

Islamic Reform and Gender Equality:
Fiqh, Feminism, or CEDAW¹?

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I am very happy to be part of this panel and am looking forward to our discussions. This time, I've been asked to reflect on issues of methodology, specifically on what might be a "useful conceptual framework" for developing gender equality in Muslim societies. To this end, I'm supposed to consider everything from the Shariah to Islamic feminism to conventions like CEDAW in order to determine whether we should focus on changing the law or on addressing things like "sexuality, leadership, citizenship, etc.,"² if we want to reform gender relationships.

These questions return me to some of the issues I touched on this morning but by a somewhat different route. I will now focus on the potential and limitations of legal approaches to women's rights, starting with a discussion of Shariah and *fiqh*.

Fiqh

Earlier, I pointed out that the fundamentalist paradigm confuses the Shariah and *fiqh* and that the manner in which it conceptualizes both is often at odds with the Qur'an and Sunnah. I want to give some examples of how this confusion impacts family law before looking at some of the consequences that result from implementing the law.

An obvious example is polygyny. *Fiqh* treats it as a universal right whereas the Qur'an only allows it in those circumstances where it can ensure justice for *orphans*. Thus, Qur'anic verses on the subject only address male guardians of female orphans and not all men. Significantly, the Qur'an even limited the Prophet's marriages while making it clear that certain kinds of marriages were only allowed to him, not to other believers.³

Fiqh also focuses heavily on protecting men's "right" to marry nine year old girls on the pretext that they are adhering to the Prophet's Sunnah. However, if the intent of the law is to generalize the Sunnah, then why not emphasize the first and longest marriage of the Prophet, at the age of 25, to a twice-widowed woman fifteen years older than

¹ Convention for the Elimination of all forms of Discrimination Against Women, adopted by the UN General Assembly in 1979.

² TOR for the conference.

³ *The Qur'an*; verse 33:50-51.

himself in whose lifetime he did not remarry? Why the obsession with his marriage to Ayesha about whose age, incidentally, we have conflicting hadith?

Lastly, *fiqh* also diverges from the Qur'an on divorce. The Qur'an sought to make divorce difficult for men by forbidding a prevalent type of divorce among seventh-century Arabs and curtailing the practice of repeatedly divorcing a wife by making the third such instance final. During divorce proceedings, it charged men not to evict wives from the home and to maintain them at the same standard of living as themselves. Yet, in no Muslim state does *fiqh* implement any of these provisions. Not only that, but *fiqh* has made a travesty out of divorce by legalizing the heinous innovation of making it irrevocable if the man pronounces it thrice in the same breath.

One can give many real-life examples of the negative impact of *fiqh* on family life but I will give only one: that of Iran. As Ziba Mir-Hosseini writes, soon after coming to power in 1979, the clerics restored "sharia family law . . . and the *fiqh* provisions for marriage and divorce."⁴ As a result, women suddenly found that "their husbands could now divorce them without first securing their consent." However, she says that this created "such havoc in family life, such an uproar among women," that the clerics were soon "forced to restore almost all the reforms"⁵ they had dismantled.

I find Iran's case significant not just for that reason but also because the social chaos led Iranians "to rethink notions of the sharia as an immutable body of law and to redefine their relationship with it." It isn't just that they came to view *fiqh* as temporal; as Mir-Hosseini says, the renowned Muslim philosopher and jurist al-Ghazali had pointed this out in the eleventh century. Rather, they realized that "the state's ideological use of the sharia and its penetration into the private lives of individuals" made it "an urgent necessity to separate religion from the state."⁶ How far this process will go in Iran is open to question, of course, but the Iranian case illustrates several things.

One is that putting all fundamentalists in one category not only ignores differences between *them* but also the differing spaces available to *women* for reform in different societies. Another is that, even in a theocracy, people are willing to rethink the Shariah as well as the relationship between religion and state if there are social pressures to do so. As an aside, I should note that al-Ghazali also held that the state did not have the right to intervene in the religious life of its subjects. In effect, while the separation of church and state in the West is a legacy of secularism, the idea that religion should not be an instrument of state policy has its roots in classical Muslim thought as well.

⁴ Ziba Mir-Hosseini, "Muslim Women's Quest for Equality," *Critical Inquiry*, 32, Summer 2006 (629-645), p. 635.

⁵ *Ibid.*

⁶ *Ibid.*, p. 637.

On a less positive note, however, the Iranian case shows that political rulers are willing to make some concessions as long as women don't challenge the "patriarchal ethos" of *fiqh*, as Mir-Hosseini says. And the reason she believes that family law is so resistant to change is because it is the "most developed field of *fiqh* where the boundary between sacred and temporal has been most blurred."⁷ I don't know enough about the history of *fiqh* to describe how this blurring came about but it strikes me as both willful and strategic. That is, I believe it is precisely this blurring that transforms male privilege into a manifestation of divine will. As such, I see Muslim resistance to reforming *fiqh* as having less to do with respecting the sacred than with protecting men's self-interest.

And, yet, without reforming *fiqh* there is no prospect for achieving gender equality from within the Islamic legal system. As the Musawah Framework for Action makes clear, equality within the family is both necessary and possible. It is "necessary because many aspects of our family laws are neither tenable in contemporary circumstances nor defensible on Islamic grounds." And it is possible because the Qur'an emphasizes the "principles of justice . . . equality . . . equity . . . human dignity, love and compassion."⁸

This view of the Shariah is likely to sit badly with the fundamentalists whose idea of it harks back to the past. Ironically, however, in the early years of Islam, "the ethos of the Shariah like that of the Quran, was egalitarian. There were special provisions to protect the weak, and no institution, such as the caliphate or the court, had any power to interfere with the personal decisions and beliefs of the individual." In fact, the Shariah was "an attempt to rebuild society on criteria that were entirely different from those of the court. It aimed to build a counter-culture and a protest movement."⁹ In reclaiming the counter-cultural aspects of the Shariah, then, it is Musawah advocates rather than the fundamentalists who are in step with the best in the Muslim past.

Feminism

Another framework that seeks to advance Muslim women's rights from within Islam is Islamic feminism which has been described as a discourse of gender justice and equality that "derives its mandate from the Qur'an."¹⁰ It does this by recuperating our notion of a just and non-patriarchal God and by reading the Qur'an in light of this view of God. Although I believe there are other words to define this framework, as I said earlier, it is the only approach to Islam that can generate liberatory readings of the Qur'an.

⁷ Ibid.

⁸ <http://www.musawah.org/>

⁹ Karen Armstrong, *Islam: A Short History*, New York: Modern Library Chronicles Book, 2000, pp.61-62.

¹⁰ Margot Badran, "Islamic Feminism: Beyond Good and Evil, Beyond East and West," unpublished paper, 2003: 2.

However, as I also pointed out, this project has been roundly attacked by secular and progressive Muslims in the U.S. and Europe. In addition to the criticisms I mentioned, I should add another one, which is that Muslims who look to the Qur'an for authority are "text fundamentalists." According to progressive Muslims, looking to a "founding text" means failing to engage it "in an interactive manner" and sustaining "the fiction that the text actually provides the norms, and we merely 'discover' the norms. The truth [they say] is that we 'make' the norms in conversation with the . . . text."¹¹

Let the record show that although I don't call myself a feminist, I am definitely a text fundamentalist! However, just because I look to the Qur'an for authority doesn't mean that I don't engage it in an "interactive manner." The two things are quite unrelated. Interpretation is *always* an interactive process since it involves an encounter between a text and a reader. As for believing that the Qur'an provides the norms, progressive Muslims seem to think so too since they keep referring to the Qur'an's "patriarchal voice."¹² Of course, if I were to apply their own criticism to them, I would say that it is they who are creating these patriarchal norms in their conversations with the text.

As to how useful Islam feminism can be outside the U.S. and Europe depends on what forms it takes. Clearly, as an episteme, it informs the thinking not only of Musawah advocates but also of activists who are engaged in curricular reform in Indonesia, like Lily Munir. As I see it, shifts in Muslim consciousnesses can only occur through an overhaul of the religious curriculum so that children learn to read the Qur'an as the liberatory and empowering word of a just, merciful, and non-patriarchal God.

As a movement, however, Islamic feminism is both small and marginal and I can't see it developing a mass base even in the U.S. and Europe. For one, its challenge to Muslim male authority will always provoke a backlash from men who don't want to let go of it. For another, most Muslims view feminism itself as a Western and secular phenomenon and adding the word "Islamic" to it doesn't change this reality.

Then there are critics of feminism like me who support its "advocacy of sexual equality and . . . [also] recognize the very real political necessity of certain feminisms." But we are also troubled by the way in which feminism forecloses "the possibility of theorizing sexual equality from within alternative paradigms. An obvious sign of this is the fact that one can't avoid being called a feminist any time one speaks about women's liberation or equality, no matter what sort of language one speaks in."¹³ As such, even

¹¹ Ebrahim Moosa, "The Debts and Burdens of Critical Islam," in Omid Safi (ed.) *Progressive Muslims*. Oxford: OneWorld, 2003, p. 125.

¹² Ibid.

¹³ Asma Barlas, "Engaging Islamic Feminism," in Anitta Kynsilehto (ed.), *Islamic Feminism: Current Perspectives*, Finland: Tampere Peace Research Institute, Occasional Paper No. 92: 2008, p. 21

though feminism opens up certain kinds of conversations, it closes off others and it is this universalizing and silencing aspects of feminism that I continue to resist.

CEDAW

The last framework I will consider is CEDAW, and I have to admit that I am ambivalent about it. This is partly because even the best crafted international laws flounder on the lack of political will to implement them. (This will also be an obstacle that Musawah advocates will have to overcome.) For instance, in spite of its support for CEDAW, the U.S. hasn't ratified it yet and, in the keynote, I criticized those who don't denounce this as a form of injustice against U.S. women.

The truth, of course, is that U.S. women don't need CEDAW to protect their rights since U.S. laws already do. However, what is important to remember is that in the U.S. the state did not decide to legislate equality on its own from above and nor was it pushed by international agencies from the outside. Instead, U.S. women waged a long struggle for equal rights in a political and cultural language that they freely chose.

Ironically, the women's movement in the U.S. also leads me to be ambivalent about CEDAW because I believe that the law alone cannot be an agent of social change. This doesn't mean that one shouldn't press for legal reform; it simply means that while a state can legalize equality, it cannot enforce the shifts in people's attitudes that are necessary for equality to become a socially acceptable norm. That is why I suspect that even if Muslim states were to adopt CEDAW, it would have a minimal impact on women in the absence of broader social changes. And this is also why I don't see a trade-off between pursuing legal reform and working to broaden the political arena for women and focusing on issues like leadership, citizenship, and so on.

I'm coming to the end of my talk, so I will sum up my thoughts. I feel that what is important to advancing the rights of Muslim women is not just the principle of gender equality but also the language in which it is advocated. In other words, for the debate on women's rights to become part of Muslim cultural consciousness, it must be framed in an Islamic idiom. I don't have a clear-cut definition of this idiom but I know that liberatory readings of the Qur'an have to be at the center of it.

We know that Muslim fundamentalists and patriarchs will resist this but what we do not like to admit as much is that so will the U.S. which launched a barefaced and well-funded initiative under the Bush administration to "reform Islam from within."¹⁴ The reform consists of efforts to secularize Muslim societies so as to bring democracy to them. I cannot get into the question of whether one can forcibly graft secularism or democracy onto a society but I should point out the obvious, which is that whereas in

¹⁴ Saba Mahmood, "Secularism, Hermeneutics, and Empire," *Public Culture*, 18:2, 2006 (232-347), p. 232.

the West secularism allowed for religious freedom, for Muslims it has meant “a brutal attack upon religion and the religious.”¹⁵ Indeed, as some people have argued, Muslim extremism is a response to this attack and therefore “inspired by the very liberal West that condemns it.”¹⁶ Fundamentalism thus “exists in a symbiotic relationship with a coercive secularism.”¹⁷

Muslim women are caught in this double pincer movement: between fundamentalist and progressives Muslims on the one hand and within the century’s old interface between “Islam and the West,” on the other. And yet, even from within this confined space, we have been inching forward over the years. I began my keynote by saying how much things have changed in my life-time and I will end this presentation with the hope that my little grandchildren will find new freedom in being the next generation of Muslim Westerners and Western Muslims because of the efforts our collective hands have wrought.

¹⁵ Armstrong, p. 158.

¹⁶ Anouar Majid, *Freedom and Orthodoxy*, Stanford University Press, 2004, p. 18.

¹⁷ Armstrong, p. 166.