Family law in Islam; between the demands of fiqh and society

The Al-Mahdi Institute’s 3rd Annual Contemporary Fiqhi Issues Workshop

26th – 27th March 2015
Family law in Islam; between the demands of fiqh and society

Contributors Workshop
26th – 27th March 2015, Birmingham

Convenor: Dr Ali-Reza Bhojani
Al- Mahdi Institute
60 Weoley Park Road, Birmingham, B29 6RB
In recent years many tensions relating to the “Islamic,” or more precisely the fiqhī, conception of sharia precepts regarding family law have arisen. These tensions reflect the changing and diverse societies in which Islam is practiced, both in Muslim majority and minority contexts. Changing social and cultural norms, coupled with the diverse regulatory frameworks of different nation states have led to numerous specific challenges relating to issues around family hierarchy, forced marriage, the age of consent, polygamy, equal access to divorce, inheritance, the concept of mahramiyya (consanguinity) and its implications for adoption, to name but a few.

Family law is defined as an area of law that deals with matters and regulations that have a significant impact on family relationships, particularly relating to marriage, divorce, adoption, custody, inheritance and abuse. In the contemporary age, obligations and disputes within the area of family law have grown, and now family law is entwined with debates over the structure of family, gender bias, and morality. Beyond the on-going disputes within the area of family law per se, observing Muslims living in contemporary societies, are faced with additional challenges arising out of their desire to follow and enact the fiqhī interpretation of relevant sharia regulations. At the heart of these concerns are questions relating to if, how and to what effect, does the fiqhī conception of family law impact societal and family relations when implemented, both at a personal level within a secular society, and at a statutory level within the Muslim world.

The 3rd annual fiqhī workshop at Al-Mahdi Institute aims to facilitate scholarship directly addressing questions surrounding ‘Family law in Islam; between the demands of fiqh and society.'
Thursday 26th March

10:30 - Registration

10:45- Welcome & Opening Remarks

11:00 - 12:15 Panel 1

The Quranic Basis for Family Relations
Sayyid Jaafer Fadhllallah (Islamic Shar‘i Institute, Lebanon)

Coherence in Surat al-Nisa: The Supposition of Women’s Economic dependence
Dr Rawand Osman (Al-Mahdi Institute)

12:15 - 2:00 (Lunch & Salat)

2:00 - 3:00 Panel 2

Unregistered Muslim Marriages- a ticking time bomb?
Ms Aina Khan (Duncan Lewis Solicitors)

Re-reading the ayat al-ahkam in the Quran regarding family relations
Prof. Ayat. Mohaghegh Damad (Shahid Beheshti University)

3:00 - 3:30 Break

3:30 – 4:45 Panel 3

Muslims between fiqh & Society: Maqasid al-sharia and modern common Morality
Dr Lena Larsen (University of Oslo)

Adoption in Islam
Shaykh Arif Abdul Hussain (Al-Mahdi Institute)

4:45 - Concluding Remarks
Friday 27th March

9:45 - 10:45 Panel 4

The Role of 'Urf in Islamic Law: The Case of the Guardianship of Women
Prof. Liyakat Takim (McMaster University)

Inter-faith Marriage in Imāmi Exegesis and Jurisprudence: The search for Legal Intent and Communal Boundaries
Shaykh Vinay Khetia (McMaster University)

10:45 - 11:00 Break

11:00 - 12:00 Panel 5

The Jurist in the New State: the Failure of the codification of Shi‘i Family Law in Iraq
Shaykh Hasan Beloushi (Exeter University)

Domestic Violence between Religion and Culture
Dr Ali Fanaei (Al-Mahdi Institute)

12:00 - 2:30 Salat & Lunch

2:30 – 3:45 Panel 6

Muslim Family Laws and the challenge of Equality
Dr Ziba Mir Hosseini (University of London, SOAS)

Autonomy & Marital Rape; A Virtue Reading of the Islamic Sources
Prof. Seyed M. Ghari Fatemi (Al-Mahdi Institute)

3:45 – 4:15 - Concluding Discussion & Remarks
Qur’anic Precepts for Family Relations
Sayyid Ja’far Fadlallah - Fadhlallah Institute

Sayyid Jaafer Muhammad Hussayn Fadhil was born in Beirut on June 24th 1974. He holds a Master’s certificate in Sociology from the Lebanese University (2001) and is presently working towards the PhD. He has been a lecturer of jurisprudence at the Islamic Shar’i Institute, Lebanon since 1999 and currently holds the position of General Religious Supervisor to a benevolent charitable organisation.

Abstract: Qur’anic Precepts for Family Relations
The Noble Qur’an is considered the first source for Islamic legislation. Its primacy, however, is not limited merely to the fact that its verses are referred to in the same vein that riwāyāt (narrations) are referred to in the discovery of legal rulings. Rather, in its very being, it represents the benchmark that must necessarily regulate the boundaries of the meanings of the riwāyāt as regards their absoluteness and qualification, or their generality and specificity. This is especially true since the realm of riwāya is one that is linked to practical applications of general principles and queries that may arise from the mental process of the questioner or from prevalent situations. For that reason, the Noble Qur’an shapes the context for the intended meaning of the riwāyāt that lack objective contextual indicators but which then tread the course of absoluteness in their conveyance. The paper presented here revolves around a review of what is featured in the Qur’an regarding the family, and will be concentrating on two main points. It must be noted here that, with Allah’s permission, we will only be treating the most prominent issues within these two points, and we’d like to emphasize that we will limit the discussion to the general deductive process of the Qur’anic verses that we will be presenting: The institution of marriage and what it entails, considering that it is the first nucleus of the family system: Within this discussion, we will attempt to unearth the philosophy of marriage in Islam, as well as the foundations that it stands on. This will then act as authoritative grounding within the scope of which legislative particulars can subsequently be structured and established. Precepts of familial relationships after the emergence of the fruits of a marriage (i.e. the children), whereby the husband now takes on the role of father and the wife the role of mother, and we now have a filial relationship ensuing with the parents and a fraternal one between siblings. We will not be delving into inheritance as a subject within this paper, because of its link to the topic of financial dynamics within which the family features as a sub-topic in itself, and also because it is a divinely-decreed matter that the individual has no connection with, being an imperative fact of life after the death of a person. What we do wish to deal with here are family relationships that the individuals within it uphold during their lifetimes and not after their death.
Coherence in Surat al-Nisa’: the Supposition of women’s economic dependence

Dr Rawand Osman – Al-Mahdi Institute

Dr. Rawand Osman currently teaches “Islam and Gender” at AMI. She holds a PhD in Islamic Studies from the University of Birmingham, and is author of the book “Female Personalities in the Qur’an and Sunna: Examining the Major Sources of Imami Shi’i Islam”, which is part of the new book series, Routledge Persian and Shi’i Studies. Her research interests include textual analysis of Islamic scripture, Islamic feminism, and feminist theology more generally. 

Abstract: 

Coherence in Surat al-Nisa’: the Supposition of women’s economic dependence

Some Muslim feminist-informed scholars have attempted to break with the hadith literature, seeing how it may be viewed as very harsh on women, and favoured a ‘Qur’an-only’ approach. Even those who do not support this theoretical framework have practically focused on the Qur’anic text and largely disregarded the sunna or hadith. However, despite that method, women’s interpretations have observed that there still remains in the Qur’an, a “degree” of “male dominance/preference”. This preference comes up in several verses; and so far each verse has been discussed separately, thereby contextualizing each problem on its own, such as men’s “degree over women” being only with regards to divorce (Wadud, 1994), or “wife-beating” being only a part of hudud (Abou El Fadl, 2008). One wonders that if the problem of male dominance is a common denominator, even though taking many forms, whether there is not in fact a more unified reason for all those issues. This research paper asks whether there is a concurrent reason for the so-called “problematic” verses on women in the Qur’an? One of the more pronounced Qur’anic statements on the subject is verse [4: 34] where qiwama is related to nafaqa, albeit not exclusively to that. Hadith literature actually elaborates on this point, by bringing in questions of inheritance and jihad. Then, polygamy is also put right next to issues relating to different expected financial responsibilities of men and women, and the supposition that men take care of women financially [4: 3]. Finally, the different attitudes of the Qur’an to the nushuz of women [4: 34] and that of men [4: 128], which have appeared to some as doublestandards, all point to the possibility of a deeper reasoning at work in the context of those verses. This paper focuses on the textual relations in Surat al-Nisa’ where all aforementioned issues of polygamy, orphans’ rights, women’s financial rights, inheritance, and marital relations, are all discussed side by side. The paper proposes that the Qur’an actually pre-supposes women’s de facto weaker position in society, especially with regards to financial dependence.
Unregistered Muslim Marriages – a ticking time bomb?

Aina Khan – Duncan Lewis Solicitors

Aina Khan launched and heads the Islamic Department at Duncan Lewis Solicitors, a nationwide firm with 600+ staff. In addition to her mainstream work as a specialist Family lawyer, Aina is recognised as the UK’s leading specialist in Islamic Family Law. Aina has developed her niche specialism in Islamic Family law over 20 years, providing pioneering solutions which work under English as well as Sharia law.

Abstract: Unregistered Muslim Marriages – a ticking time bomb? In the 21st Century, the need for critical reform in Islamic family law, and its application under civil law in Western as well as Muslim states, continues to be intensively debated. Whilst political debates take place with a call for governmental intervention to eliminate discrimination against Muslim women, the pressing necessity for wide-ranging reform in express areas can no longer be denied:–

1. Gender equality in accessing financial resources of a Muslim marriage

2. Unequivocal legal recognition under English law of the divorced wife’s contractual right to ‘Mehr’ and return of her financial contributions if in an unregistered Muslim marriages

3. Wives to have ‘Tafweed’ (the right to give unilateral ‘no fault’ divorce) and restrictions on polygamy in the Muslim marriage contract.

Possibly the most pressing need for reform is to educate Muslims on the Islamic narrative regarding having a formally recognised marriage that protects women and children. It is estimated that 80% of young British Muslims are in unregistered marriages – and that this is growing rapidly. This leaves couples with no legal rights upon divorce or to inheritance and pension rights. Given the shocking deficiency in quantitative and qualitative data (coupled with the paucity of individuals bridging the divide between religious scholars and legal experts with experience of the realities of Muslim marriage), intellectual paralysis has set in. This malaise is exceedingly detrimental to the societal welfare of Muslim women and children. Indeed it can be argued that the growing perplexity in Private International law as to the status of void/voidable/non-marriages’ is leading to direct and unnecessary discrimination – with resulting significant financial harm. Can we wait patiently for government and religious leaders to initiate change? Perhaps it is time for legal advocates and academics to step forward...
Between the demands of fiqh and Austinian Jurisprudence: an anthropologically grounded perspective

Dr Roger Ballard – Centre for Applied South Asian Studies

Dr. Ballard, A Consultant Anthropologist and Director of the Centre for Applied South Asian Studies; takes a specialist interest in the changing dynamics of family and kinship, in popular religious practice, and in differential patterns of upward social, educational and economic mobility within all of these groups, both in the UK, and in their home base in the subcontinent. Dr. Ballard also regularly accepts instructions to prepare expert reports for use in legal proceedings in which members of Britain's South Asian minorities have found themselves caught up, and in which social, cultural, linguistic, familial and religious issues are in some way at issue.

Abstract: Between the demands of fiqh and Austinian Jurisprudence: an anthropologically grounded perspective. It is not just that advice as to the socio-cultural premises on the basis of which the dynamics of family life should ideally be constructed has always been key component of the Shari'a tradition: whilst many other components of its behavioral advice have by now effectively fallen into abeyance, families still provide the foundation of Islamic life, no less in the diaspora than in Dar-ul Islam itself. However diasporic contexts, and especially in Euro-American jurisdictions, it finds itself in the midst of a system of jurisprudence whose premises at first sight differ radically from those set out in the Shari'a. But by just how much do they differ? And how might they seek to accommodate each other's difference?

In exploring this conundrum it is vital remember that the Shari'a is not Law in the Austinian sense: it is not a code, let alone a set of statutory commands; instead is much better understood as a source of personal guidance, with whose broad premises all Muslims should do their best to comply as they set about ordering their interpersonal relationships. In consequence it make no mention of family life per se; instead indicates that in the articulation of all such relationships – and most especially those of kinship – moral premises should always trump self-interest, and that the fulfilment obligation should always precede the exercise of rights in the construction of the networks of mutual reciprocity which are the foundation of local communities. The absence of any mention of ‘family' or ‘family law' is from the Shari'a (and indeed from the Qur'an) is self-evident a no brainer from an Islamic perspective, since no network of mutual reciprocity is regarded as being more significant, or more tightly knit, than those which are articulated as between kinsfolk, and which remain permanently in motion from birth to death, and as such provide the foundations of the social order.

In my view mere pressure from either side, or indeed from both sides together, will produce anything more than dusty chalk; in my view our first task must be to appreciate the merits of the system of family Jurisprudence with which they are familiar, before going on to explore, and above all to acknowledge the deficiencies in their own Jurisprudential in the light of what they have learned. Once both cheddar and paneer begin to respect each other as having common characteristics as Chedeer, we are likely to find that we have at long last produced something which everyone can enjoy.
Dr. Ziba Mir-Hosseini is a legal anthropologist, specializing in Islamic law, gender and development. She has a BA in Sociology from Tehran University (1974) and a PhD in Social Anthropology from University of Cambridge (1980). She is a Professorial Research Associate at the Centre for Middle Eastern and Islamic Law, University of London. She has held numerous research fellowships and visiting professorships, including a Fellowship at the Wissenschaftskolleg zu Berlin (2004-5) and Hauser Global Law Visiting Professor at New York University (2002-8).

Abstract: Muslim Family Laws and the Challenge of Equality

At the heart of the unequal construction of gender rights in Muslim family laws lies a theological assumption: God has given men authority over women. This assumption is justified by reference to a Qur’anic verse 4:34 and is encapsulated legally in the notion of men’s qiwama (custodianship, care, supervision). Challenges to this religious legitimation of patriarchy entail asking fundamental questions: Islam’s sacred texts speak of justice; what do they mean by this? Does it include the notion of equality for women before the law? If so, how are we to understand those passages in the texts that appear not to treat men and women as equals? Can we rethink fiqh-based family laws in line with contemporary notions of justice in which gender equality is inherent? What does equality in family laws entail? These key questions have been the subject of heated debate among Muslims since the early 20th century. In my presentation, I shall explore how Muslim legal tradition has endeavoured to meet the challenge that contemporary notions of gender equality present to traditional fiqh conceptions of family and gender rights. Recent Muslim reformist and feminist voices and scholarship have produced new knowledge and transformative interpretations from within the tradition.
Interfaith Marriage in Imāmī Exegesis and Jurisprudence: The Search for Legal Intent and Communal Boundaries

Shaykh Vinay Khetia – McMaster University

Vinay Khetia is a native of Toronto. He has a BA in Near Eastern Studies/Arabic and Religion from the University of Toronto, as well as a MA in the History and Philosophy of Religion from Concordia University. He is currently a PhD Candidate in Religious Studies at McMaster University. During these years he has attended various traditional Islamic seminars and published academic articles on Islamic Intellectual history and Islamic law. Currently, he is completing an annotated translation; al-Fusul al-‘Ashra fi al-Ghaybah by Shaykh al-Mufid (d.413 AH) and publishing a critical edition of Kitab Manaqib Fatima (as) by al-Hakim alNishapuri (d.405 AH).

Abstract: Interfaith Marriage in Imāmī Exegesis and Jurisprudence: The Search for Legal Intent and Communal Boundaries
This paper investigates how Imāmī (Twelver Shiite) scholars have grappled with and problematized a potential marriage between a Muslim man and a non-Muslim woman from amongst the people of the book (ahl al-kitāb). Imāmī jurists have predominantly (with some exceptions) arrived at two possible conclusions: it is permissible but disliked (makrūh) for Muslim males to contract a permanent (dā'imī) marriage with a kitābī or it is only permissible (again for Males) to contract a temporary (mut‘ah) marriage with permanent marriage being prohibited without qualification or at times on the basis of obligatory precaution (al-iḥtiyāṭ al-wājib) according to a number of contemporary Imāmī jurists, such as, Ayatullah Sistānī. The texts examined in this study stem from a cross section of three related genres of literature within the Imāmī intellectual tradition: the Qur’anic exegesis, Majma’al Bayān fī Tafsīr al-Qur’ān of Abū Faḍl al-Ḥasan al-Ṭabrisī (d.548/1154), the akhbārī work of demonstrative jurisprudence (al-fiqh al-istidlāl), al-Ḥadā‘iq al-nāḍira fī aḥkām al-‘itra al-tāhira, by Yusūf al-Bahrānī (d. 1186/1772.), and lastly, the contemporary uṣūlī work of demonstrative jurisprudence, Muhadhab al-āḥkām fī bayān al-Ḥalāl wa al-Ḥarām written by, ‘Abd al-‘Alá al-Sabzawārī (d.1413/1993). By presenting a cross-section of the Imāmī intellectual tradition I intend to shed light upon the multivocal and contested Imāmī intellectual discourse with regards to interfaith marriage. This study draws much needed attention to the application of strategic hermeneutical tools used by Imāmī scholars such as abrogation (naskh), juristic preference (tarjīḥ), and reconciliation (jama’) employed by Imāmī exegetes and jurists in their attempt to resolve Qur’anic ambivalence and bifurcation (al-ta‘āruḍ) within the Imāmī hadith tradition in their quest for the discovery of legal intent (murād) of the Qur’ān and sunna. It will also be asserted that the selective implementation of these various stratagems of substantive jurisprudence (uṣūl al-fiqh) are done so in or order to grapple with a scholarly tradition which struggles to classify the spiritual and communal status of the people of the book; whom on one hand are lambasted for holding certain heretical beliefs such as Trinitarian theology in the case of the Christians, or simply, the denial of Muhammad as a prophet.
Domestic Violence between Religion and Culture: An Islamic Perspective

Dr Ali Fanaei – Al-Mahdi Institute

Dr Ali Fanaei completed 17 years of seminary studies in the Hawza Ilmiyya of Qum. His teachers included: Ayatullah Sayyid Muhaqheqh Damad, Ayatullah Tabrizi, the Ayatullah Haeiri, Ayatullah Vahid, Ayatullah Montazeri, and the Ayatollah Ahmad Mianeji. He has an MA in Islamic Theology from the University of Qum taking special interest in modern theology and philosophy of religion. He then moved to the UK to conduct research at the University of Sheffield where he was awarded an Mphil for research on Moral Scepticism and Realism and a PhD for research regarding the epistemic justification of moral beliefs. Alongside training students at Al-Mahdi Institute, he has also published a number of influential works in Farsi, through which Dr Fanaei is becoming known as one of the most important of a select group of roshan fikri (‘enlightenment thinkers’) whose engagement with questions pertaining to the modern world is informed with the deepest Hawzawi credentials.

Abstract:
Domestic Violence between Religion and Culture: An Islamic Perspective

The main question of this article is this. What is the role of religion itself in domestic violence? After defining technical terms, such as “religion itself” and “domestic violence,” I will examine different answers that are usually given to this question. By analysing the nature of human agency as free and autonomous, I will conclude that in order to commit domestic violence, one need to make a decision, i.e., to go through the process of decision-making. This means that, like other types of voluntary action, in committing domestic violence, the agent needs two sorts of reason for action: justifying reason and motivating reason. Therefore, if religion itself is to play a role in domestic violence, it is either by providing the agent with justifying reason or motivating reason for it, or both. Therefore, our main question should be redressed as the two following questions:

1) Does religion itself provide its followers with justifying reason for domestic violence?
2) Does religion itself provide its followers with motivating reason for domestic violence?

Since human agents usually have multiple sources of normativity, in order to single out religion itself as the/a source of domestic violence we need to rule out the other sources. However, there are two logical gaps between the premises and the conclusion of any argument that can be put forward to support this claim. Let us call them “hermeneutical gap” and “psychological gap” respectively. The hermeneutical gap is the idea that religious people do not have direct access to the teachings of their religion, and that there is always a kind of interpretation involved in religious knowledge. Therefore, in order to justify the claim that religion itself is somehow responsible for domestic violence, we need to show that the violent-provoking interpretation of the relevant sources of religious knowledge is the correct one, i.e., the only available interpretation which is hermeneutically valid. The psychological gap, on the other hand, is the idea that any claim about the content of religious teachings which is based on the behaviour of religious people is problematic and fallacious, because to justify such a claim we need to bridge a gap that is there between belief and action.
The Jurist in the New State: the Failure of the codification of Shi'i Family Law in Iraq

Shaykh Hassan Beloushi – Exeter University

Shaykh Hassan Jamal Beloushi has studied in Hawzat alQa‘im in Syria and he has completed his PhD in University of Exeter. He specialises in contemporary Jurisprudence, especially in contemporary Shi‘i Jurisprudence. He has published papers in academic journals in Arabic and his forthcoming book is Philosophy of Ethics in Medieval Shi‘i Thought. His general research interests lie in the fields of Philosophy of Ethics and current concepts in Theology. He has lectured on fields of Islamic Jurisprudence, Qur‘anic Sciences and Arabic in Syria and Kuwait. **Abstract:** The Jurist in the New State: the Failure of the codification of Shi‘i Family Law in Iraq It has been claimed that religion, especially Islam, and the modern state are not compatible due to the nature of their moral contradiction. This makes the application of Shari‘ah in a modern state impossible. This paper aims to examine this theory by studying the effect of Shi‘i law in post 2003 Iraq on the proposal of codification of the personal statute law that was proposed in 2014 and supported by a grand ayatollah. The proposal was put forth by a Shi‘i jurist and it was the first attempt at codifying Shi‘i personal statute law in the Arab world. However, senior Shi‘i clerics (marjii‘iyah) disagreed about its validity. The secular groups also refused the proposal claiming that it contradicts with the principles of human rights and it does not protect the rights of children. This paper will examine how Shi‘i jurists address personal statute law, particularly family law, in the modern state, bearing in mind that the case of Iraq is unique for the Shi‘a as it is a secular state but under the heavy influence of religious authorities and consists of a majority Shi‘i population. It will also examine the theory of the contradiction between Islam and the modern state by studying the case of family law in Iraq. The paper will focus on the opinions of three Shi‘i jurists; al-Ya‘qubī, who has adopted the proposal through his representative in the Iraqi government, alSistanī and al-Mudarrisī, along with the opinions of secular intellectuals.
Re-reading the āyāt al-aḥkām in the Quran regarding family relations

Ayatollah Sayed Mohaghegh Damad – Shahid Beheshti University

The founder of the Hawza of Qum - Ayatollah Mohaghegh Damad had two separate courses of education. He first attended the renowned Fayzieh School at Qum, Iran, where he received his traditional Islamic education in Arabic language and literature, Qur'an and hadith, Islamic philosophy, theology and jurisprudence. On this background he achieved the status of Mujtahid (Ayatollah) in 1970. Parallel to his traditional studies he pursued a modern academic education, first at Tehran University. There he was awarded a B.A. in Islamic Philosophy and an M.A. in Islamic Jurisprudence. After that he went to Belgium, to conduct research for a Ph.D. in Law at the Catholic University of Louvain-la-Neuve, being awarded his doctorate. Ayatollah Mohagegh Damad is one of the very few high-level Mujathids in Iran to have been educated in international law in the West; he is also recognized as one of the most important philosophers of the Shia world, acknowledged to be one of the leading teachers in the Hawza of Qum. Abstract: Re-reading the āyāt al-aḥkām in the Quran regarding family relations The Quran is a collection of verses that are of one of two types. The first of these two types can be seen in the verses that are predicative or propositional (khabarī). The second type of verses in the Quran is oratorical (khitābī). The verses concerning the regulation of family relations are of this second, oratorical, category. Now the question arises as to who the addressees of the oratorical verses are. The answer to this question is crucial to the interpretation of the verses in the Quran regarding family relations and is central to the subsequent inference of any regulative precepts (aḥkām) that these verses may indicate towards. Many exegetes consider the addresses of these verses to be the husbands, a position which results in many discriminatory interpretations of these verses. This paper challenges the above approach, and its resultant discrimination, through pointing towards a further division within the oratorical verses that demonstrates that in fact the addressees of these verses are not husbands but rather society at large.
Abstract: Autonomy and Marital Rape: Towards a Virtue Reading of the Islamic Teachings

Marital rape is the result of the denial of an individual's autonomy in the most private area of their personal life. As an unwanted sexual act by a spouse committed without the other person's consent, marital rape, is therefore in plain contradiction with the right to self determination as well as right to privacy. Undermining dignity of the victim by treating them as a means rather than an end in themselves, marital rape deontologically is an unethical vice act. Qur'anic teachings appeal for a stable joyful beneficial as well as a virtuous marital relationship. “And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.”1 To avoid any room for justifying marital rape, it is therefore necessary to read “Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish”2, under the Qur'anic purpose of marriage expressed in the above verse, and in conjunction with its previous verse commanding believers to avoid love-making with their wives during menstruation. Similar hermeneutical treatment also can/should be adopted to reread the Qur'anic notion of "Qawamah"3

Seyed Fatemi spent thirteen years studying to the highest level in the traditional educational seminaries of Qum under the direct instruction of some of the leading scholars of the present day. Alongside his traditional education Seyed Fatemi was also trained in Public Law at Tehran University, receiving the award of both an LLB and an LLM. In 1999 Seyed Fatemi was awarded with a PhD from the Faculty of Law at the University of Manchester for research engaging with Comparative Human Rights. Seyed Fatemi’s teaching and research interests include; the Philosophical foundations of human rights, International and comparative Human rights, Islam and Human Rights, Usul al-Fiqh and Hermeneutics, the History and Development of Fiqh, and Muslim Theology.
Muslims between Fiqh and Society: Maqasid al-sharia and modern common Morality

Dr Lena Larson – University of Oslo

Lena Larsen is the project director of the Oslo Coalition on Freedom of Religion or Belief at the University of Oslo. She received her doctorate in 2011 from the University of Oslo. Her research interests include Islam in Europe, Islamic jurisprudence with a focus on fatwas, Islam and gender, and freedom of religion or belief. Ms. Larsen was also the President of the Islamic Council of Norway (2000-2003), and served as a consultant for the quality of presentation of Islam in textbooks (1996-1998). She is also an associate Editor of "Facilitating Freedom of Religion or Belief: A Deskbook".

Abstract: Muslims between Fiqh and Society: Maqasid al-sharia and modern common Morality

Muslims in Europe live as a minority, and the focus on an Islamic justification for norms raises the question of the relationship between Islamic jurisprudence and national laws in different ways than in the Muslim world. Not least, the question is brought up by political actors in various public debates on whether Muslims are law-abiding and loyal citizens. The claim that fundamental European values are incompatible with Islamic ones is often heard in European public debate. “Fundamental European values,” however, are not clearly defined, and attempts to define them often turn on what they are not: Of central importance is the European majority society's rejection of an oppression of women that allegedly is based on Sharia and is seen as a threat. Fatwa discourses on women-related questions could be said to symbolize the supposed incompatibility of “fundamental European values” and “Islamic values”. Such discourses are regarded with hostility by the majority community. In this paper, I will argue that muftis’ use of maqasid al-sharia as arguments for their fatwas is translatable into a more commonly accessible language that allows clarifying fundamental values and their interpretations. Moreover, I will argue that the maqāṣid theory represents, according to Ebrahim Moosa “the ethical turn in Islamic Jurisprudence,” and forms one Islamic counterpart to a theory common morality of society, “the morality of ordinary people,” as the Norwegian philosopher Knut Erik Tranøy (1918–2012) defines it (Tranøy 2001). I seek to uncover a possible correspondence between the concepts and dynamics of the two models, and I use the findings to mirror two theories of maqasid in order to explain arguments for and resistance against reform of Muslim women’s questions in Western Europe.
Adoption within Islam

Shaykh Arif Abdulhussein – Al-Mahdi Institute

Shaykh Arif founded the Al-Mahdi Institute in 1993, and currently serves as its Director and Senior Lecturer in usūl al-fiqh and Muslim Philosophy. He has been at the forefront of developing and delivering Advanced Islamic studies for over twenty years and is committed to sharing the Human face of Islam at all levels of society through a combination of public lectures and intra and inter faith dialogue. Shaykh Arif was educated at the Madrassah Syed Al-Khoei, London and graduated with Honours in 1988 where he also taught Grammar, Logic, Islamic Law and Usul al-Fiqh. He then travelled to Iran to further his studies and received his training at Hawza Ilmiyyah of Qum. He also attended private training and research studies with leading scholars of Qum. Alongside these studies he was also teaching in Qum across a wide spectrum of the traditional Muslim scholarly disciplines. On his return to the U.K. after founding the Al-Mahdi Institute he continued his graduate (kharīj) training in Usul al-fiqh and fiqh under Ayatullah H. Amini.

Abstract: Adoption within Islam

The point of contention when it comes to adoption within Islam is that it does not fall into the category of Nisbi (blood), Rida’i (milk) relations or relation through marriage and as a result does not yield an intrinsic bond between the parent and the adopted child. What this means is that the child and parent will not be considered Mahram (consanguinity) and neither will they inherit each other. The Qur’an talks of three types of relations aside from the above three these are: 1- Care and guardianship of orphans which at most can be analogised with present day fostering 2- Claimed children or sons (Ad’iya) 3- Step daughters (Raba’ib) None of these secure consanguinity let alone mutual inheritance. If these are a Sharia yardstick then adoption as understood at present has no real place within the Sharia system. However, looking at the issue of Muakhat at the point of Migration, scope is created to legitimately think about adoption in Islam. This in addition to the possibility of the present day adoption not having a precedent within the early Muslim community. This paper by considering the variety of consanguinity created through marriage and the ethos of the law of inheritance from the primary texts will argue that there is a real case for the legitimacy of adoption within Islam. In terms of the adopted child’s consanguinity it will be argued that there is no essential facet or essential extension in relation to certain consanguinities formed through marriage apart from a particular family setup envisaged by Islam in terms of sacredness and respect of certain relationships. The case of reprehensibility of physical contact between unrelated mature male and female members that is often seen as a difficulty will be addressed through analogy with the case of masters or mistresses and subordinates and argued that even here there is no essential law of prohibition. The issue of inheritance will be resolved through the ethos of inheritance from within the Qur’an to point out that there is no essential feature or extension and so the adopted child ought to inherit.
The Role of 'Urf' in Islamic Law: The Case of the Guardianship of Women

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Professor Liyakat Takim is the Sharjah Chair in Global Islam at McMaster University in Hamilton, Canada. A native of Zanzibar, Tanzania, he has spoken at countless academic conferences and authored one hundred scholarly works on diverse topics like reformation in the Islamic world, the treatment of women in Islamic law, Islam in America, the indigenization of the Muslim community in America, dialogue in post-911 America, war and peace in the Islamic tradition, Islamic law, Islamic biographical literature, the charisma of the holy man and shrine culture, and Islamic mystical traditions. He teaches a wide range of courses on Islam and offers a course on comparative religions.

Abstract: The Role of 'Urf' in Islamic Law: The Case of the Guardianship of Women

This paper focuses on the socially pertinent matter concerning the legal status of the adolescent virgin of sound mind (al-bikr al-baligha al-rashida) and the process of spouse selection. The central question revolves around whether the legal consent of her guardian is a prerequisite for the validity of the marriage contract. This study examines the process of legal deduction and demonstrative jurisprudence, in an attempt to highlight the hermeneutical tools employed by Twelver Shi‘ite jurists venturing to overcome opposing legal opinions and the bifurcation in the hadith literature. Special attention is paid to two sample texts: mabani al-‘urwat l-wuthqa of Sayyid Abul Qasim al Khui (d.1993) and the fiqh al-Sadiq of Sayyid Muhammad Sadiq Ruhani (b.1926) which both arrive at different conclusions; al-Khui stipulates that the virgin daughter requires the permission of her guardian, where Ruhani does not consider the guardian’s consent to be obligatory. All of the above mentioned factors are instrumental in determining with whom legal agency rests and its subsequent modus operandi within the context of the family unit. Examination of this issue brings to light a variegated ijtihad (the process of deriving legal intent from the scriptural sources) in Twelver Shi’ite law couched in a complex web of legal epistemology fermented over a millennia with its results being equally relevant to vast numbers of contemporary believers who assent to this world.
The workshop addressed issues relating to regulations that have a significant impact on family relationships, particularly relating to marriage, divorce, adoption, custody, inheritance and abuse. In the contemporary age, obligations and disputes within the area of family law have grown, and now family law is entwined with debates over the structure of family, gender bias, and morality. In addition, changing social and cultural norms, coupled with the diverse regulatory frameworks of different nation states have led to numerous specific challenges relating to issues around family hierarchy, forced marriage, the age of consent, polygamy, equal access to divorce, inheritance, the concept of mahramiyya (consanguinity) and its implications for adoption.

The workshop benefited by the attendance of international research specialists from various educational institutes from around the UK and the globe, students and faculty of the Al-Mahdi Institute and other Institutions alike, as well as interested members of the public.

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