

## Rethinking Women and Islam



AMIRA EL-AZHARY SONBOL

A normative view of Muslim women is as victims of a patriarchal order defined by Islamic laws, traditions, and practices. According to this perception, while modern states allowed them to emerge from seclusion to participate in society through education and employment, history shackled them with deeply entrenched social habits that hold back reforms designed to allow women greater freedom and rights. In this conception of Muslim women's history, the past is painted as a grim picture of seclusion in harems, a dark period when women constituted property to be bartered in marriage and when their purity was guarded so as not to bring shame to their families. In short, the purpose of a Muslim woman's life was to bear children, uphold her family's name, and serve the man she was given to in marriage. She had little say in her life either before or after marriage, and once married, she could not separate even from an abusive husband.

This view is shared by many Western scholars through whose eyes the non-Muslim world has come to understand Islamic history and society. Muslim feminists who are actively involved in international organizations and Western feminist circles also share it. This group of scholars and activists, the majority of whom are women, depend largely on demographic and sociological studies about the status of women in the Islamic world today. They also make reference to the Qur'an and other

sources of Islamic law, and they see Islamic law as an unchanging body of laws based on scripture and the interpretations of medieval *fuqaha'* (clergy).<sup>1</sup> They see the lives of Muslim women as dictated by medieval laws that have no place in a dynamic modern world that they identify with the West, where women have gained significant economic and political rights. They compare the favorable life of women in the West to the "servitude" of women in Third World countries in general, and Islamic countries in particular.

In defense of Islamic gender practices, some Muslim scholars have demonstrated how Islam actually improved the condition of women, who were much worse off before Islam. They point out that in pre-Islamic Arabia, women were controlled by their clans as property and suffered through female infanticide and polygamous marriages. The Qur'an gave women status equal to men in the eyes of God since both were expected to uphold the same moral standards and perform the same rituals of *shahadah* (declaration of faith), prayer, fasting during Ramadan, pilgrimage to Mecca, and *zakat* (almsgiving). Islam also gave women financial security since they received a dowry from their husbands at the time of marriage, *mut'ah* compensation (compensation when a marriage was ended against a wife's wishes, compensation for the enjoyment and benefits of the marriage that would be denied her), and a one-year alimony following divorce. Women also inherited property, and could invest their wealth in trade or any other profit-seeking activity. Islam also assured women proper treatment by their spouses and condemned abuses like wife beating or rape. Differences from what Islam prescribed in the application of gender laws by Islamic societies today are to be blamed on the interpretation of *fuqaha'* as well as traditions that predated Islam that were adopted into Islam. Interestingly, this group of scholars, like the critics of Islam, use scripture and *fiqh* almost literally, if for different ends.

Scholars who believe that women had greater freedom and rights before the coming of Islam represent a third point of view. They show that the issue of female infanticide has been exaggerated and that infanticide was practiced in a very limited way and only when clans were in dire need. Further, both girls and boys suffered from infanticide, although girls were considered more dispensable at times when tribal protection was a constant battle. It is true that the Qur'an guaranteed inheritance and dowry rights for women, but women inherited only half what men received, and the dowry was usually given to the father, and more often than not it never reached the hands of the bride. Furthermore, women of certain pre-Islamic Arabian tribes actually cohabited

with several men among whom they chose the fathers of their children. They contracted their own marriages, did not wear a veil, rode into battle with their tribes, and were intellectual leaders, poets, and prophets. Islam as interpreted by fuqaha' established a patriarchal order that denied women the freedoms they enjoyed before Islam. This third group of scholars, mostly Muslim women but among whom are some male scholars, draw upon the Qur'an and fiqh but go beyond their literal meaning, reinterpreting the Qur'an and questioning the validity of the prophetic traditions. They study connections between Qur'anic verses (*ayas*) and discuss the historical context of each verse to determine the meaning and authenticity of traditions. Similar methods are applied to prophetic traditions and exegetic literature.

At first view, these depictions seem to contradict one another; they actually but represent different outlooks dependent on the ideology of the author and the particular sources used. One problem with all three approaches is that they use pre-Islamic Arabia and the life of Bedouin women as a "takeoff" point for the evolution of Islamic societies and as the social basis of gender. Tribal habits and traditions continue to form the model for social and gender relations even though Islam has expanded and developed and exists today in highly urbanized communities with direct impact on gender. It should be added that the views described above form a basis for reform efforts by governments, individuals, and Islamic groups—both liberal and fundamentalist. While Muslim women have been strongly involved in reassessing the history of women and the impact of Islam on their lives, very few have actually attempted a "woman's" interpretation of the Qur'an. Those who have, have done so cautiously, which accounts for their wide acceptance among Muslim thinkers, liberal and conservative alike. For example, Zaynab al-Ghazali is not only a recognized and respected thinker, she is widely acclaimed by conservative *'ulama'*. So is 'Aisha 'Abdal-Rahman, better known as Bint al-Shati'. Her Qur'anic interpretations are widely respected, and her columns appear regularly in popular newspapers. Regarding the parts of the Qur'an that deal with gender relations, there is little difference between the interpretations of Bint al-Shati' and al-Ghazali and those of their male counterparts. The most radical departure is in al-Ghazali's conclusion of *Surat al-Nisa'* (4:3) that "one wife sufficed." Verse 4:3 is the Qur'anic verse that is used as the authority for a Muslim man to take as many as four wives (it will be the focus of part three of this paper). But al-Ghazali's discussion of 4:3 itself does not depart from the dominant male paradigm.

Women's lack of participation in Qur'anic interpretation should not

be surprising, however, given the fact that Muslim theology has been almost exclusively a male pursuit. It is true that certain historical figures, like the Prophet Muhammad's wife 'Aisha, are seen as important transmitters of *hadith*. It is curious that a large number of commonly used *hadiths* establishing unequal gender relations are related back to the Prophet's wives, who have been granted intellectual authority by male exegetes. What better way to establish patriarchal gender relations than by emulating the Prophet's actions within his own household? Once such knowledge was established and accepted, there was little room to question it without appearing to be an immoral threat to the Islamic community. The problem is in the knowledge, the construction of this knowledge, and the history that has been established and widely dispersed by religious and political authorities. This is where questioning must begin, and it can only be done through intensive historical deconstruction based on the actual experience of Muslim communities. Here literature—poetry, chronicles, biographies—proves problematic since it, too, is interpretation. Like *fiqh*, it is a cultural product and hence a reflection of people's ideas, feelings, and struggles, their reactions to socioeconomic conditions and other complexities of human life. There is a great need to reconsider this literature as well as move toward more popular literature in the past and present. But it cannot be stressed enough that using literature or exegetics alone as a source to study gender has been the cause of great misunderstandings. The actual lives of women rather than commentaries on and interpretation of their lives have to be the focus for any future research agenda if the imagined history of Muslim women is to be deconstructed.

However contradictory this may sound, perhaps one should also caution that, even though women have not been participants in what may be termed official theological interpretation, they were nevertheless involved in defining social and gender relations and hence the legal principles applied in Islamic law and courts. The study of concrete social experience makes this fact almost indisputable even though *fiqh* dismisses it. While archival records reveal active social participation and legal awareness on the part of women, *fiqh* depicts Islamic patriarchy as crowned by an absolutist male while women are commanded and obedient, unseen and unheard. In short, women are imagined as victims and objects and not as active participants. Women's contribution to *ijtihad* belongs to everyday life, decision making, and conflict negotiation. It is there that norms and traditions are set, and it is in these norms and traditions that gender relations reside.

In the following discussion, I attempt an interpretation of certain

important issues concerning gender established by the Qur'an. In so doing I realize that this is a woman's interpretation and will probably prove controversial. It is but one reading that takes into account historical context, *fiqh* interpretation in the past and present, laws practiced in Islamic countries today, and the application of gender laws in shari'ah courts before the modernization of laws in the nineteenth and twentieth centuries as well as in reformed courts. For the purpose of specific court evidence, I use records from Egyptian Ottoman and modern courts the subject of which has been of special interest to me in my career as researcher. Following a short interpretation of the history of women as seen through these records, I do two things. First is a general interpretation of gender in the Qur'an with an emphasis on equality and what has been popularly called "the rights of women," although the Qur'an does not deal with human rights as much as God's rights. It is in Islam's vision of human equality that human rights can be understood. Second, I take one of the most controversial issues in Islam, polygamy, and discuss the history of its interpretation as well as give my own view of the issue. My conclusions show the interconnection between the various parts of this study and discuss the need for further research and rethinking.

### Historical Background

Recent studies of the Ottoman period show that Muslim women, like women elsewhere, lived in patriarchal societies where it was usual for a male—husband, father, brother, or uncle—to head the household. Within this patriarchal order, women were expected to obey their husbands, men sometimes married more than one wife, and guardians had absolute power (*wilayat al-ijbar*) over their minor children—both boys and girls—whose marriages and divorces they arranged as they saw fit. A cursory look at archives may give the impression that divorce was the sole prerogative of men, that women could be incarcerated against their will by husbands, that physical abuse was common, and that Islamic law was applied with little change over the centuries. A closer reading of archival records, however, shows another dimension to this picture.

For one thing there are clear differences regarding the laws applied by shari'ah courts depending on place and time. Even though there was clear consistency in the application of law by judges, there are significant differences depending on the particular *madhhab* (school of law) being applied, the nature of society—whether urban or rural, tribal or peasant—and the age. Furthermore, various *fuqaha'* of the same *madhhab* interpreted the law differently. So the idea that Islamic law is unchanging is clearly based on an incomplete reading of *fiqh* without refer-

ence to actual legal practice as presented by court records, a common problem concerning the use of Islamic sources. It should be added that court records themselves are problematic since they differ greatly in quality and quantity from one part of the Islamic world to another, and even the most abundant and detailed records (Egypt, Turkey, Syria, and Palestine) do not tell the whole story. Nevertheless, archives supplemented by literature, biographies, and *fatawa* (legal opinions rendered by a recognized religious authority) of the particular decades under investigation give us a pretty good picture of life in Muslim societies.

The modern period in the Islamic world is generally dated as beginning with the nineteenth century, following Western chronologies based on the experience of the West. Today, however, modernization paradigms structured on “takeoff” points are being replaced by others emphasizing historical continuities. As more historians trained in local languages began deconstructing the normative exotic and passive picture of Muslim societies, women’s history became both the beneficiary and an important reason for this development. Thus, it is clear that the lives of women throughout most of the nineteenth century continued much as they had in the eighteenth, and that the reforms experienced by women at the hands of nation-states had mixed results. Legal reforms continued at different paces throughout the nineteenth and twentieth centuries, depending on the particular Muslim country. Egypt and Turkey seem to have been the pioneers in this area, even though other countries—like Lebanon and Tunisia, which banned polygamy—have caught up and extended rights to women exceeding those given to them in Egypt. Meanwhile, Turkey is experiencing a revival of Islamic traditions after a long period of secular government following World War I.

Modern legal reforms introduced a multi-tiered system that created what became known as “personal status law.” Without doubt, new state laws and reforms gave women access to greater public services in such areas as education and health. This was part of government mobilization efforts involving centralization, administrative rationalization, bureaucratic growth, industrialization, and westernization. Political rights were also extended to women, and they were given relative job equality with men. Laws and legal procedures supposedly applied equally to both. But if equality was the intent, as is proclaimed in the various constitutions and national charters of Muslim countries, in practice women experienced a marked deterioration in gender relations under what can only be called state patriarchy since the government extended its authority over all matters of family, gender, and personal relations.

Through committees formed to compile new laws and legal proce-

dures, the right of women to divorce became minimal while the rights of men to divorce their wives at will and to marry more than one wife were upheld and extended. New laws based only superficially and selectively on the Islamic *shari'ah* established systems and institutions that allowed for the forcible incarceration of women by their husbands. Known in Egypt as *bayt al-ta'ah* (house of obedience) and in Tunis as *dar al-ajwad* (house of notables), these structures coerced women to do what their husbands wished (or their husbands and fathers, in the case of *dar al-ajwad*).<sup>2</sup> Courts committed women to these institutions of incarceration, and the police were used to deliver them to husbands and fathers against their will. While *ta'ah* (obedience) in Islamic law is reciprocated by the husband's responsibility for *nafaqah* (financial support), it never included forced incarceration of women. Shari'ah court records from before the time of the Ottoman empire and until the modern period show clearly that such an institution as *bayt al-ta'ah* did not exist and that wives had no trouble receiving a judgment of divorce. To be secluded at home unable to go out without a husband's approval was a choice left to the wife, and she could break it at will if she no longer wished to live with him.<sup>3</sup>

One of the most serious errors applied to the history of women concerns the concept of public/private spheres. In this view, the public was the sphere of men: here they practiced their professions, participated in politics, and formed the active part of society. The woman's domain was the home. There she was secluded and could not leave without being veiled and only if her husband permitted her to go out. It was only with modernity—and in the case of non-Western women, the coming of Western influences—that the strict divides between private and public life begin to blur. This understanding is at the heart of conservative efforts to veil women in the Islamic world today, to deny them work in the public sphere, and to confine their attention to the family. Qur'anic interpretation by conservative authors is directed to enforce segregation. Women's unveiling or leaving the private domain is seen as a Western innovation that needs to be rooted out of Islamic society.

Archival research proves that the private/public divide has questionable foundations in Islamic history. The more you read, the more alive the tableau of the premodern period becomes. If coming to court was a possible cause of immorality, as some medieval jurists wrote, then Islamic society must have been terribly corrupt. Women appeared in court routinely, daily. Every second or third entry in shari'ah court records involved women—women buying, selling, marrying, divorcing, reporting violence, demanding compensation or custody of their chil-

dren, among other activities. This is in great contrast with the modern period, when mostly poor women who cannot afford the expenses of a lawyer come to court. Middle-class and wealthy women no longer make an appearance in court and instead are almost always represented by lawyers, brothers, fathers, or husbands. The accessibility of justice is one of the strongest virtues of the Ottoman period in comparison to the modern state, which codified the laws, centralized courthouses, and demanded representation by a lawyer class. The lack of participation by women in court procedures today and their delegation of such procedures to male relatives and lawyers are assumed to date from the premodern period, but this is not a true representation of the court culture of the time. One way we know this is that Ottoman courts required women to identify themselves. Some brought witnesses to vouch for their identity, but most were identified directly by the court clerks. In fact we often have the description of the woman standing in front of the court clerk in specific details.<sup>4</sup>

There is other evidence against the public/private divide, and here we should look at why women left the home in the first place. Given the number of court cases disputing the wife's constant leaving of the marital home for various purposes, one can conclude that it was natural for women to go out shopping, visiting, or to go to work. Husbands might dispute that and often withheld their *nafaqah*, as pointed out earlier. But that did not mean that women had to have their husbands' permission before going out. This is a fiction developed by modern thinkers who dismiss the pre-modern period and acclaim the benefits of modernity for women.<sup>5</sup>

The question of women's work is essential if we are to understand gender relations before the modern state came into being. Did women work? If so, what jobs did they perform? The picture regarding women and work is very interesting. Suraiya Faroqhi has shown that women in the Ottoman empire had an important role in silk manufacturing and weaving, although she mainly discusses secluded practices—that is, women not in a workplace but rather involved in a takeout system by which they produced their product at home. Interestingly, according to Faroqhi, women did organize into pressure groups, showing labor awareness.<sup>6</sup>

Egyptian archives give us much the same picture as Faroqhi—that is, women doing work at home and having access to the market in various ways to sell their product. We are also given detailed evidence of the retail aspects of women's activities. Whether this was a common practice in other parts of the Ottoman empire is worth exploring. The evi-



dence suggests that it was very natural for women to be in the marketplace, either to sell their goods or to shop. The evidence is in the form of court records dealing with disputes between husbands and wives because of their constant shopping, or between men and women or women and women who dispute over business dealings. After all, the courts were a place to resolve disputes. The most common dispute has to do with physical brawling—two women beating each other up or several women ganging up on one of them. Often it is a man who is beating up a woman over strategic selling spots in the marketplace. In court it was normal for each to declare that that spot in the market was theirs and that the other had encroached upon it.

Other common cases of women quarreling in the marketplace involved charges of forced miscarriage, which if proven brought heavy compensation. The complaint was brought to the court as a financial dispute. Sometimes the claim was that another woman caused the quarrel and that the miscarriage took place, but often a man is singled out as having caused the miscarriage. He is charged with beating up the pregnant woman on purpose, perhaps because his wife had instigated a vendetta or because the injured woman had encroached on his spot in the marketplace. This raises questions about the seclusion of women if strange men can actually beat them and cause them to miscarry! Records also show that women owned shops and property. As Afaf Marsot demonstrated, they also held *waqfs* (religious endowments) and were often assigned as executors of the *waqfs* and the estates of deceased relatives inherited by their children and siblings.<sup>7</sup> As executors they were responsible for the collection of income; and even when this job was delegated, it involved contact with strangers, including men. We also have direct evidence that women were running their shops themselves, although they might delegate this function if the shop was far away. This was the case with the Maghribi community of Alexandria, whose women inherited property in Tunisia or Morocco and delegated the collection of income to others—usually men, probably because they traveled and could carry the money back.<sup>8</sup>

In short, many of the assumptions of modern scholars and *fukahā* regarding the history of Muslim women are not founded on reality. Yet these assumptions continue to influence the way in which the Qur'an, like other sacred scriptures, has been used to build hegemonic patriarchal discourses. Beliefs about the seclusion of women, women's work as private and in the home, veiling, men's responsibility as moral guides to wives as part of their *qiwamah* (leadership), men's right to divorce women at will while women's access to divorce is restricted, and po-

lygamy are all central to these discourses. Constructed discourses gain a life of their own and become a reality having little to do with the original laws they supposedly represent.

Islam, like other religions, concerns itself with the role of women and men within society. The holy books of Jews, Christians, and Muslims contain basic principles, laws, and moral judgments concerning a woman's life and the conduct expected of her. Each generation of women has to cope with these fundamentals and tries to apply them to the particulars of life during their specific era. With the passage of time, each generation has also had to contend with the interpretations of these fundamentals by the previous ages. By the twentieth century, women had become bound not only by the laws ordained by scripture but also by their societies' understandings of the past. The experiences accumulated over centuries reflect diverse circumstances, economic structures, divisions of labor, political systems, and even international relations. Yet these experiences and their interpretation in modern terms are used to provide models for contemporary conduct.

Notwithstanding the fact that every society faced unique circumstances in its own time, and perhaps because each generation has seen its own practices as ultimately grounded in scripture, it has become customary to regard the interpretations of the religious scholars of the past as synonymous with God's intent expressed through holy books. Possibly, it is the lack of contemporary leadership matching what the "imagined" as a higher moral standard of the old standards of knowledge and piety that makes people today look to the past for guidance, or maybe it is simple nostalgia for a past world that is easier to understand now that it has gone. The most serious problem with this projection to the past is that the focus for interpreting the life of women in the modern world has been the early period of Islam. The *salaf* (forebears, forefathers) constitute the basic model, but this model is studied through the prism of the interpretation of fuqaha' throughout Islamic history as each addressed the problems of each successive age. The model of the *salaf* is therefore nothing but a construct of the succeeding generations; it represents the image rather than the concrete realities of life that modern women are supposed to live by today.

That Muslim theologians and scholars were reacting to the problems of their age and presenting their solutions to what they considered immoral or wrong—very much as they do today—has been lost to those demanding the application of models from early Islam without much concern for real research in the historical context. A good metaphor would be the sermons preached by modern popular preachers such as

Shaykhs Kishk or Sha'rawi of Egypt. From their continuous harangue regarding morality one would imagine that Egyptian society today is very immoral and corrupt, the women loose and the men unable to control their lusts. Needless to say, that is hardly the case. Egyptian society is quite conservative and pious, notwithstanding the moralist discourse. The modern period, like other historical epochs, needs to be studied from within its own historical reality. Cultural production is important to show us conflicting discourses and ongoing class struggle, but it must be seen as a cultural representation rather than concrete reality. The cases dealt with by the *muftis*, or Friday preachers, should also be seen for what they are: as dealing with specific problems, and representing a moral discourse of particular individuals with their own class and cultural baggage, rather than a general picture of Egyptian society.

In this modern age, Muslim women have experienced great changes. They have seen their societies modernize, industrialize, and interact within an increasingly smaller world in which no nation or society can stand isolated from the rest. They have been trying to come to grips with their changing roles while holding on to the fundamental laws presented by the Qur'an. Women, like men, have had to deal with a more aggressive existence, in which they increasingly share in the burden of supporting a nation. Islamic countries as a whole have had to deal with the modern age, the rise of nation states, capitalist or socialist transformations, change in family structure, and new methods and forms of education. All this has affected the male members of the community no less than the female, but, as in most social transformations involving male-dominated traditional societies, it is the changes in the rights and duties of women that have proven to be most controversial.

During the early years of the twentieth century, Muslim women experienced periods in which society encouraged their education, their public role, and a more liberal interpretation of religious laws. Those were times of revolutionary enthusiasm, in which state building was still an optimistic endeavor. During the last decades the reverse proved true. With the growth of political and economic difficulties, Muslim societies, faced with the frustrations of development and economic dependency, tried to compensate with a more puritanical approach to social and religious issues. In a way, this was an effort to control their communities' destiny in some fashion. One of the results has been a reorientation toward a stricter interpretation of the role of women and the whittling down of rights they had already won. At the same time, the maneuverability they had experienced in personal and family relations before the modern period was lost to them under the guise of reform.

The subject of Islam and women's rights has been part of an ongoing dialogue regarding the interpretation of the shari'ah since the end of the nineteenth century, when the impact of westernization began to bring about deep structural changes in various Muslim countries. One group of intellectuals and theologians has argued that to meet the challenge of modern times, their communities must become revitalized through a reopening of the door of *ijtihad* (interpretation). Through *ijtihad*, Islamic societies could hold on to the fundamentals of Islam while at the same time allowing for the transformations required by changing times. A second group, while not disagreeing about the need for *ijtihad*, has used sources of Islamic law to apply a more conservative interpretation and has looked to the past for ways to meet the challenges of modernization. Rather than try to mold Islam to changing conditions, they wish to mold modern Islamic society to Islamic law as interpreted by past generations.

Initiated during the period of *tanwir* (enlightenment), as some have referred to the late decades of the nineteenth century, this debate is taking an increasingly conservative direction today. While the first, more liberal group was more influential in the past,<sup>9</sup> with the increasing political, economic, and social problems of the last two decades, more conservative groups have gained in prestige and influence. Those who favor the more liberal argument have also turned more conservative, giving a stricter meaning to the Qur'an when it comes to the issue of gender. So even though there are clear differences between the liberals and conservatives in regard to political or economic issues, both have favored more patriarchal interpretations of Islamic laws dealing with what is termed the "woman problem."

Here I take particular issue with assumptions that it is Islam, as a religion based on a God-given law, that has held Muslim women back from gaining some measure of social and legal equality. As explained earlier in this article, such an approach undermines history by seeing Islamic law as an unchanging code and Islamic societies as stagnant waiting for a grand mover to enforce transformations. Like all other human societies, that of Islam has changed and transformed with time, changed technology, and circumstances. The laws applied, if based on particular codes, have in fact developed and mutated according to needs. Conservative methodologies applied today are creating rigid interpretations of the Qur'an that need to be addressed. The *ijtihad* applied here is an effort toward that end, so that the debate could be widened to include other points of view than the liberal and conservative perspectives that have dominated the discourse. It particularly empha-

sizes the need for women to be involved in rereading and interpreting fundamental laws set by the Qur'an. It is my belief that by looking to the Salaf for answers, one of the most important characteristics of Islam is being undermined: its flexibility. As any cleric will tell you, Islam is a universal religion and is meant to fit all places and all times. Today, the call for a return to Islam has taken upon itself a strict interpretation of the past and sees that reform of today's community should be based exclusively on the actions of those who came before. These actions are presented through the ideas of jurists rather than through the actual practice of society. Thus, whereas *turath* (heritage) literature fills the bookstores and libraries of Muslim thinkers today, little importance is given to research detailing the actual practices and application of laws, which jurists commented on or reacted to. In short, textual discourses are given greater validity than actual legal practices, and the texts selected and presented give an eternal, unchanging appearance to Islamic law fitting with modern state patriarchy.

Unfortunately, this prevailing methodology, while allowing for patriarchal hegemony, also denies the very universality of Islam so central to its message. After all, what is advocated is not a religion meant to fit all times and places but a selective reading from the accumulated interpretations of past clerics that fit the beliefs of conservative individuals and groups. Those who follow this path could be called fundamentalists but with qualifications, since they do not build their interpretations on a strict reading of the Qur'an alone; that would be counterproductive for their purposes. Rather, when it comes to controversial issues, they generally prefer to support their arguments by selected juristic interpretations from present and previous generations of *'ulama'*.

The issue of how Islamic law is to be interpreted is a vital one, not only for women's rights but because the methodology decided upon by the community will be of critical importance to the future of Islam itself. Those who hold on to the past as a way of holding on to Islam not only detract from the fundamental character of Islam as a universal religion, but also hold back their countries from advancing and developing in a world community quite different from that of the Middle Ages in which *fiqh* was formulated. Today various countries are considering whether to make the shari'ah the main law of the state, to adopt a combination of religious law and secular law, or to stick solely to secular law. It is my belief that if by shari'ah is meant the type of interpretation embraced by conservative groups, then such laws can only have a negative effect on the community. But if, as the great nineteenth-century Egyptian reformer Shaykh Muhammad 'Abduh advocated, we reopen the door of

ijtihad and allow for a rereading of the Qur'an in terms of present-day conditions, the universality of Islam can be protected. Such a methodology could also prove to be a bridge between upholding the principles of Islam and at the same time allowing Islamic society to participate in the progress of world civilization.

### Women and Gender Equality

I have continued to stress to people the importance of [religious] knowledge, since it is the light by which one should be guided. But I have found that women are in greater need of being reminded of this than men, because of their disregard for knowledge, and their natural inclination and fascination for frivolous pleasures. Usually, a young girl is brought up at home and is not taught the Qur'an and does not know ablutions . . . and is never told about the rights of a husband before her marriage . . . perhaps she has seen her mother take from [her] husband's funds without his permission, and practice witchcraft on him, claiming legitimacy for this [action] as being aimed at winning his love. . . . [Furthermore] she prays while seated even though she has the ability to stand up, and intrigues to end a pregnancy [when it happens].<sup>10</sup>

Such a negative view of women by medieval scholars is publicized through reprints by conservative presses today to paint an image of women as being essentially sinful and lacking control over their own emotions, therefore society has to legislate controls on women's activities. In order to support his religious arguments about women, Ibn al-Jawzi used mostly hadith and fiqh in preference to the Qur'an. An example of this is his assertion that it is best for women not to be in the company of men, a view that has been used to justify the segregation of women and the restriction of their movements and associations. As proof he tells the following story: "As reported by Sa'id b. al-Musayyib, [who said] that 'Ali b. Abi Talib, peace be upon him, asked Fatima ['Ali's wife and the Prophet Muhammad's daughter], peace be upon her, 'What is best for women?' She answered, 'That they see not men and men not see them.' 'Ali continued, 'I informed the Prophet, God's prayers be with him, of this and he answered: 'Fatima is but a part of me.'"<sup>11</sup>

In the part of his work titled, "Warning Women against Leaving their Houses," Ibn al-Jawzi discusses why women should not leave the home and how they should dress if they have to. "A woman must not go out [of the home], for even if she [intended] no evil, the people would [still]

not be safe from her. And if she is forced to go out, after taking her husband's permission, she should wear worn clothes . . . and make sure that her voice is not heard, and that she walks at the side of the road and not in the middle of it." As Islamic evidence for the above, he quotes a hadith of the Prophet, which he is using out of context: "'Aisha [the Prophet's wife], peace be upon her, said: I heard the Prophet of God, peace be with him, saying: 'Any woman who removes her clothes in other than her own home will destroy all that (love) that is between her and God.'" <sup>12</sup> What has one to do with the other is not clear, but this is often the case with such rules regarding women.

Based on this type of hadith methodology, fundamentalists are today constructing a moral hierarchy for gender. Little effort is made to compare the hadith with the Qur'an or to place the hadith within any particular context in which a conversation like this could have taken place. And given the fact that the Qur'an has no concept of "original sin," this picture of the essential sinfulness of women can have only a spurious basis. This is especially so given the general rules set up by the Qur'an that do not describe women as any more sinful by nature than men. Nor is Eve blamed for the fall, an idea that was imported into Islam from the Old and New Testaments. Actually, when the Qur'an discusses women and sin, it almost always discusses men and sin within the same discourse and uses a similar terminology. For example:

"Say to the believing men that they should lower their gaze and guard their modesty, that will make for greater purity for them, and God is well-acquainted with all that they do, And say to the believing women that they should lower their gaze and guard their modesty, that they should not display their beauty and ornaments except what (usually) appears of them. (S. 24:30-31)

Unfortunately, even though the Qur'an recognizes both men and women as possible sinners, and, in fact, provides for equal punishment to both, we find that the burden of sin and shame has traditionally been put on the shoulders of women, who therefore must be secluded lest they cause evil. "Women are an *'awrah*" (meaning a weak spot or genitals); the implication is then sexual weakness. "When she leaves [her home], she is accompanied by the devil." How can this image of woman as a walking *'awrah* be reconciled with the above-quoted verse from the Qur'an? And why are women and not men burdened with potential sinfulness when the Qur'an speaks with equal terms about both? And does not the Qur'an not make gossip about another's immorality a serious sin, punishable with eighty lashes? 'Abd al-Mit'al al-Jabri of al-Azhar

quotes Imam al-Ghazali in another misogynist hadith: "A woman is closer to her God if she is in a hollow cavity in her house, her prayer in the courtyard of her home is better than her prayer in the mosque, and her prayer inside her house is better than her prayer in her courtyard, and her prayer in her bedroom is better than her prayer in her house."<sup>13</sup> In short, various levels of purity are laid out, with the more secluded posited as the best. Does this not undermine the importance of communal prayers in Islam? If women cannot pray in a mosque with men, would it not be best for them to hold their own communal prayers, whose importance is emphasized in the Qur'an? Why presuppose sin in women given the Qur'an's admonishment not to presume slander, as S. 24:23 commands: "Those who slander unwary believing chaste women are cursed in this life and in the hereafter, for them is a grievous retribution."

Perhaps the most important contradiction in Qur'anic interpretation today in regard to sin has to do with stoning as a punishment for fornication. While today stoning is used to punish women for *zina* (adultery), and adultery has been made equal to flirtation and dressing-code violations in stoning cases in countries like Pakistan and Iran, there is no mention of stoning in the Qur'an. Rather, the punishment for *zina* is spelled out: "The adulteress and the adulterer, each receives a hundred lashes" (S. 24:2). As a legal basis for stoning, versions of traditions have been used that claim the Prophet's acquiescence to stoning for Muslims. Even though the books of fiqh do not lend much credibility to these, advocates of stoning for *zina* today expand on the prophetic story and give particular importance to a story that 'Ali b. Abi-Talib ordered stoning for fornication. Here again traditions of questionable validity are used in preference to the Qur'an, which is very specific about the punishment for *zina* and only accepts that such punishment—lash or exile, depending on the marital condition of the perpetrators—be exacted after a voluntary confession is rendered numerous times. A good example of a hadith that has been used for various purposes, the story being changed where suitable, has to do with the trip of the Prophet to heaven, *Isra'* and *Mi'raj*. The hadith is purported to go as follows: as the Prophet ascended to heaven with Gabriel, he saw women hanging from their breasts screaming. He asked Gabriel why they were being punished. The traditions that record Gabriel's answer mention women who foisted their bastard children on their husbands and women who committed *zina*. The connection between the two possibilities is obvious. It is not clear, however, why only women were being punished in hell for *zina*. What about the men with whom they committed *zina*? Can a woman



commit zina and have bastard children without men? Either the hadith has little legitimacy, or it has been turned around and given a misogynistic interpretation. Interestingly, this story is often repeated by groups advocating stoning today. Besides, stoning must end in death, so what are we to do about the Qur'an's admonition that a *zani* (adulterer) be married to a *zaniyya* (adulteress), and not to a non-adulterer? ("An adulterer may only marry an adulteress or a non-believer and adulteress may only marry an adulterer or a non-believer" [S. 24:3].) How are we to justify such an *ayah* if fornicators—who are caught in the act, the act is proven, and they voluntarily confess several times—can still be married after they are punished? Clearly the punishment did not include death by stoning or any other means.

Furthermore, why is it that today in Iran and Pakistan women have been stoned while men are not, when clearly women cannot fornicate alone? One must conclude that such legal interpretations are based on gender bias and misogyny, the shari'ah being manipulated to justify such actions. Thus the possibility of man being the cause of or being capable of sin is given only lip service, while it is the woman who is treated as a being from whom the world needs to be protected.

Perhaps the most central theme in Islam is its emphasis on the well-being of the community, in its concrete form rather than the idealized Islamic community at large. The various rituals, dogmas, and moral precepts presented by Islam are intended to assure the cohesion of the community. Praying, fasting, pilgrimage, and paying the *zakat* to support the needy and the community's various projects are all meant to bring people together, to mold the community into a cohesive whole that stands collectively, a unity that completes and complements its various components. For unity to exist there must be equality, a theme central to the vision of Islam. The Qur'an tells us, "Mankind, fear God Who created you from a single soul, created from it its mate, and from then twain propagated countless men and women" (S. 4:1).

This vision of equality has been one of the mainsprings and central teachings of Islam. Today it is used to show Islam's sense of justice as race- and ethnicity-blind, not differentiating between one man and another, be one rich or poor, except in what is in their hearts. But this equality is not extended to women. Rather, the concept is given no more than lip-service and the numerous Qur'anic references to equality between man and woman are commonly disregarded, as the man is given a superior moral and physical role as guardian over his wife. Even scholars considered to be liberal have found ways to justify this inequality. For example, Fazlur Rahman discusses equality in the following terms:

It may, however, be pointed out that although woman, as a human being, occupies equal status with man and is treated as equal, and enjoys equal rights, privileges etc., the fact remains that there is a difference between the sexes. No amount of debating or discussion, physical exercise or hard industrial work can change her sex. As woman, her special function in life is different from that of a man and she is naturally equipped with a different physical, physiological, biological, and even psychological structure. Islam has taken these natural differences between the sexes into account in differentiating roles and allotting functions to each sex. Therefore to talk of absolute equality between men and women is complete nonsense.<sup>14</sup>

The judgment that total equality between men and women is “non-sense” (as Rahman puts it) is based on the biological differences between the two, and particularly on the fact that the woman is the one who bears children. But why should man have rights superior to those of woman simply because God created each to fulfill different biological functions? Is man’s essence his biological function, then? Is there nothing that differentiates him from other animals? And can the emphasis not be changed to recognize the balanced equality of roles rather than biological differences, particularly at a time when a revolution in biomedicine may put these biological roles into serious question? Already advancement in the technology of firearms and security has made a man’s physical protection of women less important. The point I am trying to make is that while God certainly created men and women biologically different in order to perform particular biological roles, it is the male view of these roles that has decided actual masculine and feminine legal rights and duties in Islamic societies. It is the male view that made the male sex superior and decided that, however hard women tried, they could never achieve absolute equality with men. According to Fazlur Rahman, that notion “is complete nonsense.” But why the presumption that women would want to be men, just because they exercise to strengthen their bodies? Why would women want to change their sex or become male, except in a misogynistic view? If fundamental Qur’anic laws do not change, our interpretations of them can and should. This is what makes any holy book universal, applicable to all times and places, as every Muslim will tell you.

Were we to divide the laws and requirements of the Qur’an into the two categories of *‘ibadat* and *mu‘amalāt* (rituals and social relations), we would find that both women and men are required to follow the same

moral code. Articles of the faith are the same for both, as are the various rituals of prayer, fasting, pilgrimage, tithing, and profession of faith—all are required equally of women and men.

Muslim men and women, believing men and believing women, humble men and humble women, truthful men and truthful women, patient men and patient women, pious men and pious women, men who give to charity and women who give to charity, men who fast and women who fast, men who guard their chastity and women who guard [their chastity], men who mention God's name frequently and women who mention God's name frequently, for them has God prepared forgiveness and great reward. (S. 23:35)

In the area of mu'amalat (social relations), there is the same basic equality that requires every individual to place the well-being of the family and community foremost in his or her mind. Because of differences in the physical nature of men and women, as well as in the needs of society, special roles are assigned to each. However, these roles are equal in importance, with exact rewards for fulfilling, and punishments for not fulfilling, the duties allotted. Notwithstanding this evidence, the fact that different roles are assigned to men and women has, unfortunately, been used as a basis for perpetuating a male-dominated society, in which legal equality has been forgotten. Therefore, to assign a position of total dependence to women, and of legal dominance and guardianship to men over women, as is the rule in the Muslim world today, is not in accordance with the very foundations of Islam as presented by God's revelation in the Qur'an.

Perhaps one of the most controversial chapters in the Qur'an is Surat al-Nisa' 4, which states "Men are the protectors and maintainers of women." The Arabic original for "protectors and maintainers" is *qawwamun*, which has been understood to mean different things by different people. *Qawwam* is also explained as "Men are placed in charge of women" because God has endowed them with the necessary qualities.<sup>15</sup> Being placed in charge makes men the guardians of women, entrusts them with watching over the women's actions, and makes them the final arbiters of their fate. Other interpretations are more strict, making men liable for punishment for their wives' sins and thereby giving them the right to enforce their own view of morality upon the women they marry or for whom they act as guardians. Such interpretations have explained this phrase as meaning, "Men are pre-eminent over women," which gives them absolute power over them. Fundamentalists who support

this interpretation argue that this Qur'anic verse gives the man the right to prohibit his wife from acting in any way he judges to be unfit, lest he pay the price for her sins. However, it is not clear how such an interpretation can be reconciled with a belief in *Mi'ad* (Day of Judgment), when each individual will have to answer for his or her own deeds and thoughts. Where does the responsibility of one individual for another's actions begin or end in a system in which salvation depends on individual piety and faith?

Since the following verses may hold the key to its true meaning, it is unfortunate that its first part is usually used alone:

Men are the protectors and maintainers of women, because God has given the one more [strength] than the other, and because they support them from their means \* Therefore the righteous women are devoutly obedient [*qanitat*, pious, obedient to God],<sup>16</sup> and guard in [the husband's] absence what God would have them guard.

This verse has been interpreted in many ways. In fact, it is a good example of the flexibility of Islam, which is malleable and able to suit various periods of time. This is important because it outlines a very basic pattern in the system of *mu'amalat* set out by Islam. What it does is discuss shared obligations—that is to say, it is a balanced verse. If we analyze it and try to understand it in its totality, what we get is the following: Men are responsible for protecting women from bodily harm, and providing food and shelter for them. Women, in turn, must remain faithful to their husbands, physically, emotionally, and materially. If not, then a number of punishments ensue.

But this balance is forgotten, and *qiwamah* is taken to an extreme. According to Ibn al-Jawzi, for example, "A woman must know that she is like a slave to the husband. She is not to do anything or spend of his money without his permission, must promote his good before her own or the good of her family, and must be ready to give him pleasure. She should [also] not flaunt her beauty to him, or mention to him any of his faults. . . . A woman must be patient in answer to her husband's cruelty the same as the slave is patient."<sup>17</sup>

Is the person here a wife or a slave? Perhaps the difference was not clear in the minds of those who interpreted the Qur'anic verse on *qiwamah* in this manner. Why such ideas should be common today, should be widely publicized and made accessible to the Muslim public, is open to question, for certainly civil law forbids slavery and even Islamic laws shun it. One popular but questionable tradition attributed to

the Prophet and used to support such arguments is, "If I were to order anyone to prostrate himself to another, I would have ordered the woman to prostrate to her husband."<sup>18</sup> How could this statement, however hypothetical, be reconciled with the basic Islamic belief that prostration is only to God, and that there is no God but God, the concept of *tawhid*, or unity, which is the very basis of Islam?

If Surat al-Nisa' tells us one thing, it is that the Qur'an calls for a division of labor between men and women within the sanctity of marriage. This becomes acceptable to both when they enter into a marriage contract. A man provides for the family's economic support. A woman who bears children is expected to educate them and to keep the home as well as the sanctity of the marriage. She owes her husband allegiance, but it is questionable that this means loss of her self-identity and individuality. She is expected to make the marriage work, to try to live peacefully without problems, and the same is required of the husband. Hence, marriage was meant to be a contractual relationship, one entered into willingly by two equal partners. Certain articles and agreements are stipulated in that contract, including the exchange of money and the right of divorce, which could be either the man's or the woman's. If one party does not fulfill the obligations of a contract, it becomes null and void, and the other party then has the right either to accept the new conditions or to terminate the marriage. Theoretically, the system as presented by the Qur'an is one of impartiality to either of the sexes; it is meant to assure the strength of the foundation of the marriage, and hence the community. Each party assumes certain obligations and must fulfill a role, not to be broken by either side while keeping the other bound.

This interpretation is supported by other details from the Qur'an, such as the requirement that a woman must freely consent to the particular husband chosen for her, and that she should not be coerced into marriage any more than a man should. This matter was not questioned before modern times, since customarily the arrangement of marriages in traditional societies was the prerogative of the family, which made the choice of a mate for either a son or a daughter, who usually accepted its decision. Such a practice can easily be changed to suit modern times, since there is nothing in the Qur'an that says that the young people cannot choose their own mate. What the Qur'an does say is that the two parties in any marriage must consent, and that it is best for the woman to marry within the same social and economic class to which her family belongs. Therefore, in today's more open society, in which women play a more active economic, political, and social role, new interpretations

can be applied so as to make the actual choice of a mate by either son or daughter as acceptable as one made by the family.

Another very important verse in the Qur'an, which indicates the significance of considering marriage as a contract based on equality between the two partners, talks about who holds the *'ismah*, or bond, of marriage—that is, the matrimonial authority. The decision on who holds this authority is specified at the time of signing of the marriage contract and is generally based on the agreement of the couple, taking into consideration class, wealth, or power. In a long discourse about marriage and divorce, which seems to be directed to men—even though, as indicated before, when the Qur'an talks to men it often addresses the community at large—the Qur'an at one point tells us:

And if you divorce them before [the marriage is consummated] but after establishing their dowry, then [they are to receive] half the established dowry unless they waived it or it is waived by whoever holds in his hand the marriage knot. (S.3:237)

The Qur'an may talk about the “one in whose hands is the marriage tie” (italicized above), but even when women are given the *'ismah*, in practice men continue to have the right to divorce them. So here, too, the Qur'an is interpreted in favor of the male.

The whole question of divorce in Islam is open to interpretation. Generally speaking divorce has been made the right of men, who, unless the right is given to women at the time of marriage, have full prerogative to implement divorce procedures. The general explanation for this imbalance refers to the differences in the male and female temperaments: women are more likely to become angry and act in haste, after which they regret their actions, while men tend to be more restrained and circumspect. This, of course, is questionable, and shows a male-centered view of relations between the sexes. The important thing is that it is not supported by the Qur'an, in which, when it comes to divorce, there is the same principle of equality that is meant to guide male-female relations in other matters. Surat al-Nisa' indicates that if a wife fears that her husband may desert her, or if he shows hostility toward her, then she has sufficient cause for alarm (allowing her to question the validity of the marriage). The Qur'an does call for attempts to bring the two parties together, but recognizes that reconciliation may not be possible: “If they were to part [divorce], God will provide each from His abundance, for God is Generous, Wise” (S. 4:130). Therefore there is a realization that, notwithstanding who holds the marriage contract, women may have the basis for a divorce.

What is even more interesting about these provisions is the choice of the word *nushuz* in regard to men: "If a wife fears *nushuzan* [desertion] on her husband's part." The word *nushuzan* is defined as "violation of marital duties on the part of either husband or wife, specific recalcitrance of the woman toward her husband, and brutal treatment of the wife by the husband."<sup>19</sup> That is, what we have here is an equality of reasons leading to divorce. Unfortunately, the word "nushuz" today is used to describe a woman only; one hardly ever hears of a husband who is *nashiz*.

As for conduct within the marriage, what is expected of man is very similar to what is expected of woman: total fidelity to the partner and to the family. The Qur'an is very clear on the rights of the husband, the wife, and the children within the family. Women are not seen as being evil; it is their goodness that is stressed (S. 4:124–27). Men are admonished to treat them fairly, to honor them, to watch out for their economic and marital rights, which include the right to a sexually active marriage, and to give them respect, love, and affection. The man is given the right to marry one, two, three, or four women, but only if he is capable of treating them equally, a challenge the Qur'an recognizes as perhaps impossible to achieve. Since each individual is judged according to what is in his heart, more than by his deeds, it is almost impossible for a man to marry more than one woman and still be totally impartial among them, fulfilling his obligations to them equally as husband, friend, and lover. (This point will be expanded on later.)

Notwithstanding all the evidence presented here, the usual characterization of the role of the male within the family is one of total superiority: he is the arbiter of the family's fate and the judge of his wife's actions. Since there has to be a leader in any group to prevent chaos from taking place and since man is the protector who shoulders the financial burden, he holds the reins of power. What can the woman hope for in such a marriage? The traditional answer is that the husband is expected to deal fairly with his wife, and that she must act in every way so as to assure that he will remain fair and faithful to her. In brief, the husband is the ruling member of the family, while the wife is a passive participant whose only role is to please her husband for fear of divorce, cruelty, his taking another wife, or neglecting her sexually and emotionally. The husband, it is true, is encouraged to listen to his wife's advice—the example of the Prophet being given—but he is not required to take such advice seriously; in fact, how could he take her advice seriously when she is but a passive, isolated member of their community?

Perhaps the problem is that the only role women are supposed to play

is within marriage. This limitation, however, is not supported by the Qur'an, nor by the Sunna of the Prophet, whose first wife and the mother of his children, Khadija, was one of the great merchants of Mecca for whom the Prophet worked before their marriage. His young wife 'Aisha led armies in person against 'Ali bin Abi Talib, the Prophet's cousin and Islam's fourth caliph. It is, furthermore, not supported by Islamic history, in which women have played important roles in the economic life of their communities. The marriage contract requires that the man be responsible for all household expenses, including his wife's needs. The dowry that he pays to her father is to be given to her to use as she wills. She has the right to inherit and own property, whose control is to be kept in her own hands and not transferred to the husband at the time of marriage.

But while such rights are sanctioned by the Qur'an, we find that fundamentalists dispute them, preferring interpretations that favor the male even in today's family in which both husband and wife may work outside the home and provide it with financial support. Once more the Prophet is quoted: "A woman is not allowed to donate part of her wealth if the marriage contract is held by her husband, except with the permission of her husband."<sup>20</sup> The justification given is that the wife may be richer than the husband but that should not reduce his power over her. If such a hadith is to be proven to be authentic, it must first be reconciled with the Qur'an's admonition that a husband should be of the same economic status as his wife (*kafa'ah*). Furthermore, where the Qur'an speaks of the husband's role as regards his wife's wealth, it is to warn him from trying to cheat or rob her. Fazlur Rahman writes: "She keeps her property acquired before marriage and has no legal obligation to spend on her family out of her personal wealth. She is also entitled to a dowry (*mahr*) from her husband. She may invest her property in any way she likes or thinks best. She is quite independent, and even keeps her maiden name and does not merge it after marriage with her husband's, as happens in Western, African and Asian countries."<sup>21</sup>

There seems to be a clear guideline in the Qur'an to the effect that the woman is expected to contribute to her community. The wives of the Prophet, for example, were expected to do more than stay at home and play a passive role. Consider this passage in S. 33:28: "O Prophet! Say to your wives: if you desire the life of this world and its glitter, then come, I will provide for your enjoyment and set you free in a handsome manner." It is usual to consider this passage as referring to the need of women to spend more time in prayer, rather than a directive for them to take an active interest in their communities. But that cannot be so when



one considers the active commercial role taken by the Prophet's first wife, Khadija, or that of his other wife, Zaynab b. Jahsh, who worked for the poor, "for whom she provided from the proceeds of her manual work, as she was skillful in leather work." Yusuf Ali's commentary on this verse supports my point: "But all the consorts in their high position had to work and assist as Mothers of the *Ummat*. Theirs were not idle lives, like those of odalisques, either for their own pleasure or the pleasure of their husband. They are told here that they had no place in the sacred Household if they merely wished for ease or worldly glitter."

Islam, like other religions, has had to deal with changing times. Today the Islamic world faces the challenge of a world that is being transformed at ever increasing rates. The question is whether Muslims will be able to hold on to their religion, traditions, and central belief in God while at the same time allowing their societies to develop along with the rest of the world. The question is not an academic one, since weakness means dependency, and the weakness of the Islamic community can only lead it to a position of subservience vis-à-vis the more developed nations. The experience of the last decades should have made this clear. Islam itself, as a religion, possesses the instruments of flexibility and universality, which cannot exist without human equality. It is up to Muslims today to use Islam in the way it was meant, to make God's commandments applicable to all time, rather than to try and hold back the hands of time.

### Why Four Wives?

If you fear that you will not be able to deal justly with the orphans, marry women of your choice, double, triple, quadruple, but if you fear that you shall not be able to deal justly [treat them equally with justice?], then only one, or [she?] whom your right hands possess [hold?], that is best so you would not be unjust.  
(S. 4:3)

There is general agreement among Islamic thinkers that this ayah was received by the Prophet Muhammad following the battle of 'Uhud in which a large number of Muslim men were killed. Yet, notwithstanding this general agreement in regard to the specific context surrounding this ayah, it has been used as legal basis for permitting men to take up to four wives at any one time. As for the part of the ayah stipulating the condition that polygamous men must treat their wives equally, it is generally relegated to a man's accountability on the Day of Judgment. The logic in this contradictory interpretation—one part of the ayah being used for

the here and now, while the second part is left to the hereafter—is a good example of the patriarchal interpretation of the Qur'an.

A number of issues pertaining to this verse are directly connected to the issues of marriage, divorce, and obedience discussed earlier. I will approach the matter from two particular points: first, the context and placement of the verse within the larger context of the Surah on women; and second, the particular number of four indicated.

### *The Context*

As an introduction to Surat al-Nisa' in his translation of the Qur'an, Yusuf Ali explains that "the subject-matter [of the surah] deals with the social problems which the Muslim community had to face immediately after [the battle of] Uhud. While the particular occasion made the necessity urgent, the principles laid down have permanently governed Muslim Law and social practice." And so it has been. Answers to specific and temporary problems were made into universal laws.

While it is usual to take 4:3 as is, even disregarding all except the part that mentions four wives, it is only by considering the ayah from within the larger surah and its placement among other ayas, and analyzing its reasons of revelation (*asbab al-nuzul*), that we can begin to understand the significance of Qur'anic interpretation to gender laws in Islamic history and contemporary society. It is no exaggeration that while *asbab al-nuzul* seem to be very clear, the interpretation regarding the purpose behind the ayah has changed depending on historical context. While the number four remains constant, the legitimacy and justification for the number of wives has changed according to social pressures. Similarly, other important issues raised by Surat al-Nisa', clear when the Qur'anic text is read, change in interpretation given time and place.

To begin with, the particular context for S. 4:3 is supported by the general subject matter of Surat al-Nisa'. The context is also supported by pertinent prophetic traditions. Surat al-Nisa' begins with an admonition to humanity that they should fear God to whom they are accountable (S. 4:1). The surah then immediately moves to warn against robbing orphans or exchanging their property for less than its worth, and admonishes the hearer to give orphans the property that belongs to them (S. 4:2). Following on this theme of treating orphans fairly, Surat al-Nisa' then moves to discuss a very specific situation that is recorded in a prophetic hadith (S. 4:3):

Ibrahim b. Musa related that Hisham informed him that Ibn Gurayh said that Hisham b. 'Urwa informed him that his father

said that ‘Aisha *radiyya allahu ‘anha* (God’s mercy be upon her), related that a man had an orphan [meaning was the guardian of an orphan] and he married her (*nakahaha*). The orphan owned a palm-grove which he withheld from her and he had no real affection for her [*lam yakkun laha min nafsih shay’uin*]. The [Qur’anic] lines *Awa in khuftum an la taqsitu fi al-yatama* (and if you fear that you cannot treat orphans justly) were revealed because of him.<sup>22</sup>

If, as is always emphasized by fuqaha’, prophetic traditions are the key to understanding the meaning of the Qur’an, then the purpose of S. 4:3 is clear through this prophetic tradition. It is further confirmed by another on the same subject—probably a version of the one quoted above, and also referred back to ‘Aisha.

[T]he orphan under guardianship of her *wali* (guardian) . . . he covets her wealth and her beauty and so desired to marry her without giving her the dowry of her equals. . . so they [guardians] were forbidden from marrying them [orphans] except if they would treat them justly.<sup>23</sup>

‘Aisha continues in this tradition to compare the situation of a beautiful, wealthy orphan who is coveted by her guardian to the orphan who is neither wealthy nor beautiful and therefore finds no one wanting her for a wife. The comparison was meant to show that the guardian coveted the wealth and beauty of his ward while caring little for her. Hence, S. 4:3 asks the guardians of orphans to leave them alone and look elsewhere for wives. This meaning is reconfirmed in expanded and yet similar terms in S. 4:127.

In short, the context of the verse is indisputable as is the admonition to leave orphans alone and turn to other women for wives. Before discussing the number of wives mentioned in the verse, it is important to ask why marry at all and how to go about choosing a wife or wives? The first part of S. 4:3 only asks that men not deal unjustly with orphans and that they look elsewhere for wives. The second part of the verse presents alternatives to those men who may covet their wards, indicating that they could take other wives from among those who please them. But which women fit as possible other wives? While the second part of the verse points to slave women as one possibility, we have to look elsewhere in Surat al-Nisa’ and other chapters of the Qur’an for answers about who are possible wives and why men should marry.

Surat al-Nisa’ 4:25 gives us one indication regarding the choice of a wife. “If any of you are [financially] incapable of marrying free believing

women, they may wed believing girls from among those whom your right hands possess.” Yusuf ‘Ali explains that the girls referred to by the verse are not slaves, that is, personal property: “[W]hat your right hands possess are ‘captives’ taken in a jihad. . . . Your right hands does not mean necessarily that she has been assigned to you, or is your property. All captures in war belong to the community. They are ‘yours’ in that sense.”

This explanation makes more sense than the usual explanation that “what your right hands possess” are slave women—that is, the personal property of masters who can marry them. After all, if a man has enough wealth to own a slave woman, he probably has enough to marry a free woman. This explanation fits within the particular context of the time, when wars between tribes were the norm, as was the taking of women hostages from other tribes as *sabaya*. These hostages were normally owned by the tribe as a whole until ransomed or distributed as spoils to be treated as slaves, since their punishment is half that of a free woman (S. 4:25), but not born into slavery since they were captured in war.

In verse 36 of the same chapter, God speaks to men (meaning mankind, including both men and women), admonishing them to treat those around them well:

Serve God and join not any partner with Him; and do good to parents, kinsfolk, orphans, those in need, neighbors who are near, neighbors who are strangers, the companion by your side, the wayfarer, and what your right hands possess: for God loveth not the arrogant, the vainglorious.

The line “what your right hands possess” is popularly understood to mean slave women, which is indicative of the general acceptance that men have the power over women whom they marry or who are captives. However, since this verse is addressed to both men and women, the sense of responsibility toward other members of the community and toward “what your right hands possess” is in fact addressed to both men and women.

With time, however, “what your right hands possess” became defined as slave women, and the relationship between master and slave became defined as allowing sexual intercourse outside marriage, even when the slave woman was already married to another. How fiqh (juridical discourse) reached such conclusions is very telling about the connection between patriarchy, gender interpretation, and historical context. After all, S. 4:25 is clear in its declaration that it is best for “those among you who fear sin” (*al-‘anat*, meaning zina or fornication) to take

a wife. The rules against zina are very strict in the Qur'an, and nowhere is permission given for men to have sexual intercourse with women outside marriage, be they slaves or not. If anything, the Qur'an (S. 4:25) admonishes men to take slave women (*'ima'*) as wives and not as concubines. Perhaps because the Qur'an does not forbid concubinage in so many words, it was considered permissible by later fuqaha' given the expansion of Islam, the taking of hostages, the lucrative commerce in slaves, and the concubinage habits of pre-Islamic society, which continued into the Islamic period. It is true that S. 4:24 includes "those your right hands possess" who may be already married in the category of women who can legitimately be taken as wives. But S. 4:24 discussed legitimacy for marriage and is clearly against lust: "thus has God ordained [prohibitions] against you except for these, all others are lawful, provided you seek [them in marriage] with gifts from your property, desiring chastity, not lust."

Furthermore, the use of "what your right hands possess" in this verse confirms that this refers to women captured in battle. It was the tradition among Arab tribes to consider the ties such women had with vanquished husbands as null and void, and hence their marriages dissolved by virtue of their capture by another tribe in war. So the verse points to that group. Even though the context and meaning are historically clear, the verse was read as allowing sexual relations with married slave women, notwithstanding that the verse is about marriage and is clear in its prohibition of sex outside of marriage. Here, a general rule was made out of a nonexistent rule. Since the Qur'an does not specifically forbid fornication with slave women, it became acceptable, even though the Qur'an encourages marriage to slave women and considers any form of sexual intercourse outside of marriage to be zina with clearly specified punishments.

A good example of this leap in interpretation is Malik b. Anas's explanation of "except those whom your right hands possess" as allowing "a man to wrench" (*yanza'*) his slave woman from her husband.<sup>24</sup> The method applied—that is, what is made into a general rule from what may not have been literally declared in the Qur'an—is not used throughout but rather where it serves patriarchy. In each case, the interpretation favors greater elite, patriarchal control, which must be expected given the fact that formal interpretation has been almost exclusively male and elite supported. Without doubt female interpretation would provide different methodologies. That is why we should look at fiqh as a formal male discourse rather than an expression of the true meaning of the Qur'an.

Surah 4:25 is also used to define marriage between Muslim men and non-Muslim women. Since the verse does not identify “women of the book” who are slaves as possible brides, fiqh does not include them in that category. The explanation of the verse given by the jurist Malik b. Anas is that Muslim men could marry free Jewish and Christian women but not Jewish and Christian slave women (‘ima’) (S. 4:32). The latter were then available to their masters as sexual partners outside of marriage. Here, a missing point was turned into a general rule, and then a further rule was added about which the verse had nothing to say—that is, that slave women of the book could legally be taken as concubines. According to Malik ibn Anas, “God made legal in his revelations the marriage of Muslim slave women [‘ima’] and did not legalize the marriage of slave women of the Book, Jew or Christian . . . as for the Jewish slave or the Christian slave, she is legal to her owner by virtue of his ownership of her [*bi milk al-yamin*]. But a *majussiyyah* [Zoroastrian] slave woman is not legal to her owner [*bi milk al-yamin*].”<sup>25</sup>

Malik’s interpretation is contradictory and problematic. If *majussiyyah* slave women may not legally be taken as concubines by their owners, then why may Muslim women legally be concubines? This is but one example of the methods used by different male interpreters, who find interpretations for existing legal practices and find Islamic legal precedent for them. By the time of Malik and the other schools of law, holding slave women by the wealthy was widely accepted, and buying slaves for sexual pleasure was also widespread. A reading of literature from the Umayyad and Abbasid periods confirms this. For example, the poetry of ‘Amr ibn Rabi’a is full of adventures with beautiful women, many of whom were slaves. Then there is the extensive work of Isfahani, *al-Aghani*, which is a collection of stories of slave women, their exploits, their training, price in the slave market, and their love stories with customers and masters. It made sense that the *fuqaha’* and legists of the day would legislate for such privileges, which were often disputed in front of the *qadi* (judge), and that they would look to Islamic law for justification. Their interpretations should therefore be looked at in the context of their historical period rather than as a true representation of what the Qur’an was dealing with and the laws, specific and general, that God meant to establish for the Muslim community.

#### *The Number Four*

There is no question that S. 4:3 goes up to the number four in reference to wives. It is also clear that the verse was closely connected with a particular event; and given the details of the verse, it does not seem to have

been meant to establish a general rule. Yet that is what it has become and how the words have been interpreted—as permission for men to take up to four wives at any one time. The interesting thing is that here the literal number is taken as an absolute number. Unlike other areas of interpretation, when assumptions are made without the existence of literal text, here a literal meaning is given to words taken out of context and without the rest of the verse being taken into account.

Perhaps most telling concerning the methodology followed in *fiqh* is the fact that when the question “why four?” is asked by the *fuqaha*, it is not to determine the validity of the number; that is taken for granted. Rather, the question is used rhetorically in an Aristotelian deductive formula in search of justification for an acknowledged truth. Some of these justifications are worth looking at for their ingenuity and to illustrate patriarchal efforts to make them acceptable to particular historical epochs and contexts.

In the most widely used justification, it is stated that the Qur’an limited the number of wives to four whereas men before Islam could marry as many wives as they wished. The number four is therefore seen as an improvement and benefit to women since now husbands are limited to only four. As pointed out earlier in this chapter, the question of whether Islam bettered the condition of women has long been a subject of debate. Without arguing this point here, it is enough to say that Muslims generally accept that Islam intended to improve the condition of women by limiting to four the number of wives that a man could have. But, one should ask, if bettering the condition of women was of particular importance to Islam, which recognized that reducing the number of wives improved the life of women, then why not limit the number to one wife at any one time?

Taking up the issue of number, the Moroccan Islamic thinker Muhammad Shahrour points to the similarities between the Qur’an’s treatment of women and the issue of slavery. According to Shahrour, change was to take place slowly in both slavery and gender so as not to cause instability in human society. The direction change was to take, however, was clear from the beginning. That direction was toward less—less slavery and less polygamy, until with time both had ceased to exist, in fulfillment of the essential message of Islam: the equality of all in the eyes of God the Creator. However, Shahrour continues, while the *fuqaha* did come to recognize the intent of the Qur’an to free slaves and put an end to slavery, they did not apply the same understanding to marrying more than one wife. The emancipation of slaves began with the Qur’an’s admonishment to good Muslims that they use their money

to buy and free them. This process continued into the modern world, when slavery was finally recognized as an evil system. Emancipation is often used as an example of the logic of the Qur'an, which fits the needs of each age and brings changes to humanity as people are able to comprehend and obey God's laws. When it comes to women, however, the same logic is not applied, and the rules pertaining to gender are seen as absolute. The Qur'an clearly sets the goal that only one wife should be allowed; and as Shahrour concludes, perhaps when men realize that they cannot treat several wives equally, then the evolutionary direction set by the Qur'an may finally become a reality.<sup>26</sup>

Shahrour is clearly opening important doors of Qur'anic interpretation that break new ground and employ a fresh methodology. However, neither Shahrour nor those who claim that Islam bettered the life of women really take up the question of "why four wives?" Why not five wives? Or ten wives, for that matter? The approach has been to justify the number four rather than to question the number. The method followed has been to make "four" a rational number based on actual human needs. Most common among these justifications is that a wife could be sick and unable to perform her wifely duties. While her husband could divorce her and marry another, that would not be fair to a wife who had done nothing wrong. Better that the husband should take a second wife while continuing to support the first, protecting her in his home and thereby honoring her rather than throwing her out without financial support and protection. What about taking a third wife? Here the most common justification has to do with a wife's infertility and a husband's wish to have children, particularly a male child. Even after science proved that it is the male's genes that determine the sex of the child, this justification continues to be voiced. Once more, marrying a third wife is justified on the basis that a husband should provide and protect a wife who cannot bear children rather than abandon her. It is even claimed that a son by one wife would enrich the marriage and be a consolation for the infertile wife.

Why a fourth wife? Among the usual reasons is that a husband could find himself attracted to another woman. In such a situation it is better that he contract marriage to her than commit zina, which can only threaten social morality. When issue is taken with this last reason—that a husband who loves one wife will surely not treat her equally with his other wives—it is always pointed out that the Prophet Muhammad preferred 'Aisha, but he made sure to spend each night with a different wife. The fact that all men are not the Prophet Muhammad is simply dismissed with statements that they should try to emulate Muhammad,



that no one is perfect, and what is important is what is in their hearts. In short, it is a circular argument.

Other justifications for marrying four women include war and the deaths of men in war. Europe during the world wars is often cited as an example proving the superiority of Islamic gender laws: after all, large numbers of men killed in war meant that some women were left without husbands. Would it not have been better for European women to share a husband than not to have had one at all? To be denied sexual gratification, the solace of male companionship, and children are a worse punishment for women. During war, then, polygamy should become a duty for men to make up for the shortage of males. What about peacetime? Other arguments point to the need to propagate the faith, especially among Muslim communities who constitute minorities within larger majorities.

Interestingly, the views of women in this matter are considered something of a moot point. Since God ordained that men could have four wives, it is not up to women to decide otherwise. Even when the argument has to do with sexual gratification due to the lack of men, it is not up to women to agree that they need such gratification at the cost of sharing a husband with another woman. Again the argument is circular. In fact, an Egyptian law (Personal Status Law 44 for 1979) that tried to limit the number of wives by giving a first wife the right to a divorce if her husband married another, was strongly opposed in Egypt's Majlis al-Sha'b (People's Assembly) and reversed in 1980. The argument was that the law declared marrying a second wife constituted *darar* (harm) for the first wife, which allowed her to sue and receive a divorce since the shari'ah was clear about the right of a wife to divorce in case a marriage constituted *darar* to her. How could God ordain a *darar* and make it into law in the Qur'an? That was the argument raised by the male-dominated People's Assembly to reverse the laws: marrying a second wife could never constitute a *darar* since this was God's law. If jealousies arise between the two wives, then a husband will have to be lenient and treat them gently. In short, a wife had no recourse to divorce her husband because he decided to take a second wife unless she could prove that she suffered financial, physical, or mental harm other than that caused by the act of taking a second wife.

It should perhaps be pointed out that some contemporary conservative interpreters of the shari'ah contradict the way that the state has chosen to force a wife to stay with a husband who has taken a second wife. Thus, while applauding the Qur'anic law allowing for four wives as "a mercy" (*rahmah*) from God bestowed upon people and as a means

of strengthening the Islamic *umma* through increasing its number which can be achieved best through “early marriage and polygamy,”<sup>27</sup> al-Sayyid Sabiq is very clear about the right of a woman or her *wali* (guardian or representative) to make a husband’s monogamy a condition to be included in the marriage contract. He also considered the shari‘ah as supporting the right of a woman to have her marriage annulled (*faskh*) if her husband took another wife.<sup>28</sup>

It is commonly believed that wives have always accepted husbands’ right to take more than one wife, and that it is modernity and Western influence that have caused women to turn against such Islamic traditions. Having just one wife is therefore generally regarded as a Western import. As for divorce, Muslims see it as exclusively a male prerogative, so decreed by Islam. If women are demanding changes in marriage and divorce laws today, that too is regarded as foreign contamination to Islamic society. The two points are closely interrelated—that is, the right to have more than one wife whether a wife has agreed or not, and the right of a wife to separate from her husband because the marriage has caused her *darar*, or harm. Here is where archival research becomes of great service, and why, as stated earlier, dependence on shari‘ah, fiqh, and fatawa, without going back to see how society actually enforced laws and moral codes, only serves to support the state patriarchy under which Islamic societies live today. Put simply, and as shown in the “Historical Background” section of this chapter, women have always found it objectionable that their husbands take second wives. Egyptian archives dating from the Ottoman period and continuing until the reform of laws and courts at the turn of the twentieth century give us concrete evidence to this fact. One of the conditions most commonly included by wives in marriage contracts was that the husband not take a second wife. If he did so, then he was considered in breach of contract and the wife had the choice to accept his action, to renegotiate the marriage contract, or to divorce, whereupon she had a right to all the financial commitments due her from her husband. It is interesting that it was common for husbands who found themselves in this situation to hide the fact that they had married a second time. If brought to court by their wives, they often lied about their second marriage, and the wives often had to bring evidence and witnesses for this second marriage. This is lucky for us since we get to know the details of marriages and contracts through such disputes. The point is that having more than one wife was neither widely practiced nor acceptable before the modern period or the advent of so-called Western “contamination.”

As for divorce, it was not up to the qadi to force a wife to stay in a

marriage against her will.<sup>29</sup> When she considered that she was suffering harm from a marriage, it was her prerogative to separate from her husband. This right existed whether it was a case of breach of contract or because of clearly defined shari‘ah reasons, including incurable impotence, severe beatings, or lack of financial support. The right also existed when no such reasons existed. Even when a husband was “ideal” in all ways, the judge still had no right to force a woman to stay with him. In such a situation, she resorted to *khul‘*, by which she surrendered all financial rights to the husband; and, if she was wealthy, she could also be expected to pay compensation because the breakup of the marriage was not due to any fault of the husband. *Khul‘* was often negotiated between spouses: husbands often came to court with their wives for the purpose. However, unlike today, there is no indication that if a husband did not agree to *khul‘*, or to be divorced from his wife, that he could force her to stay with him against her wishes. The significance of these details in regard to polygamy is obvious. They meant that if a man took a new wife, there was nothing to stop his first wife (or wives) from divorcing him. It should also be observed that having more than one wife was actually quite rare in Ottoman Egypt. If anything men—and women—seemed to marry, divorce, and remarry many times rather than marry more than one person at the same time.<sup>30</sup> Forcing a wife to stay with her husband against her will, limiting her ability to divorce, and narrowing the legal meaning of harm is new historically, quite modern, and has clearly been the prerogative of the nation-state. Selective use of Qur’anic interpretation and religious exegesis has been the most important method for building up the new patriarchal order under which Muslim women live today. As mentioned earlier, S. 4:3 has been central to this discourse.

The example of the Prophet is always used to support the contention that men have the right to take multiple wives. This example is problematic because of the essentialist and final way it is presented: as an argument to end all arguments, for who can question the Prophet’s actions? Yet the Prophet Muhammad’s marital history is rather intriguing and can lead in a different direction. When he was married to Khadija, he never took another wife. Given her importance, which went beyond being his strongest supporter, she may not have been willing for him to take more than one wife. Later, when the Prophet had more than one wife, most actually asked him to marry them, and those whose marriage he contracted—like ‘Aisha b. Abi Bakr, Hafsa b. ‘Umar b. al-Khattab, or Maryam al-Qibtiyya, who was given to him as a gift—accepted his taking other wives. In fact, the Prophet was known to divorce wives who

were unwilling to remain married to him. This issue of choice is confirmed by Islamic law, which allows a girl whose marriage was contracted by her father while she was a minor to divorce a husband once she achieves maturity. (The same right is given to boys.) So a woman's choice to remain in or leave a marriage was always guaranteed by law. Ironically, this choice has been limited drastically by the modern state.

Stopping at the number four is convenient for accepting polygamy, but it could have another connotation altogether, one that involves accountability. The verse addresses a situation in which, due to the death of many at the battle of Uhud, the women and orphans left behind became wards of those who survived. As such, they risked having whatever property they had inherited or already owned appropriated by the new guardians, a situation clearly counter to the Qur'an, in which the rights of orphans constitute one central theme. So S. 4:3 can be seen as a statement by which the guardians are told that they have the power to marry as many of them as they want. After skipping "one," it goes on to "double," "triple," "quadruple." Why did it stop at quadruple? Why did it not begin with one? No explanation is given in the Qur'an; it simply goes on to indicate that if you fear you cannot treat them equally, then take only one (*fa wahidah*) or "*ma malakat aymanakum*," which is generally translated as "what your right hands possess" or "[a captive] that your right hands possess," as discussed above.

The first question to ask here is, why did S. 4:3 skip the number one? Secondly, why does it continue with the ordinals "double" (*mathna*), "triple" (*thulath*), and "quadruple" (*rubā'*) rather than the cardinal numbers two, three, and four? If the intention was to specify a particular number, then the clearest reference would have been one, two, three, or four, or even to go directly to the maximum allowed number. But that is not how the Qur'an states the matter; rather, a multiple of one is presented. Why did it stop at *rubā'*? Or the better question is, did it intend to stop at *rubā'*, or was the idea of a multiple established, so that the Qur'an did not need to proceed in multiples to infinity, *khumas* (five times), *sudas* (six times), and so on? Furthermore, the ayah did not stop with the number but continued to warn that you should not do so if you fear you cannot treat them equally, an important point since each is accountable for his actions. The verse also provides the answer to those who fear their inability to treat more than one wife equally: to take only one wife from among the orphans, presumably if they were not already married. If already married, then keep "*ma malakat aymanakum*" (what your right hands possess), which could mean a wife already held by a man or a captive held by the tribe. This point is controversial and

would hardly be agreed upon by most Qur'anic interpreters. Yet the Qur'an uses the words *malakat* and *yamin* in different ways that could lead us to suppose that the interpretation given here is as valid as the ones that see them as indicating slaves, as explained earlier.

The most important point to emphasize here, however, is that all the possible actions set out for men by the Qur'an in S. 4:3 are based on accountability. Men will be judged according to their actions, so if they fear their inability to act with justice, that should provide them with the answers as to how to proceed. Taking more than one wife is clearly included among those actions that could lead to injustice and to harming others, and men should fear taking such a road.

### Conclusions

A number of theses are presented in this chapter. First and foremost is the historical fact that interpretation of the Qur'an, and hence formulation of Islamic law, has been largely a male prerogative. Few women have ventured into Qur'anic interpretation, and those who have, have done so with caution and without becoming immersed in issues of gender and the laws pertaining to gender.

Second, because of the history of Qur'anic interpretation and the lack of women's active and formal participation, Islamic law has been and continues to be patriarchal. Interestingly, the modern period has seen an increase in this patriarchal dominance even while nation-states claim to have improved the lives and rights of women through constitutions and guarantees of equal opportunity in education and employment.

Third, it is in the realm of relations between males and females that patriarchal tightening exists and continues. While women before the modernization of law had access to divorce, and could leave marriages they felt were causing them harm, modern shari'ah laws—as interpreted through patriarchal judicial committees and almost exclusively male national assemblies—have all but denied them such a right, unless the husband is also willing to divorce. This change has come about through legal codes based literally on fiqh texts selected and interpreted by a modern patriarchal order, one that has added state power to male biological power to ensure men's control of women. In this, the state has acted as a male patriarch, extending and enforcing male power. This is in contrast to earlier conditions, before the omnipotence of the centralized nation-state, when society had greater control over its own laws and a judge judged according to the case brought to his court. His intent was to arbitrate fairly and not to enforce the codes created by state structures.

Whereas the shari‘ah is normally blamed for the unequal gender relations under which Muslim women live today, this chapter shows that the shari‘ah today is interpreted and applied differently from other historical periods. Which brings us to the fourth major point made here. Because scholars have used fiqh literature in all its types—exegetics, fatawa—as their sole source for studying the history of women, the normative picture is based on such sources. But these sources, including the writings of various schools of law, have to be studied in conjunction with the actual application of these laws for us to understand women’s history. When legal interpretation is the product of one mind under certain conditions of time and place, this interpretation can neither be complete nor binding on all Muslims in all places, or even in the same time period. The concrete evidence of legal decisions can tell us how laws were applied and hence interpreted from one age to another. It is only by comparing the implementation of laws before and after the coming of the nation-state that we can determine the actual contribution of nation-states to gender inequality, and what is established by nation-states can be disestablished by them.

### Notes

1. While it is usual to translate the term *fuqaha*’ as “jurists,” I find that translation somewhat inaccurate. A jurist sets the laws that are applied in courts. *Fuqaha*’ only state legal opinion that is nonbinding in court. Since the *fuqaha*’ are technically religious persons recognized as such by their peers and by society at large, the term “clergy” is more appropriate. In this sense any Muslim clergyman is a *faqih*, but the term is reserved for those who are particularly recognized for their learning and intellectual discourses.

2. See Dalenda Largueche, “Confined, Battered, and Repudiated Women in Tunis since the Eighteenth Century,” in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira El-Azhary Sonbol (Syracuse, N.Y.: Syracuse University Press, 1996), 259–76.

3. For more about these issues, please see the various chapters in Sonbol, *Women, the Family, and Divorce Law in Islamic History*.

4. Egypt, National Archives, *Dumyat al-shar‘iyya* (1011), 43:84–182.

5. See, for example, the image of Si al-Sayyid, the oriental despot model of a husband created by Najib Mahfouz in his trilogy.

6. Suraiya Faruqi, *Making a Living in the Ottoman Lands, 1480 to 1820* (Istanbul: Isis Press, 1995), 88, 132.

7. Afaf Lutfi al-Sayyid Marsot, *Men and Women in Eighteenth Century Egypt* (Austin: University of Texas Press, 1997).

8. Egypt, National Archives, Alexandria al-Shar‘iyya (1130), 65:306–170.

9. Particularly Shaykhs Muhammad ‘Abdu and Jamal al-Din al-Afghani.

10. Abu al-Faraj b. al-Jawzi, *Ahkam al-Nisa'* (Cairo: Maktabat al-Turath al-Islami, 1984), 4. My translation.
11. Ibid., 39–40.
12. Ibid.
13. 'Abd al-Mit' al M. Al-Jabri, *Al-Ma'rah fi'l-Tasawwur al-Islami* (Woman in Islamic Perception), 6th ed. (Cairo: Maktabat Wahba, 1983), 92–93.
14. Fazlur Rahman, *Islam: Ideology and the Way of Life* (London: Muslim Schools Trust, 1980), 396–98.
15. Rashad Khalifa, *Qur'an: The Final Scripture* (Tucson, Ariz.: Islamic Productions International, 1981); his translation.
16. The words in parentheses are my own, the word *qint* ("obedience") being of great importance. Yusuf Ali indicates that it is generally accepted as meaning obedience to a husband; in fact, it means obedience to God, submissiveness, and humbleness as characteristics of piety.
17. Ibn al-Jawzi, *Ahkam al-Nisa'*, 80.
18. Quoted in Mahmud al-Sabbagh, *Al-Sa'ada al-Zawjiyyah fi'l-Islam* (Cairo: Makabat al-Salam al-'alamiyyah, 1985), 134. My translation.
19. Hans Wehr, *Arabic-English Dictionary: The Hans Wehr Dictionary of Modern Written Arabic*, ed. J. M. Cowan (Ithaca, N.Y.: Spoken Language Services, 1976), 968.
20. Quoted in Al-Sabbagh, *Al-Sa'ada al-Zawjiyyah*, 137.
21. Rahman, *Islam*, 396.
22. *Mawsu'at al-Hadith al-Sharif*, Sahih al-Bukhari, Tafsir al-Qur'an, *Hadith* no. 4207, p. 45.
23. Ibid.
24. Sakhr, *Mawsu'at al-Hadith al-Sharif*, Sahih al-Bukhari, *Al-Nikah*-47.
25. Ibid., Muwatta' of Malik, *al-Nikah*-16.
26. Muhammad Shahrour, *al-Kitab wa'l-Qur'an, Qira'ah Mu'asirah* (Damascus: al-Ahali l'il-Tiba'ah wa'l-Nashr wa'l-Tawzi', 1990), 597.
27. Al-Sayyid Sabiq, *Fiqh al-Sunna* (Beirut: Dar al-Kitab al-'Arabi, 1987), 2:107–8.
28. Ibid., 2:105.
29. See Sonbol, *Women, the Family, and Divorce Laws in Islamic History*.
30. See Abdal-Rahim Abdal-Rahman Abdal-Rahim, "The Family and Gender Laws in Egypt during the Ottoman Period," *ibid.*, 96.