

The Qur'an, Shari'a, and Women's Rights

Re-imagining the Shari'a: Theory, Practice, and Muslim Pluralism
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I am honored to share this platform with such eminent scholars of law, specially Ziba Mir-Hosseini and Abdullahi an-Naim, whose work has appreciably shaped my own understanding of the Shari'a and *fiqh*. For that reason, I was hesitant to speak at this conference because, as I reminded Shaheen Sardar Ali, I don't "do" law. She assured me that she knows what I do and invited me to do it today and so here I am, to speak about the Qur'an which is my area of work and interest.

Thus far, my involvement with it has involved reading it as an anti-patriarchal text by a method I derive from the Qur'an itself.¹ Although this reading has found some resonance in the last few years, it has also been the subject of critique by those whom one might otherwise consider allies in the struggle for Muslim women's rights. Their conviction that we cannot secure these rights within the patriarchal framework of the Qur'an's teachings impels me to restate and clarify the value of a liberatory Qur'anic hermeneutics to such an exercise as well as to re-imagining the Shari'a. This is what I will talk about, beginning with some observations on the Qur'an and its relationship to the law.²

The Qur'an and Law

I want to start with a biographical note. About ten years ago, when I was looking for a publisher for my book on the Qur'an, a British press told me that there wasn't much interest in it in this part of the world. At the time I thought this was absurd but, by now, I have come to realize that it is true, except that it is *Muslims* who, for the most part, aren't interested in reading it, much less reading about it. In all these years, I have met very few who have read it and fewer still who've read it from cover to cover and I've even run into some who have made false claims about it while holding a copy in their hands.

My own sense is that most Muslims have a "second-hand knowledge"³ of the Qur'an, which seems to be as much a function of illiteracy as of hyper-literacy. The majority, which can't read, relies on popular or commonsensical perceptions of religion, and by commonsense I have in mind Antonio Gramsci's definition of it as the "diffuse, uncoordinated features of a generic form of thought common to

¹ Asma Barlas. *"Believing Women" in Islam* (Austin, University of Texas Press, 2002).

² It is not always relevant to my argument to distinguish between the Shari'a and *fiqh*.

³ Edward Said used this phrase for Western approaches to Islam. *Covering Islam* (NY: Vintage, 1997).

a particular period and a particular popular environment."⁴ This is why he thought of commonsense as "inconsequently, fragmentary, incoherent."⁵ While I don't think that commonsense is unimportant in shaping people's understanding of Islam, I do believe this understanding is inchoate and inconsistent. As for the experts, they may certainly know the Qur'an but it is by way of the secondary texts "where all the cultures of 'Islam' exert their influence."⁶ So influential are these texts that they have all but displaced the Qur'an, as Fazlur Rahman said.⁷

Textual knowledge is never unmediated, of course, but the two or three degrees of alienation from the Qur'an create all sorts of problems, specially for legal reform, since the Qur'an is also a source of Muslim law. Just recently, the BBC reported on a proposed new law in Mali that would give women equal rights in marriage, including not having "to obey their husbands," and, as often happens, it is many of the women themselves who are denouncing it. As one of them put it, "We have to stick to the Koran. ... A man must protect his wife, a wife must obey her husband."⁸ That the Qur'an may not mandate such obedience⁹ is not even part of the debates in Mali or, at the other end of the world, in Malaysia, where the Musawah Framework for Action has run into similar opposition.

Irrespective of what one thinks of these laws, the truth is that much of what passes as divine law in Muslim societies has no, or, at best, only minimal or qualified, sanction in the divine word. For instance, the Shari'a/ *fiqh* allows stoning to death for adultery whereas the Qur'an does not refer to stoning in any context. The Shari'a/ *fiqh* gives less weight to a woman's testimony across the board whereas the Qur'an gives a wife's testimony precedence over that of her husband if he accuses her of adultery on his own witness. The Shari'a/ *fiqh* universalizes polygyny whereas the Qur'an ties it to securing justice for female orphans and, even then, counsels monogamy. The Shari'a/ *fiqh* allows men to marry nine-year old girls on the pretext that they are following the Prophet's sunnah whereas the Qur'an says that not all that was permitted, or forbidden, to him or to his wives is so to the rest of us. (To say the obvious, men who want to emulate the Prophet could also follow his dominant sunnah, which was to marry a twice-widowed woman fifteen years his senior in whose life-time he did not re-marry.) There are similar discrepancies between the Qur'an and Shari'a/ *fiqh* on the issue of divorce as well. The point is that there is an anomaly at the heart of the framework within which Muslim laws have been historically derived and this is the disjuncture between the Qur'an, sunnah, Shari'a and *fiqh*, not to mention between them and popular Muslim customs and traditions.

⁴ Antonio Gramsci. *Selections from the Prison Notebooks* (London, Lawrence and Wishart 1998), p. 330.

⁵ A. Gramsci. *Prison Notebooks* (NY: International Publishers, 1971), p. 419.

⁶ Mohammed Arkoun, *Rethinking Islam: Common Questions, Uncommon Answers* (Boulder, CO.: Westview Press, 1994), p. 39.

⁷ Fazlur Rahman. *Islam and Modernity* (Chicago: University Press, 1982).

⁸ <http://news.bbc.co.uk/2/hi/africa/8216568.stm>

⁹ See Amind Wadud on this point. *Qur'an and Woman* (Oxford: University Press, 1999).

One consequence of this is that Muslims often don't know the difference between the Qur'an or Shari'a and the shenanigans of the Taliban, the al-Saud clan, jihadists, and sundry others. (In fact, the Western media refers to their practices as just a "severe" form of the Shari'a.) Another is that "Islamic law" does not always cohere with the Qur'an's teachings or its overall epistemology, a term I will define momentarily. This is not to say that greater coherence can in itself yield better laws. To the contrary, it will be hard to re-imagine the Shari'a or *fiqh* in the face of male supremacist interpretations of the Qur'an and as long as most Muslims continue to use the sunnah or hadith to override or undercut its most egalitarian provisions. That is why I believe that legal scholars should also have a stake in new and liberatory readings of the Qur'an.

The Qur'an as anti-patriarchal

Here I want to say something about my own since it seeks to de-link the Qur'an from patriarchy. By patriarchy I mean the episteme and practice of privileging males which, in Muslim societies, draws on the claim that God "himself" has elevated men over women. This claim arises from particular readings of solitary words like *daraba*, *qawwamum*, *darajah*, etc., as well as three or so verses, or parts of verses, in the Qur'an. Beyond the obvious point that we can choose to interpret these words, lines, and verses differently, I have also argued against sacralizations of male authority on theological grounds.

My contention is that how we read the Qur'an reflects on how we conceptualize God since, after all, we believe that the Qur'an is God's word. In light of this, we should make God's self-disclosure the site from which to interpret God's word; this also generates a more comprehensive understanding of it than reading some verses in isolation. For instance, two aspects of God's self-disclosure are that God is un-created, hence beyond sex or gender, and that God does not do *zulm* to anyone, that is, transgress against their rights.¹⁰ If this is so, then there are no good reasons for masculinizing God or ascribing sexual partisanship or injustice to God by reading the canard of male supremacy into God's word. For, why would a God who is not a male, like a male or who does not claim to like males or to have made "man in his own image" be so invested in male ascendancy over women? In fact, the Qur'an says that God created both from the same *nafs*, designated them both *khalifa*, as well as each other's *awliya*,¹¹ and endowed them equally with the capacity for moral personality.

¹⁰ This Toshihiko Izutsu's definition. *The Structure of the Ethical Terms in the Koran*, Vol. II (Japan: Keio Institute of Philological Studies, 1959) p. 152.

¹¹ *Nafs* means person or soul, *khalifa*, God's vice-regent, and *awliya* mutual guides and, according to Azizah al-Hibri, in charge of one another. "A Study of Islamic Herstory" *Women's Studies International Forum*, Special Issue: *Women and Islam*. 5, no. 2 (1982).

To my mind, these are non-contingent and foundational claims, which is why I view them as constituting the Qur'an's epistemology, a term I use loosely. The reason I believe this epistemology is anti-patriarchal is because it is based in an uncompromising rejection of an androcentric God and also because, in spite of the so-called "anti-women" verses, the Qur'an does not privilege males as a biological species. Indeed, I read these verses as being historically contingent since they address a set of relationships that were themselves contingent on the institution that made them possible. This was a seventh century tribal Arab patriarchy based in specific configurations of male authority which has long since passed into history. There is really no religious reason to insist that women and men should continue to relate to each other as if they were still living in that patriarchy. This would be like expecting people to go on acting as if they were slave-owners when slavery has ended. Of course, unlike slavery, patriarchy has simply reconstituted itself; however, my point is that just because an institution was normative once doesn't make it so in perpetuity. If we no longer consider the Qur'anic verses dealing with slavery to be legally or morally normative, why should we consider those dealing with a seventh century patriarchy as being eternally so? To make this argument is not to say that the Qur'an was a product of its own times but exactly the opposite; since a scripture is for all ages, it must also encompass a range of historical formations and possibilities, including those posed by the present and future and not just by the past.

I also argue that all those Qur'anic teachings that establish the ontic equality, similarity, sameness, and equivalence, depending on the context, of women and men, open up the possibility for theorizing radical sexual equality. Even if we are hesitant to do this, they nonetheless allow us to think of spousal relationships differently than in seventh century Arabia. Finally, instead of trying to eke out a license from a few words or verses to interpolate *zulm* against women or sexual partisanship into God's word, whether in the name of legal or exegetical tradition or because of a belief in linguistic monosemy, exegesis (and law) should aspire to remain within the epistemic and ethical limits established by belief in a just and non-representable God. The Qur'an is, above all else, the "methodology of ascent to God,"¹² as Mahmud Mohamed Taha once said; it is this sacred aspect of scripture that should also guide our hermeneutic encounter with it.

Counter-arguments

I get here get into the reasons why or the methods by which Muslims have read patriarchy and oppression into the Qur'an,¹³ but one problem is that too many Muslims approach it as "text fundamentalists." This is Ebrahim Moosa's phrase and by it he means those who believe that "the text actually provides the norms, and we merely 'discover' the norms. The truth [he says] is that we 'make' the

¹² M.M. Taha. *The Second Message of Islam* (Syracuse: University Press, 1987).

¹³ See Barlas. "Believing Women," for a full critique.

norms in conversation with the . . . text.”¹⁴ Moosa is entirely right, of course, although I do not agree with him that simply looking to the Qur’an for authority makes one a text fundamentalist or keeps one from reading it “in an interactive manner.”¹⁵ One can look to a text for authority – as I do to the Qur’an – and yet also recognize that that *any* process of interpretation is dialogical.

I also question Moosa’s characterization of the Qur’an as patriarchal and find it ironic given his criticism of those who believe that a text “actually provides the norms.” According to him, the Qur’an “advocates patriarchal norms since that was the historical condition in which the Qur’an was revealed.”¹⁶ In effect, he patriarchalizes the Qur’an by historicizing it. Arguably, however, the point of historicizing the Qur’an should be to do the opposite, which is to distinguish between content and context as well as between the normative (universal) and the contingent (specific) within the text itself. Not to do this is to confuse divine involvement in human history with an endorsement or advocacy of that history and, worse, reducible to it. As for the related idea that the Qur’an is patriarchal because it speaks mostly to men about women,¹⁷ by this standard one could also say that the Qur’an advocates slavery because it speaks to slave-owners; outside of a handful of obscurantists, I doubt many people would find this persuasive.

A final point on which I take issue with Moosa is his argument that feminist readings make “too much of a few verses . . . that suggest reciprocal rights and duties between unequal spouses and then hasten to suggest that the Qur’an advocates egalitarianism as a norm.” In his view, arguing “that these isolated and singular verses should control the meaning and interpretation of numerous other verses” is nothing short of a “hermeneutical acrobatics.”¹⁸ I presume that this critique also applies to my own reading even if it doesn’t claim to be feminist. If so, my preferred method is *not* to look at verses in isolation but to locate these within the context of Qur’anic epistemology as I have described it. Having said that, however, I see nothing wrong with emphasizing verses that have been pushed out of Muslim consciousness and, along with them, principles like love, mutuality, kindness, liberality, and consensualism between spouses.

As for the second half of the criticism, I fear this is what people do who read the Qur’an as a patriarchal text. As I noted, they pass over the entirety of its teachings to focus on solitary words and verses that they read as having only one fixed meaning and as confirming that the Qur’an is patriarchal. Not only does this involve a hermeneutical acrobatics but it also allows men to continue using the text to commit unspeakable violence against women. In this context, the

¹⁴ Ebrahim Moosa. “The Debts and Burdens of Critical Islam,” in Omid Safi (ed.) *Progressive Muslims*. (Oxford: OneWorld, 2003), p. 125.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ This is Kecia Ali’s point. *Sexual Ethics and Islam* (Oxford: Oneworld, 2006), pp.126-127.

¹⁸ Moosa, *ibid.*, 125.

liberation theologian, Farid Esack, argues that if it comes down to a choice, it is better to do violence to the text than to people.¹⁹ While I appreciate his ethics, I think this way of putting it also creates a bit of a false binary since, if it comes down to it, we could also choose *not* read the Qur'an as a patriarchal text. Yet, some of the very people who want sexual equality also disparage readings that might advance it from within a Qur'anic framework. Even if doing this means stretching the limits of our understanding of the text, isn't that better than giving in to its patriarchal or misogynistic interpretations? The Qur'an calls on us to find its best meanings and it seems reasonable to look for these in what is most egalitarian in the text itself. And, to the extent that the Qur'an opens itself to continual and better readings, shutting these down as a way to safeguard male authority amounts to selling God's word for a miserable price.

This brings me back to my initial point about the relationship between liberatory readings of the Qur'an and the project of re-imagining the Shari'a. Of course, the other part of such an endeavor is constructing a state in which Muslim laws can be implemented. The gaps between the law, scripture, and Prophetic praxis that I spoke about earlier make it difficult to imagine what it would mean to live in a "Shari'a state" or what such a state would look like. That is why I find professor an-Naim's defense of a secular state so compelling.²⁰ It would take much more than a talk of this nature to engage his argument but I have some responses to it that I want to share in the spirit of dialogue and by way of concluding.

Law and state

I am persuaded by professor an-Naim's finely argued thesis that a secular state is not incompatible with Islam and can, in fact, provide the framework for Muslims to live by their laws voluntarily and non-coercively. My comments, therefore, touch more on some tangential issues, one of which has to do with law itself. I must confess that I can't imagine law as being voluntary or non-coercive even if the Qur'an warns against compulsion in religion. There is, it seems to me, a tension right here because, law to be law, demands involuntary compliance on the pain of penalties and this is no less true of secular law than it is of religious.

More importantly, I question whether problems of Muslim law, or the tensions between various religious sources, will disappear in a secular state. As I see it, these problems have less to do with the kind of state in which Muslims live than with their mentalities and consciousness and with how they define religious knowledge and methodology. Of course, the absence of civil rights and liberties in most Muslim states makes public dialogue on such issues difficult and so it is also difficult to shift people's attitudes. However, simply having the space for a

¹⁹ Farid Esack. "What do Men Owe Women?" <http://uk.geocities.com/faridesack/fewhatdomenowe.html>.

²⁰ Abdullahi An-Naim. *Islam and the Secular State* (Cambridge, Harvard University Press, 2008).

dialogue in a secular state is not enough to produce such shifts either, as is clear from the experiences of Muslims in the U.S. and Europe.

I also do not believe, as professor an-Naim does, that the secular state, though political, is separable from politics because of the principle of constitutionalism and the regime of human rights. These may serve as checks on abuses of state power, but only as long as state rulers are willing to abide by them. As we saw with George W. Bush, neo-conservative politics trumped both human rights and the constitution when it came to the “war on terror.” The French state, on the other hand, used constitutionalism, in the form of *laicite*, to deny Muslim women the right to wear a headscarf in public spaces. As Oliver Roy argues, *laicite* “defines national cohesion by asserting a purely *political* identity that confines to the private sphere any specific religious or cultural identities.”²¹ *Laicite* may be a specific and militant form of secularism, but secularism is itself a form of politics and no secular state is, or can be, above or beyond or outside this politics.

Lastly, and this is just a passing observation, I find it intriguing that even as some Muslims are trying to align Islam with secularism, some Europeans are engaged in debates about post-secularism. I wonder what we might learn from one another if we were at the same table.

In any event, I am sure professor an-Naim knows quite well that law is not voluntary, that states are irreducibly political, and that secularism is not a panacea for all that ails Muslims. Meanwhile, my own abiding interest remains the Qur’an and I remain hopeful that the coming generations of Muslims will read it for liberation. For the moment, though, I seem destined to keep running into those who are suspicious of such a possibility or who say they support it but then end up sounding warnings against feminism or pitting women against men or undermining the family by questioning sexual hierarchies. Never, in all these years, have I heard a single Muslim man admit publicly that men themselves have been pitting their interests against those of women for women for 1,400 years in an attempt to safeguard privileges that are, at best, transitory since life itself is transient. Lamentably, it seems that even from the most egalitarian scriptures, believers can still construct dystopias. A project of re-imagining Islam must, I believe, begin by grasping this painful reality and end by transforming it.

²¹ Oliver Roy. *Secularism Confronts Islam* (NY: Columbia University Press, 2007) p. xiii.