

ISLAMIC LAW AS HERMENEUTIC DEVELOPMENTS WITHIN TRADITIONALIST ISLAM IN INDONESIA

Mark Cammack*

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INTRODUCTION

These Indonesians who have training in the classical tradition of Islam are not only some of the country's best scholars; they are also the most socially progressive interpreters of Islamic law. For them, the values of human dignity and equity are the most important. They believe that the law should be based on the principles of justice and fairness, and that it should be applied to all people equally. They also believe that the law should be used to promote the common good and to protect the rights of the individual. In their view, the law is not just a set of rules, but a living system that evolves over time to meet the needs of society. They believe that the law should be based on the principles of justice and fairness, and that it should be applied to all people equally. In their view, the law is not just a set of rules, but a living system that evolves over time to meet the needs of society.

four *madhhab*, named after their putative founders, though adhering to a common jurisprudential theory about the sources of the law and the means of their interpretation, differ significantly on many specific points of law.¹⁹ Moreover, the scholars of one *madhhab* often disagree with other scholars working within the same *madhhab*. This doctrinal diversity was considered both unavoidable and beneficial. Difference of opinion within the community of Muslims, according to a well-known *hadith* report, “is a sign of the bounty of God.”²⁰

THE CRISIS OF MODERNITY

The philosopher Alasdair MacIntyre makes the point that the life of a tradition often includes periods of crisis.²¹ A crisis occurs within a tradition when its methods of inquiry and forms of argument are no longer able to provide satisfactory responses to the concerns that are addressed by the tradition.²² Beginning in the eighteenth century, after operating virtually unchallenged for almost a millennium, the Islamic legal tradition found itself in just such a crisis.²³ Though often described as resulting from European colonialism, the rupture with the past that occurred in the eighteenth century is more accurately explained as a result of the emergence of a new civilizational form which, by its nature, could not be confined to its place of origin. The crisis facing Islamic law consists in adapting to the conditions of modernity.

Frank E. Vogel eds., 2005), for an examination of the significance of the *madhhab* both historically and today.

19. For a careful and nuanced examination of inter-*madhhab*

reject the authority of *fiqh*, describe themselves as *ans madhhab* (non-*mazhab*).²⁷

The labels for the two approaches as well as the terms describing their essential methodologies would seem to locate them firmly on opposite ends of the spectrum of social and political conservatives versus social and political progressives.²⁸ One would think that an approach premised on adherence to tradition in the form of emulation of the jurists of the past would promote rigidity, cultural/religious exclusivity, and authoritarianism. The creation of new, modern interpretations of Islam's foundational texts would seem to be conducive to adaptability, pluralism, and democracy. That is not how things have worked out, however. As the anthropologist Clifford Geertz said of Islamic modernism, "Stepping backward in order better to leap is an established principle of cultural change But in the Islamic case the stepping backward seems often to have been taken for the leap itself, and what began as a rediscovery of the scriptures ended as a kind of deification of them."²⁹ And while the modernist approach has often led to dogmatism and exclusivity, approaches grounded in the tradition have in some cases defied expectations in generating understandings of Islam characterized by tolerance and a commitment to humanistic values of freedom and equality.

27. Another factor contributing to the continued salience of the distinction between modernists and traditionalists in Indonesia is the fact that the two approaches are represented by two large mass organizations. Muhammadiyah, the modernist organization founded in 1912, and Nahdlatul Ulama, the traditionalist organization, both run thousands of schools that teach and perpetuate their respective understandings of Islamic law.

28. In a For Hw Rrd to a collection of essays on the traditionalist organization Nahdlatul Ulama, Abdurrahman Wahid summed up the conventional stereotype of traditionalist Islam in Indonesia:

Traditionalists are widely supposed to be rather backward in orientation and ossified in their 80.5 (t) 361yn290 TsTf Caw Ud76T6c 30a (670)

THE NEO-TRADITIONALIST MOVEMENT IN INDONESIA

The line between modernists who engaged in *ijtihad* and traditionalists who remain tied to *taqlid* is not as absolute as it once was. When I first began researching Islamic legal institutions in Indonesia in 1980s, modernist educational institutions focused exclusively on the study of the Quran and *hadith* *fiqh* was not part of the curriculum. The curriculum in traditionalist institutions, by contrast, consisted almost exclusively of *fiqh* for the most part, students enco (l)-4.6 (i)-4.6 ei10.ehadud

4e0)EgnTTIITfOTw ((68)4206 (0le)0n)05 (006e)74e6e)10)4e6480n)5 he)66ly5(o5f)(TJTIIITf-0Tc (0T w fi)06q)0iJ8u.0Tc Tc -00rTJA

explanation, application, and, at the most, interpretation as it had been laid down once and for all.”³³

Historically, the obligation of adherence to the law of the

question raised by the concept that must be addressed. Why would it be thought necessary or useful to carry out a reexamination of issues that have been thoroughly analyzed by jurists of the past if the second analysis employs the same interpretive approach that was used in the first analysis?

sughe tned esd i(a)-1.7 (r)6.9v (a)-1.7 (i)6.2 (l)-4. (na)9.2 ((m)6.3 ut6 .3 g 78.6 Tm[(que)-1.7 (s)-2.3 (

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premised on the complete equality of men and women.⁶⁰ The article is titled “Tauhid: A Source of Inspiration for Gender Justice.” Tauhid, which literally means “to fully appreciate oneness,”⁶¹ is the term used to describe Islam’s strong version of monotheism that condemns anything that in any way detracts from God’s absolute unity and indivisibility. Musdah observes that the principle of *tauhid* is often thought to be applicable solely to the relationship between God and humans—a doctrine regarding the attributes of God, the pillars of faith and similar matters. But a full appreciation of the principle of *tauhid* is inseparable from the everyday concerns of social relations among humans, including the relationship between men and women.

The conviction that no human equals Allah and that He has no offspring or incarnation has given rise to the principle of the equality of humankind, as all humans are Allah’s creatures. No human is superior to any other; all are fundamentally equal. No human may be deified in the sense of being made the source of guidance and support, to be feared, prayed to, and regarded as unquestionably correct. A king cannot be a god to his people, a husband cannot be a god to his wife.⁶²

Islam’s embrace of the values of equality and freedom grounded in the principle of *tauhid* is total and unqualified. The historical circumstances in which the Quran was revealed, however, prevented the immediate implementation of these values and necessitated a gradualist approach to their full realization. Slavery, for example, is plainly incompatible with the principle that all human beings are free and equal before God. However, because slavery was practiced and accepted at the time the Quran was revealed, it was not possible to abolish it immediately. The Quran introduces changes to make slavery more humane, but those changes were not intended to set rules for all time. Rather, the changes introduced in the Quran were intended as first steps toward the complete eradication of the practice.⁶³ Similarly, because of the social mores of seventh century Arabia, the full emancipation of women could only be achieved gradually. One example is the treatment of the rights of women to inheritance. In Arab society before Islam, women were regarded as property and were themselves objects of inheritance; with the arrival of Islam, women

60. For an English language summary of the proposal, see Siti Musdah Mulia & Mark E. Cammack, *Toward a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft to the Indonesian Compilation of Islamic Law*, in *ISLAMIC LAW IN MODERN INDONESIA: IDEAS AND INSTITUTIONS* 128-45 (R. Michael Feener & Mark E. Cammack eds., 2007).

61. MUHAMMAD ET AL., *supra* note 55, at 39.

62. *See id.* at 41-42.

63. *Id.* at 46-47.

assumed their proper place as subjects having the same right to inherit as men. But to prevent social upheaval and in recognition of the existing social structure in which men bore the full burden of providing for the physical needs of the family, the inheritance portion of women was fixed at half that of men. This rule that is adapted to attitudes and conditions of seventh century Arabia is not appropriate for the twenty-first century. “In circumstances in which women play an important role in the economy, as they often do today, the rules regarding division of inheritance should be reconsidered to bring them into conformity with the fundamental aim of Islam, i.e., the welfare of humankind.”⁶⁴

Lesson Four is entitled “Interpreting the Quran.” The objectives for this lesson include: understanding the historical context in which the Quran was revealed; appreciating the connection between seventh century Arab society and Islam’s mission of liberating humankind in general and women in particular; becoming familiar with Quranic texts relating to women and texts given in response to questions from women; appreciating the existence of different methods of interpreting the Quran and the relationship between those methods and commonly accepted interpretations; understanding the way socio-historical factors influenced the interpretation of texts relating to women; and gaining an understanding of the principle of gender equality in the Quran and learning the methodology for arriving at gender-just interpretations of the Quran.⁶⁵

The lesson begins with small group discussions of texts related to women designed to convey an appreciation for the way subjective factors shape how the texts can be understood. This is to be followed by a presentation by a guest speaker demonstrating the possibility of applying a gender-friendly (or non-gender-biased) interpretation of Quranic texts related to women. The outline of points to be made in the presentation instructs the speaker to describe the

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addressed in the Quran, such as physical violence against women, divorce, sexuality, and independence; and demonstrate how Quranic texts related to those issues have been given both gender-biased and gender-friendly interpretations in both the classical tradition and modern writings.⁶⁶

The points to be made by the speaker are elaborated in a reference article by Husein Muhammad. Quoting a prominent twelfth century legal scholar, Husein explains that in interpreting the Quran it is “necessary to understand its historical background,” the state of the Arabic language at the time the Quran was revealed, and “the traditions and customs of the Middle Eastern communities regarding their language, behavior, and patterns of interaction at the time the Quran’s texts appeared.”⁶⁷ It is also important in interpreting specific Quranic texts to distinguish between verses that were revealed during the earliest years of Islam when Muhammad and the community of Muslims were in Mecca, and verses revealed during the later period after the community had migrated to Medina. The verses in the two periods have a different character because of differing needs and purposes. The texts revealed in Mecca laid out principles that were to serve as the foundations of a new social structure, while the texts from the Medinan period put those principles into practice in giving form and shape to the new structures. As a result, the texts revealed in Mecca “are mostly concerned with describing and defining *tauhid* and various universal human values, such as equality, justice, freedom, pluralism, and human dignity.”⁶⁸ The texts from the Medinan period were addressed to those who had already accepted Islam and state more concrete and detailed rules for the governance of the community. In establishing rules for the new community, “[t]he Quran needed to address social reality as it actually existed, including the discriminatory attitudes toward women.” Because the Meccan verses state universal values that form the basis of Islam, verses stating specific rules must be interpreted in light of those values. Husein points out that this principle can be found in the writings of the classical era jurists: “General rules or legal universals are certain, while particular or specific rules are relative/probable [and t]herefore the general or universal norms ought to prevail.”⁶⁹

After examining the social position of women in seventh century Arabia and summarizing some of the Quranic texts regarding women, Husein addresses two specific texts regarding men’s authority over women. He writes, “[w]hen read literally, without an awareness of their context or

66. *Id.* at 66-68.

67. *See id.* at 81 (quoting Abu Ishaq al-Shatibi).

68. *Id.* at 82.

69. *See id.* at 91 (quoting Abu Ishaq al-Shatibi).

connection to other texts, it is easy to conclude that God made men the leader, authority, controller and teacher of women, while women are to be led, restrained, controlled and taught.”⁷⁰ Husein then argues—based on other Quranic texts and *hadith*, information about the circumstances in which these verses were revealed, the views of various scholars, and principles of Quranic exegesis—that the specific rules in these texts regarding men’s exercise of authority over women should be interpreted as exceptions to the general principle of human equality expressed elsewhere in the Quran. The rules represent an improvement over the existing p

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inconsistency between the narrative contained in a *hadith* and historical fact. Each of these problems is illustrated with examples.⁸²

The first step in determining the value or meaning of a *hadith* as the basis for a legal rule is an inquiry into its authenticity. Then comes the problem of interpretation. The first obstacle to arriving at a correct interpretation lies in the nature of language. Arabic, like all languages, is the product of and functions against a cultural background. Uncertainty and diversity with respect to the meaning of a *hadith* is inescapable because “[t]he communication of ideas by means of linguistic symbols and the interpretation of those symbols by readers carries an inevitable risk of diverse, incompatible, and even reductionist or distorted understanding.”⁸³ Faqihuddin gives examples of *hadith* in which the same words generate different interpretations and examples of divergent interpretations resulting from differences in the wording of two versions of the same *hadith*. He also illustrates the use of a literalist approach to interpretation and an approach that takes account of contextual factors.⁸⁴

In the last section of the paper, Faqihuddin shows how interpretive approaches recognized as v][3 (i)-2.6 (o)2 (a)12 (n)12.8 (8r)-4 (e)ent7EMC /Span1hiken8er3ac.7 (

