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Author

Duderija, Adis

Published

2017

Journal Title

Hawwa

Version

Accepted Manuscript (AM)

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## **Tensions Between the Study of Gender and Religion: the Case of Patriarchal and Non-Patriarchal Interpretations of the Islamic Tradition**

Post-review version (nearly identical to final published version) published as :Adis Duderija, [Tensions between the Study of Gender and Religion The Case of Patriarchal and Non-Patriarchal Interpretations of the Islamic Tradition Hawwa , Journal of Women in the Middle East and the Islamic World, 15,3, 2017, 257-278.](#)

Dr. Adis Duderija

Griffith University

[a.duderija@griffith.edu.au](mailto:a.duderija@griffith.edu.au)

### **Abstract**

In this article, I discuss the tensions between patriarchal and non-patriarchal interpretations of the Islamic tradition and some of the factors which contribute to the engendering of both. In order to contextualize the main discussion in the first part of the article, I outline the historical tensions between the study of religion and gender in general. The question of whether the culturally organizing function of gender is to be inevitably linked to the formation and perpetuation of patriarchal religion in general, and Islam in particular, is explored, or whether religion, including the case of Islam, can be a source of non-patriarchal values and ethics. In the second part, I discuss some of the most prominent factors which contribute to patriarchal interpretations of the Islamic tradition by grouping them, from the perspective of the individual interpreter, into those which pertain to personal opinion regarding the nature of two genders, *Sitz im Leben*, and interpretational methodology (*manhaj*). In the context of non-patriarchal interpretations of the Islamic tradition, I discuss its main delineating features and show, by using the work of a contemporary reformist Iranian scholar, H. Y. Eshkevari (b. 1949/1950), how the contemporary non-patriarchal interpretations of the Islamic tradition are sensitive to how both patriarchy and gender influence the process of interpretation.

**Keywords:** Islam and gender; women in Islam; Islamic law; Islamic jurisprudence; Islamic legal theory; gender and religion; Hussein Yousef Eshkevari; patriarchy; history of religion; gender and history

### **Introduction: Historical Tensions Between the Study of Gender and Religion**

Gender, in the realm of religion, refers to sex-associated characteristics and behaviors in both the natural and the supernatural world (Manning 2012, 436–9). Gender as an analytical category is of particular importance to religion for a number of reasons. First, the two concepts are intimately interrelated and are mutually embedded within each other, with religions shaping gender and gender influencing religion (ibid.; King and Beattie 2005, 8). This means that gender patterns are often only covertly present in religion and need to be historically excavated and carved out analytically through a careful exercise of close examination of foundational religious texts and the religious authorities and institutions built on them. Second, gender issues permeate religion since religions have created, legitimated, enforced, oppressed, subverted, transformed, and liberated gender (King and Beattie 2005, 8; cf. Manning 2012, 436–9). Third, there is, in particular, a close relationship between gender and religion because people’s self-perceptions and identity are formed and deeply rooted in their culturally shared religious heritage even if this heritage is sharply criticised and/or rejected (King 1995, 2). Fourth, religious traditions, beliefs, and practices are often highly gendered so much so that the gendered nature of the religious phenomenon is increasingly recognised, including in the sphere of theorising about religion (ibid., 5). Given the above, without a critical approach to gender it is hardly possible to describe, analyze, or explain any religion accurately.

As noted recently by Hermansen (2013), there are four positions that people, including the relevant scholars, are taking today in their discourses and understandings of the relationship between women and religion. The first position is described as “patriarchal and proud of it.” Those who subscribe to this view consider patriarchy as part of the divine order and “gender discrimination” (which is conceptualized in terms of gender difference or what I term below as “gender oppositionality”) is welcomed as divinely willed.

Secondly, there is a view that the founders of religions, including Jesus and Muhammad, were the first “feminists.” According to this narrative, these persons chosen by God as recipients of Revelation initially brought gender egalitarian messages which were subsequently lost or suppressed. Hence, what remains to be done is to recover this egalitarian spirit of the original message. The third position is that patriarchy has “highjacked” religion with the implication that theological and institutional change is necessary from within the faith-based framework to remove the garb of patriarchy from religion. The fourth position considers religion a priori and inherently patriarchal as it is considered to be against the best interest of women. Hence, women’s emancipation is sought from outside of the framework of religion. Representatives of all of these views exist in different proportions in all major religions today (Hermansen 2013, 22–23).

Religion has played an important role in defining the meaning of gender both as a symbol and in practice by communicating distinct behavioral roles for men and women which, in turn, gave rise to specific sex/gender-based rights and responsibilities (Manning 2012, 436–9). Indeed, factors that engender masculine and feminine gender roles (i.e., sets of expectations for behaving, thinking, and feeling [Kilmartin 2009]) and norms (i.e., prescriptive and proscriptive beliefs about how males and females should and should not behave, think, or feel [ibid.]) through which male-female differences are conceptualized have been recognized to be, to a large extent, of a social and cultural nature (King 1995; King and Beattie 2005; Kilmartin 2009). This is so because gender, as a concept itself, operates within a number of contexts including the historical, social, political, economic, religious, and ideological (Connell 2002; Hopflinger, Lavanchy, and Dahinden 2012). Religion too, as a concept, can be viewed as the result of socio-cultural interactions that also produces certain kinds of socio-cultural systems through processes of domination, subordination, inclusion, and exclusion (Hopflinger, Lavanchy, and Dahinden 2012, 621). Hence, both gender and religion are dynamic concepts which are specific to the socio-historical context in which they operate.

One of the aims of gender studies at its most general is to develop language and concepts necessary to comprehensively examine the use of gender as the major culturally organizing principle (Kilmartin 2009). As has been noted by many researchers, this culturally organizing function of gender has been linked to the formation and perpetuation of patriarchal societies and power asymmetries between genders from the time of the establishment of agricultural societies to the present, consistently favoring the male experiences and considering them a norm while devaluating female ones and considering them derivative or secondary (Connell 1995; Rosaldo and Lamphere 1974; King 1995; King and Beattie 2005; Keddie 2007). This function of gender very much applies to many aspects of the Islamic tradition (but not necessarily its normative foundational sources of teachings)<sup>1</sup> such as the law, politics, morality, and general etiquette and conduct. It particularly applies to traditional Muslim family law which, in its formative period, was and continued to be based on a highly gendered and power asymmetric set of obligations and rights between the sexes embedded in broader patriarchal and/or androcentric power matrixes (Ali 2010).

Cross-cultural studies have demonstrated that the position of women and men in religious traditions is often a reflection of their existing statuses in the broader society's cultural values and patterns of social organisation (Sinclair 1986). In other words, generally speaking, religious traditions advocate and are the source for traditional teachings about gender roles that assert differences between men and women (Aune 2009). Religion plays a central role in constructing gendered social roles, often promoting a patriarchal perspective as a social norm (Olson 2010, 93). In the case of the Islamic tradition, the *origins* of the division of gender roles were deeply rooted in the pre-Islamic

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<sup>1</sup> I employ the concept of Islamic tradition in line with Abu Rabi'i (2006) to refer to the cumulative religio-historic construct *emerging* from a particular approach to understanding and interpretation of the Qur'ān and Sunna, the only foundational normative sources crystallizing in doctrines derived from them pertaining to philosophy, theology, ethics, jurisprudence, legal theory, and mysticism as well as certain sociological and political attitudes and notions.

experiences of Middle Eastern peoples (Nashat 2004, 229; Keddie 2007, 13–15; Ahmed 1992). Importantly, however, religious traditions have also questioned existing gender structures away from hierarchy and toward complementarity and equality (Wiesner-Hanks 2011, 109; Kramer 2011, 44). This can be said to apply to the Islamic tradition as well, especially, among the proponents of non-patriarchal interpretations of Islam (Ahmed 1992; Barlas 2002; El-Fadl 2003; Ramadan 2009; Duderija 2011; Duderija 2017).

### **Patriarchal Interpretations of the Islamic Tradition**

In this and the following section, I would like to briefly explore the question as to which factors have promoted both patriarchal and non-patriarchal interpretations of the Islamic tradition. For heuristic purposes and from the perspective of the individual interpreter, I divide them into personal opinion regarding the nature of male and female gender, *Sitz im Leben* (the interpreter's broader socio-cultural, intellectual/civilisational, and worldview context), and interpretational methodology (*manhaj*). In reality, however, these factors exist in a dialectic relationship.

A recent important work by Karen Bauer, *Room For Interpretation: Qur'ānic exegesis and gender* (2008), has examined important factors that have influenced over 60 of the most influential Qur'ānic exegetes, primarily from the classical period and all males, in their interpretation of gender-related Qur'ānic verses pertaining to gender relations, including 4:1, 4:34, and 2:228. She convincingly argued that these “interpretations exemplify the ways in which the elements of personal opinion and common cultural understanding play out in exegetical texts” (56–7). Bauer further argues that although these exegetes strived to be objective in their Qur'ānic exegesis, their views on issues pertaining to gender clearly reflected what these scholars considered to be “well-known facts about men's and women's natures in their day” (105). In her exhaustive work, which is by far the most comprehensive extant examination of the issue of Qur'ānic exegesis on gender, she concludes as follows:

The patriarchal lens through which the exegetes understood these verses has been apparent throughout this dissertation: almost every interpretation is colored by the exegetes' assumptions about men's and women's natural roles and capabilities (ibid.).

Elsewhere, Bauer states that “common cultural understandings, societal mores, historical narrative, current scientific understandings, and their [exegetes] own opinions” have strongly influenced the kinds of meanings and interpretations of these Qur’ānic verses (ibid., 187). Bauer also argues that it is the context in which the exegetes lived including, among others, contemporary social mores, that was the most crucial factor in determining the process of interpretation (ibid.). In this context, she further states:

I have shown repeatedly throughout this dissertation how exegetes aim to be objective in their interpretations of these Qur’ānic verses, drawing on disparate elements in order to ensure the accuracy of their interpretations. Pre-modern scientific theories, societal mores, and customs are all objective truths in their particular context. But these are truths which can change. With the evolution of methods, scientists have developed more sophisticated theories about the differences, and similarities, between the sexes, and the origins of humankind. Even when applying seemingly unchanging frameworks, like grammatical interpretations, exegetes seem often to be influenced by their ideas about the innate differences between the sexes and the true meaning of a verse. And even in the pre-modern period, societal mores and customs differed according to specific circumstances (ibid., 194).

The quote above leads us to the question as to what kind of ideas and theories regarding women and gender were prevalent at that time. As it is commonly known, classical Muslim family law contains a number of gender-specific rights, duties, and norms pertaining to not only the legal sphere, but also to the political/governmental, educational, ritual, juridical, and in terms of general personal conduct (Mahallati 2010, 1–9). Most of these gender differences can be traced back to a particular understanding of

what it means to be female or male as based on the majority of the classical jurists' subscription to the thesis of "gender complementarity" (also known as "gender dualism"), which I call, for reasons outlined below, "gender oppositionality." This gender oppositionality thesis has several dimensions to it which pertain to the nature of male and female sexuality and their respective emotional and cognitive capacities. In a nutshell, gender oppositionality thesis states that women, unlike men, are highly emotional beings with weak and easily befuddled, deficient, or even non-existent rational faculties. One striking example of this kind of idea pertaining to women can be found in Ibn Manzur's (1992, 97) authoritative *Lisan al-'Arab* which, in his entry on *ra'y*, he defines as "well considered opinion, mental perception and sound judgment." He applies this description to some males only and considers that women as a general category of humanity could not possess *ra'y*.<sup>2</sup> We find similar views expressed in authoritative canonical *ḥadīth* books including those composed by Muslim, Abu Dawud, and al-Tirmidhi (Abdolqodir 2015).

Another example of gender oppositionality thesis can be found in the writings of the noted Islamic scholar al-Ghazali who relates that Ali, the fourth Sunni caliph and the first Shi'i Imam, said the following:

The worst characteristics of men constitute the best characteristics of women; namely, stinginess, pride and cowardice. For if a woman is stingy, she will preserve her own and her husband's possessions; if she is proud, she will refrain from loose and improper words to everyone; and if she is cowardly, she will dread everything and will therefore not go out of her house and will avoid compromising situations for the fear of her husband" (2012, 78).<sup>3</sup>

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<sup>2</sup> Other culturally contingent and androcentric definitions of terms in the same lexicon include words such as *al-untha* for woman (meaning "weak" or "limp") as well as entries on *imam* (prayer leader) and *khalifah* (leader/steward) as referring solely to men. See Umar (2004, 349).

<sup>3</sup> For more examples on misogyny in al-Ghazali's thought, see Harhash (2015).



The gender based sentiments expressed above were or are still reflective, at times, of the kinds of views about women and men that were/are prevalent in many Muslim majority societies and cultures.<sup>4</sup>

Another important assumption that governs the traditional or pre-modern views of the female and the male gender is the nature of their sexuality which is based on their essential difference. According to this view, sexuality is crucial but, as we saw above, not the only marker of what constitutes normative masculinity and femininity. These sexual differences are said to be based on biological and mental functions and capacities that strongly differentiate the sexes, embodied in the idea of gender dualism mentioned above. This gender oppositionality thesis also considers the female nature to be derivative vis-à-vis the male whose superiority is, at times, conceptualized to be both ontological and socio-moral. The pre-modern views of women are posited on an artificial split between body and mind, sexuality and spirituality (Shaikh 2004). The category of the female gender is constructed primarily in sexual terms. Women are identified with the “irreligious” (ibid., 102) realm of sexual passion, as repositories of all “lower” (ibid.) aspects of human nature, the very anti-thesis of the “illuminated” (ibid.) sphere of male (religious) knowledge where men are the sole bearers of religious authority (Shaikh 2004). Women and their ostensibly aggressive sexuality are conceptualized and constructed as sources of socio-moral chaos, embodiments of seduction, and a threat to a healthy social order. All of this necessitates very tight regulation of female sexual instinct by “external precautionary safeguards” such as seclusion, gender segregation, and

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<sup>4</sup> The prevalence of patriarchal values and systems in different Muslim majority societies and cultures, both in the past and the present, have been identified and discussed from various perspectives, including the anthropological, sociological, cultural, political, legal, religious/theological, and historical by a number of scholars such as S. Joseph and S. Slyomovics (2001), D. Kandiyoti (1988), K. Ali (2010), A. Barlas (2002), Z. M. Hosseini (in Duderija 2014a), L. Ahmed (1992), V. Moghadam (2010), H. Sharabi (1988) and N. Keddie (2007) to name the most prominent.

constant surveillance (Mernissi 1991; Sabbah 1984). Other assumptions include subscription to Aristotelian, rigidly essentialist ethics which discriminates on the basis of gender or social status (Duderija 2014a). According to these ethics, it is considered only just and proper that a woman is subjected to control by her father, husband, brother, or other male kin (Eshkevari 2013, 192–3).

Apart from these theories pertaining to gender that must have influenced the personal opinion of the interpreters, what kinds of social mores and norms were prevalent during the time of the writings of these Qur'ānic commentaries, and hence what kind of *Sitz im Leben* did the authors of these commentaries occupy? The answer to this question is not that difficult to find and will help us understand why exegetes' personal opinions had strong patriarchal tones.

Keddie, whose work can be used as representative of a wider and well-documented scholarship on the patriarchal nature of many Muslim majority societies and cultures, past and present,<sup>5</sup> in her influential work *Women in the Middle East: Past and Present* (2007) argues that throughout much of the pre-modern and modern Middle East history, strong patriarchal and mutually reinforcing influences in Muslim societies at the levels of both state and society/culture existed (14). She goes on to write that what she terms “gender in-egalitarian” ideologies, including female inferiority, were characteristic of all pre-modern civilizations—and the Middle East was no exception—as were male dominance in the family, household, tribe, and state (15). She convincingly demonstrates that patriarchy was operative especially in the heavily tribal pre-modern Near and Middle East states which “lacked today’s means of entering people’s lives, supported patriarchal laws and customs and left the details to male heads of households, who were expected to keep order and assure production and reproduction at home” (14).

Patriarchy, in different ways and modes, was all-encompassing and included the culture of agriculturalists, urban dwellers, and nomadic tribes alike (ibid., 16).

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<sup>5</sup> See footnote 4.

Importantly, following in the footsteps of Ahmed (1992), Keddie (2007, 30) argues that medieval Islamic society was more “patriarchal in practice and male supremacist in written ideas” than early Islamic Mecca and Medina, and that the source of the gender inequalitarian status of women came from conquered areas, especially from practices prevalent among the ruling class, the religious leaders in the conquered Sasanian and Byzantine Empires, and the ideas about the nature of men and women that were predominant at that time.

With respect to this point, Keddie states:

Islam did not begin as the most male-supremacist of the Middle Eastern religions, but Jewish and Christian Bible-related traditions, and Greek and southwest Asian ideas more hostile to women than were the Quran or original Islam came to be integrated into Islam once Islamic society adopted many features of Middle Eastern empires. Dominant Islamic Traditions stressed the supposed emotionality and inferior rationality of women, and saw women and their sexuality as evil threats to males and to the social order. These themes were read into Islamic scripture, though in many cases one can trace a biblical influence on their formulation. This view of women prevailed even when other biblical themes were rejected, suggesting that a negative view of women filled social needs (2007, 31).

In the context of the development of classical Islamic law, Keddie forms the view that the development of Islamic law and of local practices regarding women was to a significant degree “influenced by socioeconomic and political circumstances, notably, the importance of patriarchal tribes and extended families in which older men, and to a degree older women, exercised strong control over the lives and marriages of younger relatives, and boys and men had significant controls over girls and women” (ibid., 166–7).

As a generalization, Keddie opines, “one may say that in pre-modern times women were widely considered inferior, as they were in other societies, but that women’s power and agency were always greater than most outsiders imagined” (ibid., 169).

Moving from the pre-modern to the modern context, Keddie argues that the edifice of patriarchy and its influence remained firmly in societal, cultural, and political spheres. For example, in the context of modern Egypt, she states that Nasser “helped to create new political and economic space for women, but did not allow independent action or try to reform patriarchal culture or family law” (ibid., 123). Writing in the context of the modern Middle East, Keddie argues that, with very few exceptions, we witness a continued strength of ideas and customs that privilege men, may they be based in religious concepts or other aspects of culture (169–70).

From the above brief summary of Keddie’s important work on the history and the present situation of Middle Eastern societies and their impact on status and rights of women, the theme of patriarchy, except for the brief period at the time of the early Muslim community, runs as a continuous thread. Hence, we can conclude safely that the *Sitz im Leben* of the male interpreters of the Islamic tradition was significantly influenced by patriarchy and tainted their understanding of the sacred texts.

We see this clearly in the following two examples of interpretation of Qur’ān 4:34 by one classical and one contemporary exegete.<sup>6</sup> The first one comes from the classical Sunni *tafsīr* of the verse 4:34 by al-Zamakhsharī (d. 1143/1144) who is representative of the majority view of the classical Qur’ānic interpretations of this (and its sister verse 2:228). In relation to 4:34, he comments:

Men are the commanders [of right] and forbidders [of wrong], just as a governor guides the people.... The “some” in *some of them* refers to all men and all women. It means that men are only in control over women because God made some of them

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<sup>6</sup> For many more examples of patriarchal exegesis, see Bauer (2008).

superior, and those are men, to others, and they are women. This is proof that governance is only merited by superiority (*tafdīl*), not by dominance, an overbearing attitude, or subjugation. Concerning the superiority of men over women, the exegetes mention rationality (*‘aql*), good judgment (*hazm*), determination, strength, writing—for the majority of men—horsemanship, archery, that men are prophets, learned (*‘ulamā’*), have the duties of the greater and lesser imamate, *jihād*, call to prayer, the Friday sermon, seclusion in the mosque (*i’tikāf*), saying the prayers during the holidays (*takbīrāt al-tashrīq*), according to Abū Hanīfa they witness in cases of injury or death (*hudūd* and *qisās*), they have more shares in inheritance, bloodwit (*himāla*), pronouncement of an oath 50 times which establishes guilt or innocence in cases of murder (*qasāma*), authority in marriage, divorce, and taking back the wife after a revocable divorce, a greater number of spouses, lineage passing through the male line, and they have beards and turban (Al-Zamakhsharī 1965, as translated by Bauer [2008, 137]).

As an example of modern patriarchal exegesis, we can take the exegesis of M. H. Tabatabai (d. 1981), a renowned contemporary neo-traditionalist Shi‘i scholar. In his commentary of 2:228 he writes as follows:

The natural law of society says that all members of society should be treated equally, they should have as much rights as they have obligations. At the same time it decrees that every individual’s personal perfection and attributes must be recognized. The rule’s authority, the people’s subordination, the scholar’s knowledge, the illiterate person’s ignorance, all must be weighed in the scale of their usefulness for, and, effort on, society; and with that recognition everyone should be given his proper right. The same principle was applied by Islam concerning the rights and obligations of woman. It gave her as much right upon her husband as it ordained upon her for the husband. At the same time, it preserved her rightful value and place in her union with

the man and in this area, Islam found that men have a right a degree above women (Tabatabai 2017).<sup>7</sup>

Commentating on 4:34 in relation to *qiwāma*, he is of the view that *qiwāma* is not a specific rule for a husband's conduct in relation to his wife but a general statement which applies to society at large. Men are, collectively speaking, the maintainers of women. He forms the view that the verse “refers to the natural characteristics of men who have stronger rationality than women, and are stronger in bearing difficulties and in performing heavy tasks” and that women are to confine themselves to the management of domestic affairs and bringing up the children (ibid.).<sup>8</sup>

We see in both examples that certain assumptions about what it means to be a male or female had a significant impact on the interpreters' process of exegesis and its outcome.

The final factor that influenced the interpreter's process of interpretation that I mentioned at the beginning of this section refers to the actual methodology of interpretation. The delineating features of the pre-modern-based *manāhij* have been described in some detail elsewhere (Duderija 2011; Duderija 2013) and, therefore, here I would like to just briefly discuss two aspects, namely, the lack of what Duderija calls “comprehensive contextualization” (Duderija 2013) and lack of *maqāṣid*-driven *usūl al-fiqh*, both of which, in addition to their subscription to the doctrine of Salafism,<sup>9</sup> resulted in pre-modern embedded approaches to interpretation of Qur'ān and Sunna overlooking

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<sup>7</sup> Chapter 2 (“Al-Baqarah”), Verse 228–242, p. 18–19 on [www.almizan.org](http://www.almizan.org).

<sup>8</sup> Chapter 4 (“An-Nisa”), Verse 32–35, p. 199 on [www.almizan.org](http://www.almizan.org).

<sup>9</sup> In Duderija (2011, 36–9) Salafism is defined as a philosophical, political, and religious worldview that emerged in the second century hijri which is based on a regressive view of nature, history, and time that methodologically and epistemologically is pre-modern and lacks internal mechanisms to incorporate ethical values and system of ethics which were not prevalent at the time of the formative and classical periods of Islamic thought.

the importance of gender as an analytical tool to be employed for the purposes of interpretation (Duderija 2015).

By comprehensive contextualization, Duderija means investigating, in a methodical manner, the role of context in shaping the very content of the Qur'ān and its worldview. For this to take place, we need to recognize the Qur'ān's orientation towards the assumed operational discourse of its revelational context that manifests itself in the Qur'ānic content and is reflected in the grammatical and syntactical structures employed in the Qur'ān's language. This Qur'ānically assumed operational discourse must be seen as often reflecting *but not initiating* the prevalent religious, cultural, social, political, and economic situation of its direct audience, its first community of listeners and participants upon which a dialogical nature of the Qur'ān's discourse is premised. This nature of Qur'ānic discourse, as noted by Duderija elsewhere (2013), has important hermeneutical implications for gender-sensitive interpretations of the Qur'ān, for example, in relation to the interpretation of Qur'ānic verses on *ṭalāq*. Duderija (2013) argued that classical Muslim exegetes considered that the unilateral right of men to divorce their wives was a “pre-given” and “natural” order of things, a male God's given prerogative valid for all times, places, and circumstances and did not problematize it at all from a gender, custom, hermeneutical, and/or ethical perspective (*ibid.*).<sup>10</sup>

Relatedly, lack of *maqāṣid*-driven *usūl al-fiqh* in pre-modern Islamic tradition has been noted by many scholars, but none of them has put it as eloquently and as systematically as Professor Kamali (1996, 5) who in this context writes:

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<sup>10</sup> They merely emphasized that although the verse addresses the Prophet, it also speaks to all the male believers (*mu'minūn*). Instead, the *mufasssīrūn* either focused on the discussions surrounding the *'idda* and/or the proper treatment of one's wife during this time and provided the circumstances for the revelation of the verse (e.g., the Prophet's divorcing of his elderly wife Hafza, or Abd Allah Ibn 'Umar divorcing his wife when she had her menses [Duderija, 2013]).

Another aspect of the conventional methodology of *usul*, which merits attention, is its emphasis on literalism and certain neglect, in some instances at least, of the basic objective and the rationale of the law. The early formulations of *usul* have not significantly addressed this issue and it was not until al-Shatibi (d. 790 AH) who developed his major theme on the objectives and the philosophy of Sharī‘a (*maqāṣid al-sharī‘a*). Al-Shatibi’s contribution came, however, too late to make a visible impact on the basic scheme and methodology of *usul*.

As argued convincingly by Auda (2011, 194), *maqāṣid*-driven approaches to Islamic law are efforts aimed at discovering certain ethical values which are considered to contribute to sound application of sharī‘a. However, classical Muslim family law has been formulated on the basis of medieval patriarchal societal values including men’s *qiwāma*, *tafḍīl* and *wilāya* over women (Eshkevari 2013; Duderija 2014b). On the basis of pre-modern *manāhij*, including the two aspects discussed above and by subscribing to the concept of the regressive nature of time and history as exemplified in the concept of Salafism<sup>11</sup> (Duderija 2011), Muslim jurists did not seek to address these gender imbalances as they were considered part of the immutable aspects of Islamic law and in harmony with the Will of the Just Divine Legislator. Therefore, these patriarchal laws were considered by classical Muslim jurists as essentially and principally the most just laws that can possibly exist (Duderija 2014b).

### **Contemporary Non-Patriarchal Interpretations of Islam: Delineating Features and Case Study**

The proponents of contemporary non-patriarchal interpretations of Islamic tradition subscribe to very different assumptions regarding the nature of masculinity and femininity; their *Sitz im Leben* is different as well as their *manhaj*.

With respect to their views on normative gender roles and norms, the proponents of non-patriarchal interpretations of the Islamic tradition reject all of the aspects of the

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<sup>11</sup> See footnote 10.



gender oppositionality thesis discussed above as remnants of patriarchal medieval societal values and consider that both genders enjoy the same ontological, religious, ethical, legal, social, and political status (Duderija 2011; Eshkevari 2013). Their *Sitz im Leben* is shaped by the contemporary, post-Aristotelian “human rights era consciousness” (the concepts of gender non-patriarchalism and gender justice being its fundamental elements) and this consciousness, considered to be authentically embodying the spirit and values of Qur’ān and Sunna, is adopted on the part of the interpreter as an ethical lens through which Qur’ān and Sunna are interpreted (Duderija 2014a).

The *manhaj* aspect of contemporary non-patriarchal interpretations of the Islamic tradition is based on highlighting the need to often radically reevaluate inherited Islamic ethics and legal theory. Indeed, a great number of recently published studies (Sachedina 2009; Soroush 2009; Duderija 2017; An’Na’im 2011; Ramadan 2009) have emphasized the need to rethink some of the fundamental assumptions and theories governing classical Islamic legal theories and ethics that were based on certain *manāhij* of Qur’ān and Sunna and develop post-classical-embedded<sup>12</sup> hermeneutics<sup>13</sup> in order for Muslims to deal effectively with a plethora of contemporary challenges they are facing. One formidable challenge that has been identified has been in the area of issues pertaining to gender roles and relations (Duderija 2017). These contemporary proponents of non-patriarchal interpretations of the Islamic tradition have recognized a certain tension between what they consider to be the original egalitarian impulse of the normative sources of teachings embodied in the Qur’ān and Sunna and the subsequent patriarchal Islamic tradition. To

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<sup>12</sup> I use the words “post-classical-embedded” and novel interchangeably. By “post-classical-embedded,” I mean those approaches which seriously take into account and engage with but are not constrained by the hermeneutical, epistemological, and methodological dimensions characterizing classical Islamic legal theories. For details, see Duderija 2011 and Duderija 2017.

<sup>13</sup> I use the words “hermeneutics,” “interpretations,” and “*manāhij*” interchangeably throughout this article.

deal with this gender reform challenge, these scholars have adopted at least four important mechanisms:

1. They have engaged in efforts of highlighting the importance of reforming classical *usūl al-fiqh* and many epistemological, hermeneutical, and methodological assumptions on which it stands by developing novel Qur'ān-Sunna hermeneutics in which novel *maqāṣid*-driven *manāḥij* play the hermeneutically most powerful role (Auda 2008; Kamali 2011; Ramadan 2009; Duderija 2011; Duderija 2017).
2. By incorporating gender and post-Aristotelian ethics as critical analytical tools into their approach to the Islamic tradition (Mir-Hosseini 2013; Ramadan 2009; Kamali 2011; Duderija 2013).
3. By rejecting a Salafi-based worldview (Duderija 2011; Duderija 2017). By doing so, the proponents of non-patriarchal Islam distance themselves from the often patriarchal elements of the inherited Islamic legal and ethical tradition by bringing the issues of gender strictly and distinctly into the realm of social and cultural norms completely divorced from any religious or normative considerations. Second, this gender-sensitive consciousness is then translated into employing the same in developing gender-sensitive and non-patriarchal interpretations of the Qur'ān and Sunna (Duderija 2011; Duderija 2017).
4. They have problematized and rethought the concept of Sunna that is epistemologically, methodologically, and therefore hermeneutically independent of the concept of sound (*ṣaḥih*) *ḥadīth* (Duderija 2011; Duderija 2017).

One representative example of non-patriarchal interpretation of Islam, especially in relation to interpretational mechanisms two and three outlined above, is that of a contemporary Iranian reformist and former cleric Hassan Eshkevari (b. 1949/1950). Eshkevari is an outspoken and influential critic of the current Iranian version of theocracy. He was condemned to death for “apostasy” and “war against Islam” by the Iranian political cum clerical regime because of his views and spent several years in prison (Mir-Hosseini and Tapper 2006, 1). He is a prominent proponent of the “new

religious thinking” approach to religion known in Iran as *nau-andishi-yi dini* (Hunter 2009, 76).

Given the aims and the nature of this article, I am only interested here in how his views on gender and the nature of family impact his interpretation of the concepts of *qiwāma and wilāya*<sup>14</sup> which have been identified as the linchpins of patriarchal interpretations of Islam (Duderija 2014a). Hence, I will not be discussing his methodological approach to interpretation directly, apart from what is necessary to make the argument clear.

Eshkevari argues vehemently against the idea that in Islam, there is a set of gender hierarchical values that do not allow equal rights for women and that the laws in traditional Islam that do endorse these values have been constructed in the course of history and are the result of patriarchy. In this context, he forms the view that there is a need for a hermeneutic Islam that reexamines the many epistemological assumptions of traditional *fiqh*, especially, in relation to women (Eshkevari 2013, 191–2). Eshkevari deconstructs traditional assumptions pertaining to gender relations, especially in relation to *qiwāma* and *wilāya*. He identifies three most salient epistemological assumptions on which the idea of male authority and guardianship over women in Islam is premised:

1. The idea that men were ontologically superior to women and that women either have an evil nature or engender evil and hence must be controlled. This ontological superiority is justified on the basis of men’s supposed higher intelligence and rationality, women’s potent sexuality and its ability to corrupt men, as well as women’s “polluting” body as a function of their reproductive biology.

2. The argument that the patriarchal family serves as the most essential element of society without which the society cannot continue to exist.

3. The Aristotelian concept of justice alluded to above.

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<sup>14</sup> Usually translated/understood as male authority and guardianship.

Eshkevari argues that these assumptions have been incorporated and subsequently canonized into traditional Islamic law in the form of practices/laws such as men's *qiwāma* and *wilāya* over women as well as others (ibid., 192–3). In this context, he states:

These epistemological assumptions, shaped and consolidated over several millennia, became the basis of an authoritarian ethical and legal system that is premised on the notion that, if women fail to obey men in the family and society, justice will be compromised, as both family and social order will disintegrate (ibid., 193).

Eshkevari argues that the above assumptions regarding the sexes are defective. He also forms the view that these beliefs about the sexes had a significant role in determining gender relations and that they were an outcome of patriarchal historical legacies which ought to be changed or interpreted differently in the interest of both women as well as the well-being of society. An alternative set of assumptions is necessary to achieve this. Eshkevari formulates these alternative assumptions as follows:

1. *Men and women enjoy ontological equality.* In this context, he asserts that there is no “sound argument or textual proof” (ibid.) that would question this assumption. He continues to argue that in fact, in Islam, there is ample evidence to support this assumption and identifies a number of Qur’ānic verses as constituting such evidence (4:1; 6:98; 7:189; 31:28; 39:6). He forms the view that the Qur’ānic ontology, in agreement with the UNHRC, does not recognize any secondary human characteristics as a basis for discrimination and that the only things that matter from the perspective of “religion” are righteousness (*taqwā*) and righteous action (*‘amal ṣāliḥ*) (Eshkevari 2013, 193–4).

2. *Women are not inherently weak in reason or ruled by their emotion.* In this regard, Eshkevari forms the view that the belief in the contrary is a historical construct and product of a particular patriarchal mindset that “influenced the religious sources” (ibid., 194) and was “attributed to the Prophet or other religious personalities” (ibid.). He adds that the same mindset was also incorporated into the Muslim countries from western science. Any differences must be viewed as the result of historical processes which restricted women’s opportunities for intellectual and rational growth. Finally, differences

in biology and genes cannot act as the basis for differences in rights between the two sexes.

3. *The family is a joint enterprise.* Eshkevari states that the concept of family has always been subject to change as a result of changing socio-historical processes and that the patriarchal family and its assumptions “are no longer valid” which requires us to develop new sets of family law–related rulings. He continues to argue that Islam does place a strong emphasis on the family and “its integrity” and that, at the time of revelation, Islam, relative to the pre-Islamic period, “enhanced women’s position in the family and society, and gave them more rights” (ibid., 195). However, the “archaic traditions and rulings whose time is past” associated with traditional Islam can no longer be the basis of a healthy family unit and society because they are neither compatible with “our theological and epistemological assumptions nor contemporary notions of justice” (ibid.). The way forward is to recognize, as a religious principle, that the sphere of family is a joint enterprise in which every member has the same basic human rights and that additional rights and responsibilities are to be decided according to “cumulative human reasoning” (ibid.) and contemporary accepted understandings of “good practice” (ibid.). Eshkevari forms the view when appealing to *‘urf*: one must always take a rational approach and always be open to more just and better alternatives because “what is important is that, in the theory of the family as a joint enterprise, it is the collective logic and custom of the time that determines rights within the family, not a set of fixed and immutable laws” (ibid., 196).

4. *No one should dominate another.* In this context, Eshkevari explains the detrimental effects of patriarchy conceptualized as “right of dominion” (ibid.) based on ideas of hierarchy and superiority of men over women which, to Eshkevari’s mind, are antithetical to all monotheistic religions and their teachings. He uses the concept of *tawhīd* which constitutes “an undeniable religious tenet” (197) as an example of “negation of dominion” in Islam. In light of this, he argues that in Islamic legal discourse, and Muslim family law in particular, the dominion of men/husbands over women/wives is clearly present with respect to the usage of words such as *tamlīk* (possession) and *tamattu’* (enjoyment) in the marriage contract (*‘aqd*) and *taṣarruf* (conquest) in relation to sexual intercourse in which “a woman is the object of male pleasure” (193–7).

5. *Women's right for economic autonomy.* Here, Eshkevari argues that despite the fact that “religious legal discourse,” in theory, recognized women’s right to economic autonomy, in practice this was largely denied to most of them. He also argues that since women have the right to be educated and work, the traditional legal rulings pertaining to inheritance, “men’s polygamy, *mahr*, men’s obligation to provide maintenance for his wives, women’s obligation to obey their husbands, men’s right to prevent their wives from leaving the house without permission” can no longer be justified and must all be revised” (ibid., 197–8).

6. *Fiqh should not be maximalist.* Eshkevari argues that the traditional interpretations of the meaning of Islam’s universalism, its comprehensive nature and “totalizing laws,” including in the realm of social laws, is a jurists’ construction that took place over several centuries and must be questioned. He also considers that these ideas were responsible for many problematic laws in the sphere of women’s rights and rights of spouses in marriage (ibid., 198–9).

7. *Mutability of social rulings in the sharī‘a.* After outlining the arguments from past and present Shī‘ī jurists on the question of incongruity between rulings and changing contexts, Eshkevari favors the idea of changeability of social *sharī‘a* rulings which stipulates that no rulings related to social life—that is to say, laws legislated and implemented in the realms of politics, society, and family—are eternal; rather, they all have the capacity to evolve and to be transformed. In effect, the fundamental premise of this theory is that, from the outset, these rulings were not meant to be forever and after the death of the Prophet, for certain reasons, Muslims have misinterpreted them (ibid., 199–201).

Based upon the above outlined alternative assumptions, Eshkevari provides a very different understanding of the concepts of *qiwāma* (and *wilāya*) to that of traditional Islam. In relation to *qiwāma*, Eshkevari argues that the superiority or preference (*faḍḍala*) mentioned in 4:34 is not inherent, but an outcome and a response to particular socio-cultural and economic realities prevalent at the time of revelation. Since these realities no longer exist, and the nature and the very definition of a family are changing, the rulings associated with it are also subject to change. Eshkevari also questions the rationales

behind Muslim marriage laws, including the philosophy of and nature of the marital act premised as it is on the idea of women's sexuality as a good to be enjoyed by men once certain conditions have been met (ibid., 201–9).

Eshkevari, in the end, advocates for the abrogation of the legal rulings associated with the traditional patriarchal understandings of gender relations in Islamic law, especially, those pertaining to *wilāya* and *qiwāma*.

### **Conclusion**

The aim of this article was to highlight the tensions between patriarchal and non-patriarchal interpretations of the Islamic tradition. I embedded this discussion within the framework of broader debates on the question of gender as a culturally organizing force in the study of religion, in general, and Islam, in particular, and whether or not religious traditions can be interpreted in non-patriarchal ways. I have argued that both patriarchal and non-patriarchal interpretations of the Islamic tradition can be explained by examining how personal opinion impacts on what it means to be a male and a female, the *Sitz im Leben* and a commitment to a particular methodology of interpretation, and how the assumptions on which they are based interact with and influence the process of interpretation in which the interpreter is engaged. In the context of patriarchal interpretations of the Islamic tradition, I argued that the personal opinions of those who have interpreted the Islamic tradition in an patriarchal manner are a result of the subscription to the gender oppositionality thesis, a patriarchal *Sitz im Leben* as well as a *manhaj* that is embedded in a Salafi worldview that exhibits lacks of “comprehensive contextualization,” is not *maqāṣid*-driven, and is oblivious to gender as an analytical category affecting the process of interpretation. On the other hand, I showed how the contemporary non-patriarchal interpretations of the Islamic tradition are sensitive to how patriarchy and gender both influence the process of interpretation. The proponents of non-patriarchal interpretations of the Islamic tradition, such as that of H. Y. Eshkevari, discussed in the final section of the article are, on the basis of a particular *manhaj*, committed to an alternative Islamic hermeneutics which is receptive to contemporary

“human rights era consciousness” and the values that underpin it (such as gender justice and equality) which, in turn, is conceptualized and justified in a religiously authentic manner.

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