

THE ABSENCE OF MUSLIM WOMEN IN SHAPING
ISLAMIC THOUGHT:

FOUNDATIONS OF MUSLIMS' PEACEFUL AND JUST
CO-EXISTENCE

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I. SUMMARY

This paper explores the ethical and legal pedagogy of the current debates on “reforming” Muslim societies, whether they claim to reform social and legal systems, reform educational institutions, or liberate Muslim women. Since these debates claim to achieve balance in global or domestic conflicts, I address the foundations of these debates by answering three questions:

(1) Are the rationales for American and/or European governments’ interventions justified?;

(2) Can the discipline of civil law help in rethinking Islam for Muslims; and

(3) Are Muslims themselves ready to critically address the use and misuse of Islam’s primary sources (the Qur’an and particularly the *Hadith*) in their rethinking of Islam?

I argue that rather than seeking to “reform others,” in this case Muslims with an elitist attitude and sometimes violent interventions, we scholars of law and religion, scholars of Islam, policy-makers, and social justice researchers would be better off if:

(1) we thought of Islam as a religio-moral rational worldview, rather than a set of laws,

(2) we recognized Muslims as subject to historical transformation, like any other religious groups, and understood how they developed their present views of Islam, and

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(3) we considered our own real responsibilities to address the forms of global injustices as powerful shapers of world politics, particularly the politics of difference—the view that the “other” is inferior, and women’s role as mostly complementary to men.

These arguments will be developed by addressing (a) the limitations on “reforming” Muslim societies if one only continues the common debates and practices of what is known as “Islamic law” or “*shari’a* law,” (b) the deficiencies in confusing Islamic guidelines with current customary and legal systems in Muslim societies, (c) the problems resulting from confusing Islamic principles in the Qur’an with their extrapolations in the Prophetic tradition (the *Sunnah* or *Hadith*) and especially with jurisprudence rulings (*Fiqh*) or customary practices (*‘Adat* or *‘Urf*), and (d) the effects of Muslim women’s absence in shaping Islamic thought, from the time of the first Muslim community about fourteen centuries ago.

In the first section of the paper, after introducing the ethical pedagogy of the Qur’an, I look at the danger that those who claim to speak on behalf of Muslim women may improperly blame the Islamic religion, ignoring the chaotic post-colonial historical and political dynamics, such as the dominance of patriarchal, monarchical, dictatorial regimes in most of the Muslim societies and communities that are in fact responsible for women’s situation in these countries. Then, looking at contemporary discourses about “democratizing” the Muslim legal systems with a focus on earlier colonial and missionary claims of “civilizing” Muslims, particularly women, I explain why we need to change our premises and paradigms for evaluating social life in countries where Muslims are in the majority. With such a change, we may appreciate the different meanings of religion, law, and women’s rights.

In the second section of the paper, I outline the context for my new paradigm, summarize the challenges facing the contemporary process of rethinking Islam such as legitimizing Muslim female scholars’ authority and leadership in the religious/political/legal decision-making process, and reflect on how the process has been affected by the misuse of *Hadith*. I conclude by making some recommendations with specific strategies for equilibrated peaceful and just co-existence among and between Muslims and non-Muslims. These strategies are mainly intended to help Muslim women develop their capabilities to determine their own destiny and, thereby to contribute to societal and attitudinal transformation among Muslims. Eventually, these strategies may also help the young generation of Muslims to (a) develop their own identity

within the Qur'anic guidance, (b) have a better understanding of Western law and politics, (c) be included in the development of their own legal systems as well as those of Western law and politics, and (d) consequently, bring some justice into the process of rethinking Islam.

II. DEFINITION OF TERMS

A. Islam, *as Deen* (in Arabic): a worldview that encompasses religio-moral and rational guidance, as outlined in the only divine and the first primary source of Islam, the Qur'an.

B. *Shari'ah*, with a capital "S": the path that is guided by Qur'anic ethos (Surah, 45, al Jathiyah: 18).

C. *Hadith*: reports of the Prophet Muhammad's words and deeds, known as his tradition (*Sunnah*), and the second primary source of Islam. We need to distinguish between the Prophet's tradition and the historical or natural laws that the Qur'an references as *Sunnah* with a capital "S."¹

D. *Tafsir*: exegeses or interpretations of the Qur'an, based mainly on Hadith and biographies.

E. *Fiqh*: jurisprudence rules based on the Qur'an, Qur'anic exegesis and *Hadith*.

F. *'Ulema*: scholars of Islam (scholars of *Tafsir*, of *Hadith*, or of *Fiqh*). In contemporary Muslim societies, *'Alem* (sing, a scholar of Islam) is thought of mainly as one who studied in one of the traditional Muslim institutions (e.g., al Azhar, Deoband, and Qum).

G. Instruments of scholarship concerning Islam:

1. *Ijtihad*: Individual systematic reasoning within the framework of the Qur'an.

2. *Fiqh*: Interpretive ruling. Traditionally recognized schools of *Fiqh* are four Sunni schools, and one Shi'a.

3. *Shura*: mutual consultative process among the Muslim community.

1. Jawdat Sa'id, *Law, Religion And The Prophetic Method of Social Change*, 15 J.L. & Religion 83, 95 n. 15 (Afra Jalabi trans. 2000-01) (discussing the "Sunaniah" (Nomotheticism) in the Qur'an); Nimat Hafez Barazangi, *Vicegerency and Gender Justice in Islam*, in *Islamic Identity and the Struggle for Justice* 77 (Nimat Hafez Barazangi, M. Raquibuz Zaman, Omar Afzal eds., U. Press Fla. 1996) (discussing the difference between the Qur'anic *Sunnah*, the prophetic *sunnah*, and the *sunnah* of the companions, or of the Muslim community).

4. *Ijma'*: consensus of the *Umma* (Muslim universal community). Often, *Ijma'* is unjustly limited to elite males.
5. *Qiyas*: analogy to precedent cases.

III. INTRODUCTION: WHAT ARE THE BASIC ISSUES IN RETHINKING ISLAM FOR A PEACEFUL AND JUST CO-EXISTENCE AND HOW DOES THE ETHICAL PEDAGOGICAL FRAMEWORK OF THE QUR'AN ADDRESS THEM?

As an educator concerned with the foundations of Islamic and Arabic studies, I have spent a good deal of my time exploring the ethical and legal pedagogy of current debates on “reforming” Muslim societies. However, one major phenomenon continues to be overlooked in these debates, and hence will be the focus of my paper. This phenomenon is that Muslim women have remained a passive force in changing the negative practices of contemporary Islamic thought and the resulting injustices. Despite the significance of recent contributions by some Muslim female scholars to the reinterpretation of the Qur'an, conditions for the majority of the seven hundred million Muslim women in the world have not changed. Women are still being excluded from equal agency with men, from full participation in the shaping of Islamic society, and thus from full and equal Islamic identity, primarily because of patriarchal readings of the Qur'an and the entire range of early Qur'anic literature, and especially the Prophet Muhammad's reported *sunnah* compiled in the *Hadith* literature.² In these patriarchal readings, women are mostly viewed as secondary and/or complementary in the evolved structure of Muslim communities; thus, they remain potential subjects of abuse. In order to change, correct, and transform these views, we need to change the premises and paradigms used in studying Islam and reforming Muslim societies, particularly to claim the liberation of women and the elimination of violence.

The Qur'an provides the ethical pedagogical framework for liberating Islam from its interpreters, be they Orientals or Occidentals: “Inna hadha al Qur'an yahdi lillati hia aqwam wa-yubashir al Mu'mineen alladheen ya`maluna al Salihat ann lahum ajran kabeera” (This Qur'an guides to that which is most stable (or right), and gives the glad tidings to the believers who work deeds of righteousness).³ I, therefore, recommend the following four specific strategies for equilibrated

2. Nimat Hafez Barazangi, *Woman's Identity and the Qur'an: A New Reading* (U. Press Fla. 2004). See ch. 2 for further details on Qur'anic sciences and literature.

3. Qur'an, Surah 17, Bani Israel: 9. My reference to the Qur'an is mainly taken from A. Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (McGregor & Werner 1946). The few exceptions are either from a website (provided) or represent my own translation (noted).

peaceful and just coexistence among and between Muslims and non-Muslims: (1) move from focusing on Islam as a law and a dogma to viewing it as a religio-moral-rational guidance; (2) let Muslim women speak for themselves on issues of religious and public policies; (3) connect the historical to the present in understanding the various views and their implications; and (4) incorporate Muslim women's scholarship into the mainstream sources on Islamic thought.

Historical events require us to reconnect what is ethical in Islam with the political and legal in the analysis of Muslims' perceptions of legitimate Islamic law sources and the consequent behavioral manifestations in Muslim-dominated societies and in Muslim minority communities.

Despite many attempts to reform Muslim societies during the past two centuries, the living conditions for the majority of Muslims, particularly the women, remain pathetic and unjust. These ineffective reform attempts may have resulted from their being polarized or fixated on certain symptoms, overlooking the core of the problem—Muslim women's absence in shaping Islamic thought. Muslim reformers, from Jamal al Din al Afghani (1838-97) and Muhammad 'Abduh (1845-1905), to Muhammad Arkoun and 'Abdullahi Ahmed an Na'im,⁴ mainly use Western frameworks and analytical tools, thus creating discontent and sometimes distrust among "orthodox" Muslims (those who follow the literal meanings of the texts).

Other reformers, from Mahmud Taha to Muhammad Shahrur,⁵ have used the Qur'anic framework and produced radical interpretations of the Qur'an that have been questioned and often rejected by traditionalists (those who follow the traditional interpretations of texts). At times, these polarized views were considered by extremists as against Islam and their proponents were labeled as apostates; in some cases, extremists called for violent action against them. Meanwhile, traditionalists, from Sayyid Qutb (1906-66) and Jamal al Banna, to Yusuf al Qaradawi⁶ have generated more stringent interpretations of

4. Jamal al Din al Afghani, *al 'Urwa al Wuthqa wa-al Thawra al Tahririyah al Kubra* (2^d ed., Dar al-'Arab lil-Bustani 1958) (Arabic); Muhammad 'Abduh, *Al Islam din al Ilm wa-al Madaniya* (Sina' lil Nashr 1964) (Arabic); Muhammad Arkoun, *Rethinking Islam: Common Questions, Uncommon Answers* (Robert D. Lee trans., Westview Press 1994); 'Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse U. Press 1990).

5. Mahmud Taha, *Al Risalah al Thaniyah min al Islam (The Second Message of Islam)* (Abdullah an-Na'im trans., Syracuse U. Press 1987); Muhammad Shahrur, *al Qur'an wa-al Kitab: Qira'a Mua'sira* (al Ahali 1990) (Arabic).

6. Sayyid Qutb, *Fi Zilal al Qur'an* v. 1 & 2 (1st printing, Dar Ihiya' al-Kutub al-'Arabiyyah 1952) (Arabic); Jamal al Banna, *al 'Awdah ila' al Qur'an* (al-Ittiḥād al-Islāmī al-Dawī lil-' Amal

Islam as they relied on jurisprudence, and mostly used *Hadith* in a processed form as quoted in the *Fiqh* texts.

These reform attempts were also polarized primarily because they suggested a change in women's role. Yet despite (or because of) these attempts, women have become more dependent on the religious and secular governments' rhetoric or action.⁷ Historically, every time women have been discussed, new waves of patriarchal interpretations, shrouded in claims for gender equity, also have been.⁸ Recently, these traditional patriarchal views are being used by *Salafis* (followers of precedent practices) or those who call themselves "Islamists" to keep women from taking leadership positions, and even to justify domestic violence and/or state punishment of women who fail to comply with patriarchal norms. Since women's role has been mostly viewed as secondary and/or complementary in the structure of all Muslim societies, it seems that every reform attempt, intentionally or unintentionally, reinforces the inferior status of women, thereby adding to the injustices they suffer.

In the course of any reform movement, we need to understand how today's Muslims perceive the Islamic concept of justice. This requires an exploration of the sources on which they rely since most of them indiscriminately view all of these sources as sacred.⁹ In addition, we need to understand the complex methodological issues present in verifying the validity and reliability of a *Hadith*. The ease with which Muslim "reformists" or *Salafis* quote a *Hadith* is not accompanied by their willingness to let the public validate its authenticity and/or corroboration with the Qur'an. Therefore, uninformed Muslims tend to accept reformists' rationales as valid, both because of their inability to verify the validity of a *Hadith* or because of their fear of being stamped as "infidel" if they argue against the rationale drawn from it. In essence, I focus my arguments on how some Muslims have come to interpret some religious sources to license violence as the exclusive means to

1984) (Arabic); Yusuf al Qaradawi, *al Fiqh al-Islami Bayna al Asalah wa-al Tajidid* (Dar al Sahwah lil Nashr 1986) (Arabic).

7. First Lady of Syria, Asma' Asad, in a conference on developing the role of Syrian and Turkish women, stated that the main point is how to change the role of women from a follower to a complementary role. See http://www.tishreen.info/_default.asp?FileName=821576250200810220203 (accessed Oct. 10, 2008) (on file with author).

8. Jamal Badawi, *Gender Equity in Islam: Basic Principles* (Am. Trust Publications 1995); also, the President of ISNA (Islamic Society of North America), Ingrid Mattson, still talks about gender equity, resonating the sentiments of male leaders. Dr. Ingrid Mattson, *Gender Equity: The Islamic Perspective*, <http://www.youtube.com/watch?v=C7SF-bGJ23c> (accessed May 16, 2009).

9. See Pieterella Van Doorn-Harder, *Women Shaping Islam: Indonesian Women Reading the Qur'an 2-3* (U. Ill. 2006) (discussing why traditionalists view all sources of Islam, including jurisprudence (*fiqh*) books as holy texts).

defend their rights or to assert men's guardianship over women. Since one of these sources is *Hadith*, and since *Hadith* is used more often instead of the Qur'an, I propose to investigate the historical evolution of some of these usages and their consequent interpretations.

IV. THE CONTEXT: WHY DO THESE ISSUES MATTER AND WHY WE NEED TO RETHINK ISLAM?

Humans everywhere seek justice and there is the potential for peaceful solutions, even among militant Muslims, once injustice is corrected.¹⁰ Looking at the historical evolution of the use and interpretations of *Hadith* as the main challenge facing the process of rethinking Islam and reforming Muslim societies, the most critical factor in my thesis is the absence of Muslim women scholars from the religious/political/legal leadership in the decision-making process.

For instance, on July 11, 2001, the Executive Director of KARAMAH (Muslim Women Lawyers for Human Rights) testified before the Department of State on behalf of Muslim women's religious rights against the French government and other European countries who were discriminating against Muslim women wearing headscarves.¹¹ After September 11, 2001, even some American Muslim women were either confined to their homes or forced to remove their head covers for fear of being harassed or viewed as a threat to security. Meanwhile, and to my knowledge, neither KARAMAH nor other Muslim women organizations that I know of have addressed the problem of some Muslim societies forcing certain forms of dress on women, such as in Saudi Arabia, Iran, and Afghanistan. We must ask why.

Muslims, particularly women, are not exercising their own agency fully, and even when they are actively involved in seeking justice for themselves or for other women, they often use others' interpretations instead of developing their own.¹² In addition, although it is obvious

10. Barazangi, et al., *supra* n. 1, at 1-8.

11. Department of State, 01-H461-95 Testimony NO: 2, July 11, 2001, p. 35-87, http://web.lexis-nexis.com/congcomp/document?_m=4ae49d2facb64ac0470a3312b09a500f&_docnum=1&wchp=dGLbVzz-zSkSA&_md5=2a42f8233317dbaf24b08c5fdb60f799 (accessed Mar. 26, 2009).

12. Kacia Ali, *Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Law*, in *Progressive Muslims: On Justice, Gender, and Pluralism* 169, 163-169 (Omid Safi ed., One World Publication 2003), critiques reformist work of Muslim women al-Hibri, Wadud, Hassan, and Barlas because it highlights the egalitarian texts of Qur'an and *Hadith* but ignores the cultural influence that shaped the *Fiqh*: "The reality is that many women in Muslim countries continue to suffer injustices within their marriage because their husband's frame of reference about marriage adheres mainly to the *Fiqh*." (quoted in Van Doorn-Harder, *supra* n. 9, at 10).

that religious extremism is the result of ignorance or misinterpretation of the primary sources, the majority of Muslim male scholars tend to shrink from the task of reforming this malaise, or they are not ready to accept it as such.¹³ Furthermore, most Muslims, because of the effects of imposed nationalism,¹⁴ practice Islam as a dogma.¹⁵ As a result, the foundational principles of Islam as stated in the Qur'anic revealed text, documented and sealed in the seventh century A.D., are confused with Prophet Muhammad's contextually-bound extrapolations, and with the socially-based jurisprudential rules. Because politicians as well as scholars call all of these sources "Islamic *shari'a*," or as it is known in the West "*shari'a* law,"¹⁶ ordinary people, including the majority of Muslims, confuse the binding levels of these sources and separate what is morally from what is legally binding.¹⁷ Meanwhile, Western governments rely mainly on distorted negative understandings of Islam and Muslims; and given the Judeo-Christian views of religion, Islam is perceived as a religious law that needs reformation in the same manner as the European reformation—by separating state and church. Even though there has not been a real separation between faith and politics in Europe, the United States, and generally in the West, these perceptions of Islam are perpetuated by the majority of non-Muslims who teach or consult about Islam.¹⁸ Thus, the ensuing debates on reforming Muslim societies are, in my view, based on the wrong premises, and hence, I question their rationales and effectiveness.

Contemporary laws practiced in Muslim societies (incorrectly known as *shari'a* laws) are neither morally binding, nor valid in current space and time. Qur'anic *Shari'ah* (with a capital "S") is the only divine, binding source concerning the principles of Islam.¹⁹ It means the

13. Jawdat Sa'id, in his *Law, Religion And The Prophetic Method of Social Change*, *supra* n. 1, at 83, also talks about "the world sheltering the intellectual viruses that destroy us."

14. *The Formation of Islamic law* (Wael B. Hallaq ed., Ashgate/Variorum 2004), suggests that the idea that Islamic law is a viable legal system is questionable in light of the changes in the conception of legal authority brought about by the advent of the nation state.

15. Nimat Hafez Barazangi, *Religious Education*, in *Oxford Encyclopedia of Islamic Studies* (2008) (available at http://www.oxfordislamicstudies.com/article/opr/t236/e0212?_hi=4&_pos=2) (login necessary).

16. Tamara Sonn, http://www.oxfordislamicstudies.com/Public/focus/essay0408_shariah.html (accessed Mar. 24, 2009) (login necessary).

17. Barazangi, *supra* n. 1.

18. The Salzburg Global Seminar announcement of October 25-30, 2008, for the Islamic and International Law program, is a good example of this perception. It starts with "Shari'a law and Islamic legal traditions are . . ." as if these are two different entities! (on file with author).

19. The Qur'an states: "*Thumma Ja'alnaka 'Ala Shari'aten mina al'Amr fa-Itabi'ha, wala tab' Ahwa' alladheen layaa'lamun.*" (Then we put thee on the [right] way [path] of Religion: so follow thou that [way], and follow not the desires of those who know not.). Qur'an, Surah 45, al Jathiyah: 18.

path that is guided by Qur'anic ethos.²⁰ Yet, generations of Muslims have been affected by the confused views of leaders to the point that the majority of them believe *shari'ah* (with a small 's') to be directly revealed from God.²¹ One outcome of confusing the prophetic extrapolations and interpretive jurisprudence with Qur'anic *Shari'ah* has been biased views toward women²² and the "other." Thus, we need to study critically the Qur'an and the *Hadith* in order to change the perceived role of women as complementary so women are assured the primary role intended for them. This work is also necessary to eradicate the extremists' sweeping notions of the religious "other" as infidel.²³

The first principle in understanding the Qur'an is that the mature individual Muslim is not bound legally by Islam unless s/he has conscientiously accepted its moral principles as stated in the Qur'an itself.²⁴ Islam as *Deen* (worldview) is basically textual, not based on an event (for example, Christ's resurrection in Christianity), or on a law (as the law of the Torah in Judaism). The content of the text within the Qur'an is what defines all Islamic beliefs. The Qur'an also reminds us that it is not because of the Prophet Muhammad that Muslims accept the Qur'an, but because of the Qur'an, they accept the authority of the Prophet.²⁵

What has happened is that Muslims have, to a large extent, reversed the order when they idealized the Prophet and his traditions. Most contemporary Muslims even forget that the reported extrapolations on the authority of the Prophet do not supersede the Qur'anic text, mainly because they are bound by contextual applications of the message. Muslims also forget that the Prophet himself forbade his companions from documenting his *sunnah* while the Qur'an was revealed throughout the twenty-three years of his prophecy, and until his

20. Barazangi, *supra* n. 2, at 103-104.

21. Van Doorn-Harder, *supra* n. 9, at 262.

22. Leila Ahmed, *Women and Gender in Islam* 85 (Yale U. Press 1992), discusses the jurists being influenced in their elaboration of a system of marital rights and obligations by the norms governing slavery.

23. Bassam Tibi, *The Return of the Sacred to Politics as a Constitutional Law*, 55 *Theoria* 91, 98 (Apr. 2008).

24. Barazangi, *supra* n. 2, at ch. 3; Clark Lombardi, Book Review, 22 *J.L. & Religion* 607, 607 (2006-07) (reviewing Paul R. Powers, *Intent in Islamic Law: Motive and Meaning in Medieval Sunni Fiqh* (Brill 2005)) (stating that Paul Powers, in the reviewed book, discusses how classical Islamic jurists thought that "an actor's 'intent' affected the 'legality' of his actions"). Lombardi further clarifies "legality," noting that Islamic jurists worked with a "five-part typology of actions: required, prohibited, recommended, reprehensible or neutral." *Id.* at 607 n. 1.

25. Maysam al Faruqi, *Women's Self-Identity in the Qur'an and Islamic Law*, in *Windows of Faith: Muslim Women Scholar-Activists in North America* 76 (Gisela Webb ed., Syracuse U. Press 2000).

death.²⁶ He was concerned that Muslims might mix the two sources. His early companions realized the magnitude of his concerns and made special efforts to collect the *Qur'anic* scrolls into one authorized document within one decade of his death. By contrast, the reports of *sunnah* were collected, transmitted and taught orally for over a century after the death of Prophet Muhammad before they began to be collected in written form and codified in what later became known as *Hadith* collections.²⁷

What is important for my thesis is Muslims' self-identification with Islam as the *Deen of Tawhid*. *Tawhid* means that the authority lies only with God, whose guidance is in the text of the Qur'an. Hence, each individual Muslim has the personal responsibility of reading and interpreting the Qur'an in order to be able to live out his/her rights and duties justly. The Qur'an: "*Iqra' kitabaka, Kafa bi-nafsika alyawma alika hasiba.*" (Read thine [own] record: sufficient is thy soul this day to make out an account against thee.)²⁸ Also, the first verses of the Qur'an indicate the first order of things: "*Iqr', bismi Rabika Alladhi khalaq, . . . Alladhi `allama bil-qalam.*" (Proclaim [or Read] in the name of thy lord and cherisher [God] who created-, . . . He who taught [the use of] the pen).²⁹

Since the participation of Muslim women in interpreting the text has been extremely limited, I specifically focus on how failure to respect this teaching has harmed women and the generations that they have raised or are still raising. Traditional Muslims talk about the ideals of Islam, about a just and peaceful religion, but they often do not accept or develop anew equilibrated solutions for women's participation because they rely on *Fiqh* that uses processed *Hadith*.³⁰ Traditional Muslims, instead of rationally correcting non-Muslims' biased views of Islam,

26. 'Abd al-Malik Ibn Hisham (d. 834) & Tahqiq Abd al Salam Haroun, *Tahdhib Sirat Ibn Hisham* vol. 2, 141 (n.p. n.d.) (Arabic) (on file with author).

27. Hadith, in *The Oxford Dictionary of Islam*, http://www.oxfordislamicstudies.com/article/opr/t125/e758?_hi=0&_pos=1 (accessed Mar. 20, 2009) (login necessary).

28. Qur'an, Surah 17, Bani Israel: 14.

29. Qur'an, Surah 96, al'Alaq: 1, 4.

30. Nasir al Din al Albani makes Hadith the "central pillar of juridical process." Stephan Lacroix, *Al-Albani's Revolutionary Approach to Hadith*, 21 ISIM Review 6 (Summer 2008) (available at https://openaccess.leidenuniv.nl/bitstream/1887/13326/1/review_21.pdf). For al Albani, "hadith alone . . . may provide answers to matters not found in the Qur'an without relying on the school of jurisprudence." *Id.* Also, traditional Muslims, according to Martin Van Bruinessen are those who "rely on the teachings of Jurisprudence, or Fiqh, and mostly use Hadith in a 'processed form' as quoted in the Fiqh texts." Van Doorn-Harder, *supra* n. 9, at 61 (quoting Martin Van Bruinessen, *Traditions for the Future: the reconstruction of traditionalist discourse within NU*, in *Nahdlatul Ulama, traditional Islam and modernity in Indonesia* 165 (Greg Barton & Greg Fealy eds., Monash Asia Inst. 1996).

indiscriminately denounce all non-Muslims as unbelievers and their solutions as unacceptable.³¹ Some extremists even react by forcing women into seclusion to protect them from the influence of the “non-believers.”

These harsh measures, including violent behavior against “defiant” women or against the “infidel others,” result from rationales based on a *Hadith* that states: “God is pleased with two men, one kills the other; they both enter heaven.”³² It is necessary to realize that these measures evolved because some Muslims quote part of the *Hadith* out of context, ignoring the other part that states: “the first was fighting in the cause of Allah, gets killed, and hence receives his reward, and the other repents, fights in the cause of Allah, and gets killed as a martyr.”³³ Furthermore, it should be noted that another narrative concerning two Muslims killing each other states: “If two people killed each other, both go to hell.”³⁴ It is perplexing how some Muslims out of zealotry truncate part of some narratives in order to justify their behavior for their populace. Unfortunately, the uninformed majority of Muslims accept such narratives without being able to verify their accuracy, context, and corroboration with the Qur’an; consequently, they also accept the consequent improper application and its dire implications.

The Qur’an clearly shuns violence as a means to achieve justice. It distinguishes the struggle for justice (*jihad*) from fighting (*qital*).³⁵ Since Islamic behavior is a manifestation of the moral intention of the individual to fulfill his/her obligations (*taklif*),³⁶ and since gender is a social construct, it defies the purpose of Qur’anic justice merely to focus the discussion of reform on either the political/legal or the gender aspects of global and domestic violence. To change attitudes about martyrdom or violent struggle to attain justice, or the conceptions concerning women’s seclusion and domestic violence, we need to understand how certain moral essentialism has evolved away from Qur’anic rationality that emphasizes the relation between rights and responsibility.³⁷ As a result of moral essentials, Muslims emphasize responsibility while ignoring the basic duty to comprehend the true essence of the Qur’an before carrying on any responsibility. Once we

31. Sayyid Qutb & Jamal al Banna, *supra* n. 6.

32. <http://www.al-islam.com/arb/> (Arabic) (accessed Mar. 27, 2009).

33. *Id.*

34. *Id.*

35. Muhammad Shahrur, *Tajfif Manabe’ al-Irhab (Drying-up Sources of Terrorism)* 20 (al Ahali 2008) (Arabic) (on file with author).

36. Majid Fakhry, *Ethical Theories in Islam* 151 (E.J. Brill 1991).

37. “Layukalif Allah nafsa illa wis’aha . . .” (On no soul doth God place a burden greater that it can bear . . .). Qur’an, Surah 2, al Baqara 286.

have seen how this happened, the relation between historical events and Muslims' behavior in the present will be clearer, and we will have a better understanding of³⁸ how non-Muslim approaches (civil or military) are (or are not) contributing to changing these attitudes.³⁹

Social systems in Muslim communities are often built on deduction instead of induction. By ignoring Qur'anic expectations on each individual to carry out his/her own responsibilities (*taklif*) (though the Qur'an does not burden a believer above what s/he is capable), Muslims developed rationales for unjust behavior on the basis of deduction from precedent. As preachers continue to warn every Friday against introducing innovative ideas (*bida'*), Muslims, especially women, have surrendered their responsibilities completely and have become reliant on others' interpretations instead of exercising their rights to learning and coming to their own understanding of Islam.

V. THE ARGUMENTS: WHO HAS THE POWER TO ADDRESS THESE ISSUES, AND WHO BENEFITS FROM SUCH DISCUSSIONS IN MUSLIM COMMUNITIES?

If bridging Islamic and Western perceptions of reform aimed at social and political justice is to be achieved, we need to create an approach to generating knowledge wherein both women and men define transformation toward a just, participatory society respectful of individual autonomy. Currently, only the state has the legal power, while religious institutions have the power of cultural heritage, and society has customary power. Hence, Muslim women (and men for that matter) do not have direct access and conscientious knowledge of Islam (what I termed self-identity with the Qur'an). This access to Islam is needed not only as part of their religious experience but to help them determine a civic order that respects natural laws.⁴⁰ Conscientious knowledge leads to autonomous ethical action and self-governance with or without the intermediary of institutionalized social, religious or legal

38. Aili Mari Tripp, *Challenges in Transnational Feminist Mobilization*, in *Global Feminism: Transnational Women's Activism, Organizing, and Human Rights* 296 (Myra Marx Ferree & Aili Mari Tripp eds., NYU Press 2006) (explaining how the elimination of the political Caliphate caused the elimination of individual Khalifa, i.e., taking responsibility and being involved in civic affairs).

39. Albrecht Fuess, *Islamic Religious Education in Western Europe: Models of Integration and the German Approach*, 27 *J. Muslim Minority Affairs* 215 (Aug. 2007), states that European models of integration "follow mainly the existing example of state-church relations," thus ignoring that "Islam is organized quite differently from other religions that they have dealt with in the past." *Id.* at 215 (in Abstract).

40. I here distinguish between civic order being clearly outlined in the Qur'an and the ongoing debate on political order of the state by political scientists, such as Bassam Tibi's assertion that the latter is not spelled out in the Qur'an. See Tibi, *supra* n. 23, at 101.

authorities. Unfortunately, under the current systems, individuals, particularly women, are not exercising their own agency. Consequently, only the agent of the state, the religious institutions, and the patriarchs themselves benefit from exercising the power to address such issues.⁴¹ As stated earlier, according to the Qur'an, the individual Muslim is not bound legally by Islam unless s/he has consciously understood and accepted its moral principles. As long as individuals, particularly women, are not exercising their own agency, we cannot hold them accountable for accepting the "other's" agency, or for sustainable change.

Autonomous morality (not meaning individualism) helps one realize her/his own agency and therefore realize the other's agency: It will be the grounding norm with which I address trends affecting (a) the structure of domestic life, including conflicts between market democracy and current interpretations of Islamic individual liberty; (b) the decline in social and political self-governance in Muslim societies that has resulted mainly from Muslim neglect of the pedagogy of Islamic ethics; and (c) the gradual erasure of mutual consultation, or Shura (Qur'an, Surah 42, al Shura: 38) as the central egalitarian process for developing and reforming Islamic thought and culture.⁴² I am, in essence, answering my three questions: (1) Are the rationales for American and/or European governments' interventions justified?; (2) Can the discipline of civil law help in rethinking Islam for Muslims?; and (3) Are Muslims themselves ready to discuss critically the use and misuse of Islam's primary sources (the Qur'an and particularly the *Hadith*) in their rethinking of Islam?

(1) The Structure of Domestic Life. The secular and feminist schools are pushing toward liberal openness for women's lives, but colonial hierarchical attitudes and the nation-state system push toward the politics of difference, in what I call the democratic paradox.⁴³ The danger of venerating or blaming religion for existing difficulties by claiming to speak on behalf of Muslims, particularly Muslim women, makes the need for women's participation in shaping Islamic thought more obvious. Recognizing that reinterpreting scripture is not enough,

41. An excellent example is the unprecedented furor in inter-religious conferences that are taking place even as part of the UN General Assembly activities. Donald H. Argue & Leonard A. Leo, *The Saudis' Dubious Interfaith Agenda at the UN*, <http://www.csmonitor.com/2008/1113/p09s02-coop.html> (accessed Mar. 20, 2009).

42. Barazangi, *supra* n. 2, at 121-123.

43. Nimat Hafez Barazangi, *Understanding Muslim Women's Self-Identity and Resistance to Feminism and Participatory Action Research*, in *Traveling Companions: Feminisms, Teaching, and Action Research* 21 (Mary Brydon-Miller, Patricia Maguire, Alice McIntyre eds., Praeger 2004).

Muslim women scholar-activists also realized that centuries-old reform attempts brought only temporary and partial solutions.⁴⁴ By either over emphasizing or neglecting the religious aspects of Islam without paying attention to its rational and ethical foundations that affect behavior, the so-called “saviors,” “reformists,” “secularists,” and “Islamists” added to the problems rather than solving them.

For example, in November 17, 2001, First Lady Laura Bush stated in a radio address: “Because of our recent military gains in much of Afghanistan, women are no longer imprisoned in their homes. . . . The fight against terrorism is also a fight for the rights and dignity of women.”⁴⁵ Despite this claimed liberation, in November 2, 2002, Reuters reported that the Afghan Supreme Court dismissed a female judge (Marzeya Basil) for not wearing a headscarf during a meeting with President Bush and his wife in October 2002.⁴⁶

Similar events have been taking place from the time of the missionaries in the late eighteenth century⁴⁷ to the latest U.S. claim of liberating Iraq, particularly for Iraqi women who have actually lost most of what they have gained before and during the regime of Saddam Hussein. What is significant here is that, after the invasion, the United States’ interference in drafting the Iraqi constitution allowed for extremist Muslim clerics to slip in “Muslim rulings (*Marji’ia Islamiya*)” as the basis for developing radically different laws. Such laws are those that have helped harm women in the past!⁴⁸

As a result, women have not only lost their agency, they have also been robbed of the capacity to determine their own destiny. Consequently, gender justice was never achieved. Whether those in power are interpreting the Qur’an or the ideals of Western democracy, they assume that women should have proxy morality. Women are still

44. Nimat Hafez Barazangi, *Muslim Women’s Islamic Higher Learning as a Human Right: Theory and Practice*, in *Windows of Faith: Muslim Women Scholar-Activists in North America*, *supra* n. 25, at 22.

45. Laura Bush, *Radio Address by Laura Bush to the Nation*, http://web.archive.org/web/20011117-20011117re_/http://www.whitehouse.gov/news/releases/2001/11/20011117.html (accessed Mar. 27, 2009).

46. On April 22, 2003, Reuters quoted Loubna Freih, the U.N. Human Rights Commission Representative, reporting to the Commission that was ending its annual six-week session in Geneva, that “The international community has allowed warlords and local military commanders to take control of much of the country” by maintaining law and order in some places through the creation of “a climate of fear, not unlike under the Taliban” only 18 months after the U.S. forces toppled the Taliban regime, *Afghanistan: “Climate of Fear” Growing*, <http://feminist.org/news/newsbyte/uswirestory.asp?id=7734> (accessed Mar. 25, 2009).

47. Henry Harris Jessup, *The Women of the Arabs* (C.S. Robinson & Isaac Riley eds., Sampson Low, Marston, Low & Searle 1874).

48. Bill Steele, *Cornell scholar has role in drafting disputed Iraqi constitution*, <http://www.news.cornell.edu/stories/Aug05/Barazangi.Iraq.html> (accessed Mar. 20, 2009).

being treated as a minority group and as secondary to men in the religious, intellectual, social, legal and political structures. This proxy morality is based on the interpretation, or misinterpretation, of Qur'anic verses 4: 34 and 2: 228,⁴⁹ in which the interpreters rely principally on *Hadith* wherein women are described as lacking mental capabilities and religious conviction.⁵⁰ That is, as I explained in my 2004 book, the claim of men's moral guardianship and superiority over women is based mainly on the concepts of *Qawamah* and *Darajah*, meaning responsibility toward the woman and a degree or an edge of an added responsibility in verses 4:34 and 2:228, respectively. In order to interpret them, we need to put these verses in the contexts of their chapters, as well as in the context of the Qur'anic concept of *Khalifa* (trusteeship), and the meaning of God in such verses as "In the name of Allah, the Beneficent, the Merciful, and Guardian of the universe" (1:1-2). The *Qawamah* in 4:34 only implies the domestic and financial obligation vis-à-vis the woman's biologically essential role of procreation. The variation in the *Darajah* in 2:228 among men and women (God has bestowed differently among individuals) only indicates an added responsibility for the male when he initiates the divorce process. The relationship between the meanings of verses 4:34 and 2:228, Islamic justice and human Vicegerency, is summarized in verse 4:32, "Do not enviously wish for that which God proffered on some and not on others. Men and women, to each belong the works they have personally accomplished."⁵¹ That is, although Islam regards men and women as created for different but complementary biological functions, it does not specify these functions, nor does it generalize them to other intellectual, moral, or social roles.

To facilitate women's movement from the predominantly male interpretations of Islam, the Islamic principle of trusteeship (Surah 2, al Baqara: 30), must be made explicit. By this I mean that each individual is recognized as a witness to the message and, hence, has a responsibility to understand the message before s/he is able to practice it fully. Understanding the message requires that women be allowed an autonomous choice of identity, that they participate in intimate learning of the Qur'an, and they make as independent choice of Islam as their worldview.

49. See further explanations in Barazangi, *supra* n. 2, at 52-53.

50. <http://www.al-islam.com/arb/> (Arabic) (accessed Mar. 27, 2009).

51. Barazangi, *supra* n. 2, at 73 (quoting Ali Yusuf translation of the Qur'an, with some change in vocabulary).

By contrast, Islamists have made community customs the governing principles for Muslims, precluding the primacy of autonomous morality as a form of self-governance. For example, as a result of the harassment that some Muslim women encountered after September 2001, the American Muslim Women's League (MWL) asked a male Imam if it is acceptable for women to remove their head-covering under such extreme conditions.⁵² Such action is, in my view, degrading because it suggests that a woman needs permission from males to correctly order her modest public appearance. It also shows that the individual's credibility is measured by her willingness to engage in accepted social performance instead of self-determined behavior. This request for a ruling is especially perplexing because the MWL itself was leading a U.S. delegation to investigate and defend human rights of Bosnian women in the late 1990s.

The guidance of the Qur'an is that, when there is a conflict, the community's collective welfare takes precedence over individual rights. However, the individual who does not protest unjust solutions is not affirming his/her agency that is essential to practicing Islam. A critique using the values of self-identity and self-governance demonstrates the misuse of *Hadith* resulting in unjust conceptions of gender, agency, and leadership as evidenced by the following story.

Fatima, the daughter of the Prophet, was reported to have challenged the first Caliph, Abu Bakr, when he refused to give her the due share from her father's estate. Though the report represents a form of egalitarian process affirming Muslim women's agency, this representation has been altered by Muslim patriarchs by their misuse of a narrative attributed to Prophet Muhammad: "We [prophets] do not have heirs, what we leave is charity," as reported by Ibn Sa'd.⁵³ The majority of Muslims view the narrative as referring to the material inheritance of the Prophet in order to justify Abu Bakr's behavior because they idealize him as a male companion. As I have explained Ibn Sa'd's narrative in my book,⁵⁴ this interpretation distorts the intention of the narrative to forbid inherited leadership as a form of governance, as well as to recognize Muslim women's agency from within Islam.

The majorities of today's Muslims do not consider or practice the values of self-identity and self-governance as part of the Islamic ethos,

52. Muslim Women League Newsletter (2001) (on file with author).

53. Ibn Sa'd, Muhammad (ca 784-845) *Kitab al-Tabaqat al-Kabir* 8:18 (Brokelman ed., Brill 1904/AH1321) (Arabic).

54. Barazangi, *supra* n. 2, at 41.

but we have evidence that Muslim women's groups that operate with these values have achieved some form of effective intellectual and civic participation despite the historical and cultural constraints that have dominated their Muslim societies.⁵⁵ As evidenced by the preceding examples, even the American experiment in democracy has not been able to protect its own citizens from discrimination. To the contrary, the U.S. has retreated in times of crisis to oppressing minority groups, exactly as Alexis de Tocqueville feared would happen.⁵⁶

Indeed, as we have seen, the American response to Islam, including its perception that Muslim women need to be rescued from Islam, is not valid.⁵⁷ "Mainstream" literature concerning reform in Muslim societies and in defense of Muslim women's rights has also overlooked the importance of Muslim women's scholarship-activism from within the Qur'anic framework.⁵⁸ Instead, the value of Muslim women's scholarship continues to be marginalized despite claims by the West (or perhaps because of those claims) that it is "liberating" Muslim women and speaking on their behalf. This marginalization is compounded by feminists who use feminism as the central paradigm in analyzing issues facing Muslim societies, particularly gender issues.⁵⁹

(2) Surmounting Particular Politics. How could we rethink Islam for Muslims while excusing the influence of chaotic post-colonial historical and political dynamics, such as the dominance of monarchical, dictatorial regimes in most of the Muslim countries? We should not remain satisfied with retrofitting—fixing a faulty structure with new parts not available at the time of construction. We cannot afford to incorporate "new" ideas into existing theories and pseudo-democratic practices. Rather, we should fundamentally change the very practices and theories themselves. One example of this retrofitted reform that I

55. Nimat Hafez Barazangi, *Self-Identity as a Form of Democratization: The Syrian Experience*, in *Democratization and Women's Grassroots Movements* 129-149 (Jill M. Bystydzienski & Joti Sekhon eds., Ind. U. Press 1999).

56. Alexis de Tocqueville, *Democracy in America* 346 (Henry Reeve trans., Regency Publ. 2002).

57. I specifically address the missionary literature and the literature that deals with legal change based solely on human rights perspective, such as Ann Elizabeth Mayer, *Aberrant 'Islam' and Errant Daughters: The Turbulent Legacy of Beijing in Muslim Societies*, in *Muslim Women and the Politics of Participation* 29 (Mahanz Afkhami & Erika Friedl eds., Syracuse U. Press 1997).

58. I specifically address the literature that deals with legal change through secular laws, such as the work of Valentine Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (L. Rienner 2003).

59. See e.g. Elizabeth W. Fernea, *In Search of Islamic Feminism: One Woman's Global Journey* (Doubleday 1998); Interview with Margot Badran, *Islamic Feminism Is a Universal Discourse* (2005) (available at Qantara de: Dialogue With the Islamic World, http://www.qantara.de/webcom/show_article.php/_c-307/_nr-26/_p-1/i.html).

argue against is setting up parallel historical tracks of different groups' interpretation of the Qur'anic verse (Surah 4, al Nisa: 59) instead of analyzing these interpretations.⁶⁰ That is, the majority of traditional interpretations theorize that the verse 4/59—"ya`ayuha alladhin amanu, 'ati'u Allah wa'atiu alRasoul wa`uli alamr minkum . . ." (Oh, who you believe! Obey God, the Prophet, and those charged with authority among you)—means that the authority of governance lies equally in the three referenced agents: God, the Prophet, and those charged with authority. As a result, traditionalists refuse to question political and religious leaders. The Qur'anic meaning of (Obey God, the Prophet, and those charged with authority among you) is to demonstrate the sequence of sources to be used for determining the governing process, i.e., seeking primary guidance from the Qur'an, and only after that should the prophetic extrapolations be consulted, as evidenced in the rest of the verse: "fa`in tanaz'tum fi shi` fa-ruduh `ila Allah wa-alRasoul . . ." (and if you disagree on something, then seek guidance from God and the apostle). Modern Muslims in general have reversed this sequence. They have also misinterpreted the phrase, (those charged with authority among you), to mean [those who govern the affairs of Muslims] instead of [those who have the authority of knowledge and are of a just character]. This priority of authorities is evidenced in the Qur'anic verse: "wa-alladhin itakhdu min donihi awliya`, Allahu hafidh 'Alim, wa-ma-ant 'alyhem bi-wakil" (Those who take as protectors [guide] others beside Him, God watches over them; and thou (the Prophet) are not the disposer of their affairs) (Surah 42, al Shura: 6). Such interpretations extend the authority of the governing leaders to mean blind obedience to male rulers by the misuse of the *Hadith* which states: "My guide (*Wali*) is Allah and the righteous believers."⁶¹ Muslims ignore the fact that this extension contradicts the Qur'anic verse above. Unfortunately, these misinterpretations are also reinforced by Western colonials who kept intact pseudo, weak Euro-American-centered modern governing structures.

Contemporary laws (wrongly known as *shari'a* laws) that are practiced in Muslim societies are neither morally binding nor valid in space and time. In place of this weak legal structure, I propose to reexamine the existing heritage of Islam and rewrite new interpretations to integrate the histories and conversations of those groups who have made up the Muslim community. Both the theory and practice of

60. Referenced to in most of the Muslims polemic literature, including contemporary writers, such as Yusuf al Qaradawi, *supra* n. 6.

61. *Sahih Bukhari*, book of Adab, 5531, *Al-Bayan*, CD (Harf 1998, Version 2.0).

Islamic egalitarianism are necessary for achieving justice, and for transforming the global policy-making process from one governed by the demands of the “patriarchal super power” and its dictator-allied structure to an autonomous self-governing structure that is based on ethical and rational pedagogy within Muslim societies.

Two basic principles are necessary to understanding Islamic dynamics as “egalitarian.” First, an individual’s freedom of expression extends to the responsibility of rejecting any human-made rules if they contradict Qur’anic guidelines, once the individual consciously understands and chooses Islam as a worldview (*Deen*). Second, governance by the people is attained through mutual consultation (*Shura*) and determined by consensus, not solely by election or by majority representation. This form of egalitarianism calls for individuals to attain self-realization as an autonomous, moral, political, and legal entity. As a prerequisite to change for social justice, it also calls for recognition, that women must gain such identity. Further, it calls for a rejection of the worldview that considers Muslim women’s identity and morality as dependent on their male household,⁶² for matters from consummation of the marriage contract⁶³ to their exclusion from political and religious participation and civic affairs.⁶⁴

(3) Contemporary discourse that proposes “democratizing” Muslim legal systems without understanding earlier colonial and missionary power that claimed to “civilize” Muslims, particularly the women, is problematic because it misunderstands the role of Prophet Muhammad. This discourse is exacerbated by the unwillingness of Muslims to critically address the confusion between Qur’anic principles and *Hadith*, and between these principles and the practiced jurisprudence rules. Montgomery Watt wrote:

62. Barazangi, *supra* n. 54, at 132.

63. It is interesting to see how Muslims ignore an authentic narrative attributed to the Prophet in which he says (in al Turmudhi, 1026 (Barazangi, trans.), <http://hadith.al-islam.com/> (Arabic) (accessed Mar. 27, 2009)): “On the authority of Malik Bin Anas, The prophet said: the widow has more right in her affairs than her guardian, and the virgin may give her own permission, and her permission is her silence,” meaning that a woman can marry herself. Meanwhile they emphasize a weaker narrative which actually does not negate the previous narrative, but rather emphasizes the presence of a guardian (in *id.* at 1020): “On the authority of Ibn Ishaq that the Prophet said: ‘No marriage without a guardian’ meaning that a marriage may not be consummated without [the presence] of a guardian.”

64. I specifically draw attention here to Muslim societies’ treatment of women as perpetual minors by requiring the approval of a male guardian (even their own sons) of their affairs. See the report *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*, <http://www.hrw.org/en/node/62251/section/1> (accessed Mar. 20, 2009).

For the Occidental, there are grave difficulties in attaining a balanced understanding of the historical role of Muhammad. The most serious of these is that the dominant conception of religion as a private and individual matter leads Occidentals to expect that a religious leader will be a certain kind of man, and it is disconcerting to find that Muhammad does not conform to this expectation. For Muhammad, religion was the total response of his personality to the total situation in which he found himself.⁶⁵

Watt's description of the Prophet of Islam could also represent the relation of the political/legal to the religious and the intellectual in Muslim thought, ethos, and governance. Yet, contemporary Occidentals and some Muslims clearly misunderstand these relations when they talk about reform in the Muslim world that separates the religious (faith and ethic) and the secular (civic and political). This misunderstanding seems to stem from fixation on the pathological behavior of some Muslim groups, particularly those who call themselves "Islamists," and then generalizing that behavior to the rest of the Muslim population.⁶⁶

The confusion in Islamic sources might be illustrated by contemporary readings of action taken by the Prophet before his death. At his death-bed Prophet Muhammad chose Abu Bakr, his companion, to lead the collective prayer. Muslims, in general, because of their biased views of women, have ignored the dynamics of the Qur'an that recognizes all humans as trustees (*khulafa*) of the message of Islam.⁶⁷ Instead, most Muslims have interpreted the choice of Abu Bakr as favoring males over females in political and religious leadership, thus solidifying the choice as a binding precedent. They do not realize that the Prophet's choice of Abu Bakr was merely in response to the social and political situation in contemporary Arabia. Present-day Muslims even use a weak *Hadith*, "No nation will succeed under the leadership of a woman," to justify denying women religious and political leadership.⁶⁸ Indeed, as we will also see in the scholarship of Ingrid Mattson favoring

65. Montgomery Watt, "Muhammad," in *The Cambridge History of Islam* vol. 1, ch. 2, 30 (P.M. Holt, Ann K.S. Lambton, Bernard Lewis eds., Cambridge U. Press 1970).

66. The most recent of these views is expressed in Bassam Tibi, *Political Islam, World Politics, and Europe* xii (Rutledge 2008); and is propagated by other European Muslim scholars such as Asif Bayati's lecture, *Making Islam Democratic: Social Movement and the Post-Islamist Turn* (Cornell University, Oct. 29, 2008) (based on his book with the same title, Asif Bayati, *Making Islam Democratic: Social Movement and the Post-Islamist Turn* (Stanford U. Press 2007)). Both authors, in their efforts to distinguish between Islam and "Islamists," have, perhaps unintentionally, created a rift between morality and politics within the Islamic faith.

67. Qur'an, Surah 2, al Baqara: 30.

68. Barazangi et al., *Connecting the Ideal to Practice*, in *Islamic Identity*, *supra* n. 1, at 41, 44 n. 1.

male leadership and Asma Afsaruddin's treatment of the subject, some female scholars are also generally influenced in this direction by *Hadith*.

In the same way, baseless justifications founded in questionable sources continue to haunt Muslims to the point that they separate the political and the religious from the intellectual in interpreting the governing principle of mutual consultation, or *Shura*.⁶⁹ The gradual erasure of mutual consultation as the central process for developing Islamic thought for both domestic and community relations has resulted in limiting the consultative power to males in communal leadership, creating another rift within and between the domestic (private) and the communal (public).⁷⁰ This confusion still dominates Muslims' behavior, resulting in partial solutions to domestic issues and inviting the interference of Occidental (Western) governments who think that democratization of the Muslim world requires separation of the religious and the secular.⁷¹ Lately, the ruling majorities in these governments have even shown the desire to liberate Muslims from Islam or to "liberate Islam" itself.⁷²

VI. CHALLENGES FACING THE CONTEMPORARY PROCESS OF RETHINKING ISLAM: WHEN MAY MUSLIMS BE READY TO CHANGE AND WHAT WOULD BE THE COURSE OF ACTION?

One might wonder why I am undertaking this task of attempting to change the prevalent premises and paradigms in rethinking Islam, both among Muslims and non-Muslims. In my recent book, *Woman's Identity and the Qur'an: A New Reading*,⁷³ I focused on developing self-identity in relation to the Qur'an, the primary source of Islam, as a means for women to regain their rights from within and to reassert their authority in reinterpreting Qur'anic gender justice. My book and other similar works⁷⁴ have begun to take hold among some intellectual

69. Qur'an, Surah 42, al Shura: 38.

70. Barazangi, *supra* n. 2, at 10, 104-105.

71. The recent cases in Germany and France of Muslim women's divorce are glaring examples. See for example the story, *With Pop's visit, Sarkozy challenges French secularism*, <http://www.csmonitor.com/2008/0915/p01s01-woeu.html?page=2> (accessed Mar. 20, 2009).

72. See e.g. Issues of Hijab in France and the interference of European governments in teaching Islam in schools, or of the Americans in changing the curriculums in Pakistan, Saudi Arabia, and Morocco.

73. Barazangi, *supra* n. 2.

74. Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (U. Texas Press 2002); Riffat Hassan, *Muslim Feminist Hermeneutics*, in *Our Own Voices* 455 (Rosemary Skinner Keller & Rosemary Radford Reuther eds., Harper 1995); Amina Wadud, *Qur'an and Woman: Reading the Sacred Text from a Woman's Perspective* (2^d ed., Oxford U. Press 1999).

Muslims, but some elitist males and the masses of Muslims still use, or misuse, the “Prophetic tradition” to justify the existing biased practices.⁷⁵ I recommend four necessary actions if we are to (a) better understand Islam, (b) help change attitudes about Muslim women, gender justice, and the views of the “other,” (c) support the participation of the young generations of Muslims in Western cultures, and (d) achieve justice that will subsequently result in peaceful and just intercultural relations. These recommendations are the change in premises and paradigms of understanding Islam, the acceptance of women scholars’ authority to interpret the Qur’an, the interpretive connection between historical and contemporary times, and the incorporation of Muslim women’s scholarship into the mainstream sources of Islam.

A. When We Change the Premises and Paradigms of Understanding Islam

The first necessary step in recovering the Islamic heritage is to change the paradigm and the premises about the meaning of Islam. Islam is neither a law nor a dogma. Islam is basically a system of religio-moral-rational guidance.⁷⁶ It is an action-oriented worldview that encompasses social, cultural, and political elements, including religious and secular reasoning (*Ijtihad*). I capitalize on this worldview’s reliance on the human capacity to reason to reconstruct a fair decision-making process that brings equilibrium (*Taqwa*) to individual and communal relations. In the process, I show how the tension within the domestic relationship is reflected in tensions of national and international relationships and vice versa. In addition, by addressing the tensions between liberal- and feminist-generated conceptions of democracy, on the one hand, and the Western fundamentalists’ claim to be liberating Muslim women⁷⁷ while they refuse women’s rights in their own societies,⁷⁸ I also show how both Muslims and non-Muslims ignore Muslim women’s egalitarian participation.

75. Ingrid Mattson, the Director of Hartford Seminary, and the first woman president of (ISNA), “supports male privilege in leading prayers, based on her understanding of Sunnah (Muhammad’s example),” <http://www.mecca.com/modules/lifestyle/print.php?id=1432&lang=english> (accessed Mar. 20, 2009).

76. See Barazangi, *supra* n. 2, at 9, 48.

77. See text accompanying *supra* n. 46.

78. Exemplified in Barbara Finley’s “critique of President George W. Bush, whom she argues has waged a war against women on many fronts.” Elizabeth Esterchild, Book Review, 22 *Gender & Socy.* 824 (2008) (reviewing Barbara Finley, *George W. Bush and the War on Women: Turning Back the Clock on Progress* (2006)).

The erroneous view of Islam as a legal system is also influenced by the Christian missionary emphasis on elite-male leadership. Hence, the proposed solution often results in more conflict. An excellent example is the Western misunderstanding of the difference between Islamic guiding principles and what is known as “Islamic law” or “*shari’a* law,” as typified by the Archbishop of Canterbury’s statement on February 7, 2008.⁷⁹ He suggested that British lawmakers should come to some “accommodation with some aspects of Muslim law, as we already do with aspects of other kinds of religious law.” His statement exhibits a gross miscalculation of its consequences, not only for England, but for Muslims and non-Muslims around the globe. Present Muslim legal systems consist predominantly of centuries-old interpretations and customary practices by Muslim males that were transformed into “law” with the support of the colonial common law systems to subdue the conservative Muslim male leaders at that time.⁸⁰ Has the Archbishop forgotten the hardship that women have been suffering since similar rulings were imposed on Muslims and other religious groups by the British and other colonials during the nineteenth and twentieth centuries?⁸¹

Similarly, Islam has been presented by the Western academic and theological writings and policy-makers as a coherent and homogeneous religious experience.⁸² The everyday reality of Muslim communities in different parts of the world renders such conceptualization of Islam highly problematic.⁸³ We cannot separate what is ethical from the political (or legal) in the analysis of Muslim cultural issues.⁸⁴ It is also imperative to realize that in Western notions Islam is assumed to affect the everyday lives of Muslims, including their religious experience. However, the day-to-day life of a Muslim who is born to Muslim parents

79. “Archbishop of Canterbury Surrenders to Islamic Law,” <http://thoughtsongod.wordpress.com/2008/02/09/archbishop-of-canterbury-surrenders-to-islamic-law/> (accessed Mar. 20, 2009).

80. Wael B. Hallaq, *Can The Shari’a Be Restored*, in *Islamic Law and the Challenge of Modernity* 21 (Yvonne Haddad & Barbara Stowasser eds., Alta Mira Press 2004).

81. Varsha Chitnis & Danaya Wright, *The Legacy of Colonialism: Law and Women’s Rights in India*, 64 Wash. & Lee L. Rev. 1315 (2007).

82. Svetlana Peshkova, Sp. 2008 syllabus, *Anthropology of Islam: Everyday lives of Muslim women and men in different contemporary communities*, Syracuse University (Religion 400), <http://religion.syr.edu/syllabi/Spring2008/REL400LanaSp08.pdf> (accessed Mar. 20, 2009).

83. Saba Mahmood, *Feminist Theory, Agency, and the Libratory Subject*, in *On Shifting Ground: Muslim Women in Global Era* 111 (Fereshteh Nourai-Simone ed., Feminist Press 2005).

84. The conflict resulting from the proposal to introduce *shari’ah* in Canadian law is a good example here. See e.g. Anna Korteweg, *The Sharia Debate in Ontario: Gender, Islam, and Representations of Muslim Women’s Agency*, 22 Gender & Socy. 434 (2008).

has been mainly governed by what is known as “popular Islam.”⁸⁵ That is, excuses of biases are based on some rationales that have no basis in the Qur’an.

B. When We Accept Muslim Women Scholars as Authorities in Reinterpreting Islamic Sources

A second necessary step is to regain the voices of women scholars of Islam. A different understanding that places traditions in their proper context and as secondary to the Qur’an, which I have worked to bring about, may help defuse or modify the highly charged emotional (both Oriental and Occidental) public opinion that ignores the Qur’anic call for a peaceful struggle to attain justice. These uninformed emotional opinions are reflected in how Muslim female scholars’ leadership and appeals have been most affected by the misuse of *Hadith*. In fact, *Hadith* is often extended to mean “the Tradition that contains the sayings and deeds of the Prophet Muhammad and his companions.”⁸⁶ The *Hadith* often quoted to demonize the role of women’s participation in the community affairs claims that women lack necessary mental capabilities or religious convictions. What is disturbing is that no one seems to notice that the same *Hadith* commentator quotes a Qur’anic verse concerning female witnesses, without realizing that the *Hadith* narrative contradicts what is in the Qur’an.⁸⁷

The second step, therefore, is to assert Muslim women’s moral autonomy and agency, as well as the right and responsibility of every individual Muslim to understand the Qur’an without an intermediary. Unfortunately, even when women develop their own reform movements and/or interpretations, from the works of ‘Aisha ‘Abd al Rahman (pseudo Bint al Shati’)⁸⁸ and Fatima Mernissi,⁸⁹ to those of Amina Wadud,⁹⁰ traditional female preachers and leaders, from Zaynab al Ghazali⁹¹ to Ingrid Mattson, continue to emphasize the perception of

85. Edith Szanto Ali-Dib, *On the Quest for ‘Truth’ in Damascus*, VIII Syrian Stud. Assn. Newsletter 8 (Winter 2008) (available at <https://ojcs.siue.edu/ojs/index.php/ssa/article/viewFile/22/62>).

86. Pieternella Van Doorn-Harder, *supra* n. 9, at 2.

87. <http://Hadith.al-islam.com/display/Display.asp?Doc+0&Rec+4181> (Arabic) (accessed Aug. 28, 2008).

88. Bint al Shati’ (pseudo name for) ‘Aisha ‘Abd al Rahman, *al Mafhum al Islami li tahrir al mar ‘a* (al Qahira 1967) (Arabic).

89. Fatima Mernissi, *Beyond the Veil: Male-female Dynamics in a Modern Muslim Society* (Schenkman Pub. Co. 1975) and *Islam and Democracy: Fear of the Modern World* (Mary Jo Lakeland trans., Perseus Publg. 2002).

90. Amina Wadud, *supra* n. 73.

91. Zaynab al Ghazali, *Humum al mar’ah al Muslimah wa-al da’iyah Zaynab al Ghazali* (Dar

women's role as complementary. Because of them, the status quo is not changed and injustice persists.

Muslim women need to speak for themselves, especially on issues related to religious and public policies. Thus, we should accept Muslim women scholars as authorities, mainly in interpreting the Qur'an from within its own framework. Although the antagonistic cultural encounter between Muslims and Westerners has helped bring some Muslim women's voices to the surface, the time has come for these women to take the initiative in order to change Muslim dogma from within. By shifting the practice of Islamic jurisprudence from being limited to male elite dogmatic pronouncements into a community-based consultative practice, Muslim women will be able to change attitudes and customary practices. Building on these, they can subsequently establish a viable social order that is ethically based and noticeably different from traditional law-making legislation.

C. When We Connect the Historical to the Contemporary

The third step is to discuss the interpretive connection between historical and contemporary times because Muslims, like any other religious group, influence and are affected by global political and historical dynamics. We need to do so in order to understand and transform the unjust conditions in Muslim societies and before we can change the discourse of reform that will accomplish peaceful and just co-existence among Muslims and between Muslims and non-Muslims. For example, just as the American government is trying to "democratize" the Muslims of the Middle East, and as Europeans gradually move away from the nation-state institutions and attempt to integrate and/or assimilate Muslims into their societies, Muslims around the world are also aspiring to move away from the imposed legal structure of the colonial nation-state. However, most Westerners want Muslims to adopt a "moderate Islam," or a "Euro Islam"⁹² without rethinking the Westerners' own nation-state hierarchical perspectives and structures. Meanwhile, the majority of Muslims want to decolonize

al I'tisam 1990) (Arabic).

92. According to Sabine Kroissenbrunner, *Islam and Muslim Immigrants in Austria*, 22 Immigrants and Minorities 188, 206 n. 30 (2003), Smail Balic, an Austrian of Bosnian origin (d. 2002) made the first step to introduce the concept of "European Islam" or "Euro-Islam," but the concept was not accepted by either of the two major Muslim organizations in Austria, the Islamic Religious Council of Austria and the Turkish-Islamic Union in Austria (ATIB); Bassam Tibi, *Islam Between Culture and Politics* 202 (Palgrave 2001) also uses the concept to promote accommodation over multiculturalism. He further comments on this term as being his in his 2008 works. *Supra* n. 23, at 94 n. 24; *supra* n. 65, at xiv.

their own culture without rethinking their own perspectives of Islam. By contrast, the few Muslim female scholar-activists who are capturing this momentum to reinterpret Islam's primary sources in order to take their place in the decision-making process within their Muslim communities and societies are hoping to implement a fundamental aspect of the social justice contract between Muslims and Islam. Indeed, this is an essential move toward achieving comprehensive human rights for themselves, as well as challenging the unwarranted, hijacked authority that Muslim men have held for about fourteen centuries.

D. When Women Speak for Themselves, Especially on Issues Related to Public and Religious Policies

I argue that by excluding women from the historical process of interpreting the Qur'an and the collection of *Hadith*, as well as other historical events, Muslim exegesis and jurists created a different and unequal level of religious participation for Muslim women. The result is that women have been denied the role of *Khalifa* (vicegerent) even though it is an *ipso facto* principle in accepting and practicing Islam.⁹³ This problem is compounded by the fact that most Muslims consider male exegesis and jurists' interpretive rules absolute and binding, eliminating women's role in developing Islamic thought and civic morality.⁹⁴ The absence of women from the public square and from participation in generating religious thought has caused them to lose their status as principals in the ethical and civic practice of the religion; thus, they have become objects of abuse. In essence, Muslim women have lost their own direct and intimate identification with Islam, the fundamental right and responsibility for each individual Muslim that enables him or her to determine his or her own destiny and that of his or her offspring.⁹⁵

The fourth step, therefore, is to accept women's leadership authority in religious and political affairs in order to incorporate Muslim women's scholarship on the Qur'an into mainstream sources on Islamic

93. Barazangi, *supra* n.1 at 77.

94. Amina Wadud, *Citizenship and Faith*, in *Women and Citizenship* 170-187 (Marilyn Friedman ed., Oxford U. Press 2005) states:

[G]ender disparity was an underlying characteristic in the development of Islamic *shari'ah* historically, which was the means for establishing the basic moral rights and wrongs, as well as the checks and balances to maintain them in the context of Muslim civil society. This *shari'ah* construction of women can only grant the female person a deviant status, insufficient for the completion of her *khilafah* before Allah: the ultimate purpose of her humanity.

Id. at 186.

95. Barazangi, *supra* n. 2.

thought and recognize them as central to any curricular or legal development process about Islam. Muslim women scholars, though relatively limited in number, are constructing new knowledge and new meanings of the Islamic worldview that are neither ethnic- nor gender-based. Through their teaching, they are exploring “the ways in which Muslim women have constructed, reassessed, and articulated Islam and their place within it.”⁹⁶ These women scholars are concerned with maintaining and/or regaining their identity and identification with Islam as a worldview and a belief system. Thus, they are affirming their agency and moral autonomy, as well as the ethical injunctions, as superior to legal enactments in the action-oriented Qur’anic gender revolution.⁹⁷

We must regain the relationship between the power of knowledge and social/ethical/political/legal constructs, with the goal of developing a process where women can learn for themselves how to improve their capacities and (with men) to control their destinies more effectively. To enable this capacity, Islamic communities must support women’s self-realization and self-determination through Islamic higher learning (i.e., deeper knowledge of Islamic guidance in the Qur’an). Women must regain the ability to bridge individual political consciousness and social action that will mitigate potential resistance by modernists and traditionalists, and prevent domination by extremists from the East or the West.

The ultimate goal of improving the capacities of women, and particularly of female scholar-activists, is to prevent extremists, Muslim or non-Muslim, from hijacking authority over Islam, and to achieve peace and justice. However, even female scholars’ reinterpretations have not helped much because the drastic change in the global political landscape since 2001 made conditions for the majority of Muslim women more dismal. Though the time is right for Muslim women’s peaceful, but firmly grounded in Qur’anic revolution for gender justice, there has been no change in assumptions and the discourse of understanding Islam and Islamic justice. Since this change is imperative, I propose to discuss how Muslims have arrived at the current meanings of justice, particularly their biased views of gender justice.

VII. CONCLUSIONS: HOW THE ISSUES ARE BEING ADDRESSED

The main implication of my recommendations is that we must

96. Kelly Pemberton, personal e-mail communication with the author, Aug. 2007.

97. See Barazangi, *supra* n. 2, at ch. 3.

change the prevalent premises and paradigms for reconstructing Islamic thought, as well as critiquing fundamentalists' choices of resources about Islam and intercultural policy making. With my alternative paradigm, I hope, we can also stop extremists from keeping hold over Islam. Though my proposed strategies are mainly intended to help Muslim women develop their capabilities to determine their own destiny, they will necessarily contribute to societal and attitudinal transformation among the next generations of Muslims. Eventually, these strategies will also help to educate self-identified young Muslims living under Western law and politics⁹⁸ and bring about a just order in the process of rethinking Islam from within.

The state expects change among its constituents, but no change in its own structure and hierarchy, nor change in its perception of the issues. Let me point out that modern perceptions of women's inferior role are often linked to the inherited traditional perception of struggle against injustice. That is, these concepts are often confused with concepts of killing, invasions, and the capturing of women to the point that martyrdom has become tied to protecting women from being molested and to death in battle.⁹⁹ These concepts, according to Shahrur¹⁰⁰ are closely related to restrictions on individual freedom of belief and expression. Similarly, traditional perceptions of Islamic moral-religious authority and political governance seem to be confused with kinship and patriarchy. According to Asma Afsaruddin,¹⁰¹ kinship and patriarchy are closely related to practices of leadership by the tribe arbitrator, contrary to Qur'anic criteria of leadership by a knowledgeable, just character.

Religious institutions too want immunity from change, but they expect individuals to be molded/indoctrinated within the traditional practice and interpretation of texts.¹⁰² Both Shahrur and Afsaruddin explain how Muslims have strayed from Qur'anic rationality in their

98. I borrowed this idea from Sherene H. Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* 5 (U. Toronto 2008), but I take an optimistic view of her argument. She argues that the stereotypical figures that came to represent the "war on terror" are promoted to justify "the expulsion of Muslims from the political community, a casting out that takes the form of stigmatization, surveillance, incarceration, abandonment, torture, and bombs." I hope that by deconstructing the arguments about the exclusive use of civil law to assess Muslims attitudes, we will be able to help facilitate a change in the prevailing perspectives of Islam. Consequently, Muslims may renounce violence as a means to achieve justice when they are included in the development of their own and that of Western law and politics.

99. One should not forget that the environment in which early *Hadith* was documented was an adverse and violent one too.

100. Shahrur, *supra* n. 35, at 19.

101. Asma Afsaruddin, *The First Muslims: History and Memory* 7 (One World 2008).

102. See *supra* n. 41 on inter-religious conferences.

interpretive practice. Shahrur talks about how Muslims equate the Prophet with God, while Afsaruddin discusses placing *Hadith* as the primary source before the Qur'an. Shahrur¹⁰³ suggests that such departures have resulted from placing the belief in the Prophet Muhammad, as stated in the Qur'an: "*Ya'ayuha al Nabi hasbuka Allah wa man itab'aka min al Mu'mineen.*" Ah Prophet, mind only God, and those of the believers who follow you)¹⁰⁴ at the same level as the belief in the Oneness of God: "*Qul Innama youha ilay anna ilahakum Ilahun Wahid, fa-hal antum Muslimun?*" (Say it was revealed to me that your God is One, will you be at peace with this, i.e., be Muslims?).¹⁰⁵ Afsaruddin¹⁰⁶ attributes such departures from the text to specific narratives given on the authority of Prophet Muhammad under specific political circumstances. She narrates a report, mainly by Shi'a and some Sunni sources, in which the Prophet supposedly said, "Of whomever I am a *mawla*, 'Ali is his *mawla* too." In this text, the Arabic word *mawla* (a derivative of the verb *waliya*) could have many interpretations: (master, patron, friend, client, taking charge, and protégé). The Shi'a sources, according to Afsaruddin,

consistently have interpret *mawla* as occurs in this report as "master" and "patron" and has adopted this *Hadith* as the principle proof-texts affirming the prophet's designation of 'Ali [the Prophet's cousin and son-in-law] as his successor.¹⁰⁷

Unfortunately, the Muslim female scholar Afsaruddin seems more keen on explaining that the emphasis of the early Shi'a reports on 'Ali's leadership was not necessarily because of his kinship to the Prophet, but because of his "unique virtues,"¹⁰⁸ rather than drawing attention to the absence of the first Muslim women, 'Aisha, Hafsa, and Um Salama who also had unique virtues. They had the most intimate knowledge of the Prophet's extrapolation of religious and political leadership.¹⁰⁹ Afsaruddin focuses on the absence of 'Ali while overlooking the absence of the early Muslim women from participation in this very

103. Shahrur, *supra* n. 35, at 29.

104. Qur'an, Surah 8, al-Anfal 63-64.

105. Qur'an, Surah 21, al-Anbya' 108.

106. Afsaruddin, *supra* n. 99, at 15.

107. *Id.*

108. Afsaruddin states, "According to the Mu'tazli pro-'Alid scholar, Ibn 'l Hadid (d. 1257), the supporters of 'Ali were the first to put into circulation reports that praised his unique virtues immediately after the death of the Prophet." *Id.* at 22.

109. Even when Asma Afsaruddin tries, in other parts of her book, *The First Muslims*, *supra* n. 99, at 73-74, to show the positive contribution of these early Muslim women to the community, her mention of 'Aisha, for example, was incidental to the issue of idealizing early companions at later sources.

important event in Islamic history. Thus, in effect, Afsaruddin has become a victim of her own thesis concerning Muslims' diversion from Qur'anic rationality by immersing herself into the discrepancies of narratives and the justification of a particular *Hadith*, and forgetting the criteria of leadership in the Qur'an.

Afsaruddin's and similar approaches to Muslim leadership represent the case-in-point for my arguments both about (1) the dominance of narratives and *Hadith* in the development of Muslims' thinking, attitudes, and behavior, and (2) the negative use of *Hadith* (intended or unintended) to marginalize Muslim women's leadership and participation in the shaping of Islamic thought. In addition, most of the agents of change rely mainly on oral narratives of *Ahadith* (pl. of *Hadith*), often without verifying their authenticity or corroboration with the Qur'an. We saw earlier how such negative use of *Hadith* justifies inferior treatment of women, including the justification for domestic violence.¹¹⁰ By elaborating on how domestic policies affect national and international relations, I also have explained how negative views of the "other" justify harsh behavior, including international violence.

To close, I reiterate my four recommendations: (1) to move from focusing on Islam as a law and a dogma to viewing it as a religio-moral-rational guidance; (2) to let Muslim women speak for themselves; (3) to connect the historical to the contemporary and understand the historical context on issues of public and religious policies; and (4) to incorporate Muslim women's scholarship in the mainstream sources on Islamic thought.

110. Though I have not discussed domestic violence *per se*, I have discussed other perspectives that look at women as inferiors. See for example my discussion of minimizing the importance of women's participation in Friday congregation prayer in order to exclude them from public discussion of community affairs and to prevent them from playing their role of *Khalifah*, in Barazangi, *supra* n. 1, and my discussion of domestic affairs by proxy, Barazangi, *supra* n. 54.