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### Islamic Law and Gender: Revisiting the Tradition

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New Frontiers  
in the Social History  
of the Middle East



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## ISLAMIC LAW AND GENDER: REVISITING THE TRADITION

JUDITH E. TUCKER

The journey back in time then is essential, not because the pilgrimage to Mecca is a duty, but because analysis of the past, no longer as myth or sanctuary, becomes necessary and vital.<sup>1</sup>

With these words Fatima Mernissi sketched an agenda for research on women and gender issues in the context of Islam. We cannot afford, she said, to leave the exploration of the Islamic past in the hands of those who seek justification for conservative and restrictive views of what it means to be male or female. Rather we must design a pro-active research plan that can liberate the narrative of Islam, that can challenge regressive interpretations of Islamic doctrine that were foisted on the community by powerful males who subverted the original message of the Prophet Muhammad. Mernissi herself has been one of several scholars who have been engaging the Islamic tradition at its most authoritative and fundamental. Most of her work in this area focuses on the Qur'an and Sunna as the bedrock of later belief, and her discussions of this material support what we can call a feminist reading of early Islamic history: Muhammad's revelation, as well as his own words and deeds, all pointed the way toward women's rights and gender democracy. Much of what he won for women, however, was distorted, modified, or completely lost as the political leaders and thinkers of the first few centuries of Islam used selective and self-serving interpretations of this material to give conservative shape to the Islamic tradition.

Mernissi takes the veil or *hijab* as an example of the way in which a biased and ahistorical reading of the Qur'an could alter its meaning. In her discussion of the verse in the Qur'an, surah 33 verse 53, she examines the passage that was widely interpreted to herald the "descent of the *hijab*" by subsequent interpreters. The verse reads:

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<sup>1</sup> Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*, Reading, MA.: Addison-Wesley, 1991, p.21.



O ye who believe! Enter not the dwellings of the Prophet for a meal without waiting for the proper time, unless permission be granted you. But if ye are invited, enter, and, when your meal is ended, then disperse. Linger not for conversation. Lo! That would cause annoyance to the Prophet, and he would be shy of (asking) you (to go); but Allah is not shy of the truth. And when ye ask of them (the wives of the prophet) anything, ask it of them from behind a curtain. That is purer for your hearts and for their hearts.<sup>2</sup>

The penchant of both medieval and modern commentators to interpret this verse as legislating veiling for Muslim women or even seclusion from public space altogether, is found highly suspect by Mernissi. She first argues that the occasion for this revelation, that of the failure of guests to make a timely departure from a party held in honor of the Prophet's wedding to his wife Zaynab, helps us understand the real issues at the heart of this verse. Surely it had to do with the exceptional power and authority of the Prophet, and the special respect members of the community should show towards his wives, not with Muslim households and women in general. And how could this "relatively minor incident," as Mernissi terms it, "provoke a response so fundamental as the splitting of Muslim space into two universes"?<sup>3</sup> Furthermore, if we look at the appearance of the word *hijab* in other parts of the Qur'an, we find that as often as not it is a negative concept, referring to the barrier that separates sinners from the saved or man from God; how could this term be taken as a form of positive and far reaching legislation? On both historical and textual grounds, the interpretation of this verse to mean that all good Muslim women must veil seems a stretch. Thus Mernissi stakes her claim to exegetical authority and joins the discussion on proper Islamic dress.

There are many others who, by now, have also revisited the days and documents of early Islam with an eye to contesting gender interpretations at what we could call ground-zero. The sacred texts are key to any attempt to redeem the tradition. We have other lively discussions about the import of other Qur'anic verses: the Malaysian group, Sisters in Islam, for example, published a pamphlet entitled "Are Men and Women Equal before Allah?" This

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<sup>2</sup> Ibid., p.85.

<sup>3</sup> Ibid., p.100.



discussion, which comes down strongly on the side of the basic equality mandated by the Qur'an, privileges the message in certain verses such as surah 2, verse 187, which authorizes men to approach their wives during the nights of Ramadan because "they are an apparel for you and you for them." The Sisters in Islam highlight the interpretation of one commentator, Abdullah Yusuf Ali, who took this verse to mean that women and men "are for mutual support, mutual comfort, and mutual protection, fitting into each other as a garment fits the body."<sup>4</sup> Thus, argue the Sisters, the message of the Qur'an is fundamentally one of equality and mutual responsibility between men and women.

Others have looked to biographical material to better understand the original Islamic message and practice when it came to women and men. Barbara Stowasser delved into the richness of the women figures in the Qur'an.<sup>5</sup> In studying the Qur'anic accounts of women like Eve (the wife of Adam), Zulaykha (the wife of Joseph's Egyptian master), Bilqis (the Queen of Sheeba), and Mary (the mother of Jesus), she found these women to be female exemplars, both good and bad, but all endowed with spiritual freedom and moral responsibility. Stowasser is particularly interested in the ways in which these female figures, so active and robust in the Qur'anic text, were subjected to a curious compression of their power and impact through the pens of medieval exegetes. The weakness of woman's nature and her proper role as man's follower are the lite motifs of most medieval Muslim discussions of the Qur'an's female figures. Again, we have an implicit message that a return to the text, bypassing the biased medieval glosses, can redeem the Islamic message on woman and reaffirm her capacities and her social role.

Biographies of the women of the early Muslim community have also played an essential part in the reevaluation of the tradition. The figure of `A'ysha, for example, has been a source of fascination and example: here we have a powerful woman whose many roles as beloved wife and confidant of the Prophet, authoritative source of Hadith, and outspoken political figure are the subject of much discussion. Denise Spellberg's book on the legacy of `A'ysha captures the many dimensions of the historical woman as well as the

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<sup>4</sup> Sisters In Islam, "Are Women and Men Equal Before Allah?" Selangor, United Selangor Press Sdn Bhd, 1991, pp. 10-11.

<sup>5</sup> Barbara Stowasser, *Women in the Qur'an, Traditions, and Interpretations*, New York: Oxford University Press, 1994.



controversies that raged around her legacy.<sup>6</sup> Was she a model for all Muslim women or an object lesson about the dangers of women intervening in political affairs? Again, it is the interpretation of the life, rather than the life itself, that is the subject of discussion and controversy. The tendency of male Muslim intellectuals to present critical assessments of her life as negative example, assessments which were then often inscribed into the official record of Islam, is yet another example of the need to redeem the tradition. Feminist scholars, on the other hand, gravitate toward `A'ysha for the window she provides on the power and position of women in early Islam, and take her life as normative.

These types of explorations of the texts and personalities of early Islam have been a very important part of the task of reclaiming the tradition. However, the tradition is not contained solely within the early years. Rather, we have a long history of Islamic thought and the lives people lived in harmony or tension with this thought, lives that also helped shape this thought. This too is the Islamic heritage, and its records deserve our attention. The ways in which interpretations of the Qur'an and the Hadith, as well as a host of other modes of conceptualizing Islam--in history, biography, and the law for example--were made and understood across time are critical components of the Islamic tradition. Close attention to the thoughts and practices of the Muslim community down through the centuries resonates in Islamic discourse. For example, the idea that the lived experience of Muslims constitutes an important source of guidance as well as evidence of progress in moral and political life underpinned the Islamic view of history and tradition.<sup>7</sup> The legal component of this tradition, Islamic law as an evolving intellectual enterprise and as a feature of community life, as well as its implications for gender issues across the centuries, is very much a part of the history of Islam. Along with a number of other social historians who are turning to close studies of the law as it was thought and practiced in Muslim communities, I am trying to grasp how Muslim intellectuals and lay people posed questions about gender and devised answers that suited their sense of inherited tradition as well as their immediate needs. Implicit here is the notion that tradition is continually being

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<sup>6</sup> D.A. Spellberg, *Politics, Gender, and the Islamic Past. The Legacy of `A'isha Bint Abi Bakr*, New York: Columbia University Press, 1994.

<sup>7</sup> See Tarif Khalidi, *Arabic Historical Thought in the Classical Period*, Cambridge: Cambridge University Press, 1994, chapter 2.



re-created as it is reviewed, adapted, rethought, and reformed in response to the exigencies of human life. As we study how individuals and communities participated in this process, we treat tradition as a fluid and malleable phenomenon.

Recent research in Islamic law and gender has been informed by two somewhat distinct fields of scholarship. First, there is the burgeoning field of Islamic law and society which has been historicizing and sociologizing the study of Islamic law. Rather than understanding the law as a set of frozen doctrinal positions, this field has embraced the importance of examining the ways in which legal doctrines and interpretations evolved over time in rhythm with various social changes and pressures. Seminal recent research on Islamic legal history has gone far in transforming how we view the law and the *'ulama'* who were its primary interpreters. Wael Hallaq, Baber Johansen, Rudolph Peters and others of this new school do not view the *'ulama'* as men of limited intellectual scope engaged in the rote application of legal rules formulated long ago.<sup>8</sup> On the contrary, they convincingly argue that the history of Islamic law is a history of ongoing creative efforts to develop and elaborate the law in concrete social context. The practice of Islamic law is also increasingly being studied as a living tradition connecting the worlds of Islamic scholarship and the larger community of lay Muslims. Much of this new research has been published in the pages of the journal *Islamic Law and Society*, and convincingly demonstrates that legal doctrines and practices were changing and developing over the long centuries of Islam. This insight, which constitutes a fundamental sea change in the way we think about the history of Islamic law, allows us to study the law as a much more revealing and dynamic factor in any discussion of an Islamic gender-system.

A second relevant field is that of women and gender history which, in recent years, has focused our attention on the mechanisms by which ideas

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<sup>8</sup> Wael B. Hallaq, "Ifta' and Ijtihad in Sunni Legal Theory," in M. Masud, B. Messick, and David Powers, eds., *Islamic Legal Interpretation: The Muftis and Their Fatwas*, Cambridge, MA.: Harvard University Press, 1996, pp.33-43; Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies*, 16 (1984), 3-41; Baber Johansen, "Legal Literature and the Problem of Change: The Case of Land Rent," in C. Mallat, ed., *Islam and Public Law*, London: Graham and Trotman, 1993, pp. 29-47; Rudolph Peters, "Idjtihad and Taqlid in 18<sup>th</sup> and 19<sup>th</sup> Century Islam," *Die Welt des Islams* 20, nos. 3-4 (1980), 131-145.



about gender are elaborated and given authority. By revisiting tradition in order to learn how members of the *'ulama'* in a specific time and place--in my case Ottoman Syria and Palestine--defined gender roles and power, a number of historians of women and gender in different parts of the Middle East region emphasize the contingent nature of gender definition. Women and gender history is a field with a strategy: the closer the historical examination, the more the Islamic gender system gains in flexibility and variability. The deconstructing of dominant gender definitions in society is one aspect of the social historian's charge; we want to trace the ways in which the powers that be *say* what it means to be a man or a woman--across a multiplicity of texts and practices of all kinds from religion, to education, to law etc. Gender is a social product which takes on substance within a historical framework fraught with complex relations of power; it has been the gender historian's self-appointed task to follow the tracks of evolving gender definitions imprinted on almost all of a society's artefacts. We are also equally concerned with how women and men understood and worked within and against those definitions. The dominant discourse on what it meant to be male and female is never the whole story; rather there is ongoing contestation of gender definitions, particularly from the margins of a society where people jockey for space to assert their own understanding of their gendered roles and interests.<sup>9</sup>

A small but steadily growing number of studies in gender and law combines the approaches of the law and society field with that of the more established women and gender field to fashion a new approach to the study of the legal bases of the Islamic gender system and the ways in which women both utilized and stretched the law.<sup>10</sup> The sources for this work are many, but

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<sup>9</sup> For a number of lively short studies of the ways discourses on gender were being shaped and contested in the late nineteenth and twentieth centuries in the Middle East, see Lila Abu-Lughod, ed., *Remaking Women. Feminism and Modernity in the Middle East*, Princeton: Princeton University Press, 1998.

<sup>10</sup> See, for example, Margaret Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo*, Austin: University of Texas Press, 1999; Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law, Iran and Morocco Compared*, London: I.B. Taurus, 1993; Annelise Moors, *Women, Property and Islam: Palestinian Experiences, 1920-1990*, Cambridge: Cambridge University Press, 1995; Amira Sonbol, ed., *Women, the Family and Divorce Laws in Islamic History*, Syracuse: Syracuse University Press, 1996; Susan A. Spector, *Chapters on Marriage and Divorce, Responses of Ibn Hanbal and Ibn Rahwayh*, Austin:



of most importance are collections of *fatawa* (non-binding legal opinions delivered by prominent jurists, both official and unofficial *muftis*) and the actual records of the Islamic court system which become available for many regions, including Egypt, from the 16<sup>th</sup> century onwards. *Fatawa* are an invaluable source insofar as they provide a critical link between legal theory and practice. As the mufti, or deliverer of the *fatwa*, responds to a query for a legal opinion on a specific situation, he brings his understanding of the Islamic legal tradition to bear on an actual conflict or issue confronted by members of his community. He can draw on his own knowledge of the Qur'an and Hadith, on the basic legal texts of his school of law, and on the opinions of *muftis* who came before him. His task is to apply the law to the situation as it has been described to him in hypothetical terms. However, this is not necessarily a straightforward operation because every community has its particular customs and practices which he must take into consideration and each concrete instance has its own particularities which call for attention to detail. To make his job yet more difficult, he also has a vast body of textual material he can draw from which includes minority opinions from his own legal school as well as the opinions of other legal schools which might be relevant to the case at hand. Thus the mufti is willy-nilly engaged in an active endeavor in which he must combine knowledge of text, precedent, and local conditions, and subject all these to a process of legal reasoning.<sup>11</sup> As we read *fatawa*, we are able to comprehend how the Islamic legal tradition shaped, and was shaped by, the exigencies of life in various Muslim communities, how the *muftis'* views of gender were produced by a subtle interplay between the legal tradition and the concerns and needs of individuals in the community.

The records of the Islamic courts add yet another dimension. Here we have actual court cases, accounts of who came to court, what piece of business or complaint they brought, and how the case was disposed. These records allow us to look at the law in practice, to follow into the court the aggrieved, the

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University of Texas Press, 1993; Judith E. Tucker, *In the House of the Law. Gender and Islamic Law in Ottoman Syria and Palestine*, Berkeley: University of California Press, 1997.

<sup>11</sup> For further discussion of the fatwa, see Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, *Islamic Legal Interpretation. Muftis and Their Fatwas*, Cambridge, MA: Harvard University Press, 1996, chapter 1.



vengeful, or those who were simply seeing to their business and observe how they were received. As far as gender issues are concerned, we can learn much about how women and men perceived their respective rights and duties, about their sense of what was fair and licit on the one hand and what constituted a violation of their rights on the other. As the product of an accessible and widely used institution, at least in the urban areas, the court records of the Ottoman period are the kind of source a social historian dreams of. Women and men of varied religious, ethnic, and class backgrounds resorted to the court and left the traces of their concerns and beliefs. This is not to suggest that the court records are a transparent source or a mirror of reality posing no methodological problems. On the contrary, there is much we do not know about the full circumstances of any given case. We can easily imagine that long before a case gets to court it has been adjusted to suit the institutional and legal requirements in place.<sup>12</sup> Still, these records allow us a rare glimpse of what the ordinary person thought she or he might expect or deserve as a gendered individual.

As an example of how one might use these sources to further our understanding of Islamic law, gender, and the connection between the two, I will begin with a *fatwa* from Khayr al-Din al-Ramli, a 17<sup>th</sup> century Hanafi mufti from Ramla in Palestine:

Question: There is a poor woman whose husband is absent in a remote region and he left her without *nafaqa* or a legal provider. And she has suffered proven harm from that. She has made a claim against him for that [support] but the absent husband is very poor. The resources [intended] for her *nafaqa* were left in his house and in his shop, but they are not sufficient for her to withstand her poverty. She therefore asked the Shafi'i judge to annul (*fasakha*) the marriage, and he ordered her to bring proof. Two just men testified in conformity with what she had claimed, and so the judge annulled the marriage.... Then, following her waiting period, she married another man. Then the first husband returned and wanted to nullify the judgement. Can that be done for him when it was all necessary and had ample justification?

Answer: When the harm is demonstrated and the evidence for that is witnessed, the annulment of the absent husband's marriage is [legally] sound.... It is not

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<sup>12</sup> For a good discussion of the challenges of reading a court case, see Iris Agmon, "Muslim Women in Court According to the *Sijills* of Late Ottoman Jaffa and Haifa," in Sonbol, ed., *Women, the Family and Divorce Laws*, pp. 126-140.



for the Hanafi or others to nullify this as our 'ulama' have said in their *fatwas*.<sup>13</sup>

A number of issues converge in this particular *fatwa* which is, in itself, typical of the juristic discourse of the day. First, there is the question of marital rights and obligations that underlies the case. The mufti is concerned here with a woman's right to marital support, to *nafaqa*, which is a well-defined obligation on the part of the husband. The legal discourse of the time was abundantly clear and quite elaborate on this issue: a husband owed his wife material support of a kind in keeping with her station in life. In this case, that of a poor woman, this support is minimal enough to hold poverty at bay. If she had been a wealthier woman, she might have laid claim to far more in the way of support--the *muftis* of the time included such items as meat, prepared food, even servants or slaves among the items of support that a wealthy woman could demand. For our poor woman, however, it is simply a matter of her survival, her ability to avoid sinking into abject poverty. Although her husband had left some resources behind him before he left on his trip--some goods and/or money we may presume--those have proved inadequate for her needs. There is no question in the mufti's mind that this is an absolute obligation of the husband--his absence or his poverty are not sufficient excuses for his failure to meet this marital responsibility. Therefore, the question arises as to whether a judge should exercise his prerogative to annul a defective marriage at the request of the wife.

However, there is a difficulty. Hanafi jurisprudence, and the mufti Khayr al-Din is a follower of the Hanafi school, defines the judge's ability to annul a marriage very narrowly. In order for a wife's request for annulment to be honored, the marriage must be seriously defective--the husband must be impotent, insane, or suffering from a serious communicable disease.<sup>14</sup> The hands of the Hanafi judge are tied in this case. Furthermore, Hanafi law is the official *madhhab* (legal school) of the Ottoman Empire and therefore applied in the Islamic court system under the Ottomans. Here a solution is quickly

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<sup>13</sup> Khayr al-Din al-Ramli, *Kitab al-fatawa al-kubra li naf' al-biriyya*, Cairo: Bulaq, 1300/1882-1883, vol.1, p. 49.

<sup>14</sup> For a detailed discussion of Hanafi and other schools' views of the grounds for divorce, see K.N.Ahmed, *The Muslim Law of Divorce*, New Delhi: Kitab Bhavan, 1984.



found. The woman can go before a Shafi`i judge, ask for an annulment under Shafi`i law which does recognize non-support as grounds for divorce, and receive a perfectly valid annulment. Once she has obtained this annulment from a Shafi`i jurist, Hanafi judges should accept and honor the results. Even if the first husband returns and is shocked to find his wife married to someone else--in direct contradiction of Hanafi law--he has no recourse. She obtained a legal annulment and is no longer his wife.

Khayr al-Din, a highly respected Hanafi jurist, found himself faced by a troubling situation: a poor woman was trapped in a defective marriage. In order to address this hardship, he could draw on some prior opinions in the Hanafi school to justify recourse to Shafi`i law and jurists. He was not willing to follow strict Hanafi doctrine in this case, which would have left the woman in her predicament, but rather resorted to creative borrowing from another school of law--a technique we associate with 20<sup>th</sup> century legal reform techniques rather than 17<sup>th</sup> century business as usual. As we scrutinize this *fatwa*, we learn that a Muslim jurist was willing and able to take the received doctrine of his school on gender issues--in this case on a woman's ability to obtain a divorce from her husband--and modify it in response to the social needs of his day. In this case, the modification is very much in favor of expanding a woman's right to divorce her husband. This kind of flexibility, this willingness to find creative remedies for injustices that might result from doctrinal rigidity, is a hallmark of legal thought in the period. Indeed, the records of the Islamic courts reflect the common practice in Ottoman Syria and Palestine of bringing Shafi`i or Hanbali judges into the official courts for a limited number of cases, desertion and non-support by husbands as grounds for female-initiated divorce being the most common. We find such an annulment registered in the Islamic court records of Damascus in the 1740s:

The hajj `Ali b. Jadallah al-Maghrabi, the hajj Ahmad b. `Amr al-Maghrabi, and the hajj Ahmad b. `Ali testify to their knowledge of the hajj Ramadan b. `Ali b. `Abdallah al-Maghrabi, and his absence. And to their knowledge of his wife, the hurma Fatima bt. ? B. Ahmad ? Who is present in court. [She says] that he [the hajj Ramadan] married her and then traveled and left her without *nafaqa* and without a legal provider for a period of four years, and no news of his whereabouts has reached her. She swore to all that and asked the judge's permission for an annulment,



and he gave permission and annulled the marriage. 12 Sha`ban 1154 (1741).<sup>15</sup>

In this case, a woman has enlisted her husband's relatives to testify on her behalf that her husband has left her without support. They may well have been eager to do so, since in the absence of her husband legal responsibility for her support would fall on them. In any case, we find the woman herself in court, actively pressing her request for a divorce. Our views of gender relations, and specifically the ability of a woman to secure a divorce from a husband who failed in his duties of support, is transformed when we look at the *fatwas* and court records of the period.

Khayr al-Din's *fatwa* also highlights the role women might play in placing certain issues on the legal agenda. The poor woman of this case is far from passive. First she brought her complaint of non-support to the court and obtained the good offices of a Shafi`i to hear her case. We can divine that she knew not only that she stood a good chance of having the divorce granted, but also that the Shafi`i judge would be the one to give it to her. Then she went and got two male witnesses to back her story. Finally, after the divorce was granted and she had passed the required waiting period of some three months, she remarried. It was her disgruntlement that forced the issue; it was her initiative that brought the witnesses; and it was no doubt her plan to remarry that provided the dramatic denouement for this case. Clearly, we cannot look at women as the passive recipients of Islamic legal precepts, but, rather, need to sort out their roles as advocates for their own interests.

What does this kind of case and others like it have to tell us about law, gender, and tradition? First, it is abundantly evident that the law was not a fixed and immutable system: there are a variety of schools, possible opinions, ways of dealing with given situations within the framework provided by the Islamic legal tradition. Jurists responded to social problems with a willingness to examine received doctrine and find ways to adapt it to the needs of members of their communities. In doing so, they were often able to call upon minority opinions in their own school or even signal their acceptance of the interpretations of other schools. This case is about judicial flexibility, about how a willingness to consider issues of justice and hardship was characteristic

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<sup>15</sup> *Mahkamat Dimashq*, s. 106, p. 124.



in Islamic legal history.

Second, women themselves played a role in this ongoing process of negotiating gender roles and power. By raising certain issues and pressing claims in court, women invited the jurists to take up matters of concern to them and managed, upon occasion, to secure modifications of doctrine that were of benefit to them. We find women ever present and active in the judicial processes of the time, bringing queries to *muftis* and cases to court. Of course, we should not lose sight of the fact that many of these women resort to the law because their rights have been violated with impunity but still they are far from being passive victims.

Third, these legal materials enable us to address questions that go beyond the experience of women to the broader question of gender in history. In this instance, we have seen how marriage entailed certain responsibilities for men as well as for women. With marriage came the serious adult obligation of supporting a wife and family; the failure to do so could render the marriage invalid despite the wishes of the husband. Indeed, the husband's failure to support his wife leads to an inversion in the household: she can take charge of the relationship, make a unilateral decision to terminate the marriage, and even remarry without his knowledge. The gendered nature of marriage, where the man rules and provides and the woman obeys and consumes, could be rearranged and even unseated, at least on a temporary basis. This should give us pause when we go to grasp the nature of gender as a fundamental force in patterning social relationships; it seems far more contingent than it appears at first blush.

How can we sum up the accomplishments of the field of law and gender to date? First, research in this field is helping to revise our understanding of Islamic legal history. Rather than a static body of doctrine fixed in place in the 9<sup>th</sup> century, Islamic law is being cast as a living and growing tradition that connects with a range of social needs and changes. It is the reciprocal relationship between the jurists and their communities, between inherited doctrine and human experience, that molds the development of the law.

Second, research in the field of law and gender is helping us to comprehend how gendered social roles and power arrangements get constructed and modified. There is a received tradition of legal thought that was continually subject to social pressures of various kinds--the task of the *muftis* was to balance their doctrinal knowledge with the concerns and needs of their



communities. The Islamic gender system, if we want to call it that, was not a fixed inheritance but rather was the focus of rethinking, negotiation, and adjustment over time.

Last but not least, work in law and gender has contributed to our appreciation of female **and** male agency in history. Women themselves participated in the evolution of the law by bringing their issues to the attention of legal authorities, by lining up support for their positions among relatives and other members of their communities, and by pressing their claims in court. In our example above, women were clearly instrumental in expanding their rights to divorce their husbands in cases of non-support. There are other areas, including women's rights to arrange their own marriages, and their powers of guardianship over minor children, that were equally the focus of a kind of judicial activism in the Ottoman period.

Moreover, it was not just women, but men as well who participated in these legal dramas. The husband who objected to his wife's divorce initiative acted to uphold gendered privilege as he saw it. Although our antagonist lost his case, we have ample evidence that many men successfully used the law and the courts to press the male advantage in cases of divorce and child custody. However, men are not always blind champions of patriarchy; women often press their claims with male support. Fathers and brothers come to court to act as witnesses for women who are making claims against their husbands. Husbands may name their wives as the legal guardians of their children, giving them full control over their person and property should the husband die. Grown sons may act as a woman's agent in her real estate transactions. Men also chafed under their own gendered roles: there is much litigation around the issue of marital support, for example, a male obligation that appeared to be burdensome for many. The ways in which gender patterns male and female access to power and social relations is not always so neat and predictable. A web of relationships and family and community ties cut across gender lines, lending nuance to the way in which both men and women perceived their own interests. The world was just as gendered for men as for women, and males were not always the clear winners.

We are just beginning to explore the full complexity of gender in the context of Islamic history. The field of Islamic law and gender studies has much to offer, positioned as it is in the intersection of theory and practice, of thought and action. It is still a very new field and vast materials in the form of



works of *fiqh*, collections of *fatawa*, and court records are virtually untouched. As the field continues to grow, this particular journey back in time promises to help us realize the full richness of the tradition and its implications for gender issues today.