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Azizah Y. al-Hibri

University of Richmond, aalhibri@richmond.edu

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Islamic law

AZIZAH Y. AL-HIBRI

An overview of the concerns of Muslim women

The NGO Forum, held in Huarou, China, in the fall of 1995, was a defining moment in the global dialogue among women on issues relating to Islam. Prior to that event, discussions of Islamic shari'ah law (law based on religious foundations), in particular, and Islam, in general, had been escalating both in the West and in Muslim countries. In the regional conferences held in preparation for the United Nations Fourth World Conference on Women, held concurrently with the NGO Forum, the intellectual fault-lines surrounding these issues became pronounced between two radically different schools of thought. The first school of thought argued that shari'ah law was outmoded and should be discarded in favor of a modern Western secular model. The second school of thought denied any problems under existing shari'ah laws. Each group felt very strongly about its point of view. The battle was joined in Huarou.

The resulting polarization was so disturbing that it prompted several Muslim women's organizations and individuals to write a letter to the NGO Forum publication, stating in part the following:

Two dominant and opposing views on Islam which have emerged in the NGO Forum have been challenged by a group of women activists ... The first view reflects an ultraconservative position, focusing on comparing the ideals of Islam with the reality and ills of the Western world. A second view rejects religion as a reaction against Islamic conservatism and abuses committed in the name of Islam. For many of us, both views are unrealistic and untenable. Islam recognizes equality between men and women ... Islam has been used to justify laws and practices which oppress women ... This group advocates a reconstruction of Islamic principles, procedures and practices in light of the basic Qur'anic principles of equality and justice. (Sisters in Islam et al. 1995, p. 3)

It is important to understand that the differences between the two opposing schools of thought are political as much as they are religious. The first school of thought wants to emulate the West in its recent legal and social transformations relating to gender issues. The second school rejects all things Western because it rejects Western political/cultural hegemony. The emerging third school of thought wants to discover its own authentic dialectic of transformation, based on its indigenous historical context and the world of the twenty-first century.
The differences among all three schools are rendered, in certain cases, quite severe by the after-effects of colonialist policies in the Muslim world. One major aspect of such policies was educational/cultural.

In Algeria, for example, in an attempt to permanently transform Algerian culture along Western lines, French language and culture were emphasized in the educational system to the detriment of local ones. Consequently, many Algerians belonging to the colonized generations were often more familiar with the French culture and language than with their own (Lazreg 1994, especially pp. 59–67). This state of affairs severely hampered them from the outset in developing a social and political critique rooted in the area’s heritage.

Other factors appear to play an indirect role in shaping the line of thought some women ultimately adopt. They include the economic and social class of these women, their particular relation to the power structure, if any, and the general nature of the power structure and its relative degree of misogyny.

This article will focus exclusively on womanist Islamic thought. (For more on the use of the term “womanist,” see the press release issued in Beijing in September 1996 by “Karamah: Muslim Women Lawyers for Human Rights” (Karamah), a Virginia-based organization which I co-founded.) The importance of such thought stems, in my opinion, from the nature of the population, both male and female, in Islamic societies. The population is predominantly committed to spirituality (whether Islamic or otherwise), which has often been unfortunately confused with patriarchal interpretations of religious heritage. Consequently, any profound changes in these societies will have a better chance of success if approached from within a spiritual framework. For this reason, the development of a womanist Islamic jurisprudence is of paramount importance.

We start with a quick overview of the Muslim world. There are over one billion Muslims, and they live all over the globe. It is therefore expected that the problems facing the Pakistani woman will turn out to be quite different from those facing her Egyptian, Lebanese, South African, Malaysian, or American Muslim sister. More interestingly, the personal status codes (family laws) in Muslim countries differ significantly, despite the claim of each country that its code is based at least partially on Islamic principles (al-Hibri 1992, passim). As a result, women in different countries have different agendas.

Also, the cultures in these countries vary dramatically. For example, genital mutilation is a concern for Egyptian, Sudanese, Somali, and Nigerian women, but not for Syrian, Jordanian, Kuwaiti, Tunisian, Moroccan, or Lebanese women, whose cultures do not have that custom (Tubia 1995, p. 54). Because countries where genital mutilation is practiced have used religious arguments to justify it, it became necessary to refute these religious claims on their own grounds. In Nigeria, for example, which has a Christian majority with a sizeable Muslim minority, patriarchal authorities have attempted to legitimize the cultural practice of genital mutilation by utilizing arguments supposedly based on Christian and Islamic foundations. For this reason, Christian as well as Muslim women have had to refute these arguments from within their own religious tradition (Ras-Work 1992, vol. 2, pp. 62–3). This approach is quite important to allay the