
*Constructing the Notion
of Male Superiority
over Women in Islam*

*The influence of sex and gender stereotyping
in the interpretation of the Qur'an
and the implications
for a modernist exegesis of rights*

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The influence of sex and gender stereotyping in the interpretation of the Qur'an and the implications for a modernist exegesis of rights

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Introduction

All people are equal, as equal as the tooth of a comb. There is no claim of merit of an Arab over a non-Arab, or a white over a black person, or a male over a female. Only God-fearing people merit a preference with God.

The above oft-quoted *hadith* is considered a definitive statement of the ideology of equality espoused in the *Qur'an* and thus in Islam. It is an important instruction to humankind to treat fellow human beings with dignity and respect, without discrimination or prejudice based on any ground. The only distinction that can be made between human beings is a distinction based on their fear of God, and only God can discriminate. This *hadith* is one starting point for the consideration of women's equality of rights in Islam. Of course the text of the *Qur'an* must also be considered, but it is significant to note that in the discussion of women's equality of rights in Islam, this *hadith* is rarely referred to or relied upon in the interpretation of and formulation of laws that affect women's free agency as compared to men's free agency. This is of significance in the consideration of women's status in Islam. It is my contention that what is commonly understood today about women's status in Islam is the product of biased interpretation and selective acknowledgment of textual sources from which rights have been derived. In this paper I will seek to illustrate the ways in which traditional Islamic jurists have interpreted and formulated rights based on cultural definitions of "man" and "woman" and "male" and "female." I will also seek to illustrate the ways in which traditional scholars have given greater weight to textual sources that appear to substantiate such definitions, ignoring other textual sources that are inconsistent with such definitions. My objective is to show the influence of sex stereotyping in Islamic jurisprudence, and thereby provide an alternative interpretation of women's rights in Islam,

proceeding from an assumption of equality as opposed to an assumption of inequality.

In terms of equality of rights for women, I am concerned primarily with the concept of self-determination, the right of women to exercise their free will, to make their own choices, unfettered by any notion of women's inequality or incapacity. There are of course many areas of law governing the exercise of free will in Islam. For the purposes of this paper, I will limit my discussion to Verse 4:34 of the *Qur'an* which is traditionally understood as denying women's self-determination and which has been relied upon to support the subjugation and abuse of women all over the world.

The scope of the discussion in this paper, due to space constraints, is also largely limited to the *Qur'an*, with some discussion of *ahadith*.¹ It is acknowledged that a comprehensive discussion of women's self-determination in Islam requires consideration of all *ahadith* that make reference to women's rights, responsibilities, and status. I am not able in the space of this paper to provide a discussion of *ahadith* to address questions of authenticity, interpretation, and effect. There is considerable controversy surrounding the authenticity of the thousands of *ahadith* that have been collected and recorded. There is also controversy surrounding how to interpret *ahadith*, the weight that is given to any particular *hadith* as against a *Qur'anic* prescription and how to deal with contradictions between many *ahadith*. As these questions are beyond the scope of this paper. I will focus my attention on the *Qur'an* and isolated *ahadith sahiha*² that are commonly relied upon by jurists to establish legal rules concerning women's free and/or fettered agency.

I accept that the *Qur'an* is divinely inspired and that the law and religious values embodied in the letter and spirit of the *Qur'an* constitute the command of God to humankind. I also accept that the Sunna of the Prophet Muhammad (peace be upon him) is a guide to Muslims and an essential tool in the formulation of laws. What I attempt is an internal

1. *Ahadith*, the plural of *hadith*, are reports attributed to the Prophet Muhammad. They are accounts of the practices and pronouncements of the Prophet that have been collected as the *Sunna*, or Tradition, of the Prophet, which Muslims should aspire to follow in their daily lives. *Encyclopedia of Islam* (Vol. III 1979) p.23.

2. A *hadith sahih* refers to a sound *hadith*; that is, a report that is considered by traditionalists to be authentic and valid. *ibid.*, p.25.

critique of traditional Islamic jurisprudence and the historical denial of equality of rights for women in the formulation and application of Islamic law. To this end, in the first part of this paper I will consider the rules adopted by Islamic jurists in the interpretation of Islamic law and how sex stereotyping has influenced such interpretation. In the second part of this paper I will critique examples of *tafasir*, or exegeses, that rely upon traditional methods of interpretation that substantiate the denial of women's agency in Islam. My criticism will focus on the following: the textual sources from the *Qur'an* and *ahadith* that are used to support meanings given to words or 4:34; the linguistic choice of one meaning of an Arabic word or another; and whether cultural assumptions play a role in generating reasons for the "Islamic" position on women as expressed by the words or verses. In the third part of this paper I will provide alternative interpretations of 4:34, followed by a discussion of the methodological exegesis that I believe will address the failures of traditional jurisprudence and secure equality of rights for women in Islam.

My perspective is that of a student of Islam. I make no claim of expertise in Islam or Islamic law. My objective here is to highlight the absence of a sound rights framework within traditional *fiqh*. This is a result of Islam doubts concerning the certainty or correctness of the traditional *fiqh*, and the unacceptability of conclusive determinations where considerable uncertainty exists. I believe it necessary to consider interpretive methodologies that are alternatives to the traditional and to adopt a framework of egalitarianism to meet a modern understanding of rights. But I also believe that it is necessary to challenge the compulsion to define laws and moral concepts in Islam. In my view, the *Qur'an* and reliable *ahadith* are a guide from which we reach our best understanding of God's intention. We define laws and moral concepts from our best understanding. If the Muslim polity determines for itself that it desires the enactment of Islamic law, the distinction between the Truth and our understanding of it must be clear. Our understanding must be framed in terms of the will of the people, and not Divine Law.

Thus, if there is uncertainty in what is traditionally understood as an Islamic law and that Islamic law discriminates against women, then reform within Islamic jurisprudence must take place in order to derive more accurate rules from the texts. The absence of certainty mandates inquiry into other interpretations in order to reach an understanding (or understandings) that is our best understanding. I will illustrate such uncertainty in this paper and the need for revision within the Islamic framework. My reasons for this are three-fold. First, it is my contention

that equality of rights for women is not only possible within an Islamic legal framework, but mandated by the letter and spirit of the *Qur'an*. Therefore, there is no claim to the argument that only with secularization will we achieve absolute equality of rights for women. Therefore, to deny equality of rights for women is unislamic. Second, any attempt at secularization or "liberalization" will be met with accusations of Westernization, or even apostasy, and will not achieve the objective of revision in Islamic jurisprudence to address the concerns I wish to raise in this paper. Secularization simply avoids having to solve the problem, while assuming that the problem is inherent and unsolvable. Islam must be appreciated as meaningful for our modern era; meaningful for men and women and their continually changing circumstances. Thirdly, as stated above, uncertainty limits our ability to conclusively define laws as Islamic and this must preclude any notion that revision in Islamic jurisprudence is no longer necessary as textual questions are answered.

The Traditional Approach to the Formulation of Islamic Law

What law is extractable from the *Qur'an* is by definition religious, and forms (along with the *Sunna*³) part of the *Shari'a*. The *Shari'a* is traditionally understood by Muslims to be a comprehensive code for daily life. However, the question of what is a legal and/or an ethical obligation is complicated, hence the use of methods for the explanation of how the *Shari'a* is to be understood and applied. Traditional Islamic scholars developed *usul al-fiqh* – a "science" of jurisprudence for the investigation of legal questions. According to traditional jurisprudence, Islamic law is expressly devised by God and revealed by him in the *Qur'an*, containing the express laws of God,⁴ and the *Sunna*.⁵ In determining questions of law, the principles of reasoning are as follows: precedence is given first to

3. The practices and pronouncements of the Prophet Muhammad (pbuh).

4. The theory is that God is the legislator, therefore, the *Qur'an* is immutable and cannot be subject to revision or invalidation by a court or legislative body.

David J. Karl, *Islamic Law in Saudi Arabia: What Foreign Attorneys Should Know*, 25 *George Washington Journal of International Law and Economics* 113 (1991) p.133.

5. It is believed that God chose the Prophet Muhammad (pbuh) to convey the Divine Revelations to the world. The Prophet began in Mecca in 610 AD to establish a social order based on those Revelations to correct the spiritual and social ills prevalent there. These ills were attributed to polytheism, idol worship, exploitation of the poor, ill-treatment of women and unfair trade practices.

Modern Legal Systems Cyclopaedia (Keith R. Redden ed. 1984), 100.5

Qur'anic revelation and then to the *Sunna* of the Prophet (pbuh). Where matters are not conclusively addressed by the *Qur'an* or *Sunna* or are uncertain, processes of interpretation are used to formulate legal principles considered consistent with the letter and spirit of the textual sources. These processes involve legal reasoning. In order for scholars to hold an authoritative opinion on a question of law, that scholar must be a *mujtahid*. A *mujtahid* classically is a member of the '*ulama*, consisting of elite scholars who are trusted in the exercise of *ijtihad*. *Ijtihad*, literally meaning endeavor or self-exertion, is the use of individual reasoning in matters of *fiqh* by inquiring into the *Qur'an* and *Sunna*. Individual reasoning is used in the formation of *ijma'* and ruling by *qiyas*. Simply stated, *ijma'* represents the consensus among Islamic scholars in answer to a specific legal question, and *qiyas* is a process of analogical or syllogistic reasoning.⁶ The *fiqh*, or jurisprudence, therefore is the body of work based on individual reasoning. Thus, Islamic jurists rely on two sources for determining what is Islamic law: the textual sources, the *Qur'an* and the *Sunna*, which form the base of juridical reasoning, and *ijtihad*.

In order to interpret and formulate rules, traditional jurists relied on "the four proofs": the *Qur'an*, the *Sunna*, *ijma'*, and *qiyas*. As far as the *Qur'an* is concerned, its authenticity is unquestioned. What is expressed in the *Qur'an* is the expression of the absolute authority of God. The authenticity of the *Qur'an* is established according to *tawatur*, or universal transmission. *Tawatur* is based on oral tradition and involves the theory that the verses of the *Qur'an* were reported from generation to generation in exactly the same form by a large number of transmitters which would preclude any possibility of collusion and fabrication or error. Therefore what is revealed in the *Qur'an* is the Truth and provides knowledge, or '*ilm*.⁷

The second proof, the *Sunna*, is a compilation of *ahadith* which were narrated by a chain of transmitters. Each report is a *hadith* in the *Sunna*. The *Sunna* is considered authoritative because God through the *Qur'an* enjoins guidance by the Prophet (pbuh). Further, as the Prophet (pbuh) was the Messenger of God, what better example than the Messenger himself? Traditional theory is that the *Sunna* confirms the *Qur'an*, assists

6. David S. Powers, On Judicial Review in Islamic Law, 26 Law and Society Review 313 (1992) p.318.

7. See 'Abd al-Wahhab Khallaf, 'Ilm Usul al-Fiqh al-halaqah al-thaniya min silsilat al-dirasa al-ulya fi al-shari'ah al-Islamiyah bi-qism al-dukturah bi-kulliyal al-haqq (1942) pp.20-21.

in its interpretation, or fills lacunae.⁸ However, there is considerable controversy surrounding the authenticity of many reports that are attributed to the Prophet (pbuh).⁹ While the *Qur'an* is the word of God, the reports of the practices and pronouncements of the Prophet (pbuh) are theoretically not considered absolute in the hierarchy of proofs. Some *ahadith* simply refer to the acts of the Prophet (pbuh) and concern his own conduct exclusively, as opposed to being normative. Also, the *Sunna* came to incorporate reports of the practices of the first generations of Muslims, and therefore not simply the Prophet (pbuh). Some schools in Islamic jurisprudence, or *madhahib*, relied upon the *Sunna* of the Companions of the Prophet (pbuh), or the first communities of Islam.¹⁰ This was considered the living tradition of the Prophet (pbuh). In the first centuries of Islam there was an apparent aversion to a written record of the *Sunna* of the Prophet (pbuh). Because the written record was delayed and because of the fabrication of many *ahadith*, various traditions developed in different communities. These different communities relied upon the prevailing community practice in the interpretation and application of the *Qur'an*, and there developed a divergence in the *fiqh*.¹¹ In response to this, many scholars recognized the need to record in writing those *ahadith* that could be reliably attributed to the Prophet (pbuh).¹² Muhammad ibn Idris al-Shafi'i (150-204 AH¹³) was one such

8. *ibid.*, pp.36-41.

9. See Encyclopedia of Islam, *op cit.*, pp.23-29.

10. See Fazlur Rahman, Islam (2nd ed.1979) ch. 3.

11. *ibid.*

12. There developed a science in the investigation of genuine *ahadith* of the Prophet, or the science of the men who recorded *ahadith*. The chain of transmission was investigated to determine whether the report could have emanated from the Prophet, and those who transmitted *ahadith* were determined reliable or unreliable according to the following criteria: the reporter's birth date and death date, his travels and the communities that he visited, his teachers and his students, whether he had any heretical or semi-heretical beliefs, what was his character, and whether his memory was reliable. The most important question for investigators appears to be the trustworthiness of a reporter. If a reporter was ever known to have told a single lie, then his reports were usually disregarded as unreliable. Despite the claim that this method of investigation is a "science," it is highly problematic and subjective, as Fatima Mernissi points out in *Women and Islam. An Historical and Theological Inquiry* (1987).

13. The Islamic calendar began in the last part of 622 AD and the first part of 623 AD of the Christian era. A year in the Islamic calendar is a lunar year of 12 "true

scholar who called for the recognition of the Prophetic tradition as a principle of law and denounced the reliance on the living tradition of the different communities as a source of law. Al-Shafi'i encountered support from scholars, such as ibn Hanbal and abu Zahiri, who were of the view that textual sources must provide the foundation for the development of *fiqh*. He encountered resistance from those who doubted the authenticity of the *Sunna* of the Prophet (pbuh) and felt that greater reliance should be placed on the living tradition of their communities. This divergence is of great significance in the formation of different *madhahib* that adopted differing approaches to the treatment of *ahadith* and different requirements for the formation of *ijma'*.

The third proof, *ijma'*, was developed, it is claimed, in response to the *hadith* of the Prophet (pbuh) that "My community does not agree upon an error."¹⁴ Where there was uncertainty in the interpretation of the *Qur'an* or *Sunna*, or the weight to be given to the *Sunna*, if scholars were able to agree on a particular question of law, this agreement was a proof. The *madhahib*, however, formed different rules as to the results of an exercise of *ijtihad*, what was required in the formation of *ijma'*, and the status of *ijma'* in the hierarchy of proofs. As will be elaborated upon below, the divergence in the *madhahib* as regards the criteria for the formation of *ijma'* indicates what is commonly claimed: there is no *ijma'* on *ijma'*.¹⁵

The fourth proof, *qiyas*, is resorted to where it is possible to rule by analogy by investigating the precepts of the *Qur'an* and *Sunna*.¹⁶ *Qiyas* therefore involves an exercise of *ijtihad* as it requires reasoning according to what is given in the texts. Where there is a ruling based on a *Qur'anic* verse or a case narrated from the Prophet (pbuh), that ruling can be applied where there is identified a common characteristic or incident, or

months" and therefore the 12 months fall short of a solar calendar by about 11 days. Therefore in ascertaining the equivalent year in the Christian calendar it is not sufficient to simply add 622 years. For a formula to ascertain the Christian calendar equivalency, see Marshall G S Hodgson, *The Venture of Islam* (vol. 1, 1961).

14. Muwaffaq al-Din Abu Muhammad 'Abd Allah bin Ahmad ibn Qudama, *Rawdat al-Nazir wa-Junnat al-Munazir*, with commentary by 'Abd al-Qadir bin Ahmad Ibn Badran (1998) p.3.

15. See MA Abdur Rahim, *The Principles of Islamic Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools* (2nd ed. 1994) pp.115-136.

16. Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad 'Abduh and Rashid Rida* (1966) p.66.

'*illa*, between the case in question and the case in the *Qur'an*, or narrated in the *Sunna*.¹⁷ This allows for the influence of greater independent value judgments and subjectivity.¹⁸ The *madhahib* also differ in their treatment of *qiyas*.¹⁹

Theoretically, in the exercise of *ijtihad*, a *mujtahid* must strive for God's Truth. However, it is accepted that an opinion formed from an exercise of

17. *ibid.*, pp.66-79.

18. The most common and simple example used in the discussion of *qiyas* is the prohibition of drinking *khamr*, commonly considered alcohol. Verse 2:219 provides,

They will ask thee about *khamr* and *maysir* [gambling]. Say in both there is great sin, also benefits for man; but their offense is greater than their benefit.

Also, Verse 5:90-90 provide,

O you who have achieved faith! *Khamr*, *maysir*, *ansab* [idolatrous altars], *azlam* [divining arrows] are but a loathsome evil of Satan's doing, shun it then, so that you might attain to a happy state! By means of *khamr* and *maysir* Satan seeks only to sow enmity and hatred among you, and to turn you away from the remembrance of God and from prayer. Will you not, then, desist?

There are therefore two clear verses in the *Qur'an* that prohibit the consumption of *khamr*, however there has been some dispute as to the meaning of *khamr*; whether it includes all intoxicants or is limited to those intoxicants that are referred to in *ahadith* that appear to restrict the definition of *khamr*. For example there is a *hadith* that from ibn 'Umar that the Prophet said,

Every intoxicant is *khamr*, and every intoxicant is prohibited.

While there is another *hadith* from Abu Hurayra that the Prophet said,

al-Khamr is from the two trees: date and grapevine.

Therefore there is apparently conflicting evidence as to the definition of *khamr*. *Qiyas* can therefore be resorted to to resolve the question; however the '*illa* arguably cannot be positively determined. If one is dealing with beer made of barley, is it included in the prohibition? The '*illa* could be intoxicants made of dates or grapes, invoking low-level rationalism, or it could be all intoxicating drinks, all intoxicants, or all fermented drinks, invoking high-level rationalism. High-level rationalism involves identifying the *hikma*, or the underlying wisdom behind the prohibition, which in this instance may be prohibiting voluntary degradation of reason or prohibiting the consumption of intoxicants. As there are various ways of interpreting the verses according to various identified *hikmas*, *qiyas* does not eliminate independent subjective value judgments.

19. Kerr, *op cit.*, p.68.

ijtihad cannot claim to be the Truth. *Zann*, or uncertainty, is expected in the exercise of *ijtihad*. Despite this, an opinion that is the result of an exercise of *ijtihad* is still considered objective, and traditional jurists contend that in the exercise of *ijtihad* they do not invent rules. The traditional jurist formulates or attempts to formulate rules that God has already decreed and that are concealed in the sources.²⁰ The results, however, are open to error and therefore are not considered *'ilm*. The human approximation to the idealized law of God is simply that, a human approximation that cannot be elevated to the status of Divine Revelation. For this reason, the *madhahib* have been able to diverge in their opinions and in their treatment of *ijtihad*, *ijma'*, and *qiyas*. Prior to the seventh century AH there were approximately 500 *madhahib*, but there soon prevailed four *madhahib* that were local to the most influential communities in the early years of Islam.²¹

The Hanafi and Maliki *madhahib* preferred to determine questions of law by reference to the living tradition of that time. The claim was that the

20. Bernard Weiss, *Interpretation in Islamic Law: The Theory of Ijtihad*, 26 Am. J. Com. L. 199 (1978) p.200.

21. The Hanafi *madhhab* began in Kufa, the Maliki *madhhab* in Medina, the Shafi'i *madhhab* in Kufa and Baghdad, and the Hanbali *madhhab* in Baghdad. These regional schools were transformed into ecumenical schools and their positions are as follows: The Hanafi *madhhab* is the most critical of the validity of *ahadith* attributed to the Prophet and originally more inclined to formulate rules according to the living tradition of the community in Kufa. For this reason there was often resort to the living tradition before there was resort to the Qur'an or Sunna, and where the Qur'an was not clear on a matter, legal logic could be applied in the formulation of legal rules. According to this *madhhab*, *ijma'* is formed on the dominant views of the four prevailing *madhahib*, and can be formed on the basis of one Qur'anic verse or report of the Sunna of the Prophet. The Maliki *madhhab* adopts an approach similar to that of the Hanafi *madhhab*. There is criticism of the validity of many *ahadith* and the Sunna of the Prophet was often ignored in favor of the Sunna of the community of Medina.

The Shafi'i *madhhab* continued the tradition of its founder by adopting a legal rigorism based on the Sunna of the Prophet. This *madhhab* does not accept the living tradition of any community in the early years of Islam in the formulation of legal principles. *Ijma'* is formed by resort to the Qur'an or Sunna of the Prophet and the view is that the opinion of all of the Muslim community is required to reach *ijma'*. The Hanbali *madhhab* adopted the approach of al-Shafi'i with the elevation of the Prophetic Sunna as the foundation for the development of legal principles, disregarding the living tradition of the communities of the time.

Prophetic teaching was to be found in the practice of the Community.²² The traditionalists' adherence to the *ijma'* of the early scholars is also founded in the idea of the *salaf*. The *salaf* refers to the authority of the first three generations of Muslims who are considered role models in Islam. They are considered such because of their direct dealings with the Prophet (pbuh) and a *hadith* where the Prophet (pbuh) is reported as having said that the best generation is that of his Companions, the next best, the following generation, and the next, the succeeding generation. Therefore the *ijma'* of the Companions and their practices formed part of the *Sunna* and thus the faith, as opposed to simply amounting to historical accounts of early Muslims and their opinions.²³

The Difficulties with the Traditional Approach to the Formulation of Islamic Law

Resort to the *Sunna* of the early Muslims facilitated a dilution of the *Sunna* of the Prophet (pbuh) that God intended Muslims to follow. The very nature of *usul al-fiqh* facilitated the internalization of the cultural norms of the communities in which the foundations of Islamic jurisprudence were laid. These cultural norms are evidenced in the body of *fiqh* that Muslims have inherited over the centuries. The distinction between text and *fiqh*, however, is not always made when Muslims refer to the Shari'a. The opinions of medieval jurists, which comprise a major proportion of the *fiqh*, are often referred to as falling within the Shari'a. Jurists and Muslims must, however, be acutely aware of the distinction between the text, which is given and objective, and the personal understanding of a scholar, which is inherently subjective. The sources are

22. Rahman explains the position as follows:

The Companions of the Prophet generally and *as a whole* knew best and were the only and reliable bearers of the Prophetic tradition. The younger generations of the "Successors" saw the Companions in action and also learned from them, even if they could not have access to the Prophet himself, and therefore were the best immediate source for the Prophetic teaching. Even if a few of the Companions did not know the *Sunna* of the Prophet, on certain points, they could come to know such *Sunna* from the general practice of the Companions and *so by the time of the next generation the Prophetic Sunna can be taken to have been firmly established.*

Islam, *op cit.*, p.60.

23. *ibid.*, p.236.

a body of data and the *fiqh* is a process for understanding that data.²⁴ Islamic scholarship began with a clear distinction between text and *fiqh*. However, from the middle of the second century AH, *fiqh* began to be treated as a body of knowledge, standardized and considered objective, as opposed to being treated simply as scholarly opinion.²⁵ Hence, "one used to say 'one should *exercise fiqh* ("understanding")' [but now it is said] 'one should "learn" or "study" *fiqh*."²⁶ This assumption of scientific status elevated *fiqh* for all intents and purposes to the level of Divine inspiration. While this was and is never claimed by jurists, the incorporation of *fiqh* within Shari'a as constituting the body of Shari'a principles renders *fiqh* objective, conclusive, and, in similar fashion to the *Qur'an*, inimitable. Further, as the four *madhahib* we refer to today prevailed and a body of *ijma'* developed, individual reasoning and challenge were stifled. This is often claimed as a closing of the door of *ijtihad*, although this claim is contested by traditionalists. This is obviously highly problematic for Islamic law and theology. This state of affairs was initially the product of internal influences in the Muslim community and continues to be maintained by both internal and external influences.

The consequence of this synthesis of textual sources and *fiqh* into the Shari'a was the fixing of Islamic law and morality in time and place in the form of a religious dogma that developed independently of theology. The social fabric of early Muslim societies shaped this religious dogma. Pre-Islamic tribal law and the cultural constructs internalized by the early Muslim communities discriminated against women and influenced the *Sunna* of the early Muslims and the exercise of *ijtihad*. It is this social fabric that maintains Islamic traditionalism today and must itself be revamped in order to accommodate a revision of Islamic law and morality. The vision of Islamic law and morality that the majority of believing Muslims aspire to today is based on the opinions of jurists and often strays from the express injunctions of the text. The slate, in whole or in part, must be wiped clean. To what degree, how, and by whom are pressing questions that must be answered.²⁷ However, it is clear that Islamic law as understood in the twentieth century is based in substantial part on medieval Islamic jurisprudence clouded by deeply rooted cultural assumptions that were rarely challenged and that "gave rise to a then

24. Rahman, *Islam, op cit.*, p.101.

25. *ibid.*, p.102.

26. *ibid.*, p.103.

27. *ibid.*, p.214.

common model of state and family relationships which are best described today as authoritarian/patriarchal."²⁸

This state of affairs is also rooted in the socio-cultural circumstance of the Arabian *umma*, or community of believers. The need for political and social stability discouraged eclecticism in Islamic thought and re-examination in academic circles. Throughout history the stability of the *umma* has been under threat, either as a result of sectarian strife or as a result of cultural incursions. Such threats were believed to result in *fitna*, or social chaos. To avoid *fitna* and maintain the unity of the *umma*, disagreements in Islamic jurisprudence were avoided. The *umma* of seventh-century Arabia was patriarchal, and traditional jurists maintained that this reflected the natural order. The gender hierarchy that continued to prevail classed men as the leaders and protectors of women, who were classed as infantile and sexually vagrant. Women were therefore a source of *fitna*, threatening the stability of the *umma*. They were treated as suspect and untrustworthy, and had to be kept in check for fear that they would plunge the *umma* into *fitna*. This belief played an important role in Islamic jurisprudence, resulting in the formulation of detailed and complex legal rules that curtail women's free agency of movement.²⁹ Even the most progressive jurists today are careful not to challenge entrenched legal norms if to do so would pose a threat to the unity of the *umma*.³⁰ Today, in the desire to protect Muslim culture, in its various forms, from perceived Western incursions that would arguably threaten the status quo, there is an ideological opposition to social and political reform. For example, any attempt to question traditional interpretations of the requirement to veil are met with accusations of threatening the stability of Islam and the Muslim family. Traditional jurists reject law reform as "heretical innovations inspired by Western examples that would lead to decadence, immorality and the destruction of the family."³¹

28. Aziza al-Hibri, *Islam, Law and Custom: Redefining Muslim Women's Rights*, 12 Am. U. J. Int'l Law and Pol'y. 306 (1997) p.310.

29. For a detailed discussion of the extent to which traditional jurists have been influenced by the belief that women are a source of *fitna*, see Fatima Mernissi, *Beyond the Veil: Male-Female Dynamic in Modern Muslim Society* (1987).

30. Justin Leites, *Modernist Jurisprudence as a Vehicle for Gender Role Reform in the Islamic World*, 22 Colum. Hum. Rts. L. Rev. 251, pp.261-262;294.

31. Ann Elizabeth Mayer, *Law and Religion in the Muslim Middle East*, 35 Am. J. Comp. L. 126 (1987) p.127.

An example of the influence of misogyny early in Islam that affected the treatment of women is 'Umar ibn al-Khattab's treatment of women. 'Umar, the second Caliph, was known to be restrictive of women's freedom, attempted to limit the freedom of movement of the Prophet's wives after the death of the Prophet (pbuh),³² and was reported as having said the following:

Women are of three types: a modest, honest Muslim woman who helps her people live and will not ally herself with life against her people; another woman is a mere container for conceiving babies; and the third is a plague like lice with which Allah tests whoever He wills of His bondsmen.³³

Traditionalists refer to the practices and pronouncements of the first four Caliphs³⁴ and consider them authoritative, because who would know better than those who lived with the Prophet (pbuh)? Is it possible, however, that in the early years of Islam rules were qualified to accommodate the circumstances of the time or that the Caliphs were influenced by their own moral and ethical predispositions?

The influence of sex stereotyping in the development of fiqh

Islamic historians, theologians, and jurists today strenuously claim that Islam significantly improved the status of women and granted women rights that women in the West were not to acquire until the last and even this century. Modernist and feminist critics are faced with the rhetoric of a constant comparison with the status of Western women and the almost standard response that more than 1300 years ago Islam gave women the right to own property, the right to inherit, and the right to education and banned female infanticide.³⁵ This harking back to the apparent elevated status of women in Arabia after the advent of Islam³⁶

32. Leila Ahmed, *Women and Gender in Islam. Historical Roots of a Modern Debate.* (1992) pp.60-61.

33. Anas Ismail Abudawood, *Daleel Al-Saileen* (1997) p.724.

34. The Caliphs were the first four trustees of Islam, commonly known as the first four leaders of the Muslim community in Arabia.

35. Tamilla F. Ghodsi, *Tying a Slipknot: Temporary Marriages in Iran*, 15 Mich. J. Int'l L. 645, p.654.

is supposed to satisfactorily answer questions concerning the status of women in Islam today. The constant comparison with the status of women in "the West" in no way substantiates the claim that the traditional position as regards women is better than that offered in the West. Nor does a comparison with the West substantiate the claim that because centuries ago Islam improved the status of women *vis a vis* their status prior to the advent of Islam, Muslim women's position today is superior to that of women in the West. When one delves into the volumes of *fiqh* concerning women's agency, one becomes acutely aware of gender differentiation and discrimination. It is the *fiqh*, which for all intents and purposes is what is commonly understood as Islamic law, that has defined relations between men and women and that has limited women's right to self-determination. This is, and has been, of great concern to Muslims and non-Muslims alike. Such concerns are met with the rhetoric of men and women being equal, but different, or the argument that the rights of men and women in Islam are complementary. Traditional jurists claim that women's agency is fettered, but that women are given privileges to protect their status in society. There is an exchange of rights for privileges. For example, a woman is required to comply with her husband's wishes, and in return, her husband is financially responsible for her and her children. Sex differentiation is therefore central to the traditional analysis of rights and responsibilities in Islam.

One of the most prominent contemporary interpreters of the Islamic position on women accounts for the ideology that discriminates against women by pointing to:

Physiological differences between men and women such as the size of the heart, the weight of the brain, and the size of the skull. The psychological differences . . . are that women are affectionate and emotional and have weaker nerves. Men, however, are wise and intellectual and have strong nerves, which make them more qualified to strive, struggle and campaign against the odds of everyday life.³⁷

36. Some historians argue however that, while Islam introduced some measures to ameliorate the disadvantaged status of women in tribal Arabia, the situation of women did not improve significantly and that after the death of the Prophet, their situation deteriorated significantly. For an interesting discussion of the conditions and lives of women in Arabian history, see Ahmed, *Women and Gender in Islam. Historical Roots of a Modern Debate. op cit.*

37. Allamah Nuri, quoted in Shireen Mahdari, *The Position of Women in Shi'a Iran: Views of the 'Ulama*, in *Women and the Family in the Middle East: New Voices of Change* (Elizabeth Warnock Fernea, ed. 1985).

This discriminatory ideology was and continues to be the product of social and political assumptions concerning state and family relationships that are traditionally authoritarian/patriarchal.³⁸ Authoritarian/patriarchal relationships by definition discriminate and differentiate. They are dependent on the granting of rights and privileges to men at the expense of women's rights and privileges. Maintaining such relationships is antithetical to any notion of equality of the sexes and women's free agency. Authoritarian/patriarchal relationships are also based on cultural notions of sex and gender difference that have no foundation in science or across cultures. The aggressive/passive, strong/weak, intellectual/emotional, stable/threatening dichotomies implicit in such cultural notions have become important assumptions in many exegeses on the Islamic, and therefore the ideal, position on women in society. These assumptions lie in stark contrast to the life experiences of women at the time of the Prophet (pbuh), including the experiences of his wives, who were active participants in politics, commerce, religion, and war. These assumptions also open the gates to an onslaught of criticism from those who argue that Islam denies women's self-determination. A contemporary orientalist understanding of women's status in Islam is as follows:

In Islam woman is considered to be the property first of her guardian (usually her father) and then ownership over her is transferred to her husband. This view of woman – as belonging at all times to some man – reflects a heavily male-dominant, patriarchal social system with ancient roots. Such a social system can be found all over the world and was especially prevalent at the earliest stages of history. In fact, according to Darwin, the same attitude is seen in many animal species. For example, a male ape who has several females in his possession will not permit any other male to approach them, even if the males are the offspring of his own females.³⁹

In the following discussion I will consider five subjects in Islamic law as traditionally understood that are very often raised as examples of Islam's position on women being antithetical to women's self-determination. The first subject is the notion of men's authority over women and women's corresponding obedience to their husbands. The second subject

38. al-Hibri, *op cit.*, p.310.

39. Anwar Hekmat, *Women and the Koran. The Status of Women in Islam* (1997) p.155.

is the freedom to choose one's marriage partner and independently conclude one's marriage contract. The third and fourth subjects consider polygamy and a woman's right to dissolve her marriage. The fifth subject deals with the question of veiling.

Qawwamun and Obedience

If both of them [men and women] are equal in power and no one has dominance or control over the other, neither of them will accept the effect of the other, and no action will then take place at all. If the cloth has the same hardness as the needle, no act of sewing will at all be accomplished. If the earth were so hard and impervious as not to accept the effect of the plough or pickaxe, agriculture or architecture would not be possible.⁴⁰

From this statement, by a supposed eminent scholar, one could assume that the author is of the view that a man must be able to plough through a woman in order for the family and society to function. It is accepted in Islamic jurisprudence that men are superior to women and that in order for the wheels of society to keep turning smoothly, women must accept the authority of men and obey their command, unless a man commands a woman to disobey God. Verse 34 of Chapter 4 is an oft-cited Verse in the *Qur'an* used to demonstrate that Islam is structurally patriarchal, and thus Islam internalizes male dominance.

Al-rijal **qawwamuna** 'ala al-nisa' **bima faddala** allah ba'duhum 'ala ba'din wa bima anfaqu min amwalihim, fa'l-salihatu **qanitatun** hafizatun lil-ghaibi bima hafiza allah, wa'l-lati takhafuna **nushuzahunna** fa-'izuhunna wa'h-juruhunna fi'l-madaji' wa'd-**drubuhunna**, fa-'in ata'nakum fa la tabghu 'alaihinna sabila, innallaha kana aliyyan kabira.

This has been most commonly translated as follows:

Men are in charge of⁴¹ are the protectors and maintainers of⁴² women, because Allah hath made the one of them excel the

40. Maulana Jalaluddin Ansar Umri, quoted in Hemkat, *ibid.*, p.212.

41. Marmaduke Pickthall, *The Meaning of the Glorious Qur'an*, (n.d.).

42. Muhammad Abdul Haleem Eliasi, *The Holy Qur'an. Transliteration in Roman Script* (1978) pp.89-90.

other⁴³ given the one more (strength) than the other⁴⁴, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which God hath guarded. As for those of whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them⁴⁵/beat them.⁴⁶ Then if they obey you, seek not a way against them. Lo! God is ever High, Exalted, Great.

There is considerable controversy surrounding the interpretation of 4:34. There is controversy surrounding its meaning in Arabic as well as the rights and obligations that can be derived from the Verse. The most important terms in the Verse are **qawwamun**, **qanitat**, and **nushuz**. The traditional interpretations given to these terms have been fundamental to establishing men's superiority over women in Muslim communities. In order to determine what prescription, if any, is envisaged in 4:34, it is necessary to consider the prevailing interpretation of the Verse as well as alternative interpretations that consider the wide range of meanings that can be given to its essential terms. At this stage I will examine *tafasir* on 4:34 that provide an example of traditional, prevailing interpretations, and consider to what extent sex and gender stereotyping can be said to have influenced the *tafasir*. I will also consider the extent to which the traditional interpretations rely on *ahadith* that are arguably unreliable. The *tafasir* that I will consider are those by Syed Anwer 'Ali,⁴⁷ ibn Kathir (d.1419 AH),⁴⁸ and al-Tabari (d.310 AH).⁴⁹ While there are many *tafasir* that can be considered in a larger work than I am attempting, 'Ali and ibn Kathir I consider representative of traditional schools of thought that are consistent in their treatment of women. Al-Tabari, in my view, adopted a more non-committal approach to the interpretation of many words in this Verse, citing more than 200 meanings for words and phrases, highlighting the extent of linguistic selectivity that takes place in interpretation. The methodology of the *tafasir* is the same, though. It is essentially an atomistic reliance on supporting *Qur'anic* verses and

43. Pickthall, *op cit*.

44. Eliasi, *op cit*.

45. Pickthall, *op cit*.

46. Eliasi, *op cit*.

47. Syed Anwer 'Ali, *Qur'an. The Fundamental Law of Human Life* (vol. 5, 1982) pp.42-48.

48. *Tafsir al Qur'an al-a'dim lil Imam ibn Kathir* (2nd ed. vol.1, 1996) pp.241-243.

ahadith that may or may not have any substantive relation to the question at hand. There is no attempt to recognize themes or engage in a holistic examination of the *Qur'anic* world-view.⁵⁰

Qawwamun: Men are superior to women

Ali adopts the English translation "guardians" for **qawwamun**. He notes that the word has been translated as meaning "protectors" by Abdullah Yusuf 'Ali, "in charge" by Pickthall, "overseers" by Abdul Maajid Daryabadi, and "maintainers" by Maulana Mohammad 'Ali. The different meanings indicate that there is no one meaning that can be or has been consistently adopted by jurists and provide for a very wide spectrum of interpretations from which various rights and obligations may be derived. 'Ali however considers "guardians" to be the most appropriate English translation of **qawwamun**.⁵¹ Ibn Kathir argued that **qawwamun** over women means that men are the boss of women, have authority over them and can discipline them.⁵² Al-Tabari noted the many interpretations that could be given for **qawwamun**, but considered the most appropriate interpretation to be that men are in charge of or responsible for women.⁵³

Men are superior to women for two reasons: their mental and physical capabilities and men's responsibility to maintain women. 'Ali puts forward a theory as to why men are inherently superior to women, which justifies the traditional interpretation of 4:34, and the reliance on *ahadith* that clearly discriminate against and belittle women. There are verses in the *Qur'an* that apparently illustrate the creation of man having preference over the creation of woman.⁵⁴ Woman was created after man in order to provide him with comfort, and for this reason it is said that men *take* women in marriage, or women are *given* to men in marriage; women do not take men in marriage nor are men given to women in marriage. Women were given to men to comfort them in this life, and so

49. Tafsir al-Tabari: Jami al-bayan an tawil al-Qur'an (vol. 8, 1954) pp.290-316.

50. Wadud-Muhsin, *op cit.*, p.2.

51. Ali, *op cit.*, p.42.

52. ibn Kathir, *op cit.*, p.241.

53. al-Tabari, *op cit.*, p.290.

54. 4:1; 7:189; 16:72; 30:21; 39:6.

. . . the providing of comfort to man by the woman depends upon the intention or will of man himself and not at all on the intention or will of the woman. In other words, if man intends satisfaction from the woman, he can acquire it even though she may not intend it, or be a party to it by consent, or even resist it. On the other hand, if the man does not intend, she cannot, by any means, even though she may intend and will, get satisfaction from him. In other words, the position is that since the creation of woman is itself for the comfort of man, she is inherently bound to perform that obligation.⁵⁵

Inequality is inherent in human nature and therefore in Islam. This is confirmed by biological and psychological examination of men and women. The differences are fundamental and each sex has a different function.⁵⁶

One may ask, however, if men are intellectually superior to women, why it was that the believers after the death of the Prophet (pbuh) would go to 'Aisha for advice on their religious duties:

I have seen groups of the most eminent companions of the Prophet ask her questions concerning the *fara'id* (ritual obligations) and Ibn 'Ata said: "'Aisha was, among all the people, the one who had the most knowledge of *fiqh*, the one who was the most educated and, compared to those who surrounded her, the one whose judgement was the best."⁵⁷

The verses that Syed Anwer 'Ali claims indicate that men were created before women, and are therefore superior to women, do not state that

55. 'Ali, *op cit.*, pp.60-61.

56. 'Ali continues at length with a discussion of the intellectual and other capacities of men and women, relying on the theory of Havelock Ellis, "one of the greatest modern authorities on the psychology of sex," that women are more emotional, have a dislike for analysis, rigid rules, and abstract propositions, and are therefore inapt for science. They are impulsive and more liable to convulsive manifestations. 'Ali also relies on the works of a number of other psychologists and scientists who "confirm" the notion that men and women, as a result of their fundamental physical and psychological differences, cannot make the same contributions in the public and private spheres of life and that any attempt to do so will disturb the natural order.
ibid., pp.63-65.

57. ibn Hajar al-'Asqalani, *Al-Isaba fi tamyiz al-sahaba* (vol 8, n.d.) p.18.

man was created before woman. The Verse that is an explicit statement of the gender-neutrality of the origins of humankind is 4:1:

Ya ayyuha al-nas ittaqu rabbakum alladhi khalaqakum min nafsin wahidatin wa khalaqa minha zaujaha wa baththa minhuma rijalan kathiran wa nisa'a.

Who created you from **a single soul** and from it created **its mate** and from them twain hath spread abroad a multitude of men and women.

There is no reference in the *Qur'an* to the Biblical story of creation: that Adam was created first, and Eve was created from his rib. The language that is used to refer to the first beings created is clearly gender-neutral. Riffat Hassan⁵⁸ provides an interesting challenge to the accepted theory of the creation of woman as a mate for man, bringing to light many assumptions based on sex and gender, and reliance on weak *ahadith* that support the theory commonly believed by Muslims, Christians and Jews. Hassan contends that the theory was clearly borrowed from the Judeo-Christian tradition. It is also important to note that many *ahadith* where the Prophet (pbuh) apparently said that woman was created from man's rib were reported by Abu Hurayra. The significance of this will be discussed below.

Ibn Kathir was also of the view that men have authority over women because they are inherently better than women, and hence prophecy has been limited to men. There are, therefore, things that women are not able to do. For instance, women cannot be rulers.⁵⁹ Ibn Kathir relied on the following *hadith* of the Prophet (pbuh) to substantiate this claim:

Those who entrust their affairs to a woman will never know prosperity.⁶⁰

This is considered a *hadith sahih* and is quoted in al-Bukhari as an authentic report, though it appears to be inconsistent with the faith the *umma* had in 'Aisha. While *ahadith* quoted in the works of al-Bukhari are accepted as having been subjected to the most rigorous process of selection, it is useful to note Fatima Mernissi's investigation into the

58. Riffat Hassan, *Equal Before Allah? Woman-man equality in the Islamic tradition*, Harvard Divinity Bulletin (Jan-May, 1987) pp.1-4.

59. ibn Kathir, *op cit.*, p.242.

60. al-Bukhari, *Al Sahih* (Collection of Authentic Hadiths), with commentary by al-Sindi (vol 4, 1978) p.226.

authenticity of this *hadith*.⁶¹ Mernissi concerns herself with the timing of this report and the trustworthiness of the reporter of this *hadith*. After the death of the Prophet (pbuh), 'Ali ibn Abu Talib, the fourth Caliph, was not on good terms with 'Aisha, the Prophet's wife. 'Aisha did not support the selection of 'Ali as Caliph and took command of an army of insurgents, fighting him at Basra in the famous Battle of the Camel. 'Aisha's army was defeated, and it was after this battle that the report of the Prophet (pbuh) was pronounced, more than 20 years after his death.⁶² Mernissi claims that there were political and economic forces at play in the fabrication of hundreds of thousands of *ahadith*. At the time of al-Bukhari it is acknowledged that there were more than 500,000 false *ahadith* in circulation, and political leaders were acutely aware of the power and wealth that could be generated by exploiting this form of communication.⁶³

Abu Bakra, a Companion of the Prophet (pbuh) with whom he had spent a great deal of time, reported this *hadith* as emanating from the Prophet (pbuh). Abu Bakra, like many Companions, had not taken part in the civil war between 'Ali and 'Aisha. The war was *fitna*, and 'Aisha's insurgence against 'Ali was admonished. Therefore, after 'Aisha's defeat, Mernissi argues that Abu Bakra and others were forced to explain their failure to support 'Ali. A position of neutrality was not acceptable, and Abu Bakra must have seen fit to justify his non-participation with a *hadith* of the Prophet (pbuh). It was inevitable that 'Aisha would fail and therefore there was no need to engage in a battle that would only worsen the *fitna*. It appears that Abu Bakra remembered other providential *ahadith* at critical moments, decades after the death of the Prophet (pbuh).⁶⁴ Further, one biography of Abu Bakra tells us that he was convicted and

61. Mernissi, *Women and Islam*, *op cit.*

62. *ibid.*, p.41.

63. As recognized classically, Caliphs and princes were quick to encourage the fabrication of the content of *ahadith* as well as the falsification of *isnad* in order to stabilize a political system that secured their interests and mobilized the whole population under their command. There is also considerable evidence of powerful and wealthy men bribing poets, genealogists and storytellers to alter or fabricate *ahadith* in their interests.

Taha Husayn, *Fi al-adab al-jahili* (10th ed. 1969) pp.149-150.

64. Mernissi makes reference to other occasions where Abu Bakra remembered *ahadith* that "curiously – and most effectively – fitted into the stream of history."

Mernissi, *Women and Islam*, *op cit.*, p.58.

flogged for false testimony by 'Umar ibn al-Khattab.⁶⁵ The most important criterion for the acceptance of a report by a transmitter is that transmitter's honesty. There would therefore appear to be questions concerning the reliability of this *hadith*. As for *Qur'anic* treatment of women rulers, there is no statement to the effect that men are natural or better rulers than women, nor that women cannot or should not rule. In fact the only ruler, apart from the Prophets, who is depicted favorably in the *Qur'an* is Bilqis, the Queen of Sheba, who is revered for her wisdom and independence.

'Ali also claims that woman's subservience to man is confirmed by biblical verses⁶⁶ and another *hadith*:

The best wife is one whom when you see, you feel pleasure; and when you command her do anything, she obeys; and when you go out of your house, she safeguards your property as well as her own chastity.⁶⁷

Mernissi also challenges the authority of Abu Hurayra, a Companion of the Prophet, to transmit *ahadith*.⁶⁸ Abu Hurayra is credited with having transmitted a very large number of *ahadith*, but Mernissi provides evidence of many disagreements between him and 'Aisha and argues that his dislike of 'Aisha and women caused him to fabricate many reports attributed to the Prophet (pbuh). 'Aisha is reported as having said to Abu Hurayra, "[T]he next time you undertake to repeat the words of the Prophet, watch out what you recount,"⁶⁹ and "Abu Hurayra, you relate Hadith that you never heard."⁷⁰ 'Aisha on many occasions saw fit to correct Abu Hurayra's recollections of the sayings of the Prophet (pbuh) and on several occasions disputed his recollections. Despite this, her objections were ignored by al-Bukhari and other recorders of

65. Abu Bakra was flogged after being convicted of *qadhif*, or false accusation of adultery or fornication, a very serious offense in Islam. Ibn al-Athir, *Usd al-ghaba fi tamyiz al-sahaba* (vol. 5, n.d) p.38. Where one is convicted of *qadhif*, their testimony can never be accepted in relation to any matter thereafter according to 4:9.

66. Genesis, 3:16; Ephesians, 5:22-24.

67. ibn Jarir with reference to Abu Hurayra.

68. Mernissi, *Women and Islam*, *op cit.*, ch. 4.

69. Imam Zarkashi, *Al-Ijaba li 'irada ma istadrakathu 'A'isha ala al-sahaba* (2nd ed. 1980) p.118.

70. ibn Hajar, *op cit.*, vol.7, p.440.

ahadith. Mernissi argues that this was a consequence of the prevailing misogyny of the time, despite the Prophet's instruction to Muslims that they draw part of their religion from 'Aisha.⁷¹ Why is it that 5, 374 *ahadith* were collected and recorded from Abu Hurayra while only 2, 210 were collected and recorded from 'Aisha?⁷²

'Ali also relies on sociological and anthropological works that detail the gendered division of labor throughout history and across cultures to substantiate the claim that men are the natural protectors and supporters, and women are the natural carers and nurturers, in need of supervision and guidance. Their relationship to man is one of dependence, and any attempt on a woman's part to aspire to what a man achieves is undignified and unattractive. 'Ali even goes so far as to rely on the thoughts of D. H. Lawrence, who was of the view that man is a pioneer and woman for him "exists only in the twilight."⁷³

For 'Ali, the superiority of man over woman is further confirmed by 2:223:

Your women are a tilth for you to cultivate so go to your **tilth** as ye will, and send (good deeds) before you for your souls, and fear Allah, and know that ye will (one day) meet Him. Give glad tidings to believers (O Muhammad).

71. Imam Zarkashi, *Al-Ijaba*, *op cit.*, p.32.

'Aisha's objections to the reports transmitted by the Companions were largely ignored before they were compiled by Imam Zarkashi, an Egyptian Shafi'i scholar of Turkish origin, born in 745 AH. Much of Imam Zarkashi's work has been lost and what remains is ignored in favor of the more revered works of al-Bukhari and Muslim, and other more traditional recorders. Imam Zarkashi's most significant work is that quoted here, Collection of 'Aisha's Corrections to the Statements of the Companions.

It is difficult to understand how 'Aisha's contradicting reports could have been ignored bearing in mind how much she was revered as a mother of the *umma* and the apparent rigor with which *ahadith* were supposed to have been compiled. Conflicting reports should be noted and greater weight should be given to the most reliable source, particularly in light of the fact that 'Aisha often exposed Abu Hurayra as a liar.

Mernissi, *Women in Islam*, *op cit.*, pp.70-73;76-81.

72. Nadia Abbott, *Studies in Arabic Literary Papyri*. Qur'anic Commentary and Tradition (1967) p.65.

73. 'Ali, *op cit.*, pp.65-66.

'Ali interprets **tilth** as implying "the right of ownership to a certain extent."⁷⁴ Man has the right to marry up to four women at one time, has the right of divorce, and has the right to revoke a divorce before expiration of the *'idda*,⁷⁵ even against his wife's will. He continues with woman's obligation to comfort man, which

. . . primarily implies the satisfaction of sexual urges inherently put in man for the procreation of children and continuation of *his* generation [emphasis added]. For that purpose Allah the Almighty has put in man all that is necessary for carrying on the process of procreation, in which the part of woman is merely to submit and receive all that the man secretly entrusts her in the form of sperm and keep and nourish it for the first nine months in her womb . . .
⁷⁶

As a result of woman's primary role as a vessel for procreation, if she does not marry her life is without virtue. Whatever children she conceives belong not to her but her husband, and she is not permitted to suckle them without her husband's consent, according to 'Ali's interpretation of 2:233. This is a curious interpretation, as the Verse is as follows:

Mothers shall suckle their children for two years; (that is) *for those who wish to complete the suckling*. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No one should be charged beyond his capacity. *A mother should not be made to suffer because of her child*, nor should he to whom the child is born (be made to suffer) because of his child. And on the (father's) heir is incumbent the like of that (which is incumbent on the father). If they desire to wean the child, *by mutual consent* and (after) consultation, it is no sin for them; and if ye wish to give your children out to nurse, it is no sin for you, provided that ye pay what is due from you in kindness. Observe your duty to Allah, and know that Allah is seer of what ye do [emphases added].

16:72 provides: "And Allah has made spouses (**azwaj**) for you from among yourselves, and has given you sons and (daughters) from your spouses (**azwaj**)." 'Ali however has interpreted **azwaj** to mean "wives". According to 'Ali this means that Allah has *given* men, children *from* their

74. *ibid.*, p.67.

75. This period of waiting before a divorce is made absolute will be discussed below.

76. 'Ali, *op cit.*, p.68.

wives. Therefore, "there is no doubt that as long as it is destined for man to be the husband, and for woman to be the wife, she is bound to remain subservient to man, and all claims of equality are nothing but absurdity – plain and simple."⁷⁷ 'Ali from this concludes that the inequality of man and woman is not only fundamental in material terms, but also in spiritual terms.⁷⁸ This is a somewhat unusual claim in light of many *Qur'anic* verses that state that men and women are equal in spirituality,⁷⁹ among them:

33:35: Lo! Men who surrender to God and women who surrender, and men who believe and women who believe, and men who obey and women who obey, and men who speak the truth and women who speak the truth, and men who persevere (in righteousness) and women who persevere, and men who are humble and women who are humble, and men who give alms and women who give alms, and men who fast and women who fast, and men who guard their modesty and women who guard (their modesty), and men who remember God much and women who remember God hath prepared for them forgiveness and a vast reward.

There is no distinction made between men and women in the creation of humankind, the origins of humankind, and the experience of death, resurrection, judgment, and recompense.⁸⁰ The Verse that is an explicit statement of the gender-neutrality of the origins of humankind was referred to above:

Who created you from **a single soul** and from it created **its mate** and from them twain hath spread abroad a multitude of men and women.

77. *ibid.*

78. *ibid.*, pp.68-69.

79. See 9:71, and,

16:97: Whoever works righteousness, man or woman, and has Faith, verily, to him We give a life that is good and pure, and We will bestow on such their reward according to the best of their actions.

4:124: Whoever does good, from male or female, and is a believer, all such will enter Paradise.

There are also a number of verses that refer to faith and submission to God and these are gender neutral in their instruction. The "believers" and "those who believe" are referred to (2:4; 2:285; 4:136; 49:14). Men are not referred to to the exclusion of women.

80. See Wadud-Muhsin, *op cit.*, chs. 1 and 3.

Further, there is the *Qur'anic* statement as to the most noble of humankind:

49:13: We created you male and female and gave you nations and tribes that you may know one another. Indeed the most noble of you from Allah's perspective is whoever (he or she) is the most righteous.

The distinguishing value is not gender. It is righteousness, or piety, or God-consciousness.⁸¹

Al-Tabari did not engage in any debate involving social science or biology to substantiate his preference for "in charge of" or "responsible for." He was purely concerned with linguistic analysis and chose the interpretations that he considered most accurate according to the root of **qawwamun** and its place in the phrase. However, the long list that al-Tabari provides of various meanings that can and have been attributed to **qawwamun** is surely evidence of the choice that has been exercised in the interpretation of this word.

Men are financially responsible for women

'Ali argues that the words **anfaqu min amwalihim**, meaning "spend of their wealth" have been interpreted to mean what men spend on marriage, being the dower or *mahr* that they are required to pay upon marriage, and/or the continued maintenance of the wife for the duration of the marriage. Therefore men are the guardians of women because they spend money on them.⁸² Ibn Kathir confirmed this by claiming that it is obvious that God obligates men to financially support women.⁸³ 'Ali is also of the view that as men are **qawwamun** over women, women are not supposed to earn an income, except in exceptional circumstances. Men are financially responsible for women and therefore women are obligated with other duties: bearing and nurturing children, maintaining the home, and being a source of comfort for their husbands. Women who undertake financial responsibilities will not be able to discharge their duties in the home nor provide comfort for their husbands.⁸⁴

81. *ibid.*, pp.36-37.

82. 'Ali, *op cit.*, p.44.

83. ibn Kathir, *op cit.*, p.243.

84. 'Ali, *op cit.*, p.45.

'Ali prescribes a sexual division of labor as follows:

. . . while the field of activity of a man is earning through professions or vocations, fighting in the battlefields, and safeguarding the life and property of himself as well as his family, the field of activity of a woman is within the four-walls of the house where she has to provide all possible comforts to her husband, give birth to children, and to rear them up, and to look after the internal affairs of the family. On account of her inherent inabilities, during menstruation each month, and for a long time during conception as well as after the delivery of the child, she is not fit enough to undertake the activities of working outside the boundary-walls of the house.⁸⁵

This position reveals a strong loyalty to cultural constructs of gender role differentiation that are not stated in the *Qur'an* or *Sunna* of the Prophet (pbuh), and certainly ignores the fact that the Prophet Muhammad (pbuh) was an employee of his first wife, Khadija, a wealthy merchant who was 15 years his senior and obviously worked outside the home. She was not only financially responsible for her own home, she also paid the Prophet's wages.

Al-Tabari simply stated that men pay a dowry upon marriage and continue to be financially responsible for their wives for the duration of the marriage. Therefore, the preference of men over women is monetary. But this preference translates into a responsibility, rather than a privilege.⁸⁶ It is interesting to note this much less common interpretation by Muhammad Asad:⁸⁷

Men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter . . .

Qanitat: *Good women are obedient to their husbands*

Traditional schools of jurisprudence decree that a husband is owed a duty of obedience, or *ta'a*, by his wife.⁸⁸ The duty of *ta'a* includes the duty not

85. *ibid.*, p.67.

86. Al-Tabari, *op cit.*, p.291.

87. Muhammad Asad, *The Message of the Qur'an* (1980).

88. See Muhammad Abu Zahra, *Family Law in Law in the Middle East* (Majid Khadduri & Herbert J. Liebesney 1st ed. 1995), chapter VI.

to leave the marital home without the husband's permission. Breach of the duty of *ta'a* carries with it many negative repercussions for women. A disobedient wife is *nashiz* and jeopardizes her right to maintenance; she may even be divorced. Traditional jurists argue that the duty of *ta'a* is in consideration for the wife's right to maintenance during the marriage. There is even the contention that a wife may only leave the marital home without her husband's consent in the case of extreme emergency or to visit her family, the number of times being limited. Some jurists even argue that a husband's permission is still required for a woman to visit her family.

According to 'Ali and ibn Kathir, man is financially responsible for woman, and it is therefore appropriate that a man is given authority over those whom he is obligated to spend.⁸⁹ Hence, good women are those who are obedient to God, the Prophet (pbuh) and their husbands. Ibn Kathir interpreted **qanitat** as meaning "obedience to husbands."⁹⁰ Obedience to husbands is commanded by God and the Prophet (pbuh). Women are also required to protect the rights of their husbands in their husbands' absence, including guarding their husband's property, children, and home and remaining chaste. Ibn Kathir relied on the above quoted *hadith*, reported by Abu Hurayra: "The best wife is one whom when you see, you feel pleasure . . ." He also relied on another *hadith*: "If a woman prays the five prayers and fasts Ramadan and is chaste and obeys her husband, she will enter heaven from any of its doors." Ibn Kathir did not state who reported this *hadith*. If, however, doubt is established as to their authenticity, as is the case with *ahadith* reported by Abu Hurayra, where is the justification for this position? As for the promise that women who obey their husbands will enter heaven, it is questionable in light of many *Qur'anic* verses that require absolute, exclusive obedience to God.

Al-Tabari was of the view that **qanitat** refers to obedience to God and husbands.⁹¹ Unlike 'Ali and ibn Kathir, however, he did not consider other *Qur'anic* verses or *ahadith* to substantiate this position. Linguistically, he considered this the most appropriate interpretation. There are however other meanings that may be attributed to **qanitat** and this will be discussed below.

89. 'Ali, *op cit.*, p.46; ibn Kathir, *op cit.*, p.242.

90. *ibid.*

91. al-Tabari, *op cit.*, p.294.

Nushuz: Disobedient wives may be chastised and beaten

'Ali interprets **nushuz** to mean "disloyalty and ill-conduct." **Nushuz** literally means "rising" and in this context means a woman "rising against her husband." This signifies the wife "leaving the husband's place and taking up an abode which he does not like" and, according to the Arabic English Lexicon, means "the wife resisted her husband and hated him."⁹² Where a woman fails to discharge her duties and maintain obedience to her husband, she is **nashiz**. Ibn Kathir was of the view that a woman is **nashiz** if she behaves as though she is above her husband, if she disobeys his orders, if she separates herself from him, or if she hits him.⁹³ According to al-Tabari, a wife is **nashiz** if she acts arrogantly or snobbishly towards her husband, refuses to have sex with him, or disobeys him in matters where she must obey him.⁹⁴

The argument is that according to the *Qur'an*, in such circumstances the husband has a three-fold remedy: he may admonish her, refuse sexual relations with her, and, if she still persists in being **nashiz**, he may beat her. 'Ali was of the view that in regards to refusing sexual relations, a man should not take a separate residence. This would give the wife a chance to become more arrogant and indifferent towards her husband, whereas the object of the separation is to make her realize her fault.⁹⁵ If a woman persists despite this, she may be beaten, but without causing her physical injury resulting in a wound or fracture of any bone.⁹⁶ A proof that beating a wife is permitted is apparently the sequence of events that led to the revelation of 4:34. It is reported that the Prophet (pbuh) prohibited his followers from beating their wives. If a woman was beaten, she was permitted to beat her husband in the same manner as she was beaten. As a result, the women became arrogant and rebelled against their husbands. After the followers complained to the Prophet (pbuh), 4:34 was revealed, reinstating the right of men to beat their wives. The justification behind this interpretation is a report that the Prophet (pbuh) responded to a query from a Companion about women's rights over men. The Prophet (pbuh) is reported to have said:

92. 'Ali, *op cit.*, p.42.

93. ibn Kathir, *op cit.*, p.242.

94. al-Tabari, *op cit.*, p.299.

95. 'Ali, *op cit.*, p.42.

96. ibn Kathir, *op cit.*, p.242.

The right of your women is that whatever you eat you should give them the same to eat, and whatever you wear you should give them the same to wear; and if you beat them, then do not beat them on their face; and if you separate them, then separate them only in bed and not in accommodation.⁹⁷

'Ali relies on another report that the Prophet (pbuh) apparently said:

You have a right in the matter of your wives that they should not allow anybody, whom you do not like, to come in your houses. If they do this, beat them but in such manner that it may not leave an impression.

The women soon complained of ill-treatment, and the Prophet (pbuh) is reported to have said of those who beat their wives, "You will not find these men as the best among you."⁹⁸ Therefore, while wife-beating is permitted, it is discouraged. There is also the report that Prophet (pbuh) said, "The best of you is he who is best to his wife."⁹⁹ Wife-beating however, 'Ali argues, is a necessary remedy in certain situations. It is a characteristic of all societies, throughout all ages, and serves as an important disciplinary measure in the lives of women.¹⁰⁰

Ibn Kathir was of a similar view. Where a woman is **nashiz** her husband should chastise her and make her fear God, because God made it a duty upon women that they obey their husbands.¹⁰¹ Ibn Kathir cited two *ahadith* in support of this, both reported by Abu Hurayra:

When a woman spends the night away from her husband's bed, the angels keep cursing her through the night.

Had I ordained that a person should prostrate himself before another, I would have commanded that a wife should prostrate herself before her husband.

These *ahadith*, bearing in mind that they were reported by Abu Hurayra, are inconsistent with the very essence of Islam: submission to one God and nothing else. They are also inconsistent with the Prophet's treatment

97. 'Ali, *op cit.*, p.45.

98. *ibid.*, p.46.

99. *ibid.*

100. *ibid.*, pp.46-47.

101. ibn Kathir, *op cit.*, p.242.

of his wives and clearly serve the interests of patriarchy and the continued subordination of women.

In relation to the punishment that may be imposed on women, ibn Kathir noted that there is a linguistic dispute concerning the meaning of **al-hajar**; that is, how is punishment of the wife to be imposed? He cited ibn Abbas, who was of the view that a man may sleep in the same bed as his **nashiz** wife but should not have sexual relations with her, nor should he speak to her. When he shares his bed, he should give her his back. Another opinion of ibn Abbas was that a husband could have sexual relations with his **nashiz** wife, but should not speak to her if he does so, as this is hard on women. If this punishment fails to correct a wife then she may be beaten.¹⁰² Ibn Kathir relied on a number of *ahadith* to substantiate this explanation, primarily those relied upon by 'Ali. It is interesting that ibn Kathir thought that it is hard on women if their husbands have sex with them without speaking to them. I would hazard a guess that a woman who is being chastised by her husband for disobedience and forced to have sexual intercourse with him at his will does not want him to speak to her.

'Ali concludes by claiming that if a wife mends her ways and returns to obeying her husband, she should not be punished any more. Her husband must forgive her and resume normal marital relations with her. Men must at all time fear God and not abuse the rights granted to them over their wives. God is Most High and a husband is granted superiority over his wife by the grace of God. If a husband refuses to forgive his wife and put an end to his punishment of her once she has mended her ways, God will punish him for this injustice.¹⁰³

Al-Tabari was of quite a different view.¹⁰⁴ He concluded, according to a strict linguistic analysis, that where a wife is **nashiz**, her husband may chastise her and remind her to fear God, but he is not permitted to refuse to speak to her. There is also controversy surrounding the meaning of **ihjuruhunna**, derived from **al-hajar**. There are three possible interpretations of **al-hajar**: "to refuse to speak to", "to talk to repeatedly and mockingly," although not in a rude or hurtful manner, or "to tie

102. *ibid.*, p.243.

103. 'Ali, *op cit.*, p.48.

104. al-Tabari, *op cit.*, pp.306-307.

105. *ibid.*

something."¹⁰⁵ Al-Tabari dismissed the first meaning as inconsistent with the message of the Prophet (pbuh). The Prophet (pbuh) told us that "a Muslim is forbidden to use the refusal of verbal communication with another person as a punishment for a period exceeding three days." There is also the well-known instance of the Prophet himself (pbuh) separating himself from his wives for 29 nights at a time when there were constant altercations between him and his wives. He was angry with them and refused to speak to them and God chastised him for this.¹⁰⁶ Furthermore, "if the wife is in open rebellion and repudiates her husband's authority, not talking to her and avoiding seeing her will fill her with joy."¹⁰⁷ Al-Tabari rejected the second interpretation of **al-hajar** as unlikely considering the grammatical structure of the sentence. He also dismissed the traditional interpretation of "banish them to beds apart." This, he argued, would also not amount to punishment where a **nashiz** wife was refusing to have sex with her husband. Al-Tabari concluded that the meaning "to tie up" must be the meaning intended in the Verse: "'Banish them to beds apart' means tying them to their bed." This is because, **al-hajar** "is the rope with which the Arabs tie up their camels."¹⁰⁸ This is a very unusual interpretation of **al-hajar**, but at the very least it indicates that linguistic selectivity is exercised in interpretation and that such selectivity is influenced by what exegetes consider an "appropriate" meaning in that context.

Al-Tabari agreed that **idrubahunna** gives men a right to beat their **nashiz** wives. They are permitted to beat them until they mend their ways. As to the amount of force that can be used, al-Tabari simply listed the various opinions, ranging from a symbolic strike with a brush to forceful corporal punishment.¹⁰⁹

The traditional view can be summarized as follows:

It appears that confining [women] to the house is the first step, and it is when they repeat their evil deeds in the house, or do not submit to the authority of the husband and desert him, that permission is given to inflict corporal punishment, which is the last

106. Mernissi, *Women and Islam*, *op cit.*, p.157.

107. al-Tabari, *op cit.*, p.308.

108. *ibid.*, p.309.

109. *ibid.*, p.313.

resort, and if this step does not make them mend their ways, matrimonial relations may be ended.¹¹⁰

Women's self-determination is therefore a non-issue, as is women's unfettered agency. A woman's relationship with her husband is the same as a child's relationship with a parent, even though it is questionable whether child-beating is permissible in Islam. A husband, as his wife's superior, is able to instruct her as to what to do and what not to do and admonish her for not adhering to his instructions, as a parent may do with a child.

The bias of traditional scholars such as 'Ali and ibn Kathir is obvious in light of their selection of *ahadith* that they rely upon and the *ahadith* that they ignore. It is well recorded that the Prophet (pbuh) detested wife-beating and implored his followers not to beat their wives. There are the following reliable *ahadith*:

Could any of you beat his wife as he would beat a slave, and then lie with her in the evening?¹¹¹

Never beat God's handmaidens.¹¹²

The traditional scholars give an interesting twist to the sequence of events surrounding the statements of the Prophet (pbuh) and the revelation of 4:34 as noted above. They claim that the Prophet (pbuh) expressed the view that wife-beating was not permitted prior to the revelation, but that he was reported as having said after the revelation, "I wanted one thing, but God has willed another thing – and what God has willed must be best."¹¹³ However, this is not, even according to traditionalists, considered a reliable *hadith*, and it is strange that the Prophet (pbuh) could reasonably be considered to have made such a statement. Nowhere else in the *Qur'an* or *Sunna* is there an assertion by the Prophet (pbuh) that *he* wanted anything. He was the Messenger of God and he was guided by God's will. Therefore it is unlikely that he would state his position as being any different from God's position. The

110. Maulana Muhammad 'Ali, *The Religion of Islam: A Comprehensive Discussion of the Sources, Principles and Practices of Islam* (1983) p.651.

111. al-Bukhari and Muslim, quoted in Muhammad Asad, *The Message of the Qur'an*, *op cit.*, p.109.

112. Abu Da'ud on the authority of Umm Kalthum, quoted in Muhammad Asad, tr., *The Message of the Qur'an* (1980) pp.109-110.

113. Quoted in Asad, *ibid.*, p.110.

inconsistency here is too great and insufficiently examined for the traditional scholars to conclusively determine that men are permitted in Islam to beat their disobedient wives.

The difficulties with accepting the traditional interpretation of 4:34 have been outlined above. These difficulties are exacerbated by the traditional commentaries, which are subjective, based on internalized cultural notions of womanhood and femaleness as compared to manhood and maleness, and the selective use of *ahadith*, whose reliability can be challenged. There is also considerable linguistic selectivity in the interpretation of words central to establishing women's duty of obedience and men's right to beat disobedient wives. This is the subject of the next few pages.

A Modernist Interpretation of 4:34

I will begin by considering the first part of 4:34:

Al-rijal **qawwamuna** 'ala al-nisa' **bima faddala** allah ba'duhum 'ala ba'din wa bima anfaqu min amwalihim

Men are in charge of¹¹⁴ are the protectors and maintainers of¹¹⁵ women, because Allah hath made the one of them excel the other¹¹⁶ given the one more (strength) than the other¹¹⁷

The most important term for our purposes is **qawwamun**. The meaning to be given to this term will contribute significantly to the question of women's self-determination in Islam. The singular of **qawwamun**, *qawwam*, has been given various interpretations, as discussed above, with the result that 4:34 can be given very different meanings. Al-Hibri argues that the most common interpretations – "in charge of" or the "protectors and maintainers of" – presume to resolve questions of translation that are in fact undetermined according to the original Arabic; the prevailing translations are, therefore, problematic.¹¹⁸ *Qawwam* has been interpreted to mean "leader," "protector,"

114. Pickthall, *op cit*.

115. Eliasi, *op cit*.

116. Pickthall, *op cit*.

117. Eliasi, *op cit*.

118. al-Hibri, *op cit.*, p.337.

"manager," "head," "guide," or even "advisor." Al-Hibri refers to old Arabic dictionary definitions and concludes that the definitions are varied, some open to hierarchical authoritarian interpretations, some not. **Qawwamun** can also mean "providers of guidance." However, hierarchical authoritarian interpretations appear to have prevailed as meanings were colored by jurists' own authoritarian perspectives.¹¹⁹

Farida Bennani¹²⁰ argues that **qawwamun** refers to a duty, and not leadership or control. She argues that **qawwamun** is derived from the root *qwm* which means "to stand up," "to take care of," or "to guard." Therefore, a husband is a servant to his family, and not the leader of his family.¹²¹ Wadud-Muhsin¹²² and Sayyid Outb¹²³ argue that *qiwamah* is the responsibility of a man during the time his wife bears a child. Wadud-Muhsin¹²⁴ argues that a woman deserves *qiwamah* in a mutually dependent relationship where she *chooses* to take on child-bearing as her primary responsibility. She deserves physical protection and material sustenance; otherwise, "it would be a serious oppression against the women."¹²⁵ The Verse therefore refers to the responsibilities where marital partners decide to undertake different roles within the marriage.

The verb **faddala** is usually interpreted as "superior to." Al-Hibri explains that linguistically, **faddala** means "having a distinction" or "a preferred difference over another." She argues that these interpretations, placed in the context of a proper egalitarian interpretation of the Verse, give the Verse a completely different interpretation from that adopted by traditional jurists.¹²⁶ Bennani¹²⁷ argues that there is a necessary link between **qawwamun** and **bima anfaqu min amwalihim**. The link is that men are required to financially support the family. The "preference" is, therefore, material and imposes an obligation. It does not confer rights.

119. *ibid.*, p.338.

120. Farida Bennani, *Taqsim al-'Amal Bayn Al-Zawjayn* (1992) p.35.

121. *ibid.*

122. Wadud-Muhsin, *op cit.*, p.73.

123. Sayyid Outb, *Fi-Zilal al-Qur'an* (vol.II, 1980) p.650.

124. Wadud-Muhsin, *op cit.*, p.73.

125. *ibid.*

126. al-Hibri, *op cit.*, p.338.

127. Bennani, *op cit.*, p.18.

Wadud-Muhsin¹²⁸ agrees. The preference that is referred to in this context is logically a material preference; the Verse continues with the condition of men spending of their resources on women. Therefore, in the instance that a husband is *preferred* with greater financial resources than his wife, the preference is not absolute; it depends on the situation of the parties concerned. Men are not superior to women. A man may have more money than his wife has, and therefore the Verse describes that preference that may exist in some marriages. The Verse "does not read 'they (masculine plural) are preferred over them (feminine plural)'. It reads *ba'd* (some) of them over *ba'd* (others)'. The use of *ba'd* relates to what obviously has been observed in the human existence."¹²⁹ This point is made by Bennani and Imam Muhammad Abdu, who argue that the preference is between men, and is material in the sense that God has preferred some men over others in terms of wealth: the Verse reads **faddala** allah **ba'duhum** (masculine). If men were preferred over women the Verse would read **faddalahum** lahu **alay hunna** (feminine).¹³⁰

Bima is composed of two parts – **bi** and **ma**. **Bi** has been interpreted to mean one that conveys a relation of causality, one that conveys circumstantiality, and one that conveys a quantity that is less than the whole. **Ma** is a pure connector in this context. Therefore **bima** could mean "because," "in circumstances where," or "in that which," referring to a part of, but not the whole. With this in mind, 4:34 can mean that men are the providers of guidance to women in circumstances where God made some of them (men) different from some others and in circumstances where they spend of their own money.¹³¹

Al-Hibri continues by applying basic principles of Islamic jurisprudence that govern the treatment of inconsistent verses in the *Qur'an*. One way to resolve an apparent conflict between verses is to qualify a general verse by a statement in a particular verse.¹³² This is also a basic principle of Western jurisprudence. Placing the interpretation of 4:34 in the context of other verses in the *Qur'an*, it is clear that its traditional interpretation is inconsistent with many other verses that espouse

128. Wadud-Muhsin, *op cit.*, pp.70-71.

129. *ibid.*

130. Bennani, *op cit.*, p.36.

131. al-Hibri, *op cit.*, p.339.

132. *ibid.*, p.340.

principles of equality. However, these verses are largely general in nature and contain no qualifiers or provisos. Al-Hibri argues that 4:34 begins as a general statement, "men are **qawwamun** over women," and this is immediately qualified by the circumstances in which men are actually able to be **qawwamun** over women. These circumstances are indicated by the word **bima**. Thus, "men are **qawwamun** over women" is operative only where God has endowed a man with an ability that a particular woman lacks and presumably needs and that man *spends of his own money* on that woman. Only when these conditions are satisfied may that man *offer* guidance or advice to that woman. A man who is financially responsible for a woman may therefore only have an advisory role in relation to that woman.¹³³

Further, al-Hibri argues that the *Qur'an* clearly indicates that not all men satisfy these conditions, as one interpretation of **bima** is a reference to part of a group and not the whole. Further, the term **ba'dhuhum** means "some"; the phrase **bima faddala allah ba'dhuhum** can be interpreted as meaning some whom God **faddala** over some others. Al-Hibri is also of the view that a broad linguistic interpretation of the phrase is to the effect that God **faddala** some men over some other men and women and **faddala** some women over some other women and men. The use of **ba'dhuhum** indicates the limitations of the Verse.¹³⁴

Al-Hibri concludes that the Verse merely describes the situation of women in seventh-century Arabia who were financially dependent on men, and in no way prescribes relations between men and women. In such situations a man was given the responsibility, not privilege, of offering guidance or advice to a woman where he was more qualified in relation to a particular matter: for example, where a woman had little exposure in public life and had to make a decision in a commercial transaction. The woman, however, is under no obligation to accept the guidance or advice of the man. Al-Hibri contends that her interpretation is based on traditional religious and linguistic sources and therefore does not depart from traditional interpretive methodologies. Al-Hibri's interpretation is that there is no command on men to financially maintain women and there is no command on women to obey men. Further, the asymmetrical relationship between men and women in seventh-century Arabia is consistent with the descriptive nature of the Verse; "when at one point it became necessary to speak of a symmetrical

133. *ibid.*

134. *ibid.*

responsibility for guidance and protection between men and women, the *Qur'an* did not hesitate."¹³⁵ We were provided with the following Verse:

And the believers, men and women, are protecting friends of one another; they enjoin the right and forbid the wrong, and they establish worship and they pay the poor-due, and they obey Allah and his messenger. As for these God will have mercy on them. Lo! God is Mighty, Wise.¹³⁶

The fact that this Verse has largely been ignored in favor of an emphasis on 4:34 is an example of the selective emphasis the jurists have been prone to. Why is it that this Verse, which enjoins men and women to protect others and each other, is given little weight in jurists' discussions of women's status and relations between men and women?

The second part of 4:34 must also be addressed in this discussion:

fa'l-salihatu **qanitatun** hafizatun lil-ghaibi bima hafiza allah, wa'l-lati takhafuna **nushuzahunna** fa-'izuhunna wa'h-juruhunna fi'l-madaji' wa'd-rubuhunna, fa-'in ata'nakum fa la tabghu 'alaihinna sabila, innallaha kana aliyyan kabira.

This Verse is commonly translated as:

So good women are the obedient, guarding in secret that which God hath guarded. As for those of whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them¹³⁷ beat them.¹³⁸ Then if they obey you, seek not a way against them. Lo! God is ever High, Exalted, Great.

Qanitat is traditionally interpreted as "obedient," and often "obedient to their husbands." However, the term is used to describe men¹³⁹ and women¹⁴⁰ in several verses, and in the context of these verses clearly refers to a state of obedience to God. Good women are therefore God-fearing women.

135. *ibid.*, p.343.

136. 9:71.

137. Pickthall, *op cit.*

138. Eliasi, *op cit.*

139. See 2:238; 3:17; 33:35.

140. See 4:34; 33:34; 66:5; 66:12.

The concept of *ta'a* is without doubt the most degrading denial of women's self-determination and equality of rights promulgated by traditional jurisprudence. Al-Hibri¹⁴¹ argues that the contention that *ta'a* is owed by the wife to her husband is contrary to the concept of *tawhid*, or the unity of God, which is fundamental in Islam. *Ta'a* is owed to God, and only God, in the form of self-discipline, collective organization, and mutual responsibility, as opposed to being owed to a husband as a result of hierarchy and oppression. If the Prophet's relationships with his wives is an indication of any gender hierarchy that was decreed by God, jurists cannot find any recorded instance of the Prophet (pbuh) restricting his wives' access or participation in any instance, for any reason. His wives enjoyed unfettered mobility and participation in public life, subject to the requirement that they aspire to moral conduct fit for the mothers of the *umma*. Good women therefore are women who are obedient to God. There is no requirement that women obey their husbands. This is consistent with the gender-neutral interpretation of **qanitat**. Outb¹⁴² further argues that the choice of words in the Verse suggests a personal, emotional response to the authority of God as opposed to following the orders of another. Therefore *ta'a* cannot refer to women obeying men or even wives obeying their husbands, as this would diminish the absolute authority of God.

This concept of *ta'a* is closely associated with *tamkin*, or availability. According to traditional jurisprudence, a woman's consent to sexual intercourse with her husband is given once the marriage contract is formed. This consent can be relied upon at any time and under any circumstance by her husband and is irrevocable, except upon divorce. The jurists have been greatly occupied by the discussion of the infliction of corporal punishment when a wife refuses to engage in sexual intercourse with her husband. Sex plays a very important role in the formulation of legal and ethical rules in Islamic jurisprudence. A Muslim wife must submit to sex with her husband as and when he chooses. There is no question of her free agency. The aggressive/passive, strong/weak, intellectual/emotional, stable/threatening dichotomies are clearly at play. There is a strong assumption that a man is physically stronger than a woman and therefore able to overcome a passive women, and that he is entitled to reprimand her for threatening the stability of their marriage and/or their family, or for not following his command and instead acting irresponsibly, in all likelihood in response to her emotional tendencies.

141. al-Hibri, *op cit.*, p.327.

142. Outb, *op cit.*, p.652.

This is a very clear check on women's self-determination. A woman must be controlled, for her acting according to her own free will is likely to result in *fitna*.

Traditionalists and apologists address the criticism that this approach promotes wife-beating by arguing that there are limitations on when and how a husband can inflict corporal punishment on his wife. They argue that the physical punishment can only be resorted to when all other reasonable means of reprimanding the wife have been exhausted. Some traditionalists argue that a man may use physical force that does not amount to beating and bruising. For example, some scholars were of the view that a man could strike his wife with a toothbrush or even a folded handkerchief;¹⁴³ the strike being symbolic of being reprimanded.

The traditional interpretations of **nushuz** were also referred to above in the discussion of the various *tafasir*. It is important to note again that the term is used to describe men¹⁴⁴ as well as women. As there is no neuter in the Arabic language, the term in this instance is in the feminine form - **nushuzahunna**. This does not imply that the disobedience is disobedience to one's husband. As **nushuz** is gender-neutral and refers to disobedience to God, the feminine form in this instance refers to a woman disobeying God. Sayyid Qutb argues that the term refers to a state of discord between a husband and wife.¹⁴⁵

Drubuhunna is related to the verb **daraba**, traditionally interpreted as "to strike." Thus, the Verse appears to give men permission to strike their wives. However, there are many other meanings that may be used to interpret this Verse. **Daraba** does not necessarily indicate force or violence. The term can be used when someone leaves or "strikes out" on a journey.¹⁴⁶ In light of the *Qur'anic* world-view that endorses equity, justice, harmony and compassion, the meaning "to strike" cannot possibly fulfill the objective of protecting the institution of marriage and securing the physical and emotional integrity of women. In marriage there should be harmony (4:128), love, and mercy (30:21), and husbands and wives should protect each other: 2:187: "They (feminine plural) are a raiment for you (masculine plural) and you are a raiment for them."

143. See al-Tabari, *op cit.*, pp.306-316.

144. See 4:128.

145. Qutb, *op cit.*, p.653.

146. Wadud-Muhsin, *op cit.*, p.76.

Traditional scholars have been subjective in the selection of "to strike" as *the* meaning to be attributed to **daraba**.

Therefore, could the second part of this controversial Verse simply mean that good women are God-fearing, and that when a man fears that his wife's conduct is disobedient to God, he should admonish her for such conduct, take separate sleeping quarters, and then possibly "strike out" of the marriage? Mutual faith is very important in a Muslim marriage. Further, is there anything to indicate that the discussion here is gendered as opposed to neutral? Could this Verse, as are so many others, simply reflect the expression of the revelation by the Prophet (pbuh) to his Companions in a language that has no neuter form? What is certain is that the traditional claim to have conclusively determined the meaning of this Verse is inconsistent with the variety of plausible meanings that may be given to Verse 34, Chapter 4.

This consideration of 4:34 provides an insight into interpretive choices that have been described as "scientific" and objective. The gender bias and misogyny are explicit and unacceptable. There are of course other significant areas of interest that are important to this discussion. What is important in any discussion concerning equality of rights for women in Islam is a consideration of the possibilities for different readings of the *Qur'an*. I argue that a reading that furthers equality of rights is consistent with the *Qur'anic* world-view and therefore in order to achieve Islam's objectives, must be pursued in favor of a reading that compromises equality of rights for women.

One Method for an Alternative Reading

The methodological exegesis that I endorse is that suggested by modernists such as Rahman¹⁴⁷ and Wadud-Muhsin:¹⁴⁸ the isolation of the particulars to the specific context of their revelation, the identification of the principles intended by the message manifested in those particulars, and the application of those principles to particulars faced by Muslims today and tomorrow. Rahman and Wadud-Muhsin take different approaches with this objective in mind, Rahman relying more on classical Islamic philosophy, and Wadud-Muhsin more on literary theory. There have been many proposals for an Islamic reform methodology that attempt to re-interpret the *Qur'an* and the *Sunna* in order to address

147. Rahman, *Islam and Modernity and Islam*, *op cit*.

148. Wadud-Muhsin, *op cit*.

contemporary questions. I submit that the most useful are those that attempt to remain true to the text and ensure a methodology that addresses the weaknesses of the traditional *usul*. This methodology must recognize the effects of selective linguistic treatment and the influence of prior text in an exegete's reading. Further, the nature of the Arabic language must also be taken into account. For example, each word in Arabic is designated masculine or feminine and it does not follow that use of a male or a female noun necessarily restricts the application to the mentioned gender.¹⁴⁹

The question is commonly asked though: Why did not God simply and explicitly prescribe equality for women and men and prohibit all discriminatory practices? There are two answers to this question. The first is what I have attempted to argue above. Verses that have been traditionally interpreted as discriminatory are affected by subjective linguistic treatment and/or are descriptive rather than prescriptive. The second answer is that, again, we must consider the influence that the community at the time of the revelation had on the expression of the message; how the objective was achieved in that context. Islam has a strong practical element. It must work for Muslims in their time and place. Therefore, restricting the right to polygamy with a long-term view to its prohibition achieved the objective of protecting the interests of women at the time in polygamous marriages and destitute women without social and economic support. Once Muslims address the social ills that encourage polygamy¹⁵⁰ through *Qur'anic* guidance, the prohibition is inevitable.

Further, the intellectual regeneration of Islamic scholarship is and must be coterminous with the reopening of the door of *ijtihad*, or if the argument is accepted that the door never actually closed, then letting more people through the door. We cannot afford any longer to be limited by the cultural constructs of seventh century Arabia, because,

. . . [the] *Qur'an* is the divine response, through the Prophet's mind, to the moral-social situation of the Prophet's Arabia . . . The *Qur'an* and the genesis of the Islamic community occurred in the light of history and against a social-historical background. The *Qur'an* is a response to that situation, and for the most part it

149. *ibid.*, pp.6-7.

150. For example, the maltreatment and desertion of women, and the refusal to educate women and acknowledge their economic independence.

consists of moral, religious, and social pronouncements that respond to specific problems confronted in concrete historical situations.¹⁵¹

It is also my argument that the only way to achieve equality of rights for women in Muslim societies is within an Islamic framework.

The majority of Muslim women who are attached to their religion will not be liberated through the use of a secular approach imposed from the outside by international bodies or from above by undemocratic governments. The only way to resolve the conflicts of these women and remove their fear of pursuing rich and fruitful lives is to build a solid Muslim feminist jurisprudential basis which clearly shows that Islam not only does not deprive them of their rights, but in fact demands these rights for them.¹⁵²

It is necessary to draw a clear and definite distinction between the Truth and our understanding of the Truth. This is in theory consistent with the traditional *usul*. Our human understanding is subjective, prone to error, and subject to revision. Acceptance of this is fundamental to any legitimate attempt to develop a jurisprudential basis for a theory of rights in Islam. Otherwise we will be guilty of the same errors committed by traditional jurists. We will claim Truth where there is inherent uncertainty, and we will inhibit future generations of Muslims from exploring their religion. We will continue to erode the Muslim community's right to self-governance according to its best understanding of Islam and its contemporary needs.

Conclusions

There is "a serious need for constructive and bold humanism that would restate Islamic social ideals in order to back up this new legislation."¹⁵³ There cannot be a claim to a "scientific" interpretive methodology, nor can there be a claim of objectivity. The *Qur'an* is universal, and therefore its interpretation cannot be limited to the expressions of the revelations in seventh-century Arabia. We must ascertain the Divine objective, and interpret according to contemporary circumstance and our contemporary appreciation of rights and responsibilities as individuals, and members of

151. Rahman, *Islam and Modernity*, *op cit.*, p.5.

152. al-Hibri, *op cit.*, p.309

153. Rahman, *Islam*, *op cit.*, p.234.

a community, of justice, compassion, harmony, spiritual awareness, and moral responsibility.

While a reopening of the door of *ijtihad* has been called for, and attempted by modernist scholars, there has been no wholesale revision of the *fiqh*, and no unified and rigorous movement to critique the interpretive methodologies of the four prevailing *madhahib*. Many modernist scholars have undertaken, and are undertaking, an internal critique of Islamic jurisprudence and historical cultural conditions to explain the patriarchal nature of religious prescriptions, and identifying contemporary cultural conditions that perpetuate the belief that such prescriptions are genuinely Islamic. We have a body of Islamic jurisprudence that has created two classes of citizen: *sui juris* men of full intellectual, physical, and moral capacity, and *non sui juris* women of questionable intellectual, physical, and moral capacity. For this reason, a woman's right to self-determination is fettered to the extent that it is believed that her agency must be checked by a male guardian, who in some instances may be charged with making decisions on her behalf. In other instances her agency may be checked by a requirement that she secure the consent of her male guardian in order to act. While traditional jurists acknowledge the improved status of women with the advent of Islam, they do not acknowledge the full status of women; that is, *sui juris* women of full intellectual, physical, and moral capacity, in control of their own agency unchecked by any notion of a male guardian.

Islam treats women as autonomous intellectual beings. Traditional Islamic jurists do not. One can only remind them of 16:116:

But say not - for any false thing that your tongues may put forth, -
"This is lawful, and this is forbidden," so as to ascribe false things
to God. For those who ascribe false things to God, will never
prosper.

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