

# Muslim Women's Quest for Equality: Between Islamic Law and Feminism

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Muslim jurists claim, and all Muslims believe, that justice and equality are intrinsic values and cardinal principles in Islam and the sharia. If this is the case, in a state that claims to be guided by the sharia, why are justice and equality not reflected in the laws that regulate gender relations and the rights of men and women? Why do Islamic jurisprudential texts—which define the terms of the sharia—treat women as second-class citizens and place them under men's domination?

I came to confront these questions in 1979, when a popular revolution in my country, Iran, transformed my personal and intellectual life. Like most Iranian women, I strongly supported the 1978–79 revolution and believed in the justice of Islam; but when the Islamists strengthened their hold on power and made the sharia (or their interpretation of it) the law of the land, I found myself a second-class citizen. This brought the realization that there can be no justice for me, as a Muslim woman, as long as patriarchy is justified and upheld in the name of Islam. The prevailing interpretations of the sharia do not reflect the values and principles that I hold to be at the core of my faith.

Over one quarter of a century later, I revisit these questions in light of two developments in the intervening years: the rise of a popular reformist movement in Iran and the wider emergence of a new gender discourse that

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argues for equality within an Islamic framework. The questions have acquired a fresh urgency in a new century that has brought an aggressive unilateralism in the policies of the sole remaining superpower towards the Middle East and Southwest Asia, a rhetoric of “promoting democracy” and “human rights” to support military interventions in (so far) Afghanistan and Iraq.

In Afghanistan, the invasion was a reaction to the al-Qaeda attacks of 11 September 2001. It succeeded in bringing down the Taliban government (which was not responsible for the attacks) but not in capturing the al-Qaeda leadership. The invasion, occupation, and “regime change” were in part justified to the U.S. (and world) public as rescuing Afghan women from oppression, vividly represented in their all-enveloping cover, the *chadri*, or *burqa*. Many observers were consequently surprised and disappointed that the downfall of the Taliban did not lead to Afghan women’s mass abandonment of the *burqa*. Its persistence was quite rightly judged, however, to reflect the persistence of traditional patriarchal values and norms that the Taliban had merely enforced in an extreme form, norms and values that most Afghan women and men continue to associate with Islam and that few of them are yet ready to abandon in the absence of any credible or palatable alternative set of values. Indeed, the family law established in the years since the invasion enshrines the very same values despite the emergence on the political scene of a significant number of brave Afghan women.

In Iraq, when the primary reasons for the necessity of a “regime change” (Saddam’s supposed weapons of mass destruction and links to al-Qaeda) were discredited, the invaders resorted to magnifying the tyrannical nature of the Baath regime, failing to justify why they had chosen to attack this tyranny rather than the many others, far and near. The subsequent occupation and attempts to institute “freedom” and “democracy” have resulted in the strengthening of traditionalist religious forces intent on bringing family law in line with their interpretations of the sharia and on dismantling the Iraqi Family Code, which stands among the most progressive in the

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Muslim world.<sup>1</sup> As in Afghanistan, it seems that most Iraqi Muslims see the neoimperialist intervention as a direct assault on their religion, which has given a new legitimacy to radical Islamist groups and undermined the position and discourse of progressive forces.

It is debatable (and has been much debated) how far, in either Afghanistan or Iraq, the two interventions have resulted in improvements in human rights in general and women's rights in particular.<sup>2</sup> In short, the experiences of women in Iran, where a movement for democratic reform emerged after two decades of sharia as the source of law, have become directly relevant to women's quest for equality in the two neighboring countries.

There are two main elements to the argument that follows. First, one paradoxical and unintended consequence of the Islamists' reintroduction of sharia in Iran and their attempt to enforce its premodern mandates has been to open a new dialogue between Islamic law and feminism. This dialogue, in turn, has become a catalyst for the emergence of new reformist and feminist voices in Islam that are changing the terms of reference of Islamic discourses from within. Secondly, without the democratization and modernization of Islam's legal vision, Muslim women's quest for equal rights will be held hostage to the fortunes of various political tendencies, both internal and external.

But first a note on my position and conceptual framework is in order. A clear statement of position is needed, as not only the media and popular discourse but also the bulk of academic discussions on Islam and women are replete with rhetoric in the guise of either facts or scholarship. A monolithic view of Islam still dominates both popular and academic discourses.<sup>3</sup> Too often we hear statements beginning "Islam is," "the Koran says," or

1. Although the leading religious authority in Iraq, Ayatollah Sistani, differs from the ruling Iranian clerics on the proper role of religion in government, his interpretations of the sharia on gender relations and family law are more conservative, traditional, and patriarchal. His views are available on his website ([www.sistani.org](http://www.sistani.org)), which contains his rulings and fatwas on family and gender relations. For reports on recent developments, see for instance Isobel Coleman and Mehlaqa Samdani, "Promote Iraqi Women's Rights within an Islamic Framework," *Christian Science Monitor*, 14 Oct. 2005, p. 9; Edmund Sanders, "The Conflict in Iraq: Islamic Slant in the Charter Is Decried," *Los Angeles Times*, 8 Aug. 2005, p. A1; and Coleman, "Women, Islam, and the New Iraq," *Foreign Affairs* 85 (Jan.–Feb. 2006), <http://www.foreignaffairs.org/20060101faessay85104/isobel-coleman/women-islam-and-the-new-iraq.html>

2. For a discussion, see Lila Abu-Lughod, "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others," *American Anthropologist* 194 (Sept. 2002): 783–90, and Roksana Bahramitsh, "The War on Terror, Feminist Orientalism, and Orientalist Feminism: Case Studies of Two North American Bestsellers," *Critique* 14 (2005): 221–35.

3. See Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton, N.J., 1999), pp. 3–6.

“according to Islamic law or sharia.” Too rarely do those who speak in the name of Islam admit that theirs is no more than one opinion or interpretation among many. The holy texts, and the laws derived from them, are matters of human interpretation. Moreover, those who talk of Islam, or indeed of religion in relation to Islam, fail to make a distinction now common when talking of religion in other contexts, namely, between faith (and its values and principles) and organized religion (institutions, laws, and practices). The result is the pervasive polemical and rhetorical tricks of either glorifying a faith without acknowledging the horrors and abuses that are committed in its name or condemning it by equating it with those abuses. Of course, religious faith and organized religion are linked, but they are not the same thing, as is implied by conflating them in the label “Islamic” or “religious.”

Though my approach and analysis are those of a social anthropologist, I do not claim to be a detached observer.<sup>4</sup> As a believing Muslim woman I am a committed participant in debates over the issue of gender equality in law, and I place my analysis within the tradition of Islamic legal thought by invoking one crucial distinction in that tradition that has been distorted in modern times, when modern nation-states have created uniform legal systems and selectively reformed and codified elements of Islamic family law and when new forms of political Islam that use sharia as an ideology have emerged. This is the distinction between sharia and *fiqh*.<sup>5</sup>

In Muslim belief, sharia—revealed law, literally “the way”—is the totality of God’s will as revealed to the Prophet Muhammad. *Fiqh*—the science of jurisprudence, literally “understanding”—is the process of human endeavor to discern and extract legal rules from the sacred sources of Islam—that is, the Koran and the Sunna (the practice of the Prophet, as contained in *hadith*, Traditions). In other words, while the sharia is sacred, universal, and eternal, *fiqh* is human and—like any other system of jurisprudence—subject to change. *Fiqh* is often mistakenly equated with sharia, both in popular Muslim discourses and by politicians and academic and legal specialists, and often with ideological intent; that is, what Islamists and others assert to be a sharia mandate (hence divine and infallible) is the result

4. For the development of my own position and approach, see Mir-Hosseini, preface, *Islam and Gender*, pp. xi–xx and preface, *Marriage on Trial: A Study of Islamic Family Law in Iran and Morocco*, 2d ed. (London, 2000), pp. vii–xi.

5. For this distinction, see Muhammad Hashim Kamali, “Sources, Nature, and Objectives of Shari’ah,” *Islamic Quarterly* 33, no. 4 (1989): 216, and Khaled Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority, and Women* (Oxford, 2001), pp. 32–35. For an argument not employing the distinction, see Abdullahi An-Na’im, “Islamic Foundation for Women’s Human Rights,” in *Islam, Reproductive Health, and Women’s Rights*, ed. Zainah Anwar and Rashida Abdullah (Kuala Lumpur, 2000), pp. 33–34.

of *fiqh*, juristic speculation and extrapolation (hence human and fallible). *Fiqh* texts, which are patriarchal in both spirit and form, are frequently invoked as God's law, as a means to silence and frustrate Muslims' search for legal justice and equality, which are intrinsic to this-worldly justice.

It is essential, I maintain, to highlight this distinction and to draw attention to its epistemological and political ramifications. It underlies the emergence of various schools of Islamic law and within them a multiplicity of positions and opinions and also enables me—as a Muslim—to argue for gender justice within the framework of my faith.<sup>6</sup> I contend that patriarchal interpretations of the sharia can and must be challenged at the level of *fiqh*, which is nothing more than the human understanding of the divine will, that is, what we are able to understand of the sharia in this world at the legal level. In other words, sharia is the transcendental ideal that embodies the justice of Islam and the spirit of the Koranic revelations. This transcendental ideal, which condemns all relations of exploitation and domination, underpins Muslim women's quest and the critique of patriarchal constructions of gender relations, which are to be found not only in the vast corpus of jurisprudential texts but also in the positive laws that are claimed to be rooted in the sacred texts.

### Family Law, Women, and the Reform Movement in Iran

In 1979 one version of the Islamist vision was realized in Iran. A popular revolution ended 2500 years of monarchy and gave birth to an Islamic republic, which took the form of a peculiar combination of theocracy and democracy, unprecedented in Islamic history. Religious and political authority converged, and the state embarked on a fierce process of Islamization. Within two decades the heirs of the revolution were engaged in a bitter struggle over its legacy, an argument over the role of Islam in politics and the proper scope of *fiqh* rules in defining social norms and regulating personal relations.

6. For a discussion of conceptions of justice in Islamic texts, see Majid Khadduri, *The Islamic Conception of Justice* (Baltimore, 1984). In brief, there are two schools of theology and thought. The dominant *Ash'ari* school holds that our notion of justice is contingent on religious texts; whatever they say is just and not open to question. The *Mu'tazili* school, on the other hand, argues that the value of justice exists independent of religious texts; our sense and definition of justice is shaped by sources outside religion, is innate, and has a rational basis. I adhere to the second position, as developed by Abdolkarim Soroush, the Iranian reformist philosopher. According to Soroush, we accept religion because it is just, and any religious texts or laws that defy our contemporary sense of justice or its definition should be reinterpreted in the light of an ethical critique of their religious roots. In other words religion and the interpretation of religious texts are not above justice and ethics. In summer 2004, Soroush expounded his argument in a series of four lectures at Amir-Kabir University, Tehran, entitled "Religious Society, Ethical Society."

The unexpected victory of Mohammad Khatami in the 1997 presidential elections also brought about a popular reformist movement that sought a gradual withdrawal of religion from state authority and a shift from a theocratic towards a democratic basis of the Islamic republic. This unleashed a power struggle among the ruling elite, and for about eight years there was a dual state. There were two main camps: the conservatives and the reformists. The former, representing the theocratic side of the state, saw their survival and their hold on power as dependent on keeping the ideological construction of “Islam” intact and on suppressing the latter, who wanted to reconcile Islam with notions of democracy and human rights. The reformists were represented by Khatami’s ministers and the elected Sixth Parliament (2000–2004).<sup>7</sup> The theocratic forces won back parliament in 2004 and brought the dual state to an end in June 2005, when one of their candidates, the hard-liner Mahmud Ahmadinejad, won the presidential election. The means by which the theocrats regained their monopoly of state power undermined the popular legitimacy and mandate on which the Islamic Republic had so far rested. The 2005 presidential election was the latest stage of a power struggle that is far from settled, and the next stage is, as of this moment, uncertain.

Why and how has this theocracy produced its own antithesis? There is a host of factors at work upon which I cannot elaborate here, but the major elements are encapsulated in the tension between theocratic and democratic principles, a tension that is inherent in the very quest for an Islamic state in modern times. What is usually considered to define a state as Islamic is adherence to, and implementation of, the sharia, held up as the perfect law embodying the justice of Islam. But in practice in Iran—as in other states (such as Pakistan, Sudan, and Saudi Arabia) making the same claim—this has amounted to little more than enforcing a dress code for women and applying an outdated patriarchal and tribal model of social relations through courts dealing with penal cases and familial disputes. In Iran, the results have been so out of touch with contemporary social realities, with people’s sense of justice, and with women’s aspirations that both clerics and laypeople have been forced to rethink notions of the sharia as an immutable body of law and to redefine their relationship with it.

Nowhere has this been more evident than in the area of family law—the most developed field of *fiqh*, where the boundary between sacred and temporal has been most blurred. One of the early communiqués issued by Ayatollah Khomeini’s office, on 26 February 1979, barely two weeks after the

7. For an analysis of this period and the reform movement in Iran through the work of one of its clerical advocates, see Mir-Hosseini and Richard Tapper, *Islam and Democracy in Iran: Eshkevari and the Quest for Reform* (London, 2006).

collapse of the Pahlavi regime, announced the restoration of sharia family law through the dismantling of the Family Protection Law and the reinstatement of the *fiqh* provisions for marriage and divorce (codified in 1935 as part of the Iranian Civil Code).<sup>8</sup> The Family Protection Law of 1967 (and its 1975 amendments) had abolished men's right to *talaq* (repudiation), restricted their right to polygamy, and placed men and women on more or less the same legal footing in terms of access to divorce and custody rights. Khomeini's office in 1979 restored the sharia in order to "protect the family" and realize women's "high status" in Islam.

But this was not how women perceived and experienced the changes. In October 1980, when I first started attending the Tehran branches of the new family courts, now presided over by Islamic judges, women who came to court were astonished to learn that their husbands could now divorce them without first securing their consent. Some remained incredulous and would ask more than one judge: Can he really divorce me, if I don't agree? Is this what the sharia says? In 1985, when I resumed my court attendance, women, although no longer incredulous, were insistent on voicing their discontent; some used every occasion to remind the Islamic judge of his role as custodian of the sharia and of the injustice of a system which could afford them no protection. It was common to hear women ask the judge, Is this how Islam honors women? Is this the justice of Islam, that he can dispose of me now that I have lost my youth and replace me with a younger wife? To these questions, the judges had no answer, especially when a man insisted on exercising his right to divorce a wife who was entirely dependent upon him, with no other source of income and nowhere else to go. Some judges—though certainly not all—experienced a moral dilemma. Not only did they have to witness the plight of women on a daily basis, but they could not help but feel implicated themselves. The Islamic judges in whose courts I sat in the 1980s often told me that I had chosen the wrong place to learn about the sharia. I should to go to the seminaries, they said, to read *fiqh* texts and discuss them with the *ulama*; the courts had nothing to teach me about the sharia.

In 1997, when I returned to the Tehran courts to make a documentary film about divorce,<sup>9</sup> there was little trace of the idealism I had encountered in the 1980s. Meanwhile, the enforcement of patriarchal *fiqh* notions of marriage and divorce had created such havoc in family life, such an uproar among women, that the government had been forced to restore almost all

8. See *In the Shadow of Islam: The Women's Movement in Iran*, ed. Azar Tabari and Nahid Yeganeh (London, 1982), p. 232.

9. The name of this film is *Divorce Iranian Style*, dir. Mir-Hosseini and Kim Longinotto (London, 1998).

the reforms that had been dismantled overnight by that single communiqué from Ayatollah Khomeini's office. This was done through a series of legislative measures and procedural devices whose spirit and juristic logic was meant to protect and reward those women who presented no overt challenge to the patriarchal ethos of Islamic law as defined by classical Muslim jurists. To exercise his so-called Islamic right to divorce, a man now must either obtain his wife's consent or pay her substantial compensation.<sup>10</sup>

Far from producing the intended result—that is, marital harmony or a generation of docile wives—the “return to sharia” further exposed and accentuated the gap between the patriarchal assumptions by which marriage is defined in *fiqh* and the egalitarian marriage lived and experienced by most people today. It has also become a bargaining chip in the hands of women, many of whom use it effectively in the courts; some succeed in using the very elements that give men power in marriage to make them pay, both literally and figuratively. In other words, the return to sharia in Iran has proved, in effect, a major cause of marital breakdown and soaring divorce rates. Likewise, the Islamization of other areas of law, in particular the penal code, has increased the crime rates.

### New Religious Thinking

By the late 1980s in Iran, the ideological, theological, theoretical, and practical problems brought by the experience of administering premodern interpretations of *fiqh* had led to the formulation of a new approach. The main architect was Abdolkarim Soroush, whose interpretative-epistemological theory of the evolution of religious knowledge—known as the contraction and expansion of sharia—posed a serious challenge to both traditional and ideological constructions of the sharia. Soroush made a distinction between religion and religious knowledge and argued that, whereas the first is sacred and immutable, the second—including Islamic law—is human and evolves in time because of forces external to religion itself.<sup>11</sup>

Referred to as New Religious Thinking, this discourse became the intellectual backbone of the reformist movement that emerged in 1997. It is part of an older trend of thought that remained dormant during the first decade of the Islamic Republic, which was then engaged in a war with Iraq. Its advocates now display a refreshingly pragmatic vigor and a willingness

10. For pre- and postrevolutionary family law in Iran, see Mir-Hosseini, “Family Law in Modern Persia,” *Encyclopaedia Iranica*, 11 vols., ed. Ehsan Yarshater (Costa Mesa, Calif., 1999), 9:192–96.

11. For a concise account of this theory, see Soroush, “The Evolution and Devolution of Religious Knowledge,” in *Liberal Islam: A Sourcebook*, ed. Charles Kurzman (Oxford, 1998), pp. 244–54; for a selection of his writings in English, see Soroush, *Reason, Freedom, and Democracy in Islam: Essential Writings of Abdolkarim Soroush*, trans. and ed. Mahmoud Sadri and Ahmed Sadri (Oxford, 2000).

to engage with nonreligious perspectives. They do not reject an idea simply because it is Western, nor do they see Islam as having a built-in blueprint for solving the social, economic, and political problems of the Muslim world.<sup>12</sup> They contend that the human understanding of Islam is flexible, that Islam's tenets can be interpreted to encourage both pluralism and democracy, and that Islam allows change in the face of time, space, and experience.

What is new about the New Religious Thinking in Iran is not its argument that *fiqh* is temporal, a claim made by the great Muslim jurist and philosopher al-Ghazali as early as the eleventh century. Nor is it its attempt to demonstrate the compatibility of Islam with modernity, which has been the aim of all Muslim reformers since the late nineteenth century. What is new is the political context within which these ideas are now shaped and within which they operate, that is, the experience of living in a theocracy at the end of the twentieth century. This experience has forced clerics, religious intellectuals, and ordinary people alike to rethink notions of the sacred and the mundane in the sharia. It is not that the sharia is losing its sanctity or that people are turning away from Islam. Rather, the state's ideological use of the sharia and its penetration into the private lives of individuals have brought home the urgent need to separate religion from the state.

It remains to be seen whether the new religious thinkers—the intellectual backbone of the reformist movement—will succeed in translating their vision of Islam into a political reality. The dispute with their conservative opponents has shaken the very foundation on which the Islamic Republic rests. But irrespective of the outcome of this struggle, the process of desanctification and secularization of *fiqh* has reached a point of no return. Reformists in Iran have faced and continue to face many political setbacks, and during their period in office (1997–2005) they failed to bring about changes in the structure of power. But they had one major and lasting success: they demystified both the power games conducted in a religious language and the instrumental use of religion to justify autocratic rule and patriarchal culture.

At the start of this new century, Iran is going through a transition, the outcome of which may prove as significant for the Muslim world as the 1979 revolution itself. It would be one of history's sharpest ironies if the most lasting legacy of the 1979 Islamic revolution in Iran, which brought clerics to power and made the sharia the law of land, were the full separation of state and religion, an eventuality that scholars like Ernest Gellner argued was unlikely to happen in the Muslim world.<sup>13</sup> In the end, the very slogan

12. For a sample of the textual genealogy of this thinking, see Kurzman, *Liberal Islam*.

13. See Ernest Gellner, "The Importance of Being Modular," in *Civil Society: Theory, History, Comparison*, ed. John A. Hall (Cambridge, 1995), p. 39.

Return to the Sharia, from which the Islamists draw their legitimacy and power when they are in opposition, may become their Achilles heel now that they are in power.

Another legacy of the Islamic revolution in Iran has been the emergence of an indigenous Islamic feminism. Like the reformists, the feminists of Iran have been theoretically inspired by the New Religious Thinking, while their writings have been informed by both their experiences under the Islamic Republic and the specific politics of gender in Iran.<sup>14</sup> But their quest for equality and their discourse are parts of a new gender politics among Muslims worldwide, to which I now turn.

### The Emergence of Islamic Feminism

Muslim women, like other women in the world, have always been aware of—and resisted—gender inequality; yet the emergence of a sustained, indigenous feminism was delayed until recently. This delay at least partly reflects the complex relation between women’s demands for equal rights and the anticolonial, nationalist movement of the first part of the twentieth century. At a time when feminism, both as a consciousness and as a movement, was being shaped and making an impact in Europe and North America, it also “functioned to morally justify the attacks on native (Muslim) societies and to support the notion of the comprehensive superiority of Europe,” as Leila Ahmed among others has shown.<sup>15</sup>

Nineteenth-century European travellers and diplomats regularly reported on what they considered the subjection of women in Muslim societies. The rise of anticolonialist and nationalist movements put Muslims on the defensive with regard to traditional gender relations. The situation was further complicated by the rise of modern nation-states in the Muslim world and their appropriation of Islam and the “woman question” in the process of nation building. New regimes not only selectively reformed the classical rules of Islamic family law, grafting them onto a unified legal system; they also tried to define the scope of women’s rights and to control nascent women’s activism. The degree to which they succeeded or failed in this varied from country to country and from one period to another.<sup>16</sup>

14. See, for instance, Azadeh Kian, “Women and Politics in Post-Revolutionary Iran: The Gender-Conscious Drive to Change,” *Women Living under Muslim Laws* 21 (July 1998): 32–55; Mir-Hosseini, “Stretching the Limits: A Feminist Reading of the Shari‘a in Post-Khomeini Iran,” in *Islam and Feminism: Legal and Literary Perspectives*, ed. Mai Yamani (London, 1996), pp. 285–319; Afsaneh Najmabadi, “Feminism in an Islamic Republic: ‘Years of Hardship, Years of Growth,’” in *Islam, Gender, and Social Change*, ed. Yvonne Haddad and John Esposito (Oxford, 1998), pp. 59–89; and Parvin Paidar, “Feminism and Islam in Iran,” in *Gendering the Middle East: Emerging Perspectives*, ed. Deniz Kandiyoti (London, 1996), pp. 51–68.

15. Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven, Conn., 1992), p. 154.

16. See Mounira Charrad, *States and Women’s Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Berkeley, 2001); *Women, Islam, and the State*, ed. Kandiyoti (Basingstoke,

Muslim women who acquired a feminist consciousness at the time and who sought equal rights for women were under pressure to conform to anticolonialist and nationalist priorities, as well as to the secularist, modernist, yet despotic agenda of the new states. Some scholars have argued that at the start of the twentieth century the boundary between Islam and feminism was not so clearly marked and that women often tried to change traditional laws by invoking and relying on Islam's sacred texts.<sup>17</sup> But it was in this period too that women became symbols of cultural authenticity and carriers of a religious tradition and way of life, which meant that any dissent on their part could be construed as a kind of betrayal or could be silenced. Contemporary Western feminists could criticize the patriarchal elements of their own cultures and religions in the name of modernity, liberalism, and democracy, but Muslims could not draw on these external ideologies or on internal political ideologies in their fight for equal rights. For both the colonialists and the modernizing secularists, Islamic law was the embodiment of a backward system that had to be rejected or tamed in the name of progress. For anticolonialists and most nationalists, feminism—that is, advocacy of women's rights—was a colonialist project that had to be resisted. Meanwhile, undemocratic Muslim “modernists” gave a new legal force to the gender inequalities prescribed by classical Islamic jurists. As a consequence, many Muslim women faced a painful choice, as Ahmed puts it, “between betrayal and betrayal.”<sup>18</sup> They had to choose between their Muslim identity—their faith—and their new gender awareness.

But as the twentieth century drew to a close, this dilemma disappeared. One neglected and paradoxical consequence of the rise of political Islam in the second half of the century was that it helped to create a space, an arena, within which Muslim women could reconcile their faith and identity with a struggle for gender equality. This did not happen because the Islamists offered an egalitarian vision of gender relations; in fact, they did not. Rather, their very agenda—the so-called return to sharia—and their attempt to translate into policy the patriarchal gender notions inherent in traditional Islamic law provoked many women to increasing criticism of these notions and spurred them to greater activism. A growing number of women came to see no inherent or logical link between Islamic ideals and patriarchy, no contradiction between Islamic faith and feminism, and to free themselves

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England, 1991); and Paidar, *Women and the Political Process in Twentieth-Century Iran* (Cambridge, 1995).

17. On Egypt, see Margot Badran, *Feminists, Islam, and Nation: Gender and the Making of Modern Egypt* (Princeton, N.J., 1995). On Iran, see Paidar, *Women and the Political Process in Twentieth-Century Iran*.

18. Ahmed, “Early Feminist Movements in the Middle East: Turkey and Egypt,” in *Muslim Women*, ed. Freda Hussain (London, 1984), p. 122.

from the straitjacket of earlier anticolonial and nationalist discourses. Using the language of political Islam, they could sustain a critique of the gender biases in Islamic law in ways that were previously impossible.

By the late 1980s, there were clear signs of the emergence of a new consciousness, a new way of thinking, a gender discourse that was and is feminist in its aspiration and demands, yet Islamic in its language and sources of legitimacy. One version of this new discourse has come to be called Islamic feminism.<sup>19</sup> The majority of Islamists, however, and some secular feminists, see the notion of Islamic feminism as antithetical to their respective positions or ideologies and in effect as a contradiction in terms.

What, then, is Islamic feminism? How does it differ from other feminisms? These questions can best be answered by examining the dynamics of Islamic feminism and its potential in the Muslim world. It is difficult and perhaps futile to put the emerging feminist voices in Islam into neat categories and to try to generate a definition that reflects the diversity of positions and approaches of Islamic feminists. As with other feminists, their positions are local, diverse, multiple, and evolving. Many of them have difficulty with the label and object to being called either Islamic or feminist. They all seek gender justice and equality for women, though they do not always agree on what constitutes justice or equality or the best ways of attaining them.

To understand a movement that is still in formation, we might start by considering who its opponents are; in other words, we might consider the

19. There is a growing literature on Islamic feminism and its politics. See for instance Haleh Afshar, *Islam and Feminisms: An Iranian Case-Study* (Basingstoke, England, 1998); Badran, "Islamic Feminism: What's in a Name?" *Al-Ahram Weekly*, 17 Jan. 2002, <http://weekly.ahram.org.eg/2002/569/cui.htm> and "Between Secular and Islamic Feminisms: Reflections on the Middle East and Beyond," *Journal of Middle Eastern Women's Studies* 1 (2005): 6–28; Elizabeth Fernea, *In Search of Islamic Feminism: One Woman's Global Journey* (New York, 1998); Anouar Majid, "The Politics of Feminism in Islam" and Valentine Moghadam, "Islamic Feminism and Its Discontents: Toward a Resolution of the Debate," in *Gender, Politics, and Islam*, ed. Therese Saliba (Chicago, 2002), pp. 15–51; Mir-Hosseini, "Islamic Law and Feminism: The Story of a Relationship," *Yearbook of Islamic and Middle Eastern Law* 9 (2002): 34–42; Mirza, "Islamic Feminism, Possibilities and Limitations," in *Law after Ground Zero*, ed. John Strawson (London, 2002), pp. 108–22; Mirza, *Islamic Feminism and the Law*; Najmabadi Heba Raouf Ezzat, "The Silent Ayesha: An Egyptian Narrative," in *Globalization, Gender, and Religion: The Politics of Women's Rights in Catholic and Muslim Contexts*, ed. Jane H. Bayes and Nayereh Tohidi (New York, 2001), pp. 231–57; Anne Sofie Roald, "Feminist Reinterpretation of Islamic Sources: Muslim Feminist Theology in Light of the Christian Tradition of Feminist Thought," in *Women and Islamization: Contemporary Dimensions of Discourse on Gender Relations*, ed. Karen Ask and Marit Tjomsland (Oxford, 1998), pp. 17–44; Sa'diyya Shaikh, "Transforming Feminism: Islam, Women, and Gender Justice" and Gwendolyn Zoharah Simmons, "Are We up to the Challenge? The Need for a Radical Re-ordering of the Islamic Discourse on Women," in *Progressive Muslims: On Justice, Gender, and Pluralism*, ed. Omid Safi (Oxford, 2003), pp. 147–62, 235–48; and Tohidi, "'Islamic Feminism': Perils and Promises," *Mews Review* 16 (Fall 2001), <http://www.amews.org/review/reviewarticles/tohidi.htm>

resistance against which it has had to struggle. Opponents of the feminist project in Islam fall into three broad categories: Muslim traditionalists, Islamic fundamentalists, and secular fundamentalists. Muslim traditionalists resist any changes to what they hold to be eternally valid ways sanctioned by an unchanging sharia. Islamic fundamentalists—a very broad category—are those who seek to change current practices by a return to an earlier, “purer” version of the sharia. Secular fundamentalists—who can be just as dogmatic and ideological as religious fundamentalists—deny that any religious law or social practice can be just or equal.

Though adhering to very different ideologies and scholarly traditions and following very different agendas, all these opponents of the feminist project in Islam share one thing—an essentialist and nonhistorical understanding of Islam and Islamic law. They fail to recognize that assumptions and laws about gender in Islam—as in any other religion—are socially constructed and thus historically changing and open to negotiation. They resist readings of Islamic law that treat it like any other system of law and disguise their resistance by mystification and misrepresentation. Selective in their arguments and illustrations, the three kinds of opponents resort to the same kinds of sophistry; for example, they seek to close discussion by producing Koranic verses or Traditions (*hadith*) taken out of context. Muslim traditionalists and Islamic fundamentalists do this as a means of silencing other internal voices and abuse the authority of the text for authoritarian purposes. Secular fundamentalists do the same, but in the name of enlightenment, progress, and science—and as a means of showing the misogyny of Islam—while ignoring the contexts in which the texts were produced, as well as the existence of alternative texts. In so doing, they end up essentializing and perpetuating difference and reproduce a crude version of the Orientalist narrative of Islam.<sup>20</sup>

What is often missing in these narratives is a recognition that gender inequality in the old world was assumed and that perceptions of women in Christian and Jewish texts are not that different from those of Islamic texts. The early Western feminists too found it necessary to confront and challenge these perceptions, and they did so not by rejecting the Bible or their faith but by appealing to its higher values and principles. In the eighteenth century, Mary Wollstonecraft in *A Vindication of the Rights of Woman* (1792) often referred to biblical passages when defending women’s essential equality with men and in refuting the enlightenment philosophers’ arguments on women’s nature as essentially different from men’s. A century later, Eliz-

20. See Haideh Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* (London, 1999).

abeth Cady Stanton placed the demand for equal rights for women squarely within a religious framework and went as far as writing *The Women's Bible* (1895). These became part of new political and socioeconomic discourses that were shaped by new social conditions and in turn shaped new understandings of sacred texts and a woman's situation in the West.<sup>21</sup>

The work of the Islamic feminists should be examined in this light. By both uncovering a hidden history and rereading textual sources, they are proving that the inequalities embedded in *fiqh* are neither manifestations of divine will nor cornerstones of an irredeemably backward social system; rather, they are human constructions. They are also showing how such unequal constructions contradict the very essence of divine justice as revealed in the Koran and how Islam's sacred texts have been tainted by the ideologies of their interpreters.<sup>22</sup> For example, they show how men's unilateral rights to divorce (*talaq*) and polygyny were not granted to them by God but by Muslim male jurists. These are juristic constructs that follow from the way that early Muslim jurists conceptualized and defined marriage.

The majority of these feminist scholars have focused their energy on the field of Koranic interpretation (*tafsir*) and have successfully uncovered the Koran's egalitarian message. The genesis of gender inequality in Islamic legal tradition, these scholars tell us, lies in the cultural norms of early Muslim societies.<sup>23</sup> While the ideals of Islam call for freedom, justice, and equality, Muslim norms and social structures in the formative years of Islamic law

21. Given the centrality of law in Judaism, there are interesting parallels and differences in the ways in which Muslim and Jewish feminists deal with patriarchal laws legitimated through religious tradition. On Jewish feminism, see *On Being a Jewish Feminist*, ed. Susannah Heschel (New York, 1995).

22. In addition to works mentioned in note 19, see Azizah Al-Hibri, "Islam, Law, and Custom: Redefining Muslim Women's Rights," *American University Journal of International Law and Policy* 12, no. 1 (1997): 1–44; Kecia Ali, "Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Law," in *Progressive Muslims*, pp. 163–89; Asghar Ali Engineer, *The Rights of Women in Islam* (London, 1992); Farid Esack, "Islam and Gender Justice: Beyond Simplistic Apologia," in *What Men Owe to Women: Men's Voices from World Religions*, ed. John C. Raines and Daniel C. Maguire (Albany, N.Y., 2001), pp. 187–210; Haifaa Jawad, *The Rights of Women in Islam: An Authentic Approach* (Basingstoke, England, 1998); Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa* 1, no. 1 (2003): 1–28; and Amira El-Azhary Sonbol, "Rethinking Women and Islam," in *Daughters of Abraham: Feminist Thought in Judaism, Christianity, and Islam*, ed. Haddad and Esposito (Gainesville, Fla., 2001), pp. 108–46.

23. See, for instance, Asma Barlas, "Believing Women" in *Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin, 2002); Riffat Hassan, "Equal before Allah? Woman-Man Equality in the Islamic Tradition," *Selected Articles* (Grabels, France, 1987), pp. 12–24; Fatima Mernissi, *Women and Islam: An Historical and Theological Enquiry*, trans. Mary Jo Lakeland (Oxford, 1991); Shaikh, "Exegetical Violence: Nushuz in Qur'anic Gender Ideology," *Journal for Islamic Studies* 17 (1997): 49–73; and Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York, 1999).

impeded their realization. Instead, these norms were assimilated into Islamic jurisprudence through a set of theological, legal, and social theories based on certain underlying assumptions: women are created of men and for men; women are inferior to men; women need to be protected; men are guardians and protectors of women; and male and female sexuality differ and the latter is dangerous to the social order. These assumptions and theories are nowhere more evident than in the rules that define the formation and termination of marriage, through which gender inequalities are sustained in present-day Muslim societies. In my own work on marriage and divorce, I have tried to engage these juristic assumptions to show how the science of Islamic jurisprudence became the prisoner of its own legal theories, which in time has come to bypass the Koranic call for justice and reform.

### Conclusions and Implications

Before considering the implications of my account of Muslim women's quest for equality in a global politics shaped by the so-called war on terror, let me suggest some answers to my opening questions, which I now rephrase. Can sharia and feminism coexist? If so, how, and by what means and processes?

I have pursued these questions in the contexts of the reformist movement in Iran and the emerging feminist voices in Islam, which are both part of a larger intellectual and ideological struggle among Muslims over two opposed understandings of their religion and two ways of relating to its sacred texts. One is an absolutist and legalistic Islam, as understood and constructed in traditional *fiqh*, which makes little concession to contemporary realities and the aspirations of Muslims. The other is a pluralistic and tolerant Islam that is making room for these realities and values, including gender equality.<sup>24</sup> The struggle over interpretations of Islam's sacred texts has shaped Islamic history and civilization and undoubtedly will continue to do so. Since the early twentieth century the issue of women's rights has been central to this struggle, reflecting both modern realities and the changed status of Muslim women.

The emergence of new feminist voices in Islam in the late 1980s was the inception of the latest stage in this struggle. By advocating a brand of feminism that takes Islam as the source of its legitimacy, these feminist voices are effectively challenging the hegemony of patriarchal interpretations of

24. This struggle is not confined to Iran or to the Shi'a branch of Islam. For two recent accounts of its unfolding in history and other contexts, see Reza Aslan, *No God but God: The Origins, Evolution, and Future of Islam* (New York, 2005), and *Remaking Muslim Politics: Pluralism, Contestation, Democratization*, ed. Robert Hefner (Princeton, N.J., 2005).

the sharia and the legitimacy of the views of those who until now have spoken in the name of Islam. Such a challenge has been made possible, even inevitable, by the Islamists' call for a return to sharia and attempts to impose anachronistic jurisprudential constructions of gender relations. This call has placed Islamic feminism in a unique position to bring about a much-needed paradigm shift in Islamic law. It exposes the inequalities embedded in current interpretations of sharia—*fiqh*—as constructions by male jurists rather than manifestations of the divine will. This exposure can have important epistemological and political consequences: epistemological, because, if taken to its logical conclusion, one can argue that some rules that until now have been claimed as Islamic and part of the sharia are in fact only the views and perceptions of some Muslims and are social practices and norms that are neither sacred nor immutable but human and changing; political, because it can both free Muslims from taking a defensive position and enable them to go beyond old *fiqh* dogmas in search of new questions and new answers.

Can a feminist discourse that takes its legitimacy from Islam's sacred texts and that must operate within a closed legal system like *fiqh*, with little support from the power base in that tradition, break that closed system apart? In other words, can its advocates nurture a gender discourse that meets women's aspirations for equality? My answer to this question is a qualified yes, for three reasons.

First, given the current realities of the Muslim world, in which the Islamists have the upper hand in defining the terms of reference of political and gender discourses, I would maintain that only those who are prepared to engage with Islam's sacred texts and its legal tradition can bring change from within. Otherwise, Muslim women's quest for equality will remain a hostage to the fortunes of various political forces and tendencies, as was the case in the twentieth century. In my view, secular feminism in the Muslim world fulfilled its historical role by paving the way for women's entry into politics and society in the early twentieth century. But since the rise of political Islam in the second part of the century, the battle between tradition and modernity in which Muslim women are still caught must be conducted in a religious language and framework, where jurisprudential constructions of gender can be reexamined and the patriarchal mandates of *fiqh* can be challenged. The legal gains and losses of women in Iran, and now in Afghanistan and Iraq, testify to the fact that there can be no sustainable gains unless patriarchal notions of family and gender relations are debated, challenged, and redressed within an Islamic framework.

Second, the emerging feminist voices in Islam have the potential to overcome the dichotomy between "Islam" and feminism, which has been a fea-

ture of the politics of gender among Muslims in modern times. This dichotomy—itself a colonial legacy—is false and at times arbitrary, as An-Na'im reminds us.<sup>25</sup> But its implications are too grave and too pernicious to be ignored—especially in the context of the neoimperialist war on terror, which many Muslims perceive to be directed against them once again. Such a perception—whether justified or not—not only puts them on the defensive and makes them more likely to cling to religious tradition; it also erodes the credibility and moral high ground of secular and Western discourses. Islamic feminism has a positive role to play in such a context because, in Margot Badran's words, it “transcends and destroys old binaries that have been constructed. These included polarities between religious and secular and between ‘East’ and ‘West.’”<sup>26</sup>

Finally, the daily lives of many Muslim women and their life choices—whether they live in an Islamic state or as part of a diaspora in a Western liberal state—are governed and shaped by a set of patriarchal beliefs and laws for which divine roots and mandates are claimed. Only the elite and the minority of highly educated women have the luxury of choice, of rejecting or challenging these beliefs and laws. A movement to sever patriarchy from Islamic ideals and sacred texts and to give voice to an ethical and egalitarian vision of Islam can and does empower Muslim women from all walks of life to make dignified choices. This, in the end, is what Islamic feminism is about.

25. See An-Na'im, “The Dichotomy between Religious and Secular Discourse in Islamic Societies,” in *Faith and Freedom: Women's Human Rights in the Muslim World*, ed. Mahnaz Afkhami (London, 1995), pp. 51–60.

26. Badran, “Islamic Feminism,” p. 3.