon's war-torn civil fabric.[101] Resettled in South Beirut, the *Ma'had* became "the nuclei [of this] cohesive microscopic Islamic society," as historian Jamal Sankari observes.[102]

With time, this microscopic society developed into one of the largest providers of social services in the country—with a quality often surpassing that of public

100 Fieldnotes, November 10, 2012.

101 On this point, see also Aziz "Fadlallah and the Remaking of the Marja'iya."

102 Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader*, 165.

institutions.[103] The making of this charitable network was first made possible by Fadlallah's 1976 appointment as official deputy [*wakil*] of Grand Ayatollah Sayyid Abu al-Qasim al-Kho'i.[104] In his capacity as deputy, Fadlallah was granted the responsibility of collecting and dispensing monetary donations [*sadaqat*] and prescribing religious taxes (*al-khums* and *al-zakat*) on behalf of the most prominent Shi'i authority of the time.[105] These donations enabled the establishment of the Association al-Mabarrat [*Jami'iyyat al-Mabarrat al-Khayriyyah*], whose elementary school enrolled 275 students in its first year of operation.[106]

Today, the Association al-Mabarrat serves over 17,500 students, 3,500 orphans, and 350 disabled persons.[107] Parallel to al-Mabarrat charitable institutions, Fadlallah's network includes a hospital, a cultural center, a radio station and a satellite television channel. It also operates a number of resources to help pious Shi'i citizens become better Muslims; they include a highly trafficked website, a consultation office [*maktab istifta'at*] where a team of clerics answer questions about religious practices, and a judicial office [*maktab al-qada'*], where a unofficial judge adjudicates disputes in accordance with Fadlallah's jurisprudence.[108] This elaborate network employing more than 2,500 persons is funded by donations and businesses, including a publishing house, a factory of halal food, 35 gas stations, and a large restaurant where I conducted numerous interviews.[109]

The dazzling growth of Fadlallah's institutional network speaks to the religious authority that its founder—and his *hawza*—acquired since its establishment in 1967. While supporting the Islamic Revolution, he remained financially independent from Iran, and he never fully embraced the controversial concept of *wilayat al-faqih.*[110] Following the disappearance (in 1978) of Musa Sadr, the charismatic figure who inspired the Lebanese Shi'i awakening, Fadlallah became the most important cleric on the national

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103 See Le Thomas, *Les écoles chiites au Liban. Construction communautaire et mobilisation politique.*

104 Luizard, *Histoire politique du clergé chiite*, 250; Deeb, *An Enchanted Modern,* 71; Mervin, "Muhammad Husayn Fadlallah, du 'guide spirituel' au *marja'* moderniste, 280.

105 Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader*, 166.

106 Kramer, "The Oracle of Hizbullah: Sayyid Muhammad Husayn Fadlallah," 100.

107 El-Ghoul, "Delivering in the toughest of times."

108 The website can be visited at www.bayyanat.org.

109 El-Ghoul, "Delivering in the toughest of times."

110 Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader*; Mervin,"Muhammad Husayn Fadlallah, du 'guide spirituel' au *marja'* moderniste." *Wilayat el-faqih* (Persian: *vilayat-i faqih,* English: Guardianship of the Islamic Jurists) is a doctrine developed by Khomeini in the 70s and now forms the basis of the constitution of the Islamic Republic of Iran. The doctrine implies that "government belongs by right to those who are learned in jurisprudence," and remains controversial to this day. Shi'i authorities around the world are divided on the religious and political legitimacy of this concept. Momen, An Introduction to Shi'i Islam, xxii. For an account of the modern underpinnings of *wilayat el-faqih*, see Zubaida, "The ideological conditions for Khomeini's doctrine of government."

scene.[111] Although he repeatedly denied having been Hezbollah's spiritual guide, a man of such caliber could not help but influence the nascent Islamist movement—if only by having trained some of its most dedicated cadres.[112] But regardless of whether Fadlallah was instrumental in founding Hezbollah, he was considered as such by global powers: on March 5, 1985, a CIA-trained—and Saudi-funded—counterterrorism unit made an attempt against his life. A car rigged with 250 kg of explosives was detonated next to his apartment; the operation missed its target, but killed over 100 civilians, and wounded another 250.[113]

In 1995, ten years after his assassination attempt, Fadlallah ascended to the status of *marja' al-taqlid* (henceforth *marja'*), the highest level of authority in Shi'ism.[114] The *Ma'had* thus became the first *hawza* in Lebanon's history to be headed by a *marja'*, and remained the only one until the death of its founder. Yet Fadlallah's ascent, as it turned out, was far from smooth. The Iranian regime and the Lebanese partisans of Khomeini's legacy (including Hezbollah) perceived it as a challenge against the authority of Ali al-Khamenei, who had just inherited the supreme leadership of the Islamic Republic of Iran. In response, Fadlallah stressed the pluralistic nature of Shi'i leadership, pointing out that

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[111] Also important was Muhammad Mahdi Shams al-Din. For a comparison between the writings of Fadlallah and Shams al-Din, see: Berry, *Radical Transitions: Shifting Gender Discourse in Lebanese Muslim Shi'i Jurisprudence and Ideology, 1960-1979 and 1990-1999*; El-Husseini, "Women, Work, and Political Participation in Lebanese Shia Contemporary Thought: The Writings of Ayatollahs Fadlallah and Shams al-Din;" Mervin, "Charisme et distinction: l'élite religieuse chiite;" Soubra, *La Théorie de l'État dans la pensée chiite libanaise contemporaine.*

[112] While much as been said and written about the rapport between Fadlallah and Hezbollah, the precise contours of this relationship are hard to delineate. On this subject, see Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader*; Mervin,"Muhammad Husayn Fadlallah, du 'guide spirituel' au *marja'* moderniste;" Kramer, "The Oracle of Hizbullah: Sayyid Muhammad Husayn Fadlallah;" Luizard, *Histoire politique du clergé chiite*; Norton, *Hezbollah. A short History*; Deeb, *An Enchanted Modern.* AbuKhalil, "Ideology and Practice of Hizballah in Lebanon: Islamization of Leninist Organizational Principles." Carré, "Quelques mots-clefs de Muhammed Hussein Fadlallâh."

[113] Bob Woodward provides the following narrative: "On March 8, 1985, a car packed with explosives was driven into a Beirut suburb about fifty yards from Fadlallah high-rise residence. The car exploded, killing eighty people and wounding two hundred, leaving devastation, fires and collapsed buildings. Anyone who had happened to be in the immediate neighborhood was killed, hurt or terrorized, but Fadlallah escape without injury. His followers strung a huge "MADE IN USA" in front of the building that had been blow out." Woodward, *The Secret Wars of the CIA 1981-1987*, 907.

[114] The term "*marja' at-taqlid*" refers to the "title and function of a hierarchal nature denoting a Shi'i jurisconsult who is to be considered during his lifetime, by virtue of his qualities and his wisdom, a model for reference, for "imitation" or "emulation" [...] by every observant Shi'i on all aspects of religious practice and law." Calmard, "Mardja'-i Taklid," 1.

the world has seen more than one Grand Ayatollah cohabit in the same era.[115] Still, Fadlallah's claim to authority marked a rupture with the Iranian religious establishment and with Hezbollah. In the meantime, Fadlallah opened three sister *hawza*s in Syria and Lebanon—including one for women, located in Beirut.

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I entered the *Maʿhad* two years after the death of its founder. It has remained, at least until the years 2012 and 2013, both the mainspring of Fadlallah's *marjaʿiyya* and the intellectual breeding-ground for his extensive welfare network. The swift expansion of this network, however, should not conceal the *Maʿhad*'s precarious position in Lebanon's knowledge economy and the hardship of those who make shariʿa scholarship their primary business. Although *hawza* training is free of charge (books and treatises are freely distributed), it is fraught with professional and economic obstacles. While most Beiruti students live on their own, those coming from outside the capital sleep in a dormitory; they receive just enough to sustain themselves with bread and tea. Many regard this ascetic rigor as geared toward the cultivation of patience [*sabr*].[116] Some draw parallels between this austere lifestyle and the plight that several prominent Shiʿi thinkers (such as Mohammed Baqir al-Sadr and Fadlallah himself) endured during their formative years.[117]

Yet this routine of privation raises painful questions for those who are raising a family, or need to shoulder other financial responsibilities. Among them is Hussein, a tall 30 year-old Syrian student with a cherubic face. In order to cope with the exigencies of family life, Hussein used to work part-time in a departmental store while studying at the *Maʿhad*. When I met him, he had just quit his job. "To progress on the path of knowledge [*ʿilm*]," he told me, "one must make sacrifices. Nobody can hold two balls [*kurat*] in one hand. So, yes, I quit that job, and went for knowledge. But it won't be easy. Life is hard here."[118] Ali, an advanced student from South Lebanon, was caught in the same predicament. This is what he explained to me one day in the front garden of the *Maʿhad*:

> "The first day I entered the *hawza*, I told our teachers that I want to become a *mujtahid* [*i.e.* someone recognized as able to perform *ijtihad*]. Today it remains my primary goal in life; no question about it. But sometimes, frankly, I doubt that I'll reach this level. I have a wife and two children, and because life is so

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[115] Sankari, *Fadlallah. The Making of a Radical Shiʿite Leader*; and Mervin, "Charisme et distinction: l'élite religieuse chiite." The cooling of the relation between Fadlallah and the Iranian religious establishment was accompanied by a controversy that unfolded between 1993 and 1997 over Fadlallah's interpretation of an episode in the life of Fatima al-Zahraʿ, the Prophet's daughter and wife of Imam ʿAli. On this, see Rosiny, "'The Tragedy of Fatima al-Zahra' in the Debate of Two Shiite Theologians in Lebanon."

[116] Interview with a *hawza* student, conducted on March 4, 2013.

[117] On the educational trajectories of Mohammed Baqir el-Sadr, see Mallat, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shiʿi International*. and Sankari, *Fadlallah. The Making of a Radical Shiʿite Leader.* On the material conditions of Najaf seminarians, see Mervin, "La quête du savoir à Nagaf."

[118] Interview with a *hawza* student, conducted on December 12, 2012.

> expensive in Beirut, I may never become a *mujtahid*. The problem is that I have to work part-time. The economic pressure [*al-daghat al-iqtisadi*] is such that if you don't work, you won't survive here."[119]

Ali does not exaggerate. At the time of my fieldwork, Beirut was the most expensive city in the Arab world, ranking higher than post-industrial metropolises like Dubai and Abu-Dhabi.[120] The scholars teaching at the *Ma'had* have a clear grasp of how Lebanon's economic conditions impacts—and imperils—*hawza* education. They openly admit that certain students (like Ali) cannot actually live on the stipend offered; but they never miss a chance to stress that the problem also lies in the post-civil war ethos of unbridled consumerism for which Beirut is known today. They remark that some seminarians get part-time jobs mostly to keep up with the demands of mass consumption. Chiekh Mustafa, a plumpish jurist born in Najaf, senses that students with part-time jobs often are unable to cultivate the mentorship relation that has been the kernel of *hawza* training for more than a millennium. "In Najaf," he told me, "the clerics and the students are always together. Here, there are students I do not see outside of class."[121] Cheikh Hassan, a Tunisian cleric who teaches rhetoric, took this issue a step further.

> There are seminarians here who work for an employer outside, some even work for political parties. This is highly detrimental to them; first because *hawza* training requires full-time commitment [*al-tafragha*], and patience. The *hawza* has been a place of scholarly inventiveness [*ibda'*] for centuries, but this inventiveness has always been contingent on the principle that no one is tied to a salary [*murtabit bi al-ratib*], or to an imperative of professional promotion [*tarqiya mihniya*]. Likewise, no one is tied to the logic of working hours. In the workplaces where some of our students spend their time, *this* does not exist.[122]

The problem, as Cheikh Hassan sees it, is not so much that part-time wage laborers cannot properly concentrate on their studies, but rather that they are subject to a work ethic that is antagonistic to the pursuits of a *hawza*. The issue goes beyond the performance of individual seminarians; it pertains to the future of shari'a scholarship itself and the forms of life that shape it. Cheikh Hassan observes that the growing presence of part-time working students causes the logic of wage labor to filter into the domain of Shi'i instruction. It introduces a different conception of work, new standards and expectations, as well as a new practice of time.[123]

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[119] Interview with a *hawza* student, conducted on May 1, 2013.

[120] Beirut is also considered the second most expensive city of the Middle East, after Tel-Aviv. In 2013, it was ranked the 76th most expensive city in the world (with Abu-Dhabi and Dubai respectively in the 79th and 90th positions) See Mercer's 2013 and 2014 cost of living survey. Available online at http://www.imercer.com/uploads/GM/col2014i7863/index.html (consulted on February 6th, 2015).

[121] Interview with a *hawza* scholar, conducted on February 14, 2013.

[122] Interview with a *hawza* scholar, conducted on February 27, 2013.

[123] On this see, Thomson, "Time, Work-Discipline and Industrial Capitalism."

The protocols of wage labor, however, are not alone imperiling the traditional craft of *hawza*s. So are the standards of secular education. As I have noted, the accreditation delivered to Shi'i scholars—the *ijaza*—is not recognized by the Lebanese state, nor by any secular learning institutions in the country. An *ijaza* is a document (most often hand-written) in which a leading authority certifies the ability of an emerging scholar to extrapolate shari'a rulings by means of *ijtihad*.[124] The *ijaza* authorizes scholars to act as deputies of the Imams. In present-day Lebanon, however, the *hawza*s are confronted with continuous pressures to mold this practice of authorization into a new grammar of certification, made of grades, credits, and diplomas. In the following exchange, the director of the *Ma'had* describes the scope of the problem.

> **Dir.** There are today strong incentives for *hawza*s to implement changes […] One of the reasons behind this is that *hawza*s do not issue diplomas [*shahaadat*]. And diplomas are now the only language of communication between learning institutions. For example, you will receive a PhD [*duktura*] with your research. From where? From your university. But if you had studied in a *hawza*, you would finish and leave without the PhD.
>
> **J-M.L.** But what about the *ijaza?*
>
> **Dir.** There is the *ijaza*, but its modality [*nmat*] is very different from those of academic diplomas. OK, suppose you received an *ijaza.* It testifies that you have the capacity to extract the rules of the shari'a [*al-ahkam al-shari'i*]. But who issued it? A scholar; the person who taught you those things. But this document is not recognized by the official teaching institutions! Why? Because Shi'i education in general and the *hawza*s in particular are not in sync [*la tazaawaj*] with the Ministry of Education. Having an *ijaza* here is like having a huge fortune that cannot be exchanged in the domestic currency.

At this point in the conversation, the director stood up and started walking around his office, as I was caught in the classic fieldwork dilemma of deciding to wait for more or ask another question. I did not have to decide, it turned out. The Cheikh continued.

> **Dir.** So this is why, some say, we must proceed with diplomas. But what are we supposed to do with those diplomas? Diplomas structure [*tnazim*] education in a specific way. They come with controlled examinations [*ikhtibarat*], individual records [*tasjilat*], curriculums [*muqararrat*] with predetermined stages. *We enter here into a different pattern*. And, in my opinion, this pattern has many flaws. I think that many features of academic education today fulfill to the needs of the market [*haajat al-suq*]. We do not seek to meet the demands of the market, in this *hawza.* We have a task and a role, and we must undertake them. There are questions we wish to address. So this wave of changes [about diplomas] I think, is not approached with enough vigilance [*wa'i*]. Many of those advocating these changes did not take the trouble to

[124] This type of *ijaza* is also called "*ijaza ijtihad*." On the different types of Shi'i *ijaza*s, see Mervin "La quête du savoir à Nagaf," 182-183. On the difference between the *ijaza*s and conventional diplomas, see Messick, *The Calligraphic State,* 94.

read about the *hawza*, or to study the system that has made the *hawza* what it is.[125]

Concluding Remarks

The above sections traced the lineaments of *hawza* training. I have suggested some explanations for these features by discussing historical scholarship and drawing on my ethnographic research. I have first argued that, unlike other Islamic schools, *hawza*s instruct students to revise existing Shiʿi jurisprudence by reinterpreting the primary shariʿa sources and considering the questions, possibilities, and challenges of contemporary life. *Hawza*s serve to train the interlocutors of the Imams. But since the last of these Imams is a (invisible) witness of our time, his scholarly interlocutors cannot reproduce the shariʿa rules that their forefathers set for a bygone era—at least not after careful reexamination. Since the work of jurists has no legal authority after their demise, *hawza* scholars assume the responsibility of revisiting the sacred scriptures to reestablish an authoritative (yet ephemeral) jurisprudence to which the faithful can conform.

Drawing on historical studies, I have pointed out that *hawza*s have often flourished in the shadow of state regulation. Yet in light of the ethnographic material presented in the second half of this chapter, this point requires further clarification. Historically, many Shiʿi seminaries have indeed developed apart from state apparatuses and the imperatives of political rule, especially when compared to their Sunni equivalents. Incidentally, this historical argument resonates in contemporary Lebanon: we have seen that *hawza*s like the *Maʿhad* are neither funded nor recognized by the state. However, most Sunni jurists are trained in a state-subsidized institution (*Kulliyat al-Fiqh*), which runs a system of accreditation that the Lebanese Ministry of Education officially endorses.

This consideration notwithstanding, arguing that *hawza*s are independent from the state or operate outside state power is misleading on more than one account. Surely, Lebanese *hawza*s are not governmental bodies; they neither rely on state funding nor follow state-designed curricula. Yet their students' daily struggles show that *hawza* training is imperiled by social and material conditions that states contribute to shape. To an important extent, the future of *hawza* education is tied to the national economy: the dramatic rise in the cost of living has compromised seminarians' chances at acquiring the capacity to derive shariʿa rulings (as Ali noted). But the economy is not the only interface between *hawza*s and the state. As the director of the *Maʿhad* told me, Shiʿi seminaries are subject to the "language" [*lugha*] of the Ministry of Education; its refusal to conform to the "academic system of diplomas" has serious material implications for the student body, which is automatically excluded from a wide segment of the job market. Though unaffiliated with the state, the existence of *hawza*s remains fundamentally contingent on state regulation.

[125] Interview with the *hawza*'s director, conducted on April 24, 2013.

Seminaries are porous institutions, a teacher once told me. "A *hawza* is like a river," he said, "like any open space; you cannot close it off to people."[126] The upcoming chapters will approach this porosity from a different angle: we will see how the political and social conditions in contemporary Lebanon not only limit the ambitions of Shi'i seminarians, but also inform the questions they raise and the path they take toward elaborating shari'a-based answers. To do so, however, we first need to see a *hawza* at work.

[126] Interview with a *hawza* scholar, conducted on February 27, 2013.

CHAPTER TWO
Chains of Emulation

It is impossible to immerse oneself in a *hawza* seminary without being struck by two constitutive facets, which at first seem irreconcilable. On the one hand, seminarians, scholars, and teachers make persistent efforts to cultivate exemplary moral conduct: seminarians emulate the behavior of the teaching clerics, who in turn model their daily lives after those of divinely-appointed figures. The importance of these collective efforts may give the impression to a first-time visitor that Shi'i seminaries are harmonious wholes. Yet only a few hours spent in one of them would convince anyone of the opposite, for on the other hand, the *hawzat* are highly contentious terrains. Disagreements (ranging from bitter disputes to sophisticated debates) are found at every turn: in classes, in corridors, in libraries, and even in the peaceful garden near the *Ma'had*'s entrance.[1]

These seminaries enable dedicated Shi'i Muslims to uncover the shari'a in ways that respond to contemporary issues and challenges—a practice known as *ijtihad*. In the following two chapters, I will argue that the capacity to deploy shari'a jurisprudence in new directions arises from the tension between a shared moral discipline and an agonistic ethos running through *hawza* pedagogy. The next chapter will look at the debates, arguments and other practices of disagreement allowing seminarians reexamine shari'a scholarship and problematize the contemporary circumstances to which it should respond. In this chapter, I focus on the second component of the tension: namely the way seminarians constitute themselves as subjects of moral conduct.

Historians of Islam argue that shari'a scholars develop the capacity to articulate legal rulings for present times by accumulating "expert knowledge in a number of areas," such as Quran hermeneutics, jurisprudence, and deductive logic.[2] The cultivation of moral qualities and exemplary conduct are, in this view, extraneous concerns. These historical studies, based on Islamic treatises and other works of doctrine, are helpful for understanding the conventions that govern the practice of *ijtihad.* But in assuming that the capacity to reinterpret the shari'a rests exclusively on erudition, they omit half of the story.

This chapter explores the omitted half. While no one can hope to derive Islamic norms without a wealth of erudition, I clarify that *ijtihad* hinges on a program of moral training that helps seminarians realize themselves as exemplary Shi'i subjects. Put differently, my suggestion is that questioning existing jurisprudences, reinterpreting the divine revelation, and deriving Islamic norms are not purely technical operations. Rather, they are learned practices that presuppose a certain kind of moral subject—one that is constituted through particular disciplinary procedures I examine in this chapter (and in the upcoming one).

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[1] See chapter 1 for a description of the *Ma'had*, the seminary where I conducted the bulk of my fieldwork.

[2] Hallaq, *A History of Islamic Legal Theory*, 118. See also Richard, *Shi'ite Islam*, 84-85.

The following pages therefore offer an ethnographic exploration of a specific facet of shari'a instruction. My aim, however, is neither to suggest a new theory of *ijtihad* nor to challenge the aforementioned accounts based on Islamic scholarly texts. In looking at the moral, intellectual, and pedagogical operations by which *hawza* seminarians appropriate and perpetuate the inherited tradition of shari'a scholarship, I hope to complement the existing literature through a study of situated practices. Hence, my argument revolves around one particular seminary, the *Ma'had el-shar'i el-islami* [The Islamic Legal Institute; henceforth *Ma'had]*, founded by the Lebanese Cleric Muhammed Hussein Fadlallah (1935–2010). I will sometimes refer to other *hawza*s that I either explored myself or came to know through scholars who have taught or studied in them.[3]

This exploration of the moral underpinnings of Shi'i shari'a scholarship also aims to make an intervention in the study of ethics. My analysis draws heavily on a rich body of anthropological research that approaches the domain of ethics through the practices it encompasses, on the one hand, and focuses on the subjects that these very practices help constitute, on the other.[4] As will be apparent to the astute reader, the following argument is influenced by the work of Saba Mahmood. While remaining committed to this approach and its theoretical foundations, I wish to push further in the direction opened by these contributions. Much recent work on ethics has focused on practices of self-formation, and less on the collective aspirations that these practices articulate.[5] *Hawza* seminarians, I argue, do not cultivate moral virtues and dispositions (patience, humility, justice) only for the sake of becoming exemplary selves, but primarily to promote these dispositions, thus facilitating what they regard as a better way of existing together. While I do not follow the seminarians to the sites where they engage with the public (their neighborhoods, their families, and welfare organizations), I show that in subjecting themselves to the rigor of *hawza* training, they aim to orient their community toward particular Islamic ideals. In short, I suggest that to cultivate a self is, for *hawza* seminarians, a way to cultivate a community. This specific dimension of shari'a training leads me to revisit the Foucauldian framework undergirding much of the recent scholarship on ethics. My modest rearticulation of Foucault, I suggest, could open up new avenues for the study of ethics and subjectivation.

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[3] The other Lebanese *hawza*s considered here are the *Hawza al-Rasul el-Akram* [*Hawza* of the Noble Prophet] and the *Ma'had Chahid el-Awal* [Institute of the First Martyr]. Among the clerics teaching at the *Ma'had el-Shar'i el-Islami* (here the *Ma'had*) some were trained in the *hawza*s of Qom (Iran) and Najaf (Iraq). For a description of the contemporary landscape of Shi'i scholarship, see chapter 1.

[4] See also Asad, "On Discipline and Humility in Medieval Christian Monasticism"; Foucault, *Histoire de la sexualité 2: L'usage des plaisirs;* Hadot, *Philosophy as a Way of Life. Spiritual Exercises from Socrate to Foucault*. Hirschkind, *The Ethical Soundscape. Cassette Sermons and Islamic Counterpublics*; and Mahmood, *Politics of Piety. The Islamic Revival and the Feminist Subject.*

[5] The aforementioned studies (see footnote #4) do not leave out the collective project in which individual processes of self-formation partake. Mahmood, in particular, specifies that the ethical practices she analyzes constitute "a necessary condition" for the political agency of those who undertake these practices. Mahmood, *Politics of Piety. The Islamic Revival and the Feminist Subject*, 152.

My trajectory in the chapter is as follows. In the first part, I approach the ethical implications of shari'a instruction by considering the articulation of two concepts teachers mobilize in describing *hawza* training: *ta'lim* and *tarbiya.* Drawing on this articulation, and on a series of conversations with seminarians, I attend to the transformative force of Shi'i shari'a instruction. This transformation, I argue, is meant to transcend the seminarians' own selves: *hawza* students strive to realize themselves as moral exemplars in order to help ordinary Muslims develop a set of ethical capacities. To unpack this process and better grasp what it entails, I explore three particular loci of *hawza* training where seminarians learn to acquire certain moral virtues: patience [*sabr*], humility [*tawaad'a*] and justice [*'adl*].

In the second part of the chapter, I focus on the most important of these loci: the classes of Islamic ethics [*akhlaq el-islamiya*], in which seminarians learn to tackle challenges associated with their pastoral role by emulating Shi'i revered moral figures. In the third and last section, I focus on two other venues of ethical training (bi-monthly commemorations and teacher-student relationships) to bring into relief the position seminarians inhabit as they learn to emulate moral figures. Finally, taking a cue from a conversation with one seminarian in particular, I summarize my argument in suggesting that *hawza* seminarians learn to recognize themselves as part of the "chains of emulation" running from the Prophet down to the pious public.

Modes of Knowledge

In order to grasp the ethical infrastructure of shari'a scholarship, it is useful to begin with the distinction that teaching clerics draw between two interdependent dimensions of *hawza* training: *ta'lim* and *tarbiya*. The first term (*ta'lim*) refers to the practice of instruction.[6] Sheikh Hassan, the most senior cleric at the *Ma'had*, defines *ta'lim* as "the operation by which knowledge [*'ilm*] is acquired through the mediation of reason [*'aql*]."[7] Within the context of *hawza* seminaries, *ta'lim* designates the meticulous study of shari'a requirements, prescriptions, and prohibitions. For advanced seminarians, it also involves questioning current jurisprudential interpretations [*fiqh*] of the shari'a and articulating new ones when necessary. In sum, *ta'lim* names the learning procedures through which seminarians acquire skills to derive legal precepts from scriptural sources.[8] It is a common error to assume that this proficiency alone confers to Islamic scholars the authority to uncover the opinions of the Hidden Imam.

The same Sheikh Hassan, however, binds this first mode of knowledge to a second one, which he calls *tarbiya*. He describes *tarbiya* as "the operation by which moral dispositions [*akhlaq*] are passed down across generations through emulation of exemplary conduct

[6] The Arabic word *ta'lim* means teaching, instructing, briefing, or schooling. This verb is constructed from the form II of the root *'-l-a,* which means to know, to be aware or informed.

[7] Fieldnotes, June 5, 2013.

[8] The *hadith* are the record of the exemplary speeches and deeds of the Prophet. The Shi'i Muslims include in this corpus the speeches and deeds of the Prophet's first twelves successors, the "Twelve Imams."

[*suluk*]."[9] As his definition makes clear, the starting point of *tarbiya* is not a consideration of the needs, aspirations, or happiness of the learning subject, but a commitment to an shared ethical ideal. The aim is not to maximize seminarians' potential, but to perpetuate a tradition of moral cultivation. In this regard, *tarbiya* recalls *paideia*, the pedagogy practiced by ancient Greeks.[10] As Werner Jaeger famously remarked, *paideia* consists of the "molding [of] human character in accordance with an ideal."[11] Plato himself defines it as the activity by which a person "takes on [a] pattern one wishes to impress on it."[12] However, while *paideia* revolves around a set of abstract virtues (*e.g.,* courage, temperance, prudence), the moral discipline imparted to *hawza* seminarians finds its source in the virtuous conduct of Prophet Muhammad and his successors, the Twelve Imams.[13]

Thus, while *ta'lim* denotes the skills and erudition seminarians acquire as they progress through the *hawza* curriculum, *tarbiya* leaves its imprint on their mode of being. The analytics of knowledge [*savoir*] developed by Michel Foucault illuminate this double operation. In a 1982 lecture series, Foucault draws attention to various types of knowledge (ranging from Stoic philosophy to Marxism) that "produce a change in the subject."[14] His observation that certain types of knowledge simultaneously instruct and transform the subject provides a useful entry point into the combination of textual erudition and moral cultivation that characterizes *hawza* training. As I argue in this chapter and the following one, seminarians can aspire to redeploy the Islamic legal tradition in new directions only insofar as they constitute themselves as exemplary subjects of this very tradition. To quote Foucault once again, my suggestion is that aspiring Shi'i scholars can develop the capacity

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[9] The Arabic word *tarbiya* means education, upbringing, or breeding. It is constructed from the root *r-b-w*, which mean to increase, to grow. In this, the Sheikh revives the classical conception of *tarbiya*. Until the middle nineteenth century, historians have remarked, *tarbiya* used to mean "cultivation" or "breeding." Yet as europeans pedagogical practices were imposed on the Middle East, the term came to stand for the educational process itself. On this process, see Mitchell, *Colonizing Egypt*.

[10] The term *paideia* describes the moral, physical and intellectual cultivation of the person characteristic of the Greek and Hellenistic period. It is significant that the only other ethnography of Shi'i higher education was first entitled "*Persian Paideia.*" See Fischer, *Iran. From Religious Dispute to Revolution* (especially the preface). On *Paideia*, see Jaeger's magisterial *Paideia: The Ideals of Greek Culture* and Henri-Irénée Marrou, *Histoire de l'éducation dans l'Antiquité*.

[11] Jaeger, *Paideia: The Ideals of Greek Culture.* Volume 1, 21.

[12] Plato, *Republic*, 377b

[13] For an account of the cardinal virtues of Classical Antiquity, see Plato, *Republic,* 426-435 and *Protagoras,* 330b. For a discussion of the abstract nature of those virtues, see the *Meno.*

[14] Foucault, *"The Hermeneutics of the Subject" Lectures at the Collège de France 1981-1982*, 238. In the February 24 lecture, Foucault distinguished two modes of knowledge: the "knowledge of spirituality" [*savoir de spiritualité*] and the "knowledge of intellectual knowledge" [*savoir de connaissance*]. He observes that the former, unlike the later, can be acquired and developed only insofar as it simultaneously transform the learning subject.

to discover the shariʿa "on condition of a movement of the soul with regard to itself and the divine."[15]

My conversations with seminarians help concretize this point. On a rainy day, I was sitting under the *Maʿhad*'s veranda with Hussein, an advanced student who had just migrated from Syria, his war-torn homeland. Hussein was telling me that he moved to Lebanon and joined the *Maʿhad* because the Syrian *hawza* where he used to study had been shut down in the war.[16] He crossed the border alone, and was now spending his free time looking for a place to live with his wife and children, who were staying in Syria in the meantime. When I voiced my surprise that it was his intellectual project [*mashruʿa fikri*] rather than a safety concern that brought him to Beirut, Hussein quickly corrected me.[17] The pursuit of *hawza* scholarship, he pointed out, cannot be reduced to an "intellectual project": it helps you acquire competency in shariʿa law, he said, but it also "nourishes your soul."[18] As Hussein uttered these words, I realized that another seminarian was following our conversation from afar: Bashir, an advanced student from South Lebanon. Bashir went further than Hussein: shariʿa training, he opined while walking in our direction, not only nourishes the soul; it "enlightens and elevates the soul."[19] Confused as to what these different movements of the soul involved, I returned to this theme later during a formal interview with Bashir. On this occasion, he described *hawza* training in terms of plenitude and emptiness.

> Here your whole being [*kayanak*] is involved [in the learning process]. I mean, your soul and your intellect are gratified [*murtah*]; your body and your heart are gratified. At the university, only your intellect is gratified. You can learn something new there, you can acquire knowledge. But at the *hawza* it's different. It is a different kind of satisfaction. Once you become aware of the effect it has on your being, you work more, and you are more convinced by it. But when you leave this place, you feel an emptiness and shortening.[20]

In comparison with advanced seminarians like Hussein and Bashir, incoming students tend to have a more concrete and pragmatic understanding of the transformative

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[15] *Ibid*., 77

[16] The political unrest that led to the Syrian civil war began in early spring of 2011. By the time of the interview (December 2012), fighting has spread across the country and already killed more than 16,000 people, according to the Red Cross. "Syria in civil war, Red Cross says." BBC. 15 July 2012. (Retrieved March 25, 2014). See also: "Syria's Metastasising Conflicts" International Crisis Group, Middle East Report, N°143, June 2013.

[17] My surprise over Hussein's narrative was informed by the fact that at the time of our conversion (December 2012), score of Syrians had fled Syria seeking safety abroad. According to the United Nation High Commissioner for Refugees, more than 470,000 had already fled Syria in December 2012. At least 120,000 of them took refuge in Lebanon. See the UNHCR Inter-agency Information Sharing Portal http://data.unhcr.org/syrianrefugees/regional.php (Retrieved March 25, 2014.)

[18] Interview with a *hawza* seminarian, conducted on December 12, 2012.

[19] *Ibid*.

[20] Interview with a *hawza* seminarian, conducted on April 25, 2013.

dimension of *hawza* training. Seminarians belonging to clerical lineages anticipate that the practices of self-cultivation subsumed under *tarbiya* will change them.[21] They often describe themselves as being "on their way" [*'ale tariq*] to becoming religious leaders.[22] By contrast, those of lay background tend to be astonished by the existential shift they undertake after joining a *hawza*. One such student is Muhammad, who lives part-time at his parents' farm in the Beqaa valley. Dressed formally but modestly, he shared with me a glimpse of his personal trajectory.

> Not so long ago, I used to crank up loud music in my car, and cruise around wearing shorts and tank tops. I wanted to be *cool* [in English], you know. I wanted to become a *deejay* [in English]. Although I learned a lot about Islam here, when I look back, I think it is more my attitude that changed since I joined the *hawza*. I dress differently, for instance. My moral standards [*akhlaq*] are also much higher. Now in all that I do, I try to behave like a cleric—and not like a *deejay*. This is what I mean when I say that my attitude changed. I look at the world differently today, and the people [*al-nass*] look at me differently, too. They know that I'm a *hawza* seminarian.[23]

Note the connection that Muhammed establishes between the work he performs on himself ("I try to behave like a cleric") and the social position he inhabits ("The people know that I am a *hawza* seminarian"). His account of self-transformation shows a clear preoccupation with the social implications of his new behavior. While one could interpret this concern as mere vanity, much more is at stake in this account.

Muhammad's concern sheds light on the interplay between the moral discipline integral to shari'a instruction, and the public role of *hawza* seminaries like the *Ma'had.* Rony, another novice seminarian, further clarified this relationship during an interview. Born in South Lebanon, and now living in Beirut, he believed seminarians ought to live up to the highest Islamic ideals. "As seminarians," he contends, "we must become practical models of living [*qudwa 'amiliya mutaharaka*] for those who live with us." In his view, the goal is not only much to tell people what to do, but rather to exemplify Islam "through our presence [*huduruna*] and conduct [*sulukuna*]."[24]

Taken together, these remarks suggest that *hawza* seminarians submit to a program of moral discipline not only to refashion their own subjectivity, but primarily to help ordinary Muslims foster key Islamic ethical dispositions. Indeed, by entering a seminary like the *Ma'had*, the young Shi'is with whom I worked aspire to acquire the capacity to offer authoritative moral guidance to their friends, their family, and their neighbors. Some hope to become the religious leaders of a particular locality, others picture themselves with a transnational following. All of them, however, want to share their understanding of

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[21] According to my own estimate, about a quarter of the seminarians enrolled at the *Ma'had* comes from clerical lineage.

[22] Interview with a *hawza* seminarian, conducted on March 15, 2013.

[23] Interview with a *hawza* seminarian, conducted on March 18, 2013.

[24] Interview with a *hawza* seminarian, conducted on March 18, 2013.

the shari'a not only through oral advice and written scholarship, but also by displaying (and promoting) exemplary moral conduct. In their view, the ultimate aim of *tarbiya* [moral cultivation] is not to reform their individual conduct, but rather to improve the moral conditions of the community in which they live. Expressed through the Foucauldian categories of moral action, the point is this: the "*telos*" of *hawza* training is not only to cultivate one's "mode of being," but also to disseminate it throughout a larger whole.[25]

The idea that facilitating the cultivation of moral virtues can help enhance the well-being of a community resonates with the social and political aspirations shared by the seminarians of the *Ma'had* from chapter 1. Recall that many students subject themselves to shari'a training hoping to address some of the ills that befall their society: sectarianism, corruption, economic inequality. Bashir, the advanced student I quoted earlier, explained to me that in order to transform their social environment, seminarians should develop moral virtues, but also use the authority that *hawza* training bestows on them to make an impact upon the people around them. For him the *hawza* is the foundation of everything [*al-hawza assaas li kul chei'*].

> Although the dissemination of Islamic conducts is incumbent upon every Muslim, the *hawza* enables you to do so in a way that is both accurate and practical [*sahih wa 'amili*]. You acquire here the means to exercise a significant influence [*tathir*]. But if this influence remains with the confine of these walls [*i.e.,* the walls of the *hawza*], its impact is minimal. This is why we try to reach out beyond the walls in order to teach Islam. So what is the role of the *hawza*? It is to orient society in the right direction. Under the Israeli occupation, for instance, scholars of this *hawza* were explaining that we needed to defend ourselves, that we needed to liberate our land—and that was a religious thing. This is why I say that the *hawza* is the base of everything.[26]

[25] Foucault, *The Use of Pleasure*, 28. The notion of *telos* is extracted from the four-fold framework that Foucault uses to problematize ethical action. The *telos* refers to the kind of being one aspires to become by acting morally. Through moral action, one may seek to become "pure, or immortal, or free, or masters of [oneself], and so on." See Foucault, "On the Genealogy of Ethics: An Overview of Work in Progress," 355. This notion will receive greater attention in my concluding remarks. On Foucault's approach to ethics, see also Davidson, "Ethics as Ascetics: Foucault, the History of Ethics, and Ancient Thought"; Davidson, "Archaeology, Genealogy, Ethics"; Davidson, "Introduction"; Faubion, "Toward an Anthropology of Ethics: Foucault and the Pedagogies of Autopoiesis"; Faubion, *The Shadows and Lights of Waco. Millennialism Today*; Gros, "Introduction"; Hacking, "Self-Improvement"; Hadot, "Réflexions sur la notion de «culture de soi»"; and Kelly, *The political philosophy of Michel Foucault.*

[26] Interview with a *hawza* seminarian, conducted on April 25, 2013. The Israeli Defense Forces invaded Lebanon in June 1982, and established a "security zone" in South Lebanon in 1985. The occupation of the South of the country ended in 2000, that is ten years after the conclusion of the Lebanese Civil War (1975-1990). To this day, the government of Lebanon considers the Israeli withdrawal incomplete, and continue to claim ownership over the territory of the Shebaa Farms. On the action taken by Muhammed Hussein Fadlallah (the founded of the *Ma'had*) against the Israeli occupation, see Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader*, 210-215.

The hope that seminarians like Bashir invest in ethical self-formation and exemplary conduct raises a number of questions, however. Do students think that realizing themselves as ethical selves is enough to orient, impact or modify the social order? Do they believe that disseminating Islamic ideals suffices to fight socio-political ills (such as corruption and sectarianism), which are deeply engrained in Lebanese society?

While, at times, some of their expectations sound unrealistic, most students (especially those in advance levels) know that a good behavior is not enough to change society. In class, clerics often reminds students that activities of guidance (convincing a neighbor to reconsider his or her behavior; helping someone think through difficult ethical issues; leading worship practices) demand not only particular moral dispositions, but also a high degree of proficiency in shari'a jurisprudence. Likewise, tackling social issues by discovering new normative Islamic resources hinges on the skills and erudition that seminarians acquire through the mode of knowledge that *hawza* teachers call *ta'lim* [instruction].

But insofar as moral exemplarity cannot accomplish much without the support of shari'a knowledge, the inverse is equally true: seminarians need more than intellectual skills and expertise to assume the pastoral responsibility of a Shi'i jurist. The director of the *Ma'had* argues this point by emphasizing that the modes of knowledge called *ta'lim* and *tarbiya* rely heavily on one another. If, indeed, Shi'i Muslims are required to follow the legal precepts of learned clerics, Sheikh Hussein remarks that no one would obey a religious leader who shows no sense of "ethics" [*akhlaq*].[27] "Who," he once asked students in class, "would follow a cleric who circulates in poor neighborhoods driving an Alfa Romeo, or addresses an audience of the needy dressed in very expensive clothes?"[28]

The *hawza* curriculum provides another illustration of this symbiosis between intellectual erudition and moral exemplarity. Teaching clerics agree that while first and second-year seminarians must study a broad range of topics (grammar, logic, jurisprudence, Quranic recitation), classes of ethics [*akhlaq*] have priority at this stage. Sheikh Hassan, a lanky Iranian-born cleric, drove this point home in class by comparing the progression of seminarians to the growth of a tree. "If a tree grows crooked, it needs to be staked early and properly; otherwise, it will stay crooked," he said one day. "The human is the same," he continued, "if the moral flaws are not treated early on, they become part of yourself. This is why the classes of ethics are so important in the first years."[29] It is to these classes that I now turn.

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[27] Stabilized in the 18th century, the doctrine of *Marja'iyya* holds that all observant Shi'i must calibrate their religious and legal practice on a Shi'i scholar who is considered as a "model for reference" (*marja' at-taqlid*) by virtue of his qualities and his wisdom. See: Calmard, "Mardja'-i Taklid"; and Walbridge, *The Most Learned of the Shi'a. The Institution of the Marja' Taqlid*.

[28] Fieldnotes, June 4, 2013.

[29] Fieldnotes, November 13, 2012.

Disciplines of Emulation

In the previous chapter, I argued that despite the distance they maintain from state apparatuses, Lebanon's *hawza*s are nonetheless dependent on (and imperiled by) several state regulations. I noted, for instance, that the Ministry of Education's refusal to recognize traditional Shi'i qualifications and accreditation limits students' upward mobility—which in turn, impacts the seminaries' enrollment. According to *hawza* scholars, the challenges to the viability of shari'a training are all the more acute when it comes to providing the requisite conditions for the cultivation of moral dispositions germane to Islamic legal scholarship. Throughout my residence at the *Ma'had*, the director regularly lamented that training seminarians into the Shi'i tradition of ethical thinking has become increasingly difficult. He readily acknowledges that today's seminarians have a wealth of resources (a rich library, computers and databases) at their disposal to delve into Shi'i jurisprudence, logic, grammar, or theology. But according to him, this is far from enough.

> What is crucially lacking in Lebanon is the social climate [*munakh 'am*] in which students cultivate important habits [*a'dat*]. In a place like Najaf, you have thousands of seminarians and teachers, you have study circles [*halqat*] here and there. Regardless of age and background, religious scholars gather together in different places; they influence each other. This is how self-cultivation [*tarbiya al-nafs*] happens. But we don't have this here. Everything around us here is about cash, big cars, and prestige. This atmosphere is wrong, and detrimental to *hawza* students. [30]

To counter this social atmosphere, and orient the seminarians' efforts at self-improvement toward a different set of ideals, the *Ma'had* works to institute a particular "moral climate" [*bi'a*] within the confines of its walls. The remainder of this chapter offers an ethnographic exploration of this climate.[31] While the previous section showed that becoming a shari'a scholar requires cultivating a particular moral character, the upcoming ones focus on the disciplinary program through which this cultivation takes place: in other words, how seminarians learn to constitute themselves as exemplary subjects of the Shi'i tradition. I first concentrate on a key locus of moral training: the weekly classes on Islamic ethics [*al-akhlaq el-islamiya*].

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[30] Interview with the director of the *Ma'had,* conducted on April 24, 2013. Najaf (Iraq) is the oldest and most important center of Shi'i scholarship in the world. As I noted in the first chapter, the *Ma'had* was modeled on the seminaries of Najaf, where Muhammed Hussein Fadlallah (the founder of the *Ma'had*) was born and trained until 1966. Other clerics now teaching at the *Ma'had* were trained in Najaf. On the history of Najaf, and its influence on the contemporary life of the *Ma'had*, see chapter 1.

[31] The term *bi'a* denotes a milieu, or an environment, bound by a moral imperative. The term is not exclusive to *hawza* training. In her ethnography of Shi'i Lebanon, Lara Deeb observes that the term *bi'a* also describe "the atmosphere of the home, family, and perhaps school." She notes that the term implies a "normative morality" that helps foster public forms of piety. Deeb, *An Enchanted Modern. Gender and Public Piety in Shi'i Lebanon*, 119 and 223.

Seminarians trained at the *Maʿhad* attend classes on Islamic ethics during their first and second years of coursework; throughout subsequent years, they study moral philosophy [*falsafa al-akhlaq*].[32] Over the course of their third year, they also explore the ethical foundations of the other Abrahamic traditions, such as Judaism and Christianity.[33] While each of these classes contributes to the self-cultivation underpinning *hawza* training, I focus here on the pedagogy characterizing the Islamic ethics course. The *Maʿhad* offers two weekly classes on ethics: one for incoming seminarians and one for those completing their second year. Although each of these two classes is taught by a different cleric (Sheikh Hassan and Sheikh Najib, respectively), they remain similar in form and content. Both teachers begin and end by invoking the blessing of the Prophet Muhammad, and both build from the same textbook, from which weekly readings are assigned.[34] The two clerics, however, rarely discuss the readings in class. Rather, they structure their classes around a set of everyday situations in which they expect seminarians to intervene and offer guidance: how to behave in circumstances of corruption [*fassad*]; how to respond to sectarian interpellation; what to do when a conflict erupts in the street; how to criticize someone convincingly, yet respectfully.

Interestingly, the teaching clerics do *not* approach these problems through the prism of shariʿa jurisprudence [*fiqh*]. Instead, they approach them by drawing directly on the exemplary lives led by the Prophet and his successors, the Twelve Imams. Yet the teachers do not replicate the course on biographies [*sira*], which focuses exclusively on the lives of the Prophet and the Imams. The primary goal of the ethics course is not to recount the life stories of these revered figures, but rather to draw parallels between their moral teachings and everyday challenges that young clerics face in their pastoral role.[35] To do so, Sheikh Hassan and Sheikh Najib also mobilize a number of contemporary moral characters. Figures like Muhammed Hussein Fadlallah (the founder of the *Maʿhad*), Muhammed Baqir al-Sadr (a prominent Iraqi scholar), and Ruhollah Khomeini (the architect of the Islamic Republic of Iran) are often evoked. Teaching clerics even supplement this Shiʿi pantheon with anti-colonial heroes such as Mahatma Gandhi, Che Guevara and Nelson Mandela.[36] An excerpt taken from a class on Islamic ethics will

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[32] This class covers the wide range of moral theories from the Greeks (Plato and Aristotle) to utilitarian philosophers and their critics (Durkheim, in particular). Teachers use a textbook entitled *Al-mushkilat al-akhlaqiya* [The Ethical Problem].

[33] The teaching of Christianity and Judaism does not belong to the regular *hawza* curriculum. For more about these classes, see chapter 3.

[34] "*Allahumma salli ʿala Muhammad wa Ali Muhammad*" [O Allah! Bless Muhammad and the household of Muhammad] is the formula that opens and ends the lessons on ethics. The textbook is entitled *Maraa al-Rachad* [The mirror of the integrity of conduct].

[35] Seminarians take classes of *sira* [bibliography] during their first and second years.

[36] The point, Sheikh Najib specified to me, is not to suggest that Mandela and the Prophet Muhammed carry comparable weight, but rather to show that each era produced exemplary figures (religious or secular), and that our contemporary world is no exception. Interview with a *hawza* teacher, conducted on February 6, 2013.

illustrate this pedagogy. One day, Sheikh Hussein opened a class with a personal observation:

> Yesterday, I went to Hay as-Sallom [a densely populated area of Beirut]. It was terrible; complete chaos [*faouda*]. It seems that we do not know how to behave with one another in the street. The only thing we are capable of is yelling at each other. I am *not* talking about the problem of traffic [*isdiham*] here; I am talking about street ethics [*adab al-tariq*]. We must learn how to inhabit the street. We must learn to share that space. As *hawza* students, what do you do in such chaos? How do we respond to it ethically [*m'a adab*]?

Sheikh Hussein first stopped here. But since at 7 am that morning, the seminarians were not particularly responsive, he continued.

> As *hawza* students, you are responsible for sharing the good Islam [*al-Islam al-sahih*]. But how do we start doing this? You know Hay as-Sallom, you know how chaotic that neighborhood can be. How do you intervene in such a chaos? […] When you want to correct a situation like that, or a person, you must remain very humble [*mutawadi'a*]. Some students think that because they study in a *hawza*, they know everything [*y'arifu kul chei*], and they become arrogant [*mutakabirun*]. But learning, instead, should make you humbler; you should realize that your knowledge is very limited, and often weak [*daif*]. Again, think about the life of the Imams—the fifth Imam in particular. The fifth Imam had a lot to teach to the people of his time. But as you read about his life, you realize that although he was infallible [*ma'sum*], he never treated people with contempt or disrespect. He just provided an example. Baqir al-Sadr, who was assassinated thirteen years ago, is another source of inspiration here. Baqir al-Sadr criticized a lot of people, but he always did it with utmost respect [*ihtiram*]. You find in his life a model [*qadwa*] for how to correct other people's behavior.[37]

Obviously, Sheikh Hussein does not provide a straightforward answer to his opening question. He offers neither a step-by-step set of procedures for correcting someone's behavior nor a general rule as to how to intervene in the street. Instead, he shows how a moral quality (humility) displayed by an exemplary figure that seminarians study in the class on *sira* (the fifth Imam) can help seminarians approach a problem they encounter every day (people yelling at each other in the street). His goal is not to describe the lives of paradigmatic moral characters, but rather to emphasize their moral relevancy for aspirant religious leaders.

The ethics underlying these classes is not made of rules, precepts, or maxims; rather, it is based on a vast corpus of exemplary deeds which, taken together, delineate an ideal of human perfection. To be sure, this ethics of exemplarity never takes precedence over shari'a precepts (obligations, prohibitions, or restrictions). Instead, it complements them. As we will see in the next chapter, shari'a jurisprudence [*fiqh*] is also constructed around the deeds of the Prophet and his successors. Obeying this jurisprudence is therefore

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[37] Fieldnotes, April 9, 2013. This except was not recorded, but transcribed during the class.

already an ethical endeavor. Nonetheless, both Sheikh Hassan and Sheikh Najib stress that the jurisprudential norms by which the shari‘a is conveyed to the faithful do not exhaust the question of ethics. Sheikh Hassan put it this way: "jurisprudence [*fiqh*] tells you how to perform the pilgrimage, how to conclude a contract, and a ton of other things, but it does not exactly teach you how to become patient or courageous."[38] In other words, the terrain of ethics largely exceeds the rules, obligations, and prohibitions established by Islamic jurists. Sheikh Najib clarified this point by drawing the following schema on the old white board riveted on the wall of the class.

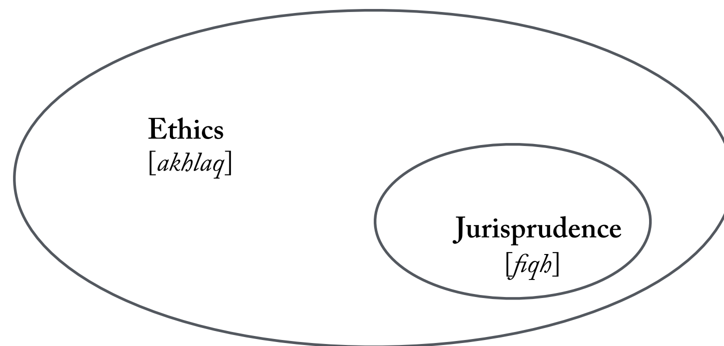

Fig 3. The relationship between ethics and jurisprudence, according to Sheikh Najib.[39]

These two embedded circles were used to introduce the notion of emulation—a key concept in *hawza* training. Sheikh Najib's schema suggests that the requirements of jurisprudence [*fiqh*] cover only a portion of the domain of moral actions. Without minimizing the importance of the shari‘a rulings formulated by contemporary scholars, both Sheikh Hussein and Sheikh al-Ulema urge future clerics to mold their everyday behavior beyond the benchmark of jurisprudential norms. Drawing parallels between everyday practical problems and the lives of exemplary Islamic figures is a way to put seminarians on a journey of ethical emulation.[40]

To understand what this conception of ethics entails, it is necessary to dwell for a moment on the notion of emulation, and its theological bearings in Shi‘i Islam. Note, to begin, that the idea of building a moral pedagogy on emulation is much older than Shi‘ism and its scholarship tradition. The notion of *paradeigma* [example for imitation] has been a salient feature of Greek thought since Homer.[41] Pre-Socratic poets, for

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[38] Fieldnotes, March 26, 2013.

[39] Fieldnotes, March 26, 2013.

[40] This phrase "journey of ethical emulation" is taken from Hussein Agrama's work. Agrama has analyzed the fatwa as "a practice that puts the questioner on a journey of ethical cultivation" Agrama, *Questioning Secularism. Islam, Sovereignty and the Rule of Law in Modern Egypt,* 182.

[41] See, for instance, Telemachus's emulation of Orestes in book III of *The Odyssey.*

instance, considered "the appeal to the example of famous heroes" as an integral part of aristocratic ethics and education.[42] Within the Islamic tradition, however, most efforts at emulation revolve around the Prophet Muhammad, whose words and actions were reported and compiled into textual records. These authoritative documents facilitate the practice of emulation, but also serve as sources of shari'a jurisprudence.

Shi'ism, however, adds a twist to the problem of emulation. Like their Sunni counterparts, Shi'i Muslims believe that the Prophet Muhammad fulfilled two mandates on earth: he revealed the divine law and he guided humankind toward God. While the Sunnis hold that these two mandates ended with the demise of Muhammad (in 632), Shi'is take a different stance. They agree that Muhammad's death ended the era of divine legislation, but hold that the authority to guide humankind (*i.e.*, the second mandate) was handed over to the Prophet's household.[43] More precisely, Shi'is contend that the capacity to embody human perfection—and elicit emulation—was passed down through the Prophet's first twelve successors, known as the Twelve Imams.[44] In this, the Shi'a depart from Sunni practitioners, whose efforts at emulation revolve around the Prophet Muhammad. Shi'i Muslims, by contrast, believe that the Twelve Imams continued to provide divine guidance after the Prophet's demise and, as such, are also worthy of emulation.[45]

Yet the core of the matter is that Shi'i Muslims believe the last of these Twelve Imams is still alive. Born in 869 in Samara (Iraq) and known as *al-Mahdi* [the rightly guided one], the Twelfth Imam vanished into occultation at the age of four. Concealed from the eyes of the living and endowed with an extraordinarily long life, the last Imam is hiding on earth, awaiting the time God has decreed for his return. According to Shi'i doctrine, the Twelfth Imam did not disappear from the world altogether, since "the world could not survive for one moment without the presence of an Imam."[46] The Twelfth Imam is thus among the living, yet he cannot be seen.[47]

The last Imam's concealment raises a number of difficult questions for the Shi'a. How can the faithful obey (let alone emulate) a hidden model? How can Shi'i Muslims even access the opinions of the last Imam? How can an invisible authority remain authoritative? After centuries of debates, the Shi'i community settled on the idea that the

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[42] Jaeger, *Paideia: The Ideals of Greek Culture*. Volume 1, 34. See also Arendt, "The Concept of History."

[43] Momen, *An Introduction to Shi'i Islam*. The phrase "the Prophet's household" translates the Islamic notion of "*ahl al-beit*," which means "the people of the house"

[44] While Sunnis give the title "Imam" to worship leaders, Shi'is use it exclusively to refer to the twelve first successors of the Prophet (and exceptionally to describe important figures of Shi'ism, *e.g.,* Imam Khomeini and Imam Musa Sadr). On this, see : Ajami, *The Vanished Imam: Musa al Sadr and the Shia of Lebanon.*

[45] The Imams carry on all the attributes of the Prophet (*e.g.,* they are chosen by God, infallible, and sinless) with the exception of the Muhammad's "divine inspiration without mediation." On this see: Eliash, "The Ithna'ashari-Shi'i Juristic Theory of Political and Legal Authority," 23-24.

[46] Halm, *Shi'ism*, 35

[47] On the Twelfth Imam's occultation, see this dissertation's introduction.

last Imam stays in touch with the faithful through the medium of the learned shariʿa scholars, who serve as his spokespersons until his return.[48] Hence, since the 16th century, the Imams' authority has persisted through the work of prominent Shiʿi scholars. Today, devoted Shiʿis obey God by following shariʿa rulings established by these scholars.

This brief excursion into Shiʿism illuminates the ultimate aim pursued by many *hawza* seminarians: to emerge as representatives of the Hidden Imam, as religious authorities capable of discovering the Imam's opinion on current affairs. Few seminarians reach this level, but a question remains: how does one accomplish this aim? How do students establish themselves as transfer points of the Imams' authority? According to one line of argument, Shiʿi seminarians acquire the capacity to link the Imams to the pious public by means of erudition. This reasoning captures some truth: as they progress through the *hawza* curriculum, students learn to calibrate their religious practices, legal reasoning, and social behavior on their own knowledge of the Prophet and Imams' conduct. So far in this chapter, however, I have argued that *hawza* scholars and seminarians cannot perpetuate the function of the Imams (to decipher God's law) solely through erudition. To organize the Shiʿi "conduct of conduct," they must constitute themselves as edified moral subjects.[49]

The weekly classes on ethics described in this section provide a first illustration of this disciplinary program. While ordinary Shiʿi Muslims follow the precepts of learned clerics, *hawza* students embark on a more ambitious quest: to emerge as influential leaders, they are urged to shape their everyday behavior to align with the moral examples set by the Imams and their most devoted followers. By organizing the classes on ethics around real-life situations, teaching clerics encourage seminarians not only to cultivate a number of pious dispositions (patience, humility, and perseverance), but also to recognize themselves as bearers of the Shiʿi moral tradition. To better understand the entailments of these practices of emulation, however, it is necessary to explore two other sites of moral training: bi-monthly commemorations and teacher-student relationships.

Nodes of Authority

Approximately twice a month, the *Maʿhad* commemorates the birth (or the demise) of an exemplary moral character—ranging from local clerics to the Islamic Prophet. These ceremonies interrupt the *hawza*'s ordinary flow of time. All activities are suspended, and everyone (including the staff members) congregates in the library, transformed into an intimate lecture hall. Seminarians and teachers collaborate to hold such events. Ceremonies usually open with novice students reciting Quranic verses, followed by intermediary and advanced seminarians delivering religious prose of their own, all in a

[48] For an excellent account of the debates, see Rasekh, *Agents of the Hidden Imam: Shiite Juristic Authority in Light of the Doctrine of Deputyship.*

[49] Foucault, "Le Sujet et le pouvoir," 1056.

dimly lit atmosphere.[50] Then, the ceremonial crescendo comes with a series of speeches by *hawza* teachers and outside clerics. These speeches always emphasize the exemplarity of the life led by the celebrated moral figures. Typically, they also enjoin the audience to weave their teachings into the fabric of everyday life. Consider, for instance, the following excerpt from a cleric's speech about the seventh Imam.

> Musa el-Khadim, the seventh Imam, considered knowledge as an injunction [*dawa*] placed upon him; in doing so, he turned his entire life into a example [*qudwa*] for us. As you know, the Imam spent a large portion of his life in prison. But throughout his life, he transformed his prison into a school. He not only learned in prison; he learned the most important lesson, which is that reading the Quran is not enough to understand it. We understand the Quran by putting it into practice [*mumarassa*]. You, students, tend to forget that: you come here, you read and study hard, but then you leave the *hawza*, and follow your old habits and individual preferences. What the seventh Imam teaches us is that it is the practice that counts. The seventh Imam lived a difficult life, but we today must live as though we want to become the seventh Imam.[51]

Obviously, these commemorations do not only honor the dead. They also place a number of demands on the living. Note, to begin with, the cleric's emphasis on the problem of moral coherence. Digressing from his account of the seventh Imam, he interpellates the seminarians ("you, students"), and underscores that embodying an ideal (represented here by the Quran) involves turning it into practice anywhere and at any time (inside and outside the *hawza*; before, during, and after class). The commemoration speech, in sum, reminds the seminarians that the process of emulating revered figures must be carried out through repeated practice. One does not become a model for reference overnight; on the contrary, ethical exemplarity is the cumulative effect of disciplined efforts reiterated over time. And, as the cleric insists here, students ought to extend these efforts outside the confines of the *Ma'had*.

This last claim resonates with a point I emphasized throughout this chapter: that Shi'i seminarians subject themselves to *hawza* discipline in order to influence the everyday conduct of fellow Muslims and, on a larger scale, foster a better way of relating to one another. *Hawza* seminaries like the *Ma'had* do not only train virtuous selves; they also (and most importantly) train ethical subjects capable of serving as models of conduct within the larger public and across generations. But, as the cleric reminds the audience in his speech, this happens only if seminarians assume their function as role models with diligence and consistency.

Becoming a moral exemplar, however, requires more than replicating prescribed forms of conduct; it entails submitting oneself to the divine will that speaks through them. In the previous section, I argued that *hawza* seminarians learn to emulate the deeds of

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[50] The seminarians who reached the intermediary level are frequently asked to write short texts about various moral figures. Some of them are delivered orally during the ceremonies of commemoration.

[51] Fieldnotes, June 4, 2013.

divinely-appointed figures in order to emerge as models of religious and moral practice. I wish to add here that seminarians can emulate and promote Islamic virtues (piety, justice, unity) only once they recognize themselves as subjects of God's will. During the bimonthly commemorations, as well as in the ethics classes, the teaching clerics introduce this requirement with the Islamic concept of *tawakkul*.[52]

The Arabic word *tawakkul* describes the act of entrusting oneself to the care of someone else.[53] As an Islamic practice, it implies putting oneself under the "dependence of God" or "placing one's fate in the hands of God," as anthropologist Charles Hirschkind puts it.[54] In the specific context of Shi'i higher instruction, the notion accomplishes a double-purpose. It first reminds the students that the authority they acquire as they advance through the *hawza* curriculum is not, properly speaking, their own. In his ethics class, Sheikh Hassan likes to repeat that the task of shari'a scholars is not to gain influence, but to convey God's influence most effectively.[55] The concept of *tawakkul* also helps emphasize that emulating exemplary religious figures requires placing oneself under their dependence. As I show in the next chapter, seminarians engage the sacred texts not so much to come up with their own interpretation, but rather to echo the voice of the Imams on how the shari'a must be applied in current times.

At this point, one may ask: how do *hawza* seminarians start emulating exemplary figures? Beyond the shari'a requirements, the classes of Islamic ethics, and the demands placed upon them during commemorations, what strategies do they use to subject themselves to God's will, and to align their conduct with that of the Imams? How, in other words, do they initiate the self-transformation, which they say undergirds shari'a scholarship? The seminarians I worked with all claimed they first learned to embody the moral dispositions required of Shi'i scholars by exposing themselves to the influence of the teaching clerics; by observing their behavior in class and then reproducing it in other contexts. I am not suggesting that seminarians blindly obey their teachers or follow their advice uncritically. In upcoming chapters, we will see that the relationship between seminarians and teachers is a fertile terrain for disagreements and debates. This notwithstanding, many *hawza* students begin realizing themselves as ethical selves by modeling their everyday behavior on that of the clerics who teach them. A conversation I had with Nizar, a novice student from Syria, helps clarify this point.

Nizar and I are sitting in the library of the *Ma'had*. He is explaining how his experience with the director of the *hawza*, Sheikh Najib, who suspends his administrative

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52 Fieldnotes, December 12, 2012. The textbook used in the classes of ethics describes the exigencies of *Tawakkul.* See: *Maraa al-Rachad*, p. 63-70.

53 This term is constructed from the form V of the root *w-k-l,* which itself refers to the act of entrusting, commissioning, or charging someone.

54 Hirschkind, "Belief as Practice and as Epistemology: A Response to Rutherford's." On this concept, see also: Gardet, "L'abandon à Dieu (tawakkul)"; and Lewisohn, "Tawakkul." Saba Mahmood translates the *tawakkul* as "trust in God." Mahmood, *Politics of Piety. The Islamic Revival and the Feminist Subject*, 50.

55 Fieldnotes, November 7, 2012 and December 12, 2012.

functions twice a week to teach the class on ethics to incoming students, is a lesson in humility [*tawaada'*]. "The director here teaches us how to behave," says Nizar. And most importantly, "he always treats us as brothers. We never feel the distance [*musafa*] in status between him and us. For example, I can go see him whenever I want to ask a question or discuss a problem. You don't have that in any other school in Lebanon." Whether this last claim is true, what is noteworthy is that Nizar attempts to reproduce Sheikh Najib's humility in his daily life. "My friends," Nizar continued, "know that I never hesitate to contradict, or correct, anyone who behaves badly [*ghalat*]. But when I do so, I try to approach people as Sheikh Nizar would do. In general I want to convince people not as an expert, but as a friend, a family member, or simply a neighbor who knows and cares about Islam."[56]

In this conversation, as in others, the relationship between the seminarians and the clerics emerges as another site of moral training. The seminarians of the *Ma'had* emulate their teachers in various ways: many dress like them, and some adopt their austere lifestyle.[57] The practices by which *hawza* students emulate their teachers' behavior enjoin us to rethink the teacher-student relationship that is often regarded as central to the history of shari'a scholarship.[58] I explained in the first chapter that, since the 11th century, shari'a knowledge has been handed down through face-to-face, interpersonal relations between a teacher and a student. My conversations with the seminarians of the *Ma'had* suggest, however, that there is more than scholarship that circulates through what Brinkley Messick calls the "teacher-to-student nodes of transmission": teachers also impart a moral discipline to their students.[59] It is not uncommon to see seminarians share personal struggles with their teachers, or to hear teachers give advice about how to respond to a particular situation. These relationships extend well beyond the walls of the *hawza*: most of the seminarians I came to know maintain a relationship of moral guidance with the teachers outside of classes.

The first student who brought these extra-curricular relationships to my attention is Kassim, an advanced seminarian who had recently moved into the neighborhood. He offered a powerful and succinct account of the triangulation between the students, the clerics and the divine figures.

> Here, you improve by embodying [*tajassad*] the lessons one by one. You embody a lesson when you are both convinced [*muqtani'a*] and affected [*mutaathir*] by it. But to do so, you need to model yourself on the clerics that

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56 Interview with a *hawza* seminarian, March 18, 2013

57 While most novice students do not wear the robe and the turban [*ammamah*] characteristic of Shi'i scholars, most of them change their dress code during the first year of study. In addition, they are required to keep their hair short and to keep their beard well-trimmed.

58 On this see: Berkey, *The Transmission of Knowledge in Medieval Cairo*; Litvak, *Shi'i Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala'*; Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society*; Tibawi, "Philosophy of Muslim Education."

59 Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society*, 89.

> teach us. We all have our preferences when it comes to teachers, but all of them have been affected, influenced, and convinced by the examples [*qadwat*] of the Imams. They live under the influence of these examples. They are carriers of examples. As students, we need to be inspired by them. Is it like a chain [*silsila*], you see. We are affected by the conduct of our teachers, we memorize and reflect on what they say and do in order to transmit that to other people in society or around us.[60]

In suggesting that being trained in a *hawza* entails inserting oneself within a "chain" that runs from the Islamic Prophet (and the Imams) down to the faithful public, Kassim captures something important about the movement of authority in Shi'ism—and the role that *hawza*s play in it. However, because the Hidden Imam's opinions on contemporary issues can never be fully ascertained, and because the scholars who uncover his views are fallible humans, the chains that *hawza* seminarians seek to link are not chains of commands and fixed rules. What these chains link together are authoritative attempts at discovering, embodying, and disseminating the divine shari'a. In this sense, they are chains of emulation.

Concluding Remarks

In this chapter, I explored the ethical ramifications of the training enabling *hawza* seminarians to question established shari'a jurisprudence and reinterpret it in ways that help the faithful navigate contemporary challenges. In doing so, my aim was twofold. I wanted to displace the idea that Islamic scholars learn to rediscover the shari'a only by amassing knowledge and skills. By drawing on local terms and on-site conversations, I showed that one becomes a shari'a interpreter by undergoing a process of ethical self-cultivation. Together, the three sites of training I examined suggest that future scholars realize themselves as moral exemplars through a double movement in which they (1) emulate conduct displayed by the Prophet and the Imams and; (2) encourage fellow Muslims to reproduce this behavior in their daily life. Though this double movement, *hawza* seminarians learn to recognize themselves as a part of the "chains of emulation" that link the divinely appointed figures with the faithful public.

Yet in making this argument, I also sought to explore an apparent paradox raised by *hawza* scholarship: seminarians acquire the capacity to redeploy the Shi'i legal tradition only by subjecting themselves to the disciplinary structures and shared moral norms of this very tradition. Over the last centuries, *ijtihad* has sparked debates about a wide range of topics, such as constitutionalism, reproductive technologies, and gender discrimination

[60] Interview with a *hawza* seminarian, May 1, 2013

in the Shi'i world.[61] If my analysis is correct, however, this possibility for renewal internal to the shari'a tradition is not a mere instrument for reform or subversive projects, but rather a means of bringing the divine will into conversation with current affairs. This argument will be pursued in the next chapter as I examine the practices of disagreement that open up the possibility for seminarians to reexamine the sacred texts.

Before closing this chapter, I want to draw out the theoretical implications of my argument by examining the process of self-cultivation (described above) through the lens of Foucault's four elements for the study of ethics. Each of the four elements received considerable attention throughout this chapter. My ethnographic account of *hawza* training, however, leads me to reformulate one of them; I wish to clarify this here.

The first of Foucault's four elements is the "ethical substance," that is, the part of oneself regarded as morally relevant (acts, desires, emotions, etc.). I argued that *hawza* seminarians concentrate their efforts on their everyday conduct, and more importantly on their public conduct. Likewise, while studying the virtuous lives of the Prophet and the Imam, they focus on the individual and social behavior of these figures, rather than on their desires or emotions. The second element is the "practices of the self," the operations through which one transforms or elaborates oneself. Foucault specifies that these practices are "proposed, suggested, imposed" by one's culture, one's society, or one's social group.[62] In the context of *hawza* training, the emulation of exemplary figures (including the teaching clerics) emerges as a key practice through which the seminarians realize themselves as ethical subjects. The third element is the "mode of subjection," which designates the way in which moral subjects are invited to recognize themselves as subjected to a (divine or secular) form of authority. My analysis suggests that the notion of *tawakkul* is an important discursive instrument through which seminarians are urged to conceive of themselves as relayers of the divine will.

The forth aspect is what Foucault calls the *"telos"* of moral action. And it is here that my analysis departs from his theoretical scheme. Foucault borrows this notion from Aristotle, who uses it to describe the goal toward which a practice is directed.[63] Foucault, however, gives to this concept a more limited meaning: he situates the *telos* of moral action *in* the ethical subject, rather than in the world this subject inhabits. Each example of *telos* he provides, for instance, is achieved at the level of the individual experience: an

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[61] For examples of this, see: Berry, *Radical Transitions: Shifting Gender Discourse in Lebanese Muslim Shi'i Jurisprudence and Ideology, 1960-1979 and 1990-1999*; Berry, "The Right of Women to Occupy Positions of Judge or State Leadership in Islamic Shi'i Imami Law"; Berry, "Gender Debates in Lebanon: Muslim Shi'i Jurisprudence in Relation to Women's Marital Sexual Rights"; Clarke, *Islam and the New Kinship. Reproductive Technology and the Shariah in Lebanon. Fertility, Reproduction and Sexuality*; Deeb, "Sayyid Muhammad Husain Fadlallah and Shi'a Youth in Lebanon"; Deeb & Harb., *Leisurely Islam. Negotiating Geography and Morality in Shi'ite South Beirut*. Sankari, *Fadlallah. The Making of a Radical Shi'ite Leader.*

[62] Foucault, "The Ethics of the Concern for Self as a Practice of Freedom," 291.

[63] Aristotle, *Nicomachean Ethics*, book 1

"ever more complete mastery of the self," a "radical detachment vis-à-vis the world," a "perfect tranquility of soul," and a "purification that will ensure salvation."[64] But if moral practices are often oriented toward the realization of the self, I want to argue that they can also be geared toward the accomplishment of something larger than the individual self—a friendship, a collective project, or a community. My point, in other words, is that conceiving the *telos* of moral action beyond the realization of the self can open up new possibilities for the study of ethics.

The seminarians of the *Maʿhad* illustrate one of these possibilities. Recall that, for them, becoming an exemplary person is not an end in itself, but rather a means to disseminate a set of moral dispositions and thus improve their social milieus. As I said previously, the *telos* of *hawza*-trained subjects entails not only establishing one's "mode of being," but also promoting it within a larger whole. In closing, note that while Foucault tends to narrow down the *telos* of moral action to a realization of the self, my reformulation of his approach aligns with an observation he made in a different context. In *The Hermeneutics of the Subject*, he argues that the care of the self (in its Platonic version) is always "instrumental with regard to the care of others."[65] Yet to see how this care of others operates concretely, it is necessary to look at the practice of *ijtihad* itself—to which I now turn.

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[64] Foucault, *The Use of Pleasure. Volume 2 of The History of Sexuality*, 27-28. In a interview given in 1982 (and revised in 1984), Foucault illustrates what he means by *telos* using a similar set of examples. "The fourth aspect is: Which is the kind of being to which we aspire when we behave in a moral way? For instance, shall we become pure, or immortal, or free, or masters of ourselves, and so on? So that's what I call the *telos*." Foucault, "The Ethics of the Concern for Self as a Practice of Freedom," 291.

[65] Foucault, *The Hermeneutics of the Subject. Lectures at the Collège de France 1981-1982*, 175.

Chapter three
Pious Doubts

Of all *hawza* seminarians I came to know, Hassan was the most committed. His assiduity was remarkable, and his determination to improve the moral well-being of the Shi'i public always seemed unquestionable to me. One day, however, after a conversation with him in the front garden of the *Ma'had*, I realized something that puzzled me. As I was transcribing our conversation on the contemporary relevance of the shari'a, it came to me that Hassan had violated an important ruling established by the founder of the *hawza*, M. H. Fadlallah: he was smoking a cigarette. And, as I suddenly recalled, he was not the only one to indulge in tobacco: in 2012–2013, the *Ma'had* had more than twenty regular smokers in its ranks. Hence, although Fadlallah prohibited tobacco, the air under the veranda of his *hawza* was thick with smoke every morning. While I knew that other clerical authorities tolerated non-compulsive smoking, a question was on my lips: why would seminarians and clerics working in the legacy of Fadlallah neglect this rule? For days, I struggled to find a tactful way to ask it.

I never had to try, it turned out. A debate about cigarette smoking erupted in class less than a week later. Returning from the morning break, Nabil, a Bahraini incoming student, picked a quarrel with one of his classmate: "*Ya* Bilal," he asked pugnaciously, "how can you smoke when we know it is harmful [*mudirr*] for the health?" Visibly irritated, Bilal asked where Nabil's scientific certitude came from. "From the *sayyid* [Fadlallah]? Well, the *sayyid* is not a doctor," he said. Calm, but slightly arrogant, Nabil responded that Fadlallah's jurisprudence "is based on scientific knowledge."[1] In protest, Bilal left the classroom. When I came across him after class, he immediately clarified that he does not abide by the jurisprudence of Fadlallah; instead he follows the rulings of another Shi'i jurist, namely Ali al-Khamenei, the Spiritual Guide of the Islamic Republic of Iran. For Khamenei, Bilal assured me, smoking is "fine."

"The problem with Nabil," Bilal continued, "is that he wants all of us to follow Fadlallah, and this goes against the spirit of this *hawza*."[2] Until then, I had assumed (like Nabil, perhaps) that by virtue of being Fadlallah's seminary, the *Ma'had* would bring

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[1] Although Fadlallah passed away in 2010, several scholars and seminarians (as well as many Shi'i Lebanese) continued to follow him postmortem. While Shi'i Muslims are theoretically disallowed to conform to the jurisprudence of a dead jurist, believers rarely shift their allegiance overnight. Furthermore, several Shi'i jurists argue that it is permissible for a person who has been following a *marja'* during his lifetime to continue doing so after the *marja'*'s death. Anthropologist Lara Deeb and urban studies scholar Mona Harb report that following Fadlallah's death on July 4, 2010, his juristic office posted the following statement on its website: "It is permissible for the emulators of the late religious authority, Sayyed Muhammad Hussein Fadlallah (ra), to continue to emulate him in a comprehensive manner." Deeb & Harb, *Leisurely Islam. Negotiating Geography and Morality in Shi'ite South Beirut*, 84. In 2012–2013, around a half of the *Ma'had*'s incoming seminarians were followers of Fadlallah.

[2] Fieldnotes, December 7, 2012.

together jurists, clerics, and seminarians seeking to anchor themselves in the scholarly legacy of Fadlallah. But Bilal was right: throughout the years, the *Ma'had* has trained students—and recruited teachers—who follow the guidance of other Shi'i authorities. Hassan, Bilal and their fellow smokers are examples of that. "We do not ask our students to belong to a religious or a political current," the director confirmed to me. "The only thing that matters is that students work seriously," he added, with a hint of pride.[3]

This routine clash illustrates the agonistic spirit that pervades *hawza* instruction and, as I will argue, enables seminarians to reinterpret the shari'a in light of present circumstances. Several historians and anthropologists have already noted that Shi'i seminaries are contentious terrains, saturated with passionate debates and sophisticated disagreements.[4] Those who reach the most advanced levels of the *hawza* curriculum, historians point out, perfect their erudition through scholastic debates [*munazara*] and dialectic modes of argumentation.[5]

The *Ma'had* is no exception in this respect. In this chapter, however, I seek to push these observations in a different direction. I wish to clarify, first of all, that debates and disputes are not the prerogatives of advanced students and established jurists; rather, they are found at each stage of the seminarians' learning journey. And while some of these debates indeed revolve around intricate questions of jurisprudence, many others deal with controversial and timely issues, such as secular marriage, sectarian strife, or Lebanese partisan politics. My contention is that these debates about current affairs play a key role in the process by which scholars reinterpret the sacred texts and formulate shari'a precepts responding to contemporary circumstances—a process called *ijtihad*.

I argue that, insofar as *ijtihad* aims to provide answers to unresolved issues, the starting point for understanding this practice is not the answers offered by scholars (which are found in books of jurisprudence), but the way jurists articulate the questions they seek to answer. Outside *hawza* seminaries, scholars most often deal with queries raised by the faithful. *Muftis*, for instance, are scholars responsible for providing shari'a-based legal opinions [*fatawa*, sing. *fatwa*] in response questions posed by ordinary Muslims about

[3] Fieldnotes, November 7, 2012.

[4] Fischer, *Iran. From Religious Dispute to Revolution*; and Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran.*

[5] Litvak notes the following: "Legal disputations [*munazara,* or *majalis al-jadal*] among students and *mujtahids* [jurists] or among the students themselves both inside class and outside had always played an important role in religions schooling. It appears that they played a greater role in the Shi'i system than in the Sunni *madaris* [plural of madrasa]" Litvak, "Madrasa and Learning in Ninetieth-Century Najaf and Karbala," 62. See also Al-Amin, *Autobiographie d'un clerc chiite de Gabal 'Amil*; and Mervin, "La quête du savoir à Nagaf. Les études religieuses chez les chi'ites imâmites de la fin du XIXe siècle à 1960."

specific situations.[6] Likewise, judges [*qadi*] can resort to *ijtihad* in order to settle the disputes brought before them.[7] Unlike *muftis* and judges, however, *hawza* scholars pursue questions which they articulate themselves beforehand. The debates punctuating the seminarians' scholarly trajectory offer glimpses of the process through which jurists frame the questions that drive their work of interpretation.

My analysis of these debates will show that the practices of moral discipline analyzed in the previous chapter do not only help seminarians develop the authority to speak on behalf of the Imams. This moral discipline also enables them to formulate meaningful *ijtihad* questions—*i.e.*, questions which scholars should answer in order to help Muslims live rightly within current conditions. More specifically, I show that the training described in the preceding chapter provides seminarians with shared moral norms on the basis of which they can formulate questions that stand in need of shari'a-informed answers. *Ijtihad* thinking, I argue, is often prompted by situations in which existing shari'a jurisprudence collides with the moral sensibility that seminarians develop though emulating the figures of the Shi'i tradition. Before delving into these debates, however, I offer an account of the seminarians' journey toward the attainment of *ijtihad*.

This chapter comprises two parts. The first part looks at the classes and disciplines (*e.g.*, jurisprudence, logic, Quranic interpretation) through which young Shi'i seminarians develop the skills necessary to offer contextualized reinterpretations of the Islamic legal tradition. Following the seminarians' trajectory, I pay attention to the cultivation of a peculiar type of doubt, and stress the pivotal role it plays in the training to *ijtihad.* As I show, seminarians achieve in "extracting" [*istikhraj*] shari'a-based rulings and guidelines by exploring the puzzles and uncertainties that characterize Shi'i legal scholarship. In the second section, I examine how *hawza* seminarians develop an understanding of the contemporary landscape they inhabit; more precisely, how they come to identify the specific problems that await a shari'a-based answer. After briefly touching on the teaching of human sciences, I analyze a set of debates between seminarians and clerics. Through these debates, students learn to identify and articulate questions that can guide the performance of *ijtihad*. In closing this chapter, I draw out the implications of my argument for understanding Islamic law and its contemporary elaboration.

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[6] About the practice of fatwa-giving, see Agrama, "Ethics, tradition, authority: Toward an anthropology of the fatwa." and *Questioning Secularism. Islam, Sovereignty and the Rule of Law in Modern Egypt* (especially chapters 3 and 5). On the work of muftis, see: Masud, Messick, & Powers, *Islamic Legal Interpretation. Muftis and their Fatwas.* and Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society* (especially chapters 7, 8 and 9).

[7] On this see, Masud, Peters, & Powers. *Dispensing Justice in Islam. Qadis and their Judgments* and Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*.

Elaborated Uncertainties: A Curriculum for *Ijtihad*

In describing *ijtihad* as a "methodology of doubt," historians of Islam highlight that human attempts to discover the divine shari'a begin and end in uncertainty. [8] Indeed, despite the fact that the shari'a is eternally true, Shi'i jurists hold that this truth can only be approached through "disciplined elucidations," which always stay contingent (at least, until the return of the Hidden Imam).[9] All scholarly efforts to reveal God's ordained path therefore remain approximate, subject to doubts and ambiguities.

The purpose of *hawza* training is to enable Shi'i seminarians to navigate this contested terrain. This training typically comprises three stages. Seminarians involved in the first stage—*al-Muqaddimat* [Preliminaries]—focus on three disciplines which, together, formed the trivium of late Antiquity: grammar, logic, and rhetoric.[10] This introductory phase lasts between one and five years, depending on the seminary. In most seminaries, it also includes an introduction to Shi'i jurisprudence. *Al-Sutuh* [Surfaces], the middle stage, usually stretches out over four to six years, providing seminarians with the skills necessary to explore the gaps and ambiguities that plague human understanding of the shari'a. Other sciences necessary to *ijtihad* are introduced during the second stage, such as the principle of jurisprudence and hadith studies. The third and highest level of study is *Bahth al-Harij* [Externals]. The seminarians who reach this stage embark on independent inquiry, using the skills and tools acquired during coursework. This research, leading to the attainment of the rank of *mujtahid* [a person qualified to practice *ijtihad*], can last for decades.

It is common to describe *hawza* curriculums by sketching out the key features of these three stages and listing the treatises assigned in each of them.[11] Using this approach would shed light on the curriculum of the *Ma'had,* which follows the tripartite division. Describing *hawza* training as a succession of stages, however, pulls us away from the crucial role that doubt plays in the seminarians' journey toward *ijtihad*. Performing *ijtihad*, historians maintain, requires "a general acknowledgement of doubt, if not a complete

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[8] Calder, "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of Ijtihad"; Gleave, *Inevitable Doubt. Two Theories of Shi'i Jurisprudence*.

[9] Fischer, *Iran. From Religious Dispute to Revolution*, 69.

[10] Roy Mottahedeh first made this parallel between *hawza* curriculum and the trivium. *The Mantle of the Prophet. Religion and Politics in Iran*, 8

[11] For a description of these three stages, see: Abisaab, "The Cleric as Organic Intellectual: Revolutionary Shi'ism in the Lebanese Hawza"; Calmard, "Les universités théologiques du shiisme imâmite"; Litvak, *Shi'i Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala'*; Mervin, "La quête du savoir à Nagaf. Les études religieuses chez les chi'ites imâmites de la fin du XIXe siècle à 1960"; Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran*; Nasrollah, *Devenir Ayatollah, guide spirituel chiite. Une recherche sur le système de l'enseignement dans les écoles religieuses de Qom et Najaf*; Sindawi, "Hawza Instruction and Its Role in Shaping Modern Shiite Identity: The Hawzas of al-Najaf and Qumm as a Case Study"; and Zubaida, *Law and Power in the Islamic World.*

abandonment of certainty."[12] Thus, in this first section, I show that before articulating scriptures-based responses to contemporary questions, *hawza* seminarians learn to cultivate a particular kind of doubt. To follow this process as closely as possible, I substitute the three-stages approach with an analysis of three overlapping tasks by which seminarians learn to uncover the shari'a: (1) understanding the fundamentals; (2) reckoning with doubt; (3) augmenting the tradition.[13]

Understanding the Fundamentals: The Two First Years > Throughout their first years of study, *hawza* seminarians become conversant in the specific concepts, principles and methods that inform the Islamic sciences. The introductory lessons of *fiqh* [jurisprudence] provide a useful vantage point to observe the seminarians' first steps. Etymologically, the Arabic word *fiqh* denotes an understanding; more precisely, an understanding of the divinely ordained path that only God knows: the shari'a.[14] The classes on *fiqh,* therefore, center on norms governing the relationships that humans maintain with God, with nature, and among ourselves. Yet while advanced students work out the most intricate facets of the shari'a, novice seminarians first learn to classify human actions into one of five possible categories: obligatory [*wajib*], recommended [*mandub*], permissible [*mubah*], repugnant [*makruh*], and prohibited [*haram*].

Introductory classes on *fiqh* follow a consistent routine: on every weekday, between 7 and 8 am, incoming seminarians decipher and memorize the jurisprudential rulings [*ahkam*] that the founder of this *hawza,* M. H. Fadlallah, derived from the sacred texts.[15] These norms cover nearly all facets of human activity, from praying and paying religious taxes to mundane endeavors such as selling goods, eating, fishing and hunting. Facing about twenty seminarians sitting behind twin wooden desks, the teachers spell out a daily

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[12] Calder, "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of Ijtihad," 72.

[13] What follows, however, should not be taken as a comprehensive account of *hawza* instruction. In order to capture *ijtihad* training, I deliberately emphasize a number of topics (*e.g.* jurisprudence, logics, Quran interpretation) at the expense of others (*e.g.* grammar, rhetorics, philosophy).

[14] The word "*fiqh*" is the verbal noun [*masdar*] derived from the root *faqaha* [فـقـه], meaning to "understand well." Before the 8th century, *fiqh* refereed to all branches of knowledge. With the development of the legal sciences, however, the significance of the word came to be restricted to the legal aspects of Islam. Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran*; and Mutahhari, *Understanding Islamic Sciences.* Today, *fiqh* is one of the three broad categories of the Islamic sciences; the other two are doctrines [*aqa'id*] and ethics [*akhlaq*]. Pelissier, "Introduction à la jurisprudence islamique."

[15] Conventionally, the *hawzat* of the Shi'i world introduce incoming seminarians to the jurisprudence of the legal authority [*marja'*] with whom they are affiliated [*tantasib ilehu*]. (Interview with a *hawza* teacher, conducted on July 1, 2013). Thus, while the first-year seminarians of the *Ma'had* study the Fadlallah's treatise of jurisprudence, students enrolled in other Lebanese *hawzat* start their exploration of Shi'i *fiqh* by examining the jurisprudence of Najaf's Ayatollah Ali el-Sistani or that of Ruhollah Khomeini, the architect of the Islamic Republic of Iran. Fadlallah's jurisprudential treatise is entitled *fiqh al-shari'a*. On the different Lebanese *hawzat*, see chapter 1.

section of the 3154 rulings listed in Fadlallah's treatise of jurisprudence.[16] Seminarians listen carefully, scribble notes in the margin of their copy of the treatise, and ask questions by raising their hand. The questions posed by novice students rarely challenge the norms under consideration; most frequently, they aim at clarifying the scope of a given ruling or the meaning of a technical term. The teaching clerics address these questions with definitions, illustration, and occasionally anecdotes. Clerics neither promote nor defend Fadlallah's jurisprudence; rather, they work to ensure that seminarians properly grasp its implications and applications. "Our goal," a cleric told me, "is to have the students read one treatise of jurisprudence in its entirety. We want the students to understand the terminology, but also the structure and the form of these treatises. Once they have learned to read one treatise, they can read any of them." [17]

But these introductory lessons actually serve a double purpose. On the one hand, they aim to make seminarians familiar with the lexicon and argumentative logic of Shi'i jurisprudence. In class, students acquaint themselves with the product of *ijtihad*: precepts meant to help the faithful obey the divine will in the midst of contemporary challenges. On the other hand, clerics seek to enable the seminarians to address (and sometimes solve) the queries of fellow Muslims.[18] As Mohammed, an advanced student from South Lebanon, explained to me: "a treatise of *fiqh* offers responses to a series of practical questions. Studying it allows students to answer questions coming from the faithful [*al-mu'minin*]. Students are therefore able to help people practice a better Islam [*al-islam al-sahih*]."[19]

Despite the overriding importance of jurisprudence in the *hawza* curriculum, novice seminarians also explore other fields of knowledge.[20] Twice a week, they learn the rudiments of Quran interpretation [*tafsir*], becoming gradually familiar with its technical

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[16] In Arabic, these treatises of jurisprudence are known as *risala 'amaliyya*, which means "practical treatise," and which implies that these treatises are not only scholarly documents, but texts that pious Shi'i consult to learn the about correct performance of multiple practices, ranging from prayers and pilgrimage to rent and hunting. To give an example of the ruling learn by incoming seminarians: "If an animal has drunk alcohol, it become obligatory to avoid [eating] the content of its interior — the heart, liver, rumen, etc." Fadlallah, 2011, *Islamic Ruling. A Guide of Islamic Practice*, 291 (Ruling #801-4).

[17] Interview with a *hawza* teacher, conducted on May 6, 2013.

[18] The Lebanese *hawza Rasul al-Akram* teaches the jurisprudence of Khomeini, the *hawza Chahid al-Awal* teaches the jurisprudence of al-Sistani. According to anthropologist Lara Deeb, Fadlallah was the most influential *marja'* in Lebanon until 2010. Deeb & Harb, *Leisurely Islam. Negotiating Geography and Morality in Shi'ite South Beirut*. About the *marja'iyya*, see chapters 1 and 4.

[19] Interview with a *hawza* student, conducted on March 21, 2013.

[20] Julien Pélisser notes that the study of *fiqh* covers up to 65% of the curriculum of the various *hawzat*. Pélissier, "Introduction à la jurisprudence islamique." This observation corroborates Georges Makdisi's claim that Islamic law is the "queen of the Islamic sciences." Makdisi, *The Rise of Colleges. Institutions of Learning in Islam and the West*, 24.

vocabulary and some of the questions it raises.[21] Islam's holy book has never been considered a self-explanatory text, but since it is the primary source of the shari'a, its interpretation is of prime importance to future jurists.[22] In the classrooms of the *Ma'had*, seminarians first discover the subtleties of the Quranic revelation by studying the interpretation that M. H. Fadlallah offers in his multi-volumes work of *tafsir.*[23] Teachers open their lessons by writing a number of verses [*ayat*, sing. *aya*] on the whiteboard riveted on the wall of the classroom; then, after having ritually invoked the blessing of the Prophet Mohammed, they spend the rest of the time explaining the meaning of each clause of the verses, as Fadlallah extrapolated it. Here again, seminarians take copious notes and often ask for clarification. I never saw a seminarian dispute the meaning of the verses under study.

The study of *mantiq* [logic] is another key component of the first learning sequence. In class, logic is described as "a general methodology [*minhaj*] aimed to ensure healthy reasoning [*al-tafkir al-sahih*] and prevent the mind from falling into error."[24] In conversation with me, teachers emphasize that this methodology help *hawza* seminarians systematize their thinking and articulate their ideas with rigor and clarity. It is crucial that principles of logic [*mabada' al-mantiq*] are passed down across generations, because these principles represent the foundations of all the Islamic sciences, and more specifically the legal sciences. "It is in light of the science of logic that all the other sciences were established," a cleric told me.[25]

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[21] Among the first notions seminarians learn is the distinction between the two dimensions of the Quran: the *zahir* [its outer dimension] and the *batin* [its inner dimension]. Although novice seminarians are not equipped to reach the inner dimension, introducing this distinction allows them to begin appreciating the textual evidence suggesting that the exoteric meaning [*zahir*] is sometimes not the one intended [*al-maqsud*], as a teacher of *tafsir* explained to me. (Interview with a *hawza* teacher, conducted on June 21, 2013).

[22] According to Wael Hallaq, Islamic jurists agree that the Quran contains some five hundred verses with legal content. Hallaq, *A History of Islamic Legal Theory. An Introduction to Sunni Usul el-Fiqh*, 3. Likewise, a Sheikh teaching advanced classes of *tafsir* at the *Ma'had* stressed that "the noble Quran is the essential source from which the rulings of the shari'a are derived [*istinbat*]." (Interview with a *hawza* teacher, conducted on June 21, 2013.)

[23] Fadlallah's treatise of *tafsir* is entitled *Tafsir min wahy al-Quran* [Interpretation from the Revelation of the Quran] and comprises twenty-five volumes. The cleric teaching *tafsir* to second-year students underscores that Fadlallah's interpretation of the Quran distinguishes itself from other works by its clarity as well as emphasis on the "moral pedagogy" of the Quran (Interview with a *hawza* teacher, conducted on June 26, 2013). Historian Mahmoud Ayoub notes that this pedagogical aspect is a central component of the Shi'i tradition of *tafsir.* "One of the most important principles of Shi'i *tafsir*," he remarks, "is that the Quran must always be shown to have relevance or applicability to some persons and situations." Ayoub, *The Qur'an and Its Interpreters*, 35. The Quran comprises 114 surahs, each of which contains between 3 and 286 verses [*ayat*]. In 2012 and 2013, novice seminarians studied the following surahs: sura *al-nisa* [on women], sura *al-insan* [on human being], and sura *al-ahzab* [on the coalition].

[24] Fieldnotes, January 21, 2013.

[25] Interview with a *hawza* teacher, conducted on March 29, 2013; Interview with a *hawza* teacher, conducted on April 24, 2013.

Historians and philosophers have rightfully noted that the rules of logic taught in Shiʿi seminaries are Aristotelian and structured around the figure of the syllogism.[26] Syllogistic reasoning is the backbone of the analytical principles that enable jurists to derive clear and concise rules from the scriptures. Although seminarians only learn these analytical principles (called *usul al-fiqh*) in advanced classes, they lay the groundwork by studying syllogistic logic during their elementary years. Throughout the first year, seminarians spend most of class time developing a toolbox of concepts necessary to perform syllogistic reasoning: deduction [*istidlal*], induction [*istiqra*], categorization [*tasnif*], and analogy [*qiyas*].[27] Teachers define these terms, and illustrate the most abstract elements by drawing schemas on the whiteboard; students demonstrate their understanding of the material through monthly quizzes. Once they reach the second year, seminarians use these concepts to solve more complex equations, going to the front of the classroom to approve or correct the syllogistic operations that teachers sketch on the board.[28] "No one," a teacher said to me, "can undertake to uncover the rules of the shariʿa [*i.e.,* perform *ijtihad*] without *usul al-fiqh*, and *usul al-fiqh* entirely rests on these operations of logic. You see, the Islamic sciences form a linkage [*tarabit*]—each science depends on another one."[29]

Reckoning with Doubt: From the Second to the Fifth Year > One morning, in order to inspirit seminarians, the teacher of logic opened his class with a rather bleak piece of poetry: "*That with intellect suffers in bliss with his mind. And the ignorant in misery lives blissfully*."[30] As he finished transcribing the sentence on the whiteboard, the teacher turned toward the students and pointed out that these words—by the Arabic poet al-Mutanabbi (915–965)—epitomize the predicament in which seminarians may soon find themselves. "Students come to me and complain that as they advance on the path of knowledge [*ʿilm*] they begin to doubt everything," he told the class. "I want to warn you that this sense of doubt [*shakk*] is likely to intensify, but it is not a bad thing."[31] Before turning to resume his lesson, he added that while doubt might be difficult to bear, *ijtihad* is impossible without it.

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[26] A syllogism is a form of reasoning consisting (in its most simple form) of a major premise, a minor premise and a conclusion. The following syllogism, by Aristotle, is often cited as an example: "All men are mortal [the major premise], Socrates is a man [the minor premise], therefore Socrates is mortal [the conclusion]." Aristotle, *Prior Analytic*. On the teaching of Aristotle in Islamic seminaries, see Hallaq, *A History of Islamic Legal Theory. An Introduction to Sunni Usul el-Fiqh;* Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran*; Street, "Arabic and Islamic Philosophy of Language and Logic."

[27] First-year classes of Logics use a textbook entitled *Khalasa al-Mantiq* by Abdelhadi al-Fadli (Beirut: non-dated)

[28] Second-year classes of Logic are based on the textbook *al-Muqaradam fi sharah mantiq al-Muzzafar ma matnah al-musahih* by Sayyid Ra'id al-Hairi (Beirut 2001).

[29] Interview with a *hawza* teacher, conducted on March 29, 2013

[30] In Arabic, the verse reads: "ذو العقل يشقى في النعيم بعقله وأخو الجهالة بالشقاوة ينعم."

[31] Fieldnotes, March 29, 2013.

The Sheikh's remark echoes a common observation made by scholars of Shi'ism that performing *ijtihad* presupposes an acknowledgement that the shari'a is shrouded in doubt. However, to understand what is at stake in this second learning sequence, it is necessary to understand what is meant by "doubt." The practice of doubt cherished by Shi'i scholars must first be distinguished from the Cartesian doubt, which underlies much of modern philosophy.[32] Unlike Descartes' radical doubt, which assails "all things" [*toutes choses*]—and most fundamentally the subject's relationship to the world—the doubt of *hawza* scholars is more limited in scope.[33] It exclusively concerns the human attempts to understand and communicate God's will, whether by narrating the Prophet's life, interpreting the Quran or devising shari'a jurisprudence. Furthermore, while Descartes overcomes doubt by turning upon himself, Shi'i seminarians cope with it by turning to the sacred scriptures. Everything emanating from God or the "14 Infallible" (the Prophet, his daughter and the Twelve Imams) is beyond doubt. As historian Robert Gleave remarks, the entire edifice of Shi'i legal sciences rests on a epistemological division between the certainty [*yaqin*] of divine knowledge and the uncertain nature of human opinion [*zann*].[34] Thus, while Descartes regards God as a potentially deceiving force and the human subject as the origin of certitude, Shi'i scholars turn Cartesian epistemology upside down by conceiving of God as the only source of certain knowledge. Cultivating doubt, in sum, involves testing human knowledge against the sacred texts. At the *Ma'had*, seminarians begin to do so toward the end of the second year of study.

Here again, it is instructive to look at the teaching of *fiqh*. Once they reach the second year, *Ma'had* seminarians set aside Fadlallah's treatise of jurisprudence. Instead, they cut their teeth on a classic work of Shi'i legal thought, *al-Sharai' al-Islam,* written by the prominent jurist Muhaqqiq al-Hilli (1180–1254).[35] The classroom setting remains the same: teachers stand between the whiteboard and a large desk facing approximately twenty students, all seated in pairs. The content of the classes, however, differs remarkably; needless to say, the thirteenth-century treatise does not tackle with the particularities of modern life. Hence, to help the seminarians appreciate the implications of al-Hilli's work, teachers translate the legal language of the thirteenth century into contemporary terms.[36] While doing so, they never miss a chance to point out where, how, and to what extent the work of al-Hilli conflicts with that of Fadlallah.

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32 Taylor, *Sources of the Self. The Making of Modern Identity*; Broughton, *Descartes's Method of Doubt*.

33 Descartes, *Méditations métaphysiques*, 13.

34 Gleave, "Conceptions of Authority in Iraqi Shi'ism : Baqir al-Hakim, Ha'iri and Sistani on Ijtihad, Taqlid and Marja'iyya," 65.

35 On the intellectual and historical significance of this treatise, see Bellefonds, "Le droit imamite"; and Pélissier Pelissier, "Introduction à la jurisprudence islamique,"

36 When, for instance, al-Hilli states that one is exempted from the obligation to complete the pilgrimage if "the presence of an enemy (*'adu*) poses a threat to one's safety," the teacher has drawn an analogy with the case of a contemporary pilgrim who is denied entrance to Saudi Arabia by an immigration officer. In this situation, the teacher said, a Muslim pilgrim could be exempted from the obligation to perform the pilgrimage (Fieldnotes, March 13, 2013).

Throughout the second, third and fourth years of study, *hawza* seminarians dwell at length on these points of contention. Teachers not only list the different positions, they also spend considerable time discussing the rifts, breaks and gaps that characterize the Shi'i legal sciences, explaining how different reading strategies lead to disagreements among jurists. As a result, the students' focus slowly shifts from the jurisprudential norms themselves to the different and sometimes contradictory evidence [*adala*, sing. *dalil*] that support these norms. Since al-Hilli's treatise does not detail these pieces of evidence, however, seminarians rely on the teachers' explanations—which they carefully transcribe in the margins of their copies of the treatise. In so doing, students get acquainted with the sources from which shari'a jurisprudence is derived: the Quran and the *hadith* [reports of the speeches and actions of the 14 Infallibles]. While seminarians learn to interpret the *hadith* later in their trajectory, it is here that they come to understand that the disagreements between scholars are not based on preferences: instead, they result from different treatments of scriptural texts. In other words, they learn that Shi'i scholars cope with the uncertainty surrounding the shari'a by marshaling different pieces of evidence and using different modes of reasoning—which inevitably leads to conflicting results.

Tall, quiet and slightly intimidating, Sheikh Amin teaches *fiqh* to third-year students at the *Ma'had*. He explains to me that exploring the spaces of non-resolution is not the only goal of the class. It is also designed, he says, to help the students deal with the plurality of understandings that characterizes Shi'i jurisprudence today. Knowing the precepts that Fadlallah derived from the scriptures is important, but there are other sound approaches, and seminarians must know them in order to help the faithful.

> Seminarians must understand that what they learned in Fadlallah's treatise [studied during the first year] is not the whole truth [*kul al-haqiqa*]. They need to be aware that the law is not one thing. In the time of the Prophet, peace be upon him, the law was one. But today, the law has many interpreters [*mufassirin*]: this understanding of the law differs from that understanding. Students have to accept the idea that we are now living in an era marked by a plurality of understandings [*ta'adad fi al-faham*].[37]

The idea that our era is characterized by multiple understandings of the shari'a does not only guide the study of *fiqh*; it also informs the seminarians' approach to Quran interpretation [*tafsir*]. It is believed that, like the shari'a, the holy Book's meaning was once clear and unambiguous. Yet as the era of the 14 Infallibles faded away, issues of exegesis gradually surfaced, and the Quran became a text to be elucidated.[38] As I mentioned, novice seminarians study Fadlallah's interpretation of the Quran; those who reach the third year delve into the mechanics of it by studying the "methodology of

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[37] Interview with a *hawza* teacher, conducted on April 4, 2013. See also Gleave, "Conceptions of Authority in Iraqi Shi'ism : Baqir al-Hakim, Ha'iri and Sistani on Ijtihad, Taqlid and Marja'iyya," 65.

[38] A number of *tafsir* scholars consider that the Quran combines both unambiguous [*muhkam*] verses and ambiguous [*mutashabih*] verses, which constitute the major portion of the Quran. See Ayoub, *The Qur'an and Its Interpreters*, 19.

[Quranic] interpretation" [*minhaj at-tafsir*].[39] In class, they review the various methodological approaches that have shaped the practice of Quran study.[40] As in the class of *fiqh* described above, seminarians learn to situate Fadlallah's work within a larger field of debates and scholarly traditions.[41]

From these classes of *fiqh* and *tafsir*, it emerges that the form of doubt valued by Shi'i jurists obliges *hawza* seminarians to explore various human attempts to decipher the divine will—whether through Quran exegesis or jurisprudential interpretation [*fiqh*]. Yet, according to the director of the *Ma'had*, the cultivation of doubt has other implications for *hawza* seminarians. While conceding that doubt may lead some to drift into "sterile skepticism," he stresses that when teaching is properly done, the acknowledgement of doubt often pushes students to revisit what they thought was true. "Today, this is crucial," said the director, "because some of our legal views need to be reconsidered [*tahtaj i'adat nazar*], and *ijtihad* implies that we put our wisdom to scrutiny." Aware that most seminarians will not reach the level of *ijtihad*, he adds that if students do not inaugurate new legal views, at least they learn to subject human discourse "to revision [*muraji'a*] and critique [*naqad*]."[42]

This last remark goes beyond the training of religious leaders or Shi'i jurists. With it, the director implies that by learning to explore religious uncertainties, students develop a

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[39] Third-year classes of methodology of *tafsir* are based on a textbook entitled *Buhuth fi minhaj tafsir al-Quran al-Karim* [*Koran Exegesis: Methodological Studies*] by Mahmoud Rajbi.

[40] According to one teacher of *tafsir,* the most significant division among the schools of Quranic interpretation separates "chronological *tafsir*" [*al-tafsir al-tartibi*] and "thematic *tafsir"* [*al-tafsir al-mawdu'i*]. The former approach considers each of the Quranic suras by following the order of the scriptural text. It also read the verses [*ayat*] in the order in which they appear in the Quran. By contrast, the latter approach (*i.e.* thematic *tafsir*) breaks with this tradition by focusing on the themes addressed in each surah. Rippin, *Approaches to the History of the Interpretation of the Qur'an*. So far, chronological *tafsir* has remained the prevalent approach in Quran studies (*ulum al-Quran*). Fieldnotes; Interview with a *hawza* teacher, conducted on June 26, 2013. On the different schools of Quran interpretation, see Wansbrough, *Quranic Studies: Sources and Methods of Scriptural Interpretation.*

[41] Beyond the different approaches considered in this class, seminarians learn to engage a set of questions which have profound implications for how the Quran ought to be read and understood. One of these questions concerns the role imparted to the speeches and deeds of the 14 Infaillibles (*i.e.* the *hadiths*) in the operation of interpretation. Since the Prophet and the Imams were the first—and the best—interpreters of the Quran, a whole school of *tafsir* holds that the Quran should be interpreted in light of the *hadith*. But because (as we will see shortly) not all *hadiths* are reliable, other specialists argue that the Quran should be interpreted strictly on its own terms. Another consequential question is whether the *surahs* ought to be understood independently or in light of the other *surahs* comprising the Quran. By exploring these questions, but also the answers provided by Shi'i scholars, seminarians gain an appreciation of how these debates impact one's understanding of the Quran, and by the same token, the rulings one extracts from it. As the clerics who teaches *tafsir* insisted in an interview, "Nobody can perform *ijtihad* while staying away from the Quran." Interview conducted on June 21, 2013

[42] Interview with the *hawza* director, conducted on April 24, 2013.

different relationship with what they hear and read every day. "In an educational climate where we want everything ready, like fast food, this is an important task," he opines.[43]

***Augmenting the Tradition: The Fourth Year Onward* >** By the fourth year, seminarians begin acquiring the skills necessary to uncover the shari'a. At this point, the cohorts become smaller: in 2012 and 2013, the advanced classes offered at the *Ma'had* brought together fewer than twenty students. The spatial arrangement of the classrooms and the teacher's use of the space show no significant difference, except that the rooms are considerably smaller (and get very humid during the rainy Lebanese winters). This third learning sequence, however, indexes more than a shift in size; it inaugurates new disciplines as well as a different pedagogical approach.

Among these new disciplines are the sciences of *hadith* [*ulum al-hadith*]. I already noted that the shari'a is derived from two separate sources. While the Quran is considered to be the first and most reliable legal source, most of Shi'i jurisprudence springs from the second source: namely the corpus of the *hadiths* (the words and actions of the 14 Infallibles).[44] The Quran and the *hadiths*, however, foster different types of uncertainty. The Quran is open to interpretation, but since it was divinely revealed, its authenticity is beyond doubt. The *hadith*, by contrast, were reported by fallible human beings; their authenticity and meaning must therefore be investigated.

Two distinct classes train the seminarians to perform this task. The classes of *'ilm al-diraya* [science of understanding] give seminarians a methodology to investigate individual *hadith*, and to classify them into four categories, ranging from authentic [*sahih*] to weak [*da'if*].[45] Students learn to measure the reliability of each fifty thousand plus *hadiths* by tracing its genealogy—*i.e.,* the detailed trajectory that the information followed until its compilation in the Shi'i collections.[46] By examining this trajectory (called a chain of transmission [*isnad*]) seminarians establish whether a given *hadith* is sound enough to serve as a source of legislation. Since all *hadiths* were passed down by humans, however, this examination involves scrutinizing the narrators who circulated information about the lives of the 14 Infallibles. *Hawza* seminarians learn to do so in a different class, centered on *'ilm al-rijal* [the science of men]. In this second course, they

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[43] *Ibid.*

[44] Unlike the corpus of the Sunni *hadith*, which is limited to the words and deeds of the Prophets, the Shi'i *hadith* also includes the words and deeds of the Prophet's daughter Zahra and those of the Twelve Imams.

[45] Seminarians first learn to distinguish between the *hadith*s that have been reported by a large number of narrators (*hadith* "*mutawatir*," trans. "continuous") and the *hadith*s that were attested only once or transmitted by only one narrator ("*khabar al-wahid*," trans. "solitary report"). Most Shi'i *hadith*s belong to the second category. See al-Fadli, *Introduction to Hadith*. See also Calder, "Doubt and Prerogative: The Emergence of an Imami Shi'i Theory of Ijtihad."

[46] Among the collections of Shi'i *hadith*s, the first four remain the most authoritative. Often called "The Four Books," they include *al-Kafi* by al-Kulani, *Man La Yahduruhu al-Faqih* by Al-Shaykh al-Saduq, *Tahdhib al-Ahkam*, and *Al-Istibsar*, both by Nasir al-Din al-Tusi. Modarressi, *An Introduction to Shi'i Law. A bibliographical study.*

mobilize different historical research tools (*e.g.*, bibliographical dictionaries, historical work) to establish the trustworthiness of the men and women who relayed information about the life of the Prophet and the Imams.

The methodology of *usul al-fiqh* [principles of jurisprudence] is another new discipline. I have stressed that the two divine sources of legislation—the Quran and the hadiths—are riddled with ambiguities, gaps, and puzzles. Historically, these areas of uncertainty forced Islamic scholars to elaborate methodological principles meant to help jurists tackle these puzzles through syllogistic reasoning. *Usul al-fiqh* is the product of this elaboration.[47] Yet this sophisticated set of principles does not only help Shi'i scholars work out ambiguities inherent to the divine texts. It also enables them to determine the legality of practices that were not even envisaged when Islam was revealed and embodied by the 14 Infallibles: tobacco smoking, organ donation, DNA technology, etc. In short, the lessons of *usul al-fiqh* provide seminarians with methodological tools to perform *ijtihad.* Sheikh Najib, who teaches *usul al-fiqh* to advanced students, emphasizes that this capacity to derive shari'a-based guidelines for new and old practices is of paramount importance today. "Why is the divorce only in the hands [*bi yad*] of the husband? Why is the son's inheritance [*mirath*] bigger than the daughter's? Why is there such discrepancy within the shari'a legal sources? All these questions have answers. But are we sure that we have the correct ones? Today, we need new answers to these questions, and perhaps new means to get these answers."[48] *Usul al-fiqh* offer the means through which jurists get these answers.

Seminarians of the *Ma'had* are trained in the discipline of *usul al-fiqh* from their fourth year of study until the end of their coursework. Their training is for the most part structured around specific logical problems that jurists encounter in deriving shari'a rulings from the Quran and the *hadiths* (*e.g.,* how to deal with two contradictory strands of evidence [*dalil*]?; is a single piece of evidence enough to support a legal ruling?; does the usage of the imperative in the sources always convey an obligation?). Seminarians

[47] On the discipline of *usul al-fiqh*, see Hallaq, *A History of Islamic Legal Theory*; Mutahhari, *Understanding Islamic* Sciences; and al-Sadr, *Principles of Islamic Jurisprudence According to Shi'i Law.*

[48] Interview with a *hawza* teacher, conducted on April 24, 2013. About the stress on novelty, see chapter 1.

learn to approach these problems through a set of logical principles.[49] Each of these principles is grounded in syllogistic reasoning, which students study during their first years of *hawza* instruction. The lessons of *usul al-fiqh* offered at the *Ma'had*—like those delivered in Qom and Najaf—are based on the pedagogy of the renown jurist Baqir al-Sadr (1935-1980).[50] Classes typically begin with a review of one of the 71 short lessons that al-Sadr's treatise comprises; seminarians study them beforehand.[51] Most class time is spent putting the lessons into practice through exercises and debates.

From a pedagogical standpoint, these debates and exercises inaugurate a crucial shift. Up to this point, teachers have been delivering lectures, exploring ambiguities, and answering students' questions. In the advanced levels, however, students instead raise questions and engage in debates. Sheikh al-Ulama, who teaches *usul al-fiqh*, always come to class with a set of index cards, on which he has written debate questions. He opens his lessons with these questions—*e.g.*, "Imagine a doubt arises about Friday prayer. You are certain that either the communal prayer or the noon prayer is obligatory on that day, but uncertain about which of the two is obligatory. Do you need to perform both prayers? If so, why?"[52] The Sheikh intervenes in the students' discussion to help seminarians expose their views systematically, and support each step of their argument. Sheikh al-Ulama usually shares his view of the matter toward the end of the lesson, but he devotes most of class-time helping seminarians construct their arguments and deploy them in a debate.

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[49] The disagreement about the practice of tobacco smoking illustrates the working of these logical principles. When confronted with a doubt regarding the permissibility of a practice (such as smoking tobacco), scholars must first find pieces of evidence in the divine sources. If the sources are silent (as they are in the case of tobacco smoking), jurists may resort to a core principle of *usul al-fiqh*: the "principle of caution" [*asalat al-ihtiyat*]. This principle holds that one should prohibit what is, according to the sources, only *probably* prohibited. In the case of cigarette smoking, the sources say that God "makes good things permissible [*halal*] and bad things [*forbidden*]." (Quran 7-157) and that "every intoxicant is forbidden." (Sahih Muslim, vol 3, hadith #4962). A scholar may interpret these evidences as suggesting that smoking is probably prohibited, and ban it on the basis of the principle of caution. However, another scholar may opt instead for another core principle: the "principle of exemption" [*asalat al-bara'ah*]. This principle holds that no one shall be punished for committing an act that is not explicitly forbidden. Applying the principle of exemption, one would conclude that cigarette smoking is permissible, since the sources provide no clear evidence of its prohibition. Scholars thus reach different conclusions whether they abide by the principle of caution or the principle of exemption. Which of the two principles prevails is matter of debate among *usul al-fiqh* scholars. Baqir al-Sadr (the author of the treatise taught at the *Ma'had*) regards the principle of caution as the "primary procedural principle" and the principle of exemption as the "second procedural principle." Sadr, *Principles of Islamic Jurisprudence According to Shi'i Law*, 112-116.

[50] On the teaching of *usul al-fiqh* in Najaf, see Mervin, "La quête du savoir à Nagaf. Les études religieuses chez les chi'ites imâmites de la fin du XIXe siècle à 1960." On the teaching in Qom, see Nasrallah, *Devenir Ayatollah, guide spirituel chiite. Une recherche sur le système de l'enseignement dans les écoles religieuses de Qom et Najaf*; and Nome & Vogt " Islamic Education in Qom: Contemporary Developments."

[51] Al-Sadr's treatise is entitled *Durus fi usul al-fiqh. Ma ma'lim al-jadida* ["Lessons in Usul al-Fiqh, with new landmarks"]. Two translations of the first volume are available in English: al-Sadr, *Principles of Islamic Jurisprudence According to Shi'i Law*; and al-Sadr, *Lessons in Islamic Jurisprudence.*

[52] Fieldnotes, June 6, 2013

The shift in pedagogy brings the seminarians closer to the disputatious pedagogic style that is the hallmark of *hawza* instruction.[53]

The advanced study of *fiqh,* too, is structured around debates. Advanced seminarians are well acquainted with the debates and disagreements inherent to Shi'i jurisprudence; they have also learned to research the sources of the shari'a (the Quran and the hadiths) and to deal with ambiguities through deduction. Studying *fiqh* no longer means memorizing precepts or reviewing jurists' disagreements. In advanced classes of *fiqh*, seminarians examine and discuss the entire set of operations by which jurists transform strands of evidence [*adala*] found in the sacred texts into legal precepts [*ahkam*]. This process (called *istidlal*) mobilizes nearly all the skills and methodologies that *hawza* students have learned since their first year of study—*e.g.* exegesis of the Quran, sciences of the *hadith*, logic, and *usul al-fiqh*. The treatises and textbooks used by seminarians at this stage do not only expose practical rules of conduct (like those used in previous stages), but also detail the pieces of evidence that supports each jurisprudential ruling and expound on the thought process behind it.[54]

The *Ma'had* coursework spans over seven years. Upon its completion, seminarians are qualified to conduct legal research under the supervision of a mentor. This research (often compared to a PhD dissertation today) is called *Bahth Harij*.[55] The word *bahth* means research; the qualifier *harij* signifies that those who embark on it can extrapolate the divine will without relying on the existing treatises on *fiqh* (whether classic or contemporary). At this stage, seminarians part ways from man-made shari'a jurisprudence and base their argument exclusively on primary shari'a sources.[56] Their research focuses on specific problems with which the faithful grapple: the possibility of women to performing the pilgrimage against the will of their husband, a daughter's inheritance, child custody, etc. For *hawza* seminarians, the *bahth harij* represents a first attempt at

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[53] On this see: Calmard, "Les universités théologiques du shiisme imâmite"; Litvak, *Shi'i Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala'*; Mervin, "La quête du savoir à Nagaf. Les études religieuses chez les chi'ites imâmites de la fin du XIXe siècle à 1960"; Mervin, "La hawza à l'épreuve du siècle: la réforme de l'enseignement religieux supérieur chiite de 1909 à nos jours"; and Mottahedeh, "Traditional Shi'ite Education in Qom."

[54] Fourth- and fifth-year seminarians study a treatise entitled *al-Lum'ah al-Dimashwuiya* [The Damascene Glitter] by Muhammad Jamaluddin al-Makki al-Amili, known as "The first martyr" (1334-1385). Sixth and seventh-year seminarians work on *Kitab al-Makasib* [The book of transactions] by Monteza al-Ansari (1781-1864).

[55] Only three *hawzat* in Lebanon offer a program of supervised research [*bahth harij*]: the *Ma'had el-Shar'i al-Islami* (here called the *Ma'had*), the *Ma'had Chahid al-Awal* and the *Hawza al-Rasul al-Akram*. The latter describes the *bahth harij* as a PhD. http://en.miu.ac.ir/index.aspx?fkeyid=&siteid=4&pageid=35857, retrieved on November 12, 2016.

[56] Interview with a *hawza* student, conducted on April 4, 2013. On this, see also Mervin, "La quête du savoir à Nagaf. Les études religieuses chez les chi'ites imâmites de la fin du XIXe siècle à 1960" and Mottahedeh, "Traditional Shi'ite Education in Qom."

ijtihad—*i.e.* a first scholarly effort to establish the shari'a norms governing the performance of a given practice. At the *Ma'had*, however, most students never see the end of this research. Others spend decades working on it.[57]

In 2012-2013, thirty-five seminarians were conducting *bahth harij* under the supervision of the clerics of the *Ma'had.* Among them was Mahdi Husseini. Originally from the Bekaa Valley (stretching between Mont Lebanon and the Anti-Lebanon mountains), Mahdi entered the *Ma'had* in 1996, and has been studying there since. After completing his coursework, he undertook a research project to determine the Islamic legality of using DNA technology to establish filial relationships. He explained that his research was driven by a practical, familial, concern: his uncle was raising a child, but the entire family was unsure whether the child belonged to him. A DNA test could solve the issue, but at the time, most Shi'i jurists were against this technology.

> "We used to determine the filiation of a child on the basis of the marriage contract, but now DNA can prove heredity; it can prove that this [person] is the father or the mother of a child. So science says this, but what is the opinion [*ra'y*] of the shari'a? What is the opinion of religion? Religion has its own way to determine the descent. But now should we adopt DNA or not? Before you decide if you are for or against DNA, you need to know what science says. Science has its opinion, but you also have to look at the *hadith*, the [Quranic] *ayat*, and all these different stands of evidence [*adala*]. You need to know them before you can decide."[58]

While pursuing their individual research, seminarians like Mahdi also participate in an advanced seminar, which meets every weekday at 8 am in the prayer room. Unlike in all other classes, participants sit on the carpeted floor, forming a large circle around the most learned of all the *hawza*'s sheikhs—who conventionally leads the seminar.[59] No whiteboard, textbook, or quizzes are necessary at this stage. And instead of lecturing or correcting the participants, the seminar leader is responsible for hosting a productive disputation [*munazara*] around questions of deductive jurisprudence [*fiqh al-istidlali*]. Samer Mustafa, a seminarian born in Algeria, remarks that each meeting revolves around a contested area of Shi'i jurisprudence. "Most often," he says, "it opens with three conflicting arguments about a particular point. Then the sheikh will share his view and invite the participants to debate these arguments." "These discussions," adds Samer, "are

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[57] The material conditions make it difficult for students to finish this research. Most seminarians reaching this point have children and can no longer subsist on the small stipend offered by the *hawza*. While some of advanced students teach elementary classes, most work outside the *hawza*. This slows down the research process. Interview with a *hawza* student, conducted on December 2, 2012. On the material conditions under which seminarians undertake *hawza* studies, see chapter 1.

[58] Interview with a *hawza* student, conducted on May 6, 2013

[59] Although I often visited the room where the research seminar takes place, I never attended the sessions. Therefore, I am relying here on interviews conducted with the clerics and advanced seminarians who participate in the *bahth harij* seminar. Interview with a *hawza* student, conducted on April 4, 2013; Interview conducted with a cleric, on December 2, 2012; Interview with a *hawza* student, conducted on May 6, 2013; Interview with a *hawza* student, conducted on April 24, 2013.

extremely technical and complicated; they are based on many centuries of research and debates. The language is also very technical and dated." Through this language, advanced seminarians exhibit the information and dialectical skills acquired during their coursework, thereby establishing their eligibility to qualify as *mujtahids*—that is, as scholars ethically and intellectually qualified to echo the voice of the Imams on current problematics.

The Other Door of *Ijtihad*: The *Hawza* Debates

So far in this chapter, I have traced the learning journey undertaken by Shiʿi seminarians. I showed how *hawza* jurists revisit (and sometimes challenge) the human understanding of the divinely ordained path: the shariʿa. One learns to perform *ijtihad*, I argued, by charting the gaps inherent to Shiʿi legal knowledge, and by exploring the interpretative possibilities concealed in the scriptures. My account, however, seems to imply that the agonistic culture of debate characterizing *hawza* training emerges toward the end of the seminarians' coursework. This is so because I have considered only one side of the matter so far.

The above section dealt solely with knowledge and methods taught through lectures and textbooks. Yet an equally important facet of Shiʿi higher education involves passionate debates about current events, as well as how they interfere with the ethical project of emulating the Prophet and the Imams. While reviewing technical aspects of Shiʿi *fiqh* or learning the principles of the syllogism, seminarians engage a host of timely topics, ranging from ongoing regional conflicts to relationships between genders and hiccups in Hezbollah politics. To be sure, these concerns are not exclusive to *hawza* students; they are intensely debated in all corners of Lebanon—so intensely that a few of Beirut's most posh cafés have forbidden their customers to address some of them.[60] Be it as it may, one would expect these debates to unfold in the margins of the training offered by the *Ma'had*; in the intervals between classes or during the morning break when seminarians gather in the front garden and drink tea together.

These debates, however, are not peripheral to *hawza* training; they happen in the midst of the classes described above. This is so because, as I will argue through the reminder of this chapter, these engagements with current affairs play a constitutive role in the seminarians' training to *ijtihad*. During my first weeks of fieldwork at the *Maʿhad*, I noticed that *hawza* classes were punctuated—and disrupted—by long digressions often turning into fierce debates between students and teachers. I long regarded these exchanges as distractions pulling Shiʿi seminarians away from exploring the hidden resources of the shariʿa. But the persistence of these debates and my conversations with teachers compelled me to revise my views.

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[60] In 2012, a number of cafés of Ras-Beirut posted signs forbidding their customers to engage topics such as the Hezbollah military arsenal and the work of the Special Tribunal for Lebanon, charged with investigating into the assassination (in 2006) of former Prime Minister Rafic al-Hariri.

"It is my task," Sheikh Ahmed told me, "to encourage the student [to address] various issues that have become important and necessary nowadays. I'm not here only to teach logic." He added that pushing students to problematize their present-day condition is part of *hawza* training. Specifically, he said: "students who engage the contemporary situation [*al-mu'asira*] develop a familiarity with different topics. They are not limited to *fiqh* and *usul al-fiqh*. They approach problems by taking into account various other aspects. There are other operations [of knowledge] that need to be taken into account in our work of *ijtihad*."[61]

This second section considers these "other operations of knowledge" for which no textbook exists, but that are no less crucial to the practice of *ijtihad.* In short, my argument is this: if, like anthropologist Michael Fisher we define *ijtihad* as "a disciplined form of reasoning that provide religious answers to new problems," it follows that seminarians cannot perform this "reasoning" without having previously delineated the "new problems" for which "religious answers" ought to be provided.[62] I described above how Shi'i seminarians learn to reinterpret legal sources; here I want to stress that these efforts at reinterpretation are always carried out after a diagnosis of the present situation and the problems that need religious answers. In Foucauldian terms, one could say that attempts at *ijtihad* rely on a prior effort of "problematization."[63]

With this is mind, and knowing that *hawza* training aims at the attainment of *ijtihad*, it should not be a surprise that seminarians devote significant time to discussions of the challenges and potentialities of present times. Currently available studies focus on the teaching of classical disciplines such as *fiqh*, *usul al-fiqh*, *tafsir*, etc. These disciplines form the backbone of *hawza* instruction, as I argued above, and in describing them, scholars have offered a unique window into the intellectual world of Shi'ism and its reproduction. In this second section, however, I pursue a different task: I illustrate how the seminarians' efforts at problematizing current affairs complement the training process I outlined above. This reconsideration of *hawza* training, I will argue, provides valuable insights into the practice of *ijtihad* itself.

By looking at landmark studies in the history of Islamic jurisprudence, we gain a first grasp at the jurists' awareness to the particularities of contemporary life. In a thoughtful article, Wael Hallaq stresses that medieval Islamic jurists were "not hesitant to reinterpret the religious law in order to address the exigencies arising in their societies."[64] Hallaq draws here on a study by Abraham Udovitch on the synergy between Islamic law and medieval commercial practices. The study shows that the discussion of commercial matters among Islamic jurists of the time "was based on a fairly clear and accurate

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[61] Interview with a *hawza* teacher, conducted on March 29, 2013

[62] Fischer, "Becoming Mollah: Reflections on Iranian Clerics in a Revolutionary Age," 90.

[63] On the notion of problematization, see: Foucault, "Polémique, politique et problématisations."

[64] Hallaq, "Usul el-Fiqh: Beyond Tradition," 181.

understanding of the economic realities of their environment."[65] This observation leads Udovitch to conclude that medieval Islamic law was partly shaped by concerns with the practical necessities of the era. Another study by Baber Johansen describes a similar relationship between Islamic legal development and current living conditions. Looking at the transformation of Islamic land tax in the Mamluk and Ottoman periods, Johansen remarks that Islamic jurists continually "adapted [the law] to a new political and socio-economic order."[66] Together, these studies demonstrate that Islamic law, though derived from sacred sources, has remained responsive to the conditions of each epoch. In this, they support the claim of the *Ma'had* cleric quoted above (Sheikh Ahmed) that future jurists must discuss a number of timely topics, rather than limiting themselves to the legal sciences.

These historical studies, however, leave open the very question that I seek to pursue here: namely, *how* do seminarians develop this understanding of the current situation, and of its ethical challenges to emulating the Prophet and the Imams? One possible answer to this question lies in the incorporation of human sciences into the *hawza* curriculum. Many Iranian seminaries, for instance, offer classes of sociology, psychology and economics since the early seventies.[67] Many Lebanese *hawza*s have adopted this trend; some have even added literary criticism and English to their program.[68] While the *Ma'had* never went as far as teaching English, it nonetheless offers classes in sociology, methods of historiography, modern moral philosophy, and comparative religions.

While the inclusion of "western sciences" in the *hawza* curriculum partly responds to the persistent call for the modernization of Shi'i higher instruction I discussed in chapter one, the director of the *Ma'had* stresses that it does more than that. These sciences, he says, enable seminarians to better grasp the "language of their era" [*lugha 'asruhu*].[69] He points out that some of the most important questions today (ranging from the uses of DNA to gender equality and the protection of human rights) are framed and discussed in the language of the human sciences [*ulum al-insan*]. A familiarity with these disciplines, he argues, helps students understand questions for which they can then find answers in the shari'a.[70] Sheikh Hassan, the most senior of the *Ma'had*'s clerics, adds that the introduction of new topics also responds to specific social demands. Reflecting on the class of comparative religion, he points out that no one teaches a class like that in Qom and Najaf. But he maintains that, in Lebanon, it is an important thing to do. "We share

[65] Udovitch,"The 'Law Merchant' of the Medieval Islamic World," 119.

[66] Johansen, *The Islamic Law on Land Tax en Rent*, 124

[67] Fischer, *Iran. From Religious Dispute to Revolution*; and Nome & Vogt, "Islamic Education in Qom: Contemporary Developments."

[68] Abisaab, "The Cleric as Organic Intellectual: Revolutionary Shi'ism in the Lebanese Hawza"; Mervin, "La hawza à l'épreuve du siècle : la réforme de l'enseignement religieux supérieur chiite de 1909 à nos jours."

[69] Interview with the *hawza* director, conducted on April 24, 2013.

[70] *Ibid.*

this country [*watan*] with Christians; they are our partners in this [*charik fi al-watan*], so even though jurists do not need to be versed of Christians ethics and ideas, seminarians here need to know the perspective of Christians."[71]

While classes on sociology and comparative religions draw the seminarians' attention to certain aspects of contemporary life, more crucial are the countless (and often fierce) debates supplementing the teaching of disciplines and methodologies described above. The following vignettes describe three debates, each of which is representative of the type of discussions held at a given point in the seminarians' scholarly trajectory. By juxtaposing these debates, and by highlighting the discursive interactions, the styles of argumentation, and practices of problem-articulation, I show how *hawza* seminarians learn to problematize the historical moment they inhabit. Importantly, I argue that the discipline of emulation I described in the preceding chapter provide students with a moral ground on which they can articulate research questions orienting their effort at scriptural interpretation.

Islamic Unity, Sunni Militancy, and the Syrian War > On a chilly morning in January, a class on Shi'i doctrine [*aqa'id*] was turned upside down by the incoming seminarians for whom it was designed. The cleric teaching the class, Sheikh Ali, had so far scrupulously followed the textbook; the topic of the day was "Islamic unity" [*al-wahda al-islamiyya*].[72] As usual, he opened with an excerpt from the textbook: "the people of the house [*i.e.,* the Shi'a] know that they are attached to the other manifestations of Islam, the invitation to His glory, in one word, His family. They protect the brotherhood between them, and dismiss the rancor from the hearth and the hatred."[73] Before the teacher even finished reading this excerpt, a tall and moon-faced seminarian named Muhammad interrupted him. "What is that talk?" he protested. "Why try to downplay the difference between Shi'is and Sunnis? It is wrong to ignore this difference!" Visibly angry, he told the teacher (and the class) that he did not stand by the terrorism practiced by Sunni groups in Syria and in North Lebanon. "Their Islam is not my Islam!" he asserted. The teacher asked him to calm down, to no avail. Muhammad stood up behind his desk. Pointing at the teacher, he continued his passionate diatribe, saying "when there is a difference, a conflict, we should not avoid it; we should face it."

Muhammed's anger must be situated within a discursive framework marked by rising sectarian tensions across the Middle East. Lebanon, in particular, has witnessed numerous geopolitical confrontations over the last two decades. Yet in the wake of American occupation of Iraq, and with the outbreak of the Syrian War, many of these conflicts came to be generally interpreted—and justified—as episodes of a global conflict between

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[71] Interview with a *hawza* teacher, conducted on May 4, 2013

[72] The textbook is *aqa'id al-imamiya* [Imamite (i.e., Shi'i) doctrines] by Mahmood Rida Al-Muzaffar (Beirut: Dar al-safwa).

[73] Al-Muzaffar, *aqa'id al-imamiya,* 140-141.

Sunnis and Shi'is. When this debate erupted in class (January 2013), Lebanon's northern capital, Tripoli, was the theater of deadly clashes between Sunni militias aligned with the Syrian rebels and Alawi fighters supported by the Syrian regime. At the same time, pictures and footage showing the crimes committed by Jihadi fighters in Syria (*e.g.,* al-Nusra Front and Ansar al-Islam) were starting to circulate in the Lebanese and international media.

Stoic, the teacher let Muhammad finish his rant, and then responded with a rhetorical question. "Is there a single Ayatollah who promotes conflict, *ya* Mohammed? Are there jurists promoting division? No. All Shi'i scholars advocate unity. If we disagree with some of our Sunni brothers, we need to dialog with them. And our dialogue should be based on the common elements between us. After all, we share Islam with Sunnis." Underlying the teacher's response is the idea, popularized by Fadlallah, that interfaith conflicts must be addressed through dialogue for which the Quran offers guidelines.[74] Although Fadlallah developed this idea in the context of Lebanon's Civil War (and applied it to the relationship between Muslims, Christians and Jews), Sayyid Musa adapted it to the conflict opposing Sunnis and Shi'a.

The move was smart, but it backfired dramatically: it pitted Fadlallah's followers against those who emulate Sistani or Khamenei. Over the next half hour, those who emulate the latter two repeated that the difference between Sunnis and Shi'is cannot be ignored, and that Sunni militants are causing harm to Islam, while the former's followers insisted that this problem should be addressed in concert with Sunni Muslims. Frustrated by this unproductive hostility, Sheikh Ali tried to retake the control of the class by posing another rhetorical question. "Wait!" he said. "Is there an Islam for Sistani and an Islam for Fadlallah?" But as he uttered these words, the bell rang, marking the end of class. The dispute (and the hostility) was transported into the corridor, then to the staircase, but faded away as seminarians left the *hawza*.

This acrimonious debate suggests three important points about Shi'i seminarians' attempts (and failure) to arrive at an adequate problematization of the present, *i.e.* one that could incentivize *ijtihad*. It first shows that *hawza* students are allowed and inclined to challenge the position of the teaching clerics, as well as the content of their lessons. However—and this is the second point—the problems they raise remain both loosely defined and narrowly debated. No one in the class asked about the normative value of Islamic unity; no one inquired as to its social implications, or its political relevance in the troubled present. Despite the efforts of the teacher, the debate came down to whether Sunni and Shi'a are "brothers in faith." And as it turned out, the seminarians' answer to this question wholly depended on whether they were following Fadlallah or another Shi'i authority. What could have been a sophisticated debate about religious difference and

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[74] Fadlallah lays out his approach to religious dialogue in a book entitled *Al-Hiwar fi Al-Quran* (translated into English under the title *Islam, the Religion of Dialogue*).

religiously-motivated violence turned into a grueling trench warfare.[75] The third point concerns the form of the dispute. While *hawza* debates are generally passionate, those held between incoming students are particularly bitter and divisive. Seminarians do not listen to each other; instead, they try to win the discussion by being assertive (*e.g.,* by standing up) and intimidating (*e.g.,* by pointing at each other). Their manners are rude and often generate tension that has nothing to do with the matter at hand. The debates held among more advanced seminarians, however, offer an interesting contrast.

Hezbollah, Politics, Corruption > A second debate worth examining occurred among third-year seminarians a few months later. This time, the students completely shifted the focus of the class. Toward the end of a logic lesson, after the teacher (Sheikh Ahmed) finished his lengthy description of the exceptional analogy [*qiyas istithna'i*], an athletic-looking student raised an openly provocative question: "is it me, *ya usted* [dear teacher], or Hezbollah deputies are just as corrupted as any other Lebanese politicians? If it is an Islamic party, aren't they supposed to abide by Islamic ethics [*al-akhlaq al-islamiyya*]?" The student's name is Hussein, and his questions have been asked across the country since Hezbollah first ran for election in 1992.[76] Before the 90s, Hezbollah had conceived of itself as a "revolutionary force" fighting Lebanon's "corrupt," "oppressive" and "sectarian" political system.[77] Yet, in 1992, with the blessing of the Supreme Leader of Iran, Ali al-Khameini, Hezbollah competed in the general Lebanese election, winning twelve seats in parliament. Like al-Khameini, Fadlallah had ruled that Hezbollah's participation in a non-Islamic government is legitimate from the standpoint of Shi'i jurisprudence. Hussein, however, was not concerned with the legal acceptability of Hezbollah's mutation into a mainstream political party, but with its political, social and moral consequences. In his view, Hezbollah has gradually come to practice the kind of politics it sought to oppose.

Still absorbed by the logic lesson, Sheikh Ahmed responded that not *all* Hezbollah deputies are corrupted. Claiming the opposite, he asserted, is to make an incorrect statement. The Sheikh's maneuver disappointed Jibril, an Iranian student sat behind Hussein. "OK, perhaps, they are not *all* corrupt," he retorted. "But this is not an answer. We are not trying to determinate if the glass is half-full or half-empty here." The Sheikh started backpedaling, and disclosed that he, too, thought that a culture of string-pulling [*wasta*] and corruption [*fasad*] is creeping into the ranks of Hezbollah. But he insisted

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[75] The debate occurred two and a half year after the Fadlallah's demise (see chapter 1). While Fadlallah has long been the most influential *marja'* in Lebanon, many Lebanese reoriented themselves toward Sistani or Khamenei after Fadlallah's death. On this, see: Deeb, "Sayyid Muhammad Husain Fadlallah and Shi'a Youth in Lebanon"; and Deeb & Harb, *Leisurely Islam. Negotiating Geography and Morality in Shi'ite South Beirut*.

[76] Alagha, *The Shift in Hezbollah's Ideology. Religious Ideology, Political Ideology, and Political Program*; Abisaab &, Abisaab, *The Shi'ites of Lebanon. Modernism, Communism, and Hizbullah's Islamists*; and Shanahan, *The Shi'a of Lebanon. Clans, Parties and Clerics*.

[77] Norton, *Hezbollah. A Short History*, 109, 37. See also "Hezbollah's Open Letter" *in* Norton, *Amal and The Shi'a. Struggle for the Soul of Lebanon*, 176.

that matter be approached from an "anthropological" perspective—winking at the ethnographer seated in the back of the classroom. The problem, he said, is that the "Shi'a became a prominent political force, but still suffer from centuries of marginalization, dispossession, and disorganization. Hezbollah is the product of this history; you cannot expect it to transform the Lebanese political culture overnight. It needs more time. We need to overcome our own heritage of dispossession."

Meanwhile, the bell had rung. The logic class was over, and the *fiqh* instructor (Sheikh Amin) came in. Sheikh Ahmed closed his textbook, and as he walked out of the classroom, he relayed the controversy to his colleague: "The students think the party [Hezbollah] is corrupt and lacks ethics. What do you think?" Sheikh Amin shrugged, replying "I don't know." Turning to the students, he quickly shifted the debate. "I mean, it's very possible," he added. "But what are we talking about? What are the pieces of evidence [*adala*, sing. *dalil*]? What is the proof [*burhan*]?" This skepticism infuriated Hussein, who went into a long rant against Hezbollah's political practices and electoral strategy. He pointed out (among other things) that "everybody knows that you cannot get anything here without a *wasta* [string-pulling]. It is no different with Hezbollah. This is pure clientelism [*mahsubiyya*]." Impassive, Sheikh Ahmed said that this might be true, but it is not proven. Hussein got furious, and accused the teacher of defending Hezbollah. But at this point, Jibril abruptly interrupted Hussein's passionate speech. "OK, stop [*halas*], said Jibril, your manners [*uslubak*] are very bad." Hussein froze, and shut up. The teacher did not add anything, and started his class on *fiqh*.

It is tempting to agree with Hussein here, and see in Sheikh Amin's game-changing intervention a mere defensive tactic aimed at exonerating Hezbollah. If we step back, though, and approach this intervention as one made by a teacher of Shi'i jurisprudence as part of training to *ijtihad*, we arrive at a different understanding. By urging third-year seminarians to substantiate their complaints and criticisms with empirical *dalil*s [pieces of evidences], the teaching cleric forces them to take on the rhetorical burden that Shi'i scholars must assume in order to be recognized as jurists [*mujtahid*]. In order to be intelligible and to make a normative impact, all contributions to Shi'i jurisprudence (that is, all efforts of *ijtihad*) must be supported, at each and every turn, by textual evidence (also called *dalils*) extracted from the Quran and the hadiths. Like other forms of human knowledge, Shi'i jurisprudence is not built on opinions or impressions. Thus, in calling for empirical evidence of Hezbollah's corruption, Sheikh Jiad is instructing seminarians on a type of argumentation that is germane to Shi'i jurisprudence. From this perspective, determining whether this intervention was meant to cover up Hezbollah is less important than appreciating how it forced seminarians to problematize current issues in more methodical, systematic and convincing way.

Also noteworthy is how Jibril's (the Iranian student) gesture brought the debate to an abrupt end. Between the hostile atmosphere during the discussion of Islamic unity among incoming students and Jibril's crucial intervention, one can appreciate the impact of the moral discipline discussed in the previous chapter. Not only was this debate more focused than the first one, but it was also much more respectful. Neither Hassan nor Jibril

hesitated to contradict the teaching clerics. But when Hassan started yelling and insulting his instructor, Jibril immediately urged him to stop and change his conduct—exemplifying what political theorist William Connolly calls "agonistic respect."[78]

Islamic Marriage, Child Abuse and Sexuality > In May 2013, after teaching marriage jurisprudence [*fiqh*] for five consecutive weeks, Sheikh Qabalan looked eager to proceed to the next legal topic: divorce. In class, however, the group of advanced seminarians forced him to dwell a little longer on the question of marriage. Hassan, a sturdy seminarian and talented soccer player, led by expressing his unease with current Shi'i jurisprudence on marriage. The first problem, for him, was that jurisprudence permits temporary marriage [*zawaj mu'aqqat*], a practice that he thought justified relationships purely based on sex. Unique to Shi'ism, temporary marriage is a contracted relationship between a man and a woman, which, unlike regular marriage, is bound by a specified time period. Within the framework of temporary marriages, sexual relationships are licit, and the children born as a result of these relationships are considered legitimate.[79] In today's Lebanon, these temporary alliances are on the rise among educated, middle-class youth, as recent studies have shown.[80]

Although Fadlallah is known for advocating these legal unions, Hassan remarked that the younger generations use temporary marriage to justify practices of mere sexual fulfillment (an observation shared by current researchers). Indeed, one can contract multiple temporary marriages, and renew them endlessly.[81] Without referring to Fadlallah's jurisprudence, the teacher replied that temporary marriages are socially useful because they help curb the practice of extramarital sex [*zina*]. "Take my two neighbors," he said. "Both are lawyers. They were married, but their [professional] careers completely undermined their relationship. They ended up divorcing, but remained strongly attached to each other. They just opted for a temporary marriage; it is a lawful [*shar'i*] solution to their problem! They can have sex without committing fornication." Teasing Hassan kindly, Sheikh Qabalan looked at him, and added: "of course, you, instead, would have advised them to abandon their careers!"

Hassan did not seem entirely convinced, but rather than carrying the debate further, he raised a different set of questions. "But is it not a problem that Shi'i jurisprudence enables old men to marry schoolgirls, and have sex with them? This happens a lot, *ya usted* [dear professor]. It happened again last month, right in my village. A very young girl; she was married to an ugly old man." Hassan is not dramatizing here. Cases of child marriage make the news regularly in Lebanon. Only within the perimeter of the neighborhood where the *Ma'had* is located, twenty complaints concerning the kidnapping of underage

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[78] Connolly, *Identity / Difference. Democratic Negociations of Political Paradox*, 166.

[79] Haeri, *The Law of Desire. Temporary Marriage in Iran*; Heffening, "Mut'a"; and Mervin, "Normes religieuses et loi du silence : le mariage temporaire chez les chiites du Liban."

[80] Deeb & Harb, "Sanctionned Pleasure"; and Mervin, "Normes religieuses et loi du silence : le mariage temporaire chez les chiites du Liban."

[81] Deeb, "Sayyid Muhammad Husain Fadlallah and Shi'a Youth in Lebanon"

girls for marriage were recorded in 2013.[82] But Hassan might have actually been referring to an even worse situation. His village belongs to the Bekaa Valley, situated halfway between Beirut and Damascus. Since the outbreak of the Syrian War, this rural region has been the main host of Syrian refugees in Lebanon.[83] Numerous reports have signaled that, as a result of the atrocious living conditions, a high number of Syrian refugees married off their young daughters to Lebanese (and Jordanians) adults, as a way to extricate them from impoverishment.[84]

While I cannot ascertain whether Cheikh Qabalan was aware of this particular situation, he fully acknowledged the problem. He first offered a moral response, stating that "these marriages must be avoided at all costs" because once married to an old man, these young girls cannot marry someone else. "This situation imprisons them," he remarked. Leaving the domain of ethics, Cheikh Qabalan shifted to the realm of jurisprudence: he noted that although these marriages create a lot of harm, Shi'i jurisprudence does not forbid them. "From a legal standpoint, they are permissible [*halal*]. Yes, this is a problem," he concluded. Analytically, the problem is this: while temporary marriage was (for him) both morally and legally acceptable, child marriage was technically legal, but grossly unjust. In other words, current jurisprudence contradicted his sense of Islamic ethics. This, for him, meant that new research [*bahth*] must be conducted; it meant that *ijtihad* is needed.

This debate, unlike the previous ones, gave rise to a meaningful research problem within the domain of Shi'i jurisprudence—*i.e.*, a problem that can drive and guide the performance of *ijtihad*. This third set of exchanges, however, differs from the two others in key respects. Note, to begin with, that the disagreements that led to (and persisted through) the debate never caused it to sour. The animosity that often arouse between novice seminarians is entirely absent here; it gave way to an agonistic respect, which characterizes most upper-level discussions at the *Ma'had* as well as in other seminaries.[85] More important, however, is the fact that advanced students have developed the capacity to articulate moral judgments that are both precise and relevant enough to prompt a reconsideration of existing shari'a scholarship.

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[82] "On-Demand' Clerics Officiate Child Marriage," *Al-Akhbar*, February 14, 2014.

[83] On this, see the statistics of the United Nations Refugee Agency available at: http://data.unhcr.org/syrianrefugees/settlement.php?id=201&country=122®ion=90 (consulted on August 1, 2015).

[84] "Syrian Refugees: Forced into Marrying off Their Daughters," *Al-Akhbar*, September 9, 2012; "A Syrian Refugee Wedding," *The Nation*, June 5, 2013; "U.N. food aid halt pushing more Syrian refugee girls to early marriage," *Reuters*, December 4, 2014.

[85] For other instances of "agonistic respect," in *hawza* seminaries, see: Litvak, *Shi'i Scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala',* 40; Litvak, "Madrasa and Learning in Ninetieth-Century Najaf and Karbala'," 62-63; Mottahedeh, "Traditional Shi'ite Education in Qom," 92-94; Calmard, "Les universités théologiques du shiisme imâmite," 82; Mervin, "La quête du savoir à Nagaf. Les études religieuses chez les chi'ites imâmites de la fin du XIXe siècle à 1960," 181; Mervin, "La hawza à l'épreuve du siècle: la réforme de l'enseignement religieux supérieur chiite de 1909 à nos jours," 70

In the previous chapter, I argued that *hawza* training should not be reduced to studying research methodologies and analytical skills; seminarians must also learn to embody a shared set of moral norms. Those who engaged in the three debates I described above mobilize these moral norms in their attempts to problematize the events, conducts, and contexts that form their contemporary landscape. Even the questions raised by novice seminarians (*e.g.*, How to respond to violence committed in the name of Islam?; Should we tolerate corruption in the ranks of an Islamic party?) were somewhat informed by the teachings of Shi'i revered figures. At this stage, however, students do not master the sources and techniques of jurisprudential reasoning well enough to turn their observations and moral judgments into a workable *ijtihad* research question. That said, *hawza* teachers nonetheless encourage students to debate, and make a place for these exchanges in their class.

What this third debate therefore illuminates is the articulation between the two chief endeavors of *hawza* seminarians: the elaboration of a shared moral ground (analyzed in chapter two) and the development of the scholarly capacities to revisit existing shari'a scholarship (described in the first part of this chapter). Sharing a set of moral norms enables seminarians to call attention to situations, behaviors and practices that complicate living in accordance with the teachings of the Imams. Developing the appropriate skills and methodologies enables them, in turn, to determine whether these situations can be addressed within the framework of current scholarship, and if not, how should one approach the sacred texts. Together, these debates show that *ijtihad*, the practice of legal reasoning passed down through *hawza* training, emerges at the intersection of jurisprudential knowledge and a well-honed moral sensibility. As Sheikh Qabalan often repeats in his advanced class of jurisprudence: "Every time you encounter a conflict between ethics [*akhlaq*] and jurisprudence [*fiqh*], it means that we must do research, you need to go back to the sources."[86] In other words, when ethics and jurisprudence part ways, Shi'i jurists must get to work.

Concluding Remarks

Over the last decades, the old Islamic notion of *ijtihad* has acquired an enchanted aura, both within and beyond the circles of legal specialists and historians of Islam. This is in part because the notion has sparked important debates. With respect to Sunnism, the crux of the debate is whether Sunni jurists stopped extracting new rulings from the sacred texts after the end of the 9th century. Against the predominant Orientalist narrative, historians such as Wael Hallaq, Rudolph Peters, and Baber Johansen argue that Sunni legal scholars never abandoned the practice of *ijtihad*.[87] In the case of Shi'ism, it is generally agreed that *ijtihad* has been the core engine of Shi'i jurisprudence at least since the 18th century. The point of debate here is whether conferring upon jurists the authority to uncover the law has paved the way for Khomeini's principle of *wilayat al-faqih*

[86] Fieldnotes, June 11, 2013

[87] Hallaq, "Was the Gate of Ijtihad Closed?"; Peters, "Idjtihad and Taqlid in 18th and 19th Century Islam"; Johansen, "Legal Literature and the Problem of Change : the Case of the Land Rent."

[guardianship of the jurists], which holds that government belongs to jurists, and which now underpins the Iranian constitution.[88]

In the last two chapters, I pursued a different set of questions. Instead of conceptualizing *ijtihad* as a potentiality (*cf.* debates on Sunnism) or as a precedent (*cf.* debates on Shi'ism), I approached it as a learned practice. Together, these two chapters chart the processes through which young Shi'i seminarians learn to uncover the divine shari'a in contemporary Lebanon. Engaging the common view that regards the ability to perform *ijtihad* as the product of bookish erudition, I argued that intellectual skills represent only one of its prerequisites—albeit an important one. In the preceding chapter, I situated Shi'i legal instruction within the larger framework of moral training aimed at helping seminarians acquire the authority to speak on behalf of the Hidden Imam. Then, I began this chapter with an account of the scholarly journey through which *hawza* seminarians develop the methodological tools necessary to reinterpret the Shi'i legal tradition in light of the conditions of contemporary living. In the second part of the chapter, I suggested that the practices of argumentation that permeate *hawza* training enable seminarians to raise questions that can be pursued through the performance of *ijtihad*. And by juxtaposing three debates held at the *Ma'had,* I highlighted how morality [*akhlaq*] serves as a touchstone for defining the current problems that should be explored. Together, these two chapters show that (in the context of Shi'i traditional legal seminaries) *ijtihad* emerges at the interactions of morality, knowledge, and a trained sensitivity to what Max Weber called the "demands of the day."

This argument has a number of implications for how *ijtihad* is conceived, studied, and practiced. Beyond the debates on Sunni and Shi'i legal history, the enchanted aura surrounding *ijtihad* largely derives from the liberal hope that in it lies a key for adapting the shari'a—if not Islam itself—to the exigencies of modern life. Both within and outside academic circles, it is common to hear that the Islamic legal tradition has ceased to evolve because, historically, something went wrong with *ijtihad*. As early as 1898, the Egyptian modernist jurist Mohammed 'Abduh declared *ijtihad* a "duty," the accomplishment of which would allow Islam "to adapt itself successfully to the modern world."[89] In the 1960s, French Thomist philosopher Louis Gardet saw in *ijtihad* the linchpin for a "renewal of Islamic humanism."[90] In contemporary Lebanon, where Sunni and Shi'i jurisprudence is enforced in the legal domain of the family, lawyers, judges, and ordinary citizens often remark that Shi'i family law is "more modern" because it "evolved through *ijtihad*."

The last two chapters show that the *ijtihad* practiced in Lebanese *hawzat* does not aim to reconcile Islamic jurisprudence with modern life. Jurists and advanced seminarians do not reconsider the scriptures afresh to "adjust" Islam to modernity. Rather, their work aims

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[88] Amir-Moezzi & Jambet, *Qu'est-ce que le shi'isme?;* Momen, *An Introduction to Shi'i Islam*; Richard, *Shi'ite Islam*.

[89] Coulson, *A History of Islamic Law*, 202. See also Hourani, *Arabic Thought in the Liberal Age 1798-1939*.

[90] Gardet, "Toward a Renewal of Islamic Humanism."

at *extending* the Islamic legal tradition into the present by offering guidelines to help the faithful approach unprecedented events or innovations from an Islamic perspective. "Contemporary problems," as the director of the *Ma'had* likes to put it, "should not be left only to politicians; *hawza* students have a moral responsibility to find [Islamic] response to them."[91] Like Benjaminian translators, Shi'i seminarians are trained to understand the "pure language" of God's revelation and to disseminate their understanding through what the director often calls the "language of the era."[92] Another argument pervading the last two chapters is that the practice of *ijtihad* depends on ethical, epistemological and institutional conditions combined in a space like the *Ma'had*. The role that these conditions play will become clearer as I explore how *ijtihad* differs—both in its premises and its results—when it is performed in the name of the Lebanese state.

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[91] Fieldnotes, June 6, 2013

[92] Benjamin, "The Task of the Translator," 361.

Chapter four
An Incomplete Epistemic Shift

The Shi'a prefer death over
the enforcement of a family law
that conflicts with the shari'a.

— Shi'i clerics to the French
High Commissioner (1939)[1]

In training new generations to reinterpret the shari'a, the *Ma'had* perpetuates the tradition of high learning, which flourished over the modest summits of the Eastern Mediterranean five centuries ago. Contemporary *hawza* seminarians learn to uncover the legal opinion of the Hidden Imam just as their fifteen-century forefathers did in the mountainous country of Jabal 'Amil (today South Lebanon).[2] Yet as I noted in the first chapter, the learning centers that once dotted the landscape of Jabal 'Amil died away in the sixteenth century, when the country's best minds started immigrating to Persia.[3] There, the clerics arriving from the Levant and other parts of the Ottoman Empire helped establish the first Shi'i empire in modern history.[4]

Within the Ottoman power circles, however, the migration of Shi'i scholars from Jabal 'Amil to Persia did not go unnoticed. Archival materials recently collected show that state officials were informed (and strongly warned) that the clerical émigrés left the shores of the Mediterranean to set up the religious architecture of the Shi'i Safavid Empire—the Ottomans' geopolitical and theological rival.[5] On the domestic front, this awareness brought severe repercussions: Jabal 'Amil was marked as a "fountainhead of heresy," and its scholars were suspected of constituting a potential fifth-column.[6] The Shi'i jurist Zayn al-Din (d. 1558) would pay for these suspicions with his life. Known for adjudicating legal cases and teaching Shi'i jurisprudence in what is today East Lebanon, Zayn al-Din was allegedly captured and executed in Istanbul by the Grand Vizier Sultan.[7] To this day,

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[1] Ministère Français des Affaires Étrangères, Centre des Archives Diplomatiques de Nantes (henceforth MAE-Nantes), Carton N° 592. "Télégramme du 24 Mars 1939 (traduit de l'arabe)."

[2] Geographically, Jabal 'Amil is "bounded to the west by the Mediterranean, to the east by the anti-Lebanon mountains, to the north by the mouth of the 'Awwali River, and to the south by Palestine." Weiss, *In the Shadow of Sectarianism,* 56.

[3] Abisaab, "Shi'ite Beginning and Scholastic Tradition in Jabal 'Amil in Lebanon"; Hourani, "Jabal 'Amil to Persia."

[4] On this process, see Arjomand, *The Shadow of God and the Hidden Imam* (especially chapter 5).

[5] Winter, *The Shiites of Lebanon under Ottoman Rule, 1516–1788*, 21-22.

[6] This did not prevent the Ottoman for collecting taxes through the agency of the Shi'i notables. *Ibid.*

[7] Winter, *The Shiites of Lebanon under Ottoman Rule, 1516–1788*, 21-24.

hawza seminarians remember him as *al-Shahid al-Thani*, the "Second Martyr" of the Shi'i scholarly tradition.

Shi'i jurisprudence became licit only three centuries later, as the Ottoman state's approach to religious difference began to shift—a shift I explore in this chapter. From 1860 onward, several Shi'i schools and seminaries [*hawza*s] were established in Jabal 'Amil and other parts of present-day Lebanon.[8] Operating on an educational terrain now occupied by Western Christian missionaries' institutions, the new *hawza*s introduced topics such as geography, poetry and Avicennian philosophy.[9] Their main purpose nonetheless remains the training of new generations in the Shi'i legal tradition. And although some of these schools were branches of leading centers abroad (in the Iraqi towns of Najaf and Karbala), they were locally funded, and maintained a degree of intellectual, legal and political autonomy vis-à-vis the Ottoman state.[10] We know from historians, foreign travelers and colonial administrators that the jurists trained in these seminaries performed what *hawza* teachers continue to regard as the role of a Shi'i cleric: to uncover how the Hidden Imam would deal with ongoing concerns, challenges and disputes.

It remains a matter of debate whether these clerics were appointed as judges in official Ottoman courts.[11] But in light of travelers' accounts, it appears that the Shi'a of the Levant actually avoided state courts, consulting instead the clerics operating outside the Ottoman judicial structures. One such traveler, Reverend John Wortabet, made the following observation about the legal life of Shi'i Muslims in the 1860s.

> In every lawsuit, the contending parties consider it wrong to have the matter carried before a judge appointed by the Government; by mutual agreement, therefore, they take such case to some free and impartial lawyer, who decide the difficulty without receiving any fees for his services. If, notwithstanding, one of the parties is still dissatisfied, the case can be carried to another lawyer. The most learned and distinguished man among them in this respect is Esh Sheikh Abdallah Name, the only *mujtahid* [cleric authorized to perform *ijtihad*] whom they have at present.[12]

Comments by other foreign observers specify that the local clerics who governed Shi'i Muslims "in the margin of [Ottoman] law" did not derive their authority from state

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[8] Isma'il, "Min al-Najaf ila Shaqra' Tariq Shi'r wa Thaqafa wa Din: kayfa kana al-intiqal wa al-'awda min al-hawza al-diniyya ila al-hawza al-mariksiyya?;"Abisaab, "The Shi'ite 'ulama, the madrasas, and Educational Reform in the Late Ottoman Period;" Al-Amin, *Autobiographie d'un clerc chiite de Gabal 'Amil*; Mervin, *Un réformisme chiite*; and MAE-Nantes, Carton n° 1541. "Rapport. Une École Religieuse Chiite à Tyr."

[9] Abisaab, "The Shi'ite 'ulama"; Mervin, *Un réformisme chiite.* On Christians missionary schools, see Fortna, *Imperial Classroom* and Makdisi, *Artillery of Heaven*.

[10] Abisaab, "The Shi'ite 'ulama," 178.

[11] Weiss, *In the Shadow of Sectarianism: Law, Shi'ism, and the Making of Modern Lebanon*, 97-107.

[12] Wortabet, *Researches into the religions of Syria*, 281-282.

credentials, but from mastering the Islamic sciences.[13] French archives show that *hawza*-trained jurists continued to adjudicate legal cases "outside of official justice" even during the period of the French colonial Mandate (1920–1943) following the fall of the Ottoman Empire.[14] In 1920, a French officer went so far as to suggest that the state recognition of Shi'i scholars as judges would have no effect unless the Mandate administration accredited those whom the community already honored and obeyed.[15] But colonial bureaucrats found themselves unable to do so.

Up to this point, this dissertation been chiefly concerned with *hawza* seminarians and how they articulate jurisprudences that respond to the changing necessities of contemporary life. I now turn to the judicial career of this Islamic scholarship in modern state apparatuses. This chapter initiates that exploration by piecing together how the Shi'i tradition became entangled with the legal functions of the Lebanese state. Since Shi'i law entered the Lebanese legislation as "family law," however, I begin by considering how Ottoman modernizers configured Islamic jurisprudence into family law through a series of legal reforms and epistemic shifts. In the second section, I examine how Ottoman modern legal innovations (codification, Western legal procedures, family law) collide with the practice of Shi'i judgeship [*qada*] in Persia, Southern Mesopotamia, and the Levantine lands that are now Lebanon. In the third part of this chapter, I consider the integration of Shi'i jurisprudence within a network of state family courts established by the French colonial administration that created Lebanon. Drawing on archival research and historical scholarship, I discuss the decrees, measures and regulations by which judgeship was taken out of the province of local Shi'i jurists, and thereby relocated into the legal structures of the state, where it remains to this day.

In narrating this history, I advance two central arguments. First, I dispute the common view that the French colonial administration (and after 1943, the Lebanese government) halted the state appropriation of shari'a law initiated by Ottoman officials.[16] The current historical literature argues that by imbuing religious clerics with the authority to adjudicate marital affairs, the Lebanese colonial and postcolonial state endorsed a "dual

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[13] O'Zoux, *Les États du Levant sous le Mandat Français*, 111, 114. See also: Cuinet, *Syrie, Liban et Palestine*, 5-6; Murr & Bourbousson, *Du statut personnel en Syrie et au Liban*, 263-267; and Mervin, *Un réformisme chiite*, 89-92.

[14] MAE-Nantes, Carton N° 456. "Les chiites" [non-dated], p. 20; MAE-Nantes, Carton n° 1 SL/250/73 "s/a. Communauté Chiite" (1940); and MAE-Nantes, Carton n° 1 SL/250/73 "Note pour Monsieur le général commandant en chef, délégué général et plénipotentiaire. Statut personnel" (1942).

[15] MEA, fond Beyrouth, carton n° 2363, dossier Saïda, Tyr, 1920. T.E.O. Ouest, Beyrouth, 22/1/1920, cabinet politique, n° 63, p. 6 (cited in Mervin, *Un réformisme chiite*, 394).

[16] This view is articulated most clearly in Thomson, *Colonial Citizens. Republican Rights, Paternal Privileges, and Gender in French Syria and Lebanon*, p. 113-116. See also Saadeh, "Basic Issues Concerning the Personal Status Laws in Lebanon," p. 455-456.

legal system" that leaves religious family law "entirely in the hands of the ulama."[17] In mainstream media, it has also become customary to imagine Lebanon as a political entity split between a secular legal system run by the state, on the one hand, and a religious regime of cleric-controlled family law on the other.[18] In comparative politics and among adherents of modernization theory, this image helps construct Lebanon as a "weak" or "failed" state that has never secured full control of the laws enforced on its territory.[19] In the eyes of many activists and scholars, the idea of a country besieged by a "dual legal system" also strengthens the notion that adjudicating family law disputes in secular courts (a project often described in terms of secularism and *laïcité*) would eradicate legal forms of gender discrimination.[20]

The itinerary that Shiʿi jurisprudence followed in the colonial Levant calls this legal imagery into question. Specifically, it shows that French administrators extended (rather than reduced) the state's authority over Islamic law. I argue that by officially appointing Shiʿi clerics to the task of governing their co-religionists' marital affairs, the early Lebanese state did not abandon the marital life of its citizenry to the uncertainties of shariʿa scholarship. On the contrary: recruiting clerics into a new network of family law courts enabled the state to incorporate Shiʿi judgeship into its legal machinery and, consequently, brought the family matters of the Levantine Shiʿa under its management. Hence, by the time Lebanon achieved independence (1943), most Shiʿi disputes were no longer settled in the house of local scholars. They were, and still are, adjudicated by state-appointed religious judges in state-sponsored courts. As a matter of fact, this history goes beyond Shiʿi jurisprudence: since the fall of the Ottoman Empire, the Sunni and Druze legal traditions have also been brought under the supervision of the Lebanese nation-state, and gradually reconfigured to serve the imperative of this new political entity. None of these traditions constitutes a legal system on its own.

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[17] *Ibid.*, p. 114. On the "dual legal system," see also Weiss, *In the Shadow of Sectarianism: Law, Shiʿism, and the Making of Modern Lebanon*, p. 99 and 159.

[18] Sussman, "In Lebanon, a Tangle of Religious Laws Govern Life and Love," in *The Atlantic*, September 29, 2011. "Faulkner case highlights issues with Lebanese family law," Australian Broadcasting Corporation, April 21, 2016. "How did it come to this? Inside the doomed bid to snatch Sally Faulkner's children" *The Guardian*, April 15, 2016.

[19] For a description of Lebanon as a weak state, see Ayubi, *Over-Stating the Arab State: Politics and Society in the Middle East*; El-Khazen, *The Breakdown of the State in Lebanon, 1967-1976*; Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*; and Rotberg, *When State Fail. Causes and Consequences.* For a cogent analysis of this literature, see Ghamroun, "Effets d'État. Mobilisations et action publique au Liban à l'épreuve du pluralisme juridique."

[20] This line of reasoning often overlooks the forms of gender discrimination secured through secular state law. See Joseph, "Secularism and Personal Status Codes in Lebanon: Interview with Marie Rose Zalzal" Saadeh, "Basic Issues Concerning the Personal Status Laws in Lebanon;" Zuhur, "Empowering Women or Dislodging Sectarianism?: Civil Marriage in Lebanon;" EI-Cheikh, "The 1998 Proposed Civil Marriage Law in Lebanon: the Reaction of the Muslim Communities;" Kanafani-Zahar, "Les tentatives d'instaurer le mariage civil au Liban : l'impact des Tanzîmât et des réformes mandataires." On how secular Lebanese law perpetuate gender inequalities, see Shehadeh, "The Legal Status of Married Women in Lebanon."

Yet I shall also argue that the case of Shiʿi law raises a distinctive set of problems: although it has been incorporated into the Lebanese state, Shiʿi jurisprudence has successively avoided being written down in a legal code (unlike its Sunni and Druze counterparts). The codification of Islamic law began under the late Ottoman Empire, but as I show, the Empire's refusal to recognize non-Sunni Islamic faith sheltered Shiʿism from what amounts to an epistemic shift in shariʿa scholarship.[21] French colonial officials, who otherwise achieved to configure Shiʿi divine law as state-enforced family law, attempted to generalize the codifying process, but were forced to abandon in the face of strong religious resistance and street protests. As a result, the law governing the family life of Shiʿi Lebanese never underwent codification—the very process that scholars conceive as enabling the epistemic transformation of Islamic law from a "jurist law" into a "state law." Despite being firmly entrenched within the structures of the Lebanese state, Shiʿi law remains, paradoxically unwritten and only accessible through fragments in—contradictory—scholarly treatises. In other words, Shiʿi law underwent an incomplete epistemic shift.

Ottoman Legal Reforms

At the dawn of the nineteenth century, the Ottoman empire had already suffered two stunning military defeats against Russia (1774 and 1792) and was headed for a third one (1812). Its revenue was on the decline, and its foreign debt on the rise.[22] Drawn into a world economy spurred by the First Industrial Revolution, it was facing mounting pressure to open its market to new circuits of foreign trade and capital flow.[23] The vast reform program known as the *Tanzimat* [reordering] was the Empire's last attempt to face up to colonial domination and dismemberment by refashioning Ottoman institutions in the "image of Europe."[24]

Though primarily designed as a response to the military, economic, and political threats to the Ottomans, the *Tanzimat* also radically transformed the practice of law, setting in motion the process by which the Islamic shariʿa became an "arm of the state."[25] In what follows, I analyze this two-pronged process, which was marked by the adoption of the constitutional principle of religious freedom and the simultaneous relocation of Islamic authority into the hands of the emerging nation-state. Through this double movement, *Tanzimat* reformers introduced a profound epistemological break in Islamic legal history:

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[21] Ibrahim, "The Codification Episteme in Islamic Juristic Discourse between Inertia and Change," p. 167. See also Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society* (especially chapter 3).

[22] Quataert, "The Age of Reforms, 1812-1914," 824-842; and Hallaq, *Shariʿa: Theory, Practice, Transformations*, 399.

[23] Quataert, "The Age of Reforms, 1812-1914"; also Hobsbawm, *The Age of Revolution*.

[24] Cleveland, *A History of the Modern Middle East*, 82.

[25] Hallaq, *An Introduction to Islamic Law*, 101.

they forced the divine shari'a into the framework of a European judicial code and restructured it around the concept of the family.

But from the perspective of the Levantine Shi'i Muslims, this epistemic shift remains incomplete for two reasons. First, although Ottoman courts were operative throughout the Empire, the Shi'a of the Eastern Mediterranean continued to bring their legal disputes before *hawza*-trained local scholars. Second, since the Ottoman Empire never recognized Shi'ism, the legal reforms it undertook left Shi'i jurisprudence relatively untouched. The French colonial administration (1920-1943) that created the country of Lebanon attempted to complete this epistemic shift by radicalizing the double movement inaugurated by the Ottomans. It extended religious freedom to Shi'i Muslims and incorporated Shi'i jurisprudence into the machinery of the state. But while French authorities managed to both reconfigure Shi'i jurisprudence into a "family law" and place it under state supervision, I argue that the epistemic shift inaugurated by the Ottomans remains nonetheless incomplete—since Shi'i family law remains unwritten (and therefore uncodified) to this day.

The *Tanzimat* reforms began on November 3, 1839, when the Ottoman Foreign Minister declared that all sultan's subjects, regardless of their religion, were now equal before the law.[26] This famous decree (known as the Gülhane Decree) was a first attempt at redefining Ottoman belonging around the idea of common political membership, over and above the different religious allegiances represented on the Ottoman territory.[27] It also launched an extensive juridical centralization and a sweeping liberalization of the Empire's economy. The Humayun Decree of 1856 accelerated these two trends. Unlike its 1839 predecessor, this second *Tanzimat* Decree was drafted under the supervision of France and Britain, to whom the Ottoman state was heavily indebted.[28] Unsurprisingly, the decree gave European merchants a wider access to the Empire territories, market and population. But it also went much further in outlining what religious equality entails.[29] The 1856 Decree formally guaranteed the right of religious freedom to non-Muslim Ottomans and Europeans nationals. Furthermore, it vowed that commercial and criminal suits involving Muslims and non-Muslim subjects would be adjudicated in the new secular "mixed courts," instead of the conventional Islamic courts.[30]

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[26] Evan, *Religious Liberty and International Law*, 76; Hanioglu, *A Brief History of the Late Ottoman Empire*, 72; Rabbath, *La formation du Liban historique et constitutionnel*, 86-87; Rubin, "Ottoman Judicial Change in the Age of Modernity," 120.

[27] On this, see: Mahmood, *Religious Difference in a Secular Age. A Minority Report*, 35-40.

[28] Hallaq, *An Introduction to Islamic Law*, 99.

[29] Quataert, "The Age of Reforms, 1812-1914," 763.

[30] Master, *Christians and Jews in the Ottoman Arab World*, 138; and Örüsü, "The Impact of European Law on the Ottoman Empire and Turkey," 48. On the trajectory of these mixed court in what is today called Lebanon, see Baz, "Les Tribunaux Mixtes au Liban."

By implementing these measures, Ottoman reformers laid the foundation of a judicial system divorced from the Islamic legal tradition and the work of its learned interpreters. Prior to the *Tanzimat* era, the Empire's lands were dotted with shari'a courts, where local religious authorities adjudicated cases through a mixture of Sunni jurisprudence and sultanic law [*qanun*].[31] The establishment of the "mixed tribunal" (as referred in the second *Tanzimat* Decree of 1856), however, signaled the rise of a new court system that would gradually restrict—and persistently undermine—the authority of jurists trained in Islamic legal methodology. Called "*Nizamiyye* courts," and spread across the Ottoman lands, these new courts were supervised by the Ministry of Justice and staffed with state officers trained in secular law.[32] During the second half of the nineteenth century, they came to be the exclusive juridical forum for addressing criminal, civil and commercial cases, leaving shari'a judges with jurisdiction only over family matters and pious endowments [*waqf*].[33]

Yet the reform movement launched with the *Tanzimat* did not only insulate the authority of shari'a scholars; it also reshaped the shari'a from within. Alongside establishing the *Nizamiyye* courts system, nineteenth-century Ottoman modernizers sought to systematize the practice of law through the adoption of European legal codes (commercial code in 1850; penal code in 1858). From the reformers' perspective, shari'a jurisprudence was a disorganized corpus "scattered throughout the works of various jurists" and therefore in need of systematization.[34] As early as 1869, *Tanzimat* architects embarked on the unprecedented enterprise of folding the divine shari'a into a new textual form: a legislated civil code. These efforts produced the first codified statement of Islamic law, known as the *Majalla*, which was made up of 1,851 articles regarding civil matters—with the important exclusion of marriage and inheritance. Starting in 1876, the *Majalla* was implemented in the new *Nizamiyye* courts as well as in the traditional Sunni courts.

Historians have remarked that the Ottoman reforms constituted an epistemic shift in the development of the Islamic legal tradition.[35] Indeed, until the reforms, the shari'a had been a "jurist's law," elaborated and renewed through the performance of *ijtihad*. Now "fixed in the structural grid of numbered code articles," the shari'a was becoming a "state law"—that is a "law promulgated by a national-territorial legislature."[36] In other words,

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[31] For an historical study of these courts, see: Tucker, *In the House of the Law*; and Gerber, *Society, and Law in Islam. Ottoman Law in Comparative Perspective.*

[32] Rubin, *Ottoman Nizamiye Courts*; and Hallaq *Shari'a: Theory, Practice, Transformations*, 410-411

[33] Rubin, "Ottoman Judicial Change in the Age of Modernity," 120-121

[34] Onar, "The Majalla," 294 (quoted in Messick, *The Caligraphic State*, 57)

[35] Tucker, *Women, Family, and Gender in Islamic Law*, 19; Hallaq, *Shari'a: Theory, Practice, Transformations*, 411; Messick, *The Caligraphic State*, 54-57; Rubin "Ottoman Judicial Change in the Age of Modernity," 128-129; Layish, "The Transformation of the Shari'a from Jurists' Law to Statutory Law in the Contemporary Muslim World;" Zubaida, *Law and Power in the Islamic* World, 133-135; and Ibrahim, "The Codification Episteme in Islamic Juristic Discourse between Inertia and Change."

[36] Messick, *The Caligraphic State*, 54; Layish, "The Transformation of the Shari'a," 86.

the shari'a was taken out of the hands of jurists and relocated in a secular legislature, as a codified document. The *Majalla* even prevented Islamic scholars from exercising *ijtihad* on the points of law for which articles already existed.[37]

In 1879, the Ottomans took a further step toward what English Sociologist Sami Zubaida calls "the etatization of the law" by promulgating the Code of Civil Procedure.[38] While the *Majalla* modified the substance of the law, this new set of regulations redefined the practice of judgeship [*qada*] to align with European procedural norms and conventions.[39] One such convention was the concept of appeal, previously unknown to the classical shari'a. Prior to the Ottoman reform era, litigants might always request a judge [*qadi*] to reconsider one of his previous judgments, but there was no hierarchy of courts or centralized system of appeal.[40] Nor was there any judicial panel, minute recordings, lawyers, or legal archives—all of which shape the practice of shari'a law in contemporary Lebanon (a point I explore in the next chapter).

In addition to the 1876 Civil Code (the *Majalla*) and this 1879 Code of Procedures, a third *Tanzimat* code carries even greater weight in today's Lebanese legal architecture: namely, the Ottoman Law of Family Right (OLFR).[41] Lebanon is the only country in the region where the Empire's Sunni family law code is still in force, in spite of the protests it sparked among both religious conservatives and secular activists.[42] Drafted in 1917, the OLFR pushed the Ottoman project of state-sponsored codification into an area of social life on which the *Majalla* was silent: marriage and divorce. Formerly handled by local scholars (muftis, jurists, judges) in compliance with the multiple "juristic nuances and variations" of shari'a jurisprudence, marital relationships were now adjudicated by state officials and subject to an 11-page code.[43]

But the OLFR did not only generalize the epistemic shift introduced by the *Majalla*; it also enabled the Ottoman state to regulate marital institutions and bring the kinship

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[37] Liebesny, *The Law of the Near and Middle East*, 100 (referring to to Iraqi Civil Code, Art 2., the same as Art. 14 of the Majalla; quoted in Messick, *The Caligraphic State*, 279).

[38] Zubaida, *Law and Power in the Islamic World*, 121. The code was followed by acts of 1888.

[39] Hallaq, *Shari'a: Theory, Practice, Transformations,* 412, 415-416; and Rubin, "Ottoman Judicial Change in the Age of Modernity," 127-128

[40] Anderson, *Law Reform in the Muslim World*, 13.

[41] The content of the code is available (in Arabic) in Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 131-142.

[42] Clarke, "Sharia Courts and Muslim Law in Lebanon," 34. On the criticism leveled against the Ottoman code of family law, see Thomson, *Colonial Citizens*, 150-151; Saadeh, "Basic Issues Concerning the Personal Status Laws in Lebanon;" Shehadeh, "The Legal Status of Married Women in Lebanon;" Joseph, "Secularism and Personal Status Codes in Lebanon: Interview with Marie Rose Zalzal;" and Zuhur, "Empowering Women or Dislodging Sectarianism?: Civil Marriage in Lebanon."

[43] Hallaq, *Shari'a: Theory, Practice, Transformations,* 454. For an account of the treatment of marital issues by local scholars, see Tucker, *In the House of the Law.*

practices of its subjects in sync with its modernizing ambitions.[44] Following the emergence of national legislation to govern family life in nineteenth-century Europe, the *Tanzimat* reformers carved out a framework of prescriptions organizing marital relationships in line with modern norms and values.[45] The legal domain delimited by this framework came to be called "family law." And, as we will see shortly, this very notion of family law forged through the 158 articles of the OLFR continues to shape, almost a century later, the legal life of Shiʿi Lebanese.

Shiʿi Legal Practice

The Shiʿa living in the eastern Mediterranean were, on the whole, badly affected by the *Tanzimat*. In the plains of the Bekaa Valley (East Lebanon) and on the plateaus of Jabal ʿAmil (South Lebanon), they suffered amidst the massive inflow of European capital in the Ottoman lands. While the region of Mount Lebanon (Center Lebanon) morphed into a semi-autonomous enclave producing silk for the French textile industry, and as Beirut grew into a hub of international trade, the Shiʿi segments of Mediterranean provinces were largely left behind.[46] "Amidst grinding poverty and diminishing economic horizons," writes historian Max Weiss, Levantine Shiʿi peasants, "scraped by through a combination of subsistence agriculture and sharecropping."[47]

This rural society, however, remained comparably removed from the legal transformations of Ottoman modernizers—and the epistemic shift underlying them. Although *Nizamiyye* courts were active across the Levant, European Orientalists observed that Shiʿi Muslims continued to "have their lawsuits settled by private judges" even in the 20th century.[48] Given the paucity of historical sources on the region, it is difficult to establish in which legal domains *hawza*-trained scholars exercised legal authority. While most commercial conflicts were adjudicated in Ottoman courts, Western travelers to the region noted that Levantine Shiʿa typically brought their civil and family disputes before local scholars [*mujtahids*] "belonging to various lineages of authority."[49] These Shiʿi

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44 Tucker, *Women, Family, and Gender in Islamic Law*, 70; and Tucker, "Revisiting Reform: Women and the Ottoman Law of Family Rights, 1917."

45 *Ibid*, 20. On the genealogy of Family law, see Halley & Rittich, "Critical Directions in Comparative Family Law;" and Halley, "What is Family Law? A Genealogy." On the trajectory of the notion of family law in Egypt, and the normative assumption enfolded into this modern notion, see Mahmood, *Religious Difference in a Secular Age*, 119-135. On the process by which the framers of OLFR selected the normative prescription out of the Islamic legal tradition (a process called *Takhayyur*), see Ibrahim, "Talfiq/Takhayyur."

46 Traboulsi, *A History of Modern Lebanon*, in particular chapters 3 and 4; Kassir, *Histoire de Beyrouth*; and Hanssen, *Fin de siècle Beirut*.

47 Weiss, *In the Shadow of Sectarianism*, 56.

48 MAE-Nantes, Carton n° 1 SL/250/73. "s/a. Communauté Chiite."

49 O'Zoux, *Les États du Levant sous le Mandat* Français, 114; Cuinet, *Syrie, Liban et Palestine*, 6. Historian Tamara Chalabi also notes that "In the absence of recognized Shiʿi religious courts in the region, the *ulama* acted as civil arbitrators." Chalabi, *The Shiʿis of Jabal ʿAmil and the New Lebanon*, 22. See also Weiss, *In the Shadow of Sectarianism*, 29.

litigants thus circumvented the framework of laws and legal procedures established by the Empire's modern reformers.

Common sense would suggest that Eastern Mediterranean Shi'a eschew the Ottoman courts to escape laws based on Sunni Islam. But even a cursory examination of the problem of legal authority in Shi'i thought and history shows that this general avoidance is more layered than one might suppose. In preceding chapters, I explained that unlike their Sunni counterparts, Shi'i Muslims hold that Prophet Muhammed conferred the authority of guiding mankind to his first twelve successors—the Twelve Imams.[50] But when, in the 10th century, the son of the Eleventh Imam was reported to have entered into complete occultation [*ghayba*], the Shi'a found themselves bereft of pastoral leadership. In the following centuries, the responsibility of guiding the Shi'a fell upon the most learned Shi'i scholars, who became agents of the Twelfth Imam.[51] This last Imam is expected to return, but as long as he remains a living specter, all claims of legal sovereignty (whether by a Caliphate, an Empire, or a nation-state) constitutes an usurpation of his authority and that of the scholars who speak in his behalf.[52]

While this antagonism towards worldly sovereignty led several historians and philosophers to construe Shi'ism as a "refusal of central state power," it did not prevent monarchs from ruling in the name of Shi'ism throughout the early modern and modern period.[53] Unlike Ottoman rulers, however, Shi'i monarchs never formalized, or centralized, the administration of shari'a law. Europeans travelers recount that, in Safavid Persia, legal disputes were not adjudicated in state institutions, but rather in the homes of local Shi'i jurists. These travelers were also struck by the lack of formal judicial procedures, and by the absence of hierarchy between the clerics, which they noted, made impossible something like the process of appeal.[54] "The enforcement of the shari'a through the [Shi'i Safavid] state," observes historian Amir Arjomand, "was never effectively institutionalized, as it was in the Ottoman Empire in the same period, and Shi'i law remained a 'jurist's law' with its typical pluralism."[55] Until the early 20th century,

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[50] On this specifically Shi'i doctrine, see the dissertation's introduction.

[51] On this process, see Rasekh, *Agents of the Hidden Imam: Shi'ite Juristic Authority in Light of the Doctrine of Deputyship*.

[52] Calder, "Judicial Authority in Imami Shi'i Jurisprudence," 107. On this, see also Algar, *Religion and State in Iran. 1785-1906. The Role of the Ulama in the Qajar Period* (chapter 1); Madelung, "A Treatise of the Sharif al-Murtada on the Legality of Working for the Government," 18-31.

[53] Jaber, *Le discours shiite sur le pouvoir*, 77; see also Corbin, *En Islam Iranien* (especially volume 1) and Amir-Moezzi & Jambet, *Qu'est-ce que le chiisme*? Clastres, *La société contre l'État. Recherches d'anthropologie politique* (especially chapter 11). On this, see Arjomand, *The Shadow of God and the Hidden Imam. Religion, Political Order, and Societal Change in Shi'ite Iran from the Beginning to 1890*.

[54] DuMans, *Estat de la Perse*; and Chardin, *Journal du voiage du Chevalier Chardin en Perse et aux Indes orientales la Mer Noire et par la Colchide: Qui contient le voiage de Paris à Ispahan*.

[55] Arjomand, "Conceptions of Authority and the Transition of Shi'ism from Sectarian to National Religion in Iran," 405.

Shi'i jurists continued to litigate civil, familial, commercial and penal disputes.[56] Like the Shi'a living in the Eastern Mediterranean, Iranian litigants "did not resort to courts but to their chosen *mujtahid*," notes Sami Zubaida.[57] These *mujtahid*s, he adds, settled legal disputes in different ways, and their conclusions co-existed in their respective networks.

Although Shi'i law was not administered by the state, it was not disorganized, nonetheless. On the contrary: almost a century before Ottomans began reforming Islamic legal practice, a specifically Shi'i framework of legal authority had organically taken shape across Persia, Mesopotamia and the Levant. Known as *Marja'iyya*, this framework was (and still is) a response to the problem of the Hidden Imam's invisibility. It posits that observant Shi'a must follow the judgments of an erudite jurist on matters of religious practice and law.[58] These erudite jurists are called *marja'*s, but unlike Ottoman judges and jurisconsults [*muftis*], they are neither appointed nor remunerated by state rulers.[59] Rather, *marja'*s are seen as "protectors against the rulers," a status they acquire by articulating jurisprudential norms using the methodology of doubt I discussed in previous chapters.[60] Beyond their scholarly repute and intellectual feats, Shi'i *marja'*s establish their authority by offering social welfare services and cultivating a pious demeanor.[61]

The legal framework provided by the notion of *marja'iyya* allowed shari'a legal practice to both stay in the hands of learned jurists and to remain a matter of interpretation. Trained in juristic hermeneutics and known for their mastery of sacred texts, *marja'*s elaborate their rulings through their understanding of the Islamic scriptures. Yet these rulings are only binding upon their followers.[62] "No *marja'* ever claimed his legal opinions to be universally binding," wrote historian Abbas Amanat, "nor did any of the *marja'*s

[56] Algar, *Religion and State in Iran. 1785-1906. The Role of the Ulama in the Qajar Period*, 13; and Zubaida, *Law and Power in the Islamic World*, 189.

[57] Zubaida, *Law and Power in the Islamic World*, 189.

[58] Calmard, "Mardja'-i Taklid," 1; Walbridge, "The Most Learned of the Shi'a. The Institution of the Marja' Taqlid,"4; and Momen "An Introduction to Shi'i Islam." Amanat, "In Between the Madrasa and the Marketplace: The Designation of Clerical Leadership in Modern Shi'ism," 98.

[59] Zubaida, *Law and Power in the Islamic World*, 182; Arjomand, *The Turban for the Crown*, 14. Max Weber also noted that "In Persia […] the members of the judiciary are 'admitted' by the Shah, who, as a religious illegitimate ruler is compelled to pay the greatest regards to the wishes of the local *honoratiores*. This 'admission' is no 'appointment,' but rather the *agrégation* of candidates graduated from the theological schools." Weber, *Economy and Society*, 822-823.

[60] Lambton, "A Reconsideration of the Position of the Marja' Al-Taqlid and the Religious Institution," p. 117. On the "methodology of doubt," see the third chapter of this dissertation, and Calmard, "Mudjtahid."

[61] On this aspect of the *marja'iyya*, see Amanat, "In Between the Madrasa and the Marketplace: The Designation of Clerical Leadership in Modern Shi'ism."

[62] Zubaida, *Law and Power in the Islamic World*, 189.

claim to be standing at the apex of a judicial hierarchy."[63] Max Weber made a similar point, when he noted that the Shi'a "may choose from a number of competing judges."[64]

Obviously, this Shi'i framework of authority was irreconcilable with the judicial reforms initiated by the Ottomans in the first half of the 19th century. *Marja'iyya* allowed (and still allows) Shi'i Muslims to decide which legal scholars they wish to obey. It also holds that these legal scholars are not amenable to state authority, and that legal disputes are adjudicated through different interpretations of the scriptural sources [*ijtihad*]. In short, it has allowed the shari'a to remain a "jurist law." Ottoman reformers, by contrast, sought to reconfigure Islamic legal practice in line with European legal standards. We saw above that this vast process of judicial reordering entailed issuing law codes that were binding to everyone, building state courts with mechanisms of appeal and enforcing secular legal procedures—all of which conflict with the way in which Shi'i law had developed in the preceding centuries.

I opened this section with a number of accounts reporting that Levantine Shi'a avoided Ottoman courts in the 19th and early 20th centuries. It is impossible, of course, to establish whether these litigants turned to local Shi'i scholars in order to circumvent Sunni law, state law or both. However, in light of this short excursion into the question of Shi'i legal authority, parsing out the intentions of these Levantine litigants is less important than simply noting that they perpetuated the old Shi'i tradition of jurist law "in the margins" of Ottoman legal power.[65]

The Colonial Invention of Shi'i Family Law

The legal situation of the Levantine Shi'a began to change after the collapse of the Ottoman Empire (1918), when the Levantine Shi'i lands were integrated into a new political structure: the French Mandate (1920–1943). Following World War I, the Arab provinces of the defunct Empire were divided into two (French and British) zones of colonial rule. Mandated by the League of Nations to administer the northern half of the Levant, France carved out of Greater Syria [*bilad al-sham*] a political entity it called "Greater Lebanon" [*Grand Liban*].[66] In 1920, despite strong communal resistance, and amid outbursts of anti-French violence, the Shi'i regions of the Eastern Mediterranean were annexed to the French regime of direct rule.[67] Six years later, French Mandate officials renamed Greater Lebanon "the Lebanese Republic," a name it still bears.[68]

[63] Amanat, "From Ijtihad to Wilayat-i Faqih," 122.

[64] Weber, *Economy and Society*, 823.

[65] MAE-Nantes, Carton n° 456. "Les chiites" [non-dated], p. 20

[66] Traboulsi, *A History of Modern Lebanon,* 75; and Weiss, *In the Shadow of Sectarianism,* 10.

[67] Rabbath, *La formation du Liban historique et constitutionnel*, 349. About the revolts, see: Mervin, *Un réformisme chiite* (chapter 8); and Abisaab, *Lebanese Shi'ites and The Marja'iyya*, 225

[68] Traboulsi, *A History of Modern Lebanon,* 90

Colonial Lebanon inherited the Ottoman legal system, but also extended its reach into new territories. Recall that the Empire only granted religious equality to Christians and Jews; it never recognized non-Sunni Islamic traditions—such as Shi'ism—other than as forms of heresy.[69] Recall also that Levantine Shi'a never stopped submitting their legal disputes to local jurists "who obtained the grade of *mujtahid*," and thus partly escaped the epistemic shift introduced by the Ottoman codifications and procedural reforms.[70] In this section, I show that the French administration (1920–1943) remedied this defiance by carrying further the double-movement I described above: by extending religious equality to Shi'i Muslims and bringing Shi'i jurisprudence under state authority.

This argument runs counter to scholarship suggesting that French officials "reversed" the Ottoman etatization of Islamic law by "fixing strict limits on the state's power over religious law."[71] A number of scholars indeed argue that Mandate Lebanon embraced a "dual legal system," in which religious clerics operate as "autonomous legal entities."[72] It is certainly true that the French Mandate Charter (1922) forbids the colonial state from interfering in the management of religious communities.[73] And it is equally true that the Lebanese Constitution (1926) guarantees that the "religious interests of the population, to whatever religious sect they belong, shall be respected."[74] But in order to develop an accurate—and critical—grasp of colonial operations of power in the Levant, we need to look beyond the official discourse of the French administration. To accomplish this goal, I delve deep into the Mandate administrative archives.

French colonial officials first tried to institute a unitary civic legal system in Lebanon. Yet in the end, they opted to grant religious communities the authority to adjudicate the

[69] Weiss, *In the Shadow of Sectarianism*, 55; and Méouchy, "La réforme des juridictions religieuses en Syrie et au Liban (1921-1939)," 361

[70] MAE-Nantes, Carton n° 1 SL/250/73 "s/a. Communauté Chiite" (1940)

[71] Thomson, *Colonial Citizens. Republican Rights, Paternal Privileges, and Gender in French Syria and Lebanon*, 114

[72] *Ibid.*, 115. See also Joseph, S. 1997. Secularism and Personal Status Codes in Lebanon: Interview with Marie Rose Zalzal, Esquire. *Middle East Report*; Saadeh, "Basic Issues Concerning the Personal Status Laws in Lebanon;" Zuhur, "Empowering Women or Dislodging Sectarianism?: Civil Marriage in Lebanon;" EI-Cheikh, "The 1998 Proposed Civil Marriage Law in Lebanon: the Reaction of the Muslim Communities;" Kanafani-Zahar, "Les tentatives d'instaurer le mariage civil au Liban : l'impact des Tanzîmât et des réformes mandataires."

[73] Longrigg, *Syria and Lebanon under French Mandate*, 376 (Article 9).

[74] The Lebanese constitution is available online at: http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf (retrieved on December 3, 2015)

family affairs of their members.[75] The Shiʿa of the Levant were the first non-Sunni Islamic community to be granted this legal authority. On January 27, 1926, prior to adopting its constitution and even its flag, the Mandate state recognized Shiʿi law (also known as the Jaʿfari *madhab*) as the legal corpus governing family life (also known as personal status) of Shiʿi Muslims living in Greater Lebanon.[76] The first article of Decree N° 3503 proclaimed that the Shiʿa "are to govern themselves in matters of personal status in accordance with the rulings of the *madhab* known as the Jaʿfari *madhab*."[77] The second article establishes the parameters of this new legal regime: Shiʿi Muslims were expected "to turn to the state-appointed *qadi* [judge] in districts that had a court"; if there was no judge in their district, Shiʿa would "resort to the court nearest to their place of residence."[78] In keeping with the Ottoman procedural reforms, this new court system was hierarchically divided between a network of first-instance courts distributed over the Lebanese territory and a High Court of Cassation [*mahkamat al-tamyiz*] located in Beirut.

In the annexed Shiʿi territories, the French initiative was met with a mixed reception. Many regarded the establishment of Shiʿi family law courts as a crucial step in the political emancipation of their community, but others saw a tragic irony: in the name of protecting the Shiʿa's autonomy, colonial officials had both restricted Shiʿi law to family matters and placed it under the aegis of the state.[79] Not surprisingly, the situation triggered a tug-of-war between the Shiʿi clericity and French administrators. Historians of Mandate Lebanon have noted that the three clerics recognized as *mujtahids* (Husayn Mughniyya, Muhsin al-Amin, and Abd al-Husayn Sharaf al-Din) undermined the credibility of the new Shi'i family court by rejecting invitations to serve as court's president.[80] As a result, French administrators were forced to appoint a minor cleric, Munir ʿUsayran, whose legal authority was contested both by notables and ordinary

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[75] On the failed attempts to establish a fully secular legal system, see Méouchy, "La réforme des juridictions religieuses en Syrie et au Liban (1921-1939);" Mervin, *Un réformisme chiite*, 394-395; Saadeh, "Basic Issues Concerning the Personal Status Laws in Lebanon;" Ghamroun, "Liban: mobiliser la norme islamique, préserver le système pluricommunautaire?"; Kanafani-Zahar, A. 2006. "Les tentatives d'instaurer le mariage civil au Liban : l'impact des Tanzîmât et des réformes mandataires."

[76] Weiss, *In the Shadow of Sectarianism,* 105; Murr & Bourbousson, "Du statut personnel en Syrie et au Liban," 263; and Rabbath, *La formation du Liban historique et constitutionnel,* 116.

[77] Arrêté n°3503, article 1, quoted in Weiss, 106

[78] *Ibid*, 106.

[79] Mervin, *Un réformisme chiite*, 93, 296. For an analysis of other colonial judicial orders, see Cohn, *Colonialism and its Form of Knowledge. The British in India* (especially chapter 3) and Merry, "Law and Colonialism."

[80] *Ibid*; Weiss, *In the Shadow of Sectarianism,* 107, Abisaab 2009, *Lebanese Shiʿites and The Marjaʿiyya*, 226

citizens of the Shi'i milieu.[81] (One notable went as far as to claim that the judgments of this default president were "null and void in the eye of the Shi'a.")[82] Historian Rula Abisaab suggested that in refusing to join the state courts, the three leading clerics obeyed the legal opinion of Iraqi jurist Mirza Shirazi, who forbade Shi'i from accepting colonial governmental posts.[83] The efforts deployed by some of these clerics against the French colonial measures to bring Shi'i law under state management indicate, however, that much more was at stake.

The Decree N° 60/L.R. was a measure of this sort. Promulgated on March 13, 1936, it sought to fulfill the promises of religious freedom and legal codification that the *Tanzimat* reformers only partially realized. The decree guaranteed to all "religious sects" legal sovereignty over their family affairs.[84] It also formalized the right of religious conversion by allowing Lebanese citizens to move from one religious community to another. Finally, and most importantly for the Shi'a, the decree enjoined each sect to submit a legal code "for examination by governmental authority."[85] While Sunni (Hanafi) family law had been codified into the 1917 Ottoman Law of Family Right, Shi'i law had withstood all attempts at codification so far.[86] French colonial officials had observed (like Max Weber before them) that Shi'i jurisprudence is "fuzzy and often contradictory."[87] And as I have argued in the preceding chapters, Shi'i jurisprudence is not a system of fixed rules, but rather an open-ended corpus of moral commandments that change with the interpretations of its scholars. It is best viewed as a set of precepts helping the faithful

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[81] MAE-Nantes, Carton N° 1 SL 250/73 "Note." February 22, 1930. Also: MAE-Nantes, Carton N° 456 "Lettre au Général Dentz, Haut-Commissaire de la République Française en Syrie et au Liban." February 13, 1941. Historian Sabrina Mervin (2000) also notes that Munir 'Usayran's appointment "reflected less his competency in matters of *fiqh* than his disposition towards diplomacy and his good relations with the French," but also that many Shi'i considered that he "was not a *mujtahid* at all." Mervin, *Un réformisme chiite*, 396, 433.

[82] MAE-Nantes, Carton N° 1 SL 250/73 "Note." February 22, 1930.

[83] Abisaab, *Lebanese Shi'ites and The Marja'iyya*, 226

[84] Seventeen "historic communities" [*communauté historiques*] are listed in Arrêté N° 60/L.R.—*i.e.*, the Sunnis, the Shi'a, the Alawites, the Ismailis (or "Sevener Shi'a"), the Druzes, the Maronites, the Greek Orthodox, the Greek Catholics, the Armenian Orthodox, the Armenian Catholics, the Syrian-Orthodox, the Syrian Catholics, the Assyrians (or Nestorian), the Chaldeans, the Evangelicals, the Latins (Roman Catholics), and the Jews. The Arrêté also mentions the creation of a non-religious community [*communauté de droit commun*], which never came into existence. On this, see: Rabbath, *La formation du Liban historique et constitutionnel*, 92; Ghamroun, "Liban: mobiliser la norme islamique, préserver le système pluricommunautaire?," 114; and Méouchy, "La réforme des juridictions religieuses en Syrie et au Liban (1921-1939); " "Kanafani-Zahar, "Les tentatives d'instaurer le mariage civil au Liban : l'impact des Tanzîmât et des réformes mandataires."

[85] Rabbath, *La formation du Liban historique et constitutionnel*, 93.

[86] About the attempts made by the Safavid state, see Arjomand, *The Shadow of God and the Hidden Imam*.

[87] MAE-Nantes, Carton N° 1 SL 250/383 "Motif de l'arrêté restreignant la compétence de la juridiction chériée." [Non-dated]. For Weber's description of Shi'i shari'a law, see: Weber, *Economy and Society*, 822-823.

emulate the Prophet and the Imams. This notwithstanding, Decree N° 60/L.R. (qualified in 1938 by Decree N° 146/L.R.) required the Shi'a to submit a legal code to the Mandate state, which would "put these documents into force through legislative action." [88]

The double decree (N° 60/L.R. and N° 146/L.R.) provoked massive demonstrations across Syrian and Lebanese Islamic milieus. Sunni Muslims were the first to rally against it, arguing that the degree relegated the divine shari'a law to the status of a religious law among other religious laws, all equally dependent upon the state for their existence.[89] Shi'i Muslims and Druze soon joined their Sunni brothers, protesting the new laws as an unconstitutional intervention into religious affairs. "Mass meetings were organized in mosques, markets closed, and thousands marched in the streets."[90] In tandem with these "lively protests," the leading Shi'i authority in the Levant, Shaykh Muhsin al-Amin, wrote a letter to the French administration, urging it to suspend the provisions in "formal contradiction" with "Islamic dogma and law."[91] Al-Amin's missive was followed by a laconic telegram signed by two clerics, declaring that "the Shi'a prefer death over the enforcement of a family law that conflicts with the shari'a."[92] Overwhelmed and unable to find a solution to the growing crisis, Mandate officials backtracked. On March 30, 1939, the French High Commissioner put his imprimatur on Decree N° 53/L.R., stating that the controversial decrees "shall have no effect on Muslims."[93] As a result of this sudden turnaround, Shi'i jurisprudence remains uncodified to this day—a point to which we shall return.

However, prior to revoking the decrees, the French administration had already appointed a commission to reorganize both Sunni and Shi'i religious courts. Neither the content nor the form of shari'a law was at stake this time; rather, the government commission was concerned with the institutional structure of the Islamic courts and their procedural protocol; they had observed that no code of procedure was regulating the work of shari'a judges.[94] In addition, colonial planners and bureaucrats imagined that a

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[88] MAE-Nantes, Carton n° 593, note n° 7751, Mazas, conseiller législatif, 4 septembre 1937 (quoted in Méouchy,"La réforme des juridictions religieuses en Syrie et au Liban (1921-1939)," 366). On the mechanic of the double-decree and the reaction it triggered, see: Rabbath, *La formation du Liban historique et constitutionnel*, 92-95.

[89] Ghamroun, "Liban: mobiliser la norme islamique, préserver le système pluricommunautaire?," 114

[90] Thomson, *Colonial Citizens. Republican Rights, Paternal Privileges, and Gender in French Syria and Lebanon*, 152-153.

[91] MAE-Nantes, Carton N° 2940, "Lettre du Chef des Ulémas Chiites (Muhsin al-Amin) relative au statut personnel des communautés," Damascus, March 21, 1939 (quoted in Weiss, *In the Shadow of Sectarianism*, 111).

[92] MAE-Nantes, Carton N° 592. "Télégramme du 24 Mars 1939 (traduit de l'arabe)."

[93] Quoted in Rabbath, *La formation du Liban historique et constitutionnel*, 96.

[94] Murr and Bourbousson, "Du statut personnel en Syrie et au Liban," 267

reorganization could help them save money and preserve the "only means of control" left to the state over religious courts.[95]

In the first months of 1940, the Shiʿi milieu learned that the commission was planning to turn the Court of Cassation [*mahkamat al-tamyiz*] into a Court of Appeal [*mahkamat al-isti'naf*], among other things. It was also rumored that the Shiʿi judges sitting on this new high court would be assisted by a civil judge representing the authority of the state. Once again, the Shiʿi religious leadership rose up to denounce another appropriation of legal authority by the colonial state. Shaykh Husayn Mughniyya, known then as the head of scholars [*rais al-ʿulema*], penned a long letter to the High Commissioner, explaining that only a *mujtahid* trained in the sciences of the shariʿa can offer a "just opinion on current affairs."[96] Hence any intervention made by a civil judge in a Shiʿi legal case would be considered illegitimate. The Shaykh added that it would also be "against the law" for the envisioned Court of Appeal to review the judgments of other Shiʿi judges.[97] This last point was clarified by a different group of Shiʿa, who styled themselves "the Delegation of the South" [*wafd al-junud*]. In a report submitted to the High Commissioner, they argued that:

> The Court of Cassation examines the rulings [of first instance courts] to know whether or not they conform with the principles of the shariʿa in order to approve them, in the first case, or in the second case, to request the judge who gave it to rectify its judgment. For it is not permitted for a judge to invalidate a judgment rendered by another *mujtahid* judge. The Court of Appeal [by contrast] modifies a judgment according to its own jurisprudence without taking into consideration the judgment of first instance; and this is formally contrary to the provisions of the shariʿa.[98]

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[95] MAE-Nantes, Carton N° 1 SL 250/383 "a/s Réorganisation des tribunaux religieux," December 27, 1940.

[96] MAE-Nantes, Carton N° 1 SL 251/8 "Lettre du Sheikh Hussein Moughnye" (March 3, 1940). On Hussayn Mughniyya, see Mervin 2000: 426-427 and 2012: 330.

[97] *Ibid*.

[98] MAE-Nantes, Carton n° 1 SL 250/383 "Mémoire relatif aux Tribunaux Jaafari adressé à Son Excellence, Monsieur Gabriel PAUX, Haut-Commissaire de la République française." (November 20, 1940). The question of whether Islamic law (both Sunni and Shiʿi) authorizes appellate review has been a matter of debate among shariʿa scholars. In a useful review of these debates, Mohammed Hashim Kamali notes that Islamic judges can revise their decisions, but also overrule a court decision that "departs from the clear injunctions of the Quran, Sunna and *ijma* [consensus]." However, he also remarks that the shariʿa is "equally clear on the point that judicial decisions which are based on sound *ijtihad* are not reviewable." Kamali, "Appellate Review and Juridical Independence in Islamic Law," 82. Given that most decisions issues by Shiʿi family law courts are based on *ijtihad* (*e.g.* cases of divorce, child custody and inheritance), the clerics of the "Delegation of the South" seems justified to claim that the commission's project of replacing the Court of Cassation with a Court of Appeal is "contrary to provision of the shariʿa." This reasoning is also used by Hussein Mughniye. MAE-Nantes, Carton N° 1 SL 251/8 "Lettre du Sheikh Hussein Moughnye" (March 3, 1940).

The upcoming chapters will show that these seemingly technical points have enormous consequences in a judicial system—like the Lebanese Shiʿi family courts—for which no legal code exists. For now, it is worth stressing that the reformation of the Court of Cassation into a Court of Appeal also faced non-religious opposition. On the International Workers' Day of 1941, three Shiʿi notables wrote to colonial officials that the reform would force litigants to "support high fees and to cross long distances," explaining that "the majority of litigants belong to the working class and consists of impoverished women requesting alimony [*nafaqa*] from their husbands."[99] In spite of religious and socialist criticisms, French colonial authorities proceeded to transform the Court of Cassation into a Court of Appeal. They also established the office of the public prosecutor [*na'ib al-ʿam*], a civil judge sitting alongside Islamic judges on the high court tasked with representing the state. These two measures formed part of Decree N° 241, signed in 1942 and meant to regulate the procedures of both the Sunni and Shiʿi family law courts.

In the following year, 1943, Lebanon became a sovereign country. Despite this new status and failed attempts to implement a secular regime of family law, the shariʿa courts established under the French Mandate remain in effect to this day. Since then, however, the Islamic court system has been subjected to new bodies of regulation.[100] On July 16, 1962, the Lebanese parliament reformed the legal procedures of Sunni and Shiʿi family courts.[101] The first of the 492 articles declares that Islamic family courts are "part of the state's juridical system."[102] This statement implies that shariʿa courts have no legal autonomy: even though Shiʿi judges are trained in *hawzat* to derive a scripture-based jurisprudence suited for our time, they are bound to apply the laws promulgated by the Parliament.[103] In other words, the fact that family law disputes are adjudicated by religious judges does not disrupt the Lebanese state's "legislative and judicial monopoly" over all legal matters—including familial affairs.[104] Another implication of this first article is that all judgments issued by Shiʿi shariʿa courts can be sanctioned and implemented only through the coercive apparatuses of the state (*e.g.*, police, army, border

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[99] MAE-Nantes, Carton N° 1 SL 250/383 "Lafkhama al-mafuz al-salmi li al-jumhuria al-fransia fi lubnan wa suria al-maʿzum" (May 1, 1941).

[100] On these promises, see: Saadeh, "Basic Issues Concerning the Personal Status Laws in Lebanon."

[101] For an overview of these procedures, see Abillama, *The Marital State: Personal Status Laws, Discourses of Reform, and Secularism in Lebanon* (unpublished PhD dissertation), 80-83.

[102] In Arabic, the code of legal procedures describes shariʿa courts as "*jiz'a min al-tanzimat al-dawla al-qada'ia.*" See Article 1 of "Qanun tanzim al-qada' al-sharʿi al-sunni wa al-jaʿfari" *in* Al-Zayn *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 49

[103] By contrast, the laws implemented in Christian family courts do not require parliamentary approval and are not directly connected to the Lebanese.

[104] Héchaime, "Actualité du statut personnel des communautés musulmanes au Liban," 7. See also: Basile, *Statut Personnel et compétence judiciaire des communautés confessionnelles au Liban*, 126.

control). Each of these judgments can, in turn, be overruled by the secular Court of Cassation [*mahkamat al-tamyiz*], the highest court in the land.[105] Finally, Shi'i family law courts are embedded in the state through the agency of the shari'a judges themselves. All thirty-two of the Shi'i judges active in Lebanon operate as civil servants [*muazzafin*], included on the payroll of the prime minister's office.[106] Their appointment requires parliamentary approval.

Despite the political campaigns Lebanese secularists have launched against this network of shari'a courts (Shi'i, Sunni and Druze), it remains in place today. Although the exclusive jurisdiction that Shi'i courts exercise over marriage has recently begun to chip away, they are still responsible for settling family disputes between citizens—whether pious, agnostic or atheist—born from a Shi'i father, converted to Shi'ism, or married to a Shi'i man. These courts, as Morgan Clarke cogently put it, "are not just for the religiously committed; they are compulsory and reproduce religious affiliations automatically—children are registered through them."[107] During my residence in Lebanon, twenty Shi'i courts of first instance existed in the country; the Court of Appeal was located in Beirut. Yet the Lebanese capital is not only the seat of the high court; it also hosts the largest Shi'i courthouse of the country, comprising four courts of first instance. It is in this courthouse that I conducted the bulk of my ethnographic research, to which I now turn.

Concluding Remarks

If decrees cannot change societies, as Montesquieu once remarked, they can still change the ways in which societies relate to the state.[108] Unrecognized by the Ottoman state, the Shi'i society of the Eastern Mediterranean was, until the first half of the 20th century, largely governed by local *mujtahids* trained to echo the voice of the Hidden Imam.[109] The decrees enacted by the French colonial state (1920–1943) reconfigured this long-standing pastoral practice in fundamental ways. After the termination of the French Mandate, the postcolonial Lebanese state passed laws and administrative measures to reorganize Shi'i judgeship in accord with modern political rule. Hence, even today, the marital disputes of Levantine Shi'a are no longer settled in the homes of local shari'a scholars; since 1926, all such concerns must be folded into "lawsuits" [*dawa*] and filed in a state court with jurisdiction in Shi'i family law. Historian Max Weiss has argued that the creation of this legal network precipitated the transformation of the Shi'a into a "Lebanese sect."[110]

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105 Clarke, "Shari'a Courts and Muslim Law in Lebanon," 34.

106 Rabbath, *La formation du Liban historique et constitutionnel*, 137. Note that this applies only to Shi'i and Sunni judges; Druze judges are paid by the Minister of Justice. On Druze family law courts, see Tarabey, *Family Law in Lebanon. Marriage and Divorce among the Druze*.

107 Clarke, " The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts," 109.

108 Montesquieu *in* Bourdieu, "Habitus, code et codification", 40.

109 On this training, see chapters 1, 2 and 3.

110 Weiss, *In the Shadow of Sectarianism: Law, Shi'ism, and the Making of Modern Lebanon*.

This chapter, however, engaged a different set of problem. Although establishing Shi'i family law courts has contributed to the "sectarianization" of Lebanon, I have argued that it also brought the family life of the Levantine Shi'a under state authority—even as it transplanted Shi'i legal practices into a secular juridical architecture.[111] We now know that these transformations are rooted in Ottoman modernizing reforms (the *Tanzimat*) which redefined the Islamic judgeship as a function of the state, restrained its scope to family law, and reorganized its practice through legal codes and European procedures. Yet the Eastern Mediterranean Shi'a persistently submitted their legal concerns to the pastoral care of *hawza*-trained shari'a scholars. Most continued to do so, I argued, until the French Mandate state incorporated Shi'i jurisprudence into the Lebanese legislation. Making sense of this incorporation, however, required setting aside preconceived notions such as the "dual legal system," the "weak state," and more generally the idea that the Lebanese state and religious institutions are locked in a zero-sum game.[112] Thus, instead of placing "religious law" in opposition to the "secular state," I analyzed their co-constitution using the administrative archives of the French Mandate as well as current legal documentation. In doing so, I showed that by appointing Shi'i clerics to adjudicate co-religionists' family matters, the Lebanese state (both colonial and postcolonial) secured its authority over the Levantine Shi'a.

In establishing Shi'i family law courts, the state simultaneously brought the Shi'i tradition of jurisprudence under its management. And here a new puzzle presents itself: despite its incorporation into the structures of the Lebanese state, Shi'i jurisprudence has so far remained uncodified.[113] We saw that the state maintains a legislative monopoly over shari'a courts, but most laws enforced by Shi'i judges have never received the approval of the Lebanese Parliament since they—unlike Sunni and Druze family laws—have never been written in the first place.[114] We also saw that in 1936 and 1938, the French administration enjoined the Shi'i to submit a code for review by governmental authorities, yet as Lebanese jurist Edmond Rabbath remarked, this requirement "was never enforced."[115] The post-colonial state never reiterated this demand. Hence, to this day, Shi'i family law remains unwritten, drawing instead on the process of legal reasoning [*ijtihad*] that judges learn to perform in *hawza* seminaries. But the practice of *ijtihad*,

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[111] *Ibid*, 4.

[112] Thomson, *Colonial Citizens. Republican Rights, Paternal Privileges, and Gender in French Syria and Lebanon*, 113, 115.

[113] Basile, *Statut Personnel et compétence judiciaire des communautés confessionnelles au Liban*, 144; Rabbath, *La formation du Liban historique et constitutionnel*, 92; and Clarke, "Shari'a Courts and Muslim Law in Lebanon," 34. Note that Lebanese Shi'i family courts must conform to the 1962 Code of Legal Procedure. Yet this code only details the conduct of legal proceedings (almost identical for Sunni and Shi'i), and does not display the substance of Shi'i family law.

[114] To help lawyers cope with this situation, unofficial compendiums have been produced. I know two of them, but other might exist. Al-Na'meh, *Dalil al-Qadaa' al-Ja'afari*; and al-Zayn, "al-Qawanin wa al-Qararat wa al-Akhkam al-Shari'a Waqafan li al-Madhab al-Ja'afari."

[115] Rabbath, *La formation du Liban historique et constitutionnel*, 93.

which I analyze in previous chapters, is here transformed in peculiar ways. To see this transformation, we need to leave the legal texts aside, and enter the courts.

Chapter five
Islamic Legal Reasoning in State Apparatuses

Space commands bodies,
prescribing or proscribing gestures,
routes and distances to be covered.
Henri Lefebvre (1984)[1]

Lebanon's highest Shi'i courthouse is housed in a narrow white building, standing eight stories high. It sits on a quiet street branching off from the UNESCO square, one of Beirut's busiest intersections.[2] A minimum of three Internal Security Forces agents (ISF), armed and dressed in military uniforms, guard its street level entrance at any time. Equipped with handheld metal detectors, they scan every person entering the building.

I first went to the Shi'i courthouse to arrange a meeting with a judge, Sheikh Ayoub, whose name an informant had written down in my pocket notebook. The security agent who checked my backpack told me the judge had already left, but I could enter the building nonetheless. After to-ing and fro-ing between the different floors, I found Judge Ayoub praying in his office, using his robe as a prayer rug and a business card as a *turbah*.[3] The litigants and employees in the office were waiting to resume the hearing the judge had interrupted to perform the afternoon prayer. I was allowed to take a seat, and seized the opportunity to observe the judge handling the remaining cases on the docket: a marriage and a bitter alimony [*nafaqa*] dispute.

An hour later, after the litigants had left, I asked the judge if we could set up an appointment to talk about the practice of Shi'i judgeship [*qada*] in Lebanon. "What do you want to know?" he responded. Unprepared to conduct a formal interview, I asked questions about his training in *hawza* seminaries. Fifteen minutes into our conversation, I finally inquired about the enigmatic black cloth-covered book sitting on his desk, which the judge had consulted compulsively throughout the last hour. Relatively oblivious to the history I narrated in the previous chapter, I asked him if it contains the provisions of Shi'i family law. "Oh no!" immediately exclaimed the judge. "Shi'i law is not in a book. It's in

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[1] Lefebvre, *La production de l'espace*, 168.

[2] Until 2008, Beirut's Shi'i courthouse was located in the Ra's al-Naba'a neighborhood. For a description of the previous building, see Weiss, *In the Shadow of Sectarianism*, x.

[3] In performing the prayer, Shi'i Muslims prostrate upon a *turbah*—a block of soil from the Iraqi town of Karbala, where the Third Imam (Hussayn Ibn Ali) died. Current jurisprudence states that prostration [*sujud*] must be performed on pure earth or what grows on it. Prostration on paper is therefore permissible since paper is made of elements that grow on earth. See: Leisten, "Turba."

the judge's heart; it's in my heart [*bi qalbi*]," he said, pointing to the left side of his chest, making sure I understood him correctly.[4]

Though the black covered-book was, indeed, no treatise on shari'a law, we find in it a clue to understanding the judge's intriguing declaration. The book contained a state-issued document of sixty-three pages governing the judicial proceedings in Lebanese Islamic family courts.[5] Its article #242 authorizes Shi'i judges to adjudicate legal disputes in accordance with the Shi'i legal school, rather than the Ottoman family code of 1917—which their Sunni counterparts must apply.[6] The problem, though, is that the Shi'i legal school [*madhab ja'fari*] is anything but a stable signifier. The notion of *madhab* [school] crystallized in the 10th century with the establishment of the four standard Sunni legal schools, each of which is grounded in its founder's legal scholarship.[7] Shi'i law followed a somewhat different trajectory. While sharing key principles of legal reasoning with Sunni scholars, Shi'i legal authorities cannot enforce the jurisprudence [*fiqh*] of their forefathers, nor even the work of a deceased scholar.[8] They are instead bound to draw on the work of present-day scholars.

Hence, through the death of authoritative jurists and the emergence of new ones, the boundaries of the Shi'i school are being constantly redrawn. And since this legal tradition has multiple interpreters today, it includes different (and often contradictory) positions on matters of worship such as the pilgrimage or the Ramadan, but also on important issues such as divorce, custody, and inheritance. Muddying the waters still further is the fact that state-appointed Shi'i family judges have all been trained as shari'a interpreters in *hawza* seminaries. They are authorized to settle family disputes according to their own interpretation of the sacred texts. In other words, they can draw on the shari'a legal precepts located in their "heart," as Judge Ayoub would put it.

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[4] Fieldnotes, December 6, 2012.

[5] Adopted by the Lebanese Parliament in 1962, the document bears the title *Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari.* It is a common mistake to confuse this document with a codified version of Islamic law (Shi'i or Sunni). See: Shehadeh, "The Legal Status of Married Women in Lebanon," 504; and El-Alami and Hinchcliffe, *Islamic Marriage and Divorce Laws of the Arab World*, 147-180.

[6] See Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 75. Since January 2012, the first source of Sunni family law are the decisions of the Lebanese Shari'a Council [*Majlis al-shari'i al-islami al-a'la*]. The 1917 Ottoman code is the second source.

[7] Makdisi, *The Rise of Colleges. Institutions of Learning in Islam and the West* (especially chapter 1); and Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.*

[8] On this, see chapter 1 and the dissertation's introduction. See also: Momen, *An Introduction to Shi'i Islam*, 225; *Gleave, Inevitable Doubt. Two Theories of Shi'i Jurisprudence*, 238; Calder, "Doubt and Prerogative: "The Emergence of an Imami Shi'i Theory of Ijtihad," 76; Calmard,"Mardja'-i Taklid."

As a result of this scaffolding of ambiguities, no consensus exists about which shari'a norms are binding in Shi'i family courts.[9] When I asked the Court President about the connotation of the "Shi'i legal school" mentioned in the state documents, he answered me with another deeply contested concept. It is defined, he said, by "those who are recognized as *mujtahid*s [authoritative Islamic legal interpreters]."[10] Yet as many historians have noted, no clear criteria exist to determine who are the Shi'i *mujtahid*s.[11] Sheikh Hussein Mughniye, an appeal judge, took a different tack. He told me that the boundaries of the "Shi'i legal school" are set by the highest living Shi'i authority.[12] But, again, the idea that such a supreme religious authority exists is profoundly contested among the Shi'a.[13] It is therefore not an accident that Lebanese lawyers with experience in family courts repeatedly pointed out to me that, unlike Sunni and Druze law, Shi'i law is nowhere to be found.

The previous chapter charted the key episodes through which Shi'i law was incorporated into the judicial order of the Lebanese state, in both its colonial and postcolonial manifestations. I showed that from 1926 onward, Shi'i shari'a scholarship became the official legal grounds upon which a new class of state employees (Shi'i family judges) came to adjudicate family disputes in a new type of state apparatus (Shi'i courts). Yet I also stressed that the epistemic shift that often indexes the etatization of the shari'a was never fully accomplished in Shi'i Lebanon—not in theory, at least: unlike its Sunni and Druze equivalents, Lebanese Shi'i family law was never codified.[14] Although Shi'i law codes do exist in Iraq and Iran, none are applicable in Lebanon. Thus, instead of adjudicating marital disputes within a fixed legal code, Shi'i Lebanese judges must settle them either by interpreting the scriptural sources (through *ijtihad*) or by consulting doctrinal treatises written by living Shi'i jurisprudential authorities. But again, since no consensus exists on whom these authorities are, similar disputes (on inheritance, divorce or child custody, for instance) may be adjudicated through different norms and forms of legal reasoning.

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[9] Scholars have suggested that Lebanese Shi'i courts apply the jurisprudence of *marja'* Ali al-Sistani. While I have seen judges refer to Sistani's scholarship, we will see that the situation is more complex. Deeb & Harb, *Leisurely Islam. Negotiating Geography and Morality in Shi'ite South Beirut*, 78. On this, see also: Human Right Watch, *Unequal and Unprotected. Women's Rights Under Lebanese Personal Status Law*, 50.

[10] Interview with the Court President, conducted on December 16, 2013.

[11] Amanat, "In Between the Madrasa and the Marketplace: The Designation of Clerical Leadership in Modern Shi'ism" ; Calmard, "Mudjtahid"; and Gleave, "La charia dans l'histoire : ijtihad, épistémologie et «tradition classique»".

[12] Interview with an appeal judge, conducted on March 12, 2013.

[13] See Lambton, "A Reconsideration of the Position of the Marja' Al-Taqlid and the Religious Institution"; Fischer, *Iran. From Religious Dispute to Revolution*, 87-97; and Arjomand, *The Shadow of God and the Hidden* Imam, 242-243.

[14] On this, see Basile, *Statut Personnel et compétence judiciaire des communautés confessionnelles au Liban*, 144; and Clarke, "Shari'a Courts and Muslim Law in Lebanon."

All this is true as far as legal texts are concerned. Hence, from a strictly legalistic perspective, we could very well conclude that Shi'i judges handle family affairs through a highly pluralistic and open-ended corpus. No legal text contradicts this analysis. But if we supplement our inquiry with an ethnographic account of the judicial practices Shi'i courts enable and disable, a more complex picture comes into focus. Such an account allows us, first, to disentangle two processes that previous studies have approached as a single one: the state management of shari'a law and its codification into national legislations.[15] Modern nation-states, the literature argues, necessarily enforce a "distorted" version of Islamic law, since the shari'a legal system was "structurally dismantled" through the process of codification.[16]

The case of Shi'i Lebanon forces us to reconsider this argument: Islamic law was here firmly incorporated into the state, but never codified. This situation raises new problems and questions, which shall help us develop critical insights into nation-states' capacity to regulate non-secular legal traditions. How is the permutable, unresolved discourse I described reconfigured into enforceable state law? How do state legal institutions deal with an unwritten and ever-changing set of norms? How does the invisible authority of the Hidden Imam (the source of Shi'i law) sit with the exigencies of state legality?

This chapter explores these questions. It describes how the routine functioning of Lebanese family courts transforms the multivocal Shi'i legal tradition into a stable system of rules. Examining the judicial process and the premises that guide the reasoning of judges, I argue that, in Lebanon, Shi'i law has been profoundly refashioned, not through legal codification, but by being transplanted within the epistemological space of civil law.[17] I use the phrase "epistemological space" to mean a specific arrangement of space, knowledge and authority, derived from the civil law tradition in this case.[18] The ideal of codification is, of course, a key feature of civil law, and the literature on Islamic family law adequately stresses its impact on the shari'a tradition. Yet by insisting on the form of the code, this scholarship leaves untouched the concrete functioning of legal procedures, spatial organization, and other devices that shape both the judicial interactions and the practice of legal reasoning. The following ethnographic vignettes thus illustrate how a tradition of legal thought becomes state law without being codified. Taken together, they show that we arrive at a deeper understanding of what contemporary Islamic law has

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[15] See: Hallaq, *Shari'a: Theory, Practice, Transformations*; Messick, *The Caligraphic State*; Mir-Husseini, *Marriage on Trial. Islamic Family Law in Iran and Morocco*; Rosen, *The Anthropology of Justice. Law as Culture in Islamic Society*; Tucker, *Women, Family, and Gender in Islamic Law*.

[16] Hallaq, *Shari'a: Theory, Practice, Transformations*, 474. See also: Rosen, *The Anthropology of Justice. Law as Culture in Islamic Society*; and Tucker, *Women, Family, and Gender in Islamic Law*.

[17] Arzoo Olansoo uses the term "islamo-civil" to describe this mixture of Islamic and civil law. See Osanloo, *The Politics of Women's Rights in Iran*.

[18] In *The Order to Things*, Foucault uses the phrase "epistemological space" [*espace épistémologique* or *domaine épistémologique*] to describe an historical period. I use it here to describe contemporary formations. See: Foucault, *The Order of Things* (chapter 10 and the preface to the English translation).

become by focusing on the concrete legal mechanisms through which it operates, rather than on the form it takes (*e.g.*, codified vs. uncodified).

Methodologically, I assume we are better positioned to analyze the work of these mechanisms when we avoid conceiving Shiʿi family courthouses as thresholds within which shariʿa law is automatically transformed. Lebanese family courts, as I show below, are not homogenous bodies; different configurations of space, language and authority coexist in each of them. In order to understand how Shiʿi law is remade into state law, I explore three distinct legal settings: the judges' offices; the first-instance courts; and the court of appeals.[19] By examining them in this specific order, I wish to reproduce the trajectory that legal cases follow from their inception until their final adjudication by the high court.[20] I begin my analysis by juxtaposing two legal settings (the judge's office and the first-instance court) as a way to stress how state-issued procedures reshape the relationship between judges and litigants. In the second part of the chapter, I focus on how child custody [*hadana*] disputes are adjudicated across first instance courts and the court of appeals. I will have more to say about child custody disputes in the dissertation's epilogue; here, I follow this specific type of case since it is uniquely suited to illuminating how the regulatory mechanisms of appeal adjudication orient shariʿa reasoning.

Judicial Encounters

Every Wednesday morning, on the fourth floor of Beirut family Shiʿi courthouse, the same scene of confusion plays out. Litigants reach the fourth floor via the terrazzo-paved staircase connecting the many stories of courtrooms, offices and corridors that comprise the courthouse. After three flights of stairs, most take a few seconds' rest to catch their breath. Then, they proceed into the first-instance courtroom [*qaus*] located in front of them, and take a seat. After a short while, many start glancing around apprehensively. Some share their bewilderment with whoever is sitting next to them: they were notified to appear in court, the roster [*rôle*] posted on the wall displays their names, and yet nothing is happening. Adding to the confusion is that everybody can hear the judge working in the small office adjacent to the courtroom. Are they at the right place? Should they wait in the courtroom or queue in front of the office? Are they requested to signal their arrival to the judge? No one really knows. Meanwhile, the queue of litigants waiting at the office door expands through the narrow corridor, making it difficult for employees to circulate, and for anyone to reach the restroom. Lawyers and experienced litigants maintain that the judge will eventually arrive and process the scheduled cases. But is it preferable to meet him in the office beforehand? That, nobody knows. Mistaking me for a lawyer, a woman asks me, "is it always chaotic [*fauwdawi*] like that?"[21]

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[19] In a number of Shiʿi courthouses, all first instance cases are adjudicated in judges' office.

[20] The idea of following the institutional movement of legal cases has been popularized by Bruno Latour. See Latour, *The Making of Law*, 70.

[21] Fieldnotes, February 16, 2013.

This weekly confusion results from the fact that lawsuits reaching Beirut Shiʿi courthouse are dispatched in different venues. While most cases are heard in the spacious courtroom that covers much of the fourth floor, a number of disputes are settled within the offices of individual judges.[22] Both settings are considered public [*ʿalni*].[23] This status, judges often reminded me, is what enabled me (as well as other researchers) to conduct ethnographic observation in them.[24] I thus begin my account with judges' offices, since this is where the process of adjudication often starts for litigants.

Although judges' offices are typically small, and always protected by a door, they constitute a relatively open space. In front of a massive wooden desk stand three black, leather-looking sofas that can accommodate up to eight people. Behind the desk is the judge, required by law to appear in religious garb.[25] On his left is the court clerk [*katib*], who puts the decisions into writing. On weekdays, a continuous stream of people (litigants, clerics, employees) moves in and out of these simple offices. A large portion of them come for the sole purpose of having their judicial documents (marriage contracts, legal decisions, birth certificates) authenticated with the judge's signature and the official stamp of the court. Many enter these offices to collect fresh information on a pending case or, conversely, to submit a piece of evidence to be added to a case file [*malaf*]. Shiʿi judges are also occasionally visited by fellow clerics, coming to enjoy company and discussion over a cup of tea. But above all, these offices provide the judges with a space to hear lawsuits in which no lawyer is involved, and disputes that present some possibility of settlement through mutual agreement [*solh*]; state procedures indeed require Lebanese judges (religious and secular) to privilege agreements over judgments.[26]

Within these offices, the locus of legal authority revolves around individual judges trained as shariʿa scholars (rather than as magistrates). Shiʿi judges receive their training in

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[22] According to my own estimate, a third of the lawsuits filed at the Beirut Shiʿi courthouse are first heard in the office of a judge.

[23] Article #171 of "Qanun tanzim al-qada' al-shariʿi al-sunni wa al-jaʿfari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 68.

[24] Ethnographic accounts of Lebanese Muslim family courts include: Ghamroun, "Effets d'État. Mobilisations et action publique au Liban à l'épreuve du pluralisme juridique;" Clarke, "The judge as tragic hero;" Clarke, "Sharia Courts and Muslim Law in Lebanon;" and Tarabey, *Family Law in Lebanon. Marriage and Divorce among the Druze*. The fact that judicial spaces are declared public does not, however, mean that researchers are allow to conduct ethnographic inquiries therein. On this, see Agrama, *Questioning Secularism. Islam, Sovereignty and the Rule of Law in Modern Egypt*, 75-84.

[25] Article #474 of "Qanun tanzim al-qada' al-shariʿi al-sunni wa al-jaʿfari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 102.

[26] Article #164 of "Qanun tanzim al-qada' al-shariʿi al-sunni wa al-jaʿfari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 67. It is difficult to determine with exactitude which lawsuits are adjudicated in judges' office, but it possible to say that most non-confrontational issues (such as marriages, divorce confirmation, and the registrations of various agreements) are adjudicated in offices. While some cases involving lawyers are adjudicated in offices, most of the cases defended by lawyers are dealt with in the courtroom.

hawza seminaries: before serving in state courts, all of them followed the curriculum I described in previous chapters.[27] From 2012 through 2014, most judges comprising the old guard had studied in Iraq, whereas younger ones were trained in Iran, Syria, or Lebanon. In one country or another, they acquired the tools and methods whereby one extracts legal rulings from the Islamic scriptures. Each studied to become a *mujtahid* [learned shari'a interpreter], since Shi'i doctrine holds that only *mujtahid*s can issue legal judgments.[28] This notwithstanding, most judges believe that only some of them deserve this title. While they all studied in *hawza* seminaries, the judges argue that some among their colleagues have not (yet) developed the capacity to derive rulings from scriptural sources, and therefore adjudicate disputes based on the jurisprudential work of authoritative scholars. But as I already pointed out, the term *mujtahid* is a contested category; asking a judge if he holds this title is a delicate enterprise.[29] The judges I know closely enough to approach the topic all gave me a version of the same answer: "It is not me to decide if I'm a *mujtahid* or not, but I know what I'm doing [*barif shu am bamal*]."[30]

At any rate, the kind of judicial work that Shi'i judges perform in their office rarely depends on scriptural interpretation. Listening to conflicting parties, understanding the particularities of a dispute, offering advice, facilitating amicable settlements, convincing litigants to pursue a course of action—these tasks seldom involve a hermeneutic of sacred

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27 Article #450 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 97. While the young seminarians with whom I worked had no desire to serve in state courts ("all judges are corrupted," one of them said to me), the post of family law judge remains one of the most secure and remunerative that *hawza* graduates can obtain. Islamic judges start their career with a monthly wage of $2,500, along with a host of privileges, such as heath insurance and a special passport. On the salary of Islamic judges, see Article #454 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 99.

28 On this, see: Amanat, "From Ijtihad to Wilayat-i Faqih: The Evolution of the Shiite Legal Authority to Political Power;" Arjomand, *The Shadow of God and the Hidden Imam*; Mottahedeh, *The Mantle of the Prophet. Religion and Politics in Iran*; and Momen, *An Introduction to Shi'i Islam*. In the 1930s and 1940s. Shi'i leaders emphasized this point in their correspondence with the French colonial officials, who established religious family law courts. Clerics and notables underscored this point in two ways. They contested the nomination of Munir 'Usayran on the grounds that he never reached the rank of "*mujtahid*," and therefore was not qualified to serve as judge. On this see: MAE-Nantes, Carton N° 1 SL 250/73 "Note," February 22, 1930; Mervin, *Un réformisme chiite*, 433. But they also denounced the idea of appointing an attorney general on the court of appeals on similar grounds. Sheikh Hussein Moughnye, for instance, wrote: "Given that the *qadi* [the religious judge] must be a *mujtahid*, the attorney general (…) should also be a *mujtahid* in order to issue just rulings on what is brought before him." MAE-Nantes, Carton N° 1 SL 251/8 "Lettre du Sheikh Hussein Moughnye" (March 3, 1940). See also: MAE-Nantes, Carton N° 1 SL 250/383 "Mémoire relatif aux Tribunaux Jaafari adressé à Son Excellence, Monsieur Gabriel PAUX, Haut-Commissaire de la République française." (November 20, 1940); and MAE-Nantes, Carton N°1 SL 250/383 "Lafkhama al-mafuz al-salmi li al-jumhuria al-fransia fi lubnan wa suria al-ma'zum" (May 1, 1941).

29 One judge directly requested that I avoid asking questions about his status (or non-status) of *mujtahid*.

30 Fieldwork, February 1, 2013.

texts. Tackling them with success, however, demands a distinct set of skills and virtues. Sheikh Fadil, a thin-bearded judge trained in the *hawza* of Qom (Iran), often stressed this point during our long conversations.

> "The challenge here is not to render a just ruling [*hakm a'dl*], but to arrive at a judgment that is acceptable to both parties. And this is an art [*fan*]! I mean, it requires a lot of efforts and practice. You cannot reach this kind of judgment simply by applying a rule […]. Behind each dispute, there is a long and often complicated story. So you need to listen to the plaintiffs with care and solicitude [*ihtimam*]. You must be very patient and show that you want to help them."[31]

Litigants and lawyers who have spent time in judges' offices concur with Sheikh Fadil on this point. They stress that the possibility of reaching a comprehensive and informed judgment hinges on the judge's abilities. "Some judges," as one lawyer said, "are more compassionate [*hanun*] and smooth [*lein*]. Others cultivate a tough [*saarim*] persona and makes it harder for litigants to initiate a settlement."[32] Anthropologist Morgan Clarke develops this point in an article on Lebanese family law courts. Contrasting the styles of different Islamic magistrates, he notes that those trained in the Shi'i tradition made "more exhaustive" efforts to engage with the details and complexities of the cases brought before them.[33] But beyond the religious affiliation, Clarke argues that it is the judge's attitude and personality that ultimately explain why some settle disputes more successfully than others.

Sheikh Fadil, however, stresses that a good attitude is not enough: "If the parties feel the pressure of the judicial system [*daght al-nizam al-qada'i*], they won't help me understand the problem; they won't even listen to each other," he told me. "This is why you cannot reach an agreement in the court of appeals; the pressure is too high there." He further remarked that formal court proceedings obey a logic of confrontation [*muwajaha*]. This atmosphere generates fears and anxieties, in his view; it deters the parties from addressing the problem that led them to pursue litigation. In the office, he adds, people can sit down, drink tea, and have a discussion: "we can talk about the real problem, instead of debating who has the law on his side."[34] But defeating the "pressure" that forecloses the possibility of discussing crucial issues obviously necessitates more than cushioned sofas and cups of tea. Opening up this kind of discursive space, says Sheikh Fadil, often requires the judge to temporarily suspend court procedures [*ijra'at*] and sideline references to one's rights [*huquq* sing. *haq*] and to the law [*qanun*]. A Shi'i judge

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[31] Interview with a judge, conducted on April 11, 2013. It should be added here that the legal practice of conciliation also involves ensuring that the terms of the agreement do not infringe the unstable boundaries of Shi'i jurisprudence. A judge should not (in principle) sign an agreement that, say, prevents a woman from performing prayer.

[32] Interview with a lawyer, conducted on April 12, 2013

[33] Clarke, "The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts," 113. Clarke suggests that "this is to a large extent tied to a substantive difference in the law applied in the two court systems rather than to their respective judicial philosophies."

[34] Interview conducted on May 11, 2013.

quoted by Morgan Clarke aptly captured this tactic by saying that he attempts to "open the discussion outside of the court [*kharij al-mahkama*]."[35]

The following vignette illustrates the complex rhetorical strategies judges wield in understanding and adjudicating the disputes that reach their office. In April 2013, four women came before a judge. Three of them were the sisters of a middle-age man who passed away a year before. The fourth woman was the man's widow, with whom the deceased had two young daughters (aged 11 and 13 years old). Since their father's death, the two girls had been living with their paternal aunts. But their mother sought to regain their custody; she filed a lawsuit for that purpose. The aunts opposed this initiative, asserting that they offer a better educational environment to the girls. While the two parties debated, the girls were waiting in the corridor, following the conversation through the half-opened door. When the judge accidentally met their gaze, he requested that the door be closed. Inside the office, both parties claimed entitlement to guardianship of the girls—making copious use of legalistic notions ("rights of the mother," "rights of the child") and threatening to involve a lawyer.

After fifteen minutes of aggressive exchanges, no solution was in sight. The judge, then, asked the four women to leave the office, requesting a private chat with the girls. The girls entered, closed the door behind them, and sat on the chairs in front of the judge's desk. The judge pushed back his chair and leaned forward to be at the same height as the girls. He asked them a few questions about the end of the school year and the upcoming holidays, which the girls politely answered. Thereupon, he looked at the two of them, and asked: "So, what do we do with this?" Both stood silent. "What is the problem we're having here?" the judge tried again. The oldest of the two went off: "The problem is that our mother filed a lawsuit [*dawa*] against our aunts. That's the problem."

Taken aback by her use of legal terms, the judge quickly replied, "No, no, no, this is not what I mean. What is the problem *behind* the lawsuit?" He cast a side glance at the other girl. Timid, she mumbled that their mother wanted them to live with them. "Great!" said the judge. "Now, what do you think of this?" After twenty minutes, it became clear that the two girls felt uneasy about their mother; the youngest seemed to be afraid of her. Neither of them knew her very well, and their short experience under her parentage quickly turned sour. "Our mother doesn't let us see our friends," the oldest girl complained. "I understand," retorted the judge, "but she is your mother, and you only have one. It's important for you to know her."

Equipped with this understanding of the problem, the judge allowed the four women to reenter the office. The girls remained inside while he briefed everyone about what he learned from his short conversation with the girls: they feel uncomfortable around their mother, he explained, and apparently they do not know her very well. He did not neglect to mention that he did tell them they ought to make effort to know her. Over the next half hour, the judge elaborated a compromise based on the girls' conception of the issue. Carefully avoiding the language of rights and laws, he decided that their mother would

[35] Clarke, "The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts," 113.

visits them twice a week at their aunts' house during the upcoming year. During the following years, they would spend two afternoons per week at their mother's apartment. This arrangement, argued the judge, would enable the girls to gradually acquaint themselves with their mother, while living in a familiar environment. He also stated (without writing it down immediately, however) that the aunts would accompany their nieces while the latter visited their mother during the first year. The parties were asked to come back the following week for the final write-up of the judgment.[36]

What deserves our attention here is not so much that the judge turned to the young girls (children's interviews are frequent in family courts), but how he engaged the problem the family was facing: the mother wanted to regain their custody, but her daughters would rather have stayed with their paternal aunts. Rather than readily enforce a shari'a norm (most Shi'i scholars hold that when a parent dies, the other one is entitled to custody), he made several attempts to understand what brought the litigants to court; to understand the problem "behind" the lawsuit, as he said.[37] He conversed with the girls strategically, to develop the understanding necessary to construct a suitable legal decision; by "suitable decision," I mean a decision that "facilitates people's affairs," echoing an argument made by Hussein Agrama.[38] What the judge seeks to facilitate here are the education of the girls and reconciliation with their mother. Equally noteworthy is the fact that throughout his engagement with the case, the judge carefully avoided using legalistic language; and when the litigants used legal vocabulary, he kept approaching the matter from other angles. As we will see soon, though, the legalistic language the judge avoided dominates judicial interactions when family disputes are adjudicated not in judges' offices, but in first-instance courtrooms—to which I now turn.

The judge's maneuver was tactful, but turned out fruitless; a year later, this lawsuit was heard by the court of appeals.[39] Before reaching the high court, however, many cases like this one are adjudicated in first-instance courtrooms, and in accordance with formal judicial proceedings. In Beirut, first-instance hearings are held each Wednesday in the spacious courtroom located on the fourth floor. All litigants are required to arrive before the start of the hearings (scheduled at 9 am). But since judges typically adjudicate a couple of cases in their office before entering the courtroom, the hearings rarely begin before 10:30 or 11—usually after much confusion.

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[36] Fieldnotes, April 23, 2013.

[37] On the Shi'i norms of child custody, see Ebrehami, "Child Custody (Hizanat) under Iranian Law: An Analytical Discussion," 470.

[38] Hussein Agrama has argued that the purpose of *fatwa* (non-binding answers provided by learned Islamic authorities about how to live rightly) is to facilitate people's affairs. See Agrama, *Questioning Secularism. Islam, Sovereignty and the Rule of Law in Modern Egypt*, 170-171; and Agrama, "Ethics, tradition, authority: Toward an anthropology of the fatwa."

[39] Case heard by the High Court, February 28, 2014.

The room where first-instance cases are processed is no different from any other courtroom (civil, penal, commercial) in Lebanon, though this one is particularly luminous. The morning sunlight is pouring through the large Southeast-facing windows on one side of the room. The marble-looking flooring and the bleak white walls reflect this natural light so well that no one saw fit to put a light bulb on the socket in the ceiling. In all other respects, the courtroom carefully replicates the layout and spatial organization of other state courts. At the head of the room is an elevated platform, known as the judge's bench [*manassa al-qadi*]. On the platform, two black leather office chairs stand behind a wooden desk that spans the width of the room. The judge is seated on the high-backed chair at the center of the desk (and on the central axis of the room); on his right-hand side, the court clerk takes the low-backed chair. In front of them—but about six meters away—is the counsel table, behind which stand the plaintiff (on the left) and the defendant (on the right). The portion of the room stretching behind the disputing parties is reserved for the public; this is where litigants and lawyers wait their turn, on wooden benches arranged in rows.

The language interactions one witnesses in these courtrooms further solidify the distance between litigants and judges.[40] Litigants voice their complaints and disagreements using ordinary language. Judges also address them in colloquial Arabic. But as soon as these exchanges end, judges turn to the court clerk, and encrypt the litigants' speech into a set of technical terms, the meaning of which is only legible to legal professionals. This process of legal translation probably speeds up the work of court employees and lawyers, but it also estranges the litigants from their own claims, demands and grievances, as in the following exchange.

— **Judge (addressing the plaintiff)**: Is it your signature here on the document?
— **Plaintiff**: It's mine.
— **Judge**: I understand that you're not pleased [*le ajabak*] with the current situation. You would like to keep the custody [*hadana*] of your daughter.
— **Plaintiff:** It's true [*sahih*].
— **Judge**: You wish to submit anything else?
— **Plaintiff**: No.
— ***Judge (turning to court clerk): Write that he repeats*** [youqarir].

— **Judge (now addressing the defendant):** You, on the contrary, are pleased with the current situation, since it's in your interest. Thus you oppose your ex-husband's initiative, right?
— **Defendant:** True. But I want to add that I have a house to receive my daughter [Defendant goes on to describe the house].
— ***Judge (interrupting the defendant and speaking to court clerk):*** *Write contestation of the agreement*.
— **Defendant:** But what does this mean?
— **Judge (kindly):** It means what you just said.

[40] On the complex relationships between space and language, see Lefebvre, *La production de l'espace* (especially chapter 2, section 11).

The use of this technical language should not be understood as a judge's ruse, but as indicative of the predominance of formal procedures in state courtrooms. In the previous chapter, I pointed out that the project of setting the shari'a into the frame of civil procedures was first carried out by the Ottoman reformers (in 1888), and pursued further by French colonial officials (in 1942). It culminated with the Lebanese Parliament's adoption of the current legal procedures (in 1962).[41] Thus, while Shi'i judges often lessen the weight of formal procedures to solve the disputes that reach their office, they cannot do so when presiding over a courtroom. Here, all gestures, interactions and acts of speech are regulated by specific rules, each of which are derived from the civil law tradition and enforced by a court supervisor.[42] Conducting a cross-examination, bringing a witness before court, responding to an accusation, submitting evidences to the judge, requesting a delay—each of these operations (and many others) must conform to the protocols detailed in the 492 articles making up the Lebanese regime of legal procedures.

The ubiquity of court procedures and the use of judicial terminology gives support to a form of judicial authority I have barely mentioned so far: the lawyers. With rare exceptions, Lebanese lawyers are unacquainted with Islamic legal thought, let alone the Shi'i tradition.[43] Very few actually specialize in family law; most practice across a wide range of legal areas, including commercial litigation, penal defense or administrative law.[44] As soon as family court sessions [*jalsat*] end, they pack their robe, rush down the stairs, and jump in a cab leading them to another courthouse, where they must navigate a different set of laws (penal, commercial or civil). In their view, shari'a courts are just like any other courts. "People are impressed because they are Islamic courts," one remarked to me. "It is true these courts apply their own laws," he added, "but so do all courts of the country: commercial and penal courts do not apply the same laws. The only real difference here is that judges wear a turban, and open the proceedings with '*bismillah*

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[41] See the law organizing the Sunni and Ja'fari courts (*Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari*) adopted in 1962. See: Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 49-114. When this law is silent, the Code of Civil Procedure (*Qanun usul al-mahkamat al-madaniya*, adopted in 1984) applies. See: Halifa, *Usul al-mahkamat al-madaniya.*

[42] A civil judge supervises the work of first-instance Shi'i judges. On the state-enforced mechanisms of discipline and supervision, see articles #459 to #473 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 97.

[43] Among the lawyers with whom I worked, only one was able to articulate some notions of Shi'i legal sciences. The vast majority of lawyers derive their knowledge of Islamic law from a class entitled "Islamic Family Law," a mandatory element in all five law school programs offered in Lebanon. As part of my ethnographic research, I enrolled in the course on Islamic Family Law offered by the Université St-Joseph. The course offers an overview of the norms and laws applied in the Sunni, Shi'i and Druze family law courts.

[44] Other researchers have made this observation. Tarabey, *Family Law in Lebanon. Marriage and Divorce among the Druze*; Clarke, "The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts."

rahman al-rahim' [in the name of God, the most gracious, the most merciful]. But that is all formal [*chakli*], it's just *décor* [said in French]."[45]

In Shi'i courtrooms, two legal epistemologies are thus brought face-to-face: in front of judges trained as shari'a scholars in *hawza* seminaries stand a contingent of lawyers trained in civil law tradition at one of the five Lebanese law schools.[46] Unsurprisingly, lawyers seldom engage the judge on religious grounds. Yet their training in law school provides them with an expertise that Islamic judges lack—a thorough command of court procedures and litigation strategies. Indeed, unlike their Iranian and Iraqi counterparts, Lebanese Shi'i judges have no training in civil law.[47] Many court employees pride themselves on having taught the judges how to conduct legal proceedings "from A to Z" [*min al-alif ila al-ya*'].[48] Lawyers, by contrast, are professionals at legal procedures. Since none of them received Islamic legal training, and since Shi'i law remains unwritten, they often mobilize their knowledge of procedural rules to challenge—and undercut—the authority of the judges.[49] As one experienced lawyer insists, this entails more than sniping at the judges on matters of procedure during the hearings. Contesting a ruling on procedural grounds requires tedious and time-consuming work.[50] It involves, for instance, verifying that both parties were notified on time; that all documents submitted are signed and dated; that all time limits were respected; and that the court has not overstepped its jurisdiction in any way. It is by detecting such breaches in the legal protocol that the lawyers I know managed to overturn judges' decisions, and request appeals.

In performing this work, however, lawyers do more than overturn legal judgments; they also subject Islamic judgeship to a new distribution of knowledge and authority. Indeed, while the shari'a tradition allows litigants to be represented by agents [*wukala*', sing. *wakil*], the notion of a lawyer [*muhami*] is foreign to it.[51] Unsurprisingly, Lebanese lawyers legitimize their involvement in Islamic courts by evoking the figure of the *wakil*.[52]

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[45] Interview with a lawyer, conducted on November 26, 2013.

[46] The following Lebanese universities have a law schools: Université St-Joseph, University of the Holy Spirit of Kaslik, Université La Sagesse, Université Libanaise, Notre Dame University – Louaize.

[47] According to Nadjma Yassari, about half of the Iranian Shi'i family law judges have completed secular law studies in one of the law faculties. Yassari, "Iranian Family Law in Theory and Practice," 59.

[48] Fieldnotes, July 18, 2013.

[49] Anthropologist Morgan Clarke has made a similar observation about Sunni courts. See, Clarke, "The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts," 111.

[50] Interview with a Lebanese lawyer, conducted on December 15, 2015.

[51] Emile Tyan writes that "there is no lawyer in Islamic law." Tyan, *Histoire de l'organisation judiciaire en pays d'Islam*, 262 (also pp. 262-286). On the difference between the figure of the *wakil* and that of the modern lawyer, see see also Bellefonds, *Traité de droit musulman comparé*, 440-447; and Jennings, "The Office of Vekil (Wakil) in 17th Century Ottoman Sharia Courts."

[52] Chibli Mallat summarizes this argument. See: Mallat, "Attorney."

Judges, too, emphasize this connection.[53] What is rarely mentioned, however, is that the work lawyers accomplish today goes far beyond the rather limited mandate of the traditional *wakil.* In contemporary Islamic scholarship, the *wakil*'s role is indeed limited to legal representation. A *wakil* can, for instance, speak on behalf of an absent litigant, but he is not authorized to advocate for another person or help "secure the best possible judgment."[54] And because legal representation introduces a risk of unfairness, several shari'a jurists hold that a litigant cannot be represented by a *wakil* without the consent of the litigant's adversary.[55] Jurists also authorize judges to exclude from the court a *wakil* doing more than working "in the interest of ascertaining the truth."[56] Obviously, none of these restrictions apply to lawyers working within the framework of legal procedures defined by the Lebanese state. On the contrary, Lebanese lawyers do everything the tradition of civil law allows to serve the interest of their clients: they conduct cross-examinations [*istijwab*, pl. *istijwabat*], issue comments [*taalik*, pl. *taalikat*] on cross-examinations and bring external expertise to court.

In a context where a minority of litigants can afford the cost of a lawyer, and where legal aid is virtually non-existent, enabling lawyers to defend (rather than to merely represent) their clients' interests often prejudices those who fight the legal battle alone—usually the poorest segment of the Lebanese society.[57] Nermine, a short woman of about fifty years old, is a case in point. She is trying to obtain a divorce (and remarry) after her husband fled with another wife in Koweit. "This court is my last hope," she told me. When I asked her if she had a lawyer, she answered:

> No. I barely have enough to pay for the *service* [a form of collective transportation] to come here. So I come here alone. My husband does not even come here; he is in Koweit. But he has a lawyer. And the first thing I see here is the lawyer of my husband drinking coffee and smoking cigarettes with the judge. Lawyers are like that; they know how to obtain what they want out of the court. It's their job! My job is to take care of my two sons, so I don't know how to write all these documents. They want me to write my story, but how do you write that? I did not know before last month that in order to divorce, I need to file a lawsuit for alimony…![58]

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[53] Interviews with judges, conducted on December 16, 2013 and May 11, 2013

[54] Jennings, "The Office of Vekil (Wakil) in 17th Century Ottoman Sharia Courts," 148.

[55] Only "sickness and absence" are acceptable excuses for using a *wakil* without the consent of the adversary. See Jennings "The Office of Vekil (Wakil) in 17th Century Ottoman Sharia Courts"; and Tyan, *Histoire de l'organisation judiciaire en pays d'Islam*, 260.

[56] Jennings, "The Office of Vekil (Wakil) in 17th Century Ottoman Sharia Courts," 148.

[57] On the question of legal aid, see Article #266 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" (*i.e.*, the 1962 Code of Procedures) *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 77. On the limits of Legal Aid in Lebanon, see al-Saba'i "Keif tu'mmin naqaba al-muhamin fi beirut al-ma'una al-qada'iya tahmil mutadarijin a'ba'ha min dun ai raqaba" in *Al-Mufakira Al-Qanuniya*, March 12, 2013; and Nazil, "al-ma'una al-qada'iya baina ijtihadat an-nusus ma'naa an-nufus" *Al-Akhbar*, April 6, 2009.

[58] Interview conducted on July 5, 2013.

Note how Nermine stresses the difficulty of producing written documentation. We have seen that Shi'i judges, in their offices, employ oral exchanges to understand the marital problems that lead to litigation. I also stressed that they often elaborate complex verbal strategies to facilitate negotiated agreements.[59] Between the judge's office and the courtroom, however, a shift in authority occurs from the spoken to the written. Hence, since legal procedures require judges to pass judgments on the basis of written evidence, court sessions include long sequences of document-handling processes. A number of historians and anthropologists have convincingly shown that such reliance on paperwork signals a reconceptualization of Islamic judicial practice.[60] Disembodied written evidence indeed has a "dubious status" in Islamic law.[61] Its value, one historian argues, depends on "the moral probity of the individual who testified to their authenticity."[62]

We may add to this analysis that the court's dependence on written evidence puts an extra burden on the litigants—and it increases risks for those who cannot afford the service of lawyers. Bringing a case to court involves producing a heavy load of written documents (*e.g.*, procuration, testimony, medical dossier, bank documents) that will not be received unless properly signed, authenticated or notarized. "It is in producing these documents that unrepresented litigants are most vulnerable," my lawyer acquaintances point out. "Litigants do not know the procedures, the judicial vocabulary; this often leads them to make costly mistakes."[63] Thus, when a judge tells a litigant "just write your story [*qastak*] and submit it," what this person might not know is that within the framework of state legal procedures, every element of his "story" can be used by his opponent, or worse: by his opponent's lawyer.[64]

Stabilizing Shi'i Jurisprudence

Although Islamic judgeship is reshaped by civil legal procedures in Shi'i family courts, such courts are nonetheless unique in that they enforce unwritten laws derived from the scriptures. Judges are bound to adjudicate family disputes in accordance with the Shi'i legal school (also known as the Ja'fari school), but as I noted above, this school does not constitute a systematic corpus of judicial norms.[65] The preceding chapters argued that Shi'i jurisprudence [*fiqh*] is best viewed not as a stable system of rules, but rather as a

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[59] For a good descriptions of these strategies, see also Clarke, "The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts."

[60] Udovitch, "Islamic law and the Social Context of Exchange in the Medieval Middle East"; Messick, *The Calligraphic State.*; Arjomand, *The Turban for the Crown. The Islamic Revolution in Iran*.

[61] Udovitch, "Islamic law and the Social Context of Exchange in the Medieval Middle East," 460.

[62] Arjomand, *The Turban for the Crown. The Islamic Revolution in Iran*, 184.

[63] Interview with a lawyer, conducted on December 22, 2015.

[64] Fieldnotes, November 26, 2013.

[65] See Article #242 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" (*i.e.*, the 1962 Code of Procedures) *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 75.

tradition of scholarly attempts to discover how the Hidden Imam approaches contemporary problems. Outside *hawza* seminaries, this tradition persists through doctrinal treatises written by Shi'i jurists. Thus, instead of settling disputes within a fixed legal code, judges can draw on these treatises or their own reading of shari'a sources to issue a ruling that best suits the situation at hand.

Trained in *hawza* seminaries to derive rulings from the scriptures and appointed by the state to pass judgments on family matters, Lebanese Shi'i judges can both articulate shari'a rules (through *ijtihad*) and apply them (through adjudication).[66] They thus blur the division of labor often posited between shari'a scholars (responsible for deriving legal norms from the scriptures) and shari'a judges (responsible for enforcing these norms by court decisions).[67] In keeping with both their scholastic training and the absence of a binding law code, judges construct their judgments by drawing together factual elements of the cases brought before them and their interpretation of the shari'a sources. While not all lawsuits require a hermeneutic of the scriptures, and although some judges adjudicate cases in a uniform way, the interpretative skills developed in *hawza* seminaries enable them to approach marital disputes through a spectrum of legal solutions.

How judges tackle child custody [*hadana*] disputes is illustrative. Adjudicating custody matters often involves determining the time span during which a divorced (or separated) woman retains custody of her child. Yet even the most learned and industrious Shi'i scholars never achieved consensus on this rather common problem. Several contend that mothers have custody of their children until they reach the age of two years old. Others prolong this period until the child is seven years old. Many add a gender twist to the problem, arguing that women retain custody of girls under the age of seven, while men are entitled to custody of boys over two years old.

Although this discrepancy is a common research problem for *hawza* seminarians and scholars, it introduces fluctuations in courts' decisions when transplanted in state legal apparatuses. It is common knowledge among judges, lawyers, and court employees that the decisions of Shi'i courts (on issues of child custody and others) are grounded in different sets of legal norms.[68] In its *Guidelines for Women in Family Law*, for instance, the Lebanese NGO Kafa specifies that the jurisprudence of Shi'i courts varies on the issue of child custody, and enumerates the most common decisions.[69] A recent report published

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[66] The word *ijtihad* is a slippery one in Lebanon. At times, secular judges use it to describe their jurisprudence. In this study, I use *ijtihad* only to refer to the practice of extracting shari'a rulings from Islam's sacred texts.

[67] On this division, see: Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society*, 146-147; and Masud, Messick, and Powers. Editors. 1996. *Islamic Legal Interpretation. Muftis and their Fatwas* (especially chapter 1).

[68] Interview with a lawyer, conducted on December 3, 2012; Interview with a judge, conducted on April 12, 2013; Interview with a court employee, conducted on December 16, 2012; Interview with a judge, conducted on April 23, 2013.

[69] Kafa, *Guidelines for Women in Family law Court* (2013 version).

by Human Rights Watch also remarks that no consensus exists over which shari'a norms are binding upon Lebanese Shi'i judges.[70]

My conversations with Judge Ayoub casts a useful light on the process of legal reasoning underlying the adjudication of custody disputes. Trained in the *hawza* of Qom, Sheikh Ayoub extrapolates from the scriptures that a father can obtain the custody of his child as soon as the latter has reached the age of two. He knows that other rules [*akhkam*] exist and that the scriptures also point in other directions, which he considers misguiding or less reliable. "Whatever other scholars say," he told me, "this is my position [*mawqafi*]." Yet while he has derived this rule, he does not always enforce it—on the contrary. He explained to me:

> Imagine you want to go somewhere, and that you must choose between two paths [*tariqein*]. One of these paths is reserved for pedestrians; there are trees and no cars. The other path runs alongside the highway; it is dirty and noisy. This is how I approach the issue of child custody. Whether the child is a girl or a boy makes no difference to me. There are two paths. In my opinion, it is preferable [*min al-afdal*] that children live with their mother until seven years old; this is the nice path. I encourage people to take this path, but I cannot exclude the other option, because the strongest scriptural evidence [*adala*] support it. Thus if the parents cannot reach an agreement, and the father wants the custody of a child older than two years old, I will apply my interpretation. But this is not the best path.[71]

Lawyers know full well that first-instance judges reach decisions by drawing on the vast and open-ended Shi'i legal tradition.[72] Yet those with experience also know the trick of the trade: that all rulings based on certain interpretations of the scriptures are overturned by the court of appeals.[73] In cases of child custody, the court of appeals systematically rules that women retain custody of girls under seven years old and custody of boys under two years old. All legal decisions departing from this interpretation therefore risk being reversed by the high court. The lawyers who are aware of this unwritten rule use it to their clients' advantage, as one of them told me.

> In cases of child custody, the high court [*al-mahkamat al-'ulia*] always enforce the same rule: a girl should live with her mother until seven years old, and a boy until two years old. I know there are other opinions, but this is the rule that the high court applies. A first instance judge [*al-qadi min al-mahkamat al-bada'iya*] may rule

[70] Human Right Watch, *Unequal and Unprotected. Women's Rights Under Lebanese Personal Status Law*, 50.

[71] Interview with a judge, conducted on March 25 2013.

[72] Interview with a lawyer, conducted on April 12, 2013; and interview with a lawyer, conducted on March 13, 2013. See Baraket, *al-Qada' al-Shi'i al-Ja'fari*. It is common to hear Lebanese lawyers and legal specialists describe Shi'i family law as a customary law [*droit coutumier*], unique and distinct from the other codified system of family law (*e.g.*, Druze, Catholic, Orthodox, etc.). Interview with a lawyer, conducted on February 11 2013; and interview with a lawyer, conducted on April 12, 2013.

[73] Interview with an appeal judge, conducted on April 23, 2013; and interview with an appeal judge, conducted on December 16, 2013.

> according to his own interpretation of the shari'a, but if his decision [*hakm*] differs from the rule of the High Court, I will file an appeal [*isti'naaf*] and win.[74]

Lebanon's Shi'i court of appeals constitutes (like most appellate courts) a highly ritualized and policed setting.[75] The weekly hearings take place on the fourth floor of Beirut's courthouse, precisely above the first-instance courtroom I have described.[76] The venue is nonetheless comparatively darker: the few rays of sunlight that peek through the vertical blinds fail to illuminate this room bounded by mahogany wood tiles. These wood tiles help recreate the pompous style characteristic of Lebanese high courts—as do the two Roman pilasters and the decorative Doric entablature imbedded in the wall behind the judges' bench. As in first instance courtrooms (and most judges' offices), no religious symbols are displayed here.

Before hearings begin, lawyers and litigants gather in the audience section of the room. In front of them, on the judges' desk, stands an impressive pile of brown envelopes containing the details of each case on the docket (between 20 and 40 per week). The judicial ceremony starts when the court usher utters the word "*al-mahkama*" [the court]. Everybody then stands up, and the judicial personnel enter the courtroom in order of importance. The president of the Shi'i family court comes first, followed by two adviser-judges [*mustasharin*, sing. *mustashar*], a civil judge acting as a public prosecutor [*na'ib al-'am*] and the court clerk [*katib*].[77] The appellants, appellees, and lawyers remain standing until the court president finishes reciting the fifty-eighth verse of the Quranic surah *al-nisa* [the women].[78] Meanwhile, an impressive security apparatus is deployed in the courtroom. Two representatives of the Lebanese Internal Security Forces (ISF) guard the door, the personal bodyguard of the court president stands next to the judges' bench, and a fourth security official oversees the section of the room where lawyers and litigants are seated.

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74 Interview with a lawyer, conducted on March 13, 2013.

75 See Cohen, *Inside Appellate Courts: The Impact Of Court Organization On Judicial Decision Making In The United States Courts Of Appeals*; and Latour, *The Making of Law*.

76 Hearings take place each Tuesday, from 10 to 13. They are open to the public. Article #171 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 68.

77 The judge-adviser who has more experience serving in Shi'i court always enters first; he is expected to sit at the right hand of the Court President. The other judge-adviser sits at the left hand of the President. Article #3 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 49

78 The translation of the surah is "God bids you to deliver all that you have been entrusted with unto those who are entitled thereto, and whenever you judge between people, to judge with justice. Verily, most excellent is what God exhorts you to do: verily, God is all-hearing, all-seeing!" (Muhammed Asad translation). Asad, *The Message of the Quran*.

In this legal arena, even more than in first-instance courts, lawyers occupy the floor, for state-issued appeal procedures silence the litigants, and only lawyers are authorized to plea before the high court. Appellants and appellees are allowed to address the panel of judges only during cross-examination [*al-istijwab*]. At any other time, they must submit their complaints, responses, and evidence through the agency of a recognized lawyer. Those who cannot afford legal representation must obtain official permission from the President to interact directly with the court.[79] While I never saw the President refuse such permission to anyone, the litigants who represent themselves are systematically relegated to the very end of court session, since the high court prioritizes lawyers. Self-represented litigants, however, must be careful not to infringe on the legal procedures and decorum. By interrupting the judges' speech, stepping into the no-man's-land separating the judges' bench from the lawyer's podium, or using improper language, they risk being expelled from the courtroom by one of the security agents.

But the litigants are not alone in being held in check at the high court: Shi'i judges, too, operate under surveillance. A civil judge sits next to them, embodying the state's legal sovereignty in his capacity as a public prosecutor [*na'ib al-'am*].[80] We have seen in the previous chapter that several Shi'i leaders long denounced this supervisory technology as a "heresy" [*bid'a*] implemented by the French colonial administration.[81] Only qualified scholars, they argued, can settle disputes in accordance with the shari'a.[82] Yet Mandate officials dismissed this opinion, and placed appeal proceedings under the monitoring power of a civil judge.[83] During appellate hearings, the public prosecutor wears the black civil judge's robe and occupies the right end of the judges' bench. Trained in the civil law tradition, he ensures that all state-defined court procedures are duly enforced and that the

[79] "Qanun tanzim al-qada' al-shar'i al-sunni wa al-ja'fari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*,

[80] State-appointed "public prosecutors" only serve in shari'a courts (Shi'i, Sunni and Druze). No state delegate operates in Christian family law courts.

[81] MAE-Nantes, Carton N°1 SL 250/383 "Mémoire relatif aux Tribunaux Jaafari adressé à Son Excellence, Monsieur Gabriel PAUX, Haut-Commissaire de la République française." (November 20, 1940).

[82] *Ibid*; and MAE-Nantes, Carton N°1 SL 251/8 "Lettre du Sheikh Hussein Moughnye" (March 3, 1940).

[83] The Lebanese state further defined the contours of this legal technology in 1962, notably in stating that the public prosecutor must belong to the Shi'i sect and be appointed by the Ministry of Justice. Interview with the public prosecutor, conducted on November 26, 2013. See also Articles #14, 32, 33, 274, 293 and 298 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan.*

court decisions do not violate the Lebanese standards of public order.[84] Should judges infringe on legal procedures or disturb public order, the prosecutor will appeal the decision to the Lebanese court of cassation [*mahkamat al-tanfiz*], which has the ultimate say over all judicial decisions rendered in the country.[85]

In this policed setting, it is impossible for judges to foster an agreement between parties, or even to address the problems underlying each lawsuit. Recall that Sheikh Fadil, whose work I described above, said that the pressure is "too high" here for litigants to reach any kind of compromise.[86] By the time their disputes come before the high court, appellants and the appellees have invested in them a considerable amount of money (in time, court fees and lawyer charges). It is no surprise that, at this stage, they do not wish to solve a problem as much as they wish to "win the case." Not all disputes, however, can be settled through dialogue and conciliation. Each week, the high court hears cases of abuses and injuries that coercive legal decisions could help redress.

However, while first-instance judges approach these cases through a range of jurisprudential possibilities distilled from the sacred scriptures, the high court instead enforces standardized rules. Here again, the issue of child custody provides a useful touchstone. Although Shi'i legal scholarship includes multiple positions on when a child passes into the care of the father, the same rule was systematically applied to each custody appeal I followed during my two-year residence in Beirut.[87] Sheikh Mughniye, an appeal judge since 1993, confirmed what lawyers had already told me: the Shi'i court of appeals always rules that boys remain under the custody of their mother until the age of two and girls until they reach seven years old. "There are other positions [*mawaqif*] on this issue," the judge explains, "and first-instance judges are allowed to settle cases through their own interpretation of the scriptures [*ijtihad*], but the high court always applies this rule."[88] The court president corroborated his colleague's observation. But in conversation with me, he

[84] First formulated in Article #6 of the 1804 French Civil Code (also called "Napoleonic Code"), the notion of "public order" (*ordre public*) is widely recognized as an indeterminate juridical notion. Hussein Agrama has argued that the very indeterminacies constitutive of the notion of public order help "consolidate and expand the state's sovereign authority to decide what counts as religious and what scope it should have in social life." Agrama, *Questioning Secularism*, 74 (see also 71-84, 92-98). More recently, Saba Mahmood has shown how the notion of public order secures the capacity of the nation-state to intervene in the private domain both in the Middle East and in Europe. Mahmood, *Religious Difference in a Secular Age*, 137, 149, 150-180. On how this plays out in Lebanon, see Landry, "Religious Freedom Beyond (or Below) the Purview of the State : The Case of Lebanon" (http://ifpo.hypotheses.org/5519). On the French context, see Surkis "Hymenal Politics." On the history of the concept of public order, see Husserl, "Public Policy and Ordre Public."

[85] Article 95 of the Code of Civil Procedures. Halifa, *Usul al-mahkamat al-madaniya*, 23-24.

[86] Interview with a judge, May 11, 2013.

[87] I have followed the appeal hearings of a total of 184 cases. Of those, about 35 cases concerned the specific issue of child custody.

[88] Interview with an appeal judge, conducted on February 12, 2013.

specified that the court of appeals apply a single set of rules, based on the shariʿa interpretations "that have been dominant [*ghalib*] historically."[89]

This last claim deserves close attention. Some of the arguments I made in previous chapters should help us unpack what is at stake here. The first three chapters of this dissertation described how *hawza* scholars derive legal and ethical precepts from Islam's sacred texts. I emphasized that this practice enables Shiʿi scholars to uncover shariʿa rules governing emerging practices (*e.g.,* DNA tests, sex-reassignment surgeries) as well as established ones (*e.g.,* divorce, custody, tobacco smoking, pilgrimage). The chapter preceding this one showed that, since its creation in 1926, the Lebanese state has appointed some of these scholars as judges, putting its coercive forces (police and military) at their disposal in order to regulate the family life of Shiʿi citizens. Those judges who serve on the appellate court have the ultimate say in the marital life of the Lebanese Shiʿa. Yet here, in this borderland between state power and religious authority, shariʿa reasoning undergoes a curious shift.

To be sure, scholars and judges fulfill different roles. Both perform legal reasoning, but they do so through different means and with different goals. *Hawza* scholars revisit established shariʿa scholarship by interpreting the scriptures in light of the problems and possibilities of our time. Building on their own conceptualization of current issues, they articulate new legal precepts and/or renew old ones.[90] Islamic judges, by contrast, are not responsible for elaborating general norms. Whether judges were chosen by believers (as they were historically) or appointed by the state (as they are in present-day Lebanon), their main task is to issue judgments on cases that litigants bring before them.

However, since Lebanese Shiʿi judges are not bound by a family law code, they can draw on the various and diverging norms, concepts and methods that their legal tradition encompasses. I showed in this chapter that certain judges bring into play the training they received in *hawza* seminaries, grounding their judicial decisions on an interpretation of the Islamic scriptures (as Sheikh Ayoub explained above). Others refer to the jurisprudential treatises of contemporary Shiʿi scholars. Each strategy advances a spectrum of shariʿa rulings, which judges can mobilize to construct their legal decisions. We saw that this process requires judges to attend to the underlying needs of each particular case, and apply the shariʿa norms that best suit the disputes at hand.[91] Thus, like scholars, the most skilled of judges consult the scriptures (or shariʿa scholarship) in order to address empirical problems, on which they have gathered information.

The court of appeals turns this reasoning practice on its head. Appeal judges construct their judgments neither by interpreting the sacred texts nor by drawing on the plurality of

[89] Interview with the court president, conducted on December 16, 2013.

[90] For a description of this process, see chapter 3.

[91] These particularities include the relation that each parties have with the disputed child, the kind of environment that each of them can offer, the child's preference, etc.

views Shiʿi judicial scholarship makes available. Instead, they implement standard legal rules applicable to all similar cases (not only those related to child custody). The judges and court employees with whom I worked emphasized that the "laws" [*qanun*] enforced by the highest Shiʿi tribunal apply uniformly to all litigants, regardless of the situation in which they are entangled. Among the judicial personnel, some remarked that the appellate court breaks with the type of case-based reasoning practiced by first-instance judges. My own analysis of court decisions corroborates these claims. Although appeal judges do not (strictly speaking) enforce a code, they applied the same set of predetermined rules throughout the thirty-one sessions I attended during my residence in Lebanon.[92] The mothers of sons older than two years, for instance, systematically lost custody to their ex-husbands.

According to its president, the high court only enforces shariʿa interpretations that have been "dominant" in the history of Shiʿi scholarship.[93] Another appeal judge articulated the same idea, saying that the court "considers only the legal opinions of the important jurists [*fuqaha*] in history."[94] This approach to shariʿa litigation obviously divests the Shiʿi tradition from some of its internal possibilities: judges consider only certain "legal opinions." Yet it also transforms the very process of judicial reasoning: while Shiʿi scholars and many first-instance judges base their reasoning on a consideration of the issues to be tackled, appeal judges proceed the other way around. Their argumentation starts not with the demands of individual cases, but with the shariʿa rules that prevailed throughout the last centuries. Despite the efforts of *hawza* scholars to uncover timely understandings of the scriptures, appellate judges base their decisions exclusively on long-standing shariʿa interpretations. Looking at the judges' own explanations, we could conclude that the value of a shariʿa interpretation, to them, is not in its capacity to address a particular situation, but instead in its importance for the history of legal scholarship. Indeed, they seem more concerned with applying the interpretations that have prevailed over the centuries than with finding those that best suit their cases.

Stopping here, however, would be to keep us focused on the agency of Shiʿi appellate judges. It would also be incomplete, for judges' explanations only partly elucidate the shift in legal thinking that concerns us here. It is instructive to know that Lebanese family judges deal with appeal lawsuits by systematically applying what they regard as time-honored shariʿa interpretations, but we also need to know why they do so. And knowing why is all the more pressing given the account of Shiʿism I offered in this dissertation. I have stressed that the jurisprudence produced by Shiʿi scholars remains binding only during their lifetime (because only living scholars are deemed able to extrapolate the views of the Hidden Imam).[95] We also saw that since no scholar can claim the monopoly on shariʿa knowledge, current Shiʿi scholarship encompasses a continuum of rules,

[92] Between December 2012 and March 2014, I attended to 31 court sessions, totalizing 184 cases.

[93] Interview with the court president, conducted on December 16, 2013.

[94] Interview with an appeal judge, conducted on April 23, 2013.

[95] On this, see chapter 1 as well as the dissertation's introduction.

approaches and guidelines for settling all kinds of issues (including family disputes). In matter of child custody, for instance, divergent opinions exist and have been used by family law judges to settle lawsuits. It is also true of divorce and inheritance cases.

Why, in these conditions, do appeals judges insist on applying the "legal opinions of the important jurists in history," and only these? Why are they turning their back on the many other interpretations available in current Shi'i judicial scholarship [*fiqh*]? To pursue these questions, we must leave the judges' motivations aside for a moment and look at the institutional framework in which they operate. Central to the appeal court's modus operandi is the "judiciary panel," [*hi'a al-mahkama*] a legal technology stemming from the civil law tradition and implemented by French colonial administrators in 1942.[96] Before this date, appealing parties dealt with a single judge (as litigants do today during first-instance proceedings). Since then, however, family law appellants and appellees have been heard by a panel of four judges: the court president, two appeal judges and a civil judge. Unless public order is at stake, the three Shi'i judges are responsible for issuing appeal decisions.

While judiciary panels are established to avoid arbitrary judgments, when they are responsible for implementing a profoundly uncertain legal tradition (such as Shi'i law), their mechanics can work against them. Note, to begin, that the high court's judgments are not products of a collective decision, but of an arithmetic. The rules of panel adjudication require the three judges to submit individual judgments, the sum of which constitutes the appeal decision. To be effective, however, appeal decisions must either be a unanimous judgment [*hakm ijma'i*] or a majority one [*hakm akthari*].[97] The corollary of this principle is that three judges with divergent opinions cannot issue a decision, until (at least) two of them come to an agreement. And therein lies the rub: in an institutional setting where issuing a judgment necessitates reaching a consensus, long-established shari'a interpretations are bound to take precedence over the emergent or still controversial ones—regardless of which interpretation best suits the matter at hand.

The example of child custody is illustrative here again. A number of authoritative Shi'i scholars today argue that women should be allowed to raise their children until they reach the age of seven (or even nine for girls); this option, scholars add, allows divorced women to lead a more decent life and helps reduce gender inequalities.[98] First-instance Shi'i judges are authorized to enforce this jurisprudence. Appeal judges are also cognizant of these debates and arguments. However, institutional imperatives internal to the practice

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[96] On the French legal reforms of 1942, see chapter 4.

[97] Article 236 of "Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari" (*i.e.*, the 1962 Code of Procedures) *in* Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya fi lubnan*, 74.

[98] Ebrehami, S. N. 2005. "Child Custody (Hizanat) under Iranian Law: An Analytical Discussion," p.468 n. 47; Berry, *Radical Transitions: Shifting Gender Discourse in Lebanese Muslim Shi'i Jurisprudence and Ideology, 1960-1979 and 1990-1999*. On the relationship between sharia interpretations and the issue of gender inequality, see the dissertation's epilogue.

of panel adjudication compel judges to reach a consensus with their peers, a process that rules out all shari'a interpretations but those that dominate the history of Shi'i legal scholarship.

Or course, Shi'i judges know that judicial panels are foreign to the shari'a tradition. They are also aware that this secular innovation orients their adjudication, but those with whom I worked maintain that this mode of adjudication "does not conflict with the shari'a."[99] "Nothing [in the scriptures] prevents the judges from forming a team [*majmua'*]," one of them told me.[100] This may very well be true, but my concern here it not determining whether Islam authorizes judicial panels; rather, it is to understand how this legal mechanism transforms shari'a reasoning and the implications for those who are subject to it. Some of these implications will be examined in the next chapter (the dissertation's epilogue). Meanwhile, it is worth emphasizing that the Shi'i appeal court enforces standard rules, not necessarily because its judges prefer to stick to the "opinions of the important jurists in history"; instead, it is because doing so allows them to reach the consensus required for the functioning of panel adjudication. Hence, if the notion of codification fails to account for why the Lebanese Shi'i appeals court applies the same fixed rule, it is equally incorrect to find an explanation in the intentions or preferences of individual judges. What matters here is not so much the judges (whether they are traditionalists or progressives) nor the law itself (whether it is codified or uncodified), but the institutional conditions under which the judges *handle* the law.

Concluding Remarks

This chapter engaged a tangle of questions raised in previous chapters. In the first part of this dissertation, I argued that Shi'i law is not a system of fixed rules, but an inconclusive discourse aimed at helping the faithful pursue their "journey of ethical cultivation," to use Hussein Agrama's formulation.[101] The chapter preceding this one showed how this discourse became, under French colonial rule, the official judicial grounds on which the state adjudicates Shi'i family disputes. I underscored that although Shi'i courts staffed with *hawza*-trained judges, the rules on which these courts' decisions are based have never been agreed upon. While Sunni and Druze family judges enforce Parliament-approved legal codes, their Shi'i counterparts continue to settle marital issues by applying different interpretations of the shari'a [*fiqh*]. Not only have these different interpretations never been formally codified, but each of them remains eminently contestable: until the return of the last Imam, they are bounded to fluctuate with the work of Islamic legal scholars. The Lebanese state, in short, governs the family life of its Shi'i citizenry on the basis of rules that are both unwritten and uncertain.

Thus, this chapter asked: How does a modern state enforce a legal framework that is not only uncodified, but fundamentally in flux? How does an unresolved discourse such as

[99] Fieldnotes, November 26, 2013.

[100] Interview with an appeal judge, conducted on November 26, 2013.

[101] Agrama, *Questioning Secularism. Islam, Sovereignty and the Rule of Law in Modern Egypt*, 182.

Shiʿi shariʿa scholarship morph into an enforceable set of laws? What can we learn about the regulatory capacities of modern secular states by looking at how they incorporate religious traditions into their judicial machinery? I approached these questions through an ethnography of the three legal settings comprising Lebanon's Shiʿi family courthouse: the judge's office, the first-instance court and the court of appeals. Moving across these three different spaces, I made two arguments.

The first of these arguments concerns the practice of judgeship [*qada*]. Earlier in this study, we saw that until the early 20th century, the lawsuits of the Eastern Mediterranean Shiʿa were not settled in state courts, but in the homes of local jurists. This changed with the colonial founding of Islamic family courts. In the first half of the chapter, I showed how this change transformed the way litigants relate to judges. We saw that in state courtrooms, judges must comply with legal procedures derived from the civil law tradition. While they remain the sole depositaries of shariʿa knowledge, their authority is undermined by lawyers' expertise in civil law and litigation procedures. In the confines of their offices, judges manage to lessen the weight of formal procedures; this approach often helps them understand the complicated stories behind lawsuits and construct more informed judgments. However, I argued that when cases are brought into courtrooms, the judicial process is no longer about finding the solution that best fits a particular problem. Rather, the process revolves around a series of procedural imperatives that judges must follow to avoid having their decisions contested by lawyers. Although these legal procedures aim to guarantee fair trials, I showed that litigants not represented by lawyers (often those of modest socioeconomic backgrounds) struggle with the technical vocabulary and the production of legal documentation.

The second argument concerns legal reasoning. In the remaining half of the chapter, I focused my attention on child custody disputes and the forms of argumentation underlying the practice of adjudication. Contradictory views on this issue coexist in the Shiʿi tradition today. And as I pointed out, first-instance judges take advantage of this internal plurality in order to render judgments that suit the lawsuits brought before them. The Shiʿi court of appeals, however, turns its back on this plurality: it systematically enforces the same set of rules. I suggested that understanding how and why the court of appeals eliminates all other shariʿa-based opinions requires looking beyond the agency of individual judges; it requires examining the institutional conditions in which they perform legal reasoning. Unlike first-instance judges, appellate judges are embedded in a legal mechanism of panel adjudication. As members of a judicial panel, Shiʿi judges issue individual decisions that are aggregated into an appeal judgment. But since these judgments are valid only insofar as two judges are in agreement, this decision-making process continually evacuates minority views and emerging shariʿa interpretations.

In the previous chapter, I noted that in the 1940s, a number of clerics opposed the creation of a Shiʿi court of appeals on the grounds that the concept of appeal is foreign to the Islamic legal tradition. Determining whether this is true is beyond the scope of this study. However, we can note that this court profoundly reshaped the judicial process: litigants are represented by lawyers, and judges work under the supervision of a civil judge

embodying the power of the state. But as I argued, legal reasoning also underwent a shift in this judicial setting. Instead of drawing on Shiʿi legal scholarship (or on the scriptural sources) to find different solutions to different problems, appeal judges apply predefined norms to every case. In the epilogue following this chapter, we will see what happens when Lebanese citizens mobilize against these norms, when Shi'is legal activists ask that judges do what they were trained for: question existing jurisprudence, and derive shariʿa rulings that respond to issues of the present.

Epilogue
The Dialectic of Ijtihad

They say that Shi'i law is driven by ijtihad.
But they are also trying to avoid
change through that door.
Beiruti Legal Activist (2014)[1]

"This law in our religion cuts me inside," reads the protestors' placard. They carry their signs a few meters away from the airport highway [*tariq al-matar*], which cuts across the working-class and predominantly Shi'i southern suburb of Beirut.[2] Facing the protestors is the entrance of the Higher Islamic Council, an institution founded in the 1960s to defend the rights of Shi'i Lebanese.[3] Held in October 2013, this demonstration marks the culmination of a legal campaign launched five years earlier by Shi'i citizens advancing a specific set of demands. They assembled in front of the Council to urge the Shi'i establishment to extend the legal period during which divorced women retain custody [*hadana*] of their children. In the preceding chapter, I noted that Shi'i family court most often transfer the custody of male children to their father two years after birth. Daughters are typically bought under the care of their father at seven years old. Such decisions, protestors argue, are both unfair to divorced women and detrimental to child development. Some of the other signs read "You can't take my children in the name of religion" and "Shame on patriarchy and injustice."

While protests over family law occur periodically in Lebanon, this one is of a different sort. Since the end of the French Mandate, leftist political parties have repeatedly denounced the state enforcement of shari'a-based laws, which they believe perpetuate women's subordination.[4] Within the last three decades, feminist movements and local NGOs have taken this fight further, critically raising awareness about domestic violence and gender discrimination.[5] In more recent years, liberal activists have sought to seize the momentum of the Arab Spring to challenge the Islamic component of the Lebanese legal system, in the hope of establishing what they see as a "truly secular state."[6]

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[1] Interview with a Shi'i activist, conducted on July 21, 2014.

[2] On Beirut's southern suburb, see: Deeb, *An Enchanted Modern. Gender and Public Piety in Shi'i Lebanon*. (chapter 1); Harb, *Le Hezbollah à Beyrouth (1985-2005). De la banlieue à la ville*. (chapter 1); Deeb & Harb, *Leisurely Islam. Negotiating Geography and Morality in Shi'ite South Beirut*.

[3] On the Higher Islamic Council, see: Norton, *Amal and The Shi'a. Struggle for the Soul of Lebanon*.

[4] EI-Cheikh, "The 1998 Proposed Civil Marriage Law in Lebanon: the Reaction of the Muslim Communities;" Zuhur, "Empowering Women or Dislodging Sectarianism?: Civil Marriage in Lebanon."

[5] Ghamroun, "Le droit de la communauté sunnite libanaise saisi par les femmes."

[6] Interview with an activist of the Civil Society Movement [*tayar al-mujtem'a al-madani*], conducted on October 3, 2012.

Unlike these secular protestors, however, the Shi'i citizens who rallied in front of the Higher Islamic Council did not frame their revolt as *against* the shari'a tradition, but rather *within* it. Over the last few years, they worked with Shi'i jurists, explained why the current child custody laws are inadequate, and tried to articulate a solution within the framework of the Islamic sacred texts. This collective demand for *ijtihad* was not without precedent in Lebanon, however. In fact, Shi'i activists took their cue from a highly similar campaign led by their Sunni fellow citizens. About two years earlier, Sunni legal activist occupied the country's premier Islamic institution, *Dar al-Fatwa*, at the peak of a campaign to extend the legal duration of maternal custody. Yet while Sunni citizens succeeded in raising the age of custody to twelve years old (for sons and daughters), Shi'i have faced a peculiar set of challenges and obstacles, which I analyze below.

This dissertation examined what Shi'i legal thinking becomes when it is made an integral component of the judiciary apparatus of a secular state. I close my study with an account of these two shari'a-based advocacy campaigns, since many of the questions raised in previous chapters are refracted through them. Having explored the world of *hawza* scholarship as well as its reconfiguration in state-run Shi'i family courts, we are now in a position to appreciate the layers of complexity underlying the two parallel struggles waged by Lebanese citizens. Yet while the five chapters of this dissertation enabled us to better understand the judicial, religious and political stakes of these campaigns, such campaigns in turn illuminate the social implications of the legal transformations I examined in this study. Juxtaposing the opportunities and obstacles faced by Shi'i and Sunni campaigners, in other words, affords us insights into what the state appropriation of the Islamic legal tradition implies for those subject to it. I argue below that, contrary to what is commonly acknowledged, the Lebanese state does not only supervise and fund the adjudication of family conflicts in accord with shari'a jurisprudence; it also has de facto veto over the shari'a interpretations that govern family life. Beyond Islamic family judges, there is another class of state-employees who contribute to reshaping the current instances and future developments of the shari'a tradition: the secular politicians, and most specifically the members of the Lebanese parliament. In order to analyze their role, I begin with an account of the legal precedents for child custody allocation Sunni citizens established in Lebanon and elsewhere.

Figure #4. Shi‘i citizens demanding a reform of child custody allocation.
The Daily Star (October 7, 2013)

Islamic Precedents

In the early 2000s, the parameters of child custody [*hadana*] allocation were the target of mobilization and reforms in various countries across the Muslim world. Between 2004 and 2007, the lawmakers of Algeria, Morocco, Syria, Mauritania, Iran, and Qatar all enacted shari‘a-based legislation allowing divorced mothers to maintain custody of their children for a longer period.[7] Meanwhile, in Palestine, family courts raised the custody age in advance of legislative activity.[8] In important respects, these judges and lawmakers followed the example of other Muslim-majority countries that had prolonged the duration of maternal custody in previous decades, such as Egypt, Iraq, and Jordan.[9]

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[7] In 2004, Moroccan lawmakers extended the period of maternal custody until children reach the age of thirteen years old, regardless of gender (article 166). In Syria (2003; articles 146 and 147), maternal custody was extended until sons reach thirteen-year-old and daughters fifteen-year-old; in Mauritania (2001; article 126), it was extended until sons reach legal majority and until daughters consummate marriage; in Qatar (2006; article 173), until sons reach thirteen-year-old and daughters fifteen-year-old; in Iran (2002; article 1109), until children reach seven-year-old, regardless of gender. In 2005, Algeria passed an amendment stating that in case of divorce, guardianship [*wilayat*] should be conferred upon the parent to whom custody [*custody*] has been assigned by the court. The current law (dating from 1984; article 65) allocates child custody to mothers until daughters reach the capacity for marriage and until ten years old for boys. Welchman, *Women and Muslim Family Laws in Arab States*; and An-Na‘im, *Islamic Family Law in a Changing World : A Global Resource Book*.

[8] *Al-Quds*, November 2005. (Quoted in Welchman, *Women and Muslim Family Laws in Arab States*).

[9] In Iraq, women can claim the custody of their children (sons and daughter) until they reach ten-year-old (article 57, amended in 1978); in Jordan until puberty (since 1976); in Egypt until sons reach ten-year-old and daughters fifteen-year-old. Nasir, *The Islamic Law of Personal Status*; Mahmood, *Statutes of Personal Law in Islamic Countries. History, Texts and Analysis*; El-Alami & Hinchcliffe. *Islamic Marriage and Divorce Laws of the Arab World*; and An-Na‘im, *Islamic Family Law in a Changing World : A Global Resource Book*.

Many of these legal changes, however, were prompted by highly focused advocacy campaigns. Broadly speaking, these campaigns adopted two lines of argumentation.[10] Reform proponents argue that many rules of Islamic jurisprudence [*fiqh*] were formulated by scholars under historical conditions that no longer prevail. They point out, for instance, that since young children do not accompany their father to the workplace nowadays, there is no justification for separating the child of a split couple from his mother before the end of childhood.[11] Legal activists also observe that the prospect of losing child custody to an ex-husband deters numerous women from seeking divorce, leading some of them to tolerate domestic violence.[12]

The concept of child custody, however, inadequately captures what is at stake in these debates.[13] Like other Muslim activists, Lebanese use the Arabic word *hadana*—which not only means to hold custody, but also to hug, nurture and raise someone.[14] Islam prescribes that parents share all legal responsibilities associated with raising a child, whenever possible.[15] *Hadana* thus only emerges as a legal problem following parental separation (or parental death). In such cases, judges and jurists must decide which of the separated parents can best take care of children. Provided that both parents qualify as appropriate caretakers, the question is answered on the basis of the child's age.[16] Islamic authorities unanimously agree that mothers have the first claim to the *hadana* of newborns. Two verses of the Quran and one authoritative prophetic teaching [*hadith*] support this

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[10] Interview with a Sunni legal activist, conducted on July 15, 2015. See also Welchman, *Women and Muslim Family Laws in Arab States.*

[11] For an lengthier examination of this argument, see Ghamroun, "Le droit de la communauté sunnite libanaise saisi par les femmes," 210-211. In a similar vein, Moulouk Berry remarks that while the current legislation is premised on the idea that the husband must go to work to support his family, women's financial contribution to the family has often became a necessity in today's Lebanon. Berry, *Radical Transitions: Shifting Gender Discourse in Lebanese Muslim Shi'i Jurisprudence and Ideology*, 105.

[12] Interview with a Lebanese legal activist, conducted on March 17, 2013.

[13] As an Islamic concept, *hadana* differs from the Western notion "child custody" in that it deals exclusively with the physical and spiritual needs of a child. In Islamic jurisprudence and in most Muslim-majority countries, the protection of the child's assets and the administration of his/her financial affairs is dealt with under the concept of *wilayat*, which literally means power. On this distinction, see: Ebrehami, "Child Custody (Hizanat) under Iranian Law: An Analytical Discussion"; Mir-Hosseini, *Marriage on Trial. Islamic Family Law in Iran and Morocco*.

[14] On the meaning and implications of *hadana*, see Zahraa & Malek, "The Concept of Custody in Islamic Law," 155-156; Spectorsky, "Custody, child; " Mir-Hosseini, *Marriage on Trial. Islamic Family Law in Iran and Morocco*, 146; and Ebrehami, "Child Custody (Hizanat) under Iranian Law."

[15] Ebrehami, "Child Custody (Hizanat) under Iranian Law," 463. See also Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*. (especially chapter 4).

[16] The criteria one must fulfill to be considered an appropriate caretaker are listed in Zahraa & Malek, "The Concept of Custody in Islamic Law," 161-164.

reasoning.[17] A firm and long-standing consensus across Islamic schools of law thus holds that children (male or female) ought to live with their mother and embrace the "fullness of her affection" at least during the first two years of their lives.[18]

Beyond this area of agreement, however, lies a vast realm of debates. Since no Quranic verse nor any prophetic teachings specify when maternal custody shall end, the founders of the four standard Sunni schools of law (Shafi'i, Hanbali, Maliki, and Hanafi) issued different rulings using different methods.[19] In so doing, some of them introduced a gender bias into the equation. Thus, while Shafi'i scholars believe children must live with their mother until the age of seven and choose their caretaker afterward, Hanbalis jurists offer this choice only to male children.[20] The two other Sunni schools refuse to let children choose their custodian, but rely on a similar gendered logic. The Malikis prescribe that boys be transferred to paternal custody at puberty [*bulugh*], while requesting that girls stay with their mother until marriage. As for Hanafi scholars, most of them stipulate that the mother's claim to *hadana* expires when her sons reach the age of seven, and her daughters the age of nine.[21]

Since the founding of the Republic of Lebanon, Sunni Lebanese have been subject to this last (Hanafi) school of shari'a scholarship.[22] Thus, until recently, Sunni women involved in *hadana* lawsuits automatically lost custody of sons over the age of six and

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[17] These scriptural excepts establish that infants should be nursed and breastfed by their mothers until they reach two years of age. See: Zahraa & Malek, "The Concept of Custody in Islamic Law," 158-160.

[18] Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*, 113. (see also 116-118, 125, 128). See also Zahraa & Malek, "The Concept of Custody in Islamic Law," 158-160; and Spectorsky,"Custody, child," 1.

[19] On these four schools and their history, see Melchert, *The Formation of the Sunni Schools of Law*.

[20] Zahraa & Malek, "The Concept of Custody in Islamic Law," 165.

[21] For an exposé on the reasoning behind Hanafi jurisprudence, see Zahraa & Malek, "The Concept of Custody in Islamic Law," 167-168 and Ramadan "The Transition from Tradition to Reform: the Shari'a Appeals Courts Rulings on Child Custody (1992-2001)," 603.

[22] See Article #242 of Lebanese Law organizing the provision of justice in Sunni and Shi'i courts ("Qanun tanzim al-qada' al-shari'i al-sunni wa al-ja'fari") in Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya lubnan*, 75. Before the colonial founding of the Lebanese Republic, the Sunni Muslims of the Levant lived under the Ottoman Empire, which also enforced Hanafi legal doctrine. Yet recent historical work shows that local clerics occasionally departed from this doctrine. On this, see: Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*; Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840;" and Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*.

daughters over the age of nine.[23] But again, while these legal norms were enforced by the Lebanese state as "Islamic law" [*qanun al-islami*], they cannot be traced back to the Islam's sacred scriptures.[24] Rather, they are based on the scholarship of Abu Hanifa (699–767), founder of the Hanafi school.

With the help of clerics trained in Islamic legal sciences, Sunni Lebanese activists found in the gap between the state law and the scriptures a space for intervention. Working alongside jurists, "we realized that no text [*nas*] in the Quran or the *hadith* speaks about the age of *hadana*," one activist explained.[25] To understand the significance of this insight, we should remember that Islamic legal scholarship rests on an epistemological division between the realm of certainty [*yaqin*] and the realm of opinion [*zann*]. As I noted in chapter 3, the realm of certainty is bounded by the Quranic text and the corpus of the *hadith*, while the realm of opinion consists of imperfect and contextual human scholarship. In stressing that the sacred scriptures contain no discussion of age, activists accomplished a double-purpose: they disclosed the contingent foundations of the law enforced in state courts, while simultaneously drawing attention to other authoritative interpretations of the shari'a.[26] One of them put it this way:

> Because there is no text, they [the 7th-8th centuries jurists] develop their own jurisprudence. At that time, they reasoned that once a boy can wash himself, get dressed and eat, he no longer needs his mother. Young boys used to leave [the house] because they were working as traders [with their father]. Social conditions have changed now. […] So we [the group of Sunni activists] gathered information like that. We made sure that there is no text; that no text prohibits changing things [*yamn'a tughayir al-amr*]. What proves it is that Shafi'i jurists say something, but then Malikis jurists say something different. The rule of seven and nine years old is only one of Abu Hanifa's opinions. Others in the same school hold that boys stay with their mother until maturity, and girls until marriage.[27]

In a state-centered juridical system, however, contemplating the possibilities offered by the Islamic legal tradition does not lead one very far. The fourth chapter of this

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[23] Since the Ottoman Code of Family Law does not specify the duration of maternal custody, judges had to refer to Hanafi doctrine. The rule stipulating that maternal custody ends when daughters reach nine-year-old and sons seven-year-old is a dominant opinion in Hanafi jurisprudence. This opinion was also enshrined in the influential compendia of Hanafi law compiled by the Egyptian jurist Muhammed Qadri Pasha (1821-1888). Although this document—known as the Qadri Pasha Code—was never adopted as official legislation, it is the first reference of the Sunni judges with whom I worked. See: Pasha, *Ahkam al-shar'iyah fi al-ahwal al-shakhsiyah*. (Translated into English as Pasha, *Code of Mohammedan personal law according to the Hanafite school*). About the use of this code by Sunni judges in Lebanon, see Clarke "Sharia Courts and Muslim Law in Lebanon."

[24] See: Al-Zayn, *Qayanin wa qararat wa akhkam al-ahwal al-shakhsiya wa tanzim al-tawa'if al-islamiya lubnan.*

[25] Interview with a Sunni legal activist, conducted on July 15, 2015

[26] On this, see Ghamroun,"Le droit de la communauté sunnite libanaise saisi par les femmes," 211.

[27] Interview with a Sunni legal activist, conducted on July 15, 2015

dissertation showed that shari'a jurisprudence (both Sunni and Shi'i) was incorporated into the state legal machinery under French colonial rule. Insofar as Islamic courts have remained "part of the state's juridical system," it should not come as a surprise that affecting legal change requires more than the moral and intellectual credentials of a *mujtahid*. More than a command of *usul al-fiqh*, it involves entering the language game of secular politics—which in Lebanon, is marked by party discipline.

Hence, while Sunni activists are grateful to local clerics for their help with jurisprudential arguments, they do not deny that it is the career politicians of the first Sunni Lebanese party—*Tayyar al-Mustaqbal* [Future Movement]—who ultimately enabled the amendments to Sunni family law. Until the day these amendments were passed, legal activists vigorously lobbied party leaders and local politicians. "It was a tiresome process," an activist told me, "but we were helped by two ministers, not to mention Fouad Sinioura and Najib Mikati [two former prime ministers]."[28] In a well-researched article on this legal campaign, sociologist Samer Ghamroun also remarks that extending the legal duration of maternal custody became a real possibility only once major political figures started pressuring the Sunni judicial establishment.[29]

But even with strong political support, all amendments to the Lebanese legislation require parliamentary approval. And therein lies the rub. Less than a year after the country's premier Islamic institution—*Dar al-Fatwa*—gave its imprimatur to a bill extending the duration of maternal *hadana* beyond ten years, a handful of Sunni MP took action to ensure the project did not survive the parliamentary process. One of them drafted a counterproposal to water down the bill. Others argued that Christian, Shi'i and Druze MP cannot legitimately legislate on legal provisions applicable in Sunni courts. In order to break this years-long impasse, Sunni activists had to hold an occupation. On June 4, 2011, while the fate of the reform project was being settled, they occupied *Dar al-Fatwa*, declaring that they would not leave until the result of the vote was announced. The tactic paid off: after a seven-year campaign and "dozens of phone calls to Sunni politicians," the assembly voted to increase the age of *hadana* to twelve years old for both sexes.[30] The amendments became official in January 2012. By this time, Shi'i Lebanese had already launched their own campaign.

Shi'i Attempts

Even before staging the protest I described in this epilogue's introduction, Shi'i legal activists had already confronted a distinct set of challenges. The first challenge has to do with the scriptural basis of their legal tradition. As I noted in chapter 2, Sunni and Shi'i jurists do not derive their rulings from the exact same sources. While the jurisprudence of both Islamic denominations is based on the Quran and on the collection of deeds and sayings attributed to the Prophet Mohammed [*hadith nabawi*], Shi'i Muslims also infer

[28] *Ibid.*

[29] Ghamroun, "Le droit de la communauté sunnite libanaise saisi par les femmes."

[30] Interview with a Lebanese legal activist, conducted on March 17, 2013.

shari'a rules from a distinct scriptural corpus composed of the reported actions of the Twelve Imams [*imami hadith*].[31] Importantly, this additional corpus contains details as to when the responsibility of child care [*hadana*] should be transferred to the father.

Like their Sunni counterparts, all Shi'i jurists hold that children under two years old should not leave the care of their mother. Yet scriptural texts exclusive to Shi'i Islam suggest that at two years of age, children fall under the custody of their father. Other Shi'i sacred references imply that maternal custody extends until offspring reach the age of seven or nine years old, regardless of gender. Shi'i scholars might provide different readings of these texts (using the methodologies I described in chapter 3), but because these texts describe the life of the Imams, scholars cannot dismiss them. Thus, unlike their Sunni fellow citizens, Lebanese Shi'i activists could not claim that no sacred text limits the duration of maternal *hadana*. They had to operate within a different framework.

Multiple legal opinions have nonetheless grown out of this scriptural framework—so much that, today, no consensus exists among Shi'i jurists. Some hold that separated mothers should be the primary caretakers of boys below the age of seven and girls below the age of nine. At the opposite end of the spectrum, others rule that the period of maternal *hadana* expires as soon as children (boys and girls) become two-year-olds. Between these two poles, various intermediary positions coexist.[32] The working of Lebanese family courts partly reflects this plurality of opinion. The preceding chapter shows that, because Shi'i family law remains uncodified, judges can adjudicate *hadana* disputes based on their own interpretation of the shari'a. The age at which children of separated couples leave the home of their mother therefore varies depending on the judge's opinion.

But I also argued that the Lebanese Shi'i Court of Appeal typically overrules first-instance court decisions that differ from its own institutional position: that maternal *hadana* ends at two and seven years old (for boys and girls, respectively). This rule, which many Lebanese lawyers regard as an unwritten law, was enshrined in the Shi'i-based Iranian Civil Code until 2002. However, as in many other Muslim-majority countries, Iranian lawmakers recently raised the age at which boys are transferred to paternal custody. Like Sunni Lebanese, they removed one gendered aspect of the law, establishing that the mothers retain custody over their children (sons and daughters) until seven years of age.[33]

These parallels notwithstanding, it would be misleading to portray the Shi'i campaign as a mere attempt to replicate Iranian reforms, or a late offshoot of the movement

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[31] These words and actions have been reported and compiled four major compilations (often referred as the four books): *al-Kafi* by al-Kulayni, *Man la yahduruhu al-faqih* by Shaykh al-Saduq, and *Tahdhib al-ahkam* and *al-Istibsar,* by Nasir al-Din al-Tusi.

[32] Some of these positions are described in Ebrehami, "Child Custody (Hizanat) under Iranian Law: An Analytical Discussion," 467-468.

[33] Shid, "Selected Aspects of Iranian Family Law;" Yassari, "Iranian Family Law in Theory and Practice;" and Ebrehami,"Child Custody (Hizanat) under Iranian Law: An Analytical Discussion."

launched by Sunni activists. The campaign that cumulated with a demonstration in front of the Higher Islamic Council also reflects developments specific to the Lebanese Shiʿi milieu. Sociologist Moulouk Berry observes that since the 1990s, many Shiʿi women activists have framed their grievances as demands for *ijtihad* and, accordingly, worked toward shariʿa-based solution with the help of Islamic scholars.[34] A symposium bringing together activists and Shiʿi jurists stressed, for instance, the necessity of issuing shariʿa rulings that address "the significant issues and problems arising from the urgent needs created by the reality of contemporary lives."[35] In a similar venue, Shiʿi jurists were asked to "remove the accretions, which were added to the [scholarly] texts as a result of inadequate, even sometimes, patriarchal systems."[36] Although the Shiʿi Lebanese who took to the street in October 2013 reflect these larger developments, they articulated a more concrete set of demands: they asked that Islamic family judges allow children of separated couples to live with the mother for a longer period of time.

In pursuing these demands, however, activists entered a curious labyrinth. Since Shiʿi family law (unlike Sunni law) has never been codified, or approved by the Lebanese Parliament, or even agreed upon by the judges who enforce it, a question inevitably arose —where to begin? Throughout this dissertation, I have argued that Shiʿi family law fluctuates with the pronouncements of living shariʿa scholars. It therefore seems logical to start such a campaign by knocking at the door of these scholars. While activists did precisely this in meeting with Lebanon's most prominent Islamic scholar, the late Mohammed H. Fadlallah (1935–2010), the campaign leader insists that they did not make this decision strategically. Since many of the participants follow the rulings of Fadlallah "in everything ranging from prayer to manicure," she told me, soliciting his opinion on the issue seemed like the most natural place to begin.[37]

Fadlallah's official jurisprudence on the thorny custody question prescribes that children (sons and daughters) stay with their mother until the age of seven. In meeting with the Shiʿi activists, he nonetheless explained that scriptures can be read in a way that allows scholars to extend the period of maternal custody up to nine years old (for daughters only). He also pledged his support for extending the duration of women's custody in family law legal decisions.[38] Activists also visited the official Shiʿi mufti of the Lebanese Republic, as well as Abel-Amir Qabalan, the deputy head of the Higher Islamic

[34] On these developments, see: Deeb, *An Enchanted Modern. Gender and Public Piety in Shiʿi Lebanon.*

[35] Berry, "Gender Debates in Lebanon: Muslim Shiʿi Jurisprudence in Relation to Women's Marital Sexual Rights," 136.

[36] *Ibid*.

[37] Interview with a Shiʿi legal activist, conducted on June 19, 2013.

[38] Interview with a Sunni legal activist, conducted on July 15, 2015; Interview with a Shiʿi legal activist, conducted on June 19, 2013. The women who demonstrated in front of the Higher Islamic Council also told the journalist that M. H. Fadlallah supported their initiatives. See: Strum B., "Shiite women call on council to revise custody laws," *Daily Star*, October 7, 2013.

Council. None of them were "against the idea."[39] Fadlallah, however, warned the activists that within the current arrangement of legal authority, clerics like him wield little influence over family judges.

Like their Sunni fellow citizens, Shi'i activists were thus forced to carry their campaign into the political arena of the state. The family law judges they met (including the president of the Shi'i court) all asserted that only a law passed by the Lebanese Parliament could bring permanent legal change. Using their personal connections, activists contacted the parliamentary leaders of the two Lebanese Shi'i political parties: Hezbollah and Harakat Amal. Some activists thought that the political and religious ties between Hezbollah and the Iranian regime could actually benefit the reform project; Iranian lawmakers had, a few years earlier, extended the period of maternal custody.[40] Activists hoped that Hezbollah politicians would agree to enact a similar legal reform in Lebanon. Party leaders, however, refused to support the initiative. To justify their position, they claimed that politicians should not interfere with the clerics' sphere of authority.[41]

We could presume that Hezbollah politicians wanted to avoid encroaching on the power that Harakat Amal (the second Shi'i party in importance) exercised over the Shi'i clerical establishment, most notably the family law judiciary. The leaders of Harakat Amal, however, openly refused to meet with the activists.

> We tried many times to get an appointment with Nabih Berri [the leader of Harakat Amal and current Speaker of Parliament], since we know he exerts influence over them [Shi'i judges], but he did not grant us an appointment. None of them supported us. We went around the whole country, we did not get a thing.[42]

In response to this political stalemate, Shi'i activists held the demonstration in front of the Higher Islamic Council that I described in the introduction. Standing before a handful of journalists, one protester read a statement written for the occasion: "The injustice afflicted on women regarding the issue of the age of custody is no longer bearable. We came today […] to say aloud, 'Stop taking women's and children's rights lightly, and enough with patriarchy under the cover of religion.'"[43] She also stressed that prominent Shi'i clerics were sympathetic toward the idea of extending maternal custody

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[39] Interview with a Shi'i legal activist, conducted on June 19, 2013.

[40] Hassan Nasrallah, Hezbollah's General Secretary, also serves as the official Lebanese representative [*wakil*] of Ayatollah Ali Khameini, the current Supreme Leader of the Islamic Republic of Iran. On the political and religious ties between Iran and Hezbollah, see Abisaab & Abisaab. *The Shi'ites of Lebanon. Modernism, Communism, and Hizbullah's Islamists*; Shaery-Eisenlohr, *Shi'ite Lebanon*; Shanahan, *The Shi'a of Lebanon. Clans, Parties and Clerics*; and Mervin, "Charisme et distinction : l'élite religieuse chiite."

[41] Interview with a Shi'i legal activist, conducted on June 19, 2013.

[42] Interview with a Sunni legal activist, conducted on July 15, 2015

[43] Quoted in Strum, "Shiite women call on council to revise custody laws," *Daily Star* (October 7, 2013)

duration and ended on a note directly addressed to the judicial establishment. "We will take the street again," she read, "the Lebanese woman will no longer keep silent."[44]

Less than six months later, however, the legal campaign initiated by Shi'i Lebanese citizens had been dissolved—or as its leader told me, "suspended indefinitely."[45] After six years "we haven't been able to get started," she says retrospectively, "we haven't been able to find a breach in the wall."[46]

Ijtihad and Change

In the few reminding pages, I shall analyze this episode of Lebanon's legal history as an entry point into the problem-space that this dissertation seeks to open up and explore. On several occasions in the preceding chapters, I stressed that *ijtihad* (understood as scriptural interpretation) is often perceived as Islam's capacity to address the changing demands of the present. Egyptian modernist thinkers, Iraqi anti-colonial activists and Iranian constitutional jurists articulated different visions of change, yet each of them was framed as *ijtihad* in one way or another. In contemporary Lebanon, we have seen *hawza* seminarians nourish the hope that scriptural reinterpretation could help solve social and political ills plaguing the country. Outside Islamic seminaries and circles of legal activism, many Shi'i citizens proudly claim that their regime of family law is based on *ijtihad*, and thus better disposed to incorporate change.[47]

Western scholarship has also stressed the interdependency between *ijtihad* and change, in both Sunni and Shi'i Islam. Until recently, historians assumed that Sunni jurists gave up on shari'a interpretation in the 9th century, and since then, have blindly imitated the "doctrine established by [their] predecessors."[48] The "closing of the doors of *ijtihad,*" as the event came to be known, became an influential schema through which to explain the "stagnation" of Islamic institutions and culture.[49] In the last three decades, historians have revisited these Orientalist tropes. Some have shown that Sunni jurists never stopped performing *ijtihad,* and that Sunni law never stopped changing.[50] Others historians have emphasized that *ijtihad* has been the driving principle of Shi'ism since the end of the 18th century, and that the notion of *marja'iyya* keeps Shi'i shari'a discourse open to

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[44] *Ibid*.

[45] Interview with a Shi'i legal activist, conducted on July 21, 2014.

[46] *Ibid*.

[47] Anthropologist Morgan Clark made the same observation. Clarke,"Sharia Courts and Muslim Law in Lebanon."

[48] Coulson, *A History of Islamic Law*, 80. See also Schacht, *An Introduction to Islamic Law*, 75; and Liebesny,"Stability and Change in Islamic Law," 19.

[49] Coulson, *A History of Islamic Law*, 73.

[50] Hallaq, "Was the Gate of Ijtihad Closed?"; Peters, "Idjtihad and Taqlid in 18th and 19th Century Islam."

emerging aspirations and innovations.[51] According to these scholars, what impedes the exercise of *ijtihad* and legal change nowadays is not blind imitation, but rather the modern process of codification. Legal codification is today conceptualized as what stabilizes Islamic family law, causing it to lose its "ijtihadic plurality."[52] Whenever codified (as it is in most Muslim-majority countries), the shari'a supposedly loses its inherent capacity for change.

Lebanon is an interesting legal terrain on which to explore these assumptions. As a result of the contingent historical forces I described in chapter 4, codification became the fundamental difference between Sunni and Shi'i family laws. While the Sunni legal regime is largely codified, Shi'i family law remains unwritten and predicated on the *ijtihad* of *hawza*-trained judges. Yet if we analyze the two parallel mobilizations from this angle, we are left with an odd paradox: the uncodified and pluralistic Shi'i law proved comparatively reluctant (if not downright hostile) to accommodating the shari'a-based demands of Lebanese citizens regarding child custody allocation. While Sunni campaigners achieved in extending the duration of maternal custody, the Shi'a who attempted to introduce similar measures received a flat refusal, eventually abandoning their struggle. The leader of the Sunni campaign was herself caught in this paradox. "When we started," she once told me, "I thought the Shi'a would be the first sect to be on board with the idea [*i.e.*, to modify the rules of custody allowance], because the Shi'a, unlike the Sunni, have not closed the door of *ijtihad*, I mean they can exercise *ijtihad*."[53]

Some of the arguments I made in this dissertation should help us unravel this paradox. While examining the interpretative efforts of *hawza* scholars in the first part of this work, I suggested that *ijtihad* is not as much a tool of change as it a practice aimed at extending the authority of the shari'a into a realm of possibilities that did not exist at the time of the Imams. In the specific case of Shi'ism, *ijtihad* is how the invisible Imam reaches the faithful. While the performance of authoritative legal reasoning often inspires, accelerates or even triggers political and legal transformations, framing *ijtihad* (or its absence) as a matter of change is to impose a particular temporality on its practice.[54]

The chapters comprising the second part of this dissertation show that neither Sunni nor Shi'i family law constitute autonomous legal discourses. To compare them in terms of *ijtihad* (or codification) is to forget that, today, both are deeply embedded in the operational logic of the Lebanese state. Recall, for instance, that the success of the Sunni

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[51] Walbridge, *The Most Learned of the Shi'a. The Institution of the Marja' Taqlid*. Zubaida, *Law and Power in the Islamic World*; Momen, *An Introduction to Shi'i Islam.*

[52] Hallaq, *Shari'a: Theory, Practice, Transformations*, 449. See also: Messick, *The Caligraphic State*; Mir-Husseini, *Marriage on Trial. Islamic Family Law in Iran and Morocco*; Rosen, *The Anthropology of Justice. Law as Culture in Islamic Society*; and Tucker, *Women, Family, and Gender in Islamic Law.*

[53] Interview with a Sunni legal activist, conducted on July 15, 2015

[54] On this, see also Agrama, "Ethics, tradition, authority: Toward an anthropology of the fatwa" and Agrama, *Questioning Secularism. Islam, Sovereignty and the Rule of Law in Modern Egypt*. (especially chapter 5).

campaign had nothing to do with the codified form of the legislation, and everything to do with the support of secular politicians institutionally authorized to modify the law applied in Islamic courts. The Shi'i campaign failed, by contrast, because activists did not manage to win over Lebanese party leaders and members of parliament. Taken together, these two legal campaigns shed further light on a key argument I made over the course of this dissertation: that understanding what Islamic law has become in modern times requires focusing on the institutional apparatuses in which it operates, rather than on the form it takes (codified or uncodified).

Yet the juxtaposition of these two stories also taught us that the secular state plays a far greater role in the administration of Islamic law than it is commonly acknowledged. The state does not only provide the necessary infrastructure to ensure that family disputes among its Shi'i citizenry are settled within the legal framework of this Islamic branch. It also grants itself the authority to decide what shari'a jurisprudence can be applied. In matters of marriage, divorce, custody and inheritance, Lebanese citizens can obtain non-binding opinions [*fatawa,* sing. *fatwa*] from local clerics or *hawza* scholars. Yet only state-appointed clerics, in their capacity as family law judges, can issue legally enforceable decisions on these matters. And as the legal campaign on child custody has shown, modifying the shari'a-derived laws applied by these judges is impossible without the active support of state politicians.

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Although the shari'a rulings issued by scholars trained in Shi'i legal methodology have little influence over state family courts, it would be inaccurate to say that *ijtihad* has disappeared from the Lebanese religious landscape. To begin with, this dissertation has shown that shari'a scholars continue to revisit established Shi'i jurisprudence in light of important contemporary issues. *Hawza* scholars, however, are not the only ones to conceive of themselves as practitioners of *ijtihad*. Shi'i family judges, too, identify *ijtihad* as a key aspect of their work—one that distinguishes them both from their Sunni counterparts and their colleagues serving in secular courts. Yet considering what I have said so far, it is worth asking what exactly judges mean by *ijtihad.*

I noted above that Shi'i family law judges did not support the campaign around maternal custody. Activists mentioned that judges dodged the issue, claiming that only the Lebanese Parliament can pass a law prolonging the legal duration of custody. Judges were right about this. In interviews with me, however, many of them went further and articulated their disagreement with the reform project. To my surprise, this disagreement had nothing to do with the shari'a interpretations the activists asked them to endorse. Insofar as judges are trained as Islamic scholars, I expected them to either justify the interpretation enforced by the court of appeal or invalidate alternative opinions. Instead, they expressed concerns that the proposed reform would impact their authority as judges. While I cannot assess whether the judges' objections influenced the Shi'i politicians' defense of *status quo*, I nonetheless close this epilogue with an analysis of this opposition, since it provides insight into what *ijtihad* becomes when it manifests in state apparatuses.

The president of the Shiʿi appellate court was the first to tell me that, within the parameters of the Shiʿi legal tradition, the "women's demands" about maternal custody were simply "impossible to fulfill."[55] Throughout the long conversation we had in his wooden office on the top floor of Beirut's Shiʿi courthouse, he showed no animosity toward the advocacy campaign, but asserted that the project was at odds with the functioning of Shiʿi judgeship. One of his colleagues serving on the appeal court, who I interviewed later, did not conceal his dislike of what he considered a "chaotic [*faoudaoui*]" campaign of women "working against their own interests." But instead of specifying the ways in which extending maternal custody runs against "women's interests," he shifted focus and pursued the president's line of reasoning. "We do not have a written law [*qanun maktube*]," he said, "so it's impossible to modify anything […] this is just not realistic; it goes against *ijtihad*."[56]

The idea that extending maternal custody goes against *ijtihad* puzzled me. But only weeks later, in the living room of another judge who had articulated a similar version of this argument, I found an opportunity to return to this question. In what sense, I asked between two sips of tea, does the demands of the Shiʿi legal activists go against *ijtihad*? He responded:

> It's simple. The project is not possible, because the Shiʿi judge has much more freedom [*hurriya*] than Sunni judges. We don't have a code […] For all the questions and problems there is more than one answer. It could be A, B, C, or D. Shiʿi law [*al-qanun al-jaʿfari*] works this way. And this is what we call *ijtihad*.[57]

Together, these explanatory remarks suggest that relocating the practice of *ijtihad* into state apparatuses sets in motion a curious dialectic process. The judges I interviewed oppose the reform project because it reveals a "Sunni" approach, as one of them said.[58] By this, they mean that the activists' project assumes family law is contained in a code, the elements of which are modifiable with parliamentary approval. Since "Shiʿi law" has not been compiled in such a code, judges argued, extending maternal custody up to a fixed age would necessarily hamper the "freedom" of the judge. In other words, *hadana* disputes could no longer be settled in accordance with the shariʿa opinion of each individual family judges.[59]

Judges, however, pushed the reasoning a step further, adding that maternal custody reform "goes against ijtihad" by limiting their judicial latitude. This is no small statement —especially considering that *ijtihad* is often described as the inner essence of Shiʿism. In making this statement, family judges dissociate themselves from the other Lebanese Shiʿi clerics who supported the activists' initiative. But what is particularly revealing about the

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[55] Interview with the Shiʿi court president, conducted on December 13, 2012.

[56] Interview with a Shiʿi judge, conducted on December 16, 2012.

[57] Interview with a Shiʿi judge, conducted on April 23, 2013.

[58] *Ibid.*

[59] On this, see chapter 5.

disagreement between family judges and independent clerics is not so much their views on child custody; instead, it is how both sides conceive of the practice of *ijtihad*. While many clerics understood the demands of Shi'i activists as a call for *ijtihad*, family law judges perceived them as a threat to *ijtihad*. Hence, everything happens as if the concept of *ijtihad*, in Shi'i Lebanon, has taken on a double meaning. Clerics defines it as "deducing a legal opinion from the whole body of principles of the faith," while for family judges, it means enjoying judicial latitude.[60]

These two meanings of *ijtihad* can, of course, work in tandem. In chapter 5, I showed that in the absence of a codified law, several Shi'i family judges enjoyed enough latitude to adjudicate custody disputes by drawing on their own interpretation of the sacred texts. However, we saw that the court of appeal often overrules judgments allowing divorced women to retain custody after two years (for boys) and seven years (for girls). In this epilogue, I narrated the legal struggle of Shi'i Lebanese citizens protesting against the shari'a norms enforced by Islamic family courts. Yet in claiming that the duration of maternal custody can and should be extended, these Lebanese citizens did not only challenge the Shi'i judicial establishment; they also brought the two meanings of *ijtihad* in conflict with one another. Judges ended up opposing an initiative based on the *ijtihad* of prominent Shi'i authorities not because they disagreed with these interpretations of the scriptures, but largely to preserve their judicial latitude, which they understand as a sign of *ijtihad*.

This suggests that transplanting Shi'i legal thinking into the domain of the state does not only transform Islamic law into a set of fixed rules. The process also turns the practice of *ijtihad* against itself—against *hawza*-trained clerics' attempts to interpret the shari'a in ways that help the faithful lead pious and decent lives.

[60] http://english.bayynat.org/Fatawa/ijtihad.htm#ijt

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