



Georgetown University Law Center
Scholarship @ GEORGETOWN LAW

2012

Of Wife and the Domestic Servant in the Arab World

Lama Abu-Odeh

Georgetown University Law Center, la34@law.georgetown.edu


Georgetown Public Law and Legal Theory Research Paper No. 12-135

This paper can be downloaded free of charge from:

<https://scholarship.law.georgetown.edu/facpub/1072>

<http://ssrn.com/abstract=2147832>

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: <https://scholarship.law.georgetown.edu/facpub>

 Part of the [Comparative and Foreign Law Commons](#), [Family Law Commons](#), [Family, Life Course, and Society Commons](#), [International Law Commons](#), and the [Law and Gender Commons](#)

Short Introduction

I will not recount to the reader the various laws that are typically referred to when the topic of the legal status of women arises. I will especially not wax eloquent on the laws of Sharia as one would typically do when discussing the legal status of women in the Arab World. I will not do so because it is on the one hand quite tedious, for anyone can log online and do research on any number of laws on this topic. The information revolution has lit a light of basic knowledge for all of us making datum on any topic that strikes our fancy accessible at the click of a button. The reader doesn't need a law professor to perform such a basic function for her. Nor will Sharia *per se* be my main concern not because I deny its importance but because the Westerner writ large seems always happy to step in and feel pity for the "Muslim woman" seen to be at the mercy of a cruel and pre-modern law that enslaves her and leaves her helpless in the grip of Muslim male patriarchy.

I should assert though to avoid common misunderstandings on the relevance of Sharia to modern women in the Arab World that a) Shari's relevance to the lives of modern women in the Arab World has been largely confined to the area of family law, b) in the modern nation state Sharia has been codified, i.e., certain rules derived from Islamic jurisprudence on the family have been selected and passed as laws, each nation state having its own unique combination of such rules, c) the courts and the judges who adjudicate disputes on family law are either secular courts/judges, or judges trained in state-run judiciary institutions with specific instruction on the state-based modern understanding of what Sharia is and d) the code, rather than Quran, the prophetic traditions, or the school of Islamic jurisprudence, is the primary source of the law. The latter constitute secondary sources.

Economy Not Culture

Instead of providing a formalist treatment of the various laws that relate to women's status, I will provide the reader with a complex picture of how legal rules interact with the larger economic organization of the region, concentrating on family law rules. My purpose in doing so is to take the discussion of law out of the culturist domain and embed it in the economic one without denying the cultural orientation of the rules in the first place (based on Islamic texts). In particular, I would like to show that Islamic rules on the family yield different outcomes depending on the nature of the economy they intervene in. While in the West, the availability of cheap domestic work is thought of as a supplement, and an important one at that, to female paid employment, this wisdom doesn't seem to hold true in the rentier economy of the Arab World. There is little paid employment available for women beside domestic work for rural or poor urban women. Most paid employment for women with higher education seems concentrated in the public sector, which has been undergoing shrinkage as a result of the prevalence of the ideology of privatization of the economy. The supply of local domestic workers is compounded with an even bigger supply of very cheap foreign domestic workers hailing from various Asian and African countries such as Philippines, Indonesia, Sri Lanka, Malaysia, Ethiopia, Ivory Coast, etc. The wages of such servants are so low that a good one seventh of all households in the Arab world employ either a local or a foreign domestic worker. Even for those who couldn't afford them, hiring a domestic servant is something to aspire to as one would rise in the world. Educated wives with no prospects for public employment in that region are caught in the (enviable?) position of having cheap maids with nowhere to go for paid employment. Rentier economy is such that it could create a great deal of wealth with little general employment. The wealth increases the aggregate purchasing power without the generalized experience that the gain in wealth was associated with labor performed. In a nutshell, the economy affords many wives with cheap maids without offering them jobs to occupy to make hiring such maids "socially meaningful".

My goal in this short paper is to capture for the reader the gains and losses associated with Islamic based family rules for the parties concerned in *the context of an economy* that has a generous supply of domestic work and a sparing one of female public employment. I do so from the perspective of the wife who is able to hire a domestic servant.

The Household Not Woman

In order to do so, I propose to start with the category “household” instead of “woman” and treat it as my primary unit of analysis. I do so for two reasons: First, the household is the primary place in which the category “woman” starts to break down into several women competing for power and resources dislodging the feminist political desire for a unified category that is the bearer of a political program for “women’s empowerment” in confrontation with men. This occurs through the figure of the “domestic servant” who triangulates the wife’s relationship with the husband inside the domestic household. Introducing the “domestic servant” into the discussion of the “legal status of women in the Arab World” (mediated through the category of the “household”) allows me to do the following: a) take the figure of “women *in* the Arab World” seriously without privileging nationalism or culture (i.e. subverting the common practice of discussing the wife’s (Arab) legal status without including that of her domestic servant (often non-Arab: Sri Lankan, Philippino, Indonesian, etc), b) stress that including the domestic servant in the analytics of gender in the Arab World allows us to *better* understand the plight of the wife under family law. This is so because the wife partially transfers to the servant the legal duty of “obedience” to her husband and at the same time shares with the servant the benefit of spousal support by the husband (the servant’s wages) and, c) following a) and b) marshal into the discussion the legal status of the domestic servant who while sharing the costs and benefits of family law is not governed by it, but whose own entry into the household is mediated by a specific rule structure, mainly, contract law (the contract of employment), as well as state regulatory regimes (of her country of origin as well as that of the country where she temporarily resides to work). If we put the servant’s contract of employment (written in the case of foreign workers, oral in the case of local ones) as well as the various regulations that touch on her labor back *inside* the household, we end up with the law of the “household” instead of family law, in effect, reverting to a medieval legal norm of categorizing the “private”. As it should be, for this allows us to capture better, given the very low rate of female public employment in the Arab World, the “legal status of women in the Arab World’ as primarily a question of female domestic labor and the ways in which this labor is commodified, exchanged, and circulated.

Second, the category “household” is a subcategory of the larger economic mode, which in turn could be seen as a macro household, interacting with the familial one dynamically with reciprocal feedback from each, and is therefore in my view more appropriate analytically in situating women legally. For instance, a windfall of gain (rent) on the macroeconomic level accrues to the oil producing countries in the gulf out of selling oil in the international market (which then circulates in the rest of the Arab World in the form of remittances from export labor to the oil producing countries and oil-wealth-based investment capital in the non-oil producing countries). The strategic value of this commodity preserves its price at a relatively high level over time especially considering the fact that its transformation into a consumable commodity requires relatively low labor input (mostly performed by cheap male labor imported from roughly the same countries that export domestic servants). If we take the marriage contract as one of the founding acts of the domestic household, then it is hard to ignore the fact that the “price of marriage” has increased exponentially over the years in the Arab World as a reflection of general economic trends. The price attached to a woman’s dowry, her expectation of the husbands income, its prospective stability and security, the assets the husband brings into the household such as furnishings, have become inflated over time as a result of the circulation of oil wealth in the Arab World. If we compare that to the incredibly low wages given to domestic servants and their stability over time, we can’t help but conclude that a windfall of “surplus labor” accrues to the household, primarily the wife, from the domestic servant. In other words, while the wife’s “price” has increased as a reflection of the generalization of oil wealth, that of the servant has remained steadily low as a reflection of the depressed economies from which these servants hail and the nature of international labor relations that ensues.

There Is Also Sex

The household is not just the site of labor circulation/commodification but also sex. Before sex enters the household to be captured by family law, it is already circulating as an effect of the distributive work of criminal law rules (on crimes of honor/passion, adultery, abortion) constricting and distributing sex and sexualities in a particular form so that they

arrives at the date of the marriage contract ready to be commodified. Two rules in family law bring about this effect, both of which have to be contended with if our picture of the household is to be made complete, the rule on dowry and the rule on obedience. The rule that captures sex *at the date of the contract* is that of dowry: “the man is under the legal obligation to pay dowry to the woman at the date of contract”. While criminal rules ensure the penalization of pre-marital sex for women (and less so for men), family law allows women to bargain their socially and legally enforced virginity in the form of dowry. Dowry is the commodified expression of women’s pre-marital virginity payable at the initiation of marriage.

The rule in family law that commodifies sex *during* marriage is the wife’s legal duty to her husband to be sexually available to him. In return, she earns her right to spousal support. It is not clear how much of that circulates “down” to the domestic servant. While incidents of rape and sexual abuse by husbands of domestic servants are reported by human rights agencies as well as by anecdotal accounts, it is not clear how prevalent these practices are. Evidence suggests they are rare.

A Short History of Dowry

There is a history to the way the dowry became commodified in the Arab World (with consequences for wife’s maintenance). In village economies, before the petro-dollar swept the sleepy village with its luring promises of consumption, a dowry given to a woman was often an asset valued by village life (a goat or two, a piece of land, etc). These were assets that were productive of more assets in the village economy. Women worked on their dowry/land, husbanded their dowry/animals, and reaped the profit they yielded which was legally their own. This had a spill-over effect on wife’s maintenance as an obligation of the husband’s in return for which he had sexual access to the wife. It lessened greatly the stakes for women associated with such financial support because women were productive agents with income of their own.

The cash economy of the petro-dollar changed all that. The daughters of these women moved to the city to inhabit a middle class apartment as “housewives” (or the city moved to the village). A dowry paid in cash, furnishings and jewelry lubricated their entry into the

urban, insular, often jobless, middle class existence. The new urban middle class wife typically deferred the cash part of her dowry to be payable upon divorce as a form of security, settling for furnishings and jewelry payable upfront. Islamic family law gave the husband the right to no-fault divorce while limiting the woman's right to grounds-based divorce¹. Upon divorce a woman was entitled to a limited amount of financial support/reimbursement. Deferred dowry, always in cash, would come in handy under such circumstances.

The move to cash dowry, mostly deferred as security, raised exponentially the stakes associated with wife's maintenance and I would presume consequently those associated with sexual availability making the overall pull of obedience that much stronger in order to survive. Turning cash and jewelry into "productive" assets through investment in the urban economy would require overcoming the wall that separated the urban household from the urban economy, specialized skills that the new urban housewife in her insular life seemed unqualified for; without the assistance of her husband that is.

The paradox is that while wife "price" may have become inflated as a result of the petrodollar economy, the wife's bargaining power in relation to her husband decreased because of the erosion of the productive quality of those assets that she was now bringing to the household. Indeed, the inflation of the "price" of marriage produced a prohibitive effect on the event of marriage itself: fewer and fewer men could afford to enter into marriage, producing the much-discussed phenomenon in the Arab World: the single woman in her thirties ready and willing to be married with no men available to make the right bid for her asking price for marriage. This new single woman ("spinster") lives in the vortex of the newly "priced" rules: single, in her thirties, and a virgin (may or may not be employed).

Where Labor and Sex Meet

¹ Tunisia gives women no fault divorce. Several Arab countries recently introduced a new form of divorce "Khula" which allows women no-fault divorce in return for giving up their financial rights (deferred dowry) upon divorce.

The obedience rule is where labor and sex meet²². The introduction of the petro-dollar economy as we have seen increased the pull of sexual obedience for the wife as a consequence of her increased financial dependence on her husband itself a function of the erosion of the productivity of the assets she brought into the marriage. On the other hand, it reaped her windfall of labor, the result of the depressed value of the servant's wages and exclusion from labor regulations that left her at the mercy of the familial demands all her waking hours. One would imagine that at least in the latter case, the wife would feel "freed" from the obedience leg of performing domestic labor. In fact, quite the opposite and for the following reasons: a) the transfer of the performance of domestic labor to a lowly paid domestic servant paid for by the husband intensified the husband's expectation of such performance whose management was delegated to the wife: performed by the servant, it remained the responsibility of the wife. B) What could have been cause for gender friction if the wife had performed it (the wife demanding that the husband assist her with household chores in an attempt to improve her position in the household) was converted into class friction in which they were both allied against the servant. In other words, the formal articulation of wifely duty remained the same because it was never politicized in the form of the "battle of the sexes"; C) Indeed, the definition of what constitutes wifely duties may have been even taken a stricter turn (more is expected of the wife). This is so because the wife's performance of domestic work is priced higher than that performed by the domestic servant given the comparative rule structure that govern their respective lives giving wives higher bargaining power vis a vis the husband. The tightly reciprocal articulation of the wifely duties and rights in marriage (obedience for financial support,

²² In general family laws in the Arab world posit a reciprocal legal relationship between husband and wife: husband supports wife financially (food, drink, shelter, medical treatment) in return she makes herself sexually available to him (obedience). It is important to assert that the woman keeps the assets that she brings into the marriage as hers and hers alone ((property, wages, and financial instruments). In other words, a wife has an independent legal personality from that of the husband and marriage does not change that in any way.

Although "Obedience" as the wife's duty to the husband has been legally "formalized" as the duty to make herself sexually available to him, the social norm, has included domestic work as part of the wife's duty. Courts tended to grant only women who come from households with domestic servants an entitlement to servants in their marital household to be paid for by the husband. Whether providing domestic work is formally part of the wife's legal duty, it is very much a powerful social norm.

deferred dowry for divorce) combined with the wife's capacity to mobilize the forces of familial pressure to improve her position in the household are not available for the domestic servant given her heightened insular status and the extreme terms of her contract. This led to the redefinition socially of what constituted domestic work with spill-over effect on the definition of wifely duties. More was now socially expected of the wife given the "cheapness" with which the work could be transferred to the servant. Perversely enough, the wife's class power came to imprison her further in her gender trap; D) the presence of cheap domestic service maintained/increased social expectations of social norms expected of both genders (hospitality) which would have otherwise eroded or been greatly compromised had cheap domestic labor not been available and gender friction arose as a result. Moreover if women were inclined to help other women perform domestic labor in social gatherings (as a form of gender solidarity), they were far less inclined to do so when a servant was performing those chores (an effect of class friction). The total burden ended up being intensified in the servant with wife as her close manager responsible for her performance; and E) Given the above, it is safe to conclude that even though the wife and the servant were formally separated by different rule networks applying to each producing differential bargaining powers (family law for the wife, employment contract for the servant), a rule spill-over effect was taking place with the duty of "obedience" (to the husband) being now that of the servant (to the husband and wife) and the "obedience" of the servant (to the husband and wife) as a total sum of the servant's terms of employment being that of the wife (to the husband). In other words, the servant had become a split-off fragment of the wife and the wife a split-off fragment of the servant. Needless to say, the more exacting weight of class friction relative to the weight of gender friction, giving the wife a much higher bargaining power in relation to the servant, tips the overall burden of obedience in favor of the wife at the expense of the servant, and in favor of the husband at the expense of wife and servant.

Exit

Unlike the wife, the domestic servant exited the system once her contract of employment terminated. With all the undignified life she had led during her term of employment, she exited the spouses' "marriage" with assets (her wages) which if carefully administered

would earn her bargaining power in the marriage she would rejoin or enter into back home. At the end of her servant's employment, the wife may have practiced a great deal of class power over her servant, but her labor of management and as stand in for servant in case of emergencies remained unrewarded. Whatever work the wife did *was* in return for her food and upkeep; all of which the servant was entitled to plus her wages.

