

**"I AM ONE OF THE PEOPLE":  
A SURVEY AND ANALYSIS OF LEGAL ARGUMENTS  
ON WOMAN-LED PRAYER IN ISLAM**

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WOMAN-LED PRAYER IN ISLAM<sup>1</sup>

*Ahmed Elewa and Laury Silvers\**

For Muslims, prayer leadership is necessary to fulfill the confirmed *sunnah* of congregational prayer, as well as the obligatory Friday sermon and prayer. The majority of jurists consider the role of imam to be better than any other duty associated with the prayer including that of the *muezzin*.<sup>2</sup>

In New York City on March 18, 2005 Dr. Amina Wadud shocked the Muslim world when she led a mixed-gender congregation in the Friday prayer. The Friday congregational prayer is at the center of Muslim religiosity. On Friday mid-day, Muslims come together as a community and turn collectively toward God. The form of the prayer affirms the community's identity; Muslims pray as brothers and sisters equal before God. They stand in straight lines, shoulder to shoulder. No one has a reserved spot. The rich stand next to the poor.

While the form of the prayer affirms the equality of all men and women before God, it also reinforces the social inequality of women and their corresponding lack of religious authority. Only men have the unrestricted right to lead the prayer, give the sermon, or even ask the community to serve God through the call to prayer. Women most often stand behind men or sometimes in another room altogether. In mosques that are sensitive to their female congregants, women sometimes give a

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\* Ahmed Elewa is associated with the Islamic American University & University of Massachusetts Medical School and Laury Silvers is associated with the University of Toronto.

2. Hamza Yusuf, *Can Women Serve as Imams?*, SEASONS, Spring 2007, at 47-64. This article was written two years after the Wadud Prayer. Shaykh Yusuf adds some insights, but for the most part this article is a brief and eloquent summary of positions already expressed in the lengthy collection of *fatwas* prohibiting unrestricted female prayer leadership cited below. The article is itself a superb expression of North American traditionalism and its culture of *taqlid*, meaning the choice to defer legal options to these scholars (*talfiq*) rather than consider one's own legal options by surveying the breadth of already-accepted rulings. Relatedly, see our discussion of consensus *infra*.

short talk before the official sermon or even author the sermon that is then given by the male imam; but these welcome gestures of inclusion nevertheless highlight women's exclusion from Islamic religious authority and participation in the mosque. Ultimately, men are the only necessary participants. Not only are men the only ones who can lead the community in obligatory rituals; only men are required to attend congregational prayers.<sup>3</sup> No matter what a woman's intellectual achievements, spiritual gifts, or commitment to God and the community may be, because she lacks male physical attributes her contribution is unnecessary. The ritual signals to all—even in those cases when it is not intended to do so—that the contribution of the most mediocre man is more important to the religious well-being of the community than that of the most outstanding woman.

The Wadud Prayer was thus organized as a response to this presumption. It was a religious ritual calling out to God and the global Muslim community to challenge male-only religious authority. The organizers, author Asra Nomani and Ahmed Nassef, Saleemah Abdul-Ghafur and Sarah Eltantawi of the late Progressive Muslim Union of North America, broadly publicized the Wadud Prayer to get their message out.<sup>4</sup> As a result there were nearly as many members of the press in attendance as there were congregants; and unsurprisingly, the prayer became an international incident overnight.<sup>5</sup> To those of us who were following the international reaction, it seemed as though every other Muslim in the world was weighing in at home, in Muslim communities, religious schools, secular universities, the media, and, of course, in new media on the web. The majority of responses were negative, stressing that it violated Islamic law for women to lead men in prayer.<sup>6</sup> Their reaction suggested or implied that the practice of a woman leading a mixed-gender congregation for the Friday prayer was deeply upsetting to the divine order of things and an example of the infiltration of secular values into their religious lives. For many

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3. Given the number of Muslim women in the workforce in North America and the growing number of Muslim men who are stay at home fathers, the obligation to attend the Friday prayer should be offered to women who work and an exemption on the grounds of caring for children, the elderly, or the infirm at home should be offered to men.

4. See Juliane Hammer's excellent article discussing the role of media in the Wadud Prayer, Juliane Hammer, *Performing Gender Justice: The 2005 Woman-Led Prayer in New York*, 4 CONTEMPORARY ISLAM 91 (2010) (special issue on Muslims and Media).

5. *Id.*

6. To be legally precise, women are not forbidden to lead men in prayer. Rather if a man is led in prayer by a woman, his prayer is considered invalid. Nearly all contemporary discussions of unrestricted female prayer leadership, though, discuss it in terms of prohibition and permission. We will follow the latter usage.

Muslims, it seemed as though the prayer was intended only to create dissension in the community.<sup>7</sup>

More than five years have passed; and in spite of the fears expressed at the time, the Muslim community has not been torn by dissension and unrest. The prayer, as galvanizing as it was, did not turn the world upside down for Muslims. Rather, it forced and inspired a fruitful discussion on the nature of a woman's place in the mosque that continues to this day.

The legal and historical record shows that women have led prayers since the time of the Prophet Muhammad in restricted circumstances (by "prayer" we refer to the ritually commanded five daily and supererogatory prayers, not personal prayers of supplication). Not all schools of law have agreed on what those restrictions on woman-led ritual prayers should be; but it is well-established among one or more of the schools that women may lead other women in obligatory prayers, women and children (and sometimes men) in their family in obligatory prayers, or mixed-gender congregations in supererogatory prayers such as the nightly prayers performed during the fasting month of Ramadan.<sup>8</sup> Occasionally, women lead men in obligatory prayers in unexpected circumstances. For instance in China, women lead other women in the obligatory prayers in female-only mosques. Although these mosques are specifically organized for women to have their own space without male interference, men have been known to participate, reportedly with the permission of the female imam.<sup>9</sup>

However, the majority of scholars agree that women may not lead men in the public performance of the five daily prayers and most especially the Friday congregational prayer. Several esteemed pre-

7. See our discussion of "westoxification" *infra* note 14.

8. The majority of the responses to the Wadud Prayer cite the breadth of these legal permissions to the degree that we can accept them as a legal commonplace. See *A Collection of Fatwas and Legal Opinion on the Issue of Women Leading Prayers*, LIVING ISLAM, Mar. 19, 2005, <http://mac.abc.se/home/onesr/d/itp.html#fwlp> [hereinafter *Fatwas*]. It is not uncommon for women to lead the men in her family, especially if she is the most knowledgeable of religious matters. Even scholars who take a narrow view of woman-led prayer admit it is permissible for her to lead the men in her family in these circumstances: Imam Zaid Shakir writes, "Some modern scholars hold it permissible for a woman to lead men in prayer within the confines of her house, if there are no men qualified to lead the prayer." Zaid Shakir, "An Examination of the Issue of Female Prayer Leadership," in *Fatwas* at 36, 40; see AL-SAN'ANI, SUBUL AL-SALAM 2:76; AZ-ZAYDAN, AL-MUFASSAL, 1:252. Imam Zaid's prohibition is also published in *An Examination of the Issue of Female Prayer Leadership*, THE COLUMBIA SOURCEBOOK OF MUSLIMS IN THE UNITED STATES 239 (Edward E. Curtis IV ed., Colum. Univ. Press 2008). We will cite Imam Zaid's response from the collection of *Fatwas* for the reader's ease of reference to the prohibitions.

9. Janyl Chtyrbaeva, "Kyrgyzstan: Girl Pursues A Difficult Dream—Becoming an Imam," RADIO FREE EUROPE, Mar. 18, 2005, <http://www.rferl.org/content/article/1058031.html>.

modern legal scholars have permitted women to lead men in all prayers, which we will refer to in this paper as “unrestricted female prayer-leadership.” Nevertheless, these permissions have long been overshadowed by a majority of scholars who prohibit unrestricted leadership.

In the following summary and analysis, we will survey the immediate responses to the Wadud Prayer, including reactions by such important scholars as the Grand Mufti of Egypt, Ali Guma'a; Shaykh Yusuf al-Qaradawi; Imam Zaid Shakir; Dr. Ingrid Mattson; Dr. Khaled Abou El Fadl; (former) Grand Mufti of Marseilles, Sohaib ben Cheikh and Dr. Omid Safi. Then we will show that, in interpreting the *Hadiths* on women-led prayer, Sunni schools of law hold a range of opinions on its permissibility. We will discuss how Muslim jurists consider historical needs in their rulings, the role of female modesty in this debate, and the nature of juristic consensus. We will then present our own argument that unrestricted female prayer leadership is legal by default rather than an innovation as many critics have charged. Finally, we set out our own different positions on the propriety of Muslim women asserting their inclusion in the current situation.

#### AN OVERVIEW OF CONTEMPORARY RESPONSES<sup>10</sup>

The reaction of the official communities of New York has been negative. The prayer was [scheduled to be held at] the Sundaram Tagore Gallery. A bomb threat forced the organizers to cancel the [event]. Finally, the yum'a [sic] prayer took place on the foreseen day, in a room provided by the Anglican Church. More than a hundred men and women attended the prayer, which took place among strict security measures.<sup>11</sup>

At the time of the Wadud Prayer, only North American Muslim communities on the margins had practiced unrestricted female prayer leadership. Shaykha Fariha's Nur Ashki Jerrahi Sufi community in New York City and Mexico City and Queer-positive organizations such as Salaam and al-Fatiha hold public woman-led Friday prayers.<sup>12</sup>

10. There were innumerable responses on the web, published in North America, and abroad. No overview could possibly account for them. We will only be able to cover those responses most important for our discussion, which will focus on North American Islam.

11. Abdennur Prado, *About the Friday Prayer led by Amina Wadud*, ABDENNUR PRADO, Mar. 19, 2005, <http://abdennurprado.wordpress.com/2005/03/10/about-the-friday-prayer-led-by-amina-wadud/>.

12. El-Farouk Khaki, personal correspondence with Laury Silvers, 2006. El-Farouk Khaki is a human rights activist and attorney, founder of Salaam: Queer Muslim community, ED and co-founder of Muslim Canadian Congress, co-founder of el-Tawhid Juma Circle, Chair of APAA, and Host/Coordinator of Salaam/Al-Fatiha International Queer Conference in Toronto 2003.

Traditional Scholars have not responded *en masse* to these events as they did the Wadud Prayer because while the prayers of these groups were public *per se*, their communities were significantly out of the mainstream so as to go largely unnoticed by the larger Muslim community.<sup>13</sup> By contrast, the Wadud Prayer was organized to be as public as possible, in order to force the larger community and scholars to respond.

Immediately following the Wadud Prayer specialized and lay legal responses were dispatched around the world. Muslim religious leaders reacted with statements pronouncing the prohibition of women's prayer leadership in the mosque.<sup>14</sup> *A Collection of Fatwas and Legal Opinions*

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Globally, the first known communities holding regular woman-led Friday congregational and *tarawih* prayers were in Johannesburg, South Africa, organized by the Muslim Youth Movement. Mosques in Johannesburg, Capetown, and Durban continue to organize woman-led prayers and have women give the Friday sermon. South Africa's pioneering woman-led prayer movement is widely reported on the web and in print. See Amina Wadud's report of her visit to South Africa in her book *INSIDE THE GENDER JIHAD: WOMEN'S REFORM IN ISLAM* 163 (Oneworld 2006).

13. Most Muslims interested in gender rights, even a number of Progressive Muslims, are so uncomfortable with homosexuality that they tend to overlook the extensive contributions of Queer communities in the areas of family planning, sexual health, HIV/AIDS in the Muslim community, and female religious authority, most especially in woman-led prayer.

14. Many of the responses were balanced, yet firm. But there were also numerous vitriolic responses, some by scholars and others by popular commentators on the web. See, e.g., the website Living Islam, [www.livingislam.org](http://www.livingislam.org), which has published empathetic and well-argued pieces from scholars such as Ustadha Zaynab Ansari as well as Shaykh G.F. Haddad's misogynist and racist rant quoted in part here.

Shaykh Haddad imagines a spiraling state of chaos. The tone and content of his piece is atypical; but Haddad is a well-regarded religious scholar of Islam, commentator on Islam in the Modern World, and guide with many followers. His response should, if anything, highlight the fairness of the other scholars cited here who no less fervently disapproved of the Wadud Prayer but managed to respond in a manner befitting the Sunna their followers expect them to uphold. Haddad's piece dramatically illustrates the fears of "westoxification" in which the worst of the West is combined with marginal and broadly unacceptable rulings from the Islamic scholarly tradition. He writes,

The "Progressives," for example, have invented a *hijabless* prayer for themselves as their New York congregation displayed. One day their female leader might actually make this state of undress the law and frown upon its lingering use by female congregants still possessed of a (male chauvinistic) sense of shame. Later, American "Progressive" illuminatas will insist that the *Fatiha* be recited in English inside prayer (perhaps allowing Swahili during Kwanzaa), free from racist Arabocentric strictures.

In the end, a Muslim might pray in short shorts behind his sing-songy female imam with the non-Arab accent, after she has graced the congregants with a *khutba* about "God, praise Her." She is *hijabless* "because *La ikra ha fil-Dm*" and shakes hands indifferently with men, none of whom minds that she wears "Opium" to the prayer. Another congregant prays with malt liquor on her breath. The man right next to her prays in a *junub* state but he is not *junub* according to a *zahir* position if there was no ejaculation. He married his granddaughter, which is licit according to a *khariji* position—temporarily and without witnesses, of course."

G.F. Haddad, *Amina Wadud's Innovation of Misguidance*, Living Islam, Nov. 8, 2005, <http://mac.abc.se/~onesr/d/itp.html#ufaw>.

on the Issue of Women Leading Prayers was the most influential collection of legal opinions (*fatwas*) because of the scholars associated with it and its broad dissemination over the web.<sup>15</sup> The collection included the prohibitions of esteemed scholars such as the Grand Mufti of Egypt, Ali Guma`a; legal scholar Shaykh Yusuf al-Qaradawi; organizations such as the Assembly of Muslim Jurists of America; and secularly educated Muslim academics of Islamic law such as Dr. Hina Azam and Dr. Mohammad Fadel.<sup>16</sup> Most importantly, the collection included a thoughtful and comprehensive piece written by the influential American imam, Zaid Shakir, of the Zaytuna Institute.

Imam Zaid Shakir's response was organized as a rebuttal to Dr. Nevin Reda's essay supporting the prayer entitled, "What Would the Prophet Do?" published in the Progressive Muslim webzine, *Muslim Wake Up*.<sup>17</sup> Much more than a rebuttal, Imam Zaid's piece is a

15. *Fatwas*, *supra* note 8.

16. Mohammad Fadel has since suggested that unrestricted prayer leadership could be argued to be a beautiful innovation (*bid'a hasana*) on the grounds that respect for women cannot be internalized in the community until men in authority pray under the leadership of women and their relationship is publicly equalized (Mohammad Fadel, personal correspondence with Laury Silvers, Oct. 2009).

In a television interview just prior to the Wadud Prayer, Shaykh Ali Guma`a was asked about Dr. Wadud's plan to lead a mixed-gender Friday congregational prayer in New York. He responded that unrestricted female prayer leadership is permissible in a community that accepts it, noting that it would not be accepted in Egypt for this reason. We wonder that he did not anticipate the world-wide rejection of the prayer, even among Muslims in North America (whom he may have considered more culturally open to female prayer leadership). Following that global outrage, Guma`a released his fatwa—discussed, *infra*, at note 24 and accompanying text, notes 79 and accompanying text, and note 109 and accompanying text—prohibiting it. We would argue that the second, formal, opinion may not nullify the first. Following his reasoning in his first opinion, female prayer leadership is not permissible where communities reject it. The second opinion was given after the nearly global rejection of female prayer leadership by the Muslim community at the time. Thus rejected by most in the broader community, female prayer leadership would have to be prohibited. But there is more to his second, formal, opinion than that. Noting his concerns over female modesty, we suggest that his second opinion is also an attempt to prevent or quiet *fitna* in the community. On legal scholars' responsibility to prevent *fitna*, please see our discussion on modesty, *infra* notes 79-85 and accompanying text. Shaykh Ali Guma`a's television interview was reported on in the Arab press:

The Mufti of Egypt, who is affiliated with al-Azhar, stated during an interview televised on Egyptian TV, that in situations where scholars have disagreed, the final decision is left to the people concerned with the issue. If they accept being led by a woman, then this is their business. There is no problem as long as it is appropriate to their customs. If, on the other hand, they reject this [female leadership], then this is their business as well. [He added that] this is what most Muslim countries including Egypt apply, and for that reason it is not expected that this [female leadership of prayer] will occur in Egypt since it goes against the culture and customs of its people and what they have been used to throughout their lives.

Salama `Abd al-Hamid, *The Mufti of Egypt, Shaykh `Ali Guma`a: Scholars' Difference of Opinion Permits Doctor Amina Wadud to Lead Men*, AL-ARABIYYA, Mar. 16, 2005, <http://www.alarabiya.net/articles/2005/03/16/11294.html>.

17. Nevin Reda, *What Would the Prophet Do?*, MUSLIM WAKE UP, Mar. 10, 2005,

summary analysis of the legal history of the prohibition of woman-led prayer. Sympathetic scholars around the world commented on early versions of Imam Zaid's piece, offering their own insights and citations and creating a thorough and heavily documented final argument.<sup>18</sup> Imam Zaid's document and its commentary are so thorough that we rely on its findings in part.

Most scholars readily acknowledged the breadth of the various rulings that include forms of woman-led prayer of men considered permissible by mainstream jurists since the early period. Thus from a legal perspective alone, the overall emotional force of the responses against woman-led prayer seemed out of place. But from a social perspective the vehemence of many scholars and lay Muslims alike makes much more sense. By our account, these impassioned responses are symptomatic of the fear that the Islamic conception of justice, which should flow from divine principles, is becoming diluted and even diverted by secular concerns and criteria.

For many Muslims living in a post-9/11 climate, the Wadud Prayer was a brazen example demonstrating that rich Western feminists from the privileged classes, liberal non-governmental organizations such as the RAND Corporation, and hostile neo-conservative politicians and their media pundits were seeking to secularize the divine principles that drive Islamic legal and ethical thinking.<sup>19</sup> According to Robert D. Crane, a Muslim convert who was an adviser to Richard Nixon and a Deputy Director of the National Security Council, unrestricted female prayer leadership is only supportable if one looks to the "West" as the arbiter of Islamic justice:

By adopting the standards of modern Western culture (or lack of culture) Sister Amina Wadud is shifting the burden of proof from the West to the East in defining the nature of dignity and justice. She thereby is buying into the Orientalist insistence that the base

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[http://web.archive.org/web/20050315040410/http://www.muslimwakeup.com/main/archives/2005/03/women\\_imamat.php](http://web.archive.org/web/20050315040410/http://www.muslimwakeup.com/main/archives/2005/03/women_imamat.php). Nevin Reda has a Ph.D. in the study of the Qur'an from the University of Toronto and a Masters in Biblical Hebrew Language and Literature. She is a co-founder and coordinator of the Canadian Certificate in Muslim Studies program at Emmanuel College.

18. Laury Silvers was forwarded several versions of his piece as it circulated the rounds of scholars, each time becoming more thoroughly argued. These scholars' unsung contributions to the piece nicely demonstrate the Muslim ideal of scholarly cooperation and humility.

19. See Muzammil Siddiqi, *Women in Leading Posts*, ISLAM ONLINE, Aug. 11, 2005, [http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask\\_Scholar/FatwaE/FatwaE&cid=1119503545996](http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503545996); CHERYL BENARD, CIVIL DEMOCRATIC ISLAM: PARTNERS, RESOURCES, AND STRATEGIES (RAND 2003); Robert D. Crane, *Assessing the Gender Insurgency of Professor Amina Wadud: Strategic, Tactical, and Legal Perspectives*, THE AMERICAN MUSLIM, Mar. 15, 2005, [http://www.theamericanmuslim.org/tam.php/features/articles/muslim\\_women\\_leading\\_prayer/](http://www.theamericanmuslim.org/tam.php/features/articles/muslim_women_leading_prayer/).



case for evaluating Islamic law is Western culture, when she should be comparing Western law with Islamic law as the base case. She should shift the burden of proof onto the secular fundamentalists by showing how deficient Western positivist legal jurisprudence is compared to the sophisticated normative legal system and code of human responsibilities and rights known as the *maqasid al shari'ah* [lit. "the objectives of shari'a"].<sup>20</sup>

This fear, termed "westoxification," is typically understood to be the *uncritical* adoption of "Western" or secular modes of thought with its damaging effects on Islamic values.<sup>21</sup> These sorts of responses to the prayer imply that a prohibition of women leading men in prayer would be most effectively guard against secularly defined female authority seeping in under cover of pietistic attempts at inclusivity.<sup>22</sup>

Thus, despite the fact that woman-led prayer has been, at the very least, a topic of discussion since the time of the Prophet, most disapproving responses viewed the performance of the Wadud Prayer as entirely alien to Islamic values.

In the same vein, many contemporary scholars responding to the Wadud Prayer argued that unrestricted female prayer leadership is prohibited because it compromises female modesty and as such poses an attack on Muslim religious life. Primarily they were concerned that men would be sexually distracted by a female imam bending over in front of them, no matter how voluminous her robes. As Soad Saleh, Dean of the School of Islamic Studies for Girls at al-Azhar University, puts it, "The origin [of the prohibition] is that the woman's body, even if veiled, stirs desire."<sup>23</sup> According to these views, a woman publicly leading men in prayer also puts the community at risk of much greater social ills.

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20. Crane, *supra* note 19.

21. The term (*gharbzadegi*) was coined in Iran in the 1960s by Jalal al-e-Ahmad and taken up by Ayatollah Ruhollah Khomeini. See ROY MOTTAHEDEH, *THE MANTLE OF THE PROPHET: RELIGION AND POLITICS IN IRAN* 296 (Oneworld 2000). The term or concept of "Westoxification," is broadly in use in North America.

22. Most Muslim scholars represented here are not opposed to female religious authority as long as that authority is defined in terms they interpret to be Islamically sound. Typically this means supporting women's rights in terms of equity and not equality. For them, equity is more adequate to long-held Islamic legal and ethical principles. See Zaid Shakir, *The Social Involvement of Women in Islam*, Zaytuna Institute (Apr. 4, 2004), <http://www.zaytuna.org/articleDetails.asp?articleID=50>. Their widespread influence in North American Islam aside, not all traditionally-oriented Muslims or traditionally-educated Muslim scholars would agree that gender-equity is the only possible traditional model (for instance, see the work of Abdullahi al-Naim, Farid Esack, Ebrahim Moosa and Khaled Abou El Fadl). This article hopes to add to the evidence of such interpretations.

23. Saleh quoted in Abou El-Magd, *Mideast Muslims outraged, see 'conspiracy' after woman leads prayers in U.S.*, *The Free Republic* (Mar. 19, 2005), <http://www.freerepublic.com/focus/f-news/1366312/posts>.

Shaykh Ali Guma`a nicely sums up this perceived risk when he *begins* his prohibition of unrestricted female prayer leadership with the words: "Islam commands chastity and virtue and it forbids adultery and fornication."<sup>24</sup>

As odd as the leap in judgment from prayer leader to fornicator may sound to many readers, it must be understood that modesty is generally viewed as a central tenet of Islamic morality. For Muslims, modesty reflects and supports the inward restraint necessary for men and women to protect themselves from sins such as obscenity, sex outside of marriage, and, for some, even sexual assault. Modesty concerns are thus articulated in Islamic rulings and cultural practices that regulate social contact between the sexes to protect women from illicit male desire. In theory and in practice, women bear a large part of the social responsibility of protecting men from sexual wrongdoing by guarding their modesty. From this perspective, women-led mixed-gender prayer is indeed a threat that would inevitably lead to sexual temptation of men, debasement of women, and disorder in the Muslim community.

Not all scholars who upheld the prohibition responded to the Wadud Prayer out of fear for the community. Some used their comments on the Wadud Prayer as an opportunity to discuss female authority in the mosque from perspectives lost in the onslaught of the prohibitions. Likewise, these opinions provided Muslims who aligned themselves against the notion of unrestricted female prayer leadership a better sense of the breadth of the tradition.

For instance, the conservative website Islam Online agreed with the prohibition, but with a conciliatory tone in which the site editors highlighted the already permissible forms of woman-led prayer, even the minority positions.<sup>25</sup> In doing so, they provided Muslims concerned about female authority a way to navigate the issue without having to challenge the majority ruling of the legal scholars.

Dr. Ingrid Mattson, who would soon become the president of the Islamic Society of North America, addressed possible modes of increased female authority in the mosques in a paper citing female-only

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24. Shaykh Ali Jumu`a [Guma`a], in *Fatwas*, *supra* note 8, at 28. The Shaykh's name has been spelled in different ways in various English sources, including as Jum`a, Gum`a, Jumaa, and Juma`a.

25. *Muslim Women Can Lead Some Prayers: Scholars*, ISLAM ONLINE, Mar. 12, 2005, <http://www.islamonline.net/English/News/2005-03/12/article06.shtml>. For example, in its fatwa bank, ISLAM ONLINE also provided the opinion of Imam Ahmad Kutty, from the Islamic Institute of Toronto, Ontario, whose prohibition was significant for being balanced in tone and content ISLAM ONLINE, (Mar. 13, 2005), [http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask\\_Scholar/FatwaE/FatwaE&cid=1119503546384](http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503546384).

woman-led mosques in China. She pointed out that although this particular form of women leading other women in prayer has no precursor in the Islamic tradition, it is nevertheless perceived by most to be a beautiful innovation in the religion.<sup>26</sup> She did not challenge the prohibition of the Wadud Prayer, but rather suggested that greater female authority in general and in the mosque has the capacity to enrich the religious lives of Muslims.<sup>27</sup>

A co-author of this article, Dr. Laury Silvers, speaking from a progressive perspective, published a response comparing the struggle for gender equality in the mosque to the struggle for civil rights in United States. She acknowledged the majority position on prohibition but suggested that woman-led public prayers continue to be held as a kind of "civil" disobedience in the hope that legal scholars would ultimately be swayed to rule otherwise.<sup>28</sup>

On the side of permission, a number of well-respected religious scholars, community leaders, and interested Muslim academics approved the prayer, calling for women to lead mixed-gender prayers in those communities that desired it. Many of those who supported woman-led prayer, even from within the boundaries of Islamic jurisprudence, approved of it out of support for greater gender justice in the Muslim community.

For these Muslims, the controversy was also a matter of Islamic morality, but from the perspective of universally accepted human rights. Many Muslims understand secularly defined human rights to be at the center of Islamic morality. Recall that "westoxification" is the uncritical adoption of Western or secular values. Secularism in and of itself is not a danger. Even Imam Zaid Shakir makes this point in his essay on the *Universal Declaration of Human Rights, American Muslims, Human Rights, and the Challenge of September 11th*.<sup>29</sup> But Imam Zaid warns that Muslims will also confront points of incongruity in the UDHR, such as women's and GLBTQ rights. In these matters, he advises, "our attempts at solving novel contemporary socio-political problems must be guided by well-defined methodologies rooted in the Islamic tradition."<sup>30</sup>

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26. Ingrid Mattson, *Can a Woman be an Imam? Debating Form and Function in Muslim Women's Leadership*, in THE COLUMBIA SOURCEBOOK OF MUSLIMS IN THE UNITED STATES, *supra* note 8, at 255-60.

27. *Id.* at 260-63.

28. Laury Silvers, *Islamic Jurisprudence, 'Civil' Disobedience, and Woman-Led Prayer*, in THE COLUMBIA SOURCEBOOK OF MUSLIMS IN THE UNITED STATES, *supra* note 8, at 246.

29. ZAID SHAKIR, *American Muslims, Human Rights, and the Challenge of September 11<sup>th</sup>*, in SCATTERED PICTURES: REFLECTIONS OF AN AMERICAN MUSLIM 151 (Kindle ed., NID Publishers 2007).

30. *Id.*

Those who supported the Wadud Prayer and unrestricted female prayer leadership saw no incongruity between human rights and women's rights. For them, the growth of social equality for women is a necessary result of women's spiritual equality before God, and therefore a manifestation of an Islamic ideal. The well-being of Muslim religious life and salvation requires assuring women's equal opportunity to exercise religious authority.

Renowned Muslim jurist and professor of law at the University of California, Los Angeles, Khaled Abou El Fadl, published a ruling providing limited support to female leadership in prayer "if a female possesses greater knowledge than a male."<sup>31</sup> In other words, uneducated males still have religious authority over equally uneducated females. In his view, only exceptional women are accorded equal authority; but it is authority nonetheless. The former Grand Mufti of Marseilles, Sohaib ben Cheikh, took a more comprehensive position and supported unrestricted female prayer leadership absolutely. Showing that support well beyond publishing a response, he requested that Muslim Feminist Pamela Taylor lead him in a public prayer during a trip to Toronto in 2006.<sup>32</sup> The Secretary General of the Islamic Commission of Spain, Mansur Escudero, likewise published his unqualified support of the Wadud Prayer and woman-led prayer in general.<sup>33</sup> His colleague, the Secretary of the Islamic Council of Spain, Abdennur Prado, published his support as part of a longer critique in which he pointed out contradictions in law and common sense in the rulings against woman-led prayer.<sup>34</sup> Like Shaykh ben Cheikh, Prado acted on his words by arranging for Dr. Wadud to lead prayer at Spain's Second Congress of International Islamic Feminism in Barcelona in 2006.<sup>35</sup>

Not all arguments in support of woman-led prayer were concerned with engaging the Islamic legal tradition or were written as a direct challenge to it. An academic scholar in the study of the Qur'an, Nevin

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31. Khaled Abou El Fadl, *On Women Leading Prayer*, SCHOLAR OF THE HOUSE (2005), <http://www.scholarofthehouse.org/onwolepr.html>.

32. Pamela K. Taylor, *Score One More for Women Imams*, BELIEFNET, 2006, <http://www.beliefnet.com/Faiths/Islam/2006/03/Score-One-More-For-Women-Imams.aspx>.

33. Prado, *supra* note 11. Manuel Escudero provided text of his opinion to us for use in this article, stating: "There are no ordained imams in Islam. The imam, the person leading the prayer, comes up as the choice of the group being led in prayer. And if the group chooses a woman, there is nothing in the Qur'an that would negate that ruling" (Manuel Escudero, personal correspondence with Laury Silvers, Aug. 20-21, 2010). Note that Escudero's reasoning is similar to Shakyh Ali Guma'a's original opinion and that of Khaled Abou El Fadl.

34. *Id.*

35. *Id.* See also the film, *THE NOBLE STRUGGLE OF AMINA WADUD* (Elli Safari 2007) that documents the New York City prayer, but also the Barcelona conference.

Reda, wrote the first major piece published in support of the Wadud Prayer. Her essay *What Would the Prophet Do?* reassessed the issue of unrestricted female prayer leadership through an original reading of the Qur'an and *Hadith* alone.<sup>36</sup> She examined the possible readings of *Hadith* significant for woman-led prayer in their historical contexts arguing that the Prophet not only permitted woman-led mixed-gender prayer, but also ordered a woman in his community to perform it.<sup>37</sup> By the sheer act of her interpretation, she challenged the right of the existing legal tradition to have the final authority.

The impact of Reda's interpretive *chutzpah* was clear when several concerned rebuttals to her argument were published, including Imam Zaid Shakir's response mentioned above and one from academic scholar of Islamic law, Hina Azam.<sup>38</sup> In response, political commentator and former board member of the Progressive Muslim Union, Dr. Hussein Ibish, who had lost his patience with what he saw to be Azam's subservience to Islamic patriarchy, declared in an infamously dismissive response entitled *Erudition as Dead End* that the time of such traditional legal niceties is over.<sup>39</sup>

Academic scholar of Islam and former co-chair of the Progressive Muslim Union of North America, Omid Safi, took a different tack when he authored PMUNA's position piece on the Wadud Prayer.<sup>40</sup> Rather than argue the legal grounds of the prayer, Safi spoke to the moral grounds by calling attention to the historical and human elements at work in Islamic legal thinking. Safi points out that while no male religious scholar would deny that women have equal spiritual authority with men, they would deny those very same women ritual authority.<sup>41</sup> In their way of thinking, God favors men with ritual and social authority over women while at the same time affirming their spiritual equality. Safi argues the opposite, stating that the decisions denying women ritual authority are human and historically-bound rather than God-given. As such, these legal decisions can and should be reassessed.<sup>42</sup>

36. Reda, *supra* note 17.

37. *Id.*

38. Hina Azam, *A Critique of the Argument for Woman-led Friday Prayers*, ALTMUSLIM, Mar. 18, 2005, <http://www.altmuslim.com/a/a/a/2194/>.

39. Hussein Ibish, *Erudition as Dead End: Hina Azam and the Perils of Legal Dogmatism*, IBISHBLOG, Mar. 25, 2005, [http://www.ibishblog.com/erudition\\_dead\\_end\\_hina\\_azam\\_and\\_perils\\_legal\\_dogmatism](http://www.ibishblog.com/erudition_dead_end_hina_azam_and_perils_legal_dogmatism).

40. Omid Safi, *Shattering the Idol of Spiritual Patriarchy*, PROGRESSIVE MUSLIM UNION OF NORTH AMERICA, Apr. 15, 2005, [http://web.archive.org/web/20050427060150/http://www.pmuna.org/archives/2005/04/pmu\\_prayer\\_init\\_1.php](http://web.archive.org/web/20050427060150/http://www.pmuna.org/archives/2005/04/pmu_prayer_init_1.php).

41. *Id.*

42. *Id.* The distinctions "ritual" versus "spiritual" authority are our own, but we believe are a

Whether or not one approved of the Wadud Prayer, no one can doubt that it created an opportunity for discussion about female authority and conditions for women in mosques. Women have always complained about deplorable conditions in mosques—such as separate entrances in the alley, isolated prayer spaces in basements or near the toilets that smell of mold or urine, and broken loudspeaker systems—as well as the lack of female representation on mosque boards.<sup>43</sup> Responses to the Prayer by many North American scholars—especially female scholars—lamented the state of women’s spaces in mosques while still upholding the prohibition.<sup>44</sup> A number of scholars and institutions may have reduced the Wadud Prayer to an ill-guided gesture of complaint against deplorable conditions in the mosque, but the public force of the event nevertheless pushed them to act on these problems. For instance, not long after the prayer, the Islamic Society of North America and other institutions came together to publish the “Woman-Friendly Mosque Initiative” calling for equitable prayer spaces and greater female representation on mosque boards.<sup>45</sup> Some communities sought to enact the most equitable possibilities provided by the law such as having women lead *tarawih* or *eid* prayers. Other communities began to organize woman-led Friday congregational prayers as well.<sup>46</sup> In the end, the Wadud Prayer galvanized already existing movements to increase women’s authority in the mosque and inspired new ones.

#### CLASSICAL POSITIONS ON WOMEN-LED PRAYERS

[Scholars] differed regarding the *imama* (leadership [in prayer]) of women. The majority (*jamhur*) do not permit her to lead men [in prayer]. They differed on her leading other women; al-Shafi’i permitted it, and Malik prohibited it. Abu Thawr and al-Tabari dissented (*shadth*) and permitted her to lead with no restrictions

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correct analysis of Safi’s argument.

43. Vanessa E. Jones, *Let us Pray Together: More Muslim women are fighting for equal treatment in the mosque*, BOSTON GLOBE, Feb. 24, 2005, available at [http://www.boston.com/news/globe/living/articles/2005/02/24/let\\_us\\_pray\\_together/](http://www.boston.com/news/globe/living/articles/2005/02/24/let_us_pray_together/).

44. The two positions are not logically-opposed if one sees women’s rights in terms of gender-equitable relations. See Zaid Shakir, *American Muslims*, *supra* note 29; Hina Azam, *supra* note 37; Zaynab Ansari, *Dr. Amina Wadud and the Progressive Muslims: Some Reflections on Woman-Led Prayer*, LIVING ISLAM, Aug. 18, 2005, [www.livingislam.org/k/awpm\\_e.htm](http://www.livingislam.org/k/awpm_e.htm).

45. ISNA, *Women Friendly Mosque Initiative*, ISNA, <http://www.isna.net/Leadership/pages/Resources-Womens-Involvement.aspx> (visited Feb. 19, 2010).

46. Many woman-led prayer groups keep a low-profile; thus, it is difficult to give an accurate report of their numbers and locations, but the Woman Imam Network’s Meetup.com page demonstrates that these prayers continue to be organized globally. Woman Imam’s Network, Meetup Groups, MEETUP, <http://win.meetup.com/> (visited Feb. 19, 2010).

(i.e. to lead both men and women).<sup>47</sup>

The difference of opinion on female prayer leadership centers around the gender of those being led, i.e., whether it is permissible to have women leading other women in prayer and whether women can lead men in prayer. On one end of the spectrum, represented by the Malikis, woman-led prayer would be strictly prohibited. In the middle, the Shafi'is and the Hanafis would permit a woman to lead other women in the confines of a private setting if she led from the first line rather than standing ahead of the other women. On the other end of the spectrum, the Hanbalis could take the broader position that women could lead prayers for men in the family in their homes or in special public prayers such as the *tarawih* nightly prayers performed during Ramadan.<sup>48</sup> Several classical scholars of law affirmed women's right to lead in all circumstances.<sup>49</sup>

Beginning with the principle sources of law, there are no verses in the Qur'an permitting or prohibiting specifically female or male led prayer. The Qur'an offers a gender-free command to pray, "*aqimu al-salat*."<sup>50</sup> Literally, "establish the prayers." There are a number of *Hadiths* addressing woman-led prayer. But none of the following reports concerning woman-led prayer were deemed entirely reliable by classical scholars due to a weakness in the chain of transmitters:

A woman reported that "Aisha led us. And she stood between us during obligatory prayer."<sup>51</sup>

It is reported that Aisha used to say the *adhan* (primary call to prayer), the *iqama* (secondary call to prayer), and lead women in prayer while standing among them in the same row.<sup>52</sup>

It is reported that Aisha used to lead women in prayer during the month of Ramadan while standing among them in the same row.<sup>53</sup>

"Umm Salama led us [women] in the afternoon prayer and stood among us (in the same row)."<sup>54</sup>

47. IBN RUSHD, ABD AL-WALID MUHAMMAD B. AHMAD, BIDAYAT AL-MUJTAHID WA NIHAYAT AL-MUQTASID 339 (Dar al-Salam 1416AH).

48. See Shakir, *Fatwas*, *supra* note 8, at 39-40.

49. IBN RUSHD, *supra* note 46, at 340.

50. See, e.g., Qur'an 2:43 & 2:110.

51. 'ALI B. 'UMAR AD-DARAQUTNI, SUNAN AD-DARAQUTNI 1:404 (Dar al-Ma'rifa 1966); ABU BAKR AHMED B. AL-HUSAYN AL-BAYHAQI, AS-SUNAN AL-KUBRA 3:131 (Muhammad 'Abd al-Qadir 'Ata ed., Maktabat Dar al-Baz 1994).

52. MUHAMMAD B. ABDULLAH AL-HAKIM, AL-MUSTADADRAK ALA AS-SAHIHAYN 1:320 (Muhammad 'Abd al-Qadir 'Ata ed., Dar al-Kutub al-'Ilmiyya 1990).

53. AHMED B. ALI B. MUHAMMAD B. AHMED B. HAJAR AL-ASQALANI, AL-DIRAYAH FI TAKHRIJ AHADITH AL-HIDAYAH 1:169 (Dar al-Ma'rifa).

54. MUHAMMAD B. IDRIS ASH-SHAFI'I, KITAB AL-UMM 8:117 (Dar al-Fikr 1983).

Abu Dawud on the authority of Umm Waraqa: The Prophet (peace and blessings be upon him) used to visit her in her own home; he appointed a *mu'adhdhin* (one performs the call to the obligatory prayers) for her, and ordered her to lead the members of her household (in the obligatory ritual prayer).<sup>55</sup>

Abu Dawud reports that Umm Waraqa said, "I said: "O Messenger of God! Permit for me to participate in the raid with you. I'll nurse your sick. Perhaps God will grant me martyrdom." He said: "Remain in your house. For verily God will grant you martyrdom." And she asked his permission to take a *mu'adhdhin* (one who performs the call to the obligatory prayers) in her *dar* (home or neighborhood). And he allowed her."<sup>56</sup>

The famed Maliki jurist and philosopher, Ibn Rushd (d. 1198), summed up the breadth of positions on woman-led prayer in his comparative legal primer *Bidayat al-mujtahid*.<sup>57</sup> His summary of legal perspectives on the matter is representative of classical Islamic legal thinking. He presents the breadth of positions and gives the majority take on the matter: Despite significant permissions for unrestricted female prayer leadership, women leading men in prayer was typically prohibited and women were only permitted to lead other women in certain circumstances. He locates two main reasons behind the majority prohibition. First, scholars argue that although there is nothing in the Qur'an to prevent unrestricted female prayer leadership, there is little or no proof that members of the early community practiced it. Second, it is a logical contradiction to suggest that women are permitted to stand ahead of men to lead when women are required to stand behind them in prayer.

First, it may seem odd, given the *Hadiths*, that the majority of jurists consider that there is little or no proof that women of the early community led men in prayer. But legal scholars only accept reliable (*sahih*) *Hadiths* as primary evidence in rulings, thus these relatively weak reports may constitute no evidence at all. Nevertheless, weak *Hadiths* that are considered only somewhat unreliable, such as these, may be used as corroborative evidence, if an argument can be made on

55. IMAM MUHAMMAD AL-'ADHIMABADI, 'AWN AL-MA'BUD SHARH SUNAN ABI DAWUD 2:300-301 (Dar al-Kitab al-'Arabi); MUHAMMAD B. SA'D AZ-ZUHRI, AT-TABAQAT AL-KUBRA 8:460 (Dar Ihya at-Tarath al-'Arabi). See also Shakir, *Fatwas*, *supra* note 8, at 36.

56. ABU BAKR AHMED B. AL-HUSAYN AL-BAYHAQI, AS-SUNAN AL-KUBRA 3:131 (Muhammad 'Abd al-Qadir 'Ata, ed., Maktabat Dar al-Baz 1994); 'Ali B. 'Umar Ad-Daraqutni, Sunan Ad-Daraqutni 1:404 (Dar al-Ma'rifa 1966); MUHAMMAD B. ABDULLAH AL-HAKIM, AL-MUSTADADRAK ALA AS-SAHIHAYN 1:320 (Muhammad 'Abd al-Qadir 'Ata, ed., Dar al-Kutub al-'Ilmiyya 1990).

57. *Supra* note 46.



other, more certain, grounds. In fact, relatively weak reports that corroborate each other can strengthen each other's reliability well enough that some legal schools are willing to rely on them.<sup>58</sup>

Each school treats *Hadith* differently as a source for rulings. For instance, the reports concerning 'Aisha and Umm Salama had some weight because, although their particular transmissions were weak, the several distinct transmissions nevertheless corroborated each other. But the Maliki school prefers to rely on what they know about the practice of the people of the Prophet's city, Medina, to any type of weak *Hadith*. Thus for the Malikis these reports were no evidence at all. Further, there is no evidence that woman-led prayer of any sort had been practiced in Medina in the century or so after the Prophet's death. For the Malikis, then, all forms of woman-led prayer were to be prohibited. The Shafi'i and Hanafi schools are willing to use the mutually corroborative reports that 'Aisha and Umm Salama had led other women in prayer in their own homes and from within the first line. Thus the Shafi'is and Hanafis accepted that women may lead other women in prayer if they did not stand ahead of the first line. Of the four surviving schools of Law, only the Hanbalis accepted and put into use all three reports. The Hanbalis—called the folk of *Hadith*—prefer to accept a somewhat reliable report to other sources of legal thinking such as analogy. Thus Hanbali scholars could argue that women are permitted to lead mixed-gender congregations in special prayers such as *tarawih* if she stands behind the men while doing so.<sup>59</sup>

According to Ibn Rushd, the *Umm Waraqa Hadith* is the key evidence supporting unrestricted female prayer leadership of men. But that *Hadith* is considered somewhat weak due to a problematic chain of narration: the different *Umm Waraqa Hadiths* only go back to a single, unreliable narrator.<sup>60</sup> Although the reports seem to be clear evidence that women led men in prayer in the Prophet's community, because the reports are weak, the majority of legal scholars can logically claim that this practice never actually took place. Summarizing the majority position, Ibn Rushd noted, "The majority agreed to prohibit her from leading men because if it were permissible, it would have been reported to have happened during the first community/generation [of Muslims]

58. For a discussion on the four schools use of *Hadith* in legal thinking, see JONATHAN A.C. BROWN, *HADITH: MUHAMMAD'S LEGACY IN THE MEDIEVAL AND MODERN WORLD* 97 (Oneworld 2009). For an introduction to the history of Islamic Law and its major features, see BERNARD WEISS, *THE SPIRIT OF ISLAMIC LAW* (Univ. Ga. Press 2006).

59. See BROWN, *supra* note 56, at 150-72 for a discussion of the role of *Hadith* in Islamic jurisprudence; Shakir, *Fatwas, supra* note 8, at 39.

60. Shakir, *Fatwas, supra* note 8, at 36.

(*al-sadr al-awwal*).<sup>61</sup>

Second, the majority of jurists, according to Ibn Rushd, identify a potential contradiction in woman-led prayer. In these scholars' opinion, the Prophet commanded women to stand behind men during prayer. If women are prohibited from standing in front of men in prayer, she cannot stand before them in order to lead:

[The second reason being that] because her *sunna* (way) in prayer is to be behind men, it follows that it is not permissible for women to stand in front of men. This is due to the Prophet (peace be upon) him saying: "Keep them behind (in the back) as God has [commanded] them to be behind."<sup>62</sup>

Thus, women's necessary position behind men renders female prayer leadership of men a logistical impossibility.

In addition, legal scholars disagree about the meaning of the *Umm Waraqa Hadith* for the conditions under which women can lead prayer. For instance, some read the *Hadith* to suggest that the Prophet would only allow Umm Waraqa to lead prayers in her home or neighborhood if the men praying behind her were slaves, e.g., beneath her social status.<sup>63</sup> Along with the weak chain of narrators, the uncertainty about its precise meaning makes it difficult to rely on this *Hadith* as the primary evidence for unrestricted female prayer leadership.

Nevertheless, a few scholars from within these legal schools have argued for unrestricted female prayer leadership. For instance, renowned Shafi'i scholars Imam al-Muzani (d. 877) and Imam Abu Thawr (d. 854) held the position that women possessed the right to unrestricted prayer leadership.<sup>64</sup> Abu Thawr's reasoning reflects the social stratification of Muslim society prior to the abolition of slavery. He argued that the legal deficiency inherent in being a male slave is greater than that in being a free woman. Since male slaves are allowed to lead free men in prayer, then free women should be permitted to do so as well. As further support he cites the *Hadith* in which the Prophet is reported to have said, "The one who should be the imam of a people is whoever is the best versed in reading the Qur'an."<sup>65</sup>

61. IBN RUSHD, *BIDAYAT*, *supra* note 46, at 340.

62. *Id.*

63. For a complete discussion of the possible readings of the *Hadith* see Shakir, *Fatwas*, *supra* note 8, at 36-39.

64. Shakir, *Fatwas*, *supra* note 8, at 40. Perhaps al-Muzani was comfortable with women's ability to bear religious authority since his sister was a well-known scholar in her own right who had spent a good deal of time in Shafi'i's circle? Imam Abu Thawr was a senior companion of al-Shafi'i and a transmitter of Shafi'i's "old" corpus of *fatwas*.

65. Imam Abu Thawr's argument and position is presented in ABUL-HASAN ALI B. MUHAMMAD B. HABIB AL-MAWARDI, *AL-HAWI AL-KABIR FI FIQH MADHHAB AL-IMAM AL-*

Outside the four schools of law, we are aware that the renowned scholars, Dawud bin Ali al-Dhahiri (d.883), Muhammad ibn Jareer al-Tabari (d. 923), and Muhyiddin Ibn al-'Arabi (d.1240) also supported absolute permission.<sup>66</sup> Unfortunately, only Ibn al-'Arabi's legal reasoning survives. For his primary evidence, Ibn al-'Arabi turns to the Qur'an's account of female prophecy, which he argues is a form of *imama* (leadership), despite the fact that there were far fewer female prophets than male.<sup>67</sup> Ibn al-'Arabi, along with Abu al-Hasan al-Ash'ari (d. 936), Abu Muhammad Ali b. Ahmed b. Sa'id Ibn Hazm (d. 1064) and Abu 'Abd Allah al-Qurtubi (d. 1273) considered Mary to be a prophet, for some of these scholars, alongside the likes of Sarah, Hagar, Hawa (Eve), the mother of Moses, and the wife of the Pharaoh. On the basis of this interpretation of the Qur'an, Ibn al-'Arabi declares female prayer leadership to be absolutely permissible.

There are those who unconditionally permit women to lead men [in prayer], which is my opinion as well. There are those who completely forbid her from such leadership and there are those who permit her to lead women, but not men. The reasoning [behind the unconditional permission] is that the Messenger of God (peace be upon him) testified that some women attained perfection just as he testified regarding some men—even though the later were more than the former. This perfection is in reference to prophecy, and prophecy is leadership (*imama*), thus a women's leadership [in prayer] is sound. The default state is that her leadership is permissible, and one should not listen to those who prohibit it without proof, for there is no text to support their claim, and any evidence they bring forth [is not female specific, and] could include them in the prohibition as well, thereby neutralizing the evidence in this regard, and maintaining the default state of her leadership's permissibility.<sup>68</sup>

SHAFI' 2/326 (Dar al-Fikr n.d.).

66. Ibn al-'Arabi, known as "The Greatest Shaykh" of Sufism, was also a scholar in other religious disciplines, such as theology, jurisprudence, and philosophy. It has been suggested that he may have been formulating a distinct school of legal thinking at the time of his death. See MICHEL CHODKIEWICZ, *AN OCEAN WITHOUT SHORE: IBN 'ARABI, THE BOOK, AND THE LAW* (David Streight trans., SUNY Press 1993).

67. See IBN HAZM, 'ALI B. AHMAD B. SA'ID, *AL-FASIL FI AL-MILAL WA AL-AHWA' WA AL-NIHAL* 5/119 (Dar al-Jeel 1996). These scholars accepted that only men were sent specifically as messengers who bore a new Law, as stated in the verse, "Before you, We only sent men (*rijalan*) whom we inspired" (Qur'an 21:7). But they also accepted that women were among those chosen to be prophets who more broadly serve as reminders of God, as stated in verses alluding that certain women received revelation (*wahy*). See, e.g., Qur'an 28:7, 19:17-18, and 3:42-43. Not all of the four scholars accepted all of the six women mentioned.

68. ABU 'ABD ALLAH MUHAMMAD B. 'ALI B. MUHAMMAD IBN AL-'ARABI, *AL-FUTUHAT AL-MAKIYYA* 1/481 (Scanned Manuscript).

## CONTEMPORARY POSITIONS ON WOMEN-LED PRAYERS

We deserve to live our lives in accordance with the *shari'a*, but it is and must be the purpose of *shari'a* to provide us the opportunity to live lives of dignity and grace. Let us recall the root meaning of the word *shari'a*, which is not a hermetically sealed list of do's and don't, but rather a *path*. The *shari'a* is, and should be, a path that leads us all back towards the Divine. To be on a path always implies a sense of movement, dynamism, and transformation. These difficult and rigorous conversations that we are undertaking are a way of honoring, and ensuring, the vitality and dynamism of the *shari'a*, not of abandoning it.<sup>69</sup>

Jurists do not interpret the *Shari'a* in a vacuum. Islamic legal methods provide jurists the leeway to formulate opinions aimed at benefiting and protecting society in both worldly affairs (*muamalat*) and ritual worship (*ibadat*).<sup>70</sup> Interpreting the law requires legal scholars to consider the people's particular historical needs so that the goals of the eternal *Shari'a* can be achieved in every place and time.

In the Islamic legal paradigm, it is crucial that one's actions in secular matters and one's actions in worship lead to a wholesome and righteous life in this world and salvation in the next. Rulings respond to eternal guidance by considering historical concerns and may be modified as those historical circumstances change. Shaykh al-Qaradawi wrote, "It is obligatory that we pay attention to the aims of Shari'ah, look at the particulars of the Qur'an and Sunnah in the light of Islam's universal aims (*al-Maqasid al-Kuliyyah*) and correlate the texts with each other."<sup>71</sup> As the legal maxim reads, "It is not reprehensible to change a legal opinion (*fatwa*) due to a change in time and place (*la*

69. Safi, *supra* note 39.

70. The first generations of Muslims were no different. The first four Caliphs and early jurists were known to have ruled first and foremost with the well-being of the society in mind. For instance, when Muslims had recently conquered expansive territories and were now governing a diverse population of non-Muslims and non-Arabs, the third Caliph Umar ibn al-Khattab (d. 644) prohibited Muslim men from marrying Christian and Jewish women. Although the practice is permitted in the Qu'ran, Umar feared that due to the specific circumstances at hand the appeal of newly accessible non-Muslim women would come at the expense of Muslim women. The Caliphs and early jurists' practice was formalized by later scholars as *siyasa shar'iyya* or *istislah*, meaning literally to manage people's affairs using the *Shari'a* and seeking out what would be most beneficial and wholesome for them. See al-Tabari's discussion of verse 2:221 in 3 ABU JAFAR MUHAMMAD B. JARIR AL-TABARI, *JAMI' AL-BAYAN 'AN TA'WIL AY AL-QURAN* (Tafsir al-Tabari) 711 (Hajr 2001).

71. Yusuf al-Qaradawi, *GPS for the Contemporary Scholar: Excerpts from "Factors that Change Religious Edicts,"* By Dr. Yusuf al-Qaradawi (Suhaib Webb posse ed. and trans.) SUHAIB WEBB: AUDIO, DISCUSSIONS, TRANSLATIONS, MUSINGS, Oct. 15, 2009), <http://www.suhaibwebb.com/islam-studies/gps-for-the-contemporary-scholar-excerpts-from-factors-that-change-religious-edicts-by-dr-yusuf-al/>.

*yunkar taghayur al-fatwa bi'taghayur al-zaman wa'l-makan*).<sup>72</sup>

While these legal principles are broadly applicable to worldly affairs (*muamalat*), they have a much more limited scope when considering ritual worship (*'ibadat*). Indeed, these principles are so circumscribed with respect to rituals that legal scholars typically claim to non-specialists that rulings concerning worship do not change in response to social and environmental need.<sup>73</sup> But in practice they do, both in extending known legal concessions (*rukhsa, rukhas*) to new situations and making significant changes to rulings on ritual practices. No historical circumstances may negate the obligation of the ritual prayer, but they may change the ways in which one fulfills the ritual obligation of the prayer.

For instance, these legal principles are especially on point when we consider how jurists rule for Muslims living in non-Muslim majority countries. These Muslims may face hardships that make concessions or changes to rulings a necessity for the continuation of their ritual practice.<sup>74</sup> There may also need to be a change in rulings simply to take local custom into account.<sup>75</sup> For instance, Shaykh Abdullah bin Bayyah explains that Muslims who cannot make their afternoon prayer on time because of constraints at work are permitted to join the afternoon prayer with their noon prayer during their lunch break. Likewise, given unavoidable constraints, one may join one's sundown prayer with the evening prayer.<sup>76</sup> Similarly, he gives an account of extending a concession to factory workers in Germany allowing the sermon to be given well before the time of prayer in the Friday service, thus pushing an obligatory part of the service ahead by several hours earlier than its prescribed time.<sup>77</sup>

Likewise there is historical evidence that Muslim jurists have approved of significant changes to ritual obligations. In one case, the change is so significant it seems as though the ritual obligation itself has been negated. In the sixteenth century, women were being sexually harassed and physically attacked while on the pilgrimage to Mecca. As a resolution, the Shafi'i scholar al-Haytami (d. 1566) ruled that women

72. AL-ZARQA, AHMED MUHAMMAD, *SHARH AL-QAWA'ID AL-FIQHIYYAH* 227 (Dar al-Qalam, 1409AH/1989).

73. Al-Qaradawi, *Fatwas*, *supra* note 8, at 33-34.

74. Shaykh Abdullah bin Bayyah, *Muslims Living in Non-Muslim Lands* (Hamza Yusuf trans.), in *THE MODERN RELIGION*, <http://www.themodernreligion.com/world/muslims-living.html> (visited Feb. 22, 2010).

75. *Id.*

76. *Id.*

77. *Id.* Only the ritual prayer aspect of the Friday service must be performed at its appointed time.

should be denied access to the mosque at Mecca for their own protection.<sup>78</sup> The pilgrimage is an obligation established by the Prophet for all Muslims who have the means to undertake it, and a right of one's religious life. In effect, al-Haytami removed the obligation of the pilgrimage for women during a time of need without legally negating the pilgrimage as an obligation in the larger sense. The social conditions brought a temporary change according to al-Haytami's legal opinion, but temporary changes such as this may remain in place as long as is necessary.

The contemporary rulings for and against woman-led mixed-gender public prayer are likewise historically contingent. The legal rulings and lay opinions are based on what various scholars have understood to be the proper dynamics of gender relations at any point in time and, as we have seen, whether or not they consider those proper relations to be under threat. On one side of the issue, scholars argue that Muslim religious life is being threatened by secularism, most especially in the form of compromised female modesty. On the other side, scholars argue that Muslim religious life is being threatened by the injustices of gender inequality in the mosque.

We would like to stress that we believe that Muslims on all sides of the issue are struggling in good faith to consider how Muslims might live the most righteous life and gain salvation. Our critique of the rulings against unrestricted female prayer leadership, including the social conditions informing those legal choices, and our resulting argument for a gender-inclusive obligation to lead prayer is not meant to negate any rulings restricting or prohibiting woman-led prayer. Rather, we recognize that the breadth of the rulings from absolute prohibition to absolute permission reflects different fair reasoning from the texts.

Our purpose thus far has been to argue for the acceptability of unrestricted female prayer leadership from within the Islamic legal tradition for those communities who choose it. Given our reading of the social issues and legal assumptions informing the contemporary scholars' decisions, we would argue further that the scholars' concerns over modesty and their claims to certainty on the grounds of consensus can be answered from within the tradition. But even more, we will argue that their concerns are already answered by Islamic law, in any case. By our analysis, unrestricted female prayer leadership is by default permissible: We argue that the obligation to lead prayers was

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78. See Marion Katz, *The Corruption of the Times and the Mutability of the Shari'a*, 28 CARDOZO L. REV. 171 (2006).

addressed to men and women alike in the absence of any explicit or contextual evidence to the contrary.

#### ON MODESTY

"Opinions of this sort offer us a poor impression of Muslim men, unable to concentrate before a dressed and veiled woman."<sup>79</sup>

As we saw, Imam Zaid Shakir, Shaykh Ali Guma'a, Shaykh al-Qaradawi, and others consider the threat to a woman's modesty and a man's sexual distraction to be the primary risk of woman-led prayer. By standing in front of men, a woman exposes herself to their sexual gaze, disrupts the prayer, and opens herself and men up to the possibility of sexual wrongdoing. As Shaykh al-Qaradawi points out, the problem was recognized and addressed by the Prophet himself:

It is to avoid stirring the instincts of men that the Sharia dictates that only men can call for Prayer and lead people in the Prayer, and that women's rows in Prayer be behind the men. The Prophet (peace and blessings be upon him) was reported to have said, "The women's best rows (in Prayer) are the last ones, and the worst of theirs are the first ones, while the men's best rows (in Prayer) are the first ones and the worst of theirs are the last ones."<sup>80</sup>

Nevertheless, as Shaykh al-Qaradawi would acknowledge, scholars of law and *Hadith* have pointed out that the key issue at stake is gender separation and not the specific placement of women behind the men.<sup>81</sup> Placing women behind the men solves the problem at hand, but it is not the *required* location for women in mixed-gender prayers. Long established practices around the Muslim world prove this point. Some mosques separate men and women on opposite sides of the room with or without a physical barrier such as a *mashrabiyya* screen.<sup>82</sup> Other mosques separate men and women on different floors, with women placed in a gallery looking down over the men, or even in different rooms entirely.<sup>83</sup> These alternative models are considered acceptable

79. Prado, *supra* note 11.

80. Al-Qaradawi, *Fatwas*, *supra* note 8, at 31.

81. *Id.*

82. See the Istiqlal mosque in Jakarta, Indonesia and the Tajmouati mosque in Fez, Morocco for examples of mosques in which men and women pray side by side with a low barrier or *mashrabiyya* screen between them. See the Clairmont Road Mosque in Capetown, South Africa for an example of a mosque in which men and women pray side by side with only rope separating the two groups.

83. See the Sultan Ahmet mosque in Istanbul, Turkey or the Hassan II mosque in Casablanca, Morocco for an example of a mosque in which women pray in a gallery above the men. See the al-Husayn mosque in Cairo, Egypt for a mosque in which women pray in a separate room

because they serve the intention of the Prophet's guidance, gender separation. In exceptional circumstances, gender separation is discarded entirely. In Mecca, men and women pray side by side so families will not be separated in the throng of over a million worshippers.<sup>84</sup>

If the scholars who prohibit unrestricted female prayer leadership are most concerned with protecting women's modesty and men from wrongdoing by means of gender separation, then the resolution is obvious: Do not place women directly in front of men when they lead the prayer. Khaled Abou El Fadl cites the approving classical scholars when he suggests that a female prayer leader should stand ahead of, but to the side of the men—and thus out of their direct sight line—when she leads.<sup>85</sup> Ideally, this solution would require communities to shift their gender separation to side by side with some sort of partition, but it could be accomplished even if the rest of the women were praying behind the men.

Resolving the issue is even easier in those situations where men and women pray in separate rooms. In these cases presently, the male prayer leader's voice is piped in *via* loudspeakers to the women's section. One could envision the opposite resolution: Pipe the female imam's voice in to the men's section. In this resolution, if female modesty is not threatened, there is no need to prohibit woman-led prayer in the community's best interest.

#### ON CONSENSUS

It is difficult to claim consensus on the prohibition of women leading men in prayer for the simple fact that two highly authoritative imams in Islamic history, both of whom both were considered independent scholars (*mujtahid mutlaq*), could not accept the other scholars' legal judgments without their own

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altogether. Many mosques in North America are located in former homes or street-front businesses, the architecture of which may demand that men and women pray in separate rooms. In these cases, the imam's voice is piped in *via* video and/or loudspeaker.

84. Recently, the presidency of the two Holy Mosques in Saudi Arabia (the Great Mosque in Mecca and the Prophet's mosque in Medina) announced that women would be separated from men during the circumambulation only. The uproar that followed from women and men alike from around the Muslim world forced them to rescind their decision. Margot Badran, *Rites and Rights: the Mosque Movement From Mecca to Main Street*, THE AMERICAN MUSLIM, Jan. 9, 2007, [http://theamericanmuslim.org/tam.php/features/articles/rites\\_and\\_rights\\_the\\_mosque\\_movement\\_from\\_mecca\\_to\\_main\\_street/0012597](http://theamericanmuslim.org/tam.php/features/articles/rites_and_rights_the_mosque_movement_from_mecca_to_main_street/0012597). It is not unusual for men and women to pray "Mecca Style" in other locales when, for instance, a mosque congregation overflows into the street during an 'eid prayer. For instance, see photographs of the 'eid prayer at Mustafa Mahmoud Square in Mohandessin, Cairo, Egypt in 2008, <http://www.casafree.com/modules/actualite-en-photo/international/aid-al-adha-2008-dans-le-monde-musulman/Eid-al-adha2008-035.jpg>.

85. Abou El Fadl, *supra* note 30.



independent investigation and subsequent conclusions.<sup>86</sup>

Many of the scholars who prohibit woman-led prayer point out that the weight of scholarly consensus has settled the matter on the side of prohibition and thus negates the minority rulings. Consensus (*ijma'*), the third source of Islamic legal reasoning following the Qur'an and the Sunna, is typically understood to be scholarly agreement by the majority of scholars on any particular issue. Once that majority agreement is reached, the decision is considered to reflect a unanimity *on par in certainty* with the Qur'an and *Hadith*, and, as such, cannot be challenged by later generations.<sup>87</sup> Imam Zaid Shakir writes, "A generally accepted principle among the Sunnis is that what the four Imams agree on is a binding ruling."<sup>88</sup>

But the consensus on consensus is far from absolutely certain. Shaykh Abdullah bin Hamid Ali points out, in his influential article on use and misuse of consensus, that there have always been legal scholars who contested the notion that consensus is a simple majority, even to the point of charging that it is impossible to convene a majority on any one issue. He cites the contemporary legal scholar Shaykh Wahbat al-Zuhayli:

The truth is that these legal consensuses are not to be supported without verification and substantiation. That is because the intent of such [claims] may, perhaps, be [only] the agreement of the majority; not everyone. What may also be the intent is the agreement of the Four Schools with disregard to [the views of] others. It might even be nothing more than the agreement of the scholars of one school with indifference to [the views of] others; or [even] the result of not knowing anyone who opposes those [claims], while what is likely meant by such [claims] is the agreement within one school.<sup>89</sup>

In practical terms, Shaykh Abdullah bin Hamid Ali illustrates that if a true consensus existed, distinct rulings definitive to the different schools could not possibly exist.<sup>90</sup> Moreover, he charges that there are some rulings of claimed consensus with which contemporary legal scholars openly disagree, such as the ruling that claims that women are less

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86. Yusuf, *Can Women Serve as Imams*, *supra* note 2, at 49.

87. Shakir, *Fatwas*, *supra* note 8, at note 49. For instance, Imam Zaid notes that rejecting binding consensus is considered disbelief.

88. *Id.*

89. Abdullah bin Hamid Ali, *Scholarly Consensus: Ijma' Between Use and Misuse*, LAMPOST PRODUCTIONS 11, <http://www.lamppostproductions.com/node/249> (visited Feb. 22, 2010).

90. *Id.* at 15.

intelligent than men.<sup>91</sup> Nevertheless he points out that there are self-evident teachings upon which all Muslims agree, such as the obligation of the Five Pillars and basic prohibitions. But any claim to consensus must be carefully considered or we run the risk of using consensus to suppress meaningful dissenting opinions.<sup>92</sup>

In this light, the existence of dissenting opinions of the renowned scholars al-Tabari, al-Dhahiri, Abu Thawr, al-Muzini, and others are sufficient to upset any claim that there is absolute certainty on the prohibition on woman-led prayer. We would argue there may be consensus on the general obligation for a Muslim from the community to lead the prayer, but there is no consensus on the necessary gender of the prayer leader. In short, a claim to a majority on this matter cannot be a claim to unanimity. Even Hamza Yusuf of the Zaytuna Institute—who supports the prohibition of female prayer leadership of men—acknowledges that it would be difficult to claim consensus on the matter due to the extraordinary reputation of the dissenting scholars.<sup>93</sup>

In their prohibitions, Shaykh Abdullah bin Hamid Ali and Imam Zaid admit the dissenting scholars' qualifications, but argue that their schools of law are extinct; thus, their opinions are no longer independently valid.<sup>94</sup> As such, their dissenting opinions cannot bring the claimed consensus into doubt. Imam Zaid argues that dissenting opinions such as these must reach us through unbroken chains of narration, or as part of a full-corpus of rulings, or accompanied with the legal methodology that developed them.<sup>95</sup> But these arguments do not get around the problem that the claim to absolute consensus on this matter is tautological. To wit, there is consensus except where there is significant dissent; that is, unless there is consensus that such dissent may be dismissed. An argument that relies on itself for its own proof cannot be the basis for a claim of absolute certainty.<sup>96</sup>

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91. *Id.* at 14.

92. *Id.* at 21.

93. Yusuf, *Can Women Serve as Imams*, *supra* note 2, at 49.

94. Abdullah bin Hamid Ali, *Fatwas*, *supra* note 8, at 16; Shakir, *id.* at 40. Abdullah bin Hamid Ali only addresses Tabari's ruling.

95. Shakir, *id.* at 41.

96. Jonathan Brown notes that the soundness of the very *Hadith* that Sunni scholars use to establish the notion of consensus was circularly established by consensus. Because there are no grounds for the notion of consensus in the Qur'an, Sunni scholars look to *Hadith* for justification. But the *Hadith* on which the notion of consensus is founded is somewhat unreliable. There is some weakness in every one of its transmissions. Thus Sunni scholars declared the *Hadith* "sound" on the basis of their consensus that it was sound. Other arguments were ultimately made to establish its trustworthiness, but it should be noted that the basis of the notion that *consensus is equal in certainty to the Qur'an and Hadith* relies on circular reasoning. BROWN, *supra* note 56, at 110.

Observing the workings of the claim to consensus from a social perspective alone, it seems that sufficiency of agreement is defined not so much by the quality of the scholars offering any one opinion but by a particular opinion's capacity to provide certainty and dispel doubt for concerned Muslims. After all, the Prophet is reported to have said,

That which is lawful is plain and that which is unlawful is plain and between the two of them are doubtful matters about which not many people know. Thus he who avoids doubtful matters clears himself in regard to his religion and his honor, but he who falls into doubtful matters falls into that which is unlawful, like the shepherd who pastures around a sanctuary, all but grazing therein. Truly every king has a sanctuary, and truly Allah's sanctuary is His prohibitions. Truly in the body there is a morsel of flesh which, if it be whole, all the body is whole and which, if it be diseased, all of it is diseased. Truly it is the heart.<sup>97</sup>

Legal scholars consider themselves to be charged with the duty of providing this certainty and dispelling doubt such that Muslims have the opportunity to lead a righteous life in this world and reach salvation in the next. Given what we understand to be the scholars' social concerns about woman-led prayer, their claim to absolute consensus makes perfect sense. They want to provide certainty and protect the community from doubts that they fear will ultimately cause chaos. Imam Zaid's concern for the community is palpable when he notes that some believers' own faith had been shaken as a result of the Wadud Prayer.<sup>98</sup> But what if our community is more resilient than they suppose? It has been five years since the Wadud Prayer, women are becoming increasingly visible in positions of religious authority in the mosque, and the predicted chaos has not arrived.

#### ON THE DEFAULT STATE

"The default state is that her leadership is permissible."<sup>99</sup>

Apart from the preceding concerns, the opinions prohibiting woman-led prayer are ultimately rooted in the assumption that the default obligation to lead the prayer is addressed only to men. Following this assumption, women only lead prayer in certain circumstances as exceptions to this default position. Shaykh al-Qaradawi considers the Wadud Prayer to be an innovation, noting that

97. YAHYA B. SHARAF AL-DIN AL-NAWAWI, AN-NAWAWI'S FORTY *HADITHS* Hadith # 6, [http://www.40hadith.com/40hadith\\_en.htm](http://www.40hadith.com/40hadith_en.htm) (visited Feb 24, 2010).

98. Shakir, *supra* note 8, at 35.

99. IBN AL-'ARABI, *supra* note 66, at 1/481.

there are no accounts that a woman ever publicly led men in prayer in the time of the Prophet.<sup>100</sup> If that is the case, one cannot add to or take away from that which has been explicitly commanded or permitted by God or the Prophet. For Shaykh al-Qaradawi and others, allowing women to publicly lead men in prayer—most especially in the Friday congregational prayer—amounts to creating a new ritual practice.<sup>101</sup>

But it is problematic to argue that the state of address, in this case, is to men alone. We argue, as with other ritual obligations, the obligation to lead is by default inclusive of women. The default case may only be changed if the Prophet explicitly commands it. There is no such gender-specific command to lead the prayer in the Qur'an, nor does the Prophet himself explicitly state that only men may lead the prayer. Thus the default state must be considered inclusion and women's unrestricted prayer leadership must be permitted.

We see no evidence in the language of the Qur'an or in the Sunna that men alone bear the obligation to lead prayer. In Arabic, the plural masculine is understood to include both men and women whereas the plural feminine refers to women alone. Muslim jurists have coined a legal maxim expressing this linguistic rule; "All plural masculine commands address both genders unless evidence shows that only men are intended."<sup>102</sup> In other words, scholars assume that all plural

100. Al-Qaradawi, *Fatwas*, *supra* note 8, at 32-33.

101. *Id.* at 33.

102. See Ibn Hajar (d. 1448) "Women and men are equal [halves] with regards to commands, unless specified otherwise." IBN HAJAR, ABUL-FADL AHMAD B. ALI B. MUHAMMAD, FATH AL-BARI FI SHARH SAHIH AL-BUKHARI Hadith # 153, p. 254 (Dar al-Ma'rifa n.d.).

See Al-Khattabi (d. 998) "[From this hadith; 'Women and men are equal halves,' we deduce that:] if the discourse is in the masculine form, then it also applies to women except where evidence shows that men were specifically intended." This was stated in al-Khattabi's commentary on the Hadith in Abu Dawud's collection: "The Messenger of God (peace be upon him) was asked what a man should do if he experienced wetness [in his under-garments] without remembering any nocturnal dreams, to which the Prophet answered that he should bathe. When asked by Umm Salim if the same applies to women he replied: "Yes, for women are the equal halves of men." AL-KHATTABI, HAMAD B. MUHAMMAD B. IBRAHIM, MA'ALIM AL-SUNAN FI SHARH SAHIH ABU DAWUD, Hadith # 77.

See Ibn al-Qayyim (d. 1350) who, citing Qu'rab 4:11, states: "[I]f injunctions are directed in the masculine form without being coupled to the feminine, then it is addressed to both men and women because the masculine form is used for them both, such as [when God says]: 'if he [the deceased] left brothers, then the mother takes a sixth.' [i.e., the same rule applies if 'she' was survived by only 'sisters,' then the mother still takes a sixth]." IBN AL-QAYYIM, MUHAMMAD B. ABI BAKR B. AYYOUB, I'LAM AL-MUWAQQINI'IN 'AN RABB AL-'ALAMIN p. 1/92 (Dar al-Jeel 1973). Ibn al-Qayyim mentioned several other examples; however, when translated to English, they become meaningless in this regard since they become phrased in a gender-neutral form. For example: "The witnesses should not refuse when they are called on (for evidence)."

See Ibn Hazm (d. 1064):

There is no disagreement amongst Arabs, or anyone fluent in their language, that men and women, when together, are addressed, or spoken of, in the same manner used when

masculine commands in the Qur'an and Sunna are addressed to both men and women by default, unless there is evidence to the contrary. Whether established by command or example, ritual obligations are considered at root to be gender inclusive.

It might be argued that the Prophet's very maleness constitutes a passive approval (*iqrar*) of the rule that the default obligation to lead the prayer is addressed to men alone. First, we would respond that his maleness alone is not sufficient evidence that women must be excluded from a ritual obligation. Or to put it another way, his maleness does not constitute an explicit command nor does it constitute *prima facie* contextual evidence that women are excluded by his example. Making this argument would render the inclusive linguistic maxim obsolete. It would be as if to say, "In Arabic, the masculine plural includes both women and men, except in the case of the Prophet's example in which only men are addressed." Instead, the Islamic legal tradition has assumed that the Prophet's example is set for both men and women, except where he explicitly states otherwise or contextual evidence demands it.<sup>103</sup>

Thus we argue that the lack of an explicit prohibition on unrestricted female prayer leadership and the Prophet's passive and active approval of a number of forms of female prayer leadership (including the disputed form of leadership in the case of Umm Waraqa) constitutes a passive approval of unrestricted leadership.

Without any explicit evidence to the contrary, we must assume that the default state of the command to lead the prayer includes men and women. There is no innovation when women lead prayer, because nothing is added to the ritual worship established by God and the Prophet. Men and women share the unrestricted obligation and opportunity to lead the ritual prayer.

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those being addressed or spoken of are men alone. Therefore it is correct to say that there is no "masculine-only" term for men, except for that which is also used to refer to both men and women, unless additional [contextual] evidence shows that men were intended alone. Therefore, it is impermissible to restrict the Discourse to part of whom it is directed to except in the presence of [evidence from] *nus* (evident text), or *'ijma* (scholarly consensus). It follows that since the term "Do" applies to both male and female alike, and since the Messenger of God, peace be upon him, was sent to both men and women, and since the Discourse of God and his Prophet to men and women is the same discourse, it is not permissible to restrict any of this to men alone except in the presence of *nus*, or *'ijma*. If they argue: "Why, that means women are addressed and required to learn about their religion and command what is good and prohibit what is wrong!" We'll say, "Yes and it's an obligation for them as it is for men . . ."

IBN HAZM, 'ALJ B. AHMAD B. SA'ID, AL-IHKAM FI USUL AL-AHKAM 3/80 (Dar al-Afaq al-Jadida n.d.).

103. IBN HAJAR, *supra* note 100, at 254.

## CONCLUSION

It is reported that Umm Salama said: "I heard the Messenger of God say 'O' People,' so I told my maid leave me [and continue combing my hair later]. She replied, 'But he only asked for the men, not the women.' To which I replied, 'I *am* one of the People!'"<sup>104</sup>

The history of the contemporary prohibitions of woman-led prayer is frustrating to consider because it seems to have developed with the well-being of society in mind. It would be easier if one could accuse the contemporary scholars of bad faith and bad thinking. Like the result of their reasoning or not, the scholars demonstrate good faith when they make their legal opinions with the aim of protecting Muslims from what they quite sincerely consider to be a threat to the stability of the Muslim community. Concern for the well-being of Muslim lives is at the center of this discussion, with all sides claiming the righteous path. From our perspective, we have hoped to expose the patriarchal assumptions at work in a legal system that so quickly moves to exclude women from access to religious or ritual authority. But we have also hoped that by contextualizing the legal thinking that drives the prohibitions, we would in turn expose the complexity and flexibility of a legal tradition that not only gives some the means to exclude women but gives others the legal warrant to redress that exclusion.

In the past century and one-half, jurists have authentically developed opinions from within the tradition that have redressed serious social wrongs against Muslim women. For instance, recently we have seen legal opinions prohibiting female genital mutilation, including the so-called lesser cutting or "sunna circumcision";<sup>105</sup> equalizing the family code of law in Morocco;<sup>106</sup> enjoining on women the right and responsibility of being judges in civil and religious courts;<sup>107</sup> and

104. This Hadith has been narrated by Umm Salama Hind bt. Abi Umayya and authenticated by MUSLIM (d. 875), SAHIH MUSLIM # 2295, AL-DORAR (2009), [www.dorar.net](http://www.dorar.net); and by YUSUF AL-QARADAWI, MIN FIQH AL-DAWLA FI AL-ISLAM 161 (Dar al-Shuruq, 1997) (emphasis added).

105. See, e.g., Ayatollah Sayyed Muhammad Hussein Fadlallah, *Fatwa regarding Female Circumcision*, BAYYANT (Dec. 12, 2007), <http://english.bayynat.org.lb/news/12072007.htm> (Shia); *Egyptian Ban on Female Circumcision Upheld*, BBC (Dec. 28, 1997), <http://news.bbc.co.uk/2/hi/42914.stm>, (Sunni, Shaykh Mohammed Sayyed Tantawi); *Somalia: Fatwa against FGM*, WOMEN LIVING UNDER MUSLIM LAWS (2005), [http://www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-412165](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-412165), (Somalian Clerics).

106. *The Moroccan Family Code (Mudawana)*, HUMAN RIGHTS EDUCATION (Global Rights trans., 2005), <http://www.hrea.org/moudawana.html>.

107. Margot Badran, *Feminist Activism and Reform of Muslim Personal Status Laws: A look at Egypt and Morocco*, JURA GENTIUM (Jan. 7, 2008), <http://www.juragentium.unifi.it/en/surveys/women/activism.htm>; *Palestine: Female Judges Give Palestinian Women Hope*

appointing female ministers in pastoral roles in regional mosques.<sup>108</sup> In these cases, legal scholars have responded to contemporary needs by finding the authority for these protections and permissions for women within the Islamic legal tradition. These scholars have perceived their work as a restoration of rights provided by God and the Prophet and denied by society.<sup>109</sup> Islamic legal thinking is neither static, nor medieval; rather, it is vibrantly alive and responsive to the needs of the Muslim community, perhaps just not as quickly as some of us would like. When legal scholars perceive the social need to share unrestricted prayer leadership with women, they will find the resources within the tradition to permit it.

It is the view of co-author Ahmed Elewa, that, given this dynamic of legal reasoning and cultural on-guardedness, female leadership of prayer should not be a point of emphasis at the present moment. Rather, Muslims interested in seeing women lead mixed-gender congregations should focus on the revival and dissemination of supporting views and evidence in an attempt to raise awareness of the "acceptability" of woman-led prayer. The actual practice of such prayer should await a later time when a particular Islamic community feels that its development is an authentic expression of its understanding and practice of Islam, not because it bows to external pressure or expectations.

Co-author Laury Silvers would prefer to follow the *sunna* of Umm Salama.<sup>110</sup> As she understands *Umm Salama's Hadith*, it tells us that cultural assumptions will sometimes err on the side of excluding women; and in those moments, women must assert their inclusion. Further, *Umm Salama's Hadith* shows us that Muslim women have been declaring themselves one of the people since the earliest days in the Muslim community. As Umm Salama might urge us, women need to continue to declare our inclusion. It is unfortunate that we have to remind men of our equal address from God, but such is the nature of patriarchy. It has always been the case that men, without prodding, do little to aid our reclamation of divinely-given rights. So what do men need to do? There is a story about Imam Zaid Shakir that is worth repeating. At a gathering of imams in Toronto, one of the men asked

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of *Fair Hearings*, AWID (Mar. 16, 2009), <http://www.awid.org/Issues-and-Analysis/Library/Palestine-Female-judges-give-Palestinian-women-hope-of-fair-hearings> (Sheik Tayseer al-Tamimi).

108. *Morocco women preachers appointed*, BBC (MAY 4, 2006), <http://news.bbc.co.uk/2/hi/africa/4971792.stm> (Mourchidat).

109. Mudawana Code, *supra* note 104; Guma'a, *Fatwas*, *supra* note 8; *Palestine*, *supra* note 107 (presenting the view of Sheik Tayseer al-Tamimi); Mourchidat, *supra* note 106.

110. *Supra* note 102.

Imam Zaid how men could help their sisters advance. It was reported to me that after a thoughtful pause Imam Zaid replied, "I think we only need to get out of their way."<sup>111</sup>

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111. Reported by Timothy J. Gianotti (who attended the meeting in personal correspondence with Laury Silvers (Feb. 2010) (on file with author).