

Muslim Feminism, Islamic Law, and the Quest for Gender Justice

Inaugural Shamima Shaikh Commemoration Lecture
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I am truly honoured to have been invited to deliver this lecture, dedicated to the memory of Shamima Shaikh. I never knew her personally. What I do know is that in addition to her political and social activism on broader South African issues, she was a passionate advocate for Muslim women's full inclusion in the life of congregation, community, and country. She worked for women's incorporation into religious spaces and public ritual life. She laboured toward the achievement of a just personal law for Muslims, one that would respect and protect women. In the decade and a half since her untimely death, that combination of ritual and social concerns, *'ibādāt* and *mu'āmalāt* in the terms of Islamic jurisprudence, is at the top of the agenda for Muslim feminists across the globe. Shaikh was truly a pioneer.

She lived out what is increasingly but, sadly, not universally accepted today: the quest for gender justice, in Islam and outside of it, is inseparable from other liberation struggles. Gender justice has many interpretations, many components, and many real world constraints. It has many opponents, too, inside and outside Islam, including retrograde figures who declare women's inferiority to men and unsuitability for public life. More numerous, and more dangerous because they seem to be more reasonable and caring, are those who insist on respect for women – when, and usually only when, women keep their proper place, fulfil their assigned roles (we might ask: assigned by whom?), and forgo the deadly peril of feminism. In the view of both of these groups, male authority in family and society, in the home and the mosque (or church, or synagogue), is an essential part of how the world works.

Fortunately, gender justice also has powerful and numerous advocates working on its behalf every day. Some do so as activists or professionals; they make it their life's work in a very literal sense. Insisting on the inseparability of her gender justice work and her Muslim faith, Shaikh did so in her work at the Muslim Youth Movement Gender Desk; to take just one other example of the many possible I could name, the Malaysian activist Zainah Anwar did so when she helped found Sisters in Islam and

now does so as director of Musawah, a transnational organization which pursues equality and justice in law.

Others do so in their daily actions, small or large acts of resistance when the status quo ignores, downplays, silences, or excludes women. Shaikh exemplified this sort of challenge twenty years ago when she insisted on praying at a mosque that tried to exclude her and other women. Interviewed by a journalist shortly after that incident, Shaikh discussed not only the need for persistence in claiming space for women's public piety but also the real challenge to women's communal roles posed by men's monopoly on religious knowledge. If one must have religious learning to make valid arguments for women's mosque access, but women are excluded from the spaces where they could gain that knowledge, what is to be done?

It remains true two decades after Shaikh's "rebellion," as one writer called it, at the Mayfair mosque that women are still frequently excluded from traditional forms of Islamic education. And yet that exclusion, never complete, is eroding; the barriers are crumbling, albeit unevenly. The barriers that remain are—in some places more than others, in some classes more than others—less important than they used to be. This is because new forms of knowledge and learning are challenging and sometimes displacing the *ulama*. Muslim women scholars constitute another group struggling for gender justice. Their interpretations of Qur'anic passages on issues involving male-female relationships, for instance, are increasingly taken into account by male thinkers – even if they are seldom credited to the women who originated them. Let me give an example from my own United States context. In 2011, then-president of the Islamic Society of North America Mohammed Magid insisted that one must interpret the Qur'anic verse (4:34), seemingly giving husbands the right to strike their wives under certain conditions, not only through the lens of the Prophet's reported practice, which rejected hitting, but also through the lens of the opening verse of the chapter where it is found, which gives an egalitarian account of creation.¹ Remarkably, then, the head of the largest American Muslim organization took it for granted not only that this account of creation ("Revere your creator who created you from a single soul and from it created its mate"[Q. 4:1]) was egalitarian but also that its egalitarianism took precedence over the gendered hierarchy set forth later in the same chapter.

¹ Kecia Ali, "The Omnipresent Male Scholar," *Critical Muslim* 8, September 2013, pp. 61-73.

This may be an instance of the workings of hegemony, a co-optation by a powerful figure and mainstream organization of just enough of a critique to maintain the big-picture status quo. Yet this is a far cry from the letter the United Ulama Council sent Shaikh in August 1995. They had initiated a correspondence with her when she questioned their view on male-initiated divorce in a radio interview. They wrote angrily, demanding her public acquiescence to their views. In reply, she wrote a substantive and fairly lengthy letter, which they dismissed in a follow-up letter as “devoid of substance,” accusing her of displaying “gross ignorance” and showing “an arrogant refusal to accept the truth.” The letter ended with a prayer that divine guidance would lead her to “surrender fully.”²

When that exchange of letters took place, the trends in interpretation that would eventually culminate in Magid’s interpretation were already in the works. It may have taken a while for them to trickle up, but they were circulating. Of course ideas have unpredictable trajectories. In retrospect, we can trace them, track their spread, pin down their genealogies. In the moment, we can observe them (partially), classify them (provisionally), and debate them (heatedly). When we survey the contours of Muslim feminist scholarship—past, present, and future—we see shifts in emphasis, from scripture to law to theology, but a coherent set of core issues: justice, dignity, equality.

The term Islamic feminism, itself highly-charged and contested, came into its own in the 1990s, after the work that supported the wave was well underway in the fields of scripture, law, and theology.³ These areas overlap, more in the work of some than others, and they do not follow each other in a neat and tidy historical progression (history is rarely as neat and tidy as we would like), though one can discern a general trend from Qur’an to law to theology over the years. Underlying each of these approaches, women’s rights activists—whether embracing the term feminist or not, and while differing on matters of basic strategy as well as orientation to the established interpretive tradition—generally share a basic view of the Muslim past, one which helps to frame and justify their reform projects, helping to create the conditions in which

² <http://shams.za.org/index.php/shamima-s-articles/dialogue-with-the-ulama>

³ For one useful reflection, see Asma Barlas, “Engaging Islamic Feminism: Provincializing feminism as a master narrative,” in Anitta Kynsilheto (ed.) *Islamic Feminism: Current Perspectives*, (Tampere Peace Research Institute, Finland, 2008), pp. 15-23.

governments, religious scholars, and other activists will be able to support specific pragmatic changes in women's legal rights.

The paradigmatic Muslim feminist narrative can be summed up in three moments, which, taken together, lead to a program of scholarship and activism in which the Qur'an is central, and jurisprudence marginalized.

First, God revealed the Qur'an. If understood properly, the Qur'anic message is egalitarian and above all just. It may have been constrained in some ways due to its revelation in the patriarchal environment of seventh-century Arabia, but even where the text seems to favour men, overall the trajectory of the Prophetic mission and divine revelation was liberatory for women. (The entrenched patriarchy of pre-Islamic Arabia is a common trope in many genres but what matters for feminists is that it can be used to explain or explain away seeming inequities: not everything could be changed or challenged at once.)

Next came the scholars. In the "elaboration of the founding discourses" elite men embedded in and unable to see beyond the dominant patriarchal values of their era interpreted scripture in ways that unduly subordinated women.⁴ They mistook their readings for the scripture itself and thereby imbued their vision of patriarchy with an aura of both immutability and unchallengeability. The law that elite men in the early and medieval periods formulated reflected their socially-conditioned views: "problematic jurisprudence was often the result of a misunderstanding or misapplication of the Qur'anic text resulting from cultural distortions or patriarchal bias."⁵ These processes must be understood in relation to the compilation of the hadith corpus and its incorporation into exegesis and law. Although there is much innocuous material and some pro-woman material in these collections, alongside an armful of reports portraying women in unflattering terms and describing their limited proper roles, a handful of truly noxious misogynist hadith pose a challenge for those committed to male-female equality in family and society.

⁴ Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven, CT: Yale University Press, 1992).

⁵ Azizah al-Hibri, "Muslim Women's Rights in the Global Villag: Challenges and Opportunities," *Journal of Law and Religion*, 15: 1-2 (2000-2001), pp. 37-66 at p. 40.

Third, in the modern era we have arrived at a time when feminists and other reformists can ignore or reject both the hadith corpus and most of the intellectual tradition that draws on and builds from it in favour of unmediated reinterpretation of Qur'an. The Qur'an is assumed, or at least publicly affirmed, by virtually all Muslims no matter how otherwise reformist to be verbatim divine speech – unlike the way that most progressive Jewish and Christian scholars treat the biblical text.⁶ This makes its interpretation the central element of the reformist religious project. Women affirm the need to engage *as women* with the authoritative Book as a partial corrective to male bias.

This move to proceed directly to the text instead of engaging with generations of commentaries and the elaborate edifice of jurisprudence is not, it is important to point out, uniquely feminist but rather characteristically modern. Though rejection of the hadith is not widespread among Islamists, other reformists often diminish the importance granted to hadith even if they do not discard them entirely. But even where the relevant scriptural canon encompasses the compendia of prophetic tradition alongside the Qur'an, the notion that everyone can read them, in a kind of Muslim *sola scriptura*, is a characteristic gesture of Muslim revivalism as well as of reform movements.

Which brings me back to Qur'an interpretation. This has been and probably remains to date the most central element of Muslim women's religious scholarship. It certainly figured prominently in Shaikh's writing and lectures. Among scholars working on scripture, some have focused their attention on critiquing previous interpreters and atomistic approaches that focus on particulars at the expense of broad principles. (In this view, the particulars tend to be patriarchal, and the broad principles, egalitarian.) For the most part, though, Muslim women "scholar-activists," as they have been described, focused their efforts not on critique of the traditional interpretive literature but rather on returning to the text themselves and approaching it afresh, holistically and thematically.⁷ These interpreters, too, make a core distinction between specific social rules and larger principles. They view inequality (as in inheritance or witnessing)

⁶ On this issue, see Aysha Hidayatullah, *Feminist Edges of the Qur'an*, New York: Oxford University Press, 2014.

⁷ Gisela Webb, ed., *Windows of Faith: Muslim Women Scholar-Activists in North America* (Syracuse, NY: Syracuse University Press 2000).

as driven by the particular circumstances of seventh-century Arabia, and see religious equality of men and women as the underlying and overriding principle, which takes precedence over limited, temporal inequality.

Riffat Hassan was a crucial figure early in this process. A Pakistani teaching in the US, she focused on Qur'anic accounts of creation and argued for jettisoning hadith texts, which in this case, she argued, drew from patriarchal biblical ideas.⁸ Amina Wadud, an American who sojourned in Malaysia before becoming part of the story of South Africa's gender jihad, explored related insights more systematically in *Qur'an and Woman*, where she argued for women's status as human beings first and foremost, not limited by gender.⁹ Asma Barlas, also Pakistani, followed with *Believing Women in Islam*, which used theories of reading to argue that the Qur'an itself is an egalitarian and anti-patriarchal text.¹⁰ We are now far enough along that a major new history and analysis of these scholars' work has just appeared: American Aysha Hidayatullah's *Feminist Edges of the Qur'an*. She outlines the major work these scholars have done, points out where they have been *unable* to go, given fidelity to twin commitments: the applicability, apart from historical contextualization, of the literal sense of the text; and the acceptance of the text's status as verbatim Divine speech. She suggests a new way of thinking about interactions with the text and requires revisiting ideas about equality.

Before I move to the second area of women's research, it's important to note again that these trends in women's interpretation are representative of broader modern Muslim tendencies, which rely on vernacular languages and often bypass interpretive tradition. These approaches typify work done by people who are not classically-trained scholars. This work on scripture by people outside the ranks of the ulama becomes a vital foundation for similar work on law. Thus, Shaikh's correspondence with the United Ulama Council involves competing interpretations of Qur'anic passages on divorce, with

⁸ Riffat Hassan, "Members, one of another" <http://www.religiousconsultation.org/hassan.htm>. On Hassan, see Hidayatullah, *Feminist Edges*.

⁹ Amina Wadud *The Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford and NY: Oxford University Press, 1999); Asma Barlas, "Amina Wadud's hermeneutics of the Qur'an: women rereading sacred texts," in Suha Taji-Farouki, ed., *Modern Muslim Intellectuals and the Qur'an* (Oxford: Oxford University Press, 2004), pp. 97-123.

¹⁰ Asma Barlas *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin, TX: University of Texas Press, 2002).

the Council prioritizing what it calls explicit texts granting male unilateral divorce and Shaikh insisting that another verse, which stresses mutuality in separation as well as a longer process involving outsiders is more in keeping with the Qur’anic ethos and therefore more appropriate to draw from.

Law and legal reform is the second area in which gender justice advocates have concentrated their efforts, and I would suggest that after the turn of the millennium, it may be the more central area of focus. Muslim women worldwide live with a variety of legal systems that often make claims to be Islamic. These Muslim minorities in Europe and North America are voluntary conscripts into a legal system from which they may pick and choose, and to which they also may give allegiance – and often choosing classical texts. Other minority communities, as in India, have had a personal law fixed for them. In South Africa, the struggle to formulate, justify, pass, or defeat a Muslim Personal Law Bill is ongoing. But many Muslim women live in contexts where the government claims to be implementing “sharia” or Islamic law. This means that Muslim women’s engagement with Islamic law often occurs not at the level of classical doctrine but at the level of political movements toward reform or repeal of existing national laws (or sometimes, where there are movements toward imposing them, toward holding that off). Advocates for particular interpretations of law frequently and directly cite scripture and interpret it to support the views they want to see.

In addition to writing directly targeting specific legal provisions of particular Muslim-majority nations, there is a modest but growing literature that deals with the classical legal tradition on its own terms – this is a critical, analytical, but not directly constructive approach – more about interrogation of the sources to understand them. South African Fatima Seedat and Pakistani-American Saadia Yacob are only two of the most promising of the new generation of scholars working on classical texts and those used by modern ulama.¹¹ There have also been selective uses of doctrines from classical texts in efforts toward reform or supporting women – often playing these doctrines against, for instance, very bad national laws, like some now-repealed provisions of

¹¹ Fatima Seedat, “Sex and the Subject of Law: A Study of Women and Legal Capacity in Hanafi Legal Theory,” McGill University doctoral dissertation, 2013; Saadia Yacob, “Hermeneutics of Desire: Ontologies of Gender and Body in Early Hanafi Law,” Duke University doctoral dissertation in progress; to be submitted 2015.

Pakistan's Hudood Ordinances.¹² Sometimes, too, this sort of scholarship seeks to reveal the basic cosmological norms and assumptions at play in the legal texts and rulings, even if they go largely unarticulated. For instance, the assumptions about male authority in the family and God's authority in the universe can intersect in interesting ways in legal texts, as well as in the interpretation of scripture.¹³ Very recently, some of these scholars have begun to address not just particular rules but also to some extent legal theory – critique the presuppositions behind the architecture and aims of the law, or basic ideas about male and female legal personhood.

Theology has, until fairly recently, not had much of a place in the struggle for gender justice. What I mean is that explicit engagement with theological discourses has been rare among Muslim women scholars, even as key theological ideas about the nature of the divine, and of human beings, male and female, motivate and sustain their projects. More generally, theology in the form of “*kalām*” (dialectical theology or philosophical theology) has been less prominent in Muslim thought than jurisprudence. But it is also the case that jurisprudence has dealt extensively with a number of questions reasonably defined as theological (who is in, who is out, how do human beings relate to God). In the last five years, there has been a dramatic shift to the use of theology as a name for what some Muslim feminists are doing. Although Muslim women have been making theological claims for some time, about the nature of God, humanity, and their interrelationship, it is new to call their work theology.

Introducing a new volume on *Muslima Theology*, American Muslim scholar Marcia Hermansen observes that “the field of ‘Muslima’ theology is still developing in conversation with global activism for Muslim women’s rights, new academic and institutional contexts for higher-level studies of the Islamic tradition, and to an extent,

¹² Asifa Quraishi, “Her Honor: An Islamic Critique of the Rape Laws of Pakistan From a Woman Sensitive Perspective,” In Gisela Webb, ed., *Windows of Faith: Muslim Women Scholar-Activists in North America* (Syracuse, NY: Syracuse University Press 2000), pp. 102–35.

¹³ Kecia Ali, “Just Say Yes: Law, Consent, and Muslim Feminist Ethics,” in Kecia Ali, Juliane Hammer, and Laury Silvers, eds. *A Jihad for Justice: Honoring the Life and Work of Amina Wadud*, E-book. 2012, pp. 121-34 (entire volume available for free download at <http://www.bu.edu/religion/people/faculty/bios/kecia-ali/>); Ayesha Chaudhry, *Domestic Violence in the Islamic Tradition*. Oxford: Oxford University Press, 2013.

more traditional institutions and discourses of Islamic learning.”¹⁴ This variety of contexts, and engagement with activist questions, puts Muslima theology in parallel in some respects with liberation theology as well as womanist and *mujerista* theologies – respectively, African-American and Latina theologies, mostly Christian.

It is not just the one volume. There is a critical mass of theologians. Jerusha Lamptey uses Muslima theologians’s approach to gender/sexual difference as a way to view religious difference.¹⁵ She argues that the Qur’an is not static on these things but diverse, relational, and fluid. What is more innovative even than her argument is her method. Rather than doing what pioneering female interpreters have traditionally done, which is take a male intellectual’s method and apply it to women instead she uses women’s methods to tackle a problem that is not limited to gender. Wadud’s 2006 *Inside the Gender Jihad*—in which South Africa looms large—is part memoir, part critique, part cri-de-coeur, and part constructive theology. It centres on what she calls the *tawhidic* paradigm – making the oneness of God central, means that human beings relate horizontally to each other (and independently to God); a man does not mediate between a woman and God.¹⁶ These theological investigations also include drawing on important texts outside the narrow confines of scripture; at least two important feminists draw on Ibn ‘Arabi. In addition to Cape Town’s Sa’diyya Shaikh, who relies on the mystic to explore gender and sexuality, American Laury Silvers uses Ibn ‘Arabi to explore a major theological conundrum that Magid shifts aside in his interpretation of 4:34.¹⁷ Instead of asking how one ought to interpret a verse that seemingly grants permission for a man to strike a woman, she asks: why does this exist in the text?

¹⁴ Marcia Hermansen, “Introduction: The New Voices of Muslim Women Theologians,” in Ednan Aslan, Marcia Hermansen, and Elif Medeni, eds., *Muslima Theology: The Voices of Muslim Women Theologians* (Frankfurt: Peter Lang, 2013), pp. 11-34 at p. 24.

¹⁵ Jerusha Lamptey, *Never Wholly Other: A Muslima Theology of Religious Pluralism* (New York: Oxford University Press, 2014)

¹⁶ Amina Wadud, *Inside the Gender Jihad: Women’s Reform in Islam* (Oxford: Oneworld Publications, 2006).

¹⁷ Sa’diyya Shaikh *Sufi Narratives of Intimacy: Ibn ‘Arabi, Gender, and Sexuality* (Chapel Hill, NC: University of North Carolina Press, 2012); Laury Silvers, “‘In the Book We Have Left Out Nothing’: The Ethical Problem of the Existence of Verse 4:34 in the Qur’an,” *Comparative Islamic Studies* 2:2, 2006.

My overview here started with scripture and ended with theology – and indeed, theology grappling with scripture. But I want to suggest that law—variously understood—remains at the centre of the Muslim feminist project. It wasn't there first; Qur'an clearly was. And indeed, Muslim women sought legal reforms in nations like Egypt and Iraq earlier in the twentieth century without necessarily making their cases in religious or scriptural terms. But beginning in the mid to late 1990s, the two came to walk the path together. Indeed, much of what Muslim feminists (including me) say about law echoes what Muslim feminists say about the Qur'an: we believe in a *shari'a* that is divine and eternal, but all human manifestations are historical, fallible, and – to date at least – patriarchal.

Insisting on the distinction between *shari'a* and *fiqh* is to take sides in a vigorous ongoing debate. The distinction seems to me both historically accurate and vital to Muslim legal reform. At the same time, it is also a rhetorical claim being made from a particular location by people who have a particular stake in the view of jurisprudence as a purely human product. In appealing to medieval legal commentators who share the view that the two are not quite the same, we make a play for authenticity in the same kind of way as those who claim that Muslims must institute *shari'a* because it's God's will.

Writing as a legal anthropologist some years ago, Iranian scholar Ziba Mir-Hosseini pointed out that few people distinguished much between the two in practice, and suggested that “in Muslim consciousness these two are so much intertwined that to make any meaningful distinction entails the risk of questioning the very notion of a divinely ordained law.”¹⁸ And yet, as someone who now works primarily to bridge the divide between scholars and activists, who is a co-founder of Musawah, who focuses on law and legal reform, she now insists on the distinction between a perfect, eternal, divine law that cannot be questioned and the fallible products of human interpretive efforts, however well-meaning, that are not sacrosanct.¹⁹

Her point is not that we must aim to get ever closer to the pristine *shari'a*. Rather, interpretation is necessary, and when we acknowledge that it *is* interpretation,

¹⁸ Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (London: I.B. Tauris, 1997[1993]), 5

¹⁹ See Ziba Mir-Hosseini, “Muslim Legal Tradition and the Challenge of Gender Equality,” in Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger, eds. *Men in Charge: Rethinking Authority in the Muslim Legal Tradition* (Oxford: Oneworld Publications, 2015), pp. 13-43.

we can then weigh arguments in favour or against. We will not be like the ulama who desired simply that Shaikh “surrender fully” – not to God, it seems to me, but to their limited, partial, distorted vision of who God is. It does no good to pretend we have unmediated access to the text. One of my objectives in discussing names, projects, approaches, lines of argument was to illustrate the vibrant, and sometimes contentious, world of Muslim feminist scholarship; another was to insist that ideas have origins. They originate with specific people, in specific times, in specific places. They change over time, in conversation and debate.

The fallibility and contingency of human intellectual efforts does not mean that ideas do not matter. In her final lecture, delivered shortly before her death, Shaikh noted that “Some activists regard an ideological investigation as an “intellectual exercise” undertaken by people not involved in the real issues.”²⁰ She was referring to a correspondent – not a member of the ulama council but a fellow activist – who took issue with Shaikh’s plan to discuss the Qur’an in the lecture, thinking it irrelevant. But Shaikh disputed the notion that one could easily separate the ideal and the real, and discard the theory in favour of the practice. Ideas so matter. At the same time, she was not an ivory-tower idealist: ideas matter in concert with practical strategies and pragmatic considerations.

This connection between real-world considerations and is a tough pill for many academics to swallow, me included. Why can it not simply be the case that the best ideas win? Shouldn’t it be enough to analyse, to interpret, to illustrate decisively with quotations from the Qur’an or sunna or perhaps, if you lean that way, a medieval luminary or two? As my South African colleague Farid Esack pointed out to me after reading my first book, I seemed to simply assume that difficult issues of sexual ethics could be resolved by arriving at better readings of scripture, clearer understandings of jurisprudence, and more cogent theological views. Classism, racism, and imperialism? What are those?

I was wrong, and although my intellectual centre of gravity remains North America, I have tried to do somewhat better in my more recent work. Yet I think I am on solid ground – or at least in good company – when I insist that ideas do matter. How

²⁰ <http://shams.za.org/index.php/shamima-s-articles/women-and-islam-the-gender-struggle-in-south-africa>

they matter, though, is a subject for debate. In that same lecture, Shaikh stated that “for Muslim women, Islam and the Qur’an can be both a force of empowerment and undermining and disempowerment.” I do not think it is merely that social forms of oppression distort what is actually a single “correct and liberatory Qur’anic position” – her phrase – on the range of issues and concerns facing women. I do agree with her, though, that Muslims can use the Qur’an as a force to empower women; in the present day I would argue that recognizing its complexity can enhance rather than detract from its message. Moreover, I think recognizing that the Qur’an contains patriarchal elements and that it is up to Muslims ourselves to decide that they are not the most compelling parts of its message – the recognition that human decisions shape the kinds of societies we live in, and the opportunities for women and for men – this realization itself can bring hope. It is, in some essential sense, up to us. If Shamima Shaikh were among us today, I have no doubt that she would be leading the way.