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TENSIONS IN TRADITION:
Hadith, Gender, and Reasonable Interpretation

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ABSTRACT

Given the central role the hadith tradition and sunna of the Prophet play in forming the doctrine of Islamic theology and law, they have been the focus of modern criticism and reinterpretation when it comes to the issues of women and gender in Islam. However, the thrust of- the hadith and sunna pull in different directions and can be read both to support and to undermine patriarchy. This Article, therefore, begins with a description of "tension reports" in the Islamic narrative tradition, arguing that there is just as much material that celebrates the memory of liberating moments for women as there are reports bolstering male dominance. Tension reports preserve moments defying the institutions of patriarch in early Islamic history. Next, I discuss what I describe as misogynistic traditions in the hadith and the three main interpretive strategies employed by Muslim women scholars in their approach to this material. I assess the merits of these strategies and offer an alternative. Rather than a wholesale rejection of the hadith and sunna, as some have proposed, I argue for a more circumspect approach. As critical components of the Islamic tradition, the hadith and sunna must continue to serve as the source for dynamic and inventive solutions even to deeply entrenched challenges such as patriarchy. Reasonable interpretation offers the promise of maintaining an ethically sensitive and dynamic approach to resolving even the most intractable issues.

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INTRODUCTION

This Article focuses on modern re-readings of the hadith literature. The hadith tradition and the sunna of the Prophet have played an inestimable role in shaping the theology and law of Islam. However, the hadith and sunna are the repository of conflicting momentums that could be read to support or undermine patriarchy. While the hadith and sunna preserved the collective memory of liberating moments for Muslim women, so much of this tradition upholds and perpetuates the institutions of patriarchy and male dominance. This Article starts out by exploring what I describe as "tension reports" in the Islamic narrative tradition. Tension reports are alleged historical memories of the exercise of women's agency in a fashion that challenged or defied the institutions of patriarchy at the time of the Prophet or his companions. As explained below, tension reports are parts of the tradition that offer potentially liberating moments from the institutions of patriarchy. Next, I briefly discuss what I describe as the misogynistic traditions in the hadith and the three main interpretive or thematic stratagems employed by Muslim women scholars in wrestling with the Prophetic tradition and its meaning in the modern world. To limit the scope of this Article, I focused mostly on the scholarship of Muslim women writing in the English language. The last Part of this Article offers concluding remarks on the main interpretive or thematic stratagems discussed below. While some scholars have called for the wholesale rejection of the hadith and sunna as hopelessly patriarchal and misogynistic, I argue for a far more circumspect approach. In my view, the hadith and sunna are critical components of the Islamic tradition, and this tradition must continue to serve as the source for dynamic and inventive solutions even to deeply entrenched challenges such as patriarchy. As argued below, the tradition must continue to be the basis for revelation-based interpretive solutions even to the most intractable temporal problems.

I. Tension Reports and Moments of Possible Liberation

The earliest traditions of Islam provide many examples of socially active and inspiring women.[1] Among those is the iconic figure of Sukayna bint al-Ḥusayn b. ʿAlī (d. 117/735), the great-granddaughter of the Prophet Muhammad and the granddaughter of the Prophet's daughter, Fāṭima, and the Prophet's cousin, ʿAlī. In Islamic historical sources, Sukayna was celebrated for her purported beauty, wit, intelligence, and for her patronage of poets. Sukayna's exact date of birth is not known, but she must have been very young when she was present at the massacre of her family in Karbala, an event that marked her for life. Sukayna was very proud of her lineage and was persistently indignant towards the ruling Umayyad dynasty that was responsible for killing her father and other members of her family. But what makes Sukayna particularly noteworthy was her social visibility and mobility, as well as the jealousy by which she guarded her autonomy. As a young woman in the Hijaz, Sukayna was a trend-setter who became famous for an attractive hairdo, labelled *al-ṭurra al-sukayniyya*. The historical sources do not agree on how many times Sukayna married but reportedly it was anywhere from two to six times. Sukayna rejected many marriage proposals from men she considered inferior, and even in her marriages, she is consistently portrayed as anything but subservient or timidly obedient to her husbands.

After her first husband died, Sukayna refused to marry for a long time. Sukayna's servant urged her to consider the proposal of ʿAbd Allāh (the grandson of ʿUthmān), and so Sukayna finally instructed her servant to go to ʿAbd Allāh and inform him that she was interested in his proposal. Abū Zahra, the clan of ʿAbd Allāh, was excited about the possible union with Sukayna's tribe, the tribe of Banū Hāshim, and so they went to make the formal proposal. But as the report goes, Sukayna kept making demands of Abū Zahra until, at some point, ʿAbd Allāh and his clan realized that Sukayna was not serious and that she had no intention of marrying ʿAbd Allāh. As the narrative goes, this eventually led to a fight and violence between the clans of Abū Zahra and Banū Hāshim. After the fight broke out, Sukayna announced that she was no longer interested in marrying ʿAbd Allāh. Other than a desire to show off her desirability and social influence, it is suspected that Sukayna's intent was to insult the clan of Abū Zahra.

In all cases, in about a year, Zayd b. ʿUmar b. ʿUthmān proposed marriage to Sukayna. She agreed to marry him as long as he would stipulate to three conditions: 1) he would not touch any other woman; 2) he would not prevent her from spending any of his money; 3) he would not restrict her movement by prohibiting her from going wherever she pleased. If he violated any of these conditions, the marriage would be automatically dissolved. Commentators

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1.   Jennifer Heath, The Scimitar and the Veil: Extraordinary Women of Islam (2004); Aisha Abdurrahman Bewley, Muslim Women: A Biographical Dictionary (2004); ʿUmar Riḍā Kaḥḥālah, Aʾlām Al-Nisāʾ Fī ʿĀlamī al-ʿArabi Wa al-Islām (1959).

on this narrative typically note that these stipulations were unusual because breaching them would have rendered the marriage null and void. The more common practice was to make the marriage voidable—in other words, the violation of the conditions would create an option that the wife could exercise if she chose to do so. Commentators note that Sukayna's innovation was the fact that if Zayd violated the conditions, then there would be no options and no choice, the marriage would be dissolved. In any case, Zayd accepted Sukayna's conditions and married her.

On one occasion, Zayd announced that his family was going for Hajj and he asked Sukayna for permission to leave to Mecca so as to meet with his family. She responded that she would not agree to his departure unless Ashar, a male servant, went along with him. Ostensibly, Ashar was supposed to act as Sukayna's spy, but on the trip to Hajj, Zayd had sexual intercourse with a slave girl and bribed Ashar not to inform his wife. Upon their return, Sukayna intensely interrogated both Ashar and Zayd. Finally, Zayd gave in and confessed to his affair with a slave girl and promptly begged for her forgiveness. To prove his goodwill, he offered to free all of his slave girls. Sukayna refused her husband's apology and offer, and proclaimed the dissolution of her marriage. The dispute continued until ʿUmar b. ʿAbd al-ʿAzīz (the Umayyad Caliph) came to power, and Zayd went to court to attempt to force a settlement. Reluctantly, Sukayna appeared in court but she informed the judge that she would not accept his jurisdiction because the marriage had already been dissolved. The judge responded, "God likes moderation in everything." Sukayna responded, "What wrong have I done? Your problem is like seeing a splinter in someone's eye, my problem is that I see a whole log in someone's eye," meaning that the judge thinks that the moral failure of her husband can be negotiated because it is like a splinter, but she sees it as a devastating log in his eye, i.e., a resounding failure. The judge and Sukayna argued back and forth, and Sukayna continued to refuse Zayd's plea for forgiveness. Ultimately, Sukayna stormed out of the courtroom and although the judge issued an order attempting to compel her cooperation, she refused the judge's order and insisted that this matter had been settled.[2]

For many Muslim women, figures like Sukayna provide the possibility of, as Fatima Mernissi described it, "liberating memories."[3] Sukayna can be part of the time-mirror wherein Muslim women can see themselves to foresee and craft their future. Sukayna's historical image, as contested as many of the details about her life may be, is not that of a docile, subservient, or submissive woman. She, like the figures of the more famous ʿĀʾisha or Umm Salama, is a woman with an undeniable degree of moral agency and autonomy.[4] This

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2.   ʿĀʾishah ʿAbd al-Rahmān Bint al-Shāṭiʾ, Tarājim Sayyidāt Bayt Al-Nubuwwah 936–39 (1987); Heath *supra* note 1, at 245–47; Bewley, *supra* note 1, at 151–52.

3.   Fatima Mernissi, The Veil and The Male Elite: A Feminist Interpretation of Women's Rights in Islam 195 (1991).

4.   Denise A. Spellberg, Politics, Gender, and the Islamic Past: The Legacy of

does not mean that early Muslim women liberated themselves from the burdens of patriarchy or that the historical moment in which these women lived was less androcentric than any other moment in the past. I believe that patriarchy, androcentricity, and male dominance, simply put, were facts in the past and remain facts in the present. Gender egalitarianism, as an ideology and as an epistemological consciousness, is a byproduct of social and economic forces born in modernity. However, one cannot deny that throughout history, Muslim women negotiated their moral agency in complex and creative ways that often challenged or at least restrained the institutions of patriarchy.

Consider the historical precedent of someone such as ʿĀʾisha bint Ṭalḥa (d.101/719), a contemporary of Sukayna, who was Abū Bakr's granddaughter and the daughter of the famous companions Umm Kalthūm bint Abū Bakr and Ṭalḥa b. ʿUbayd Allāh (d. 36/656).[5] ʿĀʾisha bint Ṭalḥa's aunt was no other than the illustrious ʿĀʾisha, the Prophet's wife (d. 58/678).[6] ʿĀʾisha bint Ṭalḥa was reportedly known for her piety and for teaching the hadith of the Prophet. But she was also famous for being a notoriously defiant and argumentative wife. ʿĀʾisha bint Ṭalḥa married three times and her disputes, especially with her first and second husbands, became the stuff of legends. After a fight with her first husband, ʿAbd Allāh b. ʿAbd al-Rahmān, her maternal cousin and the grandchild of Abū Bakr, she left her home and resided with her aunt ʿĀʾisha and refused to speak to or reconcile with her husband until he passed away.

ʿAzza al-Maylāʾ (the meaning of her name is "the singer with loose hips"), a midwife and singer, arranged the marriage of the two prominent figures of Muṣʿab b. Zubayr to ʿĀʾisha bint Ṭalḥa, after ʿĀʾisha's first husband died. When Muṣʿab b. Zubayr was killed in battle, ʿAbd al-Mālik, approached ʿUmar b. ʿUbayd Allāh al-Taymi, who was the cousin of ʿĀʾisha bint Ṭalḥa, and asked him to propose to her on his behalf. ʿUmar b. ʿUbayd Allāh al-Taymi went to ʿĀʾisha bint Ṭalḥa to talk to her about the prospect of her marriage to ʿAbd al-Mālik. She responded, "Didn't he find someone else to send to engage me other than you? How about you yourself? Aren't you interested in

ʿĀʾisha Bint Abi Bakr (1994); Ruth Roded, *Umm Salama Hind*, *in* The Encyclopaedia of Islam 856 (P.J. Bearman et al. eds., 2000); W. Montgomery Watt, *ʿĀʾisha Bint Abī Bakr*, *in* The Encyclopaedia of Islam 307–8 (H.A.R. Gibb et al. eds., 2000). ʿAʾisha bint Abī Bakr was a prominent wife of Muhammad and the daughter of Abū Baker (d. 13/634), a companion and political successor of the Prophet. She is remembered as a favored wife of the Prophet, the most prolific female transmitter of hadith (*muḥadditha*), and a jurist in her own right (*faqīha*). Umm Salama (also known by her birth name Hind bint Abī Umayya) is credited with the second most female hadith transmissions, after ʿAʾisha. She married the Prophet Muhammad after the death of her first husband at the Battle of Uḥud (3/625), and was a leading figure among the Prophet's co-wives.

5.   Reportedly, ʿĀʾisha bint Ṭalḥa and Sukayna were both married to Musʿab bin al-Zubayr, the governor of Basra. Musʿab was ʿĀʾisha's second husband. *See* Bewley, *supra* note 1, at 9–10.

6.   Lear Halevi, *Wailing for the Dead*, 183 Past & Present 3, 21–22 (May 2004); Resit Haylamaz, Aisha (2014).

marriage?" Surprised, ʿUmar b. ʿUbayd Allāh said, "You would marry me?" She responded in the affirmative and they married.

ʿĀʾisha bint Ṭalḥa was very proud of her beauty. When her second husband Muṣʿab asked her to cover her face in public, she refused stating: "God the Almighty has gifted me with the highly praised attribute of beauty, and I want people to see my beauty, so that people will know that by making me beautiful and allowing me to be seen that God has done them a favor. Therefore, I am not going to cover. By God, there is no moral defect in this." She vowed never to wear the *ḥijāb*—a vow she apparently kept.[7] What emerges from ʿĀʾisha bint Ṭalḥa's legacy is the image of a woman who was not dogmatically obedient and subservient towards men. Like her famous aunt, ʿĀʾisha bint Ṭalḥa exercised her moral agency in ways that often clashed and negotiated with the institutions of societal patriarchy. To pretend that ʿĀʾisha bint Ṭalḥa was a paragon of women's liberation is anachronistic, but to ignore the nuanced complexity of her historical legacy would be no less a distortion of historical memory.

Women such as Sukayna and the two ʿĀʾishas were not outliers. Their historical legacies point to the fact that the social realities of Muslim women were far more complex and nuanced than the prescriptive books of hadith and law would indicate. For example, it is reported that Ḥusayn, the grandson of the Prophet, who was married to ʿĀʾisha bint Ṭalḥa's sister, Umm Isḥāq bint Ṭalḥa, commented that when she would get mad at him, she would show him a stern, uncompromising face, and that she would stop talking to him for long periods of time. Ḥusayn also claimed that he was not surprised that when Umm Isḥāq got upset with him while pregnant, she would not speak with him during her pregnancy and would still not do so even after she gave birth.[8] This is a very different negotiated sense of moral agency than one would expect from the obedient and subservient wife that one finds in the prescriptive books of hadith and law.[9]

Space limitations prevent a wider exploration of such liberating memories, but I want to emphasize that such memories are not simply limited to strong-willed and assertive aspects of these female personalities. For most of the prominent women throughout Islamic history, we know far less about their personalities than we do about their social and intellectual careers. A cursory survey of the lives of several women reveals a far deeper dimension to the promise of liberating memories: consider Zayn al-ʿArab bint ʿAbd

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7.   Bint al-Shāṭiʾ, *supra* note 2, at 904; Heath, *supra* note 1, at 240–44; Abī al-Faraj Al-Iṣfahānī, Kitāb Al-Aghānī 122 (2008).

8.   Al-Iṣfahānī, *supra* note 7, at 122–23; Bint al-Shāṭiʾ, *supra* note 2, at 139.

9.   Asma Afsaruddin, *Early Women Exemplars and the Construction of Gendered Space: (Re-) Defining Feminine Moral Excellence*, *in* Harem Histories: Envisioning Places and Living Space 23–48 (2010); Benedikt Koehler, *Female entrepreneurship in early Islam*, 31 Econ. Aff. 93 (2011); Pernilla Myrne, Female Sexuality in the Early Medieval Islamic World: Gender and Sex in Arabic Literature (2019).

al-Raḥmān b. ʿUmar b. Ḥusayn (d. 704/1304), who served as the rector of the *ribāṭ al-ḥaramayn*;[10] Āmina Khātūn al-Majlisiyya (d. late-11th early-12th c. A.H./ mid-17th c. C.E.), who was often asked by her husband, himself an esteemed jurist, to explain to him principles of Shiʿī jurisprudence;[11] and Amat al-Wāḥid bint al-Ḥusayn b. Ismāʿīl al-Maḥāmilī (d. 377/987), in addition to being famous for her piety and wide-ranging knowledge on such topics as Qurʾanic recitation, inheritance, arithmetic, and grammar, she used to also issue legal verdicts (*fatw*ās) according to the Shāfiʿī school of law and was considered among the most learned of Shāfiʿī jurists.[12]

I think it is undeniable that the Prophet's legacy, especially in Medina, empowered and animated the women of his time, and that this legacy or historical memory resounded with a continuing momentum throughout Islamic history.[13] As Mernissi and others have shown, the energetic relative involvement of Muslim women at the time of the Prophet led to considerable tension with the embedded institutions of patriarchy in Medina.[14] This tension was memorialized in ʿUmar Ibn al-Khaṭṭāb's famous declaration: "We men of Quraysh used to dominate our women. When we arrived in Medina, we saw that the Anṣār let themselves be dominated by theirs, but then our women began to copy their habits."[15] Reportedly, ʿUmar's complaint came after his wife defied and argued with him. When ʿUmar attempted to discipline his wife, she protested that the Prophet's own wives defy and argue with him and the Prophet did not object. In fact, one of the Prophet's wives, Hafṣa, was ʿUmar's own daughter. When ʿUmar attempted to reproach his daughter Hafṣa and the Prophet's other wives for arguing with the Prophet, he was rebuked by the strong willed Umm Salama. Moreover, when the Prophet had a disagreement with Hafṣa, they asked her father to arbitrate between them. In ʿUmar's presence, the Prophet invited to Hafṣa to make her case. Hafṣa declined to be the first to speak commenting: "No Prophet, you speak first but only speak the truth!" ʿUmar was shocked by what he saw as his daughter's insolence for how could she imply that the Prophet

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10. ʿUmar Riḍā Kaḥḥāla, 2 Aʿlām al-nisāʾ fī ʿālamay al-ʿarab wa-l-Islām 44 (n.d.).

11. ʿUmar Riḍā Kaḥḥāla, 1 Aʿlām al-nisāʾ fī ʿālamay al-ʿarab wa-l-Islām 9 (n.d.)

12. *Id.* at 89–90.

13. Barbara Freyer Stowasser, *The Status of Women in Early Islam*, *in* Muslim Women (Freda Hussain ed., 2016); Mernissi, *supra* note 3, at 115–40; Leila Ahmed, Women and Gender in Islam: Historical Roots of a Modern Debate 72 (1992); Asma Sayeed, Women and the Transmission of Religious Knowledge in Islam (2013). A good comprehensive source is ʿAbd al-Ḥalīm Abū Shuqqa, 1 Taḥrīr Al-Marʾa Fī ʿAṣri al-Risāla (1999); ʿAbd al-Ḥalīm Abū Shuqqa, 2 Taḥrīr Al-Marʾa Fī ʿAṣri al-Risāla (1999).

14. Mernissi, *supra* note 00, at 140–155; Ednan Aslan, *Early Community Politics and the Marginalization of Women in Islamic Intellectual History*, *in* Muslima Theology: The Voices of Muslim Women Theologians 35–43 (Ednan Aslan and Marcia K. Hermansen eds., 2013); Asma Lamrabet, Women in the Qurʾan: An Emancipatory Reading 91–159 (2016).

15. Khaled Abou El Fadl, Speaking in God's Name: Islamic Law, Authority and Women 232 (2010); Mernissi, *supra* note 00, at 142–43.

would say anything but the truth? Enraged, ʿUmar raised his hand to discipline his daughter, but the Prophet intervened to stop him.[16]

II.   Tension Reports in the Hadith Literature

Although this is not the place to fully explore the issue, it is important to note that the Islamic tradition is *replete* with what I described as tension reports. These are reports that evidence an exercise of moral agency and activism by women that most likely resulted in tension or that challenged the institutions of patriarchy at some level.[17] Below, I discuss several narratives illustrative of this dynamic, but it is important to keep in mind that this is only a small sample of countless such reports. A recently published biographical dictionary of female hadith scholars — comprising a total of 43 volumes! — offers numerous examples of the contributions made by women to the Islamic intellectual tradition, particularly the formative role they played in the social dynamics of knowledge production in the nascent Muslim community. Women were eager consumers and participants in the production of religious knowledge and are represented in the historical record as frequent attendants of the Prophet's teaching sessions and confident interlocutors.[18]

For example, it is reported that women complained to the Prophet that men had tended to monopolize his time, and thus, requested that the Prophet set aside specific days and times exclusively for them.[19] Although the historical record does not show any evidence that men objected to the setting aside of a time exclusively for women, the very existence of the request and the Prophet's obliging of it is evidence of women's exercise of moral agency. Whether they intended to do so or not, and whether consciously or subconsciously, by exercising their moral agency, women challenged and negotiated the settled institutions of societal patriarchy.

Even fairly innocuous events would have the same effect and play the same function. Take, for example, the reports that women would walk up to the Prophet, take him by the hand, and escort him to settle disputes with their spouses or to resolve one problem or another.[20] The historical record does not mention that this conduct resulted in overt social tensions in Medina. However, it is reasonable to imagine that every time a woman took the initiative to solicit the Prophet's intervention in a marital dispute, that would become a precedent in the collective social imagination. This precedent involved the exercise of active moral agency by women, and this exercise negotiated the settled institutions of patriarchy. Every exercise of free moral agency threatens

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16.   Abou El Fadl, *supra* note 15, at 232; Mernissi, *supra* note 00, at 143–44; Abī ʿAbd al-Raḥmān Aḥmad b. Shuʿayb al-Nasāʾī , Kitāb ʿIshrat al-nisāʾ 159–60 (1998).

17.   Abou El Fadl, *supra* note 15, at 223.

18.   Muḥammad Akram al-Nadwī, 1 al-Wafāʾ bi asmāʾ al-nisāʾ: mawsūʿat tarājim aʿlām al-nisāʾ fī al-ḥadīth al-nabawī al-sharīf 163–67, 187–96 (2021).

19.   ʿAbd al-Ḥalīm Abū Shuqqa, 2 Taḥrīr Al-Marʾa Fī ʿAṣri al-Risāla 42 (1999).

20.   Abū Shuqqa, *supra* note 19, at 45.

the institutions of power and creates the potential for change. Whether that potential eventually results in change or is ultimately aborted is altogether a different matter.

Perhaps the most famous of the tension reports have to do with hadith or narrations that assert that God directly responded to the concerns or complaints of women at the time of the Prophet. Among the most influential and impactful were the various narrations explaining the circumstances that led to the revelation of verse 35 of chapter 33 (The *Aḥzab* or Parties) of the Qur'an.[21] Reportedly, Umm Salama complained to the Prophet, "Why is it that the Qur'an only mentions men and not women?" God responded to Umm Salama's concerns by revealing 33:35. Other hadith narrations report that this same verse was revealed because Asmāʾ bint ʿUmays (who was married to Jaʿfar b. Abī Ṭālib) told the Prophet, "Messenger of God, women are disappointed and despondent!" The Prophet inquired why this was the case, and Asmāʾ replied, "Women are not mentioned in the Qur'an in goodness as are the men." In response, verse 33:35 was revealed. Yet other narrations report that 33:35 was revealed because Umm ʿUmāra al-Anṣāriyya came to the Prophet and proclaimed, "I see that everything [in the Qur'an] is about men, and I do not find women mentioned with regard to anything!"[22] Importantly, 33:35 is not the only part of the Qur'an that explicitly addresses women's piety, but it is certainly the most famous.[23] As discussed below, many modern interpreters believe that 33:35 was a direct response to Umm Salama's strong personality and her outspoken exercise of moral and social agency. However, considering the many divergent narrations about the circumstances surrounding the revelation of this verse, it is likely that a number of women sought assurances from the Prophet that God was cognizant of their contributions and wanted the Divine text to explicitly acknowledge their moral worth and the value of their pieties.

Another set of tension reports that have become no less important among modern interpreters revolve around the circumstances that led to the revelation of the chapter titled, *al-Mujādila* (the arguing or disputing woman).[24]

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21. Qur'an 33:35: "Indeed, the Muslim men and Muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the patient men and patient women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women, the men who guard their private parts and the women who do so, and the men who remember Allah often and the women who do so—for them Allah has prepared forgiveness and a great reward."

22. Muḥammad b. Jarīr al-Ṭabarī, 19 Tafsīr al-Ṭabarī Jāmiʿ al-Bayān ʿan Taʾwīl Ayy al-Qurʾān 111 (2001); Abī ʿAbd Allāh Muḥammad al-Qurṭubī, 17 Al-Jāmiʿ al-Aḥkām al-Qurʾān 149 (2006); Abī al-Ḥasan al-Māwardī, 4 al-Nukat wa al-ʿUyūn Tafsīr al-Māwardī 402 (n.d.).

23. *See also* 4:32 and 3:195 where the Qur'an affirms that women bear equal moral responsibility to that of men.

24. This title is often misread as *al-mujādala* (the disputation) instead of *al-Mujādila* (the woman who disputes).

Verses 1–2 of chapter 58 state: "God indeed has heard the words of the woman who argued with you about her husband, and who complained to God, for God hears your conversations, and truly, God is All-Hearing and All-Seeing. Those among you who commit *ẓihār* against their wives, those are not their mothers for none are their mothers save those who gave birth to them. Verily, what they say is indecent and calumny, and God is pardoning and most forgiving." *Ẓihār* was a pre-Islamic practice according to which a man would swear at his wife 'you are to me as my mother's back' and that would count as an irrevocable divorce. There are divergent reports as to the name of the disputant woman, but most sources state that it was Khawla bint Thaʿlaba. Reportedly, Khawla complained to the Prophet that her husband swore *ẓihār* at her, and the Prophet responded, "You are now forbidden to him," which means that they were irrevocably divorced. Khawla continued to argue with the Prophet that her husband's *ẓihār* was not intended as a divorce, and that her marriage should not be dissolved. At some point, in desperation, Khawla re-directed her appeals from the Prophet to God, saying, "O God, I complain to You!" Other reports assert that having despaired of getting a different answer from the Prophet, Khawla stood in the direction of Ka'ba, and uttered a long prayer appealing to God for a solution. Ultimately, the Qur'anic revelation supported Khawla's position proclaiming that *ẓihār* is not a divorce. The Qur'an stated that *ẓihār* is a serious sin and demanded expatiation. Those who commit *ẓihār* must free a slave, fast two months, or feed sixty poor people. Khawla, however, complained that her husband did not own slaves, was too old and frail to fast two months, and was too poor to feed sixty poor people. At this point, the Prophet raised the donations necessary for expatiation and gave it to Khawla to feed the poor on her husband's behalf.[25]

One could reasonably suspect that Qur'anic interventions on behalf of women such as Khawla must have created tensions with the traditional institutions of patriarchy in early Islam. In fact, Khawla herself was sufficiently empowered by the Qur'anic intervention on her behalf to the point that she continued to play an active social and political role in the life of the nascent Muslim community. Reportedly, later on in her life, after the Prophet died, Khawla accosted the Caliph ʿUmar Ibn al-Khaṭṭāb when he passed by her while riding his donkey and firmly lectured him on his duties as the people's leader. When some of ʿUmar's companions inquired why he stood by as this old woman sternly lectured him, ʿUmar retorted that he would humbly listen to this woman for as long as she desired because she is no other than Khawla, the woman who was the subject of Qur'anic revelation.[26] Perhaps

25. Muḥammad b. Jarīr al-Ṭabarī, 21 Tafsīr al-Ṭabarī Jāmiʿ al-Bayān ʿan Taʾwīl Ayy al-Qurʾān 446–56 (2001); Abī al-Ḥasan al-Māwardī, 5 al-Nukat wa al-ʿUyūn Tafsīr al-Māwardī 498–8 (n.d.); Abī ʿAbd Allāh Muḥammad al-Qurṭubī, 20 Al-Jāmiʿ al-Aḥkām al-Qurʾān 280–82 (2006); Fakhr al-Dīn al-Rāzī, 29 Tafsīr al-Fakhr al-Rāzī 250–53 (1981).

26. Muḥammad al-Qurṭubī, *supra* note 25, at 280; Muḥammad Ibrāhim Salīm, Nisāʾ Ḥawl al-Rasūl 49–51 (1990) 49–51; Abū ʿAbd Allāh Muḥammad ibn Saʿd, 10 Kitāb

the strongest statement of the role of Qur'anic interventions in empowering women and in becoming the locus for tension reports is that which has been narrated by ʿUmar's son, ʿAbdullah Ibn Umar (d. 73/692). He reportedly said: "When the Prophet was alive, we were cautious when speaking and dealing with our women in fear that a revelation would come [from God] concerning our behavior. But when the Prophet died, we were able to speak and deal with them [more freely]."[27]

I will give one more example of the tension reports found in the tradition before moving on. In the incident known as *ḥādithat al-ifk*, ʿĀʾisha, the Prophet's wife, was slandered and falsely accused of inappropriate conduct with a man named Ṣafwān. The Prophet did not believe the accusations against ʿĀʾisha, but she was hurt by what she perceived to be lack of full support by the Prophet. The Qur'an eventually vindicated ʿĀʾisha against her accusers, and those who slandered her were punished. After the Qur'anic revelation defended ʿĀʾisha and proclaimed her innocence, ʿĀʾisha's parents, her father Abū Bakr and mother Umm Rumān, exhorted her to thank the Prophet. However, ʿĀʾisha insisted that gratitude was owed to God alone because only God (and not the Prophet) properly vindicated her.[28] Throughout Islamic history, the *ḥādīthat al-ifk* incident and ʿĀʾisha's responses to the Prophet have been the subject of numerous interpretations. Regardless of the interpretation one accepts, it is indisputable that in insisting that it is God, and God alone, who has vindicated her, and that gratitude is owed only to God, ʿĀʾisha was exercising her moral agency and setting a powerful precedent that resonated throughout Islamic history. Her exercise of moral agency negotiated the institutional patriarchy in her society in ways that were not intended or even foreseeable by ʿĀʾisha or by those who witnessed and first narrated these events.[29] Most

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AL-ṬABAQĀT AL-KABĪR 353–55 (2001); AḤMAD B. ʿALĪ B. ḤAJAR AL-ʿASQALĀNĪ, 9 FATḤ AL-BĀRĪ SHARḤ ṢAḤĪḤ AL-BUKHĀRĪ 433 (N.D.); BADR AL-DĪN AL-ʿAYNĪ, 20 ʿUMDA AL-QĀRĪ SHARḤ ṢAḤĪḤ AL-BUKHĀRĪ 280 (N.D.); AḤMAD IBN ḤANBAL, 45 MUSNAD AL-IMĀM AḤMAD IBN ḤANBAL 280 (1996).

27. ABOU EL FADL, *supra* note 15, at 223; IBN ḤAJAR AL-ʿASQALĀNĪ, 9 FATḤ AL-BĀRĪ 253–54 (N.D.).

28. ABOU EL FADL, *supra* note 15, at 230; MERNISSI, *supra* note 3, at 180–88.

29. There are numerous other tension reports that I could discuss but one in particular bears mentioning, if only briefly. A couple in Medina married and when the marriage soured, they divorced such that remarrying would have required a new contract and dowry. When the ex-husband and ex-wife began to miss one another and desired to remarry, the woman's brother, Maʿqal b. Yasār, refused to permit the union. He berated his sister and accused the ex-husband of lacking gratitude and honor. Despite his sister's insistent pleas, Maʿqal remained obstinate and refused to allow his sister to return to her ex-husband. Maʿqal proclaimed to the ex-husband, 'I honored you by marrying my sister to you, and you disrespected her by divorcing her! I will never agree to the two of you marrying again!' According to the report, the woman turned to God for help, and it was then that the Prophet received the following revelation: "If there be among you women who are divorced, and they have completed the fixed term of waiting (three months), do not prevent them from marrying (again) whom they choose, if the man and woman agree with each other honorably. This is wise

significantly, as discussed below, these tension reports were co-opted and adapted by contemporary Muslims in developing gendered re-interpretations of the tradition designed to empower women against the entrenched institutions of patriarchy and male dominance.

III. The Misogynistic Traditions

In proportion to, and to the extent that the Islamic tradition generated "liberating memories" and tension reports that had the potential of challenging patriarchy, the same tradition generated deeply chauvinistic reports. Considering that institutions of patriarchy are deeply embedded in all human history, the existence of misogynistic reports or narrations attributed to the Prophet or his companions is hardly surprising.[30] But as I have argued elsewhere,[31] and as Mernissi has shown, some of the most misogynistic reports were born in direct response to early social debates about the role and place of women, either at the time of the Prophet or shortly after his death. Examples of such reports include traditions that claim that women are not fit for positions of leadership and reports that attempt to seclude women from involvement in public life.[32] But before delving into what I am describing as misogynistic traditions, it is important to make three prefatory points: the first has to do with the definition of misogynistic reports; the second with the sources of such reports; and the third with the historical context of such reports.

What I mean by misogynistic reports are traditions attributed to the Prophet or the Companions that demean women by describing them as inherently defective, flawed, or inferior to men. Most often, these reports offer a dogmatic view of women that is bigoted, indiscriminate, unreflective, and uncritical. In these traditions, women, as a gender, are often described as defective or flawed, and should, therefore, be subservient to men. Having said this, it is important to note that historical context matters, and it matters a great deal. Thus, reports that strike the modern reader as demeaning towards women might not have always been considered as such. Moreover, it is not always possible to ascertain the intention behind many of the narrated reports found in the tradition. Take, for instance, traditions that portray women as a constant source of *fitna* (sexual seduction and enticement) to

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advice to those who believe in God and the Last Day. This is more proper and pure for God knows and you do not know." (Qur'an 2:232) Maʿqal, realizing his error, said to his sister: "I heard my God, and now I must obey," and he agreed to allow the re-marriage. For this and other reports see, Khaled Abou El Fadl, Reasoning with God: Reclaiming Shari'ah in the Modern Age 388–89 (2014).

30. Karen Bauer, Gender Hierarchy in the Qur'ān: Medieval Interpretations, Modern Responses 1–5 (2015).

31. *See* Khaled Abou El Fadl, *supra* note 15.

32. Abou El Fadl, *supra* note 15, at 111–15, 228–31. *See also* Mohammad Fadel, *Is Historicism a Viable Strategy for Islamic Law Reform? The Case of 'Never Shall a Folk Prosper Who Have Appointed a Woman to Rule Them'*, 18 Islamic L. and Soc'y 131–76 (2011).

men. Would such reports have been considered demeaning or degrading for women of the 7th or 8th centuries? Similarly, there are reported narratives that exclude women from the ability to lead congregational prayers—at the time in which these narratives emerged, were these narratives intended to be degrading or demeaning to women? Yet from the time of the Prophet to this very day, women in congregational prayers stand behind men. Is this a misogynistic practice? These questions raise complex historical and methodological issues that are beyond the scope of this Article.[33] To the extent possible, I have avoided discussing traditions that on their face do not appear to be degrading or demeaning to women.

There is often a thin line separating reports that discriminate against women and reports that can be described as misogynistic. The purported intentionality behind a particular report or the historical context that might have produced the report cannot be considered dispositive as to whether a particular narration or another is misogynistic. Again, whether the practice of having women stand behind men in congregational prayers could be considered misogynistic depends on numerous contextual factors, including whether women who follow this practice feel demeaned or degraded by it. The same can be said about the practice of hijab or wearing a veil covering a woman's hair or face. So as not to succumb to the temptations of orientalism, we can ask the same questions as to the Christian and Jewish traditions. In the Roman Catholic and Anglican orders, nuns wear a habit and veil, and in Jewish law, the veiling of women's hair is part of *tzniuth*, or the law of modesty. According to some schools of thought, a woman's hair and other parts of a woman's body are considered *ervah* (erotic enticement) and must therefore be covered. Moreover, according to some interpretations of Jewish law, a married woman may not appear in public with her hair uncovered, and a virgin bride is required to veil her face.[34] Are these veiling practices misogynistic? It seems to me that whether the veiling of women may be considered misogynistic depends on numerous cultural and epistemological factors or contingencies. Addressing these traditions that apply exclusively to women and that single out women with special burdens or accommodations require a more systematic and comprehensive approach that is beyond the scope of this Article.

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33. For a discussion of the *fitna* traditions, see ABOU EL FADL, *supra* note 15, at 232–47. On women leading prayer, *see* AMINA WADUD, INSIDE THE GENDER JIHAD: WOMEN'S REFORM IN ISLAM 177–86 (2006).

34. Barbara Goldman Carrel, *Shattered Vessels That Contain Divine Sparks: Unveiling Hasidic Women's Dress Code*, *in* THE VEIL: WOMEN WRITERS ON ITS HISTORY, LORE AND POLITICS (Jennifer Heath ed., 2008); Michael J. Broyde, *Hair Covering and Jewish Law: Biblical and Objective (Dat Moshe) or Rabbinic and Subjective (Dat Yehudit)?*, 42 TRADITION: A JOURNAL OF ORTHODOX JEWISH THOUGHT 97–179 (2009); Joshua Schwartz, *Hair's the Thing: Women's Hairstyle and Care in Ancient Jewish Society*, *in* STRENGTH TO STRENGTH: ESSAYS IN HONOR OF SHAYE J.D. COHEN 341–58 (Michael L. Satlow ed., 2018); Susan Weiss, *Under Cover: Demystification of Women's Head Covering in Jewish Law*, NASHIM: A JOURNAL OF JEWISH WOMEN'S STUDIES & GENDER ISSUES 89–115 (Spring 2009).

The final prefatory remark, a point I will return to later, has to do with the textual sources in which misogynistic reports are found. It is important to note that the same sources that contain the misogynistic reports also contain the tension reports, or the reports embodying liberating memories. The historical memory of the Prophet and the early Muslim generations are contained in the texts of the Qur'an, sunna, hadith, and *sīra*, and these texts contain narratives that can potentially both oppress and liberate Muslims.[35] The very same texts that preserved memories that strike modern readers as oppressive and unjust also preserved historical memories that are surprisingly egalitarian, equitable, or liberating. As we will discuss later, some scholars have attempted to deal with the problems of patriarchy and misogyny in the tradition by arguing that Muslims should rely solely on the Qur'an and dismiss all other texts as unreliable or as hopelessly prejudiced against women. What may be called "Qur'an-only" (known in Arabic as *al-qur'āniyyūn*) approaches raise serious methodological problems that I will address later.

IV. The Misogynistic Hadith Reports

Hidayet Tuksal divided misogynistic hadith traditions into five main categories, as follows: 1) hadiths that state that women were created from Adam's rib; 2) hadiths that claim that the majority of the inhabitants of hell will be women; 3) hadiths that assert that women are deficient or lacking in religion and intellect, and that women lead men astray[36]; 4) hadiths that claim that women are a bad omen or inauspicious; and 5) hadiths that claim that if dogs, donkeys, or women pass in front of a man performing ritual prayer, they will invalidate this prayer.[37] I agree with Tuksal's categorizations, although these five are not exhaustive. I will briefly comment on each of the five categories before discussing some of the traditions Tuksal might have missed.[38]

A. *Women Created from a Rib*

One hadith states: "Be kind to women for they are created from a rib, and the most curved portion of the rib is its upper portion. If you should try to straighten it, it will break, but if you leave it as it is, it will remain bent. So be

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35. On Sunna and hadith, *see* Abou El Fadl, *supra* note 15, at 98–132.

36. According to Tuksal, *fitan* (sing. *fitna*) hadith, such as "I have not left to you any *fitna* (trial) greater than women," are included in this third category.

37. Hideyat Sefkatli Tuksal, *Misogynistic Reports in the Hadith Literature*, *in* Muslima Theology: The Voices of Muslim Women Theologians 133–54 (Ednan Aslan and Marcia K. Hermansen eds., 2013).

38. Asma Barlas writes, "…it is ironic that even though there are only about six misogynistic Ahadith accepted as Sahih (reliable) out of a collection of 70,000, it is these six that men trot out when they want to argue against sexual equality…" in Asma Barlas, Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an 46 (2002).

kind to women."[39] Some medieval scholars have taken this hadith to affirm the biblical outlook that Eve was created from Adam's rib.[40]

Although the hadith, in its many versions, counsels the kind treatment of women, modern scholars who considered it misogynistic have done so on account of it describing women as having a crooked nature.[41] Contemporary Muslims who have defended this report have argued that crooked does not mean flawed but simply different, and therefore, the hadith was intended to espouse deference to women's distinct and unique nature. I think it is very difficult to ascertain the actual authorial intent behind this report. However, as far as I am aware, all ribs are crooked because there are no straight ribs. The reasonable import of the words is that women have been created from something derivative, and that women require special treatment because, to put it simply, something is wrong with their very nature. It is as if women are fragile and flawed, or like children, i.e. women need especially benevolent treatment so as not to offend their delicate nature. It should be recalled that in Islamic theology, straightness, such as in the expression 'the straight path' (*al-ṣirāṭ al-mustaqīm*), is equated with goodness and justness. At the same time, crookedness holds the exact opposite connotation, meaning deviance or corruption. Hence, one can easily understand why many modern interpreters of hadith considered the crooked rib traditions misogynistic. Moreover, the crooked rib traditions have been exploited in contemporary abusive practices against women.[42]

B. *The Majority of the Inhabitants of Hellfire and Deficiency in Religion and Intellect*

The same hadiths that claim that women are the majority of the inhabitants of hellfire also claim that women are deficient in religion and intellect. In other words, they are not two separate categories belonging to two separate hadith narratives. Rather, the assertions that women are the majority of hellfire

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39. Abī ʿAbd Allāh Muḥammad Al-Bukhārī, Ṣaḥīḥ Al-Bukhārī 819 (2002); Muslim ibn al-Ḥajjāj Al-Naysābūrī, Ṣaḥīḥ Muslim 683 (2006), 683; Abū ʿAbd Allāh Muḥammad b. Yazīd Ibn Māja, Sunan Ibn Māja 279 (2015); Abī ʿAbd al-Raḥmān Aḥmad b. Shuʿayb al-Nasāʾī, 8 Kitāb Al-Sunan al-Kubrā 251 (2001).

40. Tuksal, *supra* note 37, at 137.

41. *Id.* On the bent rib hadith, patriarchal interpretations, and what the author calls deficiency hadith. *See* Bauer, *supra* note 30, at 36–49, 123–34.

42. "From a Crooked Rib," became the title of Nuruddin Farah's strongly critical novel of gender roles in Somalia. Originally published in 1970, the novel continues to attract scholarly attention from the Islamic gender studies community, particularly from those writing from the geographic perspective Africa. Nuruddin Farah, From a Crooked Rib (1970). *See also* Ifeoma Einne Odinye, *Violence against Girls: A Feminist Perspective on Nuruddin Farah's From a Crooked Rib*, 6 Journal of Linguistics, Language and Culture 113–139 (2019); Mohd Anuar bin Ramli et al., *Muslim Exegeses Perspective on Creation of the First woman: A Brief Discussion*, 13 Middle-East Journal of Scientific Research 41–44 (2013); Riffat Hassan, *Feminist Theology: The challenges for Muslim women*, 5 Critique: Journal for Critical Studies in the Middle East 53–65 (1996).

and that they are deficient in religion and intellect all belong to a single genre of hadith narrative. This same basic narrative is related in a number of different versions, too many to adequately discuss here, but in essence, the hadith claims that the Prophet advised women to be generous in giving alms and to be fervent in asking God for forgiveness because women will be the majority of the inhabitants of hell. Reportedly, when women asked the Prophet why this is so, he explained that this is because women tend to be ungrateful, especially to their husbands, and because women curse too often. The Prophet then purportedly adds that although women infatuate men, often leading men astray, women are deficient in religion and intellect. Women then inquire in what way are they deficient in religion and intellect, and the Prophet reportedly replies that women lack religion because they do not pray or fast while menstruating, and that they lack intellect because in certain situations, the testimony of a woman equals only half that of a man.[43] The authenticity and meaning of this hadith, in its many different versions, has been widely debated throughout Islamic history. The hadith has been repeatedly cited in the context of many of the most misogynistic discourses in Islamic theology and jurisprudence. Some such discourses went so far as recommending that men should always consult with women only to do the exact opposite of their advice.[44] Meanwhile, other sources attempted to marginalize and limit the impact of this hadith by insisting that the Prophet was only joking and that the entire report was intended as a pun.[45]

C. *Bad Omens, Donkeys, Dogs, and Women*

There are a number of competing versions of hadiths attributed to the Prophet stating that if bad omens existed then they are to be found in houses, horses, and women.[46] Most medieval scholars raised questions about the authenticity of this genre of hadith while others argued that the hadiths were intended to describe pre-Islamic (*jāhilīyya*) beliefs and practices.[47] These scholars often cite to a version of the hadith that claims that the Prophet said, "Bad omens do not exist, but if [bad] omens existed in anything then it would be in women, homes, and horses."[48] ʿĀʾisha strongly opposed the bad omen traditions. When two men informed ʿĀʾisha that Abū Hurayra claimed that the

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43. Al-Bukhārī, *supra* note 39, at 84, 356; Al-Naysābūrī, *supra* note 39, at 51; Aḥmad Ibn Ḥanbal, 9 Musnad Al-Imām Aḥmad Ibn Ḥanbal 245–46 (1996); Abī Dāwud Al-Sijistānī, 7 Sunan Abī Dāwud 68 (2009).

44. Abou El Fadl, *supra* note 15, at 222–29; Tuksal, *supra* note 37, at 140–48.

45. Abou El Fadl, *supra* note 15, at 229.

46. Al-Naysābūrī, *supra* note 39, at 1059–60; Aḥmad Ibn Ḥanbal, 10 Musnad Al-Imām Aḥmad Ibn Ḥanbal 262 (1996); Al-Bukhārī, *supra* note 39, at 1299, 1456; Abī Dāwud Al-Sijistānī, 6 Sunan Abī Dāwud 63–64 (2009); Abī ʿAbd al-Raḥmān Aḥmad b. Shuʿayb al-Nasāʾī, 4 Kitāb Al-Sunan al-Kubrā 315–16 (2001).

47. *See* discussion in Tuksal, *supra* note 37, at 148–49.

48. Ibn Qayyim Al-Jawziyya, 10 Awn Al-Maʾbūd Sharḥ Sunan Abī Dāwud 419–20 (n.d.).

Prophet said that women and mounts could be bad omens, ʿĀʾisha was out-raged. She responded: "By God Who revealed the Qurʾan to Abū al-Qāsim (Muḥammad), whoever attributes this to the Prophet, they have lied!"[49]

Very similar dynamics surround the hadiths that claim that if a donkey, black dog, or woman passes in front of a person performing ritual prayer, then the prayer is voided.[50] The hadith exists in many divergent versions, but most medieval scholars raised serious questions about the authenticity of this hadith.[51] This hadith, with its different versions, became the subject of very con-tentious debates because it was opposed by the Prophet's wives, Umm Salama and ʿĀʾisha, who insisted that the Prophet never said such a thing.[52] ʿĀʾisha is reported to have been outraged when she heard this hadith and exclaimed: "God confound you! You have made women the same as dogs and donkeys! By God, I used to lie down in front of the Prophet, while on my menstrual cycle as he continued to pray."[53]

D.   *Other Misogynistic Hadiths: The Obedience and Subservience Reports*

Most other genres of misogynistic reports make the autonomy or moral agency of women wholly subservient to men. One can label this genre of hadith as the obedience and subservience reports.[54] For example, some of these reports state that a woman will not enter Heaven unless she pleases her husband. In one such hadith, the Prophet is reported to have said: "A woman's prayers or good deeds will not be accepted [by God] as long as her husband is upset with her."[55] Other hadiths attributed to the Prophet claim that God will not gaze upon a woman who is not grateful to her husband, and yet other hadiths assert that the angels will curse a woman who rejects her husband's sexual advances until she concedes to his demands.[56] However, perhaps the most misogynistic narrations of this kind are what I have called the "prostra-tion hadiths." This genre has been narrated in many variants, but one example will convey the basic idea. It is reported that the Prophet said: "No human may prostrate before another, but if it were permissible for a human to do so, I would have ordered a wife to prostrate before her husband because of the enormity of his rights over her. By God, if there were an ulcer excreting puss

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49.   ʿAbd al-Raḥmān ʿAbd Allāh Al-Zarʿī, Abū Hurayra Wa Aqlām Al-Ḥāqidīn 65–66 (1984); Ibn Ḥajar Al-ʿAsqalānī, 6 Fatḥ Al-Bārī 61–62 (n.d.).

50.   Al-Naysābūrī, *supra* note 39, at 510–11; Aḥmad Ibn Ḥanbal, 35 Musnad Al-Imām Aḥmad Ibn Ḥanbal 272 (1996); Al-Sijistānī, *supra* note 46, at 32. *Also see* discussion in Tuksal, *supra* note 37, at 150–52.

51.   *See* discussion in Abou El Fadl, *supra* note 15, at 226–27.

52.   *Id.*

53.   Al-Naysābūrī, *supra* note 39, at 232–33; Aḥmad Ibn Ḥanbal, 41 Musnad Al-Imām Aḥmad Ibn Ḥanbal 423 (1996); Al-Bukhārī, *supra* note 39, at 134, 1566–67.

54.   Most of these reports can be found in Muḥammad Ṣadīq Khān Al-Qanūjī, Ḥusn Al-Uswa Bimā Thabata Min Allāh Wa Rasūlihi Fi al-Niswa 553–62 (1981).

55.   Abou El Fadl, *supra* note 15, at 219–20.

56.   Abou El Fadl, *supra* note 15, at 220.

from his feet to the top of his head, and she licked it (for him) she would not fulfill his rights."[57] Other versions of this hadith do not include the reference to ulcers but instead state that if a husband demands sexual gratification from his wife, even while on the back of a camel, she must oblige him.[58] One hardly needs to comment about the misogyny that is characteristic of the obedience and subservience genre of hadith. These hadith are often cited by contemporary scholars to underscore that women owe their husbands gratitude, obedience, and servitude, especially of the sexual kind.[59]

A sizeable number of Muslim women scholars have endeavored to challenge patriarchal and misogynistic interpretations of the Islamic tradition. However, among those writing in the English language, not as many have focused specifically on the Prophetic traditions in Islam. Many works by Muslim women scholars writing on gender equality deal with the hadith traditions indirectly or incidentally, but only a few have hadith as their primary or main interest. It is fair to say that most Muslim women scholars writing on gender equality are explicitly or implicitly skeptical of the historical authenticity of misogynistic traditions attributed to the Prophet. Most of these scholars agree that gender equality cannot be achieved unless the religious texts that preserved and sanctified the misogynistic reports are read critically and with a great deal of historical skepticism. And again, most these scholars either explicitly reject or simply ignore the classical method of authenticating hadith known as *isnād* analysis. In the classical tradition, hadith scholars would painstakingly document biographical information about the narrators who reported and transmitted hadiths attributed to the Prophet. The chains of transmission of each hadith would be evaluated, and the hadith scholar would then adjudge a hadith as sound or unsound, or some degree in between. For the most part, contemporary scholars interested in gender egalitarianism in Islam do not feel bound by the determinations of classical hadith scholars as to the soundness of a report. Therefore, although a hadith may have been declared sound (ṣaḥīḥ) in classical hadith collections, the scholars discussed in this Article do not treat such determinations as binding or dispositive.[60]

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57. Ibn al-Jawzī, Kitāb Aḥkām Al-Nisāʾ, 208–14 (1997); ʿAlaʾ al-Dīn ʿAlī al-Muttaqī Al-Hindī, 16 Kanz Al-ʿUmmāl Fī Sunan al-Āqwāl Wa al-Afʿāl 337–38 (1985); al-Nasāʾī, *supra* note 39, at 253; *Ibn Qayyim Al-Jawziyya*, 6 ʿAwn Al-Maʾbūd Sharḥ Sunan Abī Dāwud 178 (n.d.).

58. On the prostration hadith and its variants, *see* Abou El Fadl, *supra* note 15, at 210–18.

59. Khaled Abou El Fadl, And God Knows The Soldiers: The Authoritative and Authoritarian in Islamic Discourses 62–66 (2001).

60. In the Sunni tradition, the main hadith collections are Bukhārī, Muslim, al-Nasāʾi, Abū Dāwūd, al-Tirmidhī, and Musnad Aḥmad Ibn Ḥanbal.

V.   The Main Stratagems for Re-reading the Hadith and Sunna

In response to patriarchal and misogynistic hadith traditions, we can identify three main thematic stratagems adopted by Muslim women scholars. In this context, what I have called thematic stratagems are pedagogical or hermeneutic approaches designed to interrogate and challenge the authority of hadith traditions that appear to promote gender inequity in Islam. The reason I have chosen to call these approaches thematic stratagems, instead of interpretive methods, is that the approaches of the scholars discussed below are not necessarily designed to reconstruct the meaning of the hadith. As noted above, very few scholars have adopted a gendered approach to hadith exclusively from a hermeneutical perspective. The issue that challenges gendered approaches is not so much the meaning of hadiths but the role or authority of hadith in the first place. To one extent or another, all gendered approaches to the hadith literature deconstruct or impeach the credibility or authenticity of narratives attributed to the Prophet that are seen as chauvinistic or misogynistic. The thematic stratagems discussed below outline different reasons or methodologies for critically evaluating the weight and authority that ought to be given to problematic hadiths. Alternatively, the stratagems employed in gendered approaches to hadith seek to explain the role and function of patriarchal institutions in the production of Islamic knowledge. The net effect of these approaches is to raise serious doubts as to whether reports attributed to the Prophet can in fact be reliably believed to have come from the Prophet. These three thematic stratagems to gendered approaches to hadith tend to focus on 1) the limited role that women played in the production of Islamic knowledge; 2) the historicism of Islamic religious text; and 3) the supremacy of the Qur'anic message as well as the centrality of universal ethical values to any historical or hermeneutical analytical project. As discussed below, these thematic stratagems are not mutually exclusive, and various scholars adopt one or more of these methods to one extent or another. Of those discussed below, no scholar has relied exclusively on one stratagem, but it is also clear that scholars tend to underscore particular stratagems, and not others, as partially responsible for gender inequality or as the best way for achieving gender egalitarianism. Below, I will discuss each of the stratagems employed by Muslim women scholars, and in the final part of this Article, I will outline my own approach to problematic traditions.

A.   *The Limited Role of Women in the Production of Knowledge*

As noted earlier, Muslim scholars have emphasized that women played a prominent role in the preservation and promotion of Islamic knowledge. Women, such as the Prophet's wives ʿĀʾisha and Umm Salama, were among the earliest narrators of hadith, and as Leila Ahmed has shown, at the time of the Prophet, women openly exercised their agency by playing an active role in

political and religious life.[61] In his very detailed study, Mohammad Nadwi illustrates that the extent to which women were involved in the preservation and production of Islamic knowledge varied greatly from one region and period to another.[62] At least one-third of the corpus of religious knowledge known as the hadith and sunna was transmitted by women during the formative first century of Islam. The traditional position is that the gender of the narrator did not affect the ultimate judgment as to the soundness or authenticity of a report. Put differently, until recently, it was believed that it simply did not matter whether a man or woman narrated a hadith because both men and women were treated equally. For the purposes of evaluating the authenticity and authority of a hadith, it did not matter whether it was narrated by a man or a woman.[63]

In this context, the relatively recent contributions of Asma Sayeed and Nimat Barazangi are most significant. Sayeed argues that while women participated in the process of transmission of knowledge and hadith in the first Islamic century, the role of women sharply decreased with the professionalization of the field of hadith-transmission in the early second century. Sayeed demonstrates that, contrary to the inherited traditional position, gender was indeed a factor in evaluating the credibility and legal impact of the first hadith narrations. In other words, the gender of the hadith narrator could affect whether a particular report was deemed sound, and could also diminish the weight and value given to particular traditions in legal determinations.[64] Building upon Sayeed's scholarship, Barazangi argues that despite the fact that many reports were narrated on the authority of women, women were excluded from participating in the formation and development of the hadith sciences. According to Barazangi, women hadith narrators were consistently marginalized by male-dominated institutions and were excluded from developing what Barazangi calls "the theology of the Sunna." Barazangi contends that since the hadith were mostly developed, read and interpreted by men, the entire corpus of inherited traditions known as the hadith is clearly imprinted with a male perspective and bias.[65]

Both Sayeed and Barazangi do not dismiss the entire corpus of hadith and sunna as mere invention or fabrication of male patriarchy. However, their scholarship does de-sacralize the hadith and sunna by underscoring the role of

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61. Ahmed, *supra* note 13, at 72.

62. Muhammad Akram Nadwi, Al-Muḥaddithāt: The Women Scholars in Islam 245–72 (2007). *See also* Asma Sayeed, Shifting fortunate: Women and hadith transmission in Islamic history (first to eighth centuries) (PhD diss., Princeton University, 2005).

63. Nadwi, *supra* note 62, at 18–22.

64. Sayeed, *supra* note 62, at 188. *See also* Asma Sayeed, *Gender and Legal Authority: An Examination of Early Juristic Opposition to Women's Hadīth Transmission*, 16 Islamic Law and Society 115–50 (2009).

65. Nimat Hafez Barazangi, Woman's Identity and Rethinking the Hadith 19–27, 160–61 (2016).

human interpretive agency in the preservation and re-production of this corpus of religious knowledge. As Barazangi puts it rather bluntly, " . . . I am neither discrediting the reported Hadith, nor refuting its central value and importance for Muslim thought and life. Rather, I want to demystify the divine halo that has been cast over Hadith literature and that has caused injustices, especially to the Muslim woman by misusing and abusing the theology of sunnah."[66] Of course, the main challenge to this argument is that the institutions that preserved all sacred texts, and indeed all of history, have been largely shaped by men. The dominance of patriarchy and the prevalence of the male voice in the institutions that preserved the human past is a universal and cross-cultural reality. One would be hard-pressed to find an inherited tradition that did not privilege the male perspective and a gendered male voice. In fact, as Ahmed points out, Islam is the only major religion to include the participatory voice of women in its foundational religious texts.[67] Gender bias was not the only form of prejudice at play in the formative moments of history—all formative moments are plagued by the prejudices of power and privilege, whatever they may be. In my view, to the extent that Sayeed and Barazangi's arguments entail a healthy dose of skepticism and critical insight when analyzing institutions that perpetuated prejudice and privilege, I think these arguments are reasonable. However, employing critical historical insights to deconstruct and dismiss tradition creates rather intractable theological and jurisprudential problems. I will return to this point later.

B.   *Arguments from Historical Contexts*

Historical contextualization is a common interpretive stratagem that is widely employed by Muslim women scholars in dealing with the hadith tradition. Perhaps the most famous and influential of these efforts is that of Mernissi in *The Veil and the Male Elite*. Mernissi analyzes the dynamics of power in relation to the formation of the hadith and what she describes as the use of sacred text as a political weapon.[68] Mernissi undertakes a close analysis of a number of what she considers to be misogynistic reports in order to demonstrate that these hadith came into being as part and parcel of the schismatic political conflicts shortly after the death of the Prophet. The misogynistic hadiths Mernissi analyzes were invented as a direct response to the political activism of ʿĀʾi-sha, the Prophet's wife, and her rebellion against the fourth Caliph, ʿAlī.[69] As significantly, Mernissi contends that the Prophet embraced an egalitarian project in which he tried to accommodate and support women's self-empowerment and self-assertion. However, the male elite of the nascent Prophetic state resisted his egalitarian project as they found their patriarchal privileges increasingly threatened. Ultimately, the Prophet's egalitarian project failed

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66.   *Id.* at 7–8.
67.   Aнмеd, *supra* note 13, at 73.
68.   Mernissi, *supra* note 3, at 25–48.
69.   *Id.* at 49–81.

when the law of the *ḥijāb* (seclusion) was decreed, giving the upper hand to ʿUmar's patriarchal faction. Nevertheless, after the Prophet's death, women such as ʿĀʾisha bint Ṭalḥa continued to resist the *ḥijāb* and resist other patriarchal efforts to exclude women from public life.[70]

Other historical arguments focus on exploring the influx of cultural influences upon Muslims after the early Islamic conquests.[71] Ahmed and others argue that following the Islamic conquests, local Byzantine and Sassanian cultures were assimilated and integrated into Islamic practices. These cultures constructed the image of women as religiously and intellectually defective, and this image was readily integrated into Islamic theology and law, especially through the medium of the hadith literature.[72] As Barbara Stowasser states, "Bible-related traditions, including their symbolic images of the female's defective nature, were seamlessly integrated into an Islamic framework."[73] Through Qur'anic exegesis and the canonization of the hadith, the image of women as at once defective and flawed, alluring and dangerous, became nestled into the fabric of Islamic orthodoxy.[74]

In this context, we must take note of the work of the scholarship of Amina Wadud and Asma Barlas, who argue that all religious texts, including the Qur'an and sunna, must be read within the historical context that constructed them. This means distinguishing between text that was intended to apply universally and in perpetuity (*al-ʿāmm*), and text that was bound to a specific time and a particular set of circumstances (*al-khāṣṣ*).[75] Using this method of historical contextualization, scholars such as Wadud, Barlas, and Kecia Ali argue for a thorough and critical re-reading of the Islamic traditions dealing with, among other topics, polygamy, veiling and seclusion, and laws of marriage and divorce.[76] For Muslim women scholars, the re-reading of history to understand the ways that the Prophet and early generations negotiated gender relations act as a source of hermeneutic inspiration. It is not an exaggeration to say that these scholars resist the oppressive momentum of history by insisting on their right to take ownership of the past. For instance, Barlas finds considerable

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70. *Id* at 85–188
71. *See, e.g.*, Asma Afsaruddin, Contemporary Issues in Islam (2015).
72. Ahmed, *supra* note 13, at 11–36.
73. Barbara Freyer Stowasser, Women in the Qur'an, Traditions, and Interpretation 23 (1994).
74. Barlas, *supra* note 38, at 45; Ahmed, *supra* note 13, at 65–68.
75. Wadud, *supra* note 33, at 196–97.
76. Aysha Hidayatullah, *Muslim Feminist Theology in the United States*, *in* Muslima Theology: The Voices of Muslim Women Theologians 86–90 (Ednan Aslan and Marcia K. Hermansen eds., 2013); Barlas, *supra* note 38, at 129, 167; Amina Wadud, Qur'an and Women: Rereading the Sacred Text from a Woman's Perspective 62 (1999); Kecia Ali, Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence (2006). For a detailed study of the thought of Amina Wadud and Asma Barlas *see* Shadaab Rahemtulla, Qur'an of the Oppressed: Liberation Theology and Gender Justice in Islam 96–225 (2017).

inspiration in the character of the Prophet's wife Umm Salama and this inspiration drives her entire hermeneutical project. As mentioned above, Umm Salama complained to the Prophet that the Qur'an spoke to men and did not address women directly. In response, the revelation responded to Umm Salama's concerns by directly addressing women. With impressive transparency, Barlas comments on this incident: "As a believer, I interpret this incident to mean not that a woman corrected God, but rather that, by God's Grace, Umm Salama's critique became the way for God to correct an entire community."[77]

I do not believe that there are any possible ways that a believer living in the modern world can avoid the weight and trajectory of history. Trying to avoid understanding the historical context that shaped and molded so many of the Prophetic traditions invariably amounts to putting one's proverbial head in the ground and trying to pretend that history does not exist. Nevertheless, it is important to deal briefly with the oft-heard challenges to the historical approach. Among the common criticisms leveled against the historically contextualized approach is that it superimposes the value system of the interpreting historian upon the body of sacred religious dogma. Without clear moral foundations, or a precise theological frame of reference, the historically contextual approach risks becoming a thinly veiled secular reconstruction of the Divine law. Historically contextualized approaches could systematically deconstruct the idea of Divine intent, but it does not necessarily replace it with a coherent religious outlook. For example, Mernissi argues that the *ḥijāb* was imposed largely in response to repressive patriarchal demands by the male elite at the time of the Prophet. However, this begs the question: Why did God accommodate the repressive demands of the male elite? What are the implications of the Divine accommodating the demands of patriarchy at the expense of women? While Mernissi offers a critical method that appeals to secular outlooks, her approach could be far less appealing to those who consider the Qur'an and sunna to be the repositories of the Divine Will. If, by imposing the *ḥijāb*, God ultimately accommodated the demands of the male elite, as Mernissi argues, what are the theological implications of such a move? Does this mean that at the time of the Prophet, God sided with the male elite against the demands of socially active women? As a theological and moral imperative, does this mean that the male elite were espousing the Islamically correct position? Mernissi's historical analysis does not provide convincing responses to these intractable theological questions.

Historically informed approaches often challenge the normative assumptions of theology and law with uncomfortable and disquieting questions. Understandably, this raises considerable anxiety among believers who are forced to confront disconcerting questions about the implications of historical memory for theology and law. The hadith and sunna cover a broad array of topics including prayer, fasting, the giving of alms, pilgrimage to Mecca,

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77. BARLAS, *supra* note 38, at 20.

prohibition against usury, etc. The most common anxiety voiced by believers is that if critical analytical methods are applied to deconstruct the substantive tradition attributed to the Prophet on the grounds of inequity between genders, what does this imply for other issues, such as class, race, sexual liberties, and so on? At what point does one succumb to self-idolatry as opposed to submitting to the will of God?

Objections to historically contextualized interpretations often boil down not only to an argument about the relevance of the Divine Will, but about how the Divine Will is discoverable. Did God intend to assign roles to men and women, and were these roles intended to be different and distinct? But did God intend to privilege males? And how do we know what God wills? I will return to these questions later, but for now, there is a more concrete objection to historically contextualized approaches to the hadith and sunna. Such approaches are often accused of being both selective and dismissive towards the hadith and sunna. For example, Shadaab Rahemtulla in her *Qur'an of the Oppressed* claims that Barlas is largely dismissive of the hadith literature precisely because of its questionable reliability, and that she is equally dismissive of the Sharīʿa because of its sexism.[78] The charge of dismissiveness is an oftheard challenge made in response to all reform-oriented scholars who attempt to historicize the huge corpus of traditions of the hadith and sunna. Historical approaches to the hadith and sunna often imply that this religious corpus is the by-product of material conditions that shaped and crafted this body of literature. As such, the hadith and sunna become the repository of the subjective and negotiated human agency, and not the Divine Will.

In her review of the scholarship of Barlas, Rahemtulla also echoes the oft-repeated charge of selectivity.[79] Of course, this charge is made not just against Barlas but also against all Muslim women reformers—if not against all reformers. In reviewing the scholarship of what she calls exegetes, Ayesha Hidayatullah writes:

> In some cases, the exegetes are inclined to cite certain Hadith reports positively without scrutinizing their historical authenticity when they support the just treatment of women, and they use them to buttress their interpretations of the Qur'an. In other cases, they argue for the inauthenticity of Hadith reports that demean women, rejecting those reports, and maintaining that the Qur'an must be prioritized over them.[80]

Hidayatullah's criticism is basically sound, but the reality is that selectivity is essential to any reform project. Any pretense to objectively interpret history is just that: a pretense. As discussed below, moral and ethical commitments are important in any interpretive project, but what matters is to be transparent and honest about one's normative commitments. Especially when

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78.   RAHEMTULLA, *supra* note 76, at 167–69.
79.   RAHEMTULLA, *supra* note 76, at 190–91.
80.   AYSHA A. HIDAYATULLAH, FEMINIST EDGES OF THE QUR'AN 213 (2014).

one claims to engage the Divine Will, one must offer an understanding of that Will and lay bare one's own teleological commitments. This sets an engagement with the reader that is honest and transparent. Often, this does mean that the reformer must sift through the frequently chaotically inconsistent hadith reports in the tradition arguing for the credibility of some reports while rejecting the credibility of others.

C.   *The Qur'anic Guidance Arguments*

Most women scholars who critically engage the hadith and sunna anchor their approach on the hermeneutics of the Qur'an. Scholars such as Wadud, Barlas, Barazangi, and Riffat Hassan argue for a thematic and holistic reading of the Qur'an in order to systematically understand its moral and ethical universe.[81] The Qur'an is interpreted to support the autonomy, dignity, and equality of women, and then hadith are substantively analyzed to assess whether the reports in question are consistent with these values. Part of this methodological stratagem is not to read the Qur'an in a piece-meal fashion or as a code of law, but to emerge with a coherent Qur'anic outlook on gender equality. Perhaps the most prominent of these approaches is Wadud's Tawhidic Paradigm. Tawhid is the belief in God's unity, indivisibility, singularity, and immutability. For Wadud, God alone is sovereign, and all human beings are equal moral agents before God. God alone is supreme, and this means that all human beings, regardless of gender, race, or class, are equal before God. Therefore, according to Wadud's approach, the entire Islamic tradition ought to be scrutinized and interpreted in order to achieve this egalitarian moral vision.[82] Importantly, scholars such as Wadud and Barlas do not argue that their reading of the Qur'an is the only possible hermeneutical engagement or interpretation of the text. Rather, their reading represents an affirmative moral commitment towards human autonomy, dignity, and gender egalitarianism. While readily conceding that the Qur'an can be read in patriarchal ways that further male dominance and the oppression of women, these interpreters appeal to their readers to share an understanding of the Divine Will that is committed to the principles of justice and equality, especially between genders.

Kecia Ali charges that Qur'anically-based approaches by some of the scholars mentioned above suffer from both dogmatism and lack of transparency. After conceding the strength of some scriptural interpretations positing a privileged role for males in society and family, Kecia Ali goes on to write: "One must debunk and counter aggressively patriarchal and indeed misogynist

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81.   Barazangi, *supra* note 65, at 33–57; Riffat Hassan, *Muslim Women and Post-Patriarchal Islam, in* After Patriarchy: Feminist Transformations of the World Religions 47 (Paula M. Cooey, William R. Eakin, and Jay Byrd McDaniel eds., 1991); Riffat Hassan, *An Islamic Perspective*, in Women, Religion, and Sexuality: Studies on the Impact of Religious Teachings on Women, (Jeanne Becher ed., 1991); Wadud, *supra* note 33, at x, 1–2; Barlas, *supra* note 38, at 9.

82.   Wadud, *supra* note 33, at 32–48; Hidayatullah, *supra* note 76, at 94–97.

interpretations, but also justify the project of egalitarian interpretation. In the process, one must acknowledge that esteeming equality as the most important interpersonal value is a peculiarity of some modern Muslims and not something inherent in the text of the Qur'an. Feminist exegetes must take care not to be as blinded by the commitment to equality, and the presumption that equality is necessary for justice, as classical exegetes were by their assumptions about the naturalness of male superiority and dominance in family and society."[83] Although I am not sure Kecia Ali's own commitment to justice and sexual freedom is better justified than the approaches to equality she criticizes, she does raise an important objection that is often made in response to Qur'anically-committed approaches. Equality is a theoretically elusive concept, and the relationship of equality to justice is ever more complex.[84] What is the proper balance between respecting the integrity and authority of the text, with all its historical peculiarities, and the subjectivities and idiosyncrasies of the interpreter of text? If one accepts the hadith and sunna only when they affirm one's interpretation of the Qur'anic text, doesn't this mean that one is cherry-picking the tradition for whatever the reader finds agreeable, while disregarding whatever is disagreeable? Isn't this, as some have charged, inconsistently selective?[85] Many Muslim women scholars argue that hadith should be accepted only to the extent that the specific Prophetic narrations are corroborated by the Qur'an. Hadith and sunna that are inconsistent with the purported Qur'anic *tawhidic* principles, or the Qur'anic principles of self-determination, liberation, autonomy, or self-identity should be rejected as inauthentic or unreliable.[86] What unites these approaches is that they derive from the Qur'an foundational moral principles that support gender egalitarianism, and then the hadith and sunna are scrutinized and either accepted or rejected in light of these principles. However, these approaches are open to the same criticism of subjectivity and selectivity, and of cherry-picking the tradition.

I must admit that I do not find the charge of selectivity particularly compelling or persuasive. In fact, selectivity in approaching an inherited tradition is necessary because embracing a tradition in its entirety as if its epistemological universe applies in perpetuity is nothing short of unfettered irrationalism. The real issue is transparency and honesty in selectivity. Before dealing with

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83.   .

84. On the complex and many possible meanings of equality, *see* Douglas W. Rae and Douglas Yates, Equalities (1981).

85. For Kecia Ali's criticism of Asma Barlas, *see* Ali, *supra* note 76, at 116. *See also* Rahemtulla, *supra* note 76, at 204–7.

86. Barazangi, *supra* note 65, at 77–87; Windows of Faith (Gisela Webb ed., 2000); Maysam J. al-Faruqi, *Women's Self-Identity in the Qur'an and Islamic Law*, *in* Windows of Faith 72–101 (Gisela Webb ed., 2000); Aminah Beverly McCloud, *The Scholar and the Fatwa: Legal Issues Facing African-American and Immigrant Muslim Communities in the United States*, *in* Windows of Faith 136–144 (Gisela Webb ed., 2000); Riffat Hassan, *Muslim Feminist Hermeneutics*, in In our Own Voices: Four Centuries of American Women's Religious Writing (Rosemary Skinner Keller and Rosemary Radford Ruether eds., 2000).

this argument, however, I need to deal with some of the basic foundational issues that arise in this context.

VI. Reasonability in Interpreting the Hadith and Sunna

As noted earlier, in response to the patriarchy and misogyny found in the hadith and sunna traditions, some scholars have either altogether rejected the authority of the Sharīʿa or tried to dilute the authority of the Sharīʿa by arguing that Sharīʿa is a morally guided path and not law.[87] I think the unspoken assumption is that a morally guided path is less constraining and more flexible and negotiable than law or a legal system. While it is true that Sharīʿa is a morally guided path, this does not mean that this moral guidance does not necessitate or even mandate firm binding obligations (*taklīf*). The entire edifice of *fiqh* (Islamic law) is based on the foundational premise that the moral path of Sharīʿa cannot be fulfilled unless the follower of the path (*al-mukallaf*) pursues the exploration of the evidence or indicators of the Divine Will (*adilla*) in order to comprehend and apply the obligations (*taklīf*) that follow from that path. While we can define Sharīʿa as the normative commitments commanded by God, the Sovereign, *fiqh* is the human effort at comprehending and giving effect to Sharīʿa. Although the abstract and practical boundaries between Sharīʿa and *fiqh* are often blurry and unclear, the expressions Islamic law or Sharīʿa law usually refer to both the Sharīʿa and *fiqh*. This is not the place to discuss whether Islamic law, as many Muslim reformers have claimed, is not real law, but it is sufficient to note that this necessarily depends on how we define the concept of law.

I have argued elsewhere that what constitutes law is a deliberative and cumulative interpretive practice that forms a narrative community that share a common linguistic practice, interpretive and expository methodologies, and instrumentalities of authoritativeness.[88] Islamic law is not law in the positivistic sense and not even in the "natural law" meaning of law, but it is law in the sense of structures and processes of generating authority, obligation, and the need for deference. The idea that what constitutes law is the command of the sovereign backed up by the threat of the use of force is deeply flawed. In essence, law is premised on the idea of the creation of obligations that earn deference and obedience whether force is used or not. In a non-positivistic sense of law, the very basic dynamic at play in the construction of obligation is founded on authority and deference. The person claiming authority and the person deferring to this authority share an epistemological presupposition based on a common framework of meaning, reference, and a shared heritage or tradition.[89]

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87. *See for example*, Barazangi, *supra* note 65, at 7. For my response to such arguments, in particular the one made by Ebrahim Moosa, see Khaled Abou El Fadl, *What type of law is Islamic Law?*, *in* Routledge Handbook of Islamic Law 13 (Khaled Abou El Fadl et al. eds., 2019).

88. Abou El Fadl, *supra* note 87, at 32.

89. For detailed argument see Abou El Fadl, *supra* note 15, at 18–69.

In the Islamic context, the epistemological presupposition for the construction of what is authoritative is the Divine Will—what God arguably demands from a believing and committed Muslim. Whether acknowledged or not, and whether the interpreter admits as much or not, all arguments about Islamic reform and Islamically-driven reconstruction of gender roles are indeed arguments about the Divine Will and what the purported reformer imagines God expects from Muslims.

Now, the epistemological presuppositions of Sharīʿa law as currently constructed include the Qur'an and, the hadith, and sunna, as well as the cumulative interpretive communities that reasoned through the fields of *uṣūl al-fiqh* (jurisprudence), *al-qawāʿid al-fiqhiyya* (legal maxims), and *fiqh* (books of positive legal opinions). As currently constituted, when we negotiate the Divine Will, we rely on concepts such as *ijtihād*, *qiyās* (reasoning through similarities or analogy), consensus (*ijmāʿ*), *maṣlaḥa* (public interest or welfare), *ḍarūra* (necessity)—all of which come from the universe of cumulative interpretive communities of the past. Hence, whether consciously or not, reformers negotiate the Divine Will through a shared epistemic universe with their readers—this universe is derived directly from the inherited cumulative interpretive communities of the past who worked through and constructed foundational concepts such as *ikhtilāf* (diversity of opinions), *tarjīḥ* (preponderance of evidence or opinion), and *shubūhat* (doubt or lack of certitude or lack of evidence), among many other concepts.[90]

My point is that there is an epistemic universe in which those who belong to the Islamic tradition dwell, and this epistemic universe generates meaning, authoritativeness, and persuasiveness. The question that interests me here is whether it makes sense to expunge, delete, or remove the hadith or sunna from this epistemic universe? In order to institute a proper Islamic reform, should we rely on the Qur'an and abrogate or ignore the traditions attributed to the Prophet? In my view, this would be a serious error because if we abrogate the past (the traditions attributed to the Prophet are part of the past), we deconstruct the tapestry of authority that bonds and maintains the Islamic tradition. The serious risk in subverting and unraveling the Islamic tradition is that the very venues for communication and deference among Muslims will entirely disintegrate. The hadith and sunna are at the very heart of the epistemic communities of Islam—if abolished, the entire edifice of Islamic meanings and communication is torn down as well. Not even the Qur'an will have meaning without the traditions of the past that give the semantics of the Qur'an a range of meanings and that give a historical context to so much of the revelation. Without reliance on the communities of interpretation that accumulated around the Divine text and that created what might be called a tradition, all that remains is a purely phenomenological approach that most likely will be too subjective and even idiosyncratic to be persuasive or authoritative.

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90. For this, see for example Intisar A. Rabb, Doubt in Islamic Law (2015).

To restate, my argument thus far is that the core issue in any reform project is the question of Divine Will, as in what obligations are owed to God. We explore the question of *taklīf* (obligation) within a world of epistemic presuppositions that define the authoritative within the Islamic tradition. The authoritative is whatever earns the deference of the agent who is searching for the Divine Will. If we abolish or dismiss the hadith and sunna, the epistemic presuppositions or the world of meaning in which Muslims dwell will cease to be. There is no meaningful way where we can talk about what the Qur'an means when it uses words such as *ṣalāh*, *ṣawm*, *zakat*, or *ḥajj*, let alone words such as *maʿrūf*, *qisṭ*, *ʿadl*, or *iḥsān* unless we anchor our discourse in the epistemic world of the Islamic tradition. Worlds of meaning are always anchored in interpretive traditions, and without its interpretive tradition, not only Sharīʿa but Islam itself will not have an authoritative frame of reference.

Much of the hadith and sunna is, however, not only sexist, and at times misogynistic, but also contradictory and inconsistent. This is precisely why it is important to be both principled and selective when negotiating this tradition. Approaching this tradition with a selective and principled methodology mandates the adoption of the interpretive values of honesty, self-restraint, diligence, comprehensiveness, and reasonableness.[91] I will have more to say about these values below, but for now I want to elaborate upon the issue of moral agency in dealing with the Islamic tradition and reconstituting gender roles.

I recall a story from the tradition that I heard as a child from one of my teachers. The story goes as follows: A shaykh was talking to his student when the student suddenly fell into a running river. The shaykh called out to the student, "Where are you going?" And the student replied, "I am going where the water takes me." The shaykh said, "By God, you must have fallen to the theology of the *mujabbirūn* (the fatalists), because if I ask anyone where are you going, and they say anywhere that the path might take me, verily, this person must be considered to be insane." The student then asked, "Even if I say wherever Allah takes me?" And the Sheikh replied, "You would be insane even if you say 'wherever Allah takes me!'" The context in which I learned this story was one in which my teacher was emphasizing personal autonomy and agency.

But more interestingly, I learned this story in a *halaqa* (circle of learning or traditional school) teaching the Qur'an. If you fall in a river that is fate. But once you fall, you must have purpose and determination and navigate your course. Reflecting upon this narrative, I imagine that the river referenced in this story is the river of tradition, and the determination that the student must have is that of interpreting and negotiating the tradition so that there will always be meaning and purpose. What I have in mind here is something akin to what Mullā Ṣadrā (d. 1050/1640), and before him Shihāb al-Dīn Suhrawardī (d. 587/1191), described as "*ittiḥād al-ʿāqil wa-l-maʿqūl*" (the relationship of

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91. Abou El Fadl, *supra* note 15, at 133.

the rationalizing agent to the subject of that agency).[92] Mullā Ṣadrā believed that, in reality, any conception of *ḥusn* and *qubḥ* (good and bad), must account for the fact that realities are constructed through the dynamic between the perceiver (the subjectivity of the perceiver) and some attributes or characteristics of the perceived.

As discussed earlier, on a number of occasions, the Qur'an and its accompanying interpretive tradition, document occasions in which God hears and responds to complaints made to the Prophet. For instance, on one such occasion the Qur'an states, "*wa yastaftūnaka fī-l-nisāʾ*" (and they ask you about issues that involve women).[93] Further, as discussed above, on another occasion, the Qur'an states that God heard the woman who argued with the Prophet about her husband and appealed to God.[94] On these occasions, among others, God responds to inquiries by women or about women—the Divine responds to contexts initiated by human activity. The human agent initiated the query eliciting a Divine response—to use the Qur'anic expression, the human agent did an *istiftāʾ* (asked for a *fatwā*), and the Divine responded. But this begs the question: what if these human agents had not acted so that the cycle of revelation could be completed? I think, however, this is the wrong question. The dynamic here is illustrative of the fact that the Divine Will is discoverable through, to use the phrase from the tradition, *ittiḥād al-ʿāqil wa-l-maʿqūl*—an active dynamic between the rationalizing agent and the subject of that agency.

The negotiation between reason and the comprehended (*ʿaql* and *maʿqūl*), or the epistemology that is the product of the negotiation and renegotiation between the active agent and subject of the agency, must be able to mine the tradition for inspiration for solutions, and not just for formulas. Revelation has come to an end, but there has to be an alternative process by which to undertake *istiftāʾ*, a process by which the rational agent can pose questions to the tradition and derive divinely-inspired responses to these questions. What I am proposing is an interpretive model of *istiftāʾ* akin to Ronald Dworkin's concept-conception distinction.[95] Dworkin illustrates the distinction through the idea of "courtesy," but I will consider "generosity." In 7th century Arabia, giving a bowl of milk to a needy person might have been considered extremely generous. But if today I were to offer the same to such a person in downtown Los Angeles, I should not be surprised if I have it thrown back in my face. The *concept* of generosity has a value, a purpose, a meaning; but its *conception*, how it is expressed and applied in a particular historical period, will change from time to time and place to place. It is the task for each generation to recover this meaning and express it in a manner faithful to the original institution.

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92. Ṣadr al-Dīn Muḥammad Shīrāzī, Ittiḥād al-ʿĀqil wa al-Maʿqūl (2004).

93. Qur'an 4:127.

94. Qur'an 58:1. For the occasion of the revelation, see for example Seyyed Hossein Nasr et al., The Study Quran: A New Translation and Commentary 1342 (2015).

95. Ronald Dworkin, Law's Empire 47–49, 70–72 (1986).

Consider the following example from the hadith tradition: Aḥmad Ibn Ḥanbal (d. 241/855) narrated a hadith in which the Prophet is reported to have said, "Whoever has a daughter and does not bury her alive (*yaʾiduhā*), does not insult her, nor favor his son over her, God will reward him with Paradise."[96] In this tradition, parents should not give preference to boys over girls, and should not bury their daughters.[97] However, if this hadith is read in conjunction with the Qur'anic condemnation of *istikrāh* (coercion and compulsion) and *istiḍʿāf* (oppression), the meaning *yaʾiduh*ā could be extended to mean to suffocate or oppress her in addition to burying her alive.[98] In other words, the concepts of *istikrāh* and *istiḍʿāf* must be interpreted and translated into conceptions. The prohibition against burying girls alive was a conception, a historical application of these concepts. In the contemporary period, to not coerce or oppress must find expression in ways meaningful and relevant to the present historical context. In earlier generations Muslim women would go to the Prophet with problems, and the Prophet responded with open revelation. Today, Muslims must consult with the "internal prophet of reason." In the words of Abū Ḥāmid al-Ghazālī (d. 505/1111), "revelation is reason from without, and reason is revelation from within (*al-sharʿ ʿaql min khārij wa-l-ʿaql sharʿ min dākhil*)."[99]

This hadith is a text that is historically contingent and circumstantial, and it is a text that is responding to the specific moral demands made by active agents.[100] But at the same time, this text is open ended in the sense that from a religious perspective, it is a text that is intended to have perpetual relevance. The text does not just memorialize specific determinations, but as significantly, the text serves important anecdotal purposes. The text contains anecdotes of empowerment. If this is the case, it seems to me that the *taklīf* is not simply one of obedience. Rather, the *taklīf* is to pose questions, make moral demands from this tradition, and generate a methodology for constructing meaning that is responsive to the rationalizing agent and the object of this agency. Hence, burying girls (*waʾd al-banāt*) could be reconstructed and renegotiated to mean the oppressing and suffocating of girls so that their souls and intellects, and not just their physical bodies, are murdered. If women are rendered powerless and systematically oppressed so that they cannot exercise their moral agency,

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96. Aḥmad Ibn Ḥanbal, 3 Musnad Al-Imām Aḥmad Ibn Ḥanbal 426 (1996).

97. *See also* Qur'an 59:5.

98. On coercion see Qur'an 10:99 and the theology of coercion and oppression in the Qur'an, see Abou El Fadl, *supra* note 29, at 382–89.

99. Abū Ḥāmid al-Ghazālī, 2 Maʿārij al-quds fī madārij maʿrifat al-nafs 57 (1975). Others have expressed this idea as reason being a Messenger from God. Al-Sayyid Muḥammad Taqī al-Mudarrisī, 4 al-Tashrīʿ al-islāmī: manāhijuhu wa maqāṣiduhu 1:87 (1993).

100. This point about historical contingency extends even to legal rules stated in the Qur'an, and was a well-established position amongst scholars of *uṣūl al-fiqh* on the basis of the distinction between God's speech (uncreated) and the legal rules based on God's commands (created). *See* Rami Koujah, *Divine Purposiveness and its Implications in Legal Theory: The Interplay of 'Kalām' and 'Uṣūl al-Fiqh'*, 24 Islamic L. and Soc'y 171, 179–80, 195 n. 100 (2017).

it seems to be the essence of burying human beings alive. *Wa'd al-banāt* was a pre-Islamic practice in which families killed their daughters by burying them alive. The above quoted hadith, however, goes beyond the prohibiting of murder to calling for the kind treatment of daughters and for not favoring boys over girls. Considering the modern moral challenges and epistemological demands, the concept of *waʾd al-banāt* should be re-conceptualized and re-interpreted to mean soul-murder and all that leads to suffocating the souls of young girls.

Returning to the issue of Sharīʿa and Islamic law, to the extent that the hadith above supports a *taklīf* (obligation) upon the agent who chooses to defer to the evidence of this obligation, this hadith is part of Sharīʿa. At the same time, this hadith and the cumulative interpretative efforts that engaged it are part of Islamic law. But it is a part of Islamic law only as long as this interpretive effort is focused on the ultimate question of *taklīf*, and as long as it engages the linguistic practice and deliberative mechanics of Islamic jurisprudence. If, for one reason or another, the interpretive effort is not interested in the question of Divine Will and *taklīf*, and if it does not employ the mechanics and linguistic practice of jurisprudence then, by definition, it is not a part of Islamic law or the Islamic legal tradition. However, just because determinations are part of Islamic law or the Islamic legal tradition does not mean they are moral or ethical. To assume that Islamic legal determinations are moral or ethical is to lapse the Divine truth with subjective efforts struggling to reach this truth. Everything in the created world must be rationalized by a rationalizing agent, and the two are engaged in a dynamic in which they mold and shape each other. This is especially the case when it comes to law; the law is a concerted effort at fulfilling the Divine Will, but it is not the Divine Will. The most that legal determinations can hope to be is to be authoritative without abusing or usurping the Divine Will. Importantly, no tradition speaks in a single moral voice—all interpretive efforts that are embedded in any tradition whatsoever are necessarily selective and discriminate. However, in order to discharge one's duty to be as authoritative as possible without abusing or usurping this interpretive authority, the interpreting agent should make best efforts to uphold the values of honesty, self-restraint, diligence, comprehensiveness, and reasonableness.[101] The role of ethics is to interrogate, scrutinize, and at times, shame the law so that the law will not be allowed to slip into the comfortable assumption that justice, fairness, and equity have indeed been achieved. Ethical critiques

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101. Reasonableness is the effort and ability to negotiate determinations within the framework of accepted cultural norms and socially recognized conceptions of justice. Unreasonable determinations are issued without regard either to their profound and turbulent social and cultural impact or to the internal cohesiveness and systematic application of a system of law. I argue that the necessary values of reasonableness are three: 1) proportionality (*tanasub*) between means and ends; 2) balance (*tawazun*) between all valid interests and roles and 3) measuredness (*talazum*) in which the processes of law are systematized and rendered both accessible and accountable. *See* Abou El Fadl, *supra* note 15, at 52–54.

of the law, and also critiques of the representatives of a legal system, should force the agents functioning on behalf of this legal system to reconsider and re-evaluate their interpretive efforts and determinations.

I must close this Article with a comment about the fact that I am a male interpreter writing about women interpreters of the religious tradition. As a male interpreter, I am necessarily constrained and limited by the subjectivities and selectivities of my own gender. No matter how much I try to elevate myself beyond these constraints and read the tradition with a principled commitment to egalitarianism between genders, I am limited by the subjectivities of my male perspective. I am committed to the Islamic tradition, including the hadith and sunna, because I believe that this tradition, with all its inconsistencies, contradictions, and paradoxes, is the repository of Islamic meaning and authoritativeness. However, as a male interpretive agent, I am fully cognizant of the fact that patriarchy is, as Asma Barlas warned, an engrained cultural habit; it is a bad habit at that, and bad habits veil the truth.[102] No one is better positioned to break the habits of patriarchy and of male dominance in the Islamic tradition than Muslim women acting as interpretive agents. With feet firmly planted in this tradition, these interpretive agents can then act to authoritatively represent, but at the same time, reconstruct and reinvent it. Like the women who made demands of the Prophet and sought Divine intervention, Muslim women must make demands upon this tradition. Yet because revelation has come to an end, it is Muslim women scholars who must intervene on their own behalf and re-negotiate and re-interpret the tradition to generate persuasive responses. The challenge is always relevance and authoritativeness—in order for determinations to be persuasive and earn the deference of believing Muslims, these determinations must authoritatively negotiate the Divine Will. To authoritatively work through the demands of the Divine Will, in my view, necessarily means wrestling through the interpretive traditions of Islam even if these interpretive traditions were formed and shaped by men.

From a theological perspective and from a tradition-based point of view, I would argue that patriarchy is not just a bad habit, but it is an *ibtilā*ʾ (trial, plight, or challenge). Like all trials given to us by God, it is there to test our ability as Muslims to persevere and overcome by achieving justice and equity (*al-ʿadl wa-l-iḥsān*). Patriarchy is like other endemic forms of *ibtilā*ʾ; like racism, ethnocentrism, nationalism, and classicism, it is a malady of the human condition that is, like so many human follies, both natural and wrong. One of the firmly anchored principles in Islamic jurisprudence, and possibly Islamic ethics, is that suffering, and harm (*ḍarar*) must be removed or brought to an end.[103] To the extent that any hadith or sunna results in suffering and harm,

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102. Barlas, *supra* note 38, at 210.
103. Khaleel Mohammed, The Islamic Legal Maxims, 44 *Islamic Studies* 191–207 (2005); Mohammad Hashim Kamali, *Legal Maxims and Other Genres of Literature in Islamic Jurisprudence*, 20 Arab L. Q. 77–101 (Spring 2006); Sobhi Mahmassani, Falsafat Al-Tashri' Fi Al-Islām, The Philosophy of Jurisprudence in Islam (1961).

there is a proportional duty (*taklīf*) to rethink the normative application of this tradition to end the suffering. Patriarchy is a plight or *ibtilāʾ* in every age but the harm and suffering that results from this challenge differs a great deal from one age and place to another. But here is where the imperative of Muslim women's agency becomes particularly compelling. It is Muslim women who must testify to their own suffering, and it is the women scholars of Sharīa who must become the medium through which revelation speaks to the demands of each place and age.

The Islamic tradition, especially the hadith and sunna, is full of examples that both empower and demean women. The committed interpretive agent must approach this tradition with a coherent and comprehensive understanding about the Divine Will and the normative values or concepts mandated by the Divine. For the committed interpretive agent, the crux of the search is the *taklīf*, which is quite simply the Divinely ordained obligation whether towards God, fellow human beings, or anyone or anything else. The *taklīf* creates an affirmative obligation to do or not to do something, but in many cases the *taklīf* upholds a concept or value such as: mercy, generosity, courtesy, truthfulness, equity, or modesty. In the vast majority of cases, even when the *taklīf* is specific and concrete enough to constitute a positive legal commandment, such as inheritance or usury laws, these rules of law are intended to serve and promote basic values or concepts.[104] But as argued above, for God's law to serve its moral purpose and for this law to be meaningful, the authoritative interpretive agent must be guided by reasonableness in interpreting the Divine Will. Reasonableness should be the guiding ethic that drives the relationship between *al-ʿāqil wa-l-maʿqūl* or the rational agent and the subject of this agency. But to be guided by reasonableness, the interpretive agent must distinguish concepts from conceptions—concepts guide conceptions but conceptions do not define concepts. Concepts are the Divinely ordained values that Muslims are commanded to pursue but conceptions are historically contingent and contextually bounded articulations of these values. But in my view, the Prophetic example teaches that women must be empowered to negotiate the distance between concepts and conceptions. Men cannot be entrusted to speak for women. Muslim women scholars must bear the burden and privilege of interrogating the Islamic tradition for both the conceptions and concepts that have a direct bearing upon the normative commitments of Muslim women.

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104. The notable exceptions to this are some ritual laws that do not have a presumptive basis in reason or rational morality. Such laws are obeyed simply because they are from God even though we do not know if such rituals are intended to serve or promote specific moral values, though some jurists have considered the rationales of such rituals to be intelligible. Rami Koujah, *Islamic Legal Reform or Re-formation? The Transmutations of Critique in Rumee Ahmed's* Sharia Compliant: A User's Guide to Hacking Islamic Law, 28 Islamic L. and Soc'y 283, 297–8 (2021).