

QUR'ANIC FOUNDATIONS OF THE RIGHTS OF MUSLIM WOMEN IN THE TWENTY-FIRST CENTURY

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Abstrak

Artikel ini membahas isu gender dengan berawal dari premis bahwa Alquran itu diwahyukan untuk semua orang, untuk segala waktu dan seluruh penjuru dunia. Sebagai konsekuensinya, Alquran masih tetap relevan saat ini untuk masyarakat di Amerika Serikat dan Indonesia, sebagaimana juga relevan bagi suku-suku Arab pada masa yang lampau. Al-Hibri berpendapat bahwa Alquran tidak hanyatidak kadaluwarsa (not outdated), tetapi justru sesuai dengan kebutuhan-kebutuhan abad 21. Di masa sekarang ini, umat manusia dapat memahami dan mendekati prinsip-prinsip Alquran dengan lebih baik daripada orang-orang yang hidup di masa yang lalu. Dalam kasus gender, al-Hibri mencoba menganalisis dengan pendekatan linguistik beberapa ayat Alquran, seperti Q.S. al-Nisā' (4): 34, yang dipahami oleh banyak penafsir sebagai inidikasi superioritas kaum lelaki atas perempuan. Ia berpendapat bahwa jika dipahami secara cermat ayat-ayat tersebut tidaklah mengandung arti seperti yang dikemukakan para mufasir:

"O people, reverence God who created you from a single nafs (soul) and created from her (that nafs) her mate and spread from them many men, and women; and reverence God through whom you demand your mutual rights, and the wombs (that bore you). (for) God watches you." [Qur'an 4:1]

Introduction

The crisis of modernity in Islamic societies, generally, and of Muslim women's rights, specifically, has led some individuals to wonder whether Islam has become outdated.¹ After all, the Qur'an

was revealed over fourteen hundred years ago to an illiterate man in the Arabian peninsula. How relevant could that revelation be today in a highly technological global village at the dawn of the twenty-first century?²

This article addresses this issue by starting from the premise that the Qur'an was revealed for all people, for all times and for all places. Consequently, it is as relevant today to the United States and Indonesia as it was relevant to the Arabian tribes of the past. The article will argue that not only is the Qur'an *not* outdated, but in fact it is extremely well-suited to the needs of the twenty-first century. In our new global village, human beings can achieve a better approximation of basic Qur'anic principles than at any other time in prior history.

In modern Indonesia, moreover, these principles are reinforced by *Pancasila*, the five principles constituting the state philosophy on which the government is based.³ These principles are articulated in the preamble to the 1945 Constitution where they are expressed as "belief in the One, Supreme God, just and civilized Humanity, the unity of Indonesia, and democracy which is guided by the inner wisdom in the community arising out of deliberation amongst representatives... creating a condition of social justice for the whole of the people of Indonesia."⁴ For Muslims though, it is clear that *Pancasila* has already been addressed in the Qur'an, and thus constitutes an important part of their beliefs. For example, the Qur'an repeatedly asserts the principle that there is only one supreme God, i.e., *Tawhīd*, the most fundamental of all Islamic beliefs. The Qur'an also emphasizes such values as justice and consultative democracy.⁵ Rediscovering these values can only serve human interest.

In the United States the value of diversity has only recently been discovered, and has led to attempts at eliminating racial and ethnic bias. Yet the value of diversity was already asserted by the Qur'an over fourteen hundred years ago. The Qur'an tells us that God, on creating us, split us into nations and tribes, so that we might get to *know* each other, i.e., enjoy each other's company.⁶ Thus, in the Qur'anic view, diversity is cause for celebration, not fear, discrimination or oppression.

Furthermore, while the United States is still struggling with issues of gender equality, the Qur'an long ago settled that issue as well by declaring that males and females were created from the same *nafs* (soul or spirit), and that Muslim males and females are each other's *walis* (protectors, friends).⁷ Yet today, many women around the Muslim world continue to be denied their basic human rights in the name of Islam. They are abused by their husbands despite the Qur'anic assertion that the relation between husband and wife is one of mercy and affection.⁸ They are denied the right to pursue an education, vote or work in some societies, also in the name of Islam. Some Muslims even denounce diversity (instead of celebrating it) by exhibiting racist attitudes and sexist behavior.

How could such an *umma*, described in the Qur'an as the best *umma* ever presented to humanity, display not Islamic values but values of ancient and twentieth century *Jāhiliyah*?⁹ The next section of this article will address precisely this issue, in the hope of reforming current un-Islamic practices.

The Qur'anic Explanation

There are many explanations as to the reasons behind such disparity between Qur'anic principles and the practices of Muslims in their daily lives. Some of these explanations are historical, others are cultural or psychological.¹⁰ We should not underestimate, for example, the colonialist impact on the self-esteem of Muslims, or on their basic familial, educational, social, legal and political institutions. In this article, however, I shall focus on the fundamental explanation provided in the Qur'an of how things go wrong among humans. It is my hope that once we recognize the source of our problems, our faith will overcome our human defects, and help us bring about the golden age of proper Islamic human relations and full-fledged women's rights.

There is a creation story in the Qur'an that often goes unnoticed. It is about the events surrounding the fall of Iblis (Satan).¹¹ As the reader may remember, God created Adam from clay. When Adam was later imbued with *rūḥ* (soul), God introduced Adam to the angels and Iblis, and ordered them to bow to Adam. They all did so, except for Iblis. Why did Iblis disobey God, the Almighty? What possible overwhelming reason could Iblis have had to defy a direct divine order?

The answer is contained in the Qur'an itself. In explaining his disobedience of Divine Will and his revulsion at the thought of bowing to Adam, Iblis told God: "I am better than him [Adam], you created me from fire and created him from clay."¹² The answer indicates that Iblis had adopted a value system based on an arbitrary hierarchical principle ("fire is better than clay") which served his own arrogant and selfish purposes. Iblis was so attached to this

hierarchical principle, that in the end he was willing to incur God's eternal wrath, rather than violate his self-made hierarchy. In other words, Iblis chose to make his Satanic will supersede Divine Will. Consequently, he violated the fundamental principle of *Tawhīd* and fell into *shirk* (belief in more than one supreme being).

Note that Iblis's arrogance was based on *jahl* (ignorance). For the Qur'an clearly tells us that those closest to God are those who are most pious.¹³ Thus, the only legitimate "principle of preference" in the sight of God is one based on *taqwā* (piety). Any other standard is likely to be rooted in *hubris*, and hence is false. False principles lead to errors or worse.

In his *Ihyā' 'Ulūm al-Dīn*, al-Ghazālī discusses this Satanic logic and the *shirk* it leads to.¹⁴ He notes that every time a rich man believes that he is better than a poor one, or a white man that he is better than a black one, then he is being arrogant. He is adopting the same hierarchical principles adopted by Iblis in his *jahl*, and is thus falling into *shirk*.

For this reason, the Islamic state in its proper form is not based on an oppressive hierarchy. Rather, it is based on the free consent of the people as expressed by elections (*bay'ah*), consultation and deliberation (*shūrā*) and a constitution articulated by basic Qur'anic principles.¹⁵ The "head" of the Muslim state is not the apex of an authoritarian hierarchy, but only of a formal organizational one. Like everyone else, his or her authority is limited by the Qur'an, and derived solely from popular vote (*bay'ah*).¹⁶ This is why in a Muslim state, any citizen can hail the head of state into court.¹⁷ There is no sovereign immunity, because there is no human sovereign. The only sovereign is God, and dominion belongs to Him alone.

This fact is illustrated by an early event in Islamic history. During the *khilāfah* (period of rule) of ‘Umar, *radiya ‘llāhu ‘anhu*, young men were complaining about the large amount of *mahr* (dower) women were demanding.¹⁸ Afraid that such a trend might discourage men from getting married, ‘Umar announced in the mosque that he was going to place an upper limit on the amount of *mahr*. An unknown old woman rose from the back of the mosque and said to ‘Umar: “You will not take away from us what God has given us.”¹⁹ ‘Umar asked her to explain her statement. Citing a clear Qur’anic verse, the woman established that the amount of *mahr* was potentially unlimited. ‘Umar immediately responded: “A woman is right and a man is wrong.”²⁰ He then abandoned his proposal.

Incidentally, the woman had a very good point. *Mahr*, in Islam, is purely the woman’s to dispose of; no one else may share in it.²¹ She may decide to use it after marriage in starting her own business, or invest it for a later time when she may need it. It is the woman’s safety net, made available to her at the outset as a gift (*nihla*).²² Today, unfortunately, the father or the husband sometimes appropriates the *mahr*, leaving the woman financially defenseless. Furthermore, Muslim courts have not been generally hospitable to Muslim women, many of whom have led a sheltered life and have no idea how to approach a lawsuit. Most significantly, many family law cases languish in courts for years. In the case of an action for divorce, for example, such delays often deny the woman any reasonable chance of reestablishing a new family life during her fertile years. Yet, we all know that in the days of the Prophet, *ṣalla ‘llahu ‘alayhi wa sallam*, divorce was obtained quickly, and women remarried soon after their *‘idda*.²³

The story of ‘Umar and the unknown old lady underlines the fact that the Muslim “head of state” is a servant of God and of the people, not an authoritarian ruler who exercises dominion over his people. This democratic view, incidentally, applies not only to the state, but to any type of hierarchy in society. For this reason, Muslims have no “church hierarchy,” but only ‘*ulamā*’. True ‘*ulamā*’ are modest about their own views, recognizing that only God knows the truth with certainty. They also respect the differing, and sometimes opposing, views of other Muslim scholars.²⁴ This is yet another way of respecting diversity, in this case, an intellectual one. In keeping with this attitude, righteous ‘*ulama*’ often ended a statement of their views with the phrase “*wa ‘llāhu a‘lam*” (God knows best).²⁵

Today, we are living in a world awash with Satanic logic. It is a world ordered into hierarchies based on every conceivable *jāhili* criterion. Among these modern criteria are colour, wealth, gender, ethnicity, youth, technological knowledge, and so on. Al-Ghazālī recognized many of these categories, but not all. The course of history has helped us uncover many more. What do we do in the face of this new *Jāhiliyya* (Age of Ignorance)?

An Islamic Solution

The Qur’an tells us that if we differ on a matter, we should refer it to God and His Prophet.²⁶ I propose that we use the same method for cleansing Islamic theory and practice from the influences of old and new *Jāhiliyya*. To achieve this, we have to reexamine and redevelop our laws in light of the new circumstances in our new societies, and in the global village. In reexamining these laws, some significant consequences follow.

For example, let us not forget the experience of the revered al-Imām al-Shāfi‘ī. After moving to Egypt, he revised his jurisprudence significantly to suit the new society.²⁷ In doing so he was not attempting to be fashionable, nor was he trying to make his jurisprudence more attractive to the Egyptians. Al-Shāfi‘ī was too serious and righteous a jurist to worry about such worldly considerations. In revising his jurisprudence, he was merely applying a basic jurisprudential rule, namely, that laws change with corresponding changes in time and place. Properly understood, this rule does not permit a change in basic Islamic principles, such as the principle of *Tawhīd*. The rule simply encourages us to exercise *ijtihād* (make an intellectual effort) whenever change occurs, in order to ensure that Qur’anic intent is still satisfied by changeable existing laws. The rule is thus a license to be intellectually active in order to better approximate Qur’anic intent and protect the *maṣlahah* (well-being) of the *umma* (the Muslim people).

In fact, another major Islamic jurisprudential principle is that the divine purpose behind every Islamic law is “*maṣlahat al-‘ibād*,” that is, the well-being of the people.²⁸ This is why God is repeatedly referred to in the Qur’an as “*al-rahīmān al-rahīm*” (compassionate and merciful). So, when a law ceases to fulfil this proper purpose, it must be reviewed and revised. ‘Umar, *raḍīya ‘llāhu ‘anhu*, took this view a step further when he prohibited the *ḥadd* (punishment) for theft in a year of starvation. On another occasion, he stopped the distribution of alms to “*al-mu‘allafa qulūbuhum*,” or “those whose hearts have been (recently) reconciled” — a group specifically designated in the Qur’an as entitled to such funds.²⁹ He argued that the circumstances implicit in the relevant Qur’anic verse had changed.

It is no accident that it was 'Umar who had to make these decisions; for neither re-examination nor change is an easy task. They must be exercised with great care. They require extensive knowledge, not only of the Qur'an but of the Qur'anic spirit as well. This spirit is demonstrated not only by the words of the Qur'an itself, but also by the life of the Prophet, *ṣalla 'llāhu 'alayhi wa sallam*. Additionally, as in all *ijtihād*, reexamination and change must be guided by an attitude of utmost piety.

In learning from the historical precedents set by 'Umar, al-Shāfi'ī and other major Islamic figures, I approach my task in this article, which is one of understanding Islam within the global context of the twenty-first century, exercising faithful humility, thoughtfulness and care. At the same time, I do not shrink from this monumental task. I shall instead be guided by the Prophetic *ḥadīth* which states that the jurist who engages in *ijtihād* and reaches the correct conclusion receives two rewards [from God], while the jurist who engages in *ijtihād* and reaches an erroneous conclusion nevertheless receives one reward.³⁰ Implicit in this answer is the message that to engage in *ijtihād*, regardless of the result, is better than not to engage in it at all. Also implicit is the basic fact that certainty belongs only to God, and that humans can only try to approach it through their best efforts. Therefore, an earlier jurist does not necessarily have a superior claim to the truth. While his or her views are deserving of considerable deference, they must, however, be assessed not only on the basis of their *fiqhī* foundations, but also their underlying assumptions. Some of these assumptions may be of totally non-religious origin. They may be outdated cultural assumptions, more suited to the early jurist's time and place.

The reader may regard as objectionable the claim that some juristic views were partly based on cultural and other non-religious assumptions. How, after all, could a pious jurist allow such assumptions to enter his or her reasoning? The answer is simple and lies in the Qur'an itself. The Qur'an, as mentioned earlier, celebrates diversity. As a result, the proper Islamic spirit is not to create laws that place Muslims in a straightjacket — despite their cultural and other differences — but rather to develop laws based on the Qur'an, supplemented by other laws derived from one's culture, so long as these supplementary laws do not conflict with the Qur'an.³¹ For this reason, it was common practice among Muslim jurists to refer to local customs in developing their local laws. Unfortunately, some of these customs harbored deep-seated gender and other kinds of bias that were not obvious to jurists centuries ago.³²

In reexamining women's rights in Islam, I shall follow the path of *ijtihad* described above. My basic reference shall be the Qur'an and the *sunna*. I shall also examine past jurisprudence on women's rights with an eye to cultural assumptions that may have been introduced by those jurists. But first, let me place my jurisprudential efforts in their proper historical context. It has long been fashionable among neo-Orientalists in the West to excerpt a phrase or two from the Qur'an in order to illustrate the claim that Islam has no regard for human rights or for women. Some Western secularist feminists, after years of arguing this position, have nevertheless found that, generally speaking, Muslim women worldwide are seriously committed to their religion. So, these Western feminists have now adopted another tactic, whereby they opportunistically

excerpt short phrases from the Qur'an which they then use in support of Western ideas about women's rights. These same women, however, who agitate overseas for Muslim women to be heard and liberated, generally exclude committed American Muslim women from their fora or offer them only a token presence.

It is my belief that, in the age of the global village, any jurisprudence about the status of women in Islam must be developed by learned Muslim women and men, all over the world, in the light of basic Islamic principles and the *maṣlaḥa* of the *umma*. Once we succeed in this task, then Muslim women in various countries will find it easier to adapt that jurisprudence to their specific culture, tradition or other circumstances. In other words, the women of the *umma*, across this global village, have the duty of understanding the true meaning of Islam with respect to their status in today's world. What is more, they also have the duty to improve their own lives in accordance with that understanding, and reply to the attacks on Islam launched by certain secular Western feminists. These attacks have unfortunately confused some Muslim women and have added to their internal conflicts and unhappiness. We need to show solidarity with these Muslim women by actively concerning ourselves with their lives.

The Rights of Muslim Women in Today's Society

As I mentioned earlier, the cornerstone of Islam is *Tawḥīd*. To abandon *Tawḥīd* and fall into *shirk* is the worst act a Muslim can commit. We are told in the Qur'an that God will not forgive *shirk*, but may forgive anything else.³³ Yet very few of us have fully understood the principle of *Tawḥīd*.

The Qur'an emphasizes divine logic when it states repeatedly that males and females were created from the same *nafs*.³⁴ Nevertheless, our jurists have found ways to limit gender equality to the spiritual realm, allowing certain communities to erect unfair gender hierarchies and barriers in this world. For example, Afghanistan has prohibited the education of women in the name of Islam. Yet it is well-established that the Qur'an advocates the pursuit of knowledge by Muslims, and that the Prophet regarded the education of each Muslim, male or female, as a *farḍ* (duty).³⁵

Nor can it be denied that Islam, based on the *sunna* of the Prophet, *ṣalla'llāhu 'alayhi wa sallam*, gave women an extensive role in the destiny of the *umma*. In fact, it was a woman, Umm Salāmah, who provided a valuable piece of advice to the Prophet at a critical juncture in the history of early Islam.³⁶ Most of our *ḥadīths* (the reported sayings of the Prophet) were transmitted by women, and many of our famous jurists were educated by women.³⁷ Yet, Muslims of today's and yesterday's *Jāhiliyya* increasingly limit the scope of Muslim women's rights.

I have examined many personal status codes (family laws) of Muslim countries.³⁸ They tend to share certain cultural influences, some unfortunately colonialist. For example, modern Muslim jurists debated at length whether women should be allowed to work. During that lengthy debate, the Muslim *umma* lost the productive capability of half its population in this century, and sank deeper into underdevelopment. Finally, forced by circumstance, jurists have concluded that women might work, so long as that work is not immoral.³⁹ But the morality requirement should not be gender based. It should be equally applicable to men's work. This fact is not reflected in any of these codes.

Nevertheless, Muslim jurists could easily have found the answer to this issue in the example provided by early Muslim women. Otherwise, how do we account for Khadija, the successful businesswoman who was also the first Muslim? If her engagement in business was somehow shameful or improper, then how do we account for the fact that the Prophet agreed to work for her? Also, how do we account for the fact that fourteen hundred years ago Islam gave women their financial independence, and made it meaningful by instituting *mahr* (a mode of capital formation designed especially for them) and by giving each woman a specified share in her family's inheritance? Furthermore, how could these women exercise that financial independence meaningfully without being able to establish and run businesses?

Yet, the codes continue to allocate duties within the family on a traditional, not a religious basis. Even the Tunisian code, the most "modern" code among those I studied, continues to state, along with some other codes, that the husband is the "head" of the family.⁴⁰ What does that mean? I have always thought of the Muslim family as a partnership in the service of God, based on consultation and characterized by affection and mercy.⁴¹ Yet, as with the concept of "head of state," this concept has also acquired an air of hierarchy and dominion, a development inimical to basic Islamic principles.⁴² Even the Prophet, *ṣalla 'llāhu 'alayhi wa sallam*, refused to exercise such dominion, to the surprise of the *Ṣaḥāba*. His approach was kind, consultative and democratic. He denounced men who physically abused women.⁴³ He gave his wives the freedom to leave him, shared with them his troubles and encouraged them to become religious leaders, to engage in business and to learn to read and

write, even though he was himself illiterate.⁴⁴ What else could he have done to set for us the proper example?

Some jurists point to a specific Qur'anic verse as the main source of their justification of the male's dominion. How could that be, given that the Qur'an, the Divine Word of God, is thoroughly consistent and, as argued earlier, describes a kinder, gentler and more civilized male-female relationship? In order to assess the claim of these jurists, I now turn to the Qur'anic verse in question.

The Qur'anic Verse on *Qiwāma*

There is a Qur'anic verse which states in its first part (P) that men are "*qawwāmūn*" over women. Structurally speaking, this first part may be partially translated as follows:

(P) Men are [*qawwāmūn*] to women, [*bi-mā*] God [*faḍḍala*] some of them [over] some others and [*bi-mā*] they spend of their own money...⁴⁵

Our understanding of (P) is predicated on (a) understanding the meaning of the words "*qawwāmūn*," and "*faḍḍala*," and also (b) understanding the grammatical structure of (P), as reflected in the use of the connective "*bi-mā*." I shall now briefly address both matters.

As regards problem (a), the meaning traditionally assigned by jurists to the word "*qawwāmūn*" in this Qur'anic verse has been a hierarchical one. The word *qawwām* (singular of *qawwāmūn*), however, is defined in a variety of ways in early Arabic dictionaries, including "head", "boss", "leader", "protector" or even "manager", "guide" and "advisor."⁴⁶ Meanings with strict hierarchical significance tend to be found in relatively old commentaries. Part of the reason

for this discrepancy is rooted in the relational meaning of the word. One old Arabic dictionary defines the related word “*qiyām*”, specifically in the context of the *āyah*, as “having the meaning of preservation and betterment.”⁴⁷ Another defines the related word “*qayyim*” as “one who manages the people’s affairs, leads and straightens them out.”⁴⁸ Both meanings, while not necessarily hierarchical, are open to hierarchical authoritarian interpretations. So, where a society was authoritarian, it made sense that interpreters should have colored these meanings with their own authoritarian perspective.⁴⁹ As the world changed, modern interpreters tried to regain for the word its original meaning. Many jurists recognized that *qiwāma* refers to guidance and care-taking, an act of friendship, not dominion. As such it is the micro/familial analogue of the macro/state model of deliberative democracy advocated by the Qur’an.⁵⁰ Given my bias against hierarchies, I opt for the latter interpretation of the word.

The verb “*faḍḍala*” in (P) is usually translated in the sense of “being superior.”⁵¹ Linguistically, “*faḍḍala*” is explained as having a distinction, a preferred difference over another, i.e., a feature or ability the other lacks.⁵² At this point, I ask the reader to resist concluding prematurely that the Qur’an therefore states that men and women are essentially different, and that the man is superior. That is in fact the patriarchal/ hierarchical conclusion; mine is different. Below we will place the word “*faḍḍala*” in (P) in its proper context and provide its fullest and most accurate meaning.

In the case of problem (b), it must be acknowledged that the word “*bi-mā*” is the most complex word in (P). Linguistically, it is composed of two parts: “*bi*” and “*mā*.” The first is a connector

with more than one meaning. Among the most prevalent meanings of “*bi*” are: (a) a meaning that conveys a relation of causality (*sababīya* or *‘illīya*), (b) a meaning which conveys circumstantiality (*tarfīya*), and (c) a meaning which conveys a quantity which is less than all (*tab‘īd*).⁵³ “*Ma*” acts here as a pure connector (*mawṣūfiya*) but may have at times a more enhanced meaning (indicating a *maṣdar*).⁵⁴ It is used to refer to inanimate objects only.⁵⁵

The critical meaning then of “*bi-mā*” revolves mostly around the “*bi*” segment. As a result, “*bi-mā*” could mean: (a) “because”, (b) “in circumstances where” and (c) “in that which”, a meaning which indicates *tab‘īd*, i.e., a portion or a part of something, but not the whole.⁵⁶

Inserting in (P) the results of our findings regarding problems (a) and (b) above, (P) now reads:

(16) Men are [advisors/ providers of guidance] to women [because/ in circumstances where/ in that which] God made some of them different from some others and [because/ in circumstances where/ in that which] they spend of their own money....

Thus, in stating what appears to be a general principle, namely that men are *qawwāmūn* over women, (P) immediately provides an explanation. The explanation acts as a limitation upon the apparently general statement (*takḥṣīṣ al-‘āmm*), by specifying the reasons or circumstances (as indicated by the various meanings of “*bi-mā*”) that would entitle a male to be *qawwām*. These include differences between some males and some females.

The limitation upon the general statement in (P) is specified by two conjunctive Qur’anic conditions provided in (P) itself. The first requires that the male be in fact the financial maintainer of

the woman and not some *fudūlī* (one who interferes in someone else's business). The second requires that the male be in fact more gifted or qualified in the area in which he is claiming *qiwāma*. Where these two conditions fail to operate *conjointly*, there is no *qiwāma*.

To quote the conditions in the verse: "*bi-mā faḍḍala'llāhu ba'dahum 'alā ba'd, wa bi-mā anfaqū min amwālihim.*"⁵⁷ The word "*ba'd*" means "some," and further underlines the meaning conveyed by "*bi-mā*," namely that *qiwama* applies only in certain cases and times when *both* these conditions are satisfied. Certainly, a woman who is incapable of supporting herself and who is less qualified or gifted in a certain area, ought to be advised by the man in her life who cares enough for her to support her financially, and who knows more about the world than she does. But to translate such a limited principle of caring into a broad principle of dominion and hierarchy is to go beyond Islamic principles to patriarchal cultural ones. For in Islam, men are not *qawwāmūn* over financially independent women, nor are ignorant men *qawwāmūn* over educated women. To argue otherwise is to misinterpret a clearly conditional verse as a general principle, and to reinterpret an act of *taklīf* (an obligation) as an act of *tashrīf* (privilege).

Final Observations

The reality of Muslim families today is that they tend to be (and have been for some time) two income families. This means that the husband and wife are both maintainers of their family. It also means that, in areas where the wife is better qualified, she is entitled to give advice to her husband as well. For example, if she is a corporate lawyer and her husband is a businessman, clearly

she is in a better position to give him legal advice. This conclusion is borne out by the Qur'anic statement that "Muslims, male and female, are each others' *walis*," that is, Muslims are each others' friends and protectors.⁵⁸ The notion of *wali* is comparable to, if not more extensive, than that of *qiwāma*.

However, in the absence of true consultative democracy in most Muslim countries — where the experience has been a series of empires, kingdoms, and other forms of authoritarian government based not on the Qur'an but on Satanic hierarchies — it is no wonder that the Muslim understanding of family relations has deteriorated as well. Furthermore, hierarchical logic was pushed to such an extreme, that laws were designed to ensure that society place the Muslim woman in a situation where the two Qur'anic conditions for her subordination given in (P) would automatically be satisfied. This was done by denying the woman the right to work, a state of affairs which made her financially dependent on some male who could,⁵⁹ and by questioning her right to obtain an education, in order to guarantee that the male would be better qualified each time, and in each circumstance.⁶⁰

Some jurists even prevented the Muslim woman from leaving her home except in very limited circumstances.⁶¹ Would these jurists be able to look Khadija and 'Ā'isha in the eye on the Day of Judgment? What would they say to these active women who are the mothers of all Muslim believers?

It is my contention that, because of historical and cultural limitations, Muslims in the past disregarded the democratic crux of the Qur'anic message. As a result, the Muslim *umma* is now paying a severe price. Our women are being raped, our homes are being

burnt, and our will is being subjugated. In other words, Muslims who have subscribed so long to authoritarian relations, in contravention of Qur'anic principles, are now being given a large dose of authoritarianism, except that they are no longer in the driver's seat. Unfortunately, I believe that the *umma* will go on suffering until we abandon authoritarian arrogance and return to Islamic democracy, both in the state and at home.

Muslims should have the courage to re-examine old hierarchical principles that were acceptable in a different era and a different culture. In re-examining these principles, we should be guided by the Qur'an and its spirit of *shura* (deliberative) democracy and the protection of the *maṣlaḥa* (interest) of the *'ibād* (people). It certainly does not serve this *maṣlaḥa* to indulge in Satanic hierarchies that weaken the *umma* and present Islam as oppressive and unjust. What we need then is a new body of laws reflecting a new set of Islamic human relations. We need, for example, a personal status code which truly recognizes and gives effect to the consultative and harmonious relations between the spouses. We need courageous legislation that abandons such tempting and confusing language as the "head" of the household. We also need social institutions that support a familial structure that reflects these relations and a court system that guarantees them.

Muslim men have a duty to help bring about this change in our families and societies. They have a duty to listen carefully to the voices of women, to see the tears and hear the sighs of the granddaughters of Khadija. They need to help devise Islamically satisfactory solutions to our existing problems, for the salvation of Muslim men and the salvation of Muslim women are inextricably intertwined. We share, after all, the same destiny.

God has stated in the Qur'an: "*wa-taṣimū bi ḥabli 'llāhi jamī'an wa-lā tafarraqu'*" ('hold fast all together by the rope of God, and do not become divided among yourselves').⁶² Muslims today are in urgent need of following this Qur'anic advice. The helplessness experienced by many Muslim women today is only one measure of how far we, as an *umma*, have drifted away from the Divine Message. Our campaign for women's rights, therefore, should not be understood as yet another attempt to snatch a piece of the pie in a power-hungry society. Not at all! It is, in fact, a serious attempt to pull our entire *umma* out of its civilizational decline, and re-introduce to it our heritage of the fundamental Qur'anic principles of fairness, justice and democracy.

By doing that we shall reinvigorate the *umma* through increased self-esteem and freedom of thought. This will enable individual Muslims to find joy and satisfaction in their accomplishments. *Fiqh*, inventions, art, social institutions, will all thrive. We would thus find ourselves on the cusp of a new age of Islamic civilization, one which will be admired and emulated rather than ridiculed by the global village in the twenty-first century. We would have at the same time abandoned the game of *Iblis*, and fully submitted ourselves to the will of God, the One and Only. ●

Endnote:

¹ See, e.g., Tim McGirk, *The Independent (London)*, April 15, 1995, 16 (quoting Imran Khan as saying: "I considered my own culture backward and Islam an outdated religion.") See also H. Morsi, *Chicago Tribune*, March 31, 1991, 2 ("Islam may look like a foreign and outdated religion, but for those who try to understand, they soon realize that Islam is a revival and restatement of the religion of Jesus, Moses and Abraham").

²The term "global village" refers to the fact that our world has shrunk as a result of new modes of communication which transfer information instantaneously and reduce the world to an interconnected global village.

³Cathie Draine and Barbara Hall, *Indonesia* (Singapore: Times Books International, 1986), 87.

⁴Preamble to the 1945 Constitution of the Republic of Indonesia.

⁵See, e.g., Qur'an 5:8; 4:58; 3:159; 42:38. See also, Subhī Mahmasānī, *Muqaddimah fī Ihyā' 'Ulūm al-Sharī'ah* (Beirut: Dār al-'Ilm lil-Malāyīn, 1962), 66.

⁶Qur'an 49:13.

⁷Qur'an 9:71

⁸Qur'an 30:21

⁹Qur'an 3:110. Islam came to prohibit the bad customs of *Jāhiliyyah*, such as female infanticide. For more on these customs, see A. al-Hibri, "Islamic Herstory: Or How Did We Get Into This Mess?" in A. al-Hibri, ed. *Women and Islam* (London: Pergamon Press 1981), 208-213.

¹⁰For some of these interpretations, see the second part of A. al-Hibri, "Islamic and American Constitutional Law: Borrowing Possibilities or a History of Borrowing?" *University of Pennsylvania Journal of Constitutional Law* (forthcoming).

¹¹Qur'an 7:11-15.

¹²Qur'an 7:12.

¹³Qur'an 49:13.

¹⁴See Abū Hāmid al-Ghazālī, *Ihyā' 'Ulūm al-Dīn* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī Press, 1939), 3: 326-43, esp. 338, 342.

¹⁵Qur'an 60:12; 48:10; 48:18; 42:38; 3: 159. See also, A. al-Hibri, "Islamic Constitutionalism and The Concept of Democracy," *Case Western Reserve Journal of International Law* 24, 1 (1992), 1-27.

¹⁶See al-Hibri, *supra* note 15, pp. 24-26; see also, al-Hibri, *supra* note 10.

¹⁷*Khalīfah* Ali, for example, was hailed into court by a non-Muslim. See a discussion of this story and the absence of sovereign immunity for the *khalīfah* in 'Abd al-Razzāq al-Sanhūrī, *Fiqh al-Khilāfah wa Taṭawwuruhā* (Egypt: al-Hay'ah al-Miṣriyyah al-'Āmmah lil-Kitāb, 1989), 213.

¹⁸Abū Hāmid al-Ghazālī, *supra* note 14, 1: 50.

¹⁹*Ibid.*

²⁰*Ibid.*

²¹Muhammad Abu Zahrah, *Al-Aḥwāl al-Shakhṣiyyah* (n.p.: Dār al-Fikr al-'Arabī, 1957), 172 (but pointing out that the woman's family has the right to protect her interests by insuring that the *mahr* is not too low). See also, 'Abd al-Karīm Zaydān, *Al-Mufaṣṣal fī Aḥkām al-Mar'ah wa al-Bayt al-Muslim*, (Beirut: Mu'assasat al-Risālah, 1994), 7: 48.

²²Qur'an 4:4.

²³In fact the concept of 'idda was introduced in order to prevent the possibility of a woman's subsequent marriage before the passage of three menstrual cycles. Remarriage is encouraged in Islam to protect the Muslim's chastity.

²⁴See Maḥmaṣānī, *supra* note 5, 51. See also, al-Hibri, *infra* note 32, 6.

²⁵See, e.g., Abū Muslim Ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī* (Beirut: Dār al-Turāth al-'Arabī, n.d.), 1: 19, 21, 24, 26, 27 (the exegesis of al-Nawawī); see also, al-Dardir, *Al-Sharḥ al-Ṣaḥīḥ* (Cairo: Dār al-Ma'arif, n.d.), 1: 739; al-Dardir, 2: 765; al-Dardir, 3: 728; al-Bukhārī, *Ṣaḥīḥ al-Bukhārī bi Ḥaṣhiyat al-Sindī* (Beirut: Dār al-Ma'arif, n.d.), 1: 6, 7, 9.

²⁶Qur'an 4:59.

²⁷See Ṭahā Jabir al-'Alwānī, *Uṣūl al-Fiqh al-Islāmī* (Herndon, V.A.: The International Institute of Islamic Thought, 1990), 33-36; Maḥmassani, *supra* note 5, 40; Muḥammad Abū Zahrah, *Al-Shāṭi'ī* (Beirut: Dār al-Fikr al-'Arabī, 1948), 145-46; 'Alā' al-Dīn al-Samarqandī, *Ṭarīqat al-Khilāf Bayn al-Aslāf* (Beirut: Dār al-Kutub al-'Ilmiyah, 1992), 13.

²⁸Maḥmaṣānī, *supra* note 5, 66-7.

²⁹Qur'an 9:60.

³⁰Muslim, *supra* note 25, 6: 13-14.

³¹Maḥmaṣānī, *supra* note 5, 67-8.

³²See, e.g., discussion in A. al-Hibri, "Islam, Law and Custom: Redefining Muslim Women's Rights," *American University Journal of International Law and Policy* 12 (1997), 14-15.

³³Qur'an 4:48; 5:72.

³⁴Qur'an 4:1; 6:98; 7:189; 31:28; 39:6.

³⁵Qur'an 20:114; 39:9; 58:11. See also Ibn Mājah, *Sunan Ibn Mājah* (Beirut: Dār al-'Ilm lil-Malāyīn, n.d.), 1: 81.

³⁶Abd al-Ḥafīm Abū Shuqqah, *Taḥrīr al-Mar'ah fī 'Aṣr al-Risālah* (Kuwait: Dār al-Qalam, 1990), 231 (quoting al-Bukhari).

³⁷Al-Hibri, *supra* note 32, 39-41.

³⁸*Ibid.*, 10-25. The personal status codes examined in this article are those of Morocco, Tunisia, Algeria, Egypt, Syria, Jordan, and Kuwait.

³⁹Al-Hibri, *supra* note 32, 12, 19.

⁴⁰Tunisian Personal Status Code Decree, dated 13 August, 1956, as amended 1993, Bk 1, Art. 23. See also, the Algerian Family Law No. 84-11 (1984), Bk 1, Tit. 1, Ch. 4, Art. 39, clause I. Incidentally, the Indonesian personal status code contains similar language. Alternatively, some other codes state instead that the woman is required to obey her husband. See, e.g., the Jordanian Personal Status Code, Provisional Law No. 61 (1976) Ch. 7, Art. 39. For more on the concept of "obedience," see al-Hibri, *supra* note 32, 18-21.

⁴¹Qur'an 2:233: 30:21.

⁴²See al-Hibri. *supra* note 10.

⁴³Abu Shuqqa. *supra* note 36. 243-45.

⁴⁴Ahmad Khairat, *Markaz al-Mar'ah fi al-Islām* (Egypt: Dār al-Ma'ārif, 1983), 64 (recounting that Hafṣah bint 'Umar Ibn al-Khaṭṭāb continued her education after marrying the Prophet, in accordance with the Prophet's express wishes).

⁴⁵Qur'an 4:34.

⁴⁶See, e.g., Abu Ja'far al-Tabari, *Tafsīr al-Ṭabarī* (Cairo: Dār al-Ma'ārif, 9th century reprint, n.d.) p. 57 (calling husbands "princes" over their wives). See also, Muḥammad 'Abd al-Ḥamīd, *Al-Aḥwāl al-Shakhṣīyah fī al-Sharī'ah al-Islāmīyah* (Cairo: Muḥammad 'Alī Ṣabīḥ wa Awlādūh, 1966), 122 (if the woman disobeys her husband, he may punish her). Cf. Muḥammad 'Aklah, *Nizām al-Uṣrah fī al-Islām* (Amman: Maktabat al-Risālah al-Hadīthah, 1983), 2: 18-19 (stating that while husbands lead the family, from an Islamic point of view, there is no existence within the family of submission by the wife or domination by the husband); see also, Muḥammad Riḍā, *Tafsīr al-Qur'ān al-Ḥakīm* (known as *Tafsīr al-Manār*) (Beirut: Dār al-Ma'rifah, 1947), 5: 67-8 (stating that *qiwamah* leadership is one of protection, caring, friendship and guidance, where the one being led acts freely and is not oppressed).

⁴⁷Muḥammad ibn Manzūr, *Lisān al-'Arab* (Beirut: Dār al-'Ilm lil-Malāyīn, 1992), 11: 355.

⁴⁸Abū 'Abd al-Raḥmān al-Farāhidī, *Kitāb al-'Ayn* (Beirut: Mu'assasat al-'Alami li al-Maṭbū'āt, 1988), 5: 232.

⁴⁹For a discussion of this point, see al-Hibri, *supra* note 32, 28.

⁵⁰Both the family and the state are based in Islam on free consent and consultation. For a discussion of the free consent requirement in the marriage, see al-Hibri, *supra* note 32, 15. See also Zaydan, *supra* note 21, 80-1. For a discussion of consultation within the family, see Abu Shuqqah, *supra* note 36, vol. 5, 104-9. For a discussion of the state analogue, see al-Hibri, *supra* note 15, *passim*, esp. 11-13, 21-24.

⁵¹See, e.g., Rida, *Tafsīr al-Qur'ān al-Ḥakīm*, 5: 67.

⁵²Ibn Manzūr, *supra* note 47, 280. See also, al-Hibri, *supra* note 32, 28, esp. n. 132.

⁵³See, e.g., Muhammad Isbir and Bilal Junaydi, *Al-Shāmil* (Beirut: Dar al-'Awdah, 1981), 135-36. See also, Fakhr al-Dīn al-Rāzī, *Al-Maḥṣūl fī 'Ilm Uṣūl al-Fiqh* (Beirut, Mu'assasat al-Risālah, 12th century reprint, 1992), 1: 379, 381, n. 3 (for the meaning of *tab'idh*).

⁵⁴See, e.g., Isbir and Junaidi, *supra* note 53, 764.

⁵⁵See, e.g., al-Rāzī, *supra* note 53, 333-34.

⁵⁶ See *supra* note 53.

⁵⁷ Qur'an 4:34

⁵⁸ Qur'an 9:71

⁵⁹ For more on this, see al-Hibri, *supra* note 32, 33-4.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 19. See also, Muḥammad Zakarīyā al-Bardisī, *Al-Aḥkām al-Islāmiyah fī al-Aḥwāl al-Shakhsīyah* (Cairo: Dār al-Nahḍah al-'Arabīyah, 1965), 292-93, and Abū Zahrah, *supra* note 21, 165.

⁶² Qur'an 3:103.

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