

ISLAMIC LAW AND MUSLIM WOMEN IN AMERICA

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THIS YEAR PROMISES TO BE an historical year for Muslim women in America. A collection of articles on Muslim women's issues, written from both theoretical and practical points of view, will appear.¹ The collection is unique, because the women who contributed to it represent a microcosm of the Muslim community in America. No such book has ever been written before. It is the culmination of decades of effort at producing significant Muslim women's writings rooted in the Qur'an and uniquely informed by the American experience.

MUSLIM WOMEN AND THE WEST

For decades now, the absence of the Muslim woman's voice in America has been taken for granted. American secular feminist organizations, concerned about the status of women in Muslim countries, have been planning their strategies in full oblivion of the valuable role Muslim women in America could play. At times, they even consciously excluded them.² As a result, the strategies these secular women adopted were often not only culturally insensitive but, more significantly, hostile to religion. In Muslim countries that were historically either the cradle of all three Abrahamic religions or other globally recognized religions, one could quickly conclude that secular strategies would not be very promising. In fact, secular efforts of Western feminists in Muslim countries have already created a backlash, even against indigenous Muslim efforts at liberation. The door has thus been slammed shut in the face of any possible constructive dialogue on women's issues.

Muslim women in America must now repair the damage and painstakingly distinguish themselves from Western secular feminists in order to estab-

lish their credibility abroad as legitimate parties in the Islamic dialogue for change and progress. This is one reason why the forthcoming book is so important. It declares once and for all that Muslim women in America have come of age and henceforth they will speak in their own voice. With their sisters at home and abroad, they will create genuine alliances, based on equality and mutual respect, to preserve women's rights in the United States, the Muslim world, and the rest of the world.

MUSLIM WOMEN AND THE MUSLIM WORLD

In developing their views, Muslim women (and men) in America must also face another challenge, this time emanating from other Muslims. For the longest time, non-American Muslims themselves overlooked the American Muslim voice. The famous article written several decades ago by Seyyed Qutb, a major Egyptian scholar, and entitled "American Islam," does not refer to American Muslim jurisprudence as one might think.³ Rather, it ridicules Muslim leaders who bend Islamic doctrine to suit the demands of American foreign policies.⁴ These leaders, Qutb argues, are willing to use Islam as a tool to control the masses and fight communism.⁵ They are willing to permit the public to discuss its Islamic views on contraception or the right of women to run for political office, but they are not willing to permit the public to freely discuss broader social, political, and economic issues.⁶

In a way, Qutb's article explains the roots of Muslim discontent with American official and NGO (non-governmental) strategies over the years. Both have disdained religion, either by using it as a tool or by disregarding it altogether. Both ignored the will of the Muslim people in the process and sought their own predefined goals. But Muslims in America are now ready to present to the world a new "American Islam," an indigenous, authentic, and genuinely caring one, not a tool for some political end.

Today, Islamic thought in America is not the product of superpower politics but of constitutionally guaranteed freedoms within the United States and the demands of a technologically advanced society. Muslims who immigrated to the United States joined indigenous American Muslims in exercising their human rights, especially the right to free thought and free speech. Many discovered that they could now discuss previously prohibited topics and entertain previously prohibited thoughts. Furthermore, with the proliferation of modern technological innovations, new Islamic experiments in areas such as banking, corporate governance, and financing, have emerged.⁷

So have modern Islamic educational institutions and women's groups. The result is an authentic Islam in America worthy of its name.

DECONSTRUCTING PATRIARCHAL JURISPRUDENCE

The Muslim experience in the United States, which included more than two decades of spirited American dialogue about women's rights, is reflected in communal concerns. Among these concerns today, the issue of women's rights ranks high. Generally, the present situation of Muslim women in the United States and abroad is fraught with tension and contradiction. On the one hand, as people of faith, Muslim women believe in the inherent justice of Islamic principles. On the other hand, their experiences are often those of injustice and oppression. Furthermore, very few Muslim women have the necessary tools for critically reexamining Islamic jurisprudence in order to expunge from Islamic laws the patriarchal influences of past cultures. I feel to this day the frustration of a Muslim woman abroad who asked me after my lecture, "Why don't *they* [religious scholars] tell us that Islam gives us all these rights?" There was no way that she could have found out the desired answer on her own. She did not have the necessary tools.

A narrow window of opportunity for acquiring some of these tools emerged in some countries when Muslim institutions of higher learning opened their doors to women. But in the absence of women's critical voices in these institutions, and of a free democratic exchange of ideas in some of these societies, the educational opportunities alone were not sufficient to bring about the necessary changes. Incidentally, the thirst for free speech and indigenously defined democratic forms of government in Muslim countries should not be underestimated. As an American on an occasional USIA (United States Information Agency) speaking tour, I was able to express my views in public fora and on television in many countries where freedom of speech often barely existed. The public reaction was usually very enthusiastic. One could feel a sense of relief settling over the audience as ideas of Islamic democracy and human rights were developed on its behalf. In one country, the audience refused to go home after one of my lectures, congregating on the street to continue the discussion. Clearly, they had a thirst for further discussions on Islamic democracy. They craved and needed democracy! Significantly, their positive response to issues of democracy, generally made them more receptive to the idea of gender-justice.

In the United States, not only do citizens have constitutional guarantees for their freedom of speech, but also there are Muslim women who have already acquired either domestically or abroad many of the necessary tools for studying Islam. Some of these women have also been exposed to or were even involved in the American women's movement. Not only did they witness or participate in its rise and struggles, but they also heard the diverse voices within it. They experienced the vigorous exchange of ideas within the movement and about it. In the end, they developed their own views, which contained potent critiques both of Western secular feminism and of the patriarchal interpretations of Islamic law that form the foundations of family law in many Muslim countries.

In an attempt to reach Muslim women (and men) outside the United States, I have personally made serious efforts to distinguish my views from Western secular ones. The result has been heartwarming. In one case, educated Muslim women, frustrated by gender discrimination in their own country, were pleasantly surprised by my gender-just interpretation of a particular Qur'anic passage traditionally interpreted in a highly patriarchal fashion.⁸ In another instance, a Muslim woman leader asked me specifically to develop gender-just jurisprudence in the area of child custody. In a third instance, a group of women encouraged American Muslim women to take a leadership role in improving Muslim women's rights around the world. In all of these discussions, the unstated premise was that Muslim women in the United States have the possibility of engaging in these endeavors freely.

At the NGO Forum held in China in conjunction with the UN Fourth Conference on Women, the situation was, however, more complicated.⁹ Some Muslim women groups were led by male "advisors" who had a predetermined agenda. In their zeal to realize it, they tried to push through the Muslim Women's Caucus a prepared statement, sight unseen. In response, American Muslim women took a very active role in the Caucus and insisted on proper democratic procedures. While our stance earned us the anger of some, most women appreciated our approach and supported us consistently. After the conference, we received letters of support from Muslim women in South Africa, Malaysia, England and various other places. Subsequently, we established an informal network of Muslim women jurists around the world, some of whom have been more than willing to help us develop a gender-just jurisprudence from the privacy of their own homes.

Despite these initial positive results, Muslim women in the United States still have a long way to go in terms of improving their religious edu-

cation and jurisprudential analysis. We also recognize that we have to fight some of our battles for women's rights closer to home. Fortunately, however, we have enlightened and highly qualified allies: Muslim male leaders and jurists who are both steeped in tradition and willing to take a fresh look at issues of democracy and women's rights.

Because of our recent efforts, Muslims around the world are increasingly welcoming the participation of American Muslim voices in their struggle for democracy and human rights. These Muslims, however, will only listen to authentic voices that are true to the message of Islam. They have become sophisticated at detecting quasi-religious voices that use religion as a tool to achieve secular ends. They have also endured a long history of Western intervention in their religious affairs. Muslims around the world will, therefore, accept no less than sincere as well as well-informed contributions to their struggles. Furthermore, even some leaders in government caught between the forces of political "fundamentalism" and Western secularism have come to appreciate a more balanced point of view in their search for an orderly way to liberate their truly religious societies. These leaders have also at times appreciated our views.

WOMEN IN EARLY ISLAMIC TRADITION

These new and encouraging developments are not a radical departure from early Islamic tradition. In fact, they are a throwback to ancient better times. Muslim women in the distant past took an active role in the development of Islamic jurisprudence. For example, 'Aisha, the wife of Prophet Muhammad, reported a substantial number of *hadiths* (sayings of the Prophet). Additionally, she provided a wealth of jurisprudence based on her extensive knowledge of both the Qur'an and the *sunnah* (the sayings and example of the Prophet).¹⁰

Not only did 'Aisha recount numerous important *hadiths* together with their surrounding circumstances, but she also refuted some misogynist ones. For example, Abu Hurairah (a male companion of the Prophet) reported that the Prophet had said, "Evil omens are [to be found] in women, mares and homes." 'Aisha became furious when she heard this report. She immediately corrected it, saying, "What he [the Prophet] said was that the people of Jahiliyyah [pre-Islamic era] used to find evil omens in these [three]."¹¹

It was also 'Aisha who argued that women should be permitted to travel alone, so long as they felt secure from *fitnah* (trouble, temptation). 'Aisha relied on the Qur'anic verse that pilgrimage is the duty of every Muslim

(3:97). Since not every Muslim woman has a husband or a *mahram* (legal companion, such as a son, brother, or other member of her family), she reasoned, Muslim women must be permitted to travel alone whether or not such travel was for pilgrimage. Not all jurists agreed with her on this point, including those who evaluated her Qur'anicly based argument in the limited context of travel for pilgrimage. In fact, even today, most personal status codes in Muslim countries restrict, directly or indirectly, the right of Muslim women to travel or even leave their home.¹²

LATER MUSLIM WOMEN WRITERS

‘Aisha does not stand alone in her jurisprudential contributions. Many outstanding male jurists of prior eras have acknowledged their debt to their female teachers.¹³ If these women teachers wrote down their views, very little of that writing is known to us today. Surviving jurisprudential contributions by Muslim women generally tend to fall in two categories, the traditional and the critical.

In the first category, I place the work of such jurists as al-Sharifah al-Dahmaa’ bint Yahia al-Murtadha, a Yemeni princess who lived toward the end of the fourteenth century. She studied under her famous brothers, al-Hadi and al-Mahdi, as well as Imam Mutahhar bin Muhammad, and wrote several books. Al-Dahmaa’ was well-known as a scholar and an educator of both men and women. Despite her familial and individual stature, some men tried to embarrass her and detract from her achievements. In one case, a man said to al-Dahmaa’ that women were for the bed, men for knowledge. She replied calmly, “Knowledge is for all the people.”¹⁴ This exchange, and others similar to it, reflect the hegemony of patriarchal thought at that time and the decline of the role of women in the area of Islamic jurisprudence.

In her *Kitab al-Nasa’ih al Muwqithat*, al-Dahmaa’ focused on those jurisprudential rules that pertained specifically to women and were different from the rules governing men in similar situations. Her book, however, does not question the patriarchal assumptions underlying the jurisprudence of the time. For example, in the passages on the rights of husbands and on *hajj* (pilgrimage), al-Dahmaa’ argues with the traditionalists that a woman may not leave her house without her husband’s permission, nor may she perform *hajj* unless accompanied by a *mahram*.¹⁵ Nevertheless, given the times in which she lived, al-Dahmaa’ was no doubt a shining light for the women of her period.

In the second category, I place the work of Nazirah Zein al-Din, who lived in Lebanon around the turn of this century. The daughter of a well-known jurist, she had an excellent education in religion.¹⁶ Her Islamic education was combined with a Western one when she was enrolled in a missionary school. Perhaps this diversity in her upbringing as well as the more recent era in which she lived made it easier for Nazirah to raise serious questions about the patriarchal interpretations of religious text.

In her book *Al-Sufur wa al-Hijab*, Nazirah questioned the practice of covering a woman's face.¹⁷ In the process of arguing that the practice was not religiously required, she touched upon a wealth of other subjects such as the education of women, Islamic dress, and equality. In the end, the book caused an uproar and was followed by a sequel that documented both the verbal attacks and words of support she received.¹⁸

COLONIALISM, CIVIL LIBERTIES, AND THE LIBERATION OF WOMEN

History thus teaches us that it is not easy to be a Muslim woman jurist, especially one who questions patriarchy. That is only half the problem. The task of engaging in Islamic jurisprudence, even under the most favorable conditions, is not an easy task. It has its minimal requirements. Among them is knowledge of the original sources. Primary among these is the Qur'an, which was revealed in classical Arabic. It also requires knowledge of *usul al-fiqh* (the jurisprudential rules of interpretation or logic) as well as historical knowledge of the circumstances surrounding the revelations, *hadiths* or laws under study.¹⁹

Today, very few women or *men* are able to produce competent writing in Islamic jurisprudence. Several historical events have intervened to make their task very demanding. Major among these historical events was the colonialist policy of weakening the Arabic language and indigenous educational institutions in Muslim countries. Algeria is a prime example of the ravages of this policy. There, the French colonialist government confiscated Muslim *awqaf* lands (lands belonging to charitable Islamic trusts that finance local schools and mosques).²⁰ This calculated move dealt a severe blow to traditional Qur'anic schools.²¹ Furthermore, the oppressive educational policies of the French resulted in keeping the predominant majority of Algerians outside the colonialist educational system.²² Consequently, whole generations of Algerians were forced to pursue their Arabic education in a handful of poorly funded Qur'anic schools.²³ The select few who

entered the colonialist educational system were deprived and often successfully severed from their linguistic, religious, and cultural heritage.²⁴

In the Indian subcontinent, the problems with the colonialists were somewhat different. There, British courts took the liberty of interpreting Islamic law. By that time, most of the population lacked linguistic and other tools for examining these interpretations. Furthermore, the legal colonialist regime gave the interpretations its full support. As a result, British interpretations of Islamic law acquired precedential value for Islamic jurisprudence in that region and continue till this day to influence the region's understanding of Islam.²⁵

Another major challenge that faced all potential jurists, whether male or female, was the erosion of civil liberties in many Muslim countries. This erosion was by no means recent. It began soon after the death of the Prophet when authoritarian governments were formed in contravention of the basic Qur'anic constitutional principles of *shura* (consultation) and *bay'ah* (election).²⁶ For several centuries thereafter, so long as jurists avoided discussing Islamic democracy and human rights, they tended to be safe from the wrath of their regimes. Jurists who ventured into these two areas often paid a high price.²⁷ As a result, Islamic jurisprudence, with few exceptions, languished in the area of *taqlid* (emulation of earlier jurists). For obvious political reasons, the jurists selected for *taqlid* were not necessarily the most democratic or liberal.

THE ROLE OF "IJTIHAD"

A third and important reason for the decline in jurisprudential activity came from well-meaning leading jurists themselves. Witnessing the spread of Islam in non-Arab speaking countries, these jurists were concerned that some of those who entered the field were not well versed in the subject matter. To avoid confusion, leading Muslim jurists restricted *ijtihad* (the interpretation of religious law or text) to those individuals who acquired an advanced level of knowledge of the religious text, relevant history, the Arabic language, and major secondary jurisprudential sources. These restrictions became at one point so daunting that some historians considered them tantamount to a "closing of the gate of *ijtihad*."²⁸

Since in Islam there is no central religious authority, no Muslim has the right to close the "gate of *ijtihad*." Every Muslim who has sufficient knowledge and piety to engage in *ijtihad* may do so with no one else's prior permission. One of the earliest examples of this fact occurred in the days of the *Khalifa* (Caliph) 'Omar. While delivering a speech in a mosque, the

Khalifa told the people that he was passing a certain law in the public interest. An old woman in the back of the mosque objected, noting that the proposed law contravened a Qur'anic verse. *Khalifa* 'Omar asked for proof, and when she stated her argument, he said, "A woman is right and a man is wrong."²⁹ He then rescinded the law.

This incident shows that a person expressing a considered opinion or an *ijtihad* on a matter need not be well known or well versed in the field of jurisprudence as a whole. What is required is simply that the argument provided in support of this *ijtihad* or opinion be sound. If the argument is sound, then it must be taken seriously and properly addressed, regardless of its origin. On the other hand, the restrictive requirements for jurisprudence, which were mentioned earlier, continue to be valuable indicia of one's preparedness for a jurisprudential career.³⁰

With these distinctions in mind, the contributions of Muslim women in the United States to Islamic jurisprudence may prove to be at least as significant as that of the old woman who corrected 'Omar in the mosque. They are also urgently needed. The complacency of *taqlidi* jurists, either for political reasons or due to lack of sufficient knowledge, has made them run afoul of a major Islamic jurisprudential principle, namely that laws change with change in time and place.³¹ This law is so deeply entrenched in the tradition that the revered Imam al-Shafi'i changed his own school of thought when he moved from Iraq to Egypt.³² His earlier jurisprudence evolved in light of the new conditions.

The Muslim world continues to this day to emulate the great Imams of Islam who lived in different cultures and different times. Particularly problematic is the transplantation of several traditional schools of thought to the United States, in total oblivion of the need to reexamine them in light of our modern era and American culture. This is especially important since Islam celebrated cultural diversity.³³ As a result, many cultures were encouraged to incorporate in their laws customs that did not conflict with Islamic principles.

Today in America, however, we still find individuals clinging to their ancestral oriental customs and rejecting, wholesale, American customs. They transmit these culturally based customs to their American children and to new converts as if they were an integral part of the religion. The result is a great deal of unnecessary hardship and confusion for a whole new generation of American Muslims.

The attitude of these "emulators" reflects not only a mis-conception of Islam, but also the subconscious misconception that Islam belongs to the

East alone. The Qur'an clearly states that Islam was revealed to all people.³⁴ That includes the United States, some of whose customs are as worthy of incorporation as those of prior cultures. Without religious education, these American Muslims have no way of finding out which customs are acceptable and which are in conflict with their religious values.

In other words, the existing situation is no longer workable at home; it is also unworkable abroad. The Muslim world is undergoing the pains of both global political and technological marginalization. Muslims are suffering under the weight of outdated authoritarian political systems and are increasingly unwilling to accept the legitimacy of these systems in today's world. (Ironically, however, it is often Western democracies that support these regimes.) The issue of the compatibility of Islam with democracy and human rights is thus a live issue for a large number of Muslims who are no longer willing to accept their existing political order without fundamental modifications.³⁵

American Muslims are well-positioned to study the jurisprudence of Islamic democracy without fear of repercussions. Unlike many of their brothers and sisters abroad, they can vocally argue, using the finest traditional religious sources, that hereditary rule is not acceptable in Islam, that each ruler must be freely chosen by the people, and that such a ruler must serve the people's interests not his own.³⁶ Once formulated, these views will find their way to other Muslim countries, connect with local progressive Islamic jurisprudence, and energize the democratic movements there. Furthermore, the American Muslim effort will not be open to the Third World critique of advancing Western hegemony, nor will it be vulnerable to refutation by pointing out the shortcomings of American democracy. The form of democracy being advocated by American Muslim jurisprudence would be fully rooted in the Qur'an itself, a revelation that transcends national borders.

PERSONAL STATUS CODES

Muslim family laws (referred to as "personal status codes") as well as the court system that applies and enforces them have created serious problems for women around the world.³⁷ Consider for example, the following true story. A young Egyptian woman complained to me that her divorce case has been languishing in court for over seven years. Despite the fact that her husband was caught committing adultery and has never supported her financially, it took the court several years to declare a divorce. The husband, however, decided to appeal the decision. Consequently, the woman remains unable to remarry

until her divorce is declared final. Since that may take a few more years, she may have lost her fertile years by the time she is legally able to remarry.

This situation is very troubling, given the precedent that *Khalifa* 'Omar set. On one of his famous evening walks around town he overheard a woman recite a heartbreaking poem describing the emotional difficulties she was facing because of the extended absence of her husband. Since her husband was in the army, *Khalifa* 'Omar decided not to keep his troops away from their wives for more than six months at a time in order to preserve the wife's chastity.³⁸ 'Omar's point of view was adopted by traditional scholars who recognized the extended absence of a spouse as grounds for judicial divorce ("tafriq").³⁹

Another piece of significant information comes from the *sunnah* of the Prophet himself. A woman called Habibah asked the Prophet for his permission to divorce her husband, Thabit. She noted that Thabit had no moral or religious shortcomings but that she could not stand him ("la utiquhu").⁴⁰ The Prophet asked her whether she was willing to return to Thabit his garden, which he had given to her as *mahr* (dower).⁴¹ She enthusiastically agreed to give that back. The Prophet then asked Habibah to return the garden to Thabit and instructed Thabit to accept the garden and divorce his wife.⁴² The whole event was over in a few minutes. Today's Muslim courts, however, make young women vulnerable to temptation and loneliness by not following the *sunnah* and offering them a prompt resolution of their marital situation.

The story about Habibah and the Prophet is also useful for examining the wife's right of *Khul'* (repudiation) in Muslim countries. This right, based on Habibah's story, permits the wife to divorce her husband at will, so long as she returns to him his *mahr*. This right is parallel to the right of the man to divorce his wife at will. Personal status codes in most Muslim countries have interpreted the right to *Khul'* so as to require the husband's consent. As a result, the wife is often either unable to divorce her husband at all or is reduced to buying his consent by paying him an amount exceeding her *mahr*, in contravention of the Prophetic tradition.⁴³

Muslim women can protect themselves from such problems by simply writing in their marriage contract a condition that permits them to divorce the husband at will. This approach is legally different from *khul'* in that it is part of the Islamic marriage contract executed by the couple. The condition usually states that the woman retains her *'ismah* (control over her own marital status) or, depending on the jurisdiction, that the husband delegates his right of divorce to his wife (*tafwid*).⁴⁴ The problem with this approach, however, is that not many women have the negotiating power to include the con-

dition. Furthermore, society as well as religious authorities discourage women from including it. For example, when I was preparing to insert this condition in my own marriage contract, the imam officiating over the ceremony stopped me. He claimed that the condition was invalid. After a lengthy argument, in which I pointed out to him that women in my religious family have consistently included this condition, the imam finally accepted. His acceptance was hastened by the fact that one of the marriage witnesses supported my argument. The witness was a well-known Muslim lawyer. Another woman with less information about *'ismah* or a less authoritative witness may have had greater difficulty in protecting her rights. This would have made her vulnerable to the consent interpretation of *Khul'* and to lengthy divorce proceedings in the event her marriage fails.

It is also worth noting that some schools of thought have developed rules that make it hard for the woman to retain her right to divorce after the marriage is consummated.⁴⁵ Such problems must be pointed out in an international Islamic debate about the rights of women. Muslim jurists must be encouraged to adopt that jurisprudence that provides Muslim women today with the full extent of their Islamic rights in a world full of patriarchal hurdles.

Generally, current personal status codes provide patriarchal interpretations of Islamic principles.⁴⁶ The misery created by these laws and interpretations is real and in need of immediate attention. Western feminists have recently focused on this issue and many of them have offered secular solutions. But *secular solutions do not count for people of faith*. These solutions abandon the very premises to which Muslim women have chosen to adhere.

CONCLUSION

The possibilities for advancing Muslim women's rights and aiding in the emergence of indigenous forms of democracy in the Muslim world are limitless. To achieve these goals, however, we need to look at the world in a new way. Muslim societies abroad need to rediscover Islam in the age of democracy and human rights. The West, and in particular America, needs to rediscover Islam not as a threatening "Other" but as part of the original civilizational and spiritual heritage of the West. In the United States, we have one additional dimension. American Muslims today are only one link in the line of Muslims who helped build this country. We had predecessors who were brought to this land involuntarily. Some of these predecessors were literate; some were even leaders of their African tribal communities.⁴⁷ They had to endure the tyranny of

slavery.⁴⁸ Nevertheless, they contributed significantly to building this country. The nation as a whole owes a lot to the efforts of these early Americans.

One more issue remains: Having extolled the virtues of American democracy, it is important to note that Muslims in America are not full beneficiaries of it. For example, under new laws that affect them disproportionately, Muslims in the United States have been denied important due process protections.⁴⁹ As a result of this state of affairs, the issue of Muslim civil rights in the United States has added a whole new dimension to the Muslim women's struggle for their human rights.⁵⁰ Of course, the proper response to civil rights problems at home is not to become cynical about American democracy but rather to contribute actively toward its improvement.

NOTES

1. Gisela Webb, ed., *Windows of Faith* (working title), (Syracuse: Syracuse University Press, forthcoming).
2. In one salient example of this attitude, American secular feminists were averse to including Muslim women wearing *hijab* (head cover) in a demonstration that took place in Washington, D.C., several years ago in support of Bosnian women. In another example, a conference on Islam organized by an American secular feminist organization did not include a single woman wearing *hijab*. The audience included a large number of such women who were frustrated and upset by the omission.
3. Seyyed Qutb, *Dirasat Islamiyah* (Cairo: Dar al-Shuruq, 1987), pp. 119–23.
4. *Ibid.*, p. 121–22.
5. *Ibid.*, p. 119–20.
6. *Ibid.*, p. 120.
7. For example, I was contacted by a group of American Muslim businessmen who had devised a corporate structure that better approximated, in their view, Islamic values of justice and fairness. Also, several Islamic financial and banking institutions have been established in the United States. These institutions are designed to be simultaneously competitive in the capital markets and in compliance with Islamic values.
8. That passage was discussed in my *Islam, Law and Custom: Redefining Muslim Women's Rights*, 12 Am. U. J. Int'l L. & Pol'y 1, 25–34 (1997).
9. For the press release that was prepared by this author and issued at the Forum by the American-based "Karamah: Muslim Women Lawyers for Human Rights," see <<http://www.karamah.org>>.
10. Sheikh Sa'id Fayez al-Dakhil, *Mawsu'at Fiqh 'Aisha Um al-Mu'mineen*, (Beirut: Dar al-Nafa'is, 1993), pp. 82, 83–84, 85–86, 87–88.
11. *Ibid.*, 532.
12. *Ibid.*, 542–44; 545–46; *Islam, Law and Custom*, p. 12.
13. See, e.g., Ahmad Shalabi, *Al-Tarbiyah wa al-Ta'lim*, in 5 *Mawsu'at al-Hadharah al-Islamiyah*, pp. 343–44 (Cairo: Maktabat al-Nahdha al-Nabawiyah, (exp. 8th ed.), 1987. See also, Muhammad al-Sakhawi, *Al-Daw' al-Lami'*, esp. vol. 12 (Beirut: Dar Maktabat al-Hayat [15th century, reprint], n.d.).
14. The only work I was able to locate so far was *Kitab al-Nasa'ih al-Muwqithat: Fima Yakhtuss bi al-Nisa' Min al-Wajibat wa al-Mandubat wa al-Watha'ef al-Mustahsanat*,

- unpublished manuscript with commentary by Abdullah Abdullah Ahmad al-Huthi, San'aa, Yemen, p. 30–33 (on file with author).
15. *Ibid.*, 94; 289–90. The fully stated rule allows a woman to travel with her husband or a *mahram*.
 16. Nazirah Zein al-Din, *Al-Sufur wa al-Hijab*, published by her father, Sa'id Bey Zein al-Din (Beirut, 1929), dedication.
 17. *Ibid.*, esp. pp. 30–34; 180–89.
 18. See, generally, Nazirah Zein al-Din, *Al-Fatat wa al-Shuyukh*, published by her father, Sa'id Bey Zein al-Din (Beirut, 1929).
 19. See, e.g., Subhi Mahmassani, *Muqaddimah fi Ihya' 'Ulum al-Shari'ah* (Beirut: Dar al-'Ilm li al-Malayin, 1962), pp. 28–9.
 20. Elsa M. Harik and Donald G. Schilling, *The Politics of Education*, (Athens, Ohio: Ohio University Center for International Studies, Africa Series No. 43, 1984), 27. See also Mas'ud Mujahid, *Al-Jaza'ir 'Abr al-Ajyal*, (Jerusalem: Dar al-Aytam al-Islamiyah al-Sina'iyah, n.d.), pp. 355.
 21. *The Politics of Education*, p.27. See also, *Al-Jaza'ir 'Abr al-Ajyal*, pp. 355.
 22. *The Eloquence of Silence: Algerian Women in Question*, (New York: Routledge, 1994) p. 62. See also, *Al-Jaza'ir 'Abr al-Ajyal*, pp. 237–39, 354–55. For another perspective on this problem, see *The Politics of Education*, pp. 2–3, 6–12, 15–17, 23–26, 30.
 23. For a discussion of this point, see Marnia Lazreg, *The Eloquence of Silence*, esp. pp. 59–62, 67, 79. See also, *Al-Jaza'ir 'Abr al-Ajyal*, p. 35.
 24. *The Eloquence of Silence*, pp. 59–61. See also *Al-Jaza'ir 'Abr al-Ajyal*, pp. 239.
 25. Keith Hodkinson, *Muslim Family law: A Source Book* (London: Croom Helm, 1984), pp.1–13.
 26. For a detailed discussion of Islamic constitutionalism and the historical crisis of authority, see Azizah Y. al-Hibri, "Islamic and American Constitutional Law: Borrowing Possibilities or a History of Borrowing?" 1 U. Pa. J. Cont. L.—(1999), 111–34. See also Azizah Y. Al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 Case W. Res. J. Int'l L. 1, 1–27 (1992).
 27. See, e.g., Hussein Zein, *Al-Islam wa al-Fikr al-Siyasi al-Mu'asser* (Beirut: Dar al-Fikr al-Hadith, 1997), pp. 45–48.
 28. See John Esposito, *Islam: The Straight Path* (New York: Oxford University Press, 1991), p. 84. See also *Muqaddimah fi Ihya' 'Ulum al-Shari'ah*, p. 20–21.
 29. Abu Hamid al-Ghazali, *Ihya' 'Ulum al-Din* (Cairo: Matba'at Mustafa al-Babi al-Halabi, 11th century, reprint, 1939), vol. 1, p.50.
 30. Mahmassani agrees that a person engaging in *ijtihad* need not have a comprehensive knowledge of all matters of jurisprudence. *Muqaddimah fi Ihya' 'Ulum al-Shari'ah*, p. 29.
 31. See *Islamic Constitutionalism*, p. 8.
 32. See *Muqaddimah fi Ihya' 'Ulum al-Shari'ah*, p. 40. See also Taha Jabir al-Alwani, *Usul al-Fiqh al-Islami* (The International Institute of Islamic Thought: Herndon, VA, 1990) 34–36; Muhammad Abu Zahrah, *al-Shafi'i* (Dar al-Fikr al-'Arabi 1948) 28, Muhammad al-Najjar, *Al-'Umm* (Maktabat al-Kulliyat al-Azhariyah: Cairo, 1961) Introduction; 'Ala' al-Deen as-Samarqandi, *Tariqat al-Khilaf Bayn al-Aslaf* (Dar al-Kutub al-Ilmiyah: Beirut, reprint, 11th century, 1992)13.
 33. Qur'an 49:13. For more on the importance of this point to Qur'anic philosophy, see the author's contribution on "Modesty," *The Oxford Encyclopedia of the Modern Islamic World*, (Oxford: Oxford University Press, 1995), vol. 3, pp. 126–27.
 34. See, e.g., Qur'an 39:41;14:1; and 2:213.
 35. Some Muslim groups, such as Tanzim Islah-i-Paksitan (Organization for the Reform of Pakistan), have argued that democracy is an un-Islamic Western concept because it

leads to a state governed by the will of the people, as opposed to Divine Will. See discussion of this group's views in Ishtiaq Ahmad's *The Concept of An Islamic State: An Analysis of the Ideological Controversy in Pakistan* (New York: St. Martin's Press, 1987), esp. p. 88. I have argued in *Islamic Constitutionalism*, pp. 16–20, that this argument, while based on correct premises, is conceptually confused.

36. See *Islamic Constitutionalism*, pp. 11–13.
37. For a detailed discussion of these codes, see *Islam, Law and Custom*, p. 10–23.
38. Jamal al-Din al-Jawzi, *Tārīkh 'Omar bin al-Khattab*, (Beirut: Dar al-Ra'ed al-Arabi, 1985), pp. 76–78.
39. See, e.g., Muhammad Abu Zahrah, *Al-Ahwal al-Shakhsīyah* (Cairo: Dar al-Fikr al-'Arabi, 3rd ed., 1957), pp. 366–67.
40. Abu Abdullah al-Bukhari, *Sahih al-Bukhari bi Hashiat al-Sindi*, (Beirut: Dar al-Ma'rifah, n.d.), vol. 3, p. 273. See also, Abu Abdullah Ibn Majah, *Sunan Ibn Majah*, (Beirut: Dar al-Kutub al-'Ilmiyah, n.d.), vol. 1, p. 663. Al-Bukhari provides another account of the story. Al-Bukhari, p. 273. According to the second account, the woman wanted a divorce from her husband because she feared that staying with him would drive her away from her religion (suggesting that the antipathy between them may cause her to go astray). Ibn Majah provides both accounts but adds that the Prophet ordered Thabit not to take from his wife more than the garden he gave her.
41. It is inaccurate to translate *Mahr* as dowry. *Mahr* is best viewed as the amount a woman receives as a gift from her prospective husband. The money is the personal property of the woman and may not be touched by either her father or, later, her husband. She could demand it prior to the marriage or demand that part of it be delayed. If no term is specified, the *mahr* becomes due upon the husband's death or divorce. In the first case it becomes a senior debt of the estate, paid in addition and prior to the wife's inherited share in the estate. In the second case, it becomes a lump sum alimony. For more on this, see, e.g., *Al-Ahwal al-Shakhsīyah*, esp. pp. 169–208; see also my contribution to the *Symposium on Religious Law*, 16 Loy. L. A. Int'l & Comp. L. J. 1, 67–70 (1993).
42. Ibn Qudamah, *Al-Mughni*, (Beirut: Dar al-Kitab al-'Arabi, (12th century), n.d.), vol. 8, pp. 173–75, 182–83.
43. *Ibid.*
44. For more on this, see this author's *Marriage Laws in Muslim Countries: A Comparative Study of Certain Egyptian, Syrian, Moroccan, and Tunisian Marriage Laws*, 4 Int'l Rev. Comp. Pub. Pol'y 227, 235 (1992).
45. *Ibid.*
46. See, generally, *Islam, Law and Custom*.
47. Robert J. Allison, *The Crescent Obscured*, (Oxford: The Oxford Press, 1995), pp. 91. Michael A. Gomez, *Exchanging Our Country Marks*, (Chapel Hill: The University of North Carolina Press, 1998), p. 61. See also, Fareed H. Nu'man, *The Muslim Population in the United States* (Washington, D.C.: The American Muslim Council, 1992), esp. pp. 20–22.
48. Thomas Jefferson viewed this system of slavery as bringing back to America the very tyranny it had revolted against. He argued that only a prodigy would survive slavery unmarred. Thomas Jefferson, *Notes on the State of Virginia* (Philadelphia: R. T. Rawle, 1801), 319–22. See also *The Crescent Obscured*, p. 88.
49. This is most salient in the use of secret evidence in immigration cases. See, e.g., the new Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–2, 110 Stat. 1262 (codified as amended in scattered sections of 8 U.S.C.A.). See also, "On Secret Evidence," *Washington Post*, editorial, page A18, October 21, 1997.
50. See, e.g., "Islamic Emblem of Faith Also Trigger for Bias," *New York Times*, November 3, 1997, Section A, col. 1.