

Book Reviews

Off the Straight Path: Illicit Sex, Law and Community in Ottoman Aleppo, by Elyse Semerdjian, Syracuse: Syracuse University Press, 2008, 247 pages.

REVIEWED BY MARY ANN FAY

Elyse Semerdjian's *Off the Straight Path: Illicit Sex, Law and Community in Ottoman Aleppo* is a pioneering study of sexual crime and punishment during the Ottoman period based on records in the archives of the Islamic courts of Aleppo, Syria. Her work straddles several disciplines including women's history, social history, and Islamic legal studies and makes significant contributions to each. Her subject of research is *zina*, which has multiple meanings including adultery, prostitution, procurement, sodomy, bestiality, and rape. Each of these are serious crimes under Islamic law that could result in draconian punishments including stoning. However, Semerdjian discovered in her research that, during the Ottoman period, offenses that appeared to be *zina* were punished by fines that were imposed according to the class and income of the defendants. Based on her examination of the criminal cases brought before the *qadis* (i.e. judges in the Islamic courts) in Aleppo, she also found that most of the time, offenses were not defined in the court records as *zina*, allowing the *qadi* to avoid imposing the harshest sentences on the defendants. Semerdjian examined one *sijill* (i.e. a volume of court records) for every decade between 1507 and 1877 when the Ottoman Empire codified Hanafi law and synthesized it with Swiss law, creating a secular code of law called the *Mecelle* in an effort to emulate Western-style law.

The historical context for Semerdjian's study is the law and policies of the Ottoman Empire, particularly the sultanic decrees known as *kanunnames*, Islamic jurisprudence (*fiqh*), and *fatwas* (i.e. legal rulings) issued by various *muftis*. Theoretically, she is part of the revisionist approach to Islamic law developed over the past 20 years by such scholars as Brinkley Messick and Wael Hallack, among others. These scholars have argued against the claim that *ijtihad* or legal reasoning disappeared from the practice of the law centuries before the Ottoman Empire arose leaving the *shari'a* courts ossified and judges inflexible and unresponsive to the communities and neighborhoods they served. However, in the past two decades, scholars have shown that jurists continued to refer to the process of *ijtihad* in their writings and that legal reasoning was converted by individual judges to living law in Islamic communities. Semerdjian concurs with the revisionists and advances the argument about living law by showing how in the Aleppo courts, local actors shaped the practice of law and even the outcomes in the courts in their communities.

Semerdjian acknowledges the methodological problems associated with the use of court records in the writing of social history but states that she is not prepared to abandon them or dismiss all of the invaluable information they provide on taxation, marriage, dowries, divorces, business transactions, religious endowments, crime, and state-society relations that she argues are "precious for the construction of social histories" (p.63). She is also not inclined to take a post-modern approach to court cases as almost purely literary texts the way historians like Beshara Doumani in his work on Ottoman Nablus do. Instead, Semerdjian has chosen to do a legal reading of the court records focused on the adjudication process and concentrated on the case, the witnesses, and the judge's verdict. This seems appropriate for a study that investigates the outcomes of court cases that involve apparent *zina* crimes that were not called *zina* and were not punished as *zina* with stoning or other physical punishments.

Jurists and legal scholars considered *zina a hadd* crime, meaning a crime which has a fixed punishment, although stoning the offenders as punishment is not mentioned in the *Qur'an*. The author contends that

the practice of stoning is justified by two *hadiths* in particular that describe the actions of the Prophet Muhammad who pronounced judgment in two cases of *zina* that apparently set the legal precedents for the prosecution of these cases and for stoning as punishment. However, Semerdjian discovered in her research into *zina* crimes during the Ottoman period that there was a discrepancy between doctrine – the theoretical prescriptions found in legal manuals – and the practice of law in the courts. One of the reasons Semerdjian offers for this discrepancy is the role the community played in the judicial process and how this shaped the law and its outcomes. This is clearest in chapters four and five where she examines actual cases from the Aleppo courts. Semerdjian argues that one of the ways that the community shaped the law was by the use of euphemisms rather than direct accusations of *zina*. For example, Aleppo residents confronted with prostitution and procurement in their neighborhood would go to the local court and accuse the perpetrators of “gathering” or “mixing” with strange men and women in their homes and ask the judge to banish them from the neighborhood. According to Semerdjian, by avoiding the use of the legal term *zina*, the court could avoid imposing draconian punishments such as death by stoning. Semerdjian notes that “The creation of a criminal category of ‘evildoer’ allows the legal authorities to deviate from standard prescriptions of punishment advocated in the juridical writings. Therefore, a crime such as *zina*, warranting one of the worst punishments in Islamic law, stoning to death, can be completely avoided by not calling it *zina* at all” (pp. 97-98). According to the author, the term *zina* was used in only ten cases to describe crimes and in only three of them was there consensual sex. In total, Semerdjian found only 121 definitive *zina*-related cases, and for the entire Ottoman period she found that there were no cases of stoning or flogging for *zina* in Aleppo. Her findings indicate that corporal punishments were rare for all cases of sexual indiscretion.

Semerdjian provides some explanations for the Ottoman approach to sexual crimes and punishment. One is legal pluralism deriving from the Empire’s tradition of accommodating local religious and legal traditions among tribesmen and villagers as well as among Jews and Christians. The method by which Islamic law was effectively transformed into and codified as Ottoman criminal law was through the *kanunnames* or imperial decrees of the sultans. The imperial decrees were a recognition by the Ottomans that *shari’a* was not always practical for day-to-day issues confronting the empire. Thus, the *kanunnames* emerged to cover such areas as taxation, land regulations, the responsibilities of government officials, and criminal offenses. Besides cases involving sexual crimes, Semerdjian also found cases involving spousal abuse and rape. In general, she argues, the courts sought to protect women from physically abusive husbands although this could conflict with the *Qur’an* verse that allows a man to punish a disobedient wife with beating (*Surat al-Nisa’* 4:34). Semerdjian argues that the judicial literature was consistently on the side of wives in spousal abuse cases. She found several cases in Aleppo in which the court granted women divorces from their physically abusive husbands and placed them with their families for their protection.

In cases involving illicit sex between men or between men and young boys, the term *zina* was not used in the few cases of homosexuality she discovered in the archives. Instead the term *al-louti* was used to describe the offender as a sodomizer in three cases, two of which resulted in punishment, which was not recorded. The author argues that there were few prosecutions for homosexuality for two reasons: First, there was no consensus among jurists that homosexuality constituted *zina*, and second, according to Abdul Karim Rafeq, the practice of sexual relations between men and young boys was widespread and socially acceptable. The courts as well as legal scholars appeared to be disinterested in sexual relations between women.

There is much to recommend in Semerdjian’s study, and a short review such as this one cannot do justice to the complexity of the topic she has undertaken to research or the various dimensions of the work. Reading Semerdjian’s book as an historian, one cannot escape comparing the flexibility and accessibility of the Ottoman-era Islamic courts and the role of the community in shaping legal outcomes with the narrow, rigid, and apparently a-historical interpretations of the law pronounced by some modern Islamists. Semerdjian

writes concerning *zina* that, “Violent punishments for this crime, such as death by stoning, have been advocated by contemporary Islamic movements and incorporated into the legal codes of some Muslim countries as punishment for breaches of sexual morality in the name of a return to a more ‘authentic’ Islamic law”. Arguing that this is a misuse of history to justify an authoritarian political agenda concerning women and morality, Semerdjian writes: “Therefore, exploring the ‘actual’ historical position of women, gender and morality becomes even more pressing as it stakes out the ground upon which the battle over morality in Islamic law will be fought” (p. XX1).

Semerdjian’s book will be of interest to specialists in the field of Islamic law, women and gender, the social history of Syria during the Ottoman period, and Ottoman studies. The book can be used by undergraduate students with some background in the history of the region and by graduate students.

Mary Ann Fay is Associate Professor of History, Morgan State University,
Baltimore, Maryland.
Email: fay_mary_ann2@msn.com

Living Palestine. Family Survival, Resistance, and Mobility under Occupation,
edited by Lisa Taraki, Syracuse NY: Syracuse University Press.

REVIEWED BY ANNELIES MOORS

Whereas much academic work on Palestine focuses on the political, the central theme of this book, in contrast, is the social reproduction of Palestinian society. Zeroing in on the everyday lived experiences of Palestinians under occupation, it analyses the strategies of households and families, and their individual members, to improve their chances for survival and social mobility. This book does not only highlight how families and households cope with ongoing processes of dispossession and repression, but also points to the limits of such endurance. More specifically, it underlines that certain households – the urban and rural poor and the refugees living in the camps, and certain family members – the young, the female, bear the brunt.

This book is first of all based on the findings of a survey conducted in the summer of 1999 of over two thousand households in nineteen communities in the West Bank and Gaza. Designed by the Institute of Women’s Studies at Birzeit University, where most of the contributors work, it aimed at going beyond conventional national surveys. Focusing on the household as a site of conflict and cooperation, the survey was designed to investigate the relations between household members, addressing such topics as the division of labour, marriage arrangements, living arrangements, wider kin networks, and educational levels, with specific attention paid to gender and generation. In order to capture the post-2000 (second *intifada*) period, characterized by separation of communities, re-invasions and wide-spread assaults on neighbourhoods, and far greater uncertainty and vulnerability, some of the contributions also make use of more recent sources, both quantitative (statistical information), and qualitative (oral narratives).

With most articles based on the household survey, this book can be read as a strong example of what can be done with such quantitative material. An in-depth analysis of such data can raise issues that have not yet been widely recognized. One example is the contribution of Lisa Taraki and Rita Giacaman which points to the significance of regional differences (that is between the north, the south and the center parts of the West Bank, represented by Nablus, Ramallah, and Hebron), rather than the more conventional division of the population of Palestine into camp, village and city

dwellers. They point not only to differences in terms of political economy, linked to the relationship of each city with its region, the character of its hegemonic groups and the diversity of the population, but also to differences in the social and moral order. The contributions of Penny Johnson and Jamil Hilal locate individual households within the wider world of kinship, and point to its ongoing importance in the lives of Palestinians under occupation. Whereas Johnson analyses the continuing importance of kin marriage and its multiple meanings, Hilal underlines how migration may lead to increased conservatism.

Two of the contributions deal more extensively with the war-like conditions of the second *intifada* as yet another phase in the ongoing colonization of Palestine. Eileen Kuttab's contribution on women's work argues for the use of the concept of a 'resistance economy', with economic strategies responding to highly volatile political conditions. Lamis Abu Nahla's contribution (written together with students) constructs six family histories. The original intention of this contribution was to supplement the 1999 household survey, yet in the course of collecting these family histories, everyday realities forced the researchers to focus on the impact of the post-2000 Israeli aggression. This contribution then provides major insights into how individual families and their members cope with these second *intifada* conditions. As these cases indicate, households are highly volatile and unstable, with families continuously trying to accommodate migration, imprisonment, and, more generally, the Israeli assaults on neighbourhoods, destruction of homes, and displacement of families as part of everyday life. One issue that stands out is the effects of the crisis on the male breadwinner, both in terms of economic loss, due to rampant unemployment, and in terms of inability to protect the family. The various cases highlight the diverse effects of such conditions on gender relations and those between generations, varying from greater rigidity to partial inversions of existing hierarchies.

These contributions point to the insights one can gain from household surveys when gender-sensitive questions on labour, education, marriage, and so on are included. Unexpected results come up and can in turn function as a source of inspiration for developing new research projects. Yet, survey material has its limitations, as it does not allow for a dialogical production of knowledge, and inevitably works with averages. With surveys, it is possible to point to particular correlations. However, to understand what particular contexts and developments mean for the people concerned and how these affect their everyday lives, we need to turn to more qualitative methods, such as a narrative analysis.

Annelies Moors is a professor at the Department of Anthropology and Sociology, University of Amsterdam, Holland.
Email: a.c.a.e.moors@uva.nl
