Chapter 11

Hijab and Choice

Between Politics and Theology

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How women dress in public is not only a prominent marker of Muslim identity, it is now one of the most contested issues among Muslims. Hijab—defined by classical jurists as a Muslim woman’s duty to cover all parts of her body apart from hands and face in public and in the presence of unrelated men—is now regarded as a central Islamic mandate. But what exactly does “cover” mean? Are particular forms of dress prescribed? Must the hair be covered? Who has the right to define the form and limits of covering? Do women themselves have any choice in this? Does the state have the right to define hijab, to enforce it, or to ban it?

Since the nineteenth century, these issues have been a major site of ideological struggle between the forces of traditionalism and modernity in the Muslim world. With the resurgence of Islam as a political and spiritual force in the 1960s, they became an arena where Islamist and feminist discourses and rhetoric have clashed head-on. Political Islam and its slogan of “return to Sharia” turned hijab into a symbol of a distinct Muslim identity and a claim to religious authenticity. For Islamists, hijab is a religious mandate that defines women’s place in society and protects them from being treated as sex objects. For feminists, on the other hand, hijab is a symbol of oppression, a patriarchal mandate that denies Muslim women the basic rights to control their own bodies and to choose what to wear.

Until the early 1990s, the debate over hijab remained polemical, emotional, and a hostage to identity politics and the legacy of colonialism. There was little dialogue between adherents of the two positions, each side judging the other’s position and arguments by its own dogmas and frames of reference. Islamists failed to produce any new or significant juristic arguments, and their policy of imposing hijab in countries where they gained power, like Iran and Sudan, were met with women’s resistance. At the same time, the ways in which some Muslim women were finding hijab empowering, and were making a conscious choice to adopt it, undermined the force of feminist objections. There were also signs of the emergence of a new discourse on hijab as a Muslim woman’s right, and consensus developed among reformist Muslim thinkers that reflected the following: wearing or not wearing hijab is a matter of personal belief and imposing or banning it is a violation of women’s human rights. As the language of choice and rights crept in, the terms of the debate began to change. New juristic arguments and positions were advanced.

In this chapter I examine, from a critical feminist perspective, the evolution of debates and juristic positions on hijab in Islamic legal tradition. I begin by examining the assumptions that underlie the rulings on hijab in classical jurisprudence (fiqh); then, proceed to show how these assumptions have been reproduced, challenged, and redefined in contemporary legal discourses. I do this with reference to Iran, where political Islam had its biggest success in 1979, and which is now one of the primary sites of new juristic arguments and positions on hijab. I conclude by exploring the implication of these debates developments for establishing common ground between Islamist and feminist discourses on hijab, and for the politics of innovation in Islamic legal tradition.

Hijab in Classical Fiqh: “Covering” or “Confinement”

Classical Islamic legal texts—at least the genre that sets out rulings (ahkam), or what we can call “positive law”—contain no explicit rulings on women’s dress, nor on how women should appear in public. They do not use the term hijab, and they use sirr (covering) to discuss the issue of dress for both men and women, but only in two contexts: first, rulings for covering the body during prayers, and secondly, rulings that govern a man’s “gaze” at a woman prior to marriage.
The rules are minimal, but clear-cut. During prayer, both men and women must cover their 'awrah, their private parts; for men, this is the area between knees and navel, but for women it means all parts of the body apart from hands, feet and face. Regarding the "gaze," it is forbidden for men to look at the uncovered body of women to whom he is not closely related—a ban that can be removed when a man wants to contract a marriage and needs to inspect the woman he intends to marry. The rulings on covering during prayer are discussed in the Book of Prayer and are among 'ibadat (ritual/worship acts), while the rulings on "gaze" come in the Book of Marriage, and fall under 'umamlat (social/contractual acts). 6

There is, however, another notion of hijab that remains implicit in these texts: "confine." This notion rests on two interrelated juristic constructs that cut across 'ibadat and 'umamlat, the two aspects of fiqh. The first construct defines a woman's whole body as 'awrah, a sexual zone, that must be covered both during prayers (before God) and in society (before men). The second construct considers a woman's sexuality to be 'fitra, as a source of danger to public order, and consequently grants men the right to control women's movements.

The rulings related to the first construct are found in the Book of Prayer (Kitab al-salat) under "covering of private parts" (sittir al-'awrah), which remains the only place that requires the covering of specific parts of body. The seminal text on comparative jurisprudence (Bidayat al-Mu'tahid) by the great jurist and philosopher Ibn Rushd sums up the state of the juristic debates up to his time, the twelfth century C.E., and allows us to glimpse the agreements and disagreements. 7 The jurists agreed that covering the private parts is an absolute obligation, but they disagreed on whether it is a condition for the validity of prayer. Similarly, they differed about the area of the body, for a woman and a man, that is delineated by the term 'awrah. 8 For a woman: "Most of the jurists maintained her entire body constitutes 'awrah, except for the face and hands. Abu Hanifa maintained that her feet are not a part of the 'awrah. Abu Bahr Ibn 'Abd al-Rahman and Ahmad said that her entire body is 'awrah." 9

Their disagreement:

is based on the possible interpretation of the words of the Exalted, "And to display of their adornment only that which is apparent," that is whether the exemption relates to defined parts or those parts that she cannot (but help) display? Those who maintained that the intended exemption is only for those parts that she cannot help but display while moving, said that her entire body is 'awrah, even her back. They agreed for this on the basis of the general implication of the words of the Exalted, "O Prophet! Tell thy wives and thy daughters and the women of the believers to draw their drapes close around them. That will make them recognizable and they will not be exposed to harm. 10

"Those who held that the intended exemption is for what is customarily not covered, that is, the face and hands, said that these are not included in the 'awrah. They (further) argued for this on the grounds that a woman does not cover her face during hajj," Ibn Rushd observes. 11

It is not my intention to enter into a discussion on the theological validity of the "general rule" or whether such a reading of the Qur'an verse is justified. Such questions have been raised by the emerging feminist scholarship in Islam, which tells us that the theological validity of classical rulings on hijab is derived from Qur'anic commentaries rather than Qur'anic prescriptions. 12 Another strand of this scholarship tells us that the further such rulings were from the time of revelation, the more women's presence in public space was constrained; and by the time the fiqh schools were consolidated, women's voices in the production of religious knowledge were silenced and they were reduced to sexual beings and placed under the authority of men. These developments were linked to political and socioeconomic factors; in particular, during Abbasid rule with the public presence of female slaves who were treated as sexual commodities and forbidden to cover in order to distinguish them from free women. Significantly, classical jurists considered the 'awrah of a female slave or servant to be different from that of a free woman; some held it to be the same as that of men, between navel and knees; others argued that it was between chest and knees. 13 Clearly, in deducing the hijab ruling, classical jurists were influenced by considerations of status and class rather than by a "divine mandate" for women to cover their hair, as the Islamists now claim.

Women's exclusion from public and political life was reinforced by the way classical jurists defined the marriage contract, in which a man acquires rights over his wife's movement and sexuality. The marriage contract, called 'aqd al-nikah (contract of coitus), has three elements: the offer (ijab) by the woman or her guardian (waali), the acceptance (qabul) by the man, and the payment of dower (mahr), a sum of money or any valuable that the husband pays or undertakes to pay to the bride before or after consummation. 14 In discussing marriage and its legal structure, classical jurists often used the analogy of the contract of sale, and they had no qualms about drawing parallels between the two. For
instance, this is how Muhāqiq al-Ḥilli, the renowned thirteenth-century Shi'a jurist, opens his discussion of marriage: "[I]t has been said that [marriage] is a contract whose object is that of dominion over the vagina (buz'), without the right of its possession. It has also been said that it is a verbal contract that first establishes the right to sexual intercourse, that is to say: it is not like buying a female slave when the man acquires the right of intercourse as a consequence of the possession of the slave."15

Sidi Khalil, the prominent fourteenth-century Maliki jurist, was equally explicit. "When a woman marries, she sells a part of her person. In the market, one buys merchandise; in marriage, the husband buys the genital aurum mulieris."16

The twelfth-century philosopher and jurist Al-Ghazali likewise drew parallels between the status of wives and female slaves, to whose sexual services the husbands or owners were entitled. In his monumental work *Revival of Religious Sciences*, he devoted a book to defining the proper code of conduct in marriage (*Adab al-Nikah, Etiquette of Marriage*), which makes explicit the assumptions in the *fiqh* rulings on marriage. Significantly, he ends the discussion with a section on "Rights of the Husband," which begins: "It is enough to say that marriage is a kind of slavery, for a wife is a slave to her husband. She owes her husband absolute obedience in whatever he may demand of her, where she herself is concerned, as long as no sin is involved."17

Interestingly, in this section Ghazali does not invoke any Qur'anic verses but relies on hadith (the sayings of the Prophet) literature to enjoin women to obey their husbands and remain at home.18

The Prophet said: "A woman is closest to the face of her Lord when she is inside her house. The prayer she performs in the courtyard of her house is more meritorious than the prayer she performs in the mosque, while her prayer in her apartment is more meritorious than her prayer in the courtyard of her house, and her prayer in her inner chamber is more meritorious than her prayer in her apartment."

That is because it is more private. This is why the Prophet said: "A woman is nakedness, so when she goes out, the devil gets up to look at her. Woman has ten nakednesses. When she gets married, her husband veils one of them, when she dies, the grave veils all ten."19

I am not suggesting that classical jurists conceptualized marriage as either a sale or as slavery.20 Certainly there were significant differences and disagreements about this among the schools, and debates within each, with legal and practical implications for women.21 Even statements such as those quoted above distinguish between the right of access to the woman's sexual and reproductive faculties (which her husband acquires) and the right over her person (which he does not). Rather, my point is that classical *fiqh* constructed women's sexuality as a commodity that men could acquire either through the marriage contract or by buying female slaves. This construction informs *fiqh* rulings on *hijab*, as does the juristic construction of women's whole body as *'awrah*, a shameful object that must be covered, for which the best means is confinement.

**Hijab in Contemporary Islamic Legal Discourses**

This implicit conception of *hijab* (symbolized by the face veil) became the main focus of criticism and debate in the first wave of Islamic modernist literature, starting with Qasim Amin's *Tahrir al-mar'ah* (*The Liberation of Women*) published at the end of the nineteenth century.22 But *hijab* as confinement was explicitly defended in the twentieth century by Islamic ideologues such as Abul Ala al-Mawdudi in his famous *Pardah*, a text that is now accepted in some Islamist circles as the "Islamic position."23 Amin unleashed a debate whose terms continue to be defined by the politics of anti-colonialism and the Muslim world's encounter with modernity, in which *hijab* has been a symbolic battleground. Muslim societies were experiencing profound change, rulers or colonial authorities were taking measures for modernization, secular systems of law and education were expanding and the first girls' schools were established. Muslim reformers such as Jamal al-Din Afghani and Mohammad Abdu were advocating religious reforms, and *fiqh* and its practitioners were losing their intellectual and political clout. As part of modernization policies, some states introduced dress laws, actively encouraging the adoption of European styles of clothing.

These developments were making the notion of *hijab* as confinement increasingly irrelevant to people's experiences and women's aspirations, and gave rise to a new genre of texts, with "*hijab*" in the title or as the main theme or concern. These texts, until recently written exclusively by men, are published by religious publishing houses all over the Muslim world and available in different languages. The stated aims are to shed new light on "the status of women in Islam" or to clarify "misunderstanding about the laws of Islam." Many of the authors, however, are neither jurists (*fuqaha*) nor strictly legal in their reasoning and arguments, which
make them more accessible to the general public. While distancing themselves from the *fiqh* notion of *hijab* as confinement, and emphasizing instead the classical rulings on covering, the vast majority of *hijab* texts merely reproduce these rulings; they do not engage with the juristic logic and social and sexual theories and assumptions underlying them. Many of these texts sound like double-talk; one good example in English is Jamal Badawi’s *The Muslim Women’s Dress According to the Qur’an and Sunnah.* Badawi starts by stressing the importance of the subject of “Muslim women’s dress” (he does not use the term *hijab*) to which the “Shari‘ah assigns moral, social, and legal dimensions.” In the next sentence, he closes the door to rational argument, stating: “One basic requirement to be a true believer according to the Qur’an is to make one’s opinions, feelings and inclinations subservient to whatever Allah and His Messenger have decided.” Other authors, however, who produce rational arguments for *fiqh* rulings, rely on modern sciences, namely, biology, psychology, and sociology, not classical jurisprudential texts. In some of these, like al-Mawdudi’s *Pandhur, hijab* is less a set of rulings for covering than an organizing principle in society and an ideology for women’s subjugation.

This literature, as I have argued elsewhere, should be seen as a response to the changed status of women in society and their new aspirations; it has created its own subject: “Islamic dress” or “hijab laws in Islam.” A shift in focus in this literature came about simultaneously with the rise of political Islam, when we see the shaping of a new discourse and new juristic positions on *hijab*. To appreciate the social and political contexts in which they emerged, let us take a closer look at the debate in Iran.

**COMPETING NOTIONS OF HIJAB IN IRAN**

In Iran, as elsewhere in the Muslim world, the debate over the two notions of *hijab* emerged at the end of the nineteenth century, as part of a wider debate over modernization and the spread of secular education—developments seen by the religious establishment as a threat to its authority. Though *hijab* was debated during the Constitutional era (1906–11), when the first girls’ schools were established, it only became a “problem” in the 1930s, when Reza Shah Pahlavi embarked on a policy of compulsory “unveiling” or *kashf-e hijab*, as part of his program for modernizing and secularizing Iran. The policy reached its peak in 1936 with a law that made wearing of *hijab*—now defined as traditional Persian attire (*chador*) or its modern version (a large scarf)—an offense, and women who defied it were arrested and their covering forcibly removed. The declared aim was to promote women’s rights and their liberation, and the assumption was that in replacing traditional women’s dress with Western styles, it would lead to women’s increased participation in society. But the banning of the chador and the headscarf brought the confinement of many women and girls from religious and traditional families, since for girls to go to school or women to leave the house without a chador meant—for them—the transgression of a religious mandate.

The unveiling policy caused outrage among the clerics, reflected in “*hijab* treatises” (*ra‘a‘el-e bejabiyeh*); they make explicit the implicit assumptions that inform *fiqh* rulings on *hijab*, and the intimate links between covering and confinement. They construe women’s presence in public space as a negation of sacred laws of Islam, as an alien and harmful innovation (*bid’a*), that was bound to corrupt individuals and destroy the moral fabric of society. In 2001, Rasul Jafarian, a researcher and cleric, published a collection of these treatises, starting with a 1911 treatise by Fakhr al-Islam, written as a refutation of Qasim Anmi and ending with Ayatollah Motahhari’s 1968 book *The Question of Hijab*, a quasi-modernist text that, as we shall see, became the official position of the Islamic Republic on *hijab*. In between, there were thirty-two other treatises, whose language and defense of *hijab* became more radical after the 1930s. With the exception of Motahhari’s text (discussed below), they have a strong anti-modernist stance, largely in reaction to Reza Shah’s *kashf-e hijab* policy and to those who had written in its support.

After Reza Shah’s abdication in 1941, the compulsory element in the policy of unveiling was abandoned, though its ideology remained intact throughout the Pahlavi era. Between 1941 and 1979 (when the regime collapsed) wearing *hijab* was no longer an offense, but it was a badge of backwardness, a marker of class, and a real hindrance to climbing the social ladder. *Hijab* prejudiced the chances of advancement in work and society not only for working women but also for men, who were increasingly expected to appear at social functions with their wives unveiled. Fashionable hotels and restaurants refused to admit women wearing the chador, and schools and universities actively discouraged it, although the headscarf was tolerated.

Just as the rules and meanings of *hijab* became more subtle and nuanced, so did ways of promoting and identifying it in the emerging
Islamic discourse. By the late 1970s, for many women, *hijab* represented what the Pahlavis had rejected; from a symbol of oppression and a badge of backwardness, it was transformed into an act of protest and was made a marker of a new Muslim identity. This was largely achieved in the works of the two main prerevolutionary Islamic ideologues, Ayatollah Mortezā Motahhari and Dr. Ali Shari'tā'i—each tackling the issue from a different perspective.28

**Hijab as “Protection”**

In 1962 the Islamic Society of Physicians, one of the professional bodies where Islamic ideology was shaped, started inviting Ayatollah Motahhari as a main speaker to its regular sessions. In March 1968, the society published the selected and edited texts of his lectures as a book, *The Question of Hijab*, which became an instant success; in October, a second edition came out, for which Motahhari wrote a new preface. It remains the most thorough and articulate treatment of *hijab* by a high-ranking cleric, and has gone through over fifty reprints.

In the course of these lectures, Motahhari offers a discursive narrative of *hijab*, its history, its philosophy, its treatment in the Qur'an and hadith, and the rationale for its *fiqh* rulings. He takes issue with both those who see *hijab* as backward and oppressive and with jurists who define it in such a way that it can bring about women’s confinement. The true rationale and purpose of *hijab* in Islam, if correctly understood, he argues, is not to exclude women from society but to facilitate their participation; it acts as a safeguard and protects women from being treated as sexual objects.

To argue for this notion of *hijab* as participation, Motahhari reworks the two juristic constructs underpinning the notion of *hijab* as confinement (woman’s body as *awrah* and woman’s presence in society as *fitna*). The jurists’ view of a woman’s body apart from her hands and face as *awrah*, he contends, sounds offensive only if we adopt the common meaning of the word that denotes the shameful zone of the body. But there is another meaning for the term *awrah*, which is a defenseless house, and it is in this sense that the idiom must be understood; that is, a woman without *hijab* is defenseless and unprotected.29 Likewise, Motahhari argues that it is not woman’s presence in society that is a danger to the social order, a *fitna*, but rather their “inmate desire to show off their beauty,” which, if not contained, excites sexual desire in men, who by nature cannot control themselves. That is why Islam, whose laws are

in line with “human nature” (*fitra*), requires women to observe *hijab* and advocates segregation of sexes in society. *Fiqh* rulings on *hijab* are intended to keep the moral order in society intact; they are to protect women against their impulses and their desire to show off their beauty, which can trigger men’s aggressive and active sexuality.30

Motahhari’s notion of *hijab* as protection leaves intact the classical *fiqh* conception of female sexuality as a danger to the social order, but it severs the link between covering and confinement, a link that Pahlavi policies in Iran had reinforced. Being premised on women’s participation, the notion of *hijab* as protection invests women with agency and power, which the clerical discourse had denied them. This power, however, is double-edged, because it not only places the burden of society’s moral and sexual purity on women by requiring them to observe the *hijab*, but also makes any other mode of clothing a provocation. In a rhetorical statement with which he ended one of his lectures, Motahhari make this crystal clear. “If a woman does not want to be provocative and does not want to appear in public naked [i.e., without *hijab*], then wearing a simple dress that covers all her body and hair is not going to prevent her from outside activity. On the contrary, those women who are obsessed with showing off their beauty, wearing tight clothing, and following different fashions become senseless, inactive individuals, because they must spend all their time in making themselves up.”31

**Hijab as Protest**

Shari’tāi, on the other hand, neither produced a text on *hijab* nor engaged with *fiqh*, whose logic and arguments he considered impotent and irrelevant to his vision of Islam. He broached the topic indirectly and offered a meaning of *hijab* that turned it from a symbol of tradition into a symbol of protest against the Shah’s regime and a marker of revolutionary Muslim identity. This he did in the course of two lectures and a seminar in the early 1970s at the Hosseyniyeh Ershad—a religious meeting place that was to become the powerhouse of modernist religious thought.32 He distinguishes between two types of *hijab*, and between the women who choose or reject them. The first is traditional *hijab*, adopted by women who succumb to religious tradition and the social forces in their milieu. This *hijab*, Shari’tāi argues, has no value, because women who wear it have made no conscious choice; they have no awareness; they wear it because their mothers have worn it; and they are likely to abandon it as soon as they start learning about new
fashions and frequenting circles where hijab is a symbol of backwardness. The second hijab is that of those women who are making a conscious choice and re-claiming their identity.

With this hijab, this generation wants to say to Western colonialism and European culture: "For fifty years, you tried, you schemed to turn me into a pseudo-Westerner; but with this dress I am saying 'No' to you; I am undoing fifty years of your plotting; I am saying: 'You cannot change me!' ... This [hijab] has value; this person [who chooses her hijab] does not feel inferior to a girl who has never reached such awareness or does not value it; she feels superior."

Shari’iati refused to reduce hijab to its fiqah rulings. Instead, he linked his notion of hijab with faith, choice, a quest for returning to find one’s true self, and above all, an ideology. Yet these notions are subordinated to his vision of Islam as an ideology for mobilizing the masses and bringing about political change. “[T]he person who has reached the level of ideology [faith] chooses her own life, her way of thinking, her very being, and even her own manner of adornment. She realizes herself. She does not surrender to television, to fashion magazines to make her. In that case she does not even dare to choose the color of her dress [because it may not be in this year's style!] She has returned and is returning fast. To what? To the Islamic dress [pishbesh-e Islami].”

He certainly had to walk a tightrope to avoid going against fiqah rulings on hijab and being drawn into a discussion of what form this “Islamic dress” should take, which women choose when they “return.” Do women have the right to define the form and limits of their “Islamic dress”? Is it an obligation or a right? It is difficult to know what he intended, as his work contains statements that support both, but a close reading suggests that neither the issue of rights nor that of women’s choice were central to his concerns. He imbued them with such a high dose of ideology that his discourse is at best ambivalent and at worst contradictory. All this makes his notion of hijab as “protest” as double-edged as Motahhari’s notion of hijab as “protection.”

Hijab as Imposition

Shari’iati died in 1977, and Motahhari was assassinated in 1979, soon after the popular revolution that marked the acme of political Islam. Though it was Shari’iati’s notion of hijab that inspired many middle-class urban and professional women to take the scarf in the 1970s, it was Motahhari’s influence that became the official discourse of the new Islamic Republic when it started to impose hijab. In 1981, a law was passed that made appearing in public without hijab an offense against public morality, punishable by the “Islamic” penalty of up to seventy-four lashes. From then on, compulsory hijab was defended with such vigor that it became one of the cornerstones of the new Republic, one of those red lines that no one dared to cross. In their Friday sermons, lectures and writings, political clerics often spoke of the making and breaking of the new order in terms of its policy of imposed hijab. Yet the ideologies of the Islamic Republic have failed to produce any juristic argument in defense of this policy, nor did any meaningful discussion of the issue emerge until the late 1990s. The vast literature that has appeared on the subject since the revolution simply repeats Motahhari’s arguments—sometimes almost verbatim.

Imposition creates resistance, and this simple sociological fact sums up the story of hijab in the Islamic Republic, which has become a war of attrition between women and the authorities. Women lost the first battle when women’s groups protested in March 1979, after Ayatollah Khomeini went back on what he had promised in Paris, and asked women who worked in government to observe Islamic dress. With the onset of the war with Iraq in 1980 and the ascendency of the radicals, there could be no more protest; however, by the 1990s it was evident that the Islamic Republic had failed to sell its own ideal of hijab to women. The chador, which the official discourse promoted as “the best hijab,” was becoming associated with fanaticism and state ideology; and what the authorities called “incorrect hijab” (bad-hejab), was becoming more and more widespread. Women were constantly pushing back the limits, especially the younger generation born during or after the Revolution, who had been indoctrinated from childhood to accept hijab as a supreme Islamic value.

Meanwhile, a number of dissident thinkers, both lay and clerical, were developing a critique of the Islamic state from within an Islamic framework. Displaying a refreshing pragmatic vigor and a willingness to engage with nonreligious perspectives, they sought a rights-based political order that could open Muslim polities to dissent, tolerance and pluralism, women’s rights and civil liberties. Their ideas and writings, which came to be known as “New Religious Thinking” (mo-andish-e ye dini), were the mainstay of the popular reformist movement that emerged in the aftermath of the unexpected victory of Mohammad Khatami in the 1997 presidential election. With the opening of political space and the expansion of the discourse of “rights,” the discussion of hijab, like
other issues that had been successfully suppressed since the revolution, inevitably resurfaced. A number of articles appeared in the reformist press questioning the wisdom of the policy of enforcement and pointing out its anachronistic incompatibility with the new discourse advocated by the reformist government.

Hijab as Choice

A key moment in the debate was the conference organized by the Heinrich Böll Institute in Berlin in April 2000, where a number of reformists—both secular and religious—were invited from Iran to discuss the prospects for reform. In a panel dealing with women’s issues, compulsory hijab became the main focus of objections by opposition elements in the audience. The two panelists with a religious perspective—Shahla Sherkat, editor of Zanan magazine, and the cleric Hassan Yusefi Eshkevari, an admirer of Shari’at—had to respond. Both rejected the idea of compulsory hijab, and argued that Muslim women should have the choice whether to adopt it or not.

Eshkevari argued that hijab and other Qur’anic injunctions pertaining to women are neither fixed nor immutable, but open to change, because they come under the category of social rules (abkam-e efteima’i). He produced two jurisprudential arguments in defense of his view. First, when there is a change in the subject (mouz) of a Shari’a ruling, either internally or externally, naturally there will be a need for a different ruling. Since the status of women (the subject of the early Shari’a rulings) has changed drastically, hijab must come up with new rulings to reflect this change. Secondly, the Prophet implemented almost all social rulings of Islam after he formed the Islamic state in Medina. They were part of the laws and customs that already existed in Arabia; “ninety-nine percent of them are abkam-e enza’i (i.e. the Prophet accepted them), not abkam-e ta’ṣisi (i.e. rulings newly established by Islam).” Hijab is among those rulings that the authorities have no right to impose on the believer; people should decide for themselves whether to follow it or not.

Upon his return to Iran, Eshkevari was arrested and charged with apostasy. Tried by the Special Clergy Court, he was sentenced to death, but this was later reduced to seven years in jail. A year later, his co-panelist Shahla Sherkat, in the course of her trial, questioned the religious value of the dress code imposed by the Islamic Republic and called it “official uniform,” not “true hijab” as mandated by Islam. Convicted of “disturbing the public mind,” she was given a suspended sentence of six months’ imprisonment and a fine, which was overturned in the Appeal Court.

The genie was now out of the bottle. Following the clampdown on the reformist press that began in spring 2000 and accelerated after the election of hardliner Mahmud Ahmadinejad to the presidency in June 2005, the Internet has become one of the main sites for the hijab debates. The material available ranges widely, from personal opinions as to whether the state or religious authorities have the right to enforce hijab in the name of Islam to sophisticated juristic arguments as to whether covering of the hair for women can be argued for on the basis of Qur’anic verses and the traditions. Some bloggers have also engaged with the religious authorities as well as reformist clerics and asked for fatwas. In February 2004, in response to a question, Hujjat ul-Eslam Ahmad Qabel, a reformist cleric authorized to deal with religious questions by Grand Ayatollah Montazeri (designated successor of Khomeini but now a dissident), stated that the covering of hair is not obligatory (sajeb) but recommended (mostahab). He provided ten arguments for his view, among which were: what is obligatory for both men and women is the covering of ‘awrah, but there is no consensus among the jurists as to what constitutes ‘awrah in women nor whether it includes her hair; and that Qur’anic verses and authentic traditions do not denote obligation but recommendation. In 2005, Mohsen Kadivar, another student of Ayatollah Montazeri’s and an outspoken reformist cleric, argued against the state’s imposition of hijab and its failure to make a distinction between sin and crime. Religious texts require both men and women to dress modestly in public but do not mandate any specific form of dress or covering for women. The whole issue of hijab, Kadivar argued, comes under the domain of ethical not legal matters; it should be left to Muslim women to choose the form and extent of their covering in accordance with their religious commitment and conscience.

Having lost the public debate over hijab as imposition, the hardliners in the Islamic Republic have returned to using the arms of the state by which they imposed it in the 1980s. In April 2007, the police launched an unprecedented aggressive drive to enforce the rule of hijab in public spaces. This initiative—named the “Moral Security Plan” (tarh-e ammiyat-e meli) and involving female police in full chador—was targeted at young women sporting the new fashion of hijab which consisted of tight tunics, short trousers, and narrow scarves, whom the authorities call “mannequins.” At the time of writing (a year later), the drive had
resulted in the arrest of thousands of women, with many hundreds of thousands receiving verbal warnings, but it had already lost its moral authority and brought a rift within the conservative coalition that brought Ahmadinejad to office. Hardliners hailed the new initiative as evidence of the new government's intention to revive the slogans and ideals of the revolution, but the head of the judiciary, Ayatollah Shahroudi, criticized it as leading to the criminalization and alienation of the youth, while members of parliament attacked it as unwise and too harsh.

Despite government attempts to control reporting of the arrests, pictures of girls resisting arrest and being roughly treated by the police circulated throughout the Internet, arousing a great deal of comment both inside Iran and abroad. These comments reveal two consensuses: that hijab is a matter of personal belief and imposing it is a violation of women's human rights; and that an imposed hijab is not “Islamic” and cannot be defended on religious grounds. In addition to personal views, Women’s Field (Meydan-e Zan), one of the web sites through which women activists interact, has started to feature a number of well-documented and informative articles; notably, Nima Namdari’s four-part “The Story of Imposition of Hijab” and Nasrin Azadi’s “Moral Security: The Plan that was Dormant for Eight Years.”

In March 2008 the Tehran chief of police, a key enforcer of the “Moral Security Plan,” was arrested for “immoral conduct”; the news leaked that his arrest had been ordered by the head of the judiciary and that there were incriminating videotapes of him and certain women, including one in which he ordered six women to pray naked with him. Whether true or not, such behavior undermines the logic of the “Moral Security” drive, which justifies the arrests of women on the grounds of keeping society safe. This gave rise to a debate in the web sites over the following questions: Who is the real danger to the moral order, women, or a system of values that reduces them to sexual beings? Can imposing hijab make society safe? What has gone wrong in the hijab debate? Are people turning away from religion? These questions and the answers offered suggest that after three decades, the official discourse of hijab as “protection,” as developed by Mortahari, has unraveled, and that elements that were latent in Shari’ati’s notion of hijab as “protest” and “choice” have resurfaced.

**Hijab Debate and Innovation: From Confinement to Choice**

The competing concurrent notions of hijab that are articulated in Iran are also evident in the rest of Muslim world and in contemporary Islamic legal debate—a debate that is still unfolding. What has this debate to tell us about the notion and politics of innovation in Islamic legal tradition?

First, as we have seen, there is neither clear-cut, coherent set of rules nor a single notion of hijab, but rather several contested ones, running the gamut from confinement to choice. These notions rest on different theological, juristic, social, and sexual assumptions and theories, shaped in interaction with sociopolitical and economic forces, and with those who have the power to represent and define the laws based and derived from Islam’s sacred texts. Hijab became an problem, a legal issue to address, only in the latter part of the nineteenth century when the encounter with modernity and women’s increasing presence in public space made classical figh rulings untenable. In the course of the twentieth century, the tension between “covering” and “confinement,” which for many centuries had permeated the discourses on hijab in Islamic legal thought, gave way to a different set of tensions: between notions of hijab as “protection,” “protest,” “identity” or “choice.” Various elements, in different combinations and at times contradictory, are now invoked, appealed to and enacted upon in different political contexts. A mélange of “protest,” “identity,” and “choice” have become the main ingredients of what hijab means for the vast majority of Muslim women who feel their faith and identity have been undermined, whether this pertains to those living as minorities in the West or those in Muslim countries like Turkey and Tunisia where the state restricts the wearing of hijab. But these notions remain intellectually undeveloped and subordinated to either traditional or ideological visions of Islam; they therefore become redundant and go into eclipse in traditional settings or under an Islamist regime that attempts to translate classical figh rulings on gender rights into policy.

The second strand of argument is that political Islam and its gender discourse contain the seeds of their own transformation and, as we have seen in the case of Iran, have provoked women’s resistance and the shaping of new juristic arguments and positions promised on a notion of hijab as a right and choice for Muslim women. There are two linked processes involved.
adopt different forms of covering (including, more recently, the face veil) are using hijab as a marker of a new identity, as a form of protest, to redefine the terms of their presence in public space. These women defend their choices, either in terms of faith, or by appealing to the feminist critique of the objectification of women's bodies and the post-colonialist critique of the representation of the Islam as the Western "other." They use this modern discourse, not that of classical fiqh, to make sense of their experience and articulate their perception of hijab. For them, like the Iranian women, the right to choose is central to being a Muslim and a woman. Likewise, the debates over the French ban on wearing hijab in school, and the Turkish outlawing of headscarves in government offices and universities, has highlighted the issue of freedom of choice.

It was precisely this combination of faith and choice, private and public, in the discourse of hijab as shaped by and practised by Muslim women, that has become problematic, as the debates over the headscarf bans in France and Turkey have revealed. These debates are too complex and multifaceted to enter into here, but one relevant aspect of them is that they reveal the contradictions in secularist feminism as well as its paternalistic and authoritarian tendencies; how its difficult relationship with religion and its claim to speak for all women can negate women's realities and choices. The two core arguments of those feminists who oppose hijab are that it is an oppressive practice, and that those who wear it are either duped by a patriarchal religion or are forced into it by their menfolk. Such arguments are, in effect, similar in their premises to those of the Islamists who argue that hijab liberates and protects women, that women without hijab are "naked" sex objects and slaves of consumer society. Both deny Muslim women agency, the right to choose and to define for themselves the terms of their presence in public space. In the ensuing heated debates, Muslim feminists have come to take a position that constitutes common ground between Islamists and feminists; they insist on women's own right to define the meaning of hijab and to enter public space on their own terms, as a matter of both belief and choice.

Finally, the obsession with hijab in contemporary discourses (both Western and Islamic), which speaks of its symbolic significance, has in a convoluted way enabled Muslim women to challenge jurisprudential wisdoms and to redefine the terms of their presence in public space. In so doing, they are confronting prevailing notions of hijab, giving it a new meaning and symbolic value and provoking the jurists to produce...
new arguments and positions from within the Islamic legal tradition. That women now have this voice is, in the end, what I consider to be an innovation in Islamic legal thought.

NOTES


2. Hijab has been translated as cover, wrap, curtain, veil, screen, partition. For the difficulty in each of these terms, see Fadwa El Guindi, "Hijab," in *The Oxford Encyclopedia of the Modern Islamic World* (Oxford: Oxford University Press, 1991), 2: 103.

3. A woman's male relatives, known as her mahram, include her husband and father, brother, son, father's brother, brother's and sister's son, husband's father.

4. For an insightful discussion, see Linda Clark, "Hijab According to Hadith: Text and Interpretation," in *The Muslim Veil in North America: Issues and Debates*, ed. Sajida Alavi, Homa Hoodfar, and Sheila McDonald (Toronto: Women's Press, 2003), pp. 214-285. Clark shows there is little concern in the hadith literature with women's covering and no explicit reference to the covering of hair; there are more hadiths on men's dress and covering their ‘umurah than on women's dress.

5. Other terms commonly used today in different countries, such as purdah (purdah), chador, and burqa, are not found in classical legal texts.


8. Ibn Rushd's discussion is confined to the four Sunni schools; Motalahi shows that the same issues and style of argumentation are shared by Shi’a jurists, see Motalahi, *Mas’alah-yi Hejab*.


18. For critical discussion of these ahadith, see El Fadl, *Speaking in God’s Name*, pp. 231-247.
20. For further discussion of Motahhari, see Mir-Hosseini, "Islam and Gender Justice," pp. 98-99.


22. Ali Shariati's first lecture, "Fatima is Fatima," was delivered in April 1971, and the second, "The Expectation of the Age from the Muslim Women," in April 1972; the seminar took place in July 1972.

23. Shariati, Zan, pp. 274-275. This is from a conversation with a group of followers in 1975, after his release from prison, published later as "Hijab," which clearly suggests how hijab, like other Islamic concepts, was for him a tool of political ideology. Ibid., pp. 161-163.

24. For instance, "Once someone asked me about hijab (the head covering) and I said that I am just a cloth merchant, I am a social worker."


26. For the treatment of the issue by Ayatollah Azari Qomi, an influential cleric in the 1980s and the early 1990s, see Mir-Hosseini, Islam and Gender, pp. 65-67.


28. In October 2003, for instance, Hossein Khodadad's blog Hejaj dar eslam esfari nist (Hijab is Not Compulsory in Islam) was blocked. According to Khodadad, this followed an opinion poll that he conducted through it, in which of 5,600 responses received over ten days, only 4 percent believed that hijab was compulsory in Islam; see http://akhbar.goy.com/politics/archives/0179737.php in Farsi; accessed July 10, 2010. His new blog has also been blocked.

29. Motahhari, Mas'alab-ye Hejaj, p. 244.

30. For the definition of hijab, see Mir-Hosseini, "Islam and Gender Justice," pp. 98-99.


32. Shariati, Zan, pp. 274. For instance, "Once someone asked me about hijab (the head covering) and I said that I am just a cloth merchant, I am a social worker."

33. Article 102 of the Law of Islamic Punishment.

34. For the treatment of the issue by Ayatollah Azari Qomi, an influential cleric in the 1980s and the early 1990s, see Mir-Hosseini, Islam and Gender, pp. 65-67.

35. This literature is too extensive to list here; for examples by clerics who reproduce versions of Motahhari's discourse, see Hossein Habibollahi, Hijab dar Bihijab (Veiling in Unveiling) (Qom: Intisharat Davari, 1994); Ruhollah Hosseiniian, Harame-ye Effat (The Boundary of Modesty) (Tehran: Islamic Propaganda Organization, 1994); and Mchbi Mehrizi, Astabaneh-ye Hejaj (The Pathology of Hijab) (Tehran: Javanravesh, 2000).


37. In October 2003, for instance, Hossein Khodadad's blog Hejaj dar eslam esfari nist (Hijab is Not Compulsory in Islam) was blocked. According to Khodadad, this followed an opinion poll that he conducted through it, in which of 5,600 responses received over ten days, only 4 percent believed that hijab was compulsory in Islam; see http://akhbar.goy.com/politics/archives/0179737.php in Farsi; accessed July 10, 2010. His new blog has also been blocked.


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for his view that the covering of hair and neck cannot be justified on religious grounds. This received wide coverage on other Farsi web sites. However, Qabel’s blog was subsequently taken down.

44. In an interview in January 2005 with Dariush Sajadi on the theme of Islam and Modernity, broadcast by Homa TV (based in the United States and reflecting the views of Iranian reformists), the text of the interview, in five parts, appeared on Farsi web sites. It is now available on Mousheh Kadivar’s site: www.kadivar.com (accessed June 17, 2010).

45. For a report in English, see www.payvand.com/news/07may/103.htm; for a report of reactions in Persian, see www.roozonline.com/archives/2007/04/00 (both accessed June 17, 2010).

46. The last part was posted on April 16, 2008, but the website can no longer be accessed.

47. The website can no longer be accessed.

48. The arrest and the rumors were reported on Iranian web sites, including conservative ones; the Judiciary confirmed the arrest without commenting on the charges; for a sample of coverage, see Omid Memarian, “The Regime’s Cover-up for the Naked Commander,” Roozonline, March 13, 2008.

49. Hassan al-Turabi, interview with Al-Arabiya TV, April 10, 2006.


51. The literature on contemporary “veiling” is vast; among the most articulate writers on the subject is Katherine Balibou, Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotypes (Herndon, VA: International Institute of Islamic Thought, 2005).


CHAPTER 12

Modern Movements in Islam

JOHN O. VOLL

Muslim movements in the modern era provide important examples of innovation in Islamic history. The wide variety of movements itself shows the dynamic diversity of approaches to dealing with modernity and modernization. Over the past century and a half, as modernity itself has changed, Muslim responses to the new modes of modernity indicate the innovative capacity of Muslims. Most frequently, analysts look at innovations in economic, social, and political areas, but the adaptations are also clearly visible in the many religious movements as well. These “religious” movements themselves can be seen as an important synthesis of social, political, and religious elements that points to the emergence of distinctive modes of Islamic expression in a contemporary world of “multiple modernities.”

Modern movements in Islam take many different forms. In this diversity, two major types of “modern movements” are identifiable. The first is the set of movements that involve the major conscious efforts in the past century and a half to articulate and develop “Islamic modernism.” In this broad movement, an important characteristic is “the self-conscious adoption of ‘modern’ values—that is, values that authors explicitly associated with the modern world.” However, “modernist” activists were not simply modern Muslims, they also wished to preserve and improve Islamic faith in the modern world. Although “modernist” movements took many different forms, their focus was to maintain an authentic Islam in the contexts of modernity. This venture involves a great
Innovation in Islam

Traditions and Contributions

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Contents

List of Illustrations
Acknowledgments ix

1. Contextualizing Innovation in Islam
Mehran Kamrava 1

PART ONE. THE INTELLECTUAL PROCESS
2. Knowledge and Hermeneutics in Islam Today: Which Reform?
Tariq Ramadan 23

3. Deconstructing Epistême[s]
Mohammed Arkoun 39

4. Iranian Shi'ism at the Gates of Historic Change
Mehran Kamrava 58

PART TWO. THE ARTS AND LETTERS
5. History from Below, Dictionary from Below
Nelly Hanna 85
6. The Translation of the Qur'an: An Impossible Task:  
The Classical Linguistic-Theological Roots of the Debate  
Nasr Abu-Zayd  
98
7. Toward a New Understanding of Renewal in Islam  
Adonis  
111
8. Creation, Originality, and Innovation in Sufi Poetry  
Patrick Lande  
125
9. Innovation in the Visual Arts of Islam  
Walter B. Denny  
143

PART THREE. ISLAM IN THE MODERN WORLD

10. Liberal/Progressive, Modern, and Modernized Islam:  
Muslim Americans and the American State  
Sherman A. Jackson  
167

11. Hijab and Choice: Between Politics and Theology  
Ziba Mir-Hosseini  
190

12. Modern Movements in Islam  
John O. Voll  
213

List of Contributors  
239
Index  
245

Illustrations

1. Page in Kufic script from a Qur'an manuscript, ink on parchment,  
Iraq, ninth century C.E.  / 146
2. Page of shikasteh calligraphy, ink on paper, Iran, eighteenth  
century C.E.  / 147
3. Shabada (profession of faith), ink on paper, Kashgar,  
twenty-first century C.E.  / 148
4. Advertising signage, Morocco, late twentieth century C.E.  / 148
5. Plate with Kufic inscription, slip on earthenware, eastern Iran,  
tenth century C.E.  / 150
6. Plate with figural decoration, luster on white ware, Iran,  
thirteenth century C.E.  / 151
7. Bowl with figural decoration, mina'i colors on white ware, Iran,  
thirteenth century C.E.  / 153
8. Jug with figural decoration, black line under turquoise glaze on  
reticulated white ware, Iran, thirteenth century C.E.  / 154
9. Underglaze-painted tile panel made in Iznik, Mosque of Selim II,  
Edirne, Turkey, ca. 1572 C.E.  / 155
10. Tomb of the Samanids, Bukhara, Uzbekistan, ca. 901 C.E.  / 157
11. Glazed brick from the Great Mosque of Malatya, Turkey,  
thirteenth century C.E.  / 158
12. Tile mosaic from the Attarin Madrasa, Fez, Morocco, late  
thirteenth century C.E.  / 159