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*Ibn Taymiyya's Feminism?  
Imprisonment and  
the Divorce Fatwās*

*Introduction*

In the early part of the fourteenth century, Taqī al-Dīn Aḥmad Ibn Taymiyya (d. 728/1328) submitted to two terms in prison, totaling almost a year, for his position on divorce. Not only did he believe that the repudiation oath was expiable like other oaths, and need not result in actual dissolution of marriage, but he had begun asserting that Triple Repudiation was not only innovative (*bid'ī*) but legally invalid. When asked to retract his positions in order to return to teaching, he famously said, "I cannot conceal knowledge."<sup>1</sup> When Henri Laoust considered Ibn Taymiyya's stances on dissolution of marriage, he found the scholar to have been acting out of a concern for the stability of the family and the right of a wife to social justice. Laoust stated: "This last point would appear, in the doctrine of Ibn Taymiyya, to be a discreet feminism of which one easily finds other examples, and which necessarily reaches, in the opinion of Ibn Qayyim al-Jawziyya, a frank justification for monogamy for reasons of social justice."<sup>2</sup>

1 Caterina Bori, "A New Source for the Biography of Ibn Taymiyya," *Bulletin of the School of Oriental and African Studies* 67, no. 3 (2004): 346.

2 Henri Laoust, "Une Risāla d'Ibn Taymiyya sur le serment de repudiation," *Bulletin des Etudes Orientales*, vol. 7-8 (Cairo: Imprimerie de L'Institut Francais, 1937-1938): 217. Such a possible stance on Ibn al-Qayyim's part surely warrants pursuing. Yossef Rapoport replies that any "feminism" attributed to Ibn Taymiyya would be mere "wishful thinking" (see Yossef Rapoport, "Ibn Taymiyya on Divorce Oaths," in *The Mamluks in Egyptian and Syrian Politics and Society*, eds. Winter Michael and Amalia Levanoni (Leiden: Brill, 2004), 205, fn. 38).

Dissolution of marriage is one of the more complex elements of Muslim family law. Much of its complexity stems from the vast amount of confusion and lack of resolution on various facets of the definition and implementation of divorce. As a matter of brief review, it is useful to include here a brief reference to some of the more potent terminology relating to this topic in order to better contextualize the discussion at hand, keeping in mind that the nuances of the terms are themselves subjects of ongoing debates:<sup>3</sup>

*Ṭalāq*: Unilateral repudiation by the husband of his wife. Discussed in the Qur'an most prominently in verses 2:228–232 and 65:1–6, this form of divorce is husband-initiated, as is the ability to revoke the divorce and return to married life. Jurists understood the “Sunnatic Repudiation” as being implemented when a woman was not menstruating and extending over a designated waiting period (*‘idda*), typically three months or three menstrual cycles.<sup>4</sup> Here, the possible second and third repudiations may occur only after a man has ended the first instance by returning his wife during her waiting period or remarrying her with a new contract after the expiration of her waiting period.<sup>5</sup>

*Ṭalāq al-bid‘a*: Innovative or sinful repudiation. This is the repudiation that does not take place according to the assumed model of three menstrual periods with a possibility of revocation. For most classical scholars, its “sinfulness” does not make it less legally valid; Ibn Taymiyya, however, began giving fatwas to the contrary, stating that this form of repudiation was *not* valid.<sup>6</sup> Triple repudiation in a single utterance falls into this category. Additionally, repudiating a woman during her menstrual period also falls into this category. Some systems penalize this form of marriage dissolution in theory while permitting it to continue in practice.<sup>7</sup>

3 For information on modern implications of divorce laws for Muslim women, see Women Living Under Muslim Laws (WLUML), International Solidarity Network, *Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World* (New Delhi: Zubaan, 2003), 255–300.

4 There is ongoing debate as to whether the end of the third menstrual period or its beginning serves to delineate the end of the waiting period. See *Majmū‘a Fatāwa Shaykh al-Islām Ibn Taymiyya*, ed. ‘Abd al-Rahmān ibn Qāsim al-‘Āṣimī (Riyadh and Beirut: Maṭābi‘ Dār al-‘Arabiyya, 1977), 33:11. There is dispute over the length of time for a woman whose period is irregular.

5 Ibid, 33:72–73.

6 Rapoport, 203.

7 *Majmū‘a*, 255–256.

*Khul'*: Dissolution of the marriage, usually for a designated price (such as return of the *mahr*). This is also referred to as woman-initiated divorce.<sup>8</sup> The waiting period for this form of marriage dissolution is one menstrual cycle.<sup>9</sup>

Despite being classified as an “innovative” or “sinful” form of repudiation, the Triple Repudiation was, historically, and remains today, a major issue in many Muslim legal systems.<sup>10</sup> The modern era has seen numerous reforms across these legal systems: in the early twentieth century, countries like Egypt,<sup>11</sup> Iraq and Jordan began considering triple pronouncements of divorce in one sitting to be the equivalent of one incidence of divorce. Yet in countries like Sri Lanka, Triple Repudiation is practiced with great frequency: “This prevalence is influenced by the widely held misperception that a triple *ṭalāq* absolves the husband of his obligation to provide maintenance during the *‘idda* period.”<sup>12</sup> In 2004, India was only just preparing to address the issue of Triple *Ṭalāq*, indeed with major trepidation out of fear of Sunni reaction to its abolishment.<sup>13</sup> Meanwhile, the fact that Triple Repudiation is an issue that is viewed as legally “unresolved”<sup>14</sup> indicates that it has persisted in the socio-legal consciousness of Muslim populations well into the modern era. Those who take strong stances against it often do so by suggesting that it was a relic from the pre-Islamic era that came back into practice due to the Ḥanafī concern with the validity of mere utterances.<sup>15</sup> The debate itself has heavy legal implications for the role of intentionality in law.

The continued existence of disagreement over Triple *Ṭalāq* could well be linked to the stances of Ibn Taymiyya, for at a pivotal moment

8 See also *Majmū'a*, 273–277; Rapoport also refers to this as “consensual divorce,” 198.

9 See *Majmū'a*, 33:10. *Khul'* is by definition an irrevocable separation (*firqa bā'ina*) according to Ibn Taymiyya, while al-Shāfi'ī does not consider it more than dissolution, with three instances engendering irrevocability.

10 According to WLUML: “Most codified laws have attempted to do away with this highly unjust form of repudiation, but customarily it continues to be practiced (especially in Bangladesh, India, Pakistan and Nigeria) ... It is even formally recognized in some systems (Sudan and Yemen)” (258).

11 For an interesting treatment of this subject by a modern era Cairene legal scholar, see Muhammad Abū Zahra, *Ibn Taymiyya* (Cairo: Dār al-Fikr al-'Arabī, 1952), esp. 427–436. Abū Zahra takes pains to point out that for the most part, Egyptian divorce law closely follows Ibn Taymiyya's opinions (427), although he has spent considerable time stating that Ibn Taymiyya's position with respect to innovative divorce is contrary to classical scholarly consensus (426–427).

12 See WLUML, 265–266.

13 Asghar Ali Engineer, “Abolishing Triple Talaq: What Next?” *Economic and Political Weekly* 39, no. 28 (Jul. 10–16, 2004): 3093–3094.

14 WLUML, 258.

in legal history, he refused to acquiesce to the consolidation of an inter-madhhab position that Triple *Ṭalāq* is legally sound within the Islamic legal system. This position of questioning scholarly consensus earned him scorn and two sojourns in prison. The concern of this paper is with the concept of Triple Repudiation (or Triple *Ṭalāq*) as discussed by Ibn Taymiyya. We inquire as to exactly what his position was, why it was problematic in the fourteenth century, and whether his position could have been viewed as championing the rights of women, as has been suggested by Henry Laoust.<sup>16</sup>

### *Ibn Taymiyya and Triple Repudiation*

Yossef Rapoport frames his analysis of Ibn Taymiyya's stances in discussions of the value of oath-taking in medieval society, for the first phases of Ibn Taymiyya's position had to do with devaluing or lessening the legal impact of oaths of repudiation intended to affirm the intention of undertaking or not undertaking an action. The fourteenth century was a time in which such oaths had taken on such intense sanctity that they were being used in legal proceedings.<sup>17</sup> Such seriousness surrounding the utterance of the divorce oath reflected its place in the social consciousness. Oaths and their results had led to innumerable unintended dissolutions of marriage. These, in turn, had led to the growth of legal sleights of hand (*hiyal*) designed to circumvent the dissolution or restore the marriage, such as the Shāfi'ī doctrine of *khul'*

15 See, for example, Engineer, "Abolishing Triple Talaq," 3093. With regard to the Hanafī position, it is usually presented as being based on the report (sometimes presented as a Prophetic hadith) that "[s]eriousness and joking are equal in marriage [proposals] just as seriousness and joking are equal in [utterances of] divorce." For this see al-Shaybānī's *Ḥujja 'alā ahl al-Madīna*, ed. al-Sayyid Mahdī Ḥasan al-Kilānī (Beirut: 'Ālam al-Kutub, 2006), 2:74, and Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010), 29–30. The matter of divorce oaths taking effect, no matter how absurd, is also presented anecdotally in the *Muṣannafs* of 'Abd al-Razzāq and Ibn Abī Shayba, although numerous counter opinions are reported suggesting that such oaths do not take effect; as the *Muṣannafs* represent some of the earliest legal literature, it is possible to see just how long these debates have endured.

16 See Laoust, "Une Risala."

17 Ibid, 198–199.

18 This legal device allows a man and woman to agree on consensual divorce (*khul'*) before the husband intentionally violates the divorce oath he has taken. As the two are divorced when the oath-violation takes place, the oath is moot, and there can be an immediate remarriage. For Shāfi'īs, who consider *khul'* to be divorce and not *fāskh* (annulment), this device could only be used twice, however, before the Triple *Ṭalāq* issue sets in (see Rapoport, 198 and 198, fn. 21, and also *Majmū'a*, 33:64).

*al-yamīn*<sup>18</sup> or the *tahlīl* marriage.<sup>19</sup> More than anything, we are told, Ibn Taymiyya's primary intention was to eliminate the necessity for *tahlīl* marriages, as these had proliferated to alarming levels in his era.<sup>20</sup>

Ibn Taymiyya points out that oaths for all other issues—such as an oath on pain of pilgrimage or giving charity—were expiable in some way.<sup>21</sup> Thus it was natural to him,<sup>22</sup> although it did not seem so natural to any other scholar of his time or preceding him, that there must be a way out of the oath of repudiation as well. The source of conflict with the legal establishment, then, lay in the fact that his decision lacked precedent and appeared to go against what was at least a tacit scholarly consensus. Oath-taking was but a subsidiary issue to the larger issue of speaking the repudiation formula and the extent of its implications; above all, what was the role of intention in law?

Like jurists before him, Ibn Taymiyya finds that Triple Repudiation falls into the category of *bid'ī* or innovative (and hence sinful) dissolution of marriage. Unlike them, however, he began ruling such repudiations invalid. There are four types of this repudiation: the triple repudiation in one utterance; successive repudiation (*mutatābi'*: all three repudiations in one sitting—*fi majlis wāḥid*); repudiation in several sittings but during one purity period; and the triple repudiation in which there are three periods of purity without any intermediary period of return. All of these, according to Ibn Taymiyya, are considered *ḥarām*.

With regard to the Triple *Ṭalāq* delivered in one utterance, Ibn Taymiyya notes that there are three opinions on it. First there is that of al-Shāfi'ī, for whom *bid'a* is limited to a repudiation that takes place during a menstrual cycle or in a period of purity in which there has been intercourse. Thus one utterance of three repudiations is, for al-Shāfi'ī, valid and without sin.<sup>23</sup>

19 A marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple.

20 Rapoport, 205.

21 See *Majmū'a*, 33:74–75 and Q 5:89.

22 See especially *Majmū'a*, 33:60: "The basic [premise] in this is that the intent of the speaker must be investigated..."

23 Of interest, however, is al-Shāfi'ī's phraseology in *Kitāb al-Umm* in which he says that triply divorcing the wife in an unconsummated marriage in one utterance is redundant in that the first utterance renders her no longer married, "and repudiation cannot take effect upon someone who is not [technically] the wife" (6:469). The difference between consummated and unconsummated marriages is the necessity of *'idda* for the former. Thus, for al-Shāfi'ī, the single divorcing utterance itself cannot complete the act of divorce from a consummated marriage, while three simultaneously can.

For Mālik, Abū Ḥanīfa and Aḥmad ibn Hanbal (in a later opinion supported by his followers and modeled on a group of the *salaf*), it is a forbidden repudiation (i.e., its result is sin) yet that which the divorcing man intends and utters necessarily takes place.

The third opinion,<sup>24</sup> Ibn Taymiyya tells us, is that it is forbidden and its legal result is only one repudiation. “This opinion is transmitted from a group of the *salaf* from among the Companions of God’s Messenger.”<sup>25</sup> He cites al-Zubayr ibn al-‘Awwām, ‘Alī, Ibn Mas‘ūd, ‘Abd al-Raḥmān ibn al-Zubayr, and Ibn ‘Abbās, among others. Interestingly, Ibn Taymiyya also cites this opinion as being held by the Zāhirīs and the Shi‘a; he names Muḥammad al-Bāqir and his son Ja‘far al-Ṣādiq.

In support of the third opinion, Ibn Taymiyya adduces both the Qur’an and Sunna and well as jurisprudential analogies and [case-based] considerations (*i’tibār*).<sup>26</sup> Of these, the first two provide the most important source of information for this discussion. He says:

Every repudiation legitimized by God in the Qur’an for the wife in a consummated marriage is a revocable repudiation (*al-ṭalāq al-raj‘ī*). God did not allow anyone to repudiate three times simultaneously nor did He make it legal for the wife in a consummated marriage to be irrevocably repudiated. However, if he repudiates her before consummation she is no longer licit for him (*bānat minhu*), and if her *‘idda* is expired, she is no longer licit for him.<sup>27</sup>

Qur’anic support for the third opinion is found in the verse:

Repudiation is twice then retention as according to proper custom (*imsāk bi-ma‘rūf*) or letting go in a pleasant manner (*tasrīḥ bi-iḥsān*).<sup>28</sup>

Thus, repudiation does not happen all at once (*duf‘a wāḥida*) but time after time, or repetitively.<sup>29</sup> Ibn Taymiyya also relies on Qur’anic indicators by pointing to God’s words concerning procedures after a repudiation has taken place.

24 There is an additional opinion on the subject, that of “some of the Mu‘tazila and Shia,” but it is an opinion that he believes lacks precedent: that there is no valid legal implication for a single utterance of Triple Repudiation (33:9).

25 *Majmū‘a*, 33:8.

26 See *Majmū‘a*, 33:81. With hesitance, I have translated this term (*i’tibār*) as “[case-based] considerations,” but it may well be translated as “context.” It begs in-depth research on Ibn Taymiyya’s use of this element in his *fiqh*. See also 33:63, 33:91 and 33:93 for other mentions of *i’tibār*. 33:63 deems it “the best and highest form of analogy (*qiyās*),” while 33:91 seems to clearly indicate that the meaning is “context.”

27 *Majmū‘a*, 33:9.

He who remains conscious of God, God provides for him a “way out” (*makhraj*) and blesses him in ways he could not have anticipated.<sup>30</sup>

And later,

You do not know, perhaps God will cause something to happen (*yuhdithu ba'd dhālika amr*).<sup>31</sup>

Thus, says Ibn Taymiyya, “whoever rushes ahead and repudiates thrice in one utterance—or several—has closed for himself that way out and prevented God from “causing something to happen” by returning hearts to their [previous levels] of love (*muwaddatihā*).”<sup>32</sup>

As for the Sunnaic evidence, Ibn Taymiyya relies upon reports related through Ibn ‘Abbās. One such report relates that Rukāna Ibn ‘Abd Yazīd repudiated his wife thrice in one sitting, then went to the Prophet who assured him that the three were equivalent to but one, and that he could return her.<sup>33</sup>

Most supportive of his position is the report delivered through Ṭawūs from Ibn ‘Abbās. It was evident that ‘Umar felt the Muslims to be divorcing their wives with impunity, and deemed it necessary to rein in the tossing about of utterances of repudiation.

At the time of God’s Messenger and Abū Bakr, and two years into the Caliphate of ‘Umar, Triple Repudiation was equal to (but) one.<sup>34</sup> Then ‘Umar said, “People are rushing in a situation in which they had previously been patient (or, perhaps, reticent). So if we make [its consequences] more serious for them, they will not engage in it.”<sup>35</sup>

Thus, posits Ibn Taymiyya, it was ‘Umar’s decision, and not that of the early community, that caused Triple *Ṭalāq* to attain such weight and result in the actual three instances of repudiation instead of only one.<sup>36</sup> Whereas the situation at the time (that of carelessness in hurling

28 Q 2:228.

29 Abū Zahra, 420.

30 Q 65:2–3.

31 Q 65:1.

32 Abū Zahra, 420.

33 *Majmū‘a*, 33:13, and see also 73. While the following report from Ibn ‘Abbās is posited as being *ṣahīh*, this one is admitted as having “a good isnād (*isnād jayyid*)” and related by “Aḥmad and others.”

34 This wording occurs verbatim in Ibn al-Mundhir’s *al-Ishrāf ‘alā madhāhib ahl al-‘ilm* (Beirut: Dār al-Fikr, 1993), 1:143.

35 *Majmū‘a*, 33:13.

36 *Majmū‘a*, 33:15–16. See also Rapoport, 204.

statements of repudiation) required adjustment of the law, the situation in Ibn Taymiyya's era—that of the proliferation of *tahlil* marriages—also merited a similar adjustment.<sup>37</sup> In this case, however, it was a readjustment, a return to the previous state of affairs in which the utterance of the formula for Triple *Ṭalāq* equaled but one instance of repudiation. Above all, Ibn Taymiyya maintains that the *tahlil* marriage was prohibited at the time of the Prophet and his Companions.<sup>38</sup>

Where Mamlūk scholars cried foul was Ibn Taymiyya's assertion that, because the ruling was 'Umar's, there had been no initial consensus on the subject.

### *Questioning Consensus: Analysis of Ibn Taymiyya's Stances*

Of the several issues that landed Ibn Taymiyya in jail, Triple *Ṭalāq* is perhaps the least abstract. The other issues pertained wholly to creed, the discourse surrounding God's features (*al-ṣifāt*) and various charges of anthropomorphism, as well as the issue of the visiting of graves.<sup>39</sup> On this very issue of divorce, which appears to be much more legal than theological, Ibn Taymiyya declared the "oath of repudiation"<sup>40</sup> to

37 For more information on Ibn Taymiyya's position on *tahlil* marriages see 33:92–93. The *tahlil* marriage is the marriage in which a triply-repudiated woman, who cannot remarry her husband unless she has consummated and ended a marriage with another in the interim, marries *solely* for this purpose, so that she might return to her original spouse. As early as the *Muṣannaf* of 'Abd al-Razzāq, legal devices were sought to ameliorate these circumstances, and it is asked whether or not a boy who can achieve erection but not ejaculation might serve in the role of *muḥallil*, or whether he must have reached the age of ejaculation to do so. See 'Abd al-Razzāq ibn Hammām ibn Nāfi', *Muṣannaf* (Beirut: Dār al-Kutub al-'Ilmiyya, 2000), 6:275, 11189–11190 and 11191. It is Ibn Taymiyya's position that the legal subterfuge of marrying for the *intent* of rapid divorce is what is illicit, not the marriage itself. He denounces this legal device with reports saying that those who engage in it are cursed, and claiming that "it was absolutely never related that in [the] era [of the Prophet and his Companions] a woman was returned to her husband after the third divorce via a *tahlil* marriage."

38 See also the Prophetic hadith in which the wife of Rifā'a al-Qurazī, who had recently married a new spouse after her third divorce, is asking the Prophet if she can be divorced yet, and the Prophet reminds her that she must have sexual intercourse ("*lā, baṭā'ā tadhūqī 'usaylatahu wa yadhūqā 'usaylataki*") with her new husband before divorcing him (for it to be deemed a valid marriage). This hadith is found in Bukhārī, 2496; Muslim, 1433; Tirmidhī, 1118; al-Nasā'ī, 3409; and also Ibn Taymiyya's student Ibn Qayyim al-Jawziyya in *I'lām al-Muwaqqi'īn* (Beirut: al-Maktaba al-'Aṣriyya, 2007), 4:252. Ibn al-Qayyim advances the opinion that the purpose for this practice was that a woman should be considered ḥarām for her triply-divorcing husband until she marries another "as a punishment for him," for having repudiated her. See *al-I'lām*, 2:54. This matches Ibn Taymiyya's vocabulary precisely: *Majmū'a*, 33:21.

39 For more on Ibn Taymiyya's various trials and prison tenures, see Sherman Jackson, "Ibn Taymiyya on Trial in Damascus," *Journal of Semitic Studies* XXXIX, no. 1 (1994): 41–85, and Donald Little, "The Historical and Historiographical Detention of Ibn Taymiyya," *International Journal of Middle East Studies* 4, no. 3 (1973): 311–327.

be expiable because Triple *Ṭalāq* was itself contrary to the intent of Islamic law regarding repudiation.

Is it remarkable that this scholar should submit to terms of prison rather than retracting his stance on what could be considered an issue whose affected population is largely women? Donald Little's article gives us a deep sense of what he refers to as state assessments as to the dangers of Ibn Taymiyya's beliefs:

From the point of view of the head of state and his religious advisors, the propagation of certain theological beliefs jeopardized the salvation of individual Muslims and the stability of the state, so that the sultan [al-Malik al-Nāṣir, r. 693–741/1293–1341] as defender of the state took appropriate action.<sup>41</sup>

Little asserts that Ibn Taymiyya's divorce stance was no less threatening than his theological stances. But what did jurists perceive as dangerous with regard to the way in which a woman is repudiated?

What Laoust refers to as Ibn Taymiyya's resistance to the formalism of traditional *fiqh*<sup>42</sup> was, for the scholarly establishment of his time, highly problematic. The practical danger of Ibn Taymiyya's stance was, as his refuter Taqī al-Dīn al-Subkī pointed out, if a man had repudiated his wife triply, and yet was made to understand that an utterance of Triple *Ṭalāq* was equal to but one repudiation, he might continue to cohabit and even to beget children with his wife, mistakenly thinking himself still married to her.<sup>43</sup> Their children, then, would technically be bastards. Ibn Taymiyya's position was thus portrayed as dangerous to the larger Muslim community.

Further, there can be little doubt that the scholarly establishment, allied as it was with the military establishment in the Mamlūk era, simply could not tolerate an opinion that lay contrary to a claimed consensus.<sup>44</sup> But what was the consensus on the subject? Al-Subkī cites such scholars as Ibn 'Abd al-Barr (d. 463/1070). A brief look at Ibn 'Abd al-Barr's thoughts reveals that he takes the following position: although a single utterance of the formula for triple repudiation is sinful, it is still entirely valid. He contends that "there is no difference of

40 Rapoport's essay gives careful delineation of how repudiation oaths, which were deemed conditional divorce, differed from other sorts of oaths or vows. See especially Rapoport, 192–194.

41 Little, 321.

42 Laoust, 218.

43 Taqī al-Dīn al-Subkī, *al-Rasā'il al-Subkiyya fī al-radd 'alā Ibn Taymiyya wa tilmīdhīhi Ibn Qayyim al-Jawziyya* (Beirut: 'Alam al-Kutub, 1983), 151–152, cited in Rapoport, 192.

opinion between the leading regional muftīs,” and any contrary opinion is extremely isolated.<sup>45</sup> For our purposes, we note that such emphatic wording tends to indicate real levels of disagreement. Further, that Ibn ‘Abd al-Barr begins his chapter on *Ṭalāq* with an in-depth discussion of Triple Repudiation in one utterance is in itself indicative of the salient nature of the subject in his time.

But it is possible to question Ibn ‘Abd al-Barr’s consensus claim by looking into earlier sources such as Ibn al-Mundhir (d. 318/930), the most famous of the early writers to address consensus. Each of Ibn al-Mundhir’s chapters on divorce is focused on highlighting discussions of intentionality. For one example:

The scholars differ over the man who says to his wife, “You are repudiated,” and he means thrice (*wa huwa ya’nuwī thalāth*). A group says, “It is but one [instance], and he has more right to her [than herself, i.e. the right to return her].” This is the statement of al-Ḥasan [al-Baṣrī], ‘Amr ibn Dīnār, and [Sufyān] al-Thawrī, al-Awzā’ī, Aḥmad [ibn Ḥanbal], Abū Thawr, and the Ḥanafī.

Others have said, “If he means three, it is three,” and this is the opinion of Mālik, al-Shāfi‘ī, Ishāq and Abū ‘Ubayd. And we say this as well, based on the saying of the Prophet, “Works are intentional (*al-a’māl bi-l-niyya*).”<sup>46</sup>

This same concern with intentionality extends to utterance of the triple repudiation formula itself:

44 Abū Zahra also insists that Ibn Taymiyya’s positions regarding Triple *Ṭalāq* ran counter to consensus. It is symptomatic of consensus discussions to find that later scholars simplify and obfuscate early discussions of consensus. Despite a very lengthy and multi-faceted exploration of repudiation and intentionality in utterances of divorce, in the consensus compendium *al-Iqnā’ fī masā’il al-ijmā’* of Ibn al-Qaṭṭān al-Fāsī, ed. Fārūq Ḥammāda (Damascus: Dār al-Qalam, 2003), 3:1257–1258, we find that Ibn al-Mundhir al-Naysābūrī’s (d. 318/930) consensus statement on this matter is given as centering on the usual Ḥanafī proof text (cited in a different version in fn. 14 above): “There are three matters about which seriousness is considered serious and joking is [equally] considered to be serious: marriage, repudiation and the reinstatement (of a repudiated woman).” See Ibn al-Mundhir’s *al-Ishrāf*, 1:173. The actual text in the *Ishrāf* varies slightly at several points from that given in *al-Iqnā’*, perhaps significant only in the arrangement of matters (repudiation is listed first). Although the idea of the joking divorce being a valid divorce is posited by Ibn al-Mundhir as al-Shāfi‘ī’s opinion (among others), to our knowledge, the first major exposition of this report occurs in al-Shaybānī’s *Hujja* (as in fn. 14 above). As we shall see, above, the discussions in *al-Ishrāf* are for more nuanced than al-Subkī or Abū Zahra imply, and the role of intention is preeminent.

45 Abū ‘Umar Yūsuf ibn ‘Abd Allāh Ibn ‘Abd al-Barr, *Kitāb al-Istidhkār* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2006), 6:3. “This is passed down from the majority of the righteous forebears, and the difference over it is isolated, [the sort that] only innovators would adopt, or the sort of person to whom no one would turn due to the isolated nature of his opinion from the majority, and using such an opinion is impermissible due to it being a distortion of the Book and the Sunna.”

46 *Al-Ishrāf*, 1:144–145.

They differ over the man who says to his wife with whom he has consummated marriage, “You are repudiated, you are repudiated, you are repudiated.”<sup>47</sup> A group has said, “If he meant just one [repudiation], the first [utterance served as valid] and it is one [instance]. If he meant to initiate [a repudiation] after that first [instance] it is as he intended. If he meant by his third utterance to [merely] clarify the second [instance] (*in arāda bi-l-thālitha tabayyun al-thāniya*), then the amount of repudiations is two. And if he intended three repudiations then it is thrice. If he dies before being asked his intention, then [the repudiation stands as] three. This is the opinion of al-Shāfi‘ī.”<sup>48</sup>

Thus, it is clear that concern with verbal expression versus inner intention is not a foreign construct that Ibn Taymiyya was ushering into discussion of dissolution of marriage for the first time in Islamic jurisprudential history, as al-Subkī accused. Al-Subkī’s citation of a consensus on the subject emerged from a consultation of sources, such as Ibn ‘Abd al-Barr, which stood rather later than these early discussions.

It is possible that Ibn Taymiyya was referring to just such sources as Ibn al-Mundhir and the scholars before him when he defended his position on repudiation by saying, “I cannot suppress my knowledge.” Laoust speaks of Ibn Taymiyya’s insistence on bringing “intention” into the discussion, not just in the realm of *‘ibādāt* as was en vogue in his era, but to all realms, even that of divorce.<sup>49</sup> It was based upon just this reason (the role of *niyya*) that Ibn Taymiyya formulated his strong opinions against the concept of forced marriage.<sup>50</sup>

### *Forced Marriage and the Hostage Motif*

It is useful, in inquiring into Ibn Taymiyya’s motivations for his notorious stances on oaths of repudiation and by extension Triple *Ṭalāq* generally, to consider a wider framework for his positions. Through-

47 Note a similar discussion in the small chapter on the utterance, “You are repudiated absolutely (*al-batta*)”: Ibn al-Mundhir offers several opinions, the first being that it is a single instance allowing reinstatement (Mālik, ‘Umar ibn al-Khaṭṭāb), and another, offered by al-Shāfi‘ī, that if one was meant, then one occurred, while if three were meant, then three occurred. Further opinions emphasize the importance of intention (*al-Ishrāf*, 147–148).

48 Ibid, 144.

49 Laoust, 217.

50 Ibid, 218.

out Ibn Taymiyya's discussions of marriage and the marriage bond, he uses the vocabulary of captivity, referring to a woman as becoming the *asīra*, the captive or hostage of the husband.<sup>51</sup> Forced marriage in particular causes Ibn Taymiyya to take on a tone that sounds something akin to outrage.<sup>52</sup>

With regard to contracting marriage for her against her will: This is against the fundamentals [of the religion] and against reason (*mukhālif li-l-uṣūl wa-l-'uqūl*). God did not intend for her guardian to force her to sell or buy except with her permission, or [force her] to eat, drink, or wear that which she does not desire. So how could [her guardian] force her to have intercourse and live with someone she despises sleeping with and living with? God has created between spouses love and mercy (*mawadda wa-rahma*). If [the marriage] can only occur despite her hatred of it and desire to flee from it, what love and mercy can there be therein?<sup>53</sup>

What is most intriguing here for our purposes is the point about the practice of repudiation that he brings into the discussion of forced marriage. The typical pre-*Ṭalāq* scenario is one of mediation involving a member of each respective family. He points out that each *walī* (and he insists that the *walī*, appointed by each spouse, is the most correct term in this instance), has the power to initiate actual dissolution proceedings.

What is particularly potent in these points is the equality that Ibn Taymiyya posits between the spouses' positions during mediation.

The Lawgiver does not force a woman to marry if she does not want to do so. Indeed, if she were to hate the husband, and a split occurs, [the Lawgiver] causes her affairs to fall into the hand of other than the husband, one of her family who prioritizes [her] well-being [*maṣlaḥah*], along with someone who seeks his well-being from his own family. [In this way, the Lawgiver] ends her involvement (*yukhalliṣuhā*) with the husband without his authority, so how could she become his hostage (*kayf tu'sir ma'hu*) forever without her authority?<sup>54</sup>

51 The root *a-s-r* and its derivatives refer principally to tying, binding and taking captive, deriving, Lane tells us, from the *isār*, or leather thong used for binding. From this root there is the commonly-used word "*usra*," meaning family. It is clear, however, that Ibn Taymiyya is intending to denote the female captive, particularly when it comes to his discussion of *khul'* in which he speaks of self-fransom.

52 Ibn Taymiyya, *Fatāwā al-nisā'*, ed. Sa'd Yūsuf Abū 'Azīz (Cairo: Dār al-Fajr li-l-Turāth, 1999), 199–203.

53 *Majmū'a*, 32:25.

54 *Fatāwā al-Nisā'*, 203.

The hostage motif takes on another dimension, however, when Ibn Taymiyya discusses a woman's responsibilities once within the marriage bond. From discussing the inability of a woman to fast or pray throughout the night without her husband's permission, he declares the absolute obligation (*farḍ*) of a woman to submit to her husband's demands for sexual intercourse. "How could a believing woman prioritize a voluntary action [i.e. supererogatory prayer throughout the night] over an obligation?"<sup>55</sup> Obedience<sup>56</sup> is total sexual obedience, and the absence of that obedience is the essence of the definition of *nushūz*<sup>57</sup> that makes allowable beating (*dhālika yubīḥ lahu ḍarbuḥā*).<sup>58</sup> Thus while there is concern in one fatwa for a woman's not entering involuntarily into the state of being "hostage," once there, her sexual obligations define her relationship to her husband.

Further, Ibn Taymiyya is clear that the husband's rights are next in line after those of God and the Prophet. He quotes the following hadith:<sup>59</sup> "If I could order anyone to bow to anyone I would order a woman to bow down to her husband, due to the magnitude of his rights over her."

Ibn Taymiyya is deeply concerned with consent when it comes to the contracting of the marriage. Once within the marriage, however, the preeminence of the husband's rights over those of the woman obviates her consent to intercourse. By entering into the marriage contract her consent to making herself sexually available is deemed implicit. She is still very much the hostage. The assumption is, perhaps, that this captivity is voluntary, with understood parameters of behavior; it would seem that Ibn Taymiyya's views on divorce uphold this notion of voluntary captivity.

And yet the hostage is capable of being ransomed. When Ibn Taymiyya discusses the issue of *khul'*, it is in the following way:

55 *Fatāwā al-Nisā'*, 212.

56 Ibn Taymiyya here defines *qānita* (from Q 4:34) as meaning obedience to the husband. Qur'anic hermeneutics would seem to indicate that, based on its other occurrences (Q 39:9, 16:120, 33:35, 66:5, 2:116, 30:26, 2:238, 3:17, 66:12) *qānita* has much more to do with "obedience to God."

57 Q 4:34.

58 *Fatāwā al-nisā'*, 213.

59 The editor of *Fatāwā al-Nisā'* (Sa'd Yūsuf Abū 'Aziz) designates this hadith as *ṣaḥīḥ*. I found it in #1159 and #1160 of Tirmidhī, both entries designated as "*ḥasan gharīb*," a far lesser level of authenticity.

60 *Fatāwā al-Nisā'*, 214.

*Khul'* as described in the Qur'an and the Sunna is when a woman hates her husband and wants to leave him, so she gives him her dower, or part of it, as a ransom for herself just as the hostage is ransomed.<sup>60</sup>

Thus, the difference between *ṭalāq* and *khul'* would seem to be an assumption that the woman is an unwilling participant in the former and an active instigator of the latter. Ibn Taymiyya assumes the repudiated woman, as a willing captive in her marriage, would find the waiting period in a typical "Sunnaic repudiation" useful, for it is the period in which the repudiating man reflects on his choice and presumably regrets it enough to bring the wife back to her previous status. As we have seen, Ibn Taymiyya evidences a deep concern with the intentionality of human actions within law. But he is also deeply concerned with Divine Intention. For this reason, it would seem clear that Ibn Taymiyya believes Triple *Ṭalāq* cannot but obstruct the Divine Intention of allowing a man to reconcile with his wife, as the *'idda* waiting period is designed to do.<sup>61</sup>

### *Conclusion*

With Rapoport, I would hesitate to cast Ibn Taymiyya as a feminist.

With Laoust, though, I believe that Ibn Taymiyya arrived at two inescapable conclusions when considering law pertaining to dissolution of marriage in the fourteenth century.

The first conclusion is that oaths of repudiation not intended to actualize a dissolution of marriage must be evaluated, like all actions of a believer, based on the intention behind them. The second is that there are checks and balances inherent in the structure of unilateral repudiation designed to protect, to some extent, the rights of women and to force upon men a realization of a woman's worth. Triple *Ṭalāq* subverts these.

61 Ibn al-Qayyim gives a lengthy exposition on the topic of *'idda* in *Ḥlām al-muwaqqi'īn*. In it, he is concerned with the "wisdom" behind the verses and rulings; as such he is keen to explain that the waiting period for divorce and death is not designed simply to make sure that there is a lack of pregnancy. This is one of the reasons, he says, but not the only reason. Other reasons include: understanding the full significance of the marriage contract (*ta'zīm khatr hādihā al-'aqd*); lengthening the time period in which a divorcing husband may return his wife (*tajuwīl zaman al-raj'a*)—such that he might regret his action; and the allowance for the rights of the wife to be secure, with regard to her residence and maintenance (i.e. to prevent her from being unfairly and hastily ejected from her home) (2:55).

Ibn Taymiyya “could not suppress [his] knowledge” of correct action with regard to divorce oaths, a particular subset of practices of “innovative repudiation,” in which the allotted time for reinstatement was omitted, and he worked to apply careful consideration of intent to the realm of practical law. Says Laoust: “It is as a moralist and a jurist that Ibn Taymiyya takes a stand against these practices [of *tahlīl* and triple repudiation in one utterance]. On the one hand, the abuse of repudiation is the consequence which undermined the solidity of the family institution, and, on the other, the misunderstandings regarding the rights of women to be treated justly.”

Still, Ibn Taymiyya's vocabulary on the topic of marriage depicts a scenario played out by a hostage and her captor. This state of affairs remains a tangible reality for many women married under legal systems purporting to be Islamic. The right to self-ransom (Ibn Taymiyya's analogy for *khul'*) is still a right that remains difficult to negotiate for many women in Muslim legal systems, due to their ignorance of that right, the system's refusal to allow it, or due to financial considerations preventing access to enough “ransom money.”<sup>62</sup>

That the issue of Triple Talaq still haunts the Islamic legal sphere proves that it remains unresolved. Retaining full rights upon repudiation and attaining direct access to divorce continue to be issues that are confusing and difficult for Muslim women to negotiate. The problem is commonly one of perception: often legal options are unknown and cultural considerations overwhelm the dynamics of dissolution. The woman who is uneducated as to the scope and extent of her rights

62 It is generally agreed by women's rights advocates that *Talāq tafviḍ*, “delegated divorce,” wherein a man designates an agent (here, ideally the woman herself) to enact the divorce, is more beneficial to the woman than the *khul'* form that typically demands an abdication of financial rights. See WLUMI, 267–271. Both unconditional and conditional (based on stipulations in a marriage contract) *ṭalāq tafviḍ* exist, depending on the legal system. For more on this subject see Lucy Carroll, “Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife,” *Modern Asian Studies* 16, no. 2 (1982): 277–309. In some systems, this form of divorce is called *'iṣma*. The vocabulary essential to this sort of divorce is that the wife must not declare to the husband: “You are divorced,” but rather, “I am divorced from you”; utterance is again key to the process. For a useful comparative discussion across the legal schools see ‘Abd al-Raḥmān al-Jaziri, *Kitāb al-fiqh 'alā al-madhāhib al-arba'a*, ed. Muḥammad Bakr Ismā'īl (Cairo: Dār al-Manār, 1999), 304–317. Note that although all the schools allow for this form of divorce, the compiler begins his chapter by insisting that the power of divorce should not be entrusted to a woman due to her “natural volatility” (*sarī'a al-ta'athhur*) and inability to exercise the patience inherent in men (304). “If divorce were in her hands, it would be used in the worst way for she cannot control herself as a man can” (*lā tastaṭī' ḍabt nafsihā kamā yastaṭī' al-raḥul*) (304–305). Note that the cause for Ibn Taymiyya's position on divorce oaths was the societal phenomenon of men divorcing their wives irrevocably in a fit of anger, later regretted only after the damage to the marriage was done.

has little recourse against the perception, often reinforced by her community, that she is indeed irrevocably repudiated.

Ultimately, the practice of *Ṭalāq*, be it Triple or otherwise, manifests a power imbalance that undermines the contractual nature of Islamic marriage. Just as Islamic marriage contracts are constructed as exercises in mutuality, certain legal systems recognize *mubārʿa* (divorce by mutual consent): Senegal, Tunisia, and Turkey.<sup>63</sup> Mutual dissolution is here complementary to the initially mutual agreement to the marriage. Meanwhile, unilateral repudiation is depicted in the Qurʿan as a social practice requiring regulation through conditions such as mandatory reconciliation efforts and clauses for revocability.

The Sudan and Yemen still formally recognize Triple *Ṭalāq*, while custom perpetuates its practice in countries such as Egypt, Bangladesh, India, Pakistan, and Nigeria.<sup>64</sup> Ibn Taymiyya, not particularly feminist, but particularly concerned with bringing intent, and especially divine intent, to bear on the law, was willing to dwell in prison for his views on unilateral repudiation and his inability to “conceal knowledge.” Some seven hundred years later, similar opportunities abound for disseminating legal knowledge and advocating for legal and social reform of unjust repudiation practices.

63 See WLUMI, 253.

64 WLUMI, 258.