

EXPANDING THE VOCABULARY OF ISLAMIC LIBERALISM

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The Moroccan sociologist, Fatima Mernissi, opens the introduction to her famous book, *The Veil and the Male Elite* (1991), with a brief account of an episode at her local grocery store that encapsulates the problem I address in my Wiko project. She recounts how her simple question “Can a woman be a leader of Muslims?” shocked her grocer and led one customer to invoke God’s protection against “the catastrophes of the times!” She adds that a schoolteacher, the third person in the grocery store at the time, “stood slowly caressing his wet mint leaves, and then hit me with the Hadith [prophetic tradition] that he knew would be fatal: ‘Those who entrust their affairs to a woman will never know prosperity!’ Silence fell on the scene. There was nothing I could say”. Mernissi describes her reaction thus: “I discretely left the grocery store without another word. *What could I have said to counterbalance the force of that political aphorism, which is as implacable as it is popular?* [italics added] Silenced, defeated, and furious, I suddenly felt the urgent need to inform myself about this Hadith, and to search out the texts where it is mentioned, to understand better its extraordinary power over the ordinary citizens of a modern state.” The *Mernissi Predicament* – i. e. the inability to respond effectively to the militant positions of fundamentalists – is by no means restricted to Morocco; it is, in fact, quite common in the debates raging globally among Muslims. These debates are taking place in mosques and Islamic seminaries, universities and research centers, media outlets, courtrooms, academic journals and books. Constantly featuring in the debates are diverse and clashing viewpoints of Muslims variously labeled as “secularists”, “modernists”, “reformers”, “moderates”, “activists”, “liberals”, “neoliberals”, “salafists”, “fundamentalists”, “militants”, “jihadists”, “conservatives”, “traditionalists”, “neo-traditionalists”, etc. Throwing these labels around has become an important part of the discursive repertoire in the raging debates among Muslims, and therefore the labels deserve serious critical reflection, particularly on how labeling is deployed to silence rival voices.

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A central preoccupation in the discourses of Islamic modernists since the middle of the nineteenth century has been the imperative to defend the right to speak on topical issues of the day from the perspective of Islamic modernism, the Islamic legitimacy of which has often been contested. The discursive strategies of emphasizing the inadequacy of traditional categories of Islamic thought and of urging new ways of rethinking Islam in the modern world have yet to dislodge deeply engrained patterns of traditional Islamic thought that are sometimes the explicit issues in contention, or often serving as the subtext within the debates. An alternative strategy of recovering and proclaiming *selected* elements within Islamic classics has so far marshaled strong arguments that demonstrate Qur'anic bases for an Islamic theology of liberation, Islamic roots of liberalism, democracy, social pluralism, peace-building, human rights, as well as Islamic warrants for gender equality.

These discursive strategies of excavating Islamic classics for warrants to support liberal positions within the contemporary Muslim debates deserve further development: they should be expanded and fortified with equally islamically authentic rebuttals against the potentially violent responses with death *fatwas* and *takfir* [excommunication]. This has been the focus of my project during my fellowship at Wiko. In this essay I explore the challenges and opportunities of using this strategy in the Nigerian context of contemporary application of Islamic law.

My approach to this project comprises both normative and scholarly dimensions. I seek to provide scholarly and critical analysis for the accurate understanding of contemporary Islamic thought in both the local context of Nigeria and globally. At the same time, I engage actively in constructing and advocating what should become the Islamic norms in light of the contemporary challenges of modernity confronting Muslims in different parts of the world. In my field of Comparative Religion, advocating norms of a particular religion while still maintaining critical scholarly stand is a perennial concern that always requires diligent treatment. For even if clinical detachment is not feasible in the human sciences, it is certainly possible to separate the normative advocacy of particular religious values and the scholarly critical analysis required for attaining accurate understanding of religious phenomena. In the following pages I do my utmost to balance the two different agendas of normative advocacy and critical scholarly analysis. While I do not presume to pre-empt the reader's right to conclude differently, I do hope the reader will appreciate this caveat.

Defining Liberalisms: Secular and Religious

The idea of “Islamic liberalism”, or “religious liberalism” more broadly, may strike secular skeptics as an oxymoron – like military intelligence. But this can be true only if one adopts a very narrow understanding of religion as “unquestioned faith in one absolute truth”. Religion, however, is much more than that. For example, the affirmation of individual religious experience and freedom of conscience arising from the Christian Reformation and Protestantism are readily recognized as critical elements of modern European liberalism. Similarly, Talmudic traditions entail liberal elements in their never-ending discourses on scripture that can broach any issue and accommodate many different viewpoints. Likewise, Hindu religious traditions are renowned for their deeply entrenched pluralism that acknowledges the validity of different paths to salvation, notably the three paths of knowledge (*jnana-marga*), action (*karma-marga*), and devotion (*bhakti-marga*). Clearly, affirmation of individual autonomy in Protestantism, acceptance of discursive deliberation in Talmudic Judaism, and the entrenched pluralism common to Hindu traditions are recognizable elements of liberalism in various religions. Hence the idea of Islamic liberalism is not so implausible – as I hope to demonstrate presently. But since there are several traditions of liberalism, it is relevant here to identify what I mean when I use the term “liberal” in this essay.

The *Oxford English Dictionary* gives several meanings of liberalism: being free from narrow prejudice and bigotry or unreasonable prejudice in favor of traditional opinions or established institutions; and also being open-minded to receive new ideas or proposals of reform. Interestingly enough, one dictionary meaning of liberalism is directly connected to religion when the term is “applied as a party designation to those members of a church or religious sect who hold opinions ‘broader’ or more ‘advanced’ than those in accordance with its commonly accepted standard of orthodoxy, e. g. in Liberal Catholic”. But consistent with the ambiguity arising from its several meanings, different Christian denominations are reckoned as religious liberals: “in the US chiefly applied to the Unitarians and Universalists; in England somewhat more vaguely to those who reject or consider unessential any considerable part of the traditional system of belief”. Equally instructive, the dictionary indicates that religious liberalism is also applicable to Judaism, thereby reinforcing the idea that religious liberalism is not a contradiction in terms. An even more complex conception of liberalism is discernible in its more specialized meanings identified by Jeremy Waldron around:

*a family of positions centered around constitutional democracy, the rule of law, political and intellectual freedom, toleration in religion, morals and lifestyle, opposition to racial and sexual discrimination, and respect for the rights of the individual. Often these positions are associated with a suspicion of state authority, with a view that the powers of government should be constrained if not minimized, and with a confidence in the ability of individuals to organize themselves on the basis of the market, the free interplay of ideas and the loose and informal associations of civil society.*¹

The different components in this conception of liberalism have not always been part of the defining characteristics of the term, a point that becomes clearer in historical perspectives. In the 17th and 18th centuries, European liberalism was associated with the idea of free market, open competition, and less state regulation of economic activities. But in the twentieth century, liberalism has become associated with the state actively intervening in both the economy and society to create and sustain the conditions necessary for individuals to meaningfully exercise the political, social, economic, intellectual, religious and cultural freedoms that liberalism advocates. Yet even now, there remain different tendencies and programmatic emphasis within liberalism, with some still distrusting state intervention in the economy, and others not agreeable to state intervention in society as well. Similarly, there are observable differences in the national traditions of liberalism in different countries:

*In England – in many ways the birthplace of liberalism – the liberal tradition in politics has centered on religious toleration, government by consent, personal and, especially, economic freedom. In France liberalism has been more closely associated with secularism and democracy. In the United States liberals often combine a devotion to personal liberty with an antipathy to capitalism, while the liberalism of Australia tends to be much more sympathetic to capitalism but often less enthusiastic about civil liberties.*²

¹ Jeremy Waldron. "Liberalism." In *Routledge Encyclopedia of Philosophy*, edited by E. Craig. London: Routledge, 1998, accessed on October 15, 2006, from <http://www.rep.routledge.com/article/S035>.

² Gerald Gaus and Shane D. Courtland. "Liberalism." *The Stanford Encyclopedia of Philosophy* (Winter 2003 Edition), edited by Edward N. Zalta, accessed on September 29, 2003 from <http://plato.stanford.edu/archives/win2003/entries/liberalism/>

These shifts in the meanings and continuing divergences in the self-identifications of liberals suggest that we should perhaps refer to liberalisms (in the plural), since the term has meant different things to different people in different contexts and times. In fact, Douglass argues that some of the names now recognized as founding fathers of liberalism such as John Locke and Immanuel Kant hardly considered themselves liberals.³ As if all these are not enough complexities, Paul Seabright claims that liberalism is not “about how to live as a Western capitalist Protestant”. For Seabright, the roots of liberalism are to be found not in capitalism but in agriculture, which sets up the “remarkable 10,000-year-old revolution that led modern man, independently in many different parts of the world, to give up the hunting and gathering life and to found farms, villages and eventually cities”. The momentous departure from hunting to agriculture forced prehistoric humans to develop means and ways of peaceful interactions with outsiders via trade and immigration. As humans came to live in groups larger than the small bands of hunters, Seabright’s further contends, “the habits of mind and the forms of behavior that farmers had to learn are the foundations of liberalism, and they are what we need to reaffirm today if we are to share the world with strangers without tearing ourselves apart.” Given the wider scope of his conception of liberalism, Seabright was able to recognize liberal elements within Islam when he remarks thus:

Similarly, Islam as a political ideology consists of a set of ideas and values that has proved extremely successful at building cohesion in societies under stress at a crucial period in their history. For several centuries Islamic societies led the world in culture and military strength. Some Islamic centers were models of tolerance and – yes – liberalism that have rarely been equaled since.⁴

Islamic Liberalism Scientifically Observed

Seabright’s ability to notice that liberal elements do exist within Islam seems exceptional among Western journalists and commentators. But many Western scholars of Islam have

³ See, for example, R. Bruce Douglass. “Liberalism.” *Encyclopedia of Government and Politics*. London: Rutledge, 2nd edition, 2004, p. 9.

⁴ Paul Seabright. “Liberals and Strangers: Liberalism is not 300 Years Old.” Available at http://www.prospect-magazine.co.uk/ArticleView.asp?P_Article=12560, accessed on May 6, 2004.

long observed scientifically and convincingly documented the centrality of liberal elements within the classical heritage of Islam. For example, Marshal Hodgson has also observed that classical Islamic thought upholds egalitarian justice, social mobility, individual responsibility and dignity, good government, human prosperity – all in the name of Shari'a that Muslims should uphold. He contends that since modern Europe has realized most of these ideals, it follows that Muslims learned in Shari'a could find much to admire in European modernity, adding that in the nineteenth century some alert and respected Muslims declared that “the Europeans were leading a better life by Islamic standards than were the Muslim societies”.⁵

In more recent years, more Western scholars of Islam have called attention to various manifestations of Islamic liberalism. Leonard Binder emphasizes the political and social correlates for Islamic liberalism, especially the acceptance of rational deliberation on the common good by the political leadership and social elite, adding that these correlates are discernible in some contemporary Muslim countries.⁶ Dale Eickelmann focuses on the religious transformation that has been taking place in Muslim societies since the second half of the twentieth century, highlighting in particular the fragmentation of religious authority resulting from phenomenal expansion of education and modern communication technologies, as well as the reform programs informed by the Washington neo-liberal consensus of the 1980s–1990s.⁷ The shared discourse on the common good in the public sphere has also been emphasized by Salvatore Armando and Dale Eickelmann as an important development in the direction of political liberalism within contemporary Muslim societies.⁸ Furthermore, Esposito and Voll demonstrate convincingly that even if pre-Islamic traditions had anti-democratic elements, these do not prevent contemporary Muslims from finding authentic Islamic bases in support of democracy⁹ – just as the non-democratic elements of pre-modern Europe did not prevent European countries from developing democratic polities in modern times.

⁵ Marshal Hodgson. *Venture of Islam*. Chicago: University of Chicago Press, 1974, vol. iii, pp. 196 ff.

⁶ Leonard Binder. *Islamic liberalism: A Critique of Development Ideologies*. Chicago: University of Chicago Press, 1988.

⁷ Dale F. Eickelmann. “Mass Higher Education and the Religious Imagination in Contemporary Arab Societies.” *American Ethnologist* 19, 4 (1992): 643–655. Dale F. Eickelmann and Jon W. Anderson, eds. *New Media in the Muslim World: The Emerging Public Sphere*. Bloomington, IN: Indiana University Press, 2003.

⁸ Salvatore Armando and Dale F. Eickelmann, eds. *Public Islam and the Common Good*. Leiden: Brill, 2004.

⁹ John Esposito and John Voll. *Islam and Democracy*. New York: Oxford University Press, 1996.

Charles Kurzman defines “Islamic liberalism” concretely in terms of Muslims’ acceptance of and advocacy for democracy, human rights, women’s and minorities’ (non-Muslims’) rights, freedom of thought, human progress and opposition to theocracy. While highlighting that Islamic liberalism “voices concerns parallel to those of Western liberalism”, Kurzman contends that the similarity “does not imply that liberal Muslims are stale and reassuring imitators of Western philosophy”. He supports his contentions by assembling the written corpus produced by Muslim liberal thinkers since the nineteenth century and by highlighting the firmly Islamic bases for their discourses.¹⁰ Again, while these discourses have their Muslim critics and opponents, that does not negate the fact that there are Muslim liberals, who are locked in intellectual contest with their adversaries.

More closely related to the geographic focus of this essay on Nigeria, Roman Loimeier has elucidated the clear points of comparison between contemporary transformations within Islamic religious landscapes in Senegal, Nigeria and Tanzania with those of the European Reformation widely regarded as a critical element in the emergence of modern European liberalism.¹¹ John Paden has also insightfully analyzed the civic institutions of the Muslim community of northern Nigeria that have consistently enabled Nigerian Muslims to evolve effective mechanisms of peaceful co-existence in the plural society of modern Nigeria.¹² These mechanisms have survived the recent severe tests posed by the increased incidences of ethno-religious conflicts, which often involved many other non-religious factors, such as land disputes between peasants and pastoralists, tensions from rural-urban seasonal migrations, the zero-sum politics of rent-seeking, etc.¹³ Clearly, various Western scholars of Islam have documented the reality of liberal elements within both the classical and the modern traditions of Islam. This well-documented reality is not at all falsified by pointing to many and in some cases increasing levels of illiberal pronouncements and practices in contemporary Muslim societies, just as the indisputable existence of racists and fas-

¹⁰ Charles Kurzman. *Liberal Islam: A Sourcebook*. New York: Oxford University Press, 1998, and *Modernist Islam: A Sourcebook*. New York: Oxford University Press, 2002.

¹¹ Roman Loimeier. “Is There Something Like ‘Protestant Islam’?” *Die Welt des Islams*. 45, 2 (2005): 216–253.

¹² John N. Paden. *Muslim Civic Cultures and Conflict Resolution: The Challenge of Democratic Federalism in Nigeria*. Washington, D.C.: Brookings Institution Press, 2005.

¹³ See recent reaffirmation of this tradition by the Sultan of Sokoto, the spiritual head of Nigerian Muslims, in his recent speeches at the United States Institute for Peace, available at http://www.usip.org/events/2007/1113_nigeria.html and also at New York Council on Foreign Relations available at http://www.cfr.org/publication/14874/islam_and_democracy_in_nigeria_rush_transcript_federal_news_service.html, both accessed on February 22, 2008.

cists in Western countries does not invalidate Western bragging rights of being liberal democracies.

Islamic Liberalism Normatively Articulated

Several Muslim intellectuals as well movements and organizations have vigorously voiced their own understanding of the liberal elements within the Islamic tradition. Here are few examples. Khaled Abou El Fadl of the University of California in Los Angeles has argued for drawing clear distinctions between authoritative Islamic tenets and the authoritarian tendencies that have increasingly become prominent within Islamic intellectual circles.¹⁴ Abdul Aziz Sachedina of the University of Virginia has identified the Islamic basis for supporting modern democracy in Muslim societies,¹⁵ while Tariq Ramadan has become an important voice in the debate for formulating new understandings of Islam that will be in tune with contemporary West European societies, where Muslim minorities have increased significantly in recent decades.¹⁶ It must be emphasized that normative articulations of Islamic liberalism have come not only from Muslim intellectuals living in Western countries and working within Western academies, or by Western-educated Muslim elites teaching in their own home countries. One can plausibly claim that their Islamic liberalism has a great deal to do with their training in Western academies. But such claims are not particularly pertinent, unless one assumes that Western liberalism itself developed within a set of hermetically sealed borders of Europe. But such an ahistorical view is hardly tenable. Even if one were to grant this dubious claim for the sake of argument, there are still other articulations of Islamic liberalism springing forth from the contemporary fountains of traditional Islamic learning located within Muslim societies.

Muslim advocates for liberalism have articulated their arguments in the heartland of traditional Islam. These are particularly significant not only because they can claim greater

¹⁴ Khaled Abou El Fadl. *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourses*. Lanham, MD.: University Press of America, 2001. See also Khaled Abou El Fadl. *Speaking in God's Name: Islamic Law, Authority, and Women*. Oxford: Oneworld, 2001.

¹⁵ Abdulaziz A. Sachedina. *The Islamic Roots of Democratic Pluralism*. New York: Oxford University Press, 2001.

¹⁶ Tariq Ramadan. *Western Muslims and the Future of Islam*. New York: Oxford University Press, 2004, and *To Be a European Muslim: A Study of Islamic Sources in the European Context*. Leicester, UK: Islamic Foundation, 1999.

practical relevance and perhaps even more legitimacy by their strategic locations within Muslim societies where their voices are more urgently needed, but also because they give us insights into the indigenously Islamic vocabulary for liberal discourse, for example: the Islamic discourse against excessive religiosity (*la ghuluw fi al-din*), the Islamic discourse for simplicity in religion (*al-din yusr*), and the Islamic discourse for moderation (*al-Wastiyya*).

From Saudi Arabian Islamic universities came interesting publications arguing against religious extremism (*Mushkīlat al-ghuluw fi al-Din fi al-Asr al-Hadir*, 2002) by Abd al-Rahman b. Mu'allal al-Luhayq and another publication identifying Islamic legal maxims that articulate the view that ease and simplicity are important features of Islamic law (*al-Qawa'id wa al-Dawabit al-Fiqhiyya al-Mutadammina li al-Taysir*, 2003 by Abd al-Rahman b. Saleh al-Abd al-Latif). Other Saudi Arabian voices for liberalism are being articulated within the series of national dialogues promoted recently by the Saudi Monarch, King Abdullah ibn Abdulaziz. The declared objective of the King Abdulaziz National Dialog Center is the creation of "a new environment which will facilitate dialogue among various sections of the [Saudi] society with the aim of promoting public interest and consolidating national unity based on the Islamic faith". This objective is pursued through the cultivation of dialog as the preferred method of addressing social, educational, intellectual, religious and political problems confronting contemporary Saudi Society.¹⁷ Skeptics may easily dismiss this Saudi initiative as mere window dressing, and even a more neutral observer should be cautious. Yet, the fact that is hard to deny is that, already, there is now official acceptance of the existence of Saudi citizens who are *not* Wahhabis but Shi'a, and they have been officially welcomed to participate in the series of the national dialogs that have already taken place. This development would have been impossible five to ten years ago.

Another seemingly impossible development has also taken place in Egypt, where members of the Gama'a Islamiyya that waged violent campaigns in that country during the 1980s–1990s have renounced their employment of violence as an acceptable means to achieve their goals. Since taking the cease-fire initiative in 1997, they have issued four separate studies setting forth the Islamic arguments proving the error of their previous ways

¹⁷ See the website of the King Abdulaziz Center for National Dialog at <http://www.kacnd.org/default.asp>, accessed on February 20, 2008. See also Edward S. Walker, Jr., "The Quiet Revolution – Saudi Arabia." *The Middle East Institute* January 14, 2004, available at <http://www.mideasti.org/scholars/editorial/quiet-revolution-saudi-arabia>, accessed on February 20, 2008, and Richard Dekmejian. "The Liberal Impulse in Saudi Arabia." *The Middle East Journal* 57, 3 (2003): 1–9.

and in favor of adopting peaceful methods in their activism.¹⁸ In Syria, Shahrour has put forward a new reading of the Qur'an that departed significantly from the old traditional understanding of the Muslim sacred text, provoking several rejoinders in popular media as well as in learned circles.¹⁹ These examples do not exhaust the list of the active voices for liberal positions coming out of Muslim countries.

As I have already noted, the factual existence of Islamic liberalism cannot be denied by simply pointing to counter-examples of many instances of illiberal thoughts and practices within Islamic communities both in the past and in the present. The more pertinent point to note is that just as in other traditions and cultures, liberal and illiberal elements exist in tension and competition within Islamic traditions. Hence the imperative need for proponents of Islamic liberalism not to deny the existence of illiberal elements within Islamic tradition but to articulate vigorously the authentic Islamic arguments that not only support their liberal stands but, equally importantly, respond with strong Islamic rebuttals against the criticisms of their Muslim opponents.

A very fruitful path in this direction has been identified by Charles Kurzman's two anthologies of the corpus of Islamic liberal thought since the middle of the nineteenth century. Kurzman's real contribution is not the simple compilation of these writings – valuable as that may be – but his insightful analysis of the intellectual vulnerabilities in the various arguments advocated by Muslim liberals in support of acceptance of democracy, freedom of thought, women's rights, the rights of non-Muslims, and progress, on the one hand, and against theocracy, on the other. Kurzman highlights the firm Islamic bases for three discourses of Islamic liberalism. First, the *discourse of liberal Shari'a* proclaims that Shari'a is liberal. This discourse enjoys Islamic authenticity by viewing liberalism as a divine command, hence effectively counteracting criticism of imitating the West. Its chief weakness, however, is that it has no response to counter-arguments showing aspects of the Shari'a that are not liberal. Second, the *discourse of silent Shari'a* holds that Shari'a is silent on key issues, thus leaving room for human initiatives. This discourse lacks rebuttal against the criticism that the Shari'a is neither silent nor liberal on some issues. Third, the *discourse of interpreted Shari'a* holds that Shari'a is the product of historically conditioned human in-

¹⁸ Issam Fawzi und Ivesa Lübben. *Die ägyptische Jama'a al-Islamiya und die Revision der Gewaltstrategie*. Deutsches Orient-Institut im Verbund Deutsches Übersee-Institut, *DOI-Focus* 15, July 2004.

¹⁹ Andreas Christmann. "73 Proofs of Dilettantism": The Construction of Norm and Deviancy in the Responses to Mohamad Shahrour's Book *al-Kitab wa'l-Qur'an: Qira'a Mu'asira*". *Die Welt des Islams* 44, 2 (2004): 20–73.

terpretations of divine commands. If pursued to its logical conclusion, this discourse implies that the authority of the Prophet Muhammad and the Qur'an are also historically conditioned, thereby risking the charge of apostasy, against which Muslim liberals seem to have no effective intellectual response. These limitations create vulnerabilities in the discourses of Islamic liberalism that are crying for urgent attention, with grave practical consequences that can be seen clearly, for example, in the context of contemporary application of Islamic law in Nigeria.

Islamic Liberalism: Practically Applied in Nigeria

In analyzing the various reactions to the recent developments in Shari'a application in Nigeria, Ayesha Imam gives us a very good Nigerian illustration of the *Mernissi Predicament*. Imam observes that: "The dominant discourse was that to criticize – even in the mildest ways – the shari'ization project was to be by definition anti-sharia, anti-North [the predominantly Muslim region of Nigeria], and anti-Islam." Criticism of any aspects attracts accusations of apostasy, raising the specter of the death penalty. Ayesha Imam observes that in the "context of vigilantes and the failure of state authorities to maintain security and the rule of law, these accusations are a very real threat, [and they] raise the likelihood of physical attack, if not actual death".²⁰ The threat of vigilante violence against Muslim critics of the Sharia project has forced some to recant their earlier skepticisms and many more to resort to self-censorship. Here we see the power of labeling as a discursive strategy of silencing dissent and intimidating intellectual opponents. It is particularly instructive to note the insidious ways in which such labelling asserts itself by instilling fear, thereby inducing self-censorship to avoid being labeled with the dreaded monikers that are ready-made for intellectually licensing a quick resort to violence to squelch alternative views.

A report by Human Rights Watch observes that recent expansion of Islamic law in the northern states of Nigeria has created a climate uncondusive to freedom of expression, leading to "a form of self-censorship among critics – including academics, human rights activists, members of women's organizations, lawyers and others – who were willing to

²⁰ Ayesha Imam. "Fighting the Political (Ab)Use of Religion in Nigeria: BOABAB for Women's Human Rights, Allies and Others." In *Warning Signs of Fundamentalisms*, edited by A. Imam, J. Morgan, and N. Yuval-Davis, published by Women Living under Muslim Law, 2004. <http://www.wluml.org/english/pubsfulltxt.shtml?cmd%5B87%5D=i-87-98541>. p. 128, accessed on May 24, 2007.

express strong reservations about Sharia in private conversations but not in public”.²¹ This self-censorship is “based primarily on a fear of being labeled as anti-Islamic – a charge commonly labeled against perceived critics of Sharia”. Human Rights Watch reports further that “the consequences of this self-censorship have been a virtual silence on the part of the northern civil society about the more controversial aspects of Shari’a, including some of the more blatant human rights abuses, and, for a long time, the absence of genuine, open public debate on these questions”.²² This unhealthy intellectual development reveals a remarkable similarity to Mernissi’s encounter with the problematic of gender in contemporary Islamic discourses in Morocco. As in Mernissi’s case, Muslim women in Nigeria have resorted to the Islamic classics in order to combat gender bias in the contemporary application of Islamic law – a point analyzed in more details below.

Background to Contemporary Application of Islamic Law in Nigeria

In the early 2000s, media outlets around the world carried screaming headlines of stories about Islamic courts in Nigeria sentencing poor women to death by stoning, having found them guilty of the offence of illicit sex as stipulated in recent legislations expanding the scope of Islamic law. Although these developments seem to have suddenly burst out on the international arena without warning, they were in fact preceded by decades of incremental changes that have cumulatively raised the profile of Islamic political awareness and activism in Nigeria’s public sphere.

These developments unfolded within the broad context of the prolonged grip on power by Nigeria’s military, which dominated politics for all but sixteen years since 1960, when the country emerged from colonial rule as a modern state. One of the devastating consequences was the stifling of democracy and political party activity. Another major negative consequence was the entrenchment of corruption and lack of accountability by governmental officials that have earned Nigeria the dubious distinction of being among the most corrupt countries in the world. A third negative consequence resulted from the imposition by the World Bank and IMF of the structural adjustment programs (SAP) that impoverished many Nigerians without succeeding in reviving the economy via deregulation, commer-

²¹ Human Rights Watch (September 2004). “Political Sharia”? Human Rights and Islamic Law in Northern Nigeria. *Human Rights Watch* 16, 9(A): 86–90.

²² Ibid, p. 88.

cialization and privatization of moribund state economic enterprises. Religious revival and activism emerged among both Muslims and Christians as a cathartic outlet for the pent-up frustration arising from prolonged military misrule, political repression, and economic failures, sometimes leading to violent conflicts between Muslims and Christians that have been also reported by international media. But less known are the changes in the religious landscape in Nigeria that made the seemingly sudden application of Islamic law not so sudden and more easily comprehensible. In particular, three major trends are relevant for understanding these recent developments.²³

First, an Islamic reform movement espousing Wahhabi doctrines – popularly called IZALA – emerged in the late 1970s and became very active in mobilizing mass followers and recruiting them into a very well-organized movement headed by an effective leadership with a clear top-down hierarchy and channels of communication. Through its network of schools and mosques, as well as its open-air public preaching, often recorded on audio cassettes and disseminated to wider audiences, IZALA became a prominent civil society organization whose substantial membership and disciplined hierarchical organization provided an effective substitute for political activity, in lieu of political parties under military regimes. IZALA dominated the public sphere with its open-air preaching, sermons, and discourses that address many societal concerns, but largely from its Wahhabi sectarian perspectives. This meant that IZALA stands in an adversarial relationship with the Sufi orders that have historically held the allegiance of the majority of Nigerian Muslims. Although IZALA could easily call millions of its followers into mass action via its formidable network of schools and mosques, it is somewhat ironic that it never really made radical demands on the Nigerian state; its political activity has been largely in the political mainstream and preoccupied with securing the benefits of Nigerian patrimonial politics for its leaders more than for its rank-and-file members. Nevertheless, its contribution to the saturation of Nigeria's public sphere with Islamic consciousness was quite instrumental in preparing the ground for expanding the scope of Islamic law once Nigeria returned to democracy in 1999. This remains true even though IZALA never publicly campaigns for Islamic law to be expanded. In fact, IZALA leadership was caught unawares when elected politicians announced the new reforms of Islamic law – but of course they have since found ways to get on the bandwagon.

²³ For more details on the following analysis of these trends, see Muhammad S. Umar. "Education and Islamic Trends in Northern Nigeria." *Africa Today* 48, 2 (2001): 128–150.

Similarly caught unawares is the Islamic Movement in Nigeria, the second of the three major Islamic trends that formed the background for understanding recent changes in the application of Islamic law in Nigeria. Although maintaining principled distance from the reform initiatives of the politicians, the Islamic Movement differs from IZALA in other important respects, most notably in its Shi'ite doctrinal orientation that contrasts sharply with the Wahhabism of the IZALA. The Islamic Movement in Nigeria originated from the activism of Muslim students who were initially attracted to the radicalism of the Iranian Revolution of 1979, but eventually came to espouse more and more Shi'ite doctrines, symbols and practices. Right from its inception, the Islamic Movement was much more politically oriented, given its explicit opposition to the secular character of the Nigerian state and its equally vocal demand for establishing an Islamic state in the country. Its explicit political orientation and even more importantly its militant and confrontational approach toward achieving its political goals have landed the Islamic Movement in more troublesome encounters with the Nigerian state, especially the security agencies, resulting in many arrests and detentions of its leadership and the deaths of many followers in confrontation with law enforcement and security agencies. During the decades of the 1980s and 1990s, the Islamic Movement experienced three significant changes: 1) from the initial attraction to the political radicalism of the Iranian revolution to a religious conversion to Shi'ism, especially to Shi'ite political doctrines regarding the Imam as the only legitimate political leader of Muslims; 2) the establishment of extensive network of local cells, mosques and schools; and 3) the routinization of the initial radicalism around the charismatic figure of Shaykh Ibrahim al-Zakzaki, the living martyr who has engaged the Nigerian state in many confrontations, conferring on him a certain aura of righteousness, courage, piety, etc. Ironically, when the Shari'a politics began in 1999, al-Zakzaki did not support it; instead, he argued that ordinary politicians could not lead the struggle for the establishment of an Islamic state in Nigeria and that the Shari'a could not be implemented without first establishing an Islamic society and state, for that would amount to putting the horse before the cart. Yet, more than two decades of the Islamic Movement's political activism contribute significantly to the increased public receptivity to the recent political initiative of expanding the scope of Islamic law.

Finally, the vast majority of Nigerian Muslims have traditionally been affiliated with the Qadiriyya and Tijaniyya Sufi orders, particularly since the nineteenth century. Over the ages, these Sufi orders have evolved a *modus operandi* with political authorities that facilitated their acceptance of the changing roles of Islam in public affairs. During British colo-

nial rule between 1903 and 1960, Sufi leaders were particularly influential in helping the majority of Muslims to come to terms with the challenges of modernity brought about by the colonial regime, including the various reforms of Islamic law that ended in confining the jurisdiction of Islamic courts mainly to matters of personal status.²⁴ But once the two trends discussed above became active during the 1980s and 1990s, the Sufi orders were forced to react, particularly to IZALA's anti-Sufism. Among the key reactions were: revitalization of Sufi practices, adoption of some of IZALA's organizational innovations, such as utilizing modern media to respond to IZALA criticisms, and fierce competition for access to political patronage. Notably absent was any demand for expanding the application of Islamic law; but this should not be surprising at all, given Sufi leaders' acceptance of the limited status accorded to Islamic law during the colonial era and even early independence. The leaders of the Sufi orders were even less prepared than the other two trends for state implementation of religious agenda; but they have found ways to join the mass support for recent expansion of Islamic law.

The Immediate Context of 1999

One of the most ravaging legacies of the prolonged military grip on power was the cancellation of the presidential elections of June 1993, widely acclaimed as the freest and fairest elections in the country's history. In the very gloomy atmosphere of Nigeria's possible collapse into a failed state, both the military head of state at the time, General Sani Abacha, and the president-elect-but-never-acknowledged Chief Mashood Abiola died within a month of each other in 1998. Suddenly, Nigeria's political horizon changed drastically, and within a year, elections were held that resulted in the former military head of state, General Olusegun Obasanjo, once again becoming President of Nigeria in May of 1999. He was re-elected for a second term in 2003 and left office in 2007, having failed to amend the constitution to give him a third term in office. Not all aspects of the long-term legacy of the Obasanjo presidency are clear yet. But expanding the jurisdiction of Islamic law must be reckoned among the major albeit unintended legacies.

It is very important to note that when the British took over Nigeria in 1903, they found Islamic law being applied in Muslim regions of the country. They placed some restrictions,

²⁴ For details, see Muhammad S. Umar. *Islam and Colonialism: The Intellectual Responses of Muslims of Northern Nigeria*. Leiden: Brill, 2005.

mostly regarding capital and physical punishments. The continuing interaction with British Common Law and colonial legislations over 60 years of colonial rule added more subtle changes in procedure, case-law, written records, formal appeal,²⁵ etc. At independence in 1960, a *Penal Code* and a *Criminal Procedure Code* were enacted with substantial portions adopted from Islamic law, but with the notable omission of *hudud punishments*, i. e. the punishments believed to be specifically imposed by God, and therefore humans should not alter them in any way. These punishments include: 1) the death penalty by execution for murder and apostasy, by crucifixion for highway robbery with homicide, and by stoning for adultery; 2) cutting off the hand and/or feet for theft and highway robbery without homicide; and 3) floggings for fornication, false accusation of illicit sexual intercourse, and for drinking alcohol. Several consultations with Muslim leaders and religious authorities ensured acceptance of the new codes,²⁶ which operated without much opposition from Muslims up to 1999. In 1975–76, a new constitution was drafted for Nigeria, and there were controversial debates about the status of Islamic law in the constitution. The adopted compromise allowed states to establish Sharia courts, including Sharia Courts of Appeal, and empowered the Federal Courts, including the Supreme Court of Nigeria, to hear appeals from State Sharia Courts of Appeals in panels made up of Muslim Judges with competence in Islamic law. In the context of a constitutional review in the mid-1990s, this compromise was challenged by both Muslims, who wanted to expand the scope of Islamic law, and non-Muslims, who wanted to remove any provision for Islamic law in the constitution; but in the end, the earlier compromise was retained.

Muslim politicians have often used demands for Shari'a as a bargaining chip in national politics, but no one really thought much of the issue, certainly not in terms of reintroducing the *hudud* punishments. Therefore it was a surprise when the elected Governor Ahmed Sani of Zamfara State announced his intention to reintroduce the application of "full sharia", in contrast to the incomplete sharia inherited since the colonial era. Governor Sani claimed he was fulfilling his electoral campaign promise to reintroduce the full sharia, but the issue was not on his political party's electoral platform. Within less than a year, 11 other states with Muslim majorities could not resist the popular pressure to follow in the foot-

²⁵ Awwalu H. Yadudu. "Colonialism and the Transformation of the Substance and Form of Islamic Law in Northern Nigeria." *Journal of Law and Religion* 9 (1991): 12–47.

²⁶ Phil Ostien and Sati Fwatshak. "The Settlement of 1960 and Why It Still Matters Today." In *Shari'a Implementation in Northern Nigeria, 1999–2006: A Source Book*, edited by Phil Ostien. Ibadan. Nigeria: Spectrum Books, 2007, vol. 1, pp. 3–29.

steps of Zamfara State, even though the governors of those states did not want to do that. It was impossible for politicians facing re-election to ignore the tremendous popular support.

Some analysts argue that this popular support was part of a conspiracy by a cabal of Muslim politicians from northern Nigeria to sabotage the government led by Chief Obasanjo, who is a born-again Christian. Others see the popular support in terms of the restoration of authentic Muslims' communal identity that was undermined by the colonial compromise that limited the application of Islamic law to matters of personal status. The more persuasive explanation is to see the massive support as an expression of popular aspirations for the rule of law in the face of a huge increase in organized violent crime that has claimed the lives of many Nigerians not only through armed robbery on the highways, but also through raids in broad daylight by dangerously armed criminals attacking commercial banks, currency exchange shops, and the homes of private, law-abiding citizens. In non-Muslim areas, this popular aspiration for the rule of law is also evident in the phenomenon of "vigilante groups" who deliver summary mob justice to anyone accused or suspected of being an armed robber.

The immediate reaction of the federal government of Nigeria came in the form of behind-the-scenes political negotiations and arm-twisting of the state governors to dissuade them from expanding the jurisdiction of Islamic law. President Obasanjo coined the term "political shari'a", which he sees as the result of politicians giving in to popular pressure but which will go away once that pressure subsides. Importantly, the federal authorities did not seek a judicial resolution through the Supreme Court of Nigeria, which could not have been easily enforced if the Supreme Court ruled against the expansion of the Shari'a, given the volatile political situations at the time. Time has proven the wisdom of this decision by the federal authorities, for the issue has died down, though the newly enacted Shari'a laws are still in the books.

The major changes introduced by the new legislation expanding the scope of the shari'a include the reintroduction of *hudud* punishments and in some states additional features from the medieval formulations of Islamic law, including giving women inferior legal status and rights. Another set of legislation seeks to control vice by outlawing prostitution, gambling, the consumption of alcohol, etc., while a third set introduces judicial re-organization of courts by establishing two parallel court systems for the separate application of Islamic law and Nigeria's public law. A fourth set establishes statutory agencies, such as a Council of Ulama, a Shari'a Implementation Commission and, interestingly, a Sharia Re-

search Council. Significant variations exist in the provisions of the laws enacted by each of the twelve states.²⁷

A notable area of difference is the roles assigned to the leaders of the religious movements, especially leaders of IZALA and Sufi Orders, who were both appointed to serve on the newly established Sharia implementation agencies, with all the perks that come with high-profile political appointments in the country. In a sense, these appointments mark a departure from the tokenism that has been the model of interface between leaders of religious movements and state authorities, whereby religious leaders are only nominally engaged by the state in the management of public affairs. Not surprisingly, the religious leaders have since become vocal proponents of the new Sharia implementation project, even though none of them was demanding the expansion of the application of Shari'a before 1999. But a worrisome development is that some of the religious leaders are pulling the new Shari'a project in unhealthy directions. Some are participating in the violent discourse of *takfir* and *death fatwas*, through which they hope to silence criticism; and establishing Shari'a vigilante groups is part of this unhealthy development of intimidating people with different views on the shari'a projects – a clear indication of the existence of the Mernissi predicament in Nigeria.

Gender issues are among the most controversial. For organizations advocating women's rights and human rights activists, it has become imperative to find ways to respond to attempts to silence them and cripple their activities. In the course of defending poor rural women who were convicted of illicit sex and sentenced to death by stoning, as provided for in the newly enacted shari'a codes, these activists stumbled upon the requisite intellectual resources from Islamic legal thought when they employed lawyers with expertise in Islamic law to represent the women charged in court. By building their case solidly within Islamic law, these expert Islamic lawyers were able to convince the Shari'a Courts of Appeal to overturn the convictions handed by lower shari'a courts.

Among the compelling arguments that won the appeal are: 1) the failure of the lower shari'a courts to observe the procedural safeguards established in classical formulations of Islamic law to avert hasty judgment in *hudud* cases; 2) police investigation of charges of illicit sex (*zina*) violates Islamic conception of individual privacy; 3) police prosecution wit-

²⁷ For the texts of the statutes enacting these changes as well as their analysis, see Phil Ostien, ed. *Shari'a Implementation in Northern Nigeria, 1999–2006: A Source Book*. Ibadan, Nigeria: Spectrum Books, 2007, vols. 1–5.

nesses cannot testify to have seen the actual sexual intercourse in progress that classical Islamic law requires for establishing proof of *zina*; 4) the legally technical meaning of *zina*, whose legal implications must be fully explained to the accused, not just by translating the word from Arabic to Hausa, and the technical meaning of *muhsin*, i. e. the lawfully married person who could be subjected to *hadd* punishment for *zina*, must also be fully explained to the accused; 5) in Islamic law, the presence of reasonable doubt (*shubha*) calls for averting imposition of *hadd* punishment, and such reasonable doubts were introduced to the cases when the accused women withdrew their confessions, and also by the Islamic legal concept of sleeping pregnancy, which deems an infant born within 5 years after divorce as a legitimate child of the divorced couple; and 6) the failure of the lower shari'a courts to first establish the facts of the cases at hand and then to apply the law accordingly, rather than simply basing their judgments on mere recitation of the applicable rules of Islamic law. Significantly, some of the arguments of the appeal drew upon Nigeria's constitutional and public law, most notably: the supremacy of Nigeria's constitution and (a) its prohibition of prosecution for offences post facto; (b) its requirement that offences must be defined in a written law duly enacted before anyone can be charged for such offences; (c) its requirement that details of the charges must be provided to the accused; (d) its requirement that the right to counsel must also be explained. The appeal judgments held that the lower shari'a courts failed to observe these constitutional provisions. This combined appeal to both Islamic law and Nigeria's constitutional and public law indicates how the legal pluralism inherited from the colonial era is now functioning in contemporary Nigeria.

Having successfully employed classical doctrines of Islamic law, women's rights activists began to study Islamic law to find Islamic arguments supporting women's empowerment. In a recent study conducted by BAOBAB, an NGO for women's human rights that is affiliated with Women Living under Muslim Law International Solidarity Network, the authors echo the Mernissi predicament when they observe that:

it is extremely troubling that often the mere mention of the word "Shari'a" seems to render all policies and legislation above scrutiny or criticism, whatever their content. We hope to change this and render religious and other policies and laws open to scrutiny. We hope to begin to counter the myth that religious laws are directly God-given, which makes people blindly accept or fear to protest, and which leads to acquiescence or resignation in the face of the religious right... To do this, we will consider the nature of laws – in particular, Muslim laws – whether secu-

*lar or religious showing that, whilst religious laws may be based on divine revelations, they are necessarily also man-made, historical and social products, and therefore changeable.*²⁸

Following the line of argument that Kurzman calls *interpreted shari'a*, this study demonstrates the active role of humans, *especially men*, in articulating the enforceable rules of sharia, thereby challenging the notion of sharia as God-given law that should not be criticized in any way, as well as contending that criticizing the fundamentalist interpretations is *not* tantamount to questioning God's law – thus giving advanced rebuttals to the anticipated quick resort to death fatwas. Another important point highlighted is the diversity and variations of opinions in the classical interpretations of shari'a. Using the example of Qur'an 4:3 relating to polygamy, the authors remark that (a) the central point of the verse is that polygamy is allowed but not required, (b) specific conditions of fairness and equal treatment are required, (c) the verse was revealed after the Battle of Uhud during the lifetime of the Prophet Muhammad, when many male Muslims fell in battle and left many women widowed and orphaned in Arabian tribal society, where "few women and children had independent access to resources and therefore needed to have a claim for maintenance on a man through kinship or marriage". By reviewing the various interpretations of this verse to create diverse and even contradictory rules of shari'a relative to polygamy, the authors effectively challenge the claim that only one version of absolutely correct shari'a exists, and they implicitly advocate the validity of different choices within the diversity of accepted interpretations of the shari'a. Possibilities of protecting women's rights, even within the predominantly patriarchal formulations of Islamic law, are identified, thereby critiquing the purely secularist activists who would prefer to regard Islamic law as part of the problem for women's rights and also exposing the Islamophobia that often hides behind attempts to liberate Muslim women from their allegedly oppressive religion. This study leaves no reader in doubt that improved religious literacy can be an effective response to the hegemonic politics of religious revival seeking to "restrict women's rights and autonomy in the name of religious and/or cultural imperatives".

²⁸ Ayesha M. Imam, Mufuliat Fijabi, and Hurera Akilu-Atta. *Women's Rights in Muslim Laws: A Resource Document*. BAOBAB for Women's Human Rights 2005, p. 14, available at http://www.baobabwomen.org/publications_womenshr.htm#WRML, accessed on February 22, 2008.

By engaging the classics of Islamic law and thought, women's rights activists in Nigeria – as in Morocco and other Muslim countries – have come to discover the centrality of human agency in interpreting the Qur'an and the Prophetic traditions to construct the enforceable rules of Islamic law in many different and sometimes even contradictory ways. But in contrast to Mernissi's intellectual odyssey into *usul al-hadith* – the foundational science of ascertaining the validity and legal authority of prophetic traditions – the Nigerian women's rights activists restricted their search to the narrow confines of *fiqh* – the specific rules of Islamic law as formulated by mostly male Muslim jurists during the medieval era of Islamic history, which of course offers incredible variety and diversity in determining the enforceable rules of Islamic law. But the Nigerian discourses allude to other interesting aspects of classical intellectual traditions of Islam that arguably offer even more compelling evidence of human agency, diversity and variety in the foundational Islamic sciences that specify the first principles governing all formulations of Islamic tenets and norms.

Conclusion

As women's rights are debated, contested and defended in contemporary Islamic discourses by actively engaging with the classical heritage of Islamic thought, the emerging phenomenon of "Islamic feminism" or what has been aptly termed the "Gender Jihad"²⁹ is clearly one of the most controversially charged arenas of the debate raging globally among Muslims. In political and intellectual engagements with its formidable adversaries – namely fundamentalism and traditionalism – the Gender Jihad of Islamic Feminism can and should take advantage of the vast discursive resources from the rich intellectual heritage of Islamic thought to advocate and defend the legitimacy of positions, without yielding to the intimidating discourses of *takfir* and death fatwas. Since space will not permit any further elaboration of these first principles here, I have attached an appendix mapping the various branches of classical Islamic thought, each offering different potentials for rethinking and reconstructing Islamic norms in the context of the contemporary challenges confronting Muslims as ordinary citizens of the modern state – *a la* Mernissi.

²⁹ Amina Wadoud. *Inside the Gender Jihad*. Oxford Oneworld Publications, 2006.

Appendix on the Outline of Classical Islamic Thought

Scriptural Studies

Ulum al-Qur'an: Textual Studies of Qur'an

Tafsir: Exegesis, Interpretations of the Qur'an

Hadith: Prophetic Traditions

Ulum al-Hadith: Textual Studies of Hadith

Sirah: Hagiography of Prophet Muhammad

Theology

Kalam: Theology

Rationalist Mu'tazila

Traditionalist Ash'ariyya/Maturidiyya

Kharijites

Murji'a

Mantiq: Aristotelian Logic

Falsafa: Philosophy (Neo-Platonism)

Legal Studies

Usul al-Fiqh: Principles of Jurisprudence

Al-Qawa'id al-Fiqhiyya: Legal Maxims

Al-Ashbah wa al-Naza'ir: Comparative Legal Theory

Al-Furu' al-Fiqhiyya: Enforceable Rules of Islamic Law

Al-Madhahib al-Arba'a: Four Sunni Traditions of Interpretation

Shi'ite Traditions of Interpretations

Siyasa/Qanun: Administrative Justice and Decrees

Al-Qada': Judgment/Case-Law

Al-Fatwa: Advisory Legal Opinion

Mysticism

Asceticism

Philosophical Sufism

Institutional Sufism of Religious Orders

History

Manaqib: Hagiography

Tariḫh: History

Tarajim: Biographical Dictionaries

Language and Literature

Adab: Literature and Humanities

Luggha: Language

Grammar

Rhetoric

Oratory