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# Speaking in God's Name

Islamic Law, Authority, and Women

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## 7 Faith-based assumptions and determinations demeaning to women

The juristic determinations analyzed thus far can be described as negligent or reckless with regard to the trust of special agency. At the heart of this negligence or recklessness is a violation that involves a degree of lack of honesty, self-restraint, diligence, comprehensiveness, or reasonableness. In each determination, the special agent failed to disclose a critical balancing act of competing interests, or failed to show reasonable concern and respect for one set of interests as opposed to others. Alternatively, the special agent failed to adequately analyze or take account of the critical material upon which his or her authoritativeness is based, whether this critical material is the instructions of the Principal or the activities of the relevant interpretive communities that formed around the instructions of the Principal. In each determination, we could point to a serious analytical flaw, the effect of which is to make the special agent self-referential and authoritarian. This type of analysis, however, is not adequate in addressing determinations that involve fundamental points of departure over the moral or ethical foundations that define our relationship to the Principal, Himself.

In a particular genre of determinations, the problem cannot be ascribed to a failure to investigate the evidence adequately or simply to an abuse of discretion. Here, the problem is not solely a sociologically based insensitivity to the interests of a particular group of people, or a failure to take account of the weight of the evidence. Rather, the issue is the basic moral commitments or understandings of the special agents, and the way they impact the dynamics of their relationship to the common agents. From a certain perspective, in this genre of determinations, the quantitative weight of the textual (instructional) evidence might point to a particular determination, nevertheless the moral convictions of the agents might pose a serious challenge to the acceptance of these determinations. This problem is well-illustrated in a whole set of traditions that can be described as demeaning to women. As discussed below, these traditions relate to a variety of issues

including the nature of women, the role of women, or even the fate of women. I am not arguing that textual evidence plays no role in this analysis for in fact, as we will see, the evidence is often conflicting and complex. The evidence in these cases tells a complex and contradictory story, and the question boils down to what and whom do you believe? In these cases, the dispositive reference often becomes the conscience or the moral understanding that defines one's relationship to the Principal. This argument is better demonstrated through the analysis of a group of determinations and the traditions cited in them. Most of the traditions that I will discuss are cited by C.R.L.O in the context of determinations that prohibit the mixing of the sexes (*ikhtilāf*), the employment of women outside the home, the veiling of women, or determinations maintaining that the spiritual status of a woman depends on the extent of her obedience to her husband.<sup>1</sup>

*Prostrating to husbands, licking their ulcers while struggling with Hadith methodology*

The C.R.L.O jurists, and in fact many others in the modern age, assert that wives are commanded to obey their husbands as long as the husband's command is lawful. Usually, this means that a wife must obey her husband if he orders her not to leave the home, not to work, not to visit friends, not to cook Indian food, or not to wear her grandmother's nightgown or curlers to bed. In other words, a wife should obey her husband in all mundane matters. She should also obey in other matters that, perhaps, are not so mundane. If the husband wants to have sex, she should promptly submit. If she wishes to fast, other than in the month of Ramadan, she must obtain his permission.<sup>2</sup> Furthermore, according to some traditions, discussed below, women must obey their husbands even if these husbands are wrong or unjust.<sup>3</sup> Typically, these jurists cite the Qur'anic verse stating: "Men are the maintainers (*qawwāmūn*) of women by what God has given some over the others, and by what they spend."<sup>4</sup> The word used in the Qur'anic verse, *qawwāmūn*, could mean the "protectors," "maintainers," "guardians," or even "servants." That same word is used in the Qur'an in one other context, and that is when Muslims are commanded to be the *qawwāmūn* of justice. Typically, those who agree with the C.R.L.O assert that this verse is added proof that husbands have the right to command and discipline their wives. I have dealt with the issue of obedience to husbands and the so-called "beating-verse"<sup>5</sup> elsewhere, and it is not fruitful to repeat the analysis here.<sup>6</sup> In this context, it is sufficient to note that this verse is not dispositive. For one, the word *qawwāmūn* is ambiguous, and more importantly, the verse seems to hinge the status of being a maintainer, guardian or protector on objective capacities, such as the ability to provide financial support. Arguably, if a woman is the one providing financial support, or stability, she becomes the one entrusted with the burden of guardianship. Furthermore, arguably, if financial responsibility is shared between

the partners, then they become each other's guardians. Furthermore, at no point does the Qur'an use the word *ṭā'ah* (obedience) in characterizing the marital relationship. Rather, marriage is characterized as a relationship of companionship and compassion (*mawaddah wa rahmah*), not a relationship between a superior and inferior.<sup>7</sup>

Nevertheless, the Qur'anic discourse does not play the primary role in determinations of spousal obedience. The primary role is played by traditions attributed to the Prophet, the most notable of these being the one in which the Prophet reportedly says, "It is not lawful for anyone to prostrate to anyone. But if I would have ordered any person to prostrate to another, I would have commanded wives to prostrate to their husbands because of the enormity of the rights of husbands over their wives."<sup>8</sup> This tradition is narrated in a variety of forms and through a variety of transmissions by Abū Dāwūd, al-Tirmidhī, Ibn Mājah, Ahmad b. Ḥanbal in his *Musnad*, al-Nasā'ī, and Ibn Ḥibbān.<sup>9</sup>

In one version, Maḥmūd b. Ghaylān reports that Abū Hurayrah said that the Prophet asserted: "If I would have ordered anyone to prostrate to anyone I would have ordered a wife to prostrate to her husband."<sup>10</sup> This version also occurs by the way of Faḍl b. Jubayr from Abū Umāmah al-Bahlī.

In another version, Abū Bakr b. Abī Shaybah reports that 'Ā'ishah said that the Prophet said: "If I would have ordered anyone to prostrate to anyone I would have ordered a wife to prostrate to her husband. If a man orders his wife to move from a red mountain to a black mountain and [again] from a black mountain to a red mountain it is incumbent upon her to obey."<sup>11</sup>

In a related version, 'Ā'ishah is reported to have said that the Prophet was standing among a group of *Muhājirūn* (Muslim migrants from Mecca to Medina) and *Anṣār* (native converts of Medina) when a camel came and prostrated to the Prophet. The Companions said, "O Prophet the cattle and trees prostrate before you; are we not more deserving [of such an honor]?" (meaning: Shouldn't we prostrate to you?). The Prophet said: "Worship your God and honor your brothers . . ." but the balance of the report is the same as above.<sup>12</sup>

Another version comes from Azhar b. Marwān. He reports that when Mu'ādh returned from Shām, he prostrated to the Prophet. The Prophet said, "What are you doing Mu'ādh?" Mu'ādh said, "I was in Shām and I saw that the people there prostrated to their priests and clergy and I wished we could do the same for you." The Prophet said, "If I would have ordered anyone to prostrate before anyone but God, I would have ordered a woman to prostrate to her husband. By God, a woman cannot fulfill her obligations to God until she fulfills her obligations to her husband and if he asks for her [i.e. for sex] while she is on a camel's back, she cannot deny him [his pleasure]."<sup>13</sup>

Another version has Mu'ādh returning from Yemen, not Shām, and asking the Prophet if Muslims should prostrate to him. The Prophet's reply is the same as above but without the addition about having sex on a camel's back. In yet another version, it is Qays b. Sa'd b. 'Ubādah who is returning from Ḥirah. The

same scenario then takes place as above.<sup>14</sup> Still another version has the Prophet adding that, "a woman cannot fulfill her obligations towards God unless she fulfills her obligations towards her husband. [In fact,] if he desires her while she sits on a saddle (or an upright seat used for birthing), she should submit."<sup>15</sup>

In a final version, Anas b. Mālik reports that the Prophet said, "No human may prostrate to another, and if it were permissible for a human to prostrate to another I would have ordered a wife to prostrate to her husband because of the enormity of his rights over her. By God, if there is an ulcer excreting puss from his feet to the top of his head, and she licked it for him she would not fulfill his rights."<sup>16</sup>

According to scholars of *hadīth*, the authenticity of these traditions ranges from *da'if* (weak) to *ḥasan gharīb* (good).<sup>17</sup> All of them are *āḥādī ḥadīth* (reports of singular transmissions) not reaching the level of *tawātur* (reports of several transmissions).<sup>18</sup> Importantly, these reports reach beyond other traditions that specify a narrow legal obligation; these reports explicate a fundamental principle that is supposed to impact upon all marriages and all gender relations. While the physical act of prostration to the husband is not permitted, the moral substance of prostration does apply through such traditions. The clear implication of the reports is that a wife owes her husband, by virtue of him being a husband, a heavy debt. The husband is owed the utmost degree of respect and even servitude.<sup>19</sup> It is not an exaggeration to say that according to these traditions, the wife lives as the husband's humble servant; she is to submit sexually on the back of a camel and lick his puss-filled ulcers if need be. A similar message is affirmed by another tradition also reported by Abū Hurayrah asserting that the Prophet said: "If a man calls his woman to bed, and she refuses to come, the angels will continue to curse her until the morning." There are several other versions of this report, which assert that if the man becomes upset because his wife will not have sex with him, the angels will continue cursing the woman until the husband is no longer angry.<sup>20</sup>

There is no question that these traditions, and others discussed below, have grave theological, moral, and social consequences. They do not only support C.R.L.O's determinations mandating obedience to husbands, but they also contribute to the general denigration of the moral status of women. After all, even the angels in the heavens are moved to the point of cursing women if they do not surrender their will and body to their husbands. Regardless of the jargon generated by apologists about how Islam liberated and honored women, these traditions subjugate a woman's honor to the will of men.<sup>21</sup> It is significant, for example, that after citing the prostration and submission traditions, the jurist Ibn al-Jawzī (d. 521/1201) makes the immoral claim that a wife should consider herself, for all practical purposes, the husband's slave. He states in part:

It is incumbent upon a woman to know that it is as if she is owned (*ka al-mamlūkah*) by her husband, therefore she may not act upon her own affairs or

her husband's money except with his permission. She must prefer his rights over her own and over the rights of her relatives, and she must be ready to let him enjoy her through all clean means. She must not brag about her beauty and must not taunt him about his shortcomings . . . It is incumbent upon a woman to endure her husband's mistreatment as a slave should. We have seen that the virtues of a slave woman were described to Mālik b. Marwān. When she was presented to him, he asked her about her affairs. She said, "I cannot forget who I am. I am your slave." So [Mālik] said, "This covered [woman] is worth her price."<sup>22</sup>

Although this quote is not representative of the predominant view in classical juristic tradition, the point remains that the prostration and submission traditions legitimate, if not induce, this type of discourse.<sup>23</sup> Because of the drastic normative consequences of traditions such as this, they require a conscientious pause. If by the standards of age and place, or the standards of human moral development, traditions lead to *wakḥāh al-ḍamīr* (the unsettling or disturbing of the conscience), the least a Muslim can do is to pause to reflect about the place and implications of these traditions. If we assume that the human *fiṭrah* (intuition) is socially and historically limited, it will necessarily be changing and evolving. Consequently, what will disturb the conscience in one context will not necessarily do the same in another. Nevertheless, if a Muslim's conscience is disturbed, the least that would be theologically expected from thinking beings who carry the burden of free will, accountability and God's trust, is to take a reflective pause, and ask: to what extent did the Prophet really play a role in the authorial enterprise that produced this tradition? Can I, consistently with my faith and understanding of God and God's message, believe that God's Prophet is primarily responsible for this tradition?

This is not an invitation to the exercise of whimsy and feel-good determinations. The duties of honesty, self-restraint, diligence, comprehensiveness, and reasonableness demand that a Muslim make a serious inquiry into the origin, structure, and symbolism of the authorial enterprise that produced the tradition before simply waiving it away and proceeding on his merry way. The conscientious-pause would obligate the Principal's agent to apply thorough critical thought to the tradition in question, in search for the role of the Prophet in it. To demonstrate this point, I will examine the prostration tradition, and similar reports, in some detail.

Perhaps the most notable thing about the prostration traditions is that they are structurally peculiar. In most reports, the Prophet is asked whether it is permissible to prostrate to him, the Prophet. To this he is supposed to have answered, "No! But actually if a human could prostrate to a human it would be the wife to a husband." Such a fundamentally revolutionary view is expressed out of context and in a rather casual way. Basically, according to these reports, the Prophet volunteers this injunction although that is not what is being asked. In most versions, the one doing the asking is a man and the response is given to a man or men. Although the traditions have a profound impact upon women,

this advice is supposed to be enunciated before an audience of men. This is quite a casual way of delivering advice that will have profound social and theological implications upon women in particular. Furthermore, as a matter of symbolic discourse, an unjustifiable nexus is created between the Prophet and husbands. The question posed to the Prophet is about the respect that is owed the Prophet. The response addresses the respect that is owed husbands. A powerful symbolic association is created between the status of the Prophet and the status of husbands. We observe a similar association between husbands and the symbols of Divinity in the submission tradition. A whole host of angels in the Heavens are aggrieved by the frustration of a man's libido. This only raises the question: what is it about a man's sexual urges that make them so fundamental to the pleasure of the Heavens? Does this include all forms of pleasure by men or only sexual? What if a man's pleasure consists of being breastfed by his wife or of being tied up and whipped by his wife? Do the Heavens maintain their enthusiasm for the male libido regardless of its many forms and regardless of the emotional consequences upon the wife?

The context and structure of the traditions makes them suspect. It is highly unlikely that the Prophet, in such an unsystematic or haphazard fashion, would address Islamic theological questions. Furthermore, the Qur'an is rather vigilant in asserting the unshared, undivided, and non-contingent supremacy of God. This assertion formed the basis for the Islamic dogma maintaining that submission to God necessarily means non-submission to anyone else. Consequently, any tradition that draws an association between the status of the Prophet, or the pleasure of God, and the status or pleasure of a human being is inherently suspect. Under all circumstances, it is reasonable to claim that if a tradition has serious theological, moral, and social implications, it should meet a heavy burden of proof before it can be relied upon. But even more, if a tradition is suspect because of a contextual or structural defect, among other reasons, then there should be a presumption against its authenticity, and the evidence supporting the authenticity of the tradition should be conclusive.

In the case of the prostration and submission traditions, the evidence suggests that they cannot be relied upon because we cannot conclusively assert that the Prophet played the primary role in the authorial enterprise that produced them. For one, they contradict the theological notion of the undivided supremacy of God and God's Will. In addition, they are inconsistent with the Qur'anic discourse on marriage. The Qur'an states: "From God's signs is that God created mates for you among yourselves so that you may find repose and tranquility with them, and God has created love and compassion between you" (Qur'an 30:21). The Qur'an also describes spouses as garments for each other (Qur'an 2:187). In addition, these traditions are not consistent with the cumulative reports describing the conduct of the Prophet with his own wives. For example, al-Bukhārī narrated that 'Umar's wife while arguing with 'Umar told him, "You reproach me for answering you! Well, by God, the wives of the

Prophet answer him, and one of them might even desert him from morning until night."<sup>24</sup> In Tayalisi's report, one of the Prophet's wives might argue with him until she angers him.<sup>25</sup> Furthermore, there are numerous reports by the Prophet's wives asserting that the Prophet never struck or insulted any one of them, and that his demeanor with his wives was gentle and playful, and that he would frequently seek their counsel.<sup>26</sup> These reports cast an image of the Prophet, as a husband, that is very different from the image advocated by the prostrating and submission tradition. The point, again, is not whether these reports, even if in *Ṣaḥīḥ al-Bukhārī*, have legal imperative value. The point is that the Prophet, as the most elementary reading of the *sīrah* (traditions of the Prophet's life) would reveal, was not a dictator within his family.

A person suffering the conscientious-pause would have to consider the above-mentioned considerations as part of the totality of evidence that must be sifted through in order to ascertain whether the suspect traditions meet the onerous burden of proof placed upon them. In addition, one might ask, considering the patriarchal society in which Islam was revealed, what are the chances that the Prophet did, in fact, prohibit the act of prostrating to him, but that the authorial enterprise added the part about the prostration of wives? As some commentators have noted, the tradition seems to be highly exaggerated (*fīhi ghāyat al-mubālaghah*) with what appears to be later editorial additions about mountains, saddles, backs of camels, and puss-filled ulcers.<sup>27</sup> Is it possible that the prostration part of the tradition was added as a, so-to-speak, rider-bill on an otherwise unrelated historical incident? To what extent should we probe the circumstances of the individuals engaged in the authorial enterprise? For instance, many of the versions of both the prostration and submission traditions go back to Abū Hurayrah, which is a problematic fact.<sup>28</sup> As we will see below, many of the traditions demeaning to women are reported, in one version or another, by Abū Hurayrah who has been a rather controversial figure in early Islamic history. In fact, criticism directed at his credibility is not novel, and, in fact, has induced some writers to compose books in his defense.<sup>29</sup> The basic criticism directed at him is that he was a late convert to Islam who became a Muslim only three years before the Prophet's death. Nevertheless, Abū Hurayrah transmitted more traditions attributed to the Prophet than most of the Companions who lived with the Prophet for as much as twenty years. Furthermore, compared to some Companions such as Abū Bakr, 'Umar, 'Alī, or Abū Dharr al-Ghifārī, he does not seem to have been particularly close to the Prophet. As a result, there are a large number of reports asserting that several Companions such as 'Ā'ishah, 'Umar, and 'Alī severely criticized Abū Hurayrah for transmitting so many reports. Abū Hurayrah's contemporaneous detractors objected to the fact that Abū Hurayrah was a late convert, and transmitted many traditions that contradicted the transmissions of more notable Companions. To these criticisms, Abū Hurayrah responded, that it was not his fault that other Companions forgot what they heard and saw while he cared to remember.

He also added that while other Companions were busy pursuing their commercial interests, he piously stayed with the Prophet, learning at his feet. Of course, this, in itself, implicitly detracted from the virtue of the other Companions, which only made Abū Hurayrah's credibility more problematic. For instance, in one such report, ʿĀʾishah called upon Abū Hurayrah to come see her, and she told him, "Abū Hurayrah! What are these reports from the Prophet that we keep hearing that you transmit to the people! Tell me, did you hear anything other than what we heard, did you see anything other than what we observed?" Abū Hurayrah responded, "O mother, you were busy with your kohl and with beautifying yourself for the Prophet, but I – nothing kept me away from him."<sup>30</sup> In a similar report, Abū Hurayrah would consistently say, "My close companion (*khalīlī* – i.e. the Prophet) told me such-and-such, and my close companion did such-and-such." ʿAlī confronted Abū Hurayrah and said, "Abū Hurayrah, since when was the Prophet your close companion!"<sup>31</sup>

Other reports asserted that Abū Hurayrah would contradict himself, or that he was corrected by other Companions such as Zubayr and ʿUmar. In fact, ʿUmar reportedly threatened to punish him if he did not refrain from transmitting traditions. In one report, ʿUmar told Abū Hurayrah, "If you don't stop transmitting *ḥadīth* from the Prophet, I will exile you."<sup>32</sup> Interestingly though, after ʿUmar's death, Abū Hurayrah only accelerated his transmission activities, and would reportedly comment that if ʿUmar was alive he would have had him beaten for his narratory zeal. On several occasions, as discussed below, ʿĀʾishah, the Prophet's wife, specifically objected to transmissions by Abū Hurayrah that demeaned women. In one report unrelated to women, Abū Hurayrah was addressing some legal issue when ʿĀʾishah was praying, but she overheard him nevertheless. By the time she finished her prayers, Abū Hurayrah had left the mosque upon which ʿĀʾishah reportedly said, "Did you see this man (*Abū fulān*), he came and sat next to my room as I was praying, saying such-and-such. If I would have caught up with him after finishing my prayers, verily, I would have corrected him."<sup>33</sup> Some reports even allege that the narration of reports became a means by which Abū Hurayrah earned a living. Other reports mention that Abū Hurayrah was knowledgeable in the Talmud and that many of his transmissions correlated with Jewish mythology and lore. Importantly, Abū Hurayrah seemed to claim esoteric knowledge of the Prophet. Reportedly, he would comment that he transmitted some things from the Prophet, but that he conceals so much more. If he would transmit everything he heard or knows from or about the Prophet, people would have had him pelted with shoes and garbage, and said Abū Hurayrah must be insane.<sup>34</sup> To this, al-Ḥasan (d. 50/670), the Prophet's grandson, responded, "By God, he is right! If he would tell us that the Kaʿbah is burning or crumbling no one would believe him!"<sup>35</sup>

These various issues led some early jurists to refuse to rely on the transmissions or legal opinions of Abū Hurayrah. Some later jurists such as al-Sarakhsī (d. 483/1090) accepted his transmissions only if they did not

contradict analogical analysis.<sup>36</sup> Importantly, however, Abū Hurayrah's reputation, primarily for sectarian reasons, has been substantially rehabilitated. In response to Shīʿī criticisms, Sunnīs insisted on the credibility and justness of character of all the Companions including ʿAlī's foe, Muʿāwiyah, and Abū Hurayrah, who reportedly supported Muʿāwiyah.<sup>37</sup> Some circulated traditions explained Abū Hurayrah's role as being the result of exceptional or super-natural circumstances. One such report, asserts that the reason Abū Hurayrah transmitted so much is that the Prophet made a special prayer asking God to allow Abū Hurayrah to forget nothing. Other reports assert that Abū Hurayrah was uniquely inspired so that he was able to ask the Prophet questions that the Prophet had hoped to be asked for twenty years.<sup>38</sup> Basically, through the persuasive powers of Sunnī apologetics most Sunnī collections of *ḥadīth* accepted the reports of Abū Hurayrah. In fact, it is likely that in order to defend Abū Hurayrah's credibility, some of the reports that originated with him were also circulated in the name of other Companions. So, for instance, in one report, the prostration tradition is transmitted in the name of ʿĀʾishah thus, giving the impression that even ʿĀʾishah accepted Abū Hurayrah's transmissions.

My point is not to impeach Abū Hurayrah, but these various pieces of information are relevant to determining whether traditions in which he figures prominently should be relied upon when the consequences of this reliance are so grave. If there is no reason for a conscientious-pause, the interpreter might be willing to be less critical or to give the report the benefit of the doubt. If, however, the theological, moral, and social implications are profound, an interpreter cannot treat the report with the same degree of tolerance. The approach I am advocating requires that the totality of circumstances be considered in evaluating reliance on a tradition. There should be a *proportional relationship* between the theological and social implications of a tradition and the burden of proof it should satisfy. If a tradition is suspect because it induces a conscientious-pause, then it should not be relied upon unless its authenticity can be conclusively established.

The suggested approach would evaluate issues related to the substance (*matn*), chain of transmission (*isnād*), historical circumstances (*zarf al-rivāyah*), and the moral and social consequences.<sup>39</sup> As we noted earlier, *matn* or substantive analysis, which relies on an analysis of a variety of intangible factors, is not a novelty in Islamic history.<sup>40</sup> According to the classical scholarship on the *ʿilal al-ḥadīth* (analysis of defects in tradition), a report with an impeccable chain of transmission may be rejected because the text of the tradition is not sound. As mentioned earlier, such a tradition would be rejected either because it contains grammatical or historical errors, or it clearly contradicts the Qurʾān, or the text is contrary to the laws of nature, common human experience or the dictates of reason.<sup>41</sup> After evaluating the totality of the evidence, classical scholars would declare a tradition suffering from these defects, or others, to have *ʿilal qāḍīyah fī al-matn* (an effective defect in the substance of the tradition that renders it unreliable).<sup>42</sup> But as noted earlier, this field remained under-developed and

under-utilized by Muslim scholars, and its ambiguities led some scholars to describe it as the "mysterious science."<sup>43</sup>

My point, of course, is to make the self-serving plea of orthodoxy, but, admittedly, classical and modern scholars have not attempted to correlate the authenticity of a tradition with its theological and social ramifications. The scholars of *ḥadīth* did not demand a higher standard of authenticity for a tradition that could have sweeping theological and social consequences. Additionally, as the passage from Ibn Khaldūn, quoted earlier implies, *ḥadīth* scholars did not engage in historical evaluation of traditions or examine their logical coherence or social impact, and as a result, they often accepted the authenticity of traditions with problematic theological and social implications.

If one adopts the proportionality inquiry advocated here, the conscientious-pause would lead one, at a minimum, to refuse to rely on traditions such as the prostration and submission tradition in legal or theological matters. This does not necessarily mean that one is conclusively deciding that the tradition is not authentic. Rather, one is only deciding that the tradition cannot be conclusively said to originate primarily from the Prophet. Since one suspends, perhaps indefinitely, reliance on such traditions, one does not need to affirmatively decide whether they are authentic or not. All one needs to decide is that they are not good enough to rely on, and, therefore, we do not even reach a faith-based determination. Now, let us assume that after discharging the five obligations by thoroughly evaluating everything I can discover about these traditions, my conscience remains troubled. My conscience remains troubled either because my evaluation of the evidence leads me to think that to the best of my knowledge this tradition appears authentic, or I find the tradition so fundamentally offensive to my understanding and relationship with God. In other words, assume that I evaluate everything related to the prostration tradition, and my conscience is not satisfied with a simple decision not to rely on the tradition because my conscience is satisfied only if I affirmatively believe the tradition is not authentic. I very much want to believe that the Prophet did not say this. Alternatively, assume that I find that the evidence points to the actual authenticity of the tradition, and yet, my conscience remains troubled because as a believer, I cannot believe that the Prophet said such things. What do I do then? I take the stand of a faith-based objector, and refuse to accept the authenticity of the traditions. If I am wrong, the fact that I discharged the five obligations would vindicate me, hopefully, before God, from the onerous charge of being whimsical. But if I am right in arguing that God looks to the effort and not the results, the simple fact that I discharged the five obligations would free me from liability.

#### *Keeping husbands and God happy, and making it to heaven*

Being fully conscious of the fact that the approach advocated above, particularly in the contemporary age, is at the very least quite controversial, the balance of

this chapter will attempt to demonstrate the necessity of this approach by addressing several more examples. This will require that I provide some more detail as to the classical methodology of traditions, and why I think it is inadequate. I will continue to focus primarily on the traditions cited by the C.R.L.O in reaching its determinations. This is not because I wish to discredit the C.R.L.O or its long list of affiliated jurists, but because it is my belief that the methodology utilized by the C.R.L.O has become very widespread in the Muslim world today.

In order to bolster its determination mandating obedience of wives to husbands, the C.R.L.O and the jurists who agree with this position frequently cite traditions that go beyond the submission and prostration reports. These traditions make a wife's religious salvation explicitly contingent on her husband's pleasure. For example, a tradition narrated by Abū Dāwūd, al-Tirmidhī, Ibn Mājah, Ibn Ḥibbān, and al-Ḥākim claims that Umm Salamah, the Prophet's wife, reported that the Prophet said, "Any woman who dies while her husband is pleased with her enters Heaven." This tradition is of the same degree of authenticity as the reports on prostration.<sup>44</sup> The commentators on the well-known classical source *Riyāḍ al-Ṣāliḥīn* say that this means only if the woman is pious and her husband is pleased with her, will she enter Heaven.<sup>45</sup> This is, of course, read by implication (*mafḥūm al-naṣṣ*, *mūthāq al-naṣṣ*, or *maḍmūn al-naṣṣ*). The literal text does not say a pious woman, it says any woman who dies with her husband pleased with her will enter Heaven. This is problematic because it makes God's pleasure contingent on the husband's pleasure. But even if we say the tradition only applies to pious women, it is still problematic because God's pleasure is still contingent on the husband's pleasure regardless of how impious the husband might be. The wife might be pious and the husband impious, and yet, the husband's pleasure matters. Then, we are forced to read a further implication; this tradition applies only if the husband is pious and the wife is pious. But even then, it is still problematic because what happens if the wife is more pious than the husband? What if the husband is spend-thrifty or ill-mannered or ill-tempered or violent or cowardly or stupid or lazy? Despite any possible occasionality, God's pleasure would be contingent on the husband's pleasure. This is a revolutionary concept with profound theological and social implications. Before it can be recognized as setting a theological foundational principle, it must be of the highest degree of authenticity, which it is not.

Another version of this tradition has Anas b. Mālik reporting that the Prophet said: "If a woman prays five [times a day], fasts Ramadan, obeys her husband, and guards her chastity, she will enter Heaven."<sup>46</sup> Arguably, this version explains or specifies (*takhsīṣ*) the earlier version. So it is not simply any woman that obeys her husband who will enter Heaven; rather, only a woman who obeys, prays, fasts and guards her chastity. However, there are several problems with this logic as well.<sup>47</sup> First, this version is accepted by a fewer number of narrators than the first. Second, one of the individuals in the chain of transmission of this



version is Ibn Luhay'ah, who is not trustworthy.<sup>48</sup> Third, this version does not at all avoid the ambiguities of the first version. For example, what happened to the *farḍ* (religious obligation) of paying *zakāh* (almsgiving), or performing *hajj* (pilgrimage to Mecca)? Perhaps this is relegated to the financial abilities of the husband. But what if the wife is rich and the husband is poor? Additionally, what if the wife prays, fasts, protects her chastity, and obeys her husband, but is despicable otherwise? What if she backbites, slanders people, beats her children, steals from the neighbors, tortures her cat, and mocks the poor? Is she still entitled to enter Heaven? The only way we can give a negative response to this question is by imputing different meanings to the tradition than the apparent meaning of the words.

Other traditions relied upon for the same obedience determination include one that claims that the Prophet stated, "A woman's prayers or good deeds will not be accepted [by God] as long as her husband is upset with her."<sup>49</sup> Another tradition reportedly transmitted by 'Abd Allāh b. 'Umar claims that the Prophet proclaimed, "God will not look at a woman who is not grateful to her husband despite her reliance on him" (i.e., despite the fact that she depends on her husband).<sup>50</sup> And yet another report claims that the Prophet said, "If a woman upsets her husband, his angelic wife in Heaven (*ḥūr al-'ayn* – his wife among the angels waiting for him in the Hereafter) will say, 'May God confound you! Do not upset him (the husband)! He is but a visitor with you who is about to leave you and join us.'"<sup>51</sup>

The analysis presented above, applies to these traditions as well. These traditions invoke a conscientious-pause – they trouble the conscience, contradict other portrayals of the Prophet's character, and conflict with the Qur'ānic spirit. With a minimal amount of reflection, one can see a conflict between the foundational principles set by the Qur'ān and the traditions of subservience and obedience. The Qur'ān talks of love, compassion, friendship, and virtuous women who are obedient to God – not to husbands.<sup>52</sup> Arguably, compelling your wife to have intercourse on the back of an animal, demanding unquestioning reverence, or blind obedience is not conducive to love, compassion, friendship, virtue, or obedience to God. In my view, the Qur'ānic conception of marriage is not based on servitude, but on compassion and cooperation; and the Qur'ānic conception of virtue is not conditioned on the pleasure of another human being, but on piety and obedience to God.

Classical and modern jurists argue that if there is a conflict between the sources, one must reconcile them – not use one source to trump the other. This is a well-established principle in Islamic jurisprudence. Pursuant to this principle, the obedience traditions would serve to specify or particularize the broader discourses in the Qur'ān and *Sunnah* about friendship and companionship. This is the logic that the C.R.L.O uses in arguing that the obedience traditions add a further detail to the broader Qur'ānic discourses. According to this reasoning, Islam requires the establishment of friendship and companionship, but through

obedience. But one should ask the following methodological question: should traditions of divergent versions, of singular (*āḥādī*) transmissions, which do not reach the highest level of authenticity, and which have suspect theological logic and profound social implications, be allowed to conflict with the Qur'ān in the first place? In fact, and more importantly, should traditions with the qualities described above, be recognized as establishing laws, let alone foundational principles, for something as essential as marriage? I propose that a rationale of proportionality must be adopted, which would necessarily require only those traditions of the highest degree of authenticity to be recognized as foundational in matters of crucial religious or social implications.

The *ahl al-ḥadīth*<sup>53</sup> have argued that traditions of singular transmission (*āḥādī* reports) create certain knowledge (*yaqīn qaṭ'ī*) and hence, could support a binding rule not only in *ibādāt* (laws relating to worship) and *mu'āmalāt* (laws relating to social and commercial interactions), but also in *'aḡā'id* (matters of faith). The other schools of thought disagreed – some arguing that *āḥādī* traditions do not yield knowledge at all and may not be used to support legal imperatives. The majority, however, held that such traditions, while not leading to certain knowledge, do produce a likelihood that the transmission is valid (*ẓann*). Furthermore, the majority of jurists argued that *āḥādī* traditions can support legal imperatives in the field of *furū'* (branches of religion) but not *uṣūl* (fundamentals of religion). The majority then disagreed within itself: some argued that *āḥādī* traditions can establish a legal imperative in the branches of religion as long as it does not contradict the Qur'ān or *mutawātir* traditions; others argued that *āḥādī* traditions cannot contradict the practice of the people of Medina; others that *āḥādī* traditions cannot contradict a *qiyās* (rule by analogy); and others asserted that *āḥādī* traditions cannot support independent legal imperatives, but only support an exception or a specification to a general rule.<sup>54</sup>

The C.R.L.O, and those who follow their school of thought, agree with the *ahl al-ḥadīth* in allowing *āḥādī* traditions to be dispositive in all fields of law as well as in matters of faith and conviction.<sup>55</sup> To a large extent, this position justifies the majority of their determinations, especially on issues related to women. Furthermore, this position seems to have gained widespread currency in the contemporary age.<sup>56</sup> However, it is important to note that, other than *ahl al-ḥadīth*, it is clear that the vast majority of classical Muslim jurists wanted to limit the scope of *āḥādī* traditions. Since *āḥādī* traditions cannot lead to certain knowledge of the Prophet's utterances, they cannot be relied upon to the same extent as *mutawātir* traditions. *Āḥādī* traditions, the majority argued, could be used to establish branches of the religion, but not the fundamentals. Although the majority of jurists struggled with the distinction between fundamentals and branches, the fact remains that they did not consider *āḥādī* traditions of sufficient probative value to establish matters that are essential to religion. Therefore, it makes perfect sense to argue for a proportional relationship between the authenticity of traditions and their effective scope. I cannot claim



that the logic of proportionality is explicitly endorsed by the discourses of the classical jurists, but I believe that proportionality is the clear import of their debates on *ahādī* traditions. However, to limit the logic of proportionality to the dichotomy between *uṣūl* and *furū'* is not plausible. As noted earlier in this book, the distinction between *uṣūl* and *furū'* is itself problematic.<sup>57</sup> It is not at all clear how one defines *uṣūl* or *furū'*. More importantly, the issue is not whether a problem could be technically classified as part of *uṣūl* or *furū'*. Rather, the issue is the existence of proportionality between our knowledge of the source of a text, and the impact of the text. The greater the potential impact of a textual source, the more one should insist on its authenticity. *Mutawātir* traditions lead to greater certainty as to the role of the Prophet in the authorial enterprise and, therefore, could possibly be relied upon to establish legal imperatives with far reaching theological, social or political implications. Nevertheless, the analysis should not simply be limited to whether a tradition is *mutawātir* or *ahādī*. Especially in cases of the conscientious-pause, whether a tradition is *mutawātir* or *ahādī* is only the beginning of the inquiry. Relying solely on the counting of the number of early transmitters will yield little benefit. The point is not only how many people from the first generations of Muslims transmitted a particular tradition. Rather, when a tradition has serious social, theological or political implications, the inquiry should be whether the totality of the evidence could provide us with a clear sense of the role of the Prophet in what is attributed to him. The totality of evidence would include the authenticity and trustworthiness of the transmitters, the number of transmitters from the early generations, the number of versions of the traditions, the factual contradictions between the different versions, the substance of the tradition, the relation between this tradition and more authentic or less authentic reports from the *Sunnah*, the Qur'anic evidence (in terms of contradictions or consistencies), the historical context of the tradition, and the practices of the Prophet and Companions in related contexts. By their very nature, *mutawātir* traditions will be able to withstand greater scrutiny than their *ahādī* counterparts. Ultimately, however, even after evaluating the totality of the evidence, one might have to take a faith-based stand in rejecting a particular position. Importantly, if this stand is taken by a special agent who had fulfilled the five contingencies including disclosing his or her conscientious objection, one cannot describe the special agent's behavior as authoritarian. After all, the special agent had showed humility, self-restraint, and diligence in exploring all the possibilities, and after disclosure, the common agents are free to affirm or withdraw their trust and deference.

*Bargaining with crooked-ribs, defective intellects, bad omens, dogs and women*

I noted above that especially as to traditions that cause a conscientious-pause, the totality of circumstances must be carefully scrutinized. This has particular

relevance to reports that demean women because of the stubborn institutions of patriarchy that are likely to have played a predominant role in the authorial enterprise that generated many traditions. For instance, in a remarkable tradition expressing this reality, Ibn 'Umar (d. 73/692) reportedly commented, "When the Prophet was alive we were cautious when speaking and dealing with our women in fear that a revelation would come [from God] concerning our behavior. But when the Prophet died we were able to speak and deal with them [more freely]."<sup>58</sup> This tradition reflects a rather rare admission that there was social resistance to the early Islamic reforms regarding women.<sup>59</sup> Ibn 'Umar's report is consistent with the many traditions that recount the widespread resistance, especially by Meccan men, to the presence of women in public forums, which compelled the Prophet to explicitly command men not to prevent women from attending prayers in mosques.<sup>60</sup> Nevertheless, despite the explicit command, men allowed women to attend prayers in the morning but not the night, which in turn, led the Prophet to specify that his command covered attending prayers at night as well.<sup>61</sup> The early traditions reflect a virtual war of reports on this and other issues, some of which are discussed below. It is sufficient, at this point, to note that one of the circulating reports even claimed that menstrual periods originated as a form of Divine punishment for the public role played by women. According to this report, the women of the Israelites would insist on attending temples of worship, but they inevitably misbehaved by unleashing their womanly charms upon the unsuspecting men. As a result, God forbade Jewish women from attending temples of worship, and inflicted the menstrual cycle upon all women as punishment, apparently to keep women from places of worship for a period of time each month.<sup>62</sup> Of course, I am not implying that the majority of classical scholars, or even a sizable number of them, accepted the validity of this report. Nonetheless, it is symptomatic of a socio-historical context that left its clear imprint on the raw materials that Muslim jurists are forced to work with. So, for instance, there are a considerable number of reports, one of which is quoted below, that the Meccan Muslims found the culture of the native Medinese too liberal for their taste. Medinese women played a very public role, and so, for example, formed part of the Medinese delegation that negotiated with the Prophet before his migration to Medina.<sup>63</sup>

As demonstrated below, understanding this context is important not only for evaluating the authorial enterprise behind several traditions, but also for understanding the role of several traditions that attempt to exclude women from public life. I will discuss several of what might be called the public function traditions in a section below. But as a foundation, I will analyze a set of traditions that relate to the construction of the symbolic nature of women. Again, I have focused on the traditions cited in juristic determinations by the C.R.L.O. These traditions create symbolic associations between women and some unflattering construct. Ultimately, these traditions lay the foundation for

legal determinations affirming the position of patriarchy, the submission of women, and their exclusion from public life.

Among the conscientious-pause inducing determinations of the C.R.L.O are ones that deal with women and the negation of prayer, bad omens, and divorce. The C.R.L.O jurists are asked about the effect of a woman passing in front of a man in prayer. The C.R.L.O responds that if a man is praying and a woman passes in front of him without a screen separating the man and woman, the man's prayer is invalidated and must be repeated. In support, the C.R.L.O cites a transmission by Abū Hurayrah attributing to the Prophet the statement, "The passage of a woman, donkey, and black dog in front of a man, invalidates his prayer."<sup>64</sup> In another *responsum*, Ibn Bāz asserts that some women are bad omens and, therefore, divorcing them is justifiable. In support, he cites a Prophetic tradition stating, "If bad omens exist in anything, they exist in [some] houses, women, and mounts."<sup>65</sup>

These traditions and the C.R.L.O determinations hardly warrant a comment – the association drawn between women and animals is clear. In fact, other traditions, cited in the context of mandating the veil or in prohibiting the mixing of sexes, draw an association between women and the devil. For example, a tradition attributed to the Prophet, proclaims, "A woman comes in the image of a devil, and leaves in the image of a devil." The rest of the tradition goes on to say that if a man is aroused by a foreign woman, he should satisfy his desire lawfully with his wife.<sup>66</sup> It is important to note that the C.R.L.O does not use these reports in order to explicitly defile or demean women. In fact, according to the C.R.L.O, their determinations honor and protect women from all forms of degradation. Of course, the way the C.R.L.O makes this point is by asserting that Islam, apparently which they represent, fully honors and protects women.<sup>67</sup> The reports quoted above are utilized in making technical decisions on particular legal issues. However, having employed reports that draw a connection between women and unflattering symbolisms, the C.R.L.O is able to draw upon social constructs or typologies of womanhood with devastating results. These constructs or typologies enable the C.R.L.O to maintain that women should be excluded from public life, and all activities that are part of partaking in public life such as driving. Significantly, this is done with an air of condescending benevolence, and not confessed malignity. This is well illustrated in the C.R.L.O's utilization of what can be called the crooked rib and deficient intellect traditions. In the first, Abū Hurayrah reported that the Prophet said, "Take good care of women, for they have been created from a crooked rib, and the most crooked part of a rib is its upper part. If you try to straighten out a rib, you will break it and if you leave it [alone] it will remain crooked. So, take good care of women."<sup>68</sup> In another version of the same report, again transmitted by Abū Hurayrah, the Prophet reportedly said, "A woman is like a rib. If you try to straighten her, you will break her. If you accept her the way she is, you will enjoy [your life with] her, but she will remain crooked."<sup>69</sup> The C.R.L.O uses this

tradition in ruling that women require understanding and care-taking by men – men ought to be tolerant of women's defects and so, in the existence of marital problems, husbands should not to rush to divorce their wives.<sup>70</sup>

Like the crooked rib reports, the deficient intellect traditions are easily co-opted into paternalistic and condescending discourses. This tradition in its most well-known version provides:

Abū Hurayrah<sup>71</sup> reported that the Prophet passed by a group of women when he addressed them. The Prophet proclaimed, "O women! Increase your prayers, and then give more alms for I have seen that women are the majority of the inhabitants of Hell." A wise woman asked, "Why are we [women] the majority of the inhabitants of Hell, O Prophet of God?" The Prophet responded, "Because you frequently slander and curse, and you are ungrateful to your companions. I have not seen anyone more deficient in intellect and religion, who is able to prevail (mislead) the wise, than you." So, they (the women) asked, "And, what is [our] deficiency in intellect and religion?" The Prophet said, "[Your] deficiency in intellect is in the fact that the testimony of a man is worth [the testimony] of two women, and your deficiency in religion is that you spend days without fasting or praying (because of the menstrual cycle)."<sup>72</sup>

The C.R.L.O, as in the case of most apologists, insists that there is nothing demeaning in this tradition to women because the tradition clearly states that the deficiency is not substantive, but rather technical. The deficiency means legal incapacity, and not natural inability.<sup>73</sup> It is significant, however, that in a large number of determinations excluding women from public life and imposing the veil, the C.R.L.O frequently asserts that women are the majority of the inhabitants of Hell, and that they are of a limited emotional and intellectual capacity. According to the C.R.L.O, because women are not in control of their emotions and are not as sagacious as men, they should not work outside the home, occupy positions of leadership, drive cars, pursue higher education, visit graves, travel without a male companion, or even attend mosques other than the one closest to their homes.<sup>74</sup> Despite its assurances to the contrary, the C.R.L.O employs these traditions in the affirmation of certain typologies – perceptions or social constructs – of the capacities and function of women. This lays the foundation for most of the patriarchal and condescendingly paternalistic determinations of Islamic law.

Considering the nature of the traditions mentioned above, admittedly, one feels rather silly in saying that these traditions require a conscientious-pause, and perhaps, a faith-based protest. These traditions seem self-evidently immoral and shocking. Nevertheless, considering that the C.R.L.O and many other contemporary authors have given these reports determinative weight, we are forced to address them.<sup>75</sup> Attempting to evaluate these traditions by simply scrutinizing the chains of transmission is pedantic and non-probative. I am not dismissing the chain of transmission analysis as entirely irrelevant, but it simply constitutes one of the elements that needs to be evaluated.<sup>76</sup> The issues that

confront us in addressing these traditions consist of evaluating the authorial enterprise supporting these reports, and exploring the extent that they can form part of the instructions that the special agent is charged with interpreting and implementing. I confess that, at a personal level, I am willing to be a conscientious faith-based objector to this genre of traditions. They are fundamentally inconsistent with my understanding of God and the Islamic message. This disclosure is consistent with the methodology advocated here. However, aside from any faith-based claims, it is my contention that contemporary jurists who rely on these traditions are violating the contingencies upon which their authoritativeness is founded. The failure largely consists in the fact that these contemporary jurists have not diligently investigated the authorial enterprise that retained, transmitted, and constructed these traditions. It is impossible to be sufficiently diligent in analyzing the authorial enterprise behind these reports without seriously considering the highly patriarchal context that these traditions reflect.

The tradition by Abū Hurayrah asserting that mounts, black dogs, and women invalidate the prayer of men is a good starting point for illustrating this issue, and so I will examine some of the circumstances surrounding this report. Interestingly, there are many existing versions of this report; the various versions are ascribed to transmissions by Abū Hurayrah, as well as Ibn 'Abbās and Abū Dharr al-Ghifārī. The one element common to all versions is the inclusion of social undesirables in the possible list of things that could invalidate a prayer. For instance, one version, reportedly narrated by Ibn 'Abbās, asserts that it is pigs, black dogs, donkeys, and women that invalidate a man's prayer. Some versions claim that all dogs, not just black, and only menstruating women, not all women, invalidate prayers. Other versions add Manicheans, unbelievers, and Jews, for good measure, to the list of invalidators. Clearly, this was a tradition that served as a receptacle for social condemnation, and the hurling of bigoted insults. Importantly, various historical reports assert that this tradition faced considerable opposition in early Islam. A large number of reports state that 'Ā'ishah, in particular, took offense – when informed that Abū Hurayrah was circulating this report, she exclaimed, "God confound you! You have made women the same as dogs and donkeys!" In another transmission, 'Ā'ishah reportedly responded, "You have made women like the worst animals! By God, I used to lie down in front of the Prophet, while on my menstrual cycle, as he continued to pray." Umm Salamah, the Prophet's wife, confirmed 'Ā'ishah's report, and recounted that they would be on their menstrual period and they would either pass or lay down in front of the Prophet as he prayed, and the Prophet never made mention of any such rule. Furthermore, 'Alī and Ibn 'Umar rejected the various versions of the tradition and contended that none of the categories mentioned above could invalidate a Muslim's prayers. Other reports add that Ibn 'Abbās, the same person to whom one of the above versions is attributed, and other Companions, narrated that on several occasions, donkeys

passed in front of the Prophet, and a dog played around the Prophet as he continued to pray. Ibn 'Abbās adds that no one thought that donkeys or dogs affected the validity of prayers, and the Prophet never stated that they did either. Importantly, as far as the activities of the early interpretive communities are concerned, they reflect a general lack of confidence in all the versions of this tradition. For instance, early scholars disagreed on the authenticity of Abū Hurayrah's tradition, and its alternative versions.<sup>77</sup> Some argued that the tradition is weak, others said it was fabricated, and still others claimed that it is authentic, but that it was later abrogated by the Prophet. The jurists al-Shāfi'ī, al-Thawrī, Abū Hanīfah, and Mālik b. Anas did not rely on the tradition, and held that nothing that could pass in front of a praying person invalidates his or her prayers.<sup>78</sup> Even Ahmad b. Hanbal, the founder of the Hanbalī school of legal thought, argued that while he is sure that black dogs do invalidate prayers, he very much doubted that the same rule applies to donkeys and women.<sup>79</sup>

From the point of view of the accumulation and evaluation of evidence, we cannot conclusively and with absolute certainty decide that the dog, donkey, and women tradition is authentic or inauthentic. More importantly, authenticity is not even the relevant issue. The relevant issue is how to assess the authorial enterprise. We have enough circumstantial evidence to indicate a strong bias in the early social dynamics of Islam to shape the tradition one way or another. There was a sufficient degree of vested interest in degrading women by associating them with dogs, donkeys or unbelievers, and there was a strong enough interest to add Jews to the list of undesirables as well. There was also a vested interest in defending women against this charge. In the midst of these social interests and lively dynamics, there was a strong incentive to embellish, exaggerate, construct, and re-construct.<sup>80</sup> The appearance of Abū Hurayrah in the reports, considering his background, adds another level of indeterminacy about the authorial enterprise. It is very likely, if not very probable, that this was a social debate in which the memory of the Prophet was co-opted, redacted, and at times, invented. Once again, we must refer to the doctrine of proportionality in considering the legal effect to give to a tradition. Considering the many ambiguities, suspicions, and doubts surrounding the authorial enterprise, it is irresponsible, and perhaps dishonest, to use the dog, donkey, and women tradition in the fashion in which the C.R.L.O uses it. Furthermore, considering the egregious moral implications of these traditions upon the normative status of women in society, it is outrageous that the C.R.L.O relies on them in such a perfunctory manner.

Substantially the same analysis applies to the traditions on crooked ribs, deficient intellects, and women as devils or bad omens. If we take, for example, the tradition on the bad omen of women, we observe very similar dynamics. The various versions of this tradition include some that omit any mention of women – only horses and homes are mentioned as possible sources of bad omens. Interestingly, one version states the exact converse of the bad omen tradition.

In this version it is reported that the Prophet said, "Bad omens do not exist, but if good omens exist in anything (*al-yumn* and, in another version, *al-fa'l al-fayyib*) then it would be in women, homes, and horses."<sup>81</sup> In addition, several reports assert that 'Āishah strenuously opposed the bad omen tradition. In one such report, two men informed 'Āishah that Abū Hurayrah was saying that the Prophet said that women and mounts could be bad omens. 'Āishah was outraged and declared, "By God Who revealed the Qur'ān to Abū al-Qāsim (Muḥammad), whoever attributes this to the Prophet, has lied."<sup>82</sup> Again, because of the contextual ambiguities surrounding this issue, early jurists were reluctant in accepting or relying on the bad omen tradition in legal determinations. But as can be expected, this tradition served as the grazing ground for some of the most virulent anti-women rhetoric in Islamic history. Some commentators claimed that the intended meaning of "women who are a bad omen," is women who are unable to bear children. A report attributed to 'Umar even proclaimed that "a straw rug on the floor is better than a barren woman." Yet, many of the early and late classical jurists, such as Taqī al-Dīn al-Subkī (d. 756/1355), asserted that men who consider some women to be bad omens, or who ascribe unfortunate events to women, are ignorant. Other classical jurists simply interpreted the tradition away. For example, Ibn al-'Arabī (d. 543/1148) argued that the tradition was simply describing an unfortunate and reprehensible social practice in early Arabia. The Prophet was only saying that Arab customs used to ascribe disasters to horses, homes or women because it was believed that some houses, animals or women were cursed. The Prophet, Ibn al-'Arabī contended, was advising Muslims to abandon such reprehensible superstitions.<sup>83</sup> In support of this argument, Ibn al-'Arabī and others cite reports such as the following: Abū Hurayrah states that the Prophet said, "A believing man should not hate a believing woman, for if there is something that he dislikes about her, [surely] there will be something that he likes about her."<sup>84</sup> Arguably, believing that a Muslim woman is a bad omen, and that she is the herald of misery is inconsistent with the more nuanced and rationally based approach of the tradition above. Of course, for the conscientious jurist, this only raises many questions, among them: is this report Abū Hurayrah's way of rehabilitating himself with the women of Medina? Was this report attributed to Abū Hurayrah by others as a way of rehabilitating his reputation? Is this a counter-tradition intended to resist the bad omen tradition? Does the above quoted tradition betray a condescending attitude towards women similar to the crooked rib tradition, which also counsels tolerance and patience with women? Most importantly, to what extent can we discern the role of the Prophet in the authorial enterprise supporting the tradition?<sup>85</sup>

Limitations of time and space prevent me from providing a detailed analysis of every one of the traditions demeaning to women cited at the beginning of this section. Nevertheless, I think it is sufficient to note that all of them deserve a serious conscientious-pause, and are candidates for a faith-based objection. In

addition, all arise from singular transmissions, and reflect the same troubled social context noted above. For instance, a careful reading of the deficient intellect and religion tradition would leave one with the distinct suspicion that this report had been redacted and constructed in stages, probably in response to socio-political dynamics. The first part of the tradition consists of a clear and unambiguous blanket condemnation of women – women constitute most of the inhabitants of Hell, they are slanderous and ungrateful beings, they are deficient in intellect and religion, and they lead sagacious men into error. There is no question that from these reports the fact that women do such terrible things is symptomatic of their religious and intellectual deficiencies, which in turn, will make women most of Hell's population. Interestingly, however, the second part of the tradition attempts to neutralize or rehabilitate the first – the deficiency is not substantive; it is merely technical. It is the law that creates this deficiency – the deficiency is born out of legal technicalities, and not out of anything inherent to womanhood. But if that is true and women are not morally responsible for the technicalities that the law imposes on them, why are they going to make up most of Hell's fodder? The incongruence between the first part and the second part of the tradition have led some commentators to adopt the rather implausible position that the Prophet was teasing or joking with the women present in the incident, and that the expression "deficient in intellect and religion" was intended as a pun (*fa kāna al-rasūl yatalattaf ma'ahum*).<sup>86</sup>

The attempts to rehabilitate the first part with a redacted second part, or to orient the tradition into a narrow technicality, or perhaps make it all a joke, point to the fact that the authorial enterprise behind this report, and the others, was complex and multi-layered. One can cite an endless array of evidence demonstrating the tensions in the dynamic and hyperactive culture of early Islam. We have traditions that are at times attributed to either 'Umar, Abū Hurayrah, or the Prophet, stating that men should consult with women and then do the exact opposite. In one such tradition, 'Umar reportedly said, "do the opposite of what women advise you to do, for in doing the opposite is a [great] blessing."<sup>87</sup> In another report, as part of a long tradition, Abū Hurayrah claims that the Prophet said, "If the day comes when ... your affairs are controlled by women, then being below the earth will be better than being on its surface (i.e., it is better to be dead)."<sup>88</sup>

Furthermore, we already encountered the Abū Bakrah tradition asserting that people who are led by women will surely fail. Yet, we find the same evidence of protests by various women, and traditions insisting that the Prophet consulted with his wives on many affairs. For instance, the Prophet reportedly consulted with Umm Salamah regarding the Treaty of Ḥudaybiyyah, and consulted and deferred to Khadījah on numerous occasions.<sup>89</sup> In addition, we find numerous reports of women leading a very active social and political life at the time of the Prophet, and afterwards. Notably, 'Āishah led, or was at least one of the leaders, of a rebellion after the death of the Caliph 'Uthmān – a role which people such

as Abū Bakrah and Abū Hurayrah strenuously opposed. In fact, 'Ā'ishah was not the only woman to have been involved in an armed uprising. For instance, the rather famous Khārījīyah, Ghazālah, and her husband sacked Kūfah in an anti-Umayyad rebellion and she reportedly led her male fighters in prayers in the Kūfah mosque.<sup>90</sup> Thus, we confront the very real possibility that most or all of the anti-women traditions were produced as a form of male resistance to the active public role played by women in early Islam.<sup>91</sup> We already saw this phenomenon in the case of the Abū Bakrah tradition about the leadership of women – a phenomenon that did not entirely escape the attention of the classical sources.<sup>92</sup>

It is likely that the new ideological revolution in Arabia, caused by the Islamic message, energized various segments and factions in society who explored and bargained for new positions, roles, and functions. As often happens in situations of rapid or revolutionary change, social structures, mores, and bonds are reconstructed and redrawn pursuant to a dynamic negotiative process. Various segments try to reposition and redefine themselves according to the newly emerging set of affiliations and symbolisms. Particularly if there is great enthusiasm and excitement about a potential new way of life, various segments in society jostle for positions of inclusion and worth in the new structure. There is no reason to believe that women, or various sub-groups of women, were an exception to this dynamic. In fact, there is considerable evidence that women in Medina demanded inclusion in the Islamic revolution. For instance, there are reports that women, as a group, demanded to meet with the Prophet in weekly sessions especially designated for them. In addition, reports record several incidents in which women met individually and privately with the Prophet, or one of his wives, to discuss their problems or seek advice.<sup>93</sup> Women also demanded that the Qur'ān address them specifically, and not simply refer to them in the generic linguistic male form.<sup>94</sup> We also encounter reports of the Qur'ān engaging women. For instance, "God has indeed heard the statement of the woman who argues with you (i.e., the Prophet) and complains to God, and God hears the arguments between you for God hears and sees all."<sup>95</sup> The Qur'ān goes on to address the concerns of the woman in question.<sup>96</sup> The Qur'ān also vindicated 'Ā'ishah by supporting her, and by criticizing the behavior of some male Companions who accused her of unchaste behavior.<sup>97</sup> Reportedly, after her vindication, 'Ā'ishah, apparently still upset, refused to thank the Prophet, and said, "I express my gratitude only to God," and the Prophet smiled in response.<sup>98</sup> Furthermore, women insisted on having the right to go out on military campaigns, to attend prayers in the mosque, and to grant assurances of safe conduct to the enemy.<sup>99</sup> After the Prophet died, energized by the sweeping social changes taking place, women played a major role in attempting to define and construct the Islamic tradition. Therefore, we find that roughly a third of the early transmissions or legal opinions are by women or attributed to women. Last, but not least, we also observe 'Ā'ishah's venture into the world of politics and armed rebellion, both during the reign of 'Uthmān and 'Alī, and the

indisputable shock waves this had created in early Islamic society.<sup>100</sup> It is reasonable to think that this legacy was bound to generate opposition, and that the opposition would take the form of traditions warning against a public role for women and speaking of crooked ribs, prostrating to husbands, bad omens, and deficient intellects. These traditions and their counter-traditions are indicative of the vibrant negotiative process that took place in early Islam – a process that most certainly included the re-definition of gender relations.

One area where this negotiative process is powerfully displayed is the field of marriage and the restrictions placed on wives. In this negotiative process, one observes a virtual battle of rhetorical devices, all utilizing traditions attributed to the Prophet. A simple change in the wording of a particular report would produce meaning and counter-meaning in an effective and powerful fashion. Understanding the negotiative processes of such traditions often involves a careful studying of the different versions of a core transmission. One such tradition is attributed variously to 'Ā'ishah, Ibn 'Umar, Abū Sa'īd al-Khudrī, through his son, Abū Hurayrah, and Mu'ādh b. Jabāl. The core element to all the versions of this report is the story of a woman who is not thrilled about getting married, and who approaches the Prophet to ask him about the obligations of a wife towards her husband. In response to the woman's queries, the Prophet advises her that a husband has numerous rights over his wife: a wife must fulfill her husband's sexual desires, even if on top of a camel's saddle (*zahir qatab*); she should not fast, other than in Ramadan, without his permission; she should not spend any of his money without his permission; and she may not leave her home without his permission, and if she does, the angels will curse her until she returns home.<sup>101</sup> In another version, as mentioned earlier, the Prophet also informs her that even if a husband suffers from a puss-filled ulcer and she licks it, she cannot do him justice. In different versions of these same reports, the rights of the husband are further emphasized and sanctified. The female interlocutor inquires: "What if the husband is unjust (*zālim lahā*)?" Reportedly, the Prophet responds that a wife must obey her husband even if he is unjust. The patriarchal power of these traditions seem unchallengeable; a woman who, in the first place, is reluctant to get married receives a somber and uncompromising set of responses to her questions. There is very little room to negotiate the power of husbands. However, in several versions, we find an interesting variation. In one, a woman informs the Prophet that she dislikes marriage and that she has turned down many suitors. Furthermore, she has resolved not to marry until she first finds out what obligations she will owe to her husband. Upon receiving the responses mentioned above, the woman declares, "By God, if that is so, I resolve never to get married (in a different version, 'I will never be under a man's control as long as I live)!'" And, she leaves. In another version, we find the Prophet supporting the woman's decision. In this version, a father brings his daughter to the Prophet complaining that she refuses to marry anyone. The Prophet tells the daughter to obey her father. To this, the daughter responds, "No, not until you

first tell me what rights a husband has over his wife." The Prophet reportedly gives her the answers mentioned above, and in response, she declares, "By the God who has sent you with the Truth, I will never get married as long as I live!" The Prophet then declares that women cannot be married without their full consent.<sup>102</sup> These reports battle over the contested territory of the role of woman in general, and wives in particular. But the duties of wife symbolize the role of women in society at large. The responses of the women who refuse the institution of marriage altogether can be read as a protest against the patriarchal religious dogma that places women in a submissive and degrading position. The symbolism of these reports conveys a compelling message: if need be, women will just have to do without men.

In order to emphasize the point about gender negotiations, and perhaps put it into perspective, I will close this section with a long quote by 'Umar b. al-Khattāb. In response to a period of tension between the Prophet and his wives, 'Umar shared his worries and concerns with the Prophet in the following passage:

God is Great! O Prophet, you have seen us, the people of Quraysh, we were a people who controlled our women. Then, we came to Medina, and we found a people who are controlled by their women. Our women (the women of Mecca) started learning and imitating their women. One day, I became mad with my wife, and she started arguing with me. When I chided her for talking back to me, she said, "Why do you think I cannot argue with you! By God, the wives of the Prophet argue with him, and one of them even abandons him from morning until night." I told her, "Whoever does this is truly shameless!" How do they know that God might not become angered because of the hurt caused to the Prophet, and then they would be truly ruined!

In response, 'Umar reports, the Prophet smiled.<sup>103</sup>

#### *Praying in closets, hugging the wall, and the dangers of seduction*

Thus far, we have been skirting around the issue at the core of most juristic determinations mandating the exclusion of women from public places, and that is the issue of *fitnah* (seduction or seductive acts). But our exploration of the authoritarian would not be complete without, at least, addressing some of the main issues raised by this concept. I am not speaking here simply of the concept of the veil (*al-hijāb*), which mandates the covering of a woman's entire body except for the face and hands, or, in a minority school of thought, the covering of everything except for the eyes or one eye. Well-established interpretive communities have generated both points of view, although the first was and remains the predominant one. In the modern age, the minority school is espoused primarily by Saudi jurists. There is a sizable body of secondary literature on the veil, both as a legal imperative in Islam and as a sociological practice, and doing this issue justice would require a separate book.<sup>104</sup> The

problem of *fitnah*, which I will address here, overlaps in important respects with the issue of the veil, but conceptually it remains a separate field of inquiry. *Fitnah* in Islamic discourses is often associated with turbulence, disorder, enticement, and the opening of the doors to evil. The issue addressed here focuses on determinations that utilize or rely on the doctrine of *fitnah* as an essential legal element justifying a particular ruling. Of course, the concept of *fitnah* is often at the core of the discourses on the necessity of the veil. However, my aim here is not to debunk the notion of *fitnah* as seduction or enticement, but to examine methodologies of determination as they relate to the authoritative and authoritarian.

At the outset, we need to keep in mind several considerations about the idea of *fitnah*, as seduction. *Fitnah* connotes the notion that certain things or acts produce the type of sexual arousal that is conducive to the commission of sin. Certain acts, such as *khalwah* (privacy and seclusion between a foreign man and woman) are presumed to be inherently dangerous because they produce the type of *fitnah* that is conducive to the commission of unlawful sexual acts – since the man and woman are enjoying their privacy, they may be tempted to engage in some form of sexual activity or another. The Qur'an, does use the word *fitnah*, but not to refer to sexual arousal or seduction. The Qur'an uses the word to refer to non-sexual temptations such as money, and to severe trials and tribulations. As to sexuality, other than the prohibition against engaging in illicit sex, the Qur'an does command Muslim men and women to lower their gaze, be modest, and not to flash their adornments (*zinah*) except when appropriate, such as with husbands or wives.<sup>105</sup> Significantly, early Islamic reports do not tie the issue of what eventually becomes known as the *hijāb* to the problem of *fitnah*. In other words, the technical issue of the proper form of *hijāb* is not directly related to the possibilities of *fitnah*, but to social status and physical safety. Interestingly, what becomes known in modern discourses as the *hijāb* is discussed in classical juristic sources in the chapter on prayer. In that chapter, among other things, the jurists discuss what needs to be covered by men and women in prayer, and from that, the issue of *'awrah* (private parts that ought to be covered by clothing) is discussed as well.<sup>106</sup> In prayer, a Muslim man or woman must cover their full *'awrah*, or what the law considers to be the private parts of a human being. Presumably, what is considered to be the *'awrah* while in prayer is also the *'awrah* outside of prayer – what needs to be covered in prayer, also needs to be covered outside of prayer. This is at the heart of the debates on *hijāb* – the *hijāb*, in that sense, is whatever covers the private parts (*mā yastur al-'awrah*).<sup>107</sup>

*Fitnah* is a collateral matter. The *'awrah* is covered, presumably, because there is an affirmative independent command to do so, and not simply because it causes a *fitnah*. Arguably, the *'awrah* is to be covered even if it does not cause a *fitnah*, and not everything that causes a *fitnah* is necessarily a *'awrah*. As a juristic matter, we need to ask two separate questions: what is the evidence necessary to establish the *'awrah*? And what is the evidence necessary to ascertain a *fitnah*? As



noted above, the evidentiary basis for the *hijāb*, which covers the *'awrah*, requires a separate study, but I will analyze some of the evidence that is relevant for *fitnah* determinations. In thinking about this matter, we need to first ask: how do we know that something causes a prohibited *fitnah*? Is a *fitnah* determination an empirical or doctrinal issue? In other words, if a friend is a good-looking fellow who wears a good-looking tie every morning before going to teach his classes, and my friend asks me if wearing such remarkably attractive ties everyday is an unlawful *fitnah*, do I undertake an empirical inquiry into the seduction of his ties, or do I search the doctrinal sources for determinations on tie-like items of clothing? Assume that my friend has a warm and loving voice; many of the students who hear the enchantments of his lectures are promptly seduced. Assuming I search the doctrinal sources and find nothing on male lecturers with seductive voices, based on the empirical evidence, may I advise my friend to find a non-lecturing job or, better yet, find a job that does not require human communication?

The response to these questions depends on whether empirical evidence is relevant to *fitnah* determinations or not, and depends on how broad the prohibition is against *fitnah*. Do the instructions of the Principal mandate that all sources of *fitnah* be snuffed out in society? If the answer is yes, this poses an insurmountable challenge. Assume that in order to put an end to all sources of *fitnah*, we lock up all women in society in fortified homes, has *fitnah* come to an end? There is also homosexual *fitnah* that presumably could result from the interaction of men with men and women with women. There is also the *fitnah* that comes through television stations, computer images, publications, poetry, and a vivid imagination. Do we prohibit these as well? But if we do, this assumes that eradicating the sources of *fitnah* is the only relevant interest under *Sharī'ah*. So, assume that human beings need to be exposed to some degree of *fitnah* in order to receive an education, medical attention, engage in trade and politics, and in order not to be painfully dull and boring. Why should *fitnah* take precedence over any other *Sharī'ah* value – what is the evidence that *fitnah* is the core value in Islam, and not knowledge, justice, utility or beauty?

There is another serious conceptual and moral difficulty with the idea of *fitnah*. The principle that no one can be called to answer for the sins of another is a core *Sharī'ah* value. In Qur'ānic discourses, one person or set of people cannot be made to suffer because of the indiscretions, sins, or faults of others – each individual is responsible and accountable only for his or her own behavior.<sup>108</sup> In fact, when addressing issues of modesty, the Qur'an is quite careful to place the blame on those it labels the hypocrites, who harass or molest the innocent.<sup>109</sup> The jurisprudence of *fitnah*, however, runs the risk of violating this principle. For example, assuming that the reason we are confronted with a *fitnah* situation is because of men with an overactive libido or who are impious or ill-mannered. Demanding that women should suffer exclusion or limitations would violate the principle that the innocent should not pay for the

indiscretions of the culpable. As we already explained, *'awrah* and *fitnah* are separate categories – a person covers the *'awrah* not because of *fitnah*, but because the covering of *'awrah* is a separate imperative based on a set of specific instructions. Whether revealing the *'awrah* leads or does not lead to *fitnah* is irrelevant. But from that perspective, the whole logic of *fitnah* as seduction becomes quite suspect. Whether a person covers his or her *'awrah* or not, he or she should not be made to suffer for the indiscretions or impiety of others. Put bluntly, whether a person is sexually aroused or not is entirely irrelevant as to what the object of arousal must or must not do. The laws and imperatives of modesty ought to be set by God and not by immoral individuals who are violating the law of God.

As we will see, most *fitnah* determinations rely on the dubious logic that women should pay the price for the impious failures of men. Furthermore, in these determinations, as far as women are concerned, *fitnah* emerges as the core value of Islam. Therefore, women's education, mobility, safety, and even religious liberty should be restricted in order to avoid *fitnah*. Hence, we observe that women can be banned from driving, working, serving in the military, or appearing in public life under the guise of *fitnah*. As far as the relationship between the special agent and the common agents is concerned, we find ourselves reverting back to the notion of fundamental disagreements about the Divine Will, Divine Justice, and the purpose and role of *Sharī'ah*. Nevertheless, one does not necessarily need to resort to faith-based objections to *fitnah* determinations that unjustly treat women if one can demonstrate that such determinations are based on an abusive treatment of the evidence. The suspected abuse relates to a lack of reasonableness or balance in weighing the evidence on a particular matter. Furthermore, the abuse could consist of an extreme lack of willingness to implement critical insight to evidence that could have dire consequences in perpetuating intolerable injustice upon half of the Muslim population.

The most pronounced feature of the legal determinations that exclude women from public life is the obsessive reliance on the idea of *fitnah*. In these determinations, women are persistently seen as a walking, breathing bundle of *fitnah*. One can hardly find a *responsa* that deals with women without the insertion of some language about the seductions of womanhood. So, for instance, according to the C.R.L.O, women may attend mosques only if it does not lead to *fitnah*; women may listen to a man reciting the Qur'an or give a lecture, only if it does not lead to *fitnah*; women may go to the marketplace only if it does not lead to *fitnah*; women may not visit graveyards because of the fear of *fitnah*; women may not do *tasbīh* or say amen aloud in prayer because of the fear of *fitnah*; a woman praying by herself may not raise her voice in prayer if it leads to *fitnah*; a woman may not even greet a man if it leads to *fitnah*; and every item and color of clothing is analyzed under the doctrine of *fitnah*.<sup>110</sup> It does not seem to occur to the jurists who make these determinations that this presumed



*fitnah* that accompanies women in whatever they do or wherever they go is not an inherent quality of womanhood, but is a projection of male promiscuities. By artificially constructing womanhood into the embodiment of seductions, these jurists do not promote a norm of modesty, but, in reality, promote a norm of immodesty. Instead of turning the gaze away from the physical attributes of women, they obsessively turn the gaze of attention to women as a mere physicality. In essence, these jurists objectify women into items for male consumption, and in that, is the height of immodesty.

The challenge, however, is that the jurists who make these determinations find support in a range of traditions that position women as an indefatigable source of seduction and temptation for men. The C.R.L.O jurists unfailingly cite and quote these traditions in arguing for the seclusion of women and in prohibiting the mixing of the sexes in public forums (*ikhtilāf*). There is a plethora of traditions that convey the same basic message: women are an unadulterated *fitnah*.<sup>111</sup> In some of the most common versions of this genre of traditions, we encounter the following: Abū Saʿīd al-Khudrī reports that the Prophet said, "This earth is lush and pretty, and God has entrusted you [in this earth] to see what you will do. When it comes to [the temptations of] this world be cautious, and as to women be cautious [as well] for the first *fitnah* that befell the Israelites was [the *fitnah* of] women."<sup>112</sup> In another oft-quoted version, the Prophet reportedly said, "I have not left in my people a *fitnah* more harmful to men than women."<sup>113</sup> In a report from a related genre of traditions, a version of which we encountered earlier, the Prophet reportedly said, "Women are the snares of the devil."<sup>114</sup> In a tradition that draws a connection between *ʿawrah* and *fitnah*, it is transmitted that ʿAbd Allāh b. ʿUmar narrated that the Prophet said, "[The whole of] a woman is a *ʿawrah* and so if she goes out, the devil makes her the source of seduction."<sup>115</sup> A particular genre of reports takes the message of these traditions to its logical extreme. This genre effectively declares that women ought to be either married or dead. In a version transmitted through Ibn al-ʿAbbās, the Prophet reportedly said, "A woman has ten *ʿawras*; when she marries, her husband covers one of her *ʿawras*, and when she dies, the grave covers the rest."<sup>116</sup> The logical conclusion to be drawn from this tradition is that for a woman to be thoroughly modest, she ought to be dead and buried.

Not surprisingly, these traditions lay the foundations for most of the determinations regulating a woman's appearance and conduct, regardless of whether a particular woman has covered her private parts. Therefore, even if a woman has covered her private parts, she may still not mix with men in all public forums and some private forums. Importantly, these traditions become the vehicle for symbolisms placing women in the role of the distrusted or treacherous, and for associating them with the construct of a menace that must be restrained. Consequently, in classical commentaries on these traditions, it is not unusual to find the following language:

Since God has made men desire women, and desire looking at them, and enjoying them, women are like the devil in that they seduce men towards the commission of evil, while making evil look attractive [to men]. We deduct from this that women should not go out in the midst of men except for a necessity, and that men should not look at their cloth and should stay away from women all together.<sup>117</sup>

In a separate source, also commenting on the same traditions, we find the following passage:

Some sages said women are pure evil, and the worst thing about them is that men cannot do without them. Women are deficient in intellect and religion, and they impel men to commit acts that lack reason or piety, such as becoming pre-occupied with worldly affairs and ignoring religious affairs, and this is the worst type of corruption.<sup>118</sup>

The first point of inquiry is to ask, do the *fitnah* traditions make an empirical claim or a normative claim? Are these traditions saying that as an empirical matter women will always have this affect on men? If the answer is yes, then the question is, what if the empirical reality contradicts the claim of the tradition? In the science of *ḥadīth*, any tradition that contravenes human experience cannot be accepted as valid. So, for instance, if a tradition says that the people of Yemen walk on three legs, since the tradition is empirically incorrect it cannot be relied upon in legal determinations. Therefore, if human experience reveals that men are the source of as much evil as women, how do we then deal with these traditions? Arguably, the *fitnah* traditions are not describing an empirical state of affairs, but are setting a normative principle. The normative principle is that women are dangerous, and whether you can empirically verify this or not, you must accept it, believe it, and act on it. This, of course, takes us to the full circle of construction of reality – by prophesying that women are dangerous and treating them as dangerous, we are never able to realize any reality other than that women are dangerous.

Perhaps I can demonstrate this point by dealing with the example that became a subject of virulent debate between the modern scholar *Shaykh* Muḥammad al-Ghazālī and his opponents. There is a tradition that says, in effect, if a fly falls in your cup, dunk the fly in the liquid before drinking the liquid. Why? Because, according to the tradition, the disease is on one wing and the cure is on the other – by submerging the fly in the drink, we neutralize any potential harmful effects of diseases carried by the fly.<sup>119</sup> If this tradition is making an empirical claim, then it could be accepted or rejected on empirical grounds. If, however, the tradition is making a normative claim, effectively it is as if the tradition is saying, "regardless of any empirical evidence, trust in what I say because I know best." As a result, every time someone dunks the fly in the drink and gets ill, we must refuse to consider any empirical evidence that would debunk the claim of the tradition. We must tell ourselves, "the sick person got sick, not because of the fly, but because of any other reason." The same analysis

applies to Abū Hurayrah's tradition claiming that there is no such thing as contagious disease.<sup>120</sup>

This points to a serious problem related to our proportionality analysis. As argued earlier, traditions of singular transmissions should not support determinations of faith. Matters of faith and conviction are too serious and grave to be determined by traditions that arose from tumultuous social contexts, in which the role of the Prophet cannot be ascertained with absolute reliability. The requirement of proportionality would demand that the greater the theological, social, and political impact of a tradition, the stricter the scrutiny that the tradition must pass. Because of this, it is important to ask, if these traditions cannot establish points of conviction or faith, then what claims do remain? Once we disqualify these traditions from establishing points of faith (*ʿaqidah*), what remains of the tradition? What remains is the empirical claim – what remains is sociology.

The implications of my argument are clear; since these traditions only qualify under a proportionality analysis to make empirical claims then they become empirically verifiable. Human experience can either confirm or completely refute their credibility. This, of course, relates to the believability of the tradition; it, however, is not conclusive as to its enforceability. If the tradition is empirically unbelievable, then it cannot be relied on and cannot be enforced either. Nonetheless, if it is empirically verifiable that is not the end of the process. If we discover that, in fact, women are dangerous, that flies have the disease on one wing and the cure on another, or that there is no such thing as contagious disease, that only means that the tradition is *potentially* enforceable. Whether the tradition is enforceable depends on whether it is consistent with higher doctrinal, legal, or moral considerations. Therefore, assuming that we are able to empirically verify that women are the source of *fitnah*, as I noted above, that is not the only consideration. The ending of seduction must be weighed against the principles of Islamic justice. Consequently, if the core of the problem is in the promiscuities of men, then women should not be made to suffer for the faults of men. Furthermore, in all cases higher values, such as education or health, cannot be sacrificed in order to guard against the dangers of *fitnah*.

One can imagine that a fair-minded person reading this text might pause before saying, "This just does not feel right. The Prophet tells us that women are a *fitnah*, and you rationalize the Prophet's statement away!" But that is exactly the point; we are unable to ascertain that the Prophet played the primary role in the authorial enterprise that generated these traditions. Since we are unable to ascertain the Prophet's role, and considering the impact of these traditions, there is no possible justification for taking the traditions at their word. Rather, one can conscientiously require the traditions to be empirically believable and not trump values that have been established through more reliable means. If we could establish the role of the Prophet in the authorial enterprise, then and only then, we might have to resort to a faith-based protest against these traditions because they seem to contravene higher moral values such as justice and fairness.

Now, we should assess the issue of the authorial enterprise as it relates to the *fitnah* traditions. I start the analysis with the following speculation: is it possible that the Prophet in one or more contexts warned against sexual promiscuities and immodesty, and that this warning was remembered and reconstructed into a warning against women? This speculation is warranted because it is entirely plausible that the Prophet would counsel modesty and virtue, and it is also plausible that the patriarchal society receiving the Prophet's counsel redirected this counsel into a statement against women. Importantly, one of the most problematic aspects about the *fitnah* traditions and their determinations is that they render a good part of the Islamic historical experience in Medina a corruption. It is difficult to reconcile the traditions of *fitnah* and exclusion with the numerous reports about the active participation of women in public life during the life of the Prophet and after his death as well. In fact, the reports that document incidents of seclusion of women are few in comparison with the reports documenting the opposite. The reports of public participation are too numerous to recount here, but they include the Prophet racing his wife in public, ʿĀishah and other women watching sports in Medina, women asking and complaining to the Prophet about a variety of problems, and women participating in Islamic battles in a variety of capacities. One of the widely reported incidents is one in which a group of women were meeting with the Prophet. Apparently, their voices had become quite loud; when ʿUmar entered upon the rowdy group, the Prophet laughed at how quickly everyone quieted down. Furthermore, men and women visited each other and exchanged gifts. Several reports state that women would come to the Prophet in the street take him by the hand, sit with him, and discuss their problems.<sup>121</sup> In none of these reports about the historical practice is there a hint of obsession about *fitnah* or the affect of *fitnah*. Importantly, the overwhelming majority of the traditions of the *fitnah* genre do not purport to describe a historical practice. Rather, they present declarations, aspirations, claims, or normative prescriptions. If these traditions are to be believed, then there was an enormous disparity between the normative declarations of the Prophet, and the actual historical practice in Medina. Seen differently, either the reports that describe the historical practice are exaggerated or the traditions of *fitnah* are exaggerated. It is implausible that the Companions and the Prophet, himself, consistently chose to ignore the Prophet's normative injunctions about *fitnah* in actual practice. The typical C.R.L.O response to this type of argument is to claim that all of the incidents mentioned above took place before the imposition of the *hijāb*. Once the *hijāb* was imposed, all of the above mentioned incidents became irrelevant. However, considering that the *hijāb* was introduced in the very last years before the death of the Prophet, we end up with the peculiar result that most of the Islamic historical experience, as far as gender relations are concerned, becomes an utter nullity. In addition, most Qurʾānic commentaries explicitly state that the *hijāb* was imposed only upon the Prophet's wives. In fact, the verse explicitly addresses

itself to the wives of the Prophet and comments that the wives of the Prophet are unlike other women in the Muslim community.<sup>122</sup> Furthermore, many of the reports about the historical practice describe numerous incidents of public participation by women in the last years of the Prophet's life and after his death. For instance, a good portion of the reports describe incidents that took place during the reign of 'Umar, 'Uthmān, and 'Alī. Moreover, even assuming that the law of *'awrah* was revealed in the last year or two of the Prophet's life, as argued above, the issue of *'awrah* is separate from the issue of *fitnah*. Although the issue of *'awrah* needs a separate treatment, it is significant that according to the authorial enterprise that conveyed the laws of *'awrah*, the *'awrah* of female slaves are different from the *'awrah* of free women. As noted earlier in the book, a female slave does not require the covering of the hair, the arms, or part of the legs. If the discourse of *'awrah* was related to the discourse of the *fitnah*, there would be no grounds for distinguishing the two.<sup>123</sup> Most certainly, slave women are as capable of creating *fitnah* as free women, and, yet, what is required of each category is different. In my view, the mere fact that the authorial enterprise distinguished between the *'awrah* of free and non-free women is sufficient in itself to warrant a complete re-examination of the *'awrah* laws.

There are several material elements that are often ignored when discussing the issue of *hijāb* or the *'awrah* of women. These elements suggest that the issue of *fitnah* might have dominated and shaped the discourse on the *'awrah* of women, but they are also informative as to the possible authorial enterprise behind the *fitnah* traditions. There are six main elements that, I believe, warrant careful examination in trying to analyze the laws of *'awrah*, and that invite us to re-examine the relationship between *'awrah* and *fitnah*. Firstly, early jurists disagreed on the meaning of *zīnah* (adornments) that women are commanded to cover. Some jurists argued that it is all of the body including the hair and face except for one eye. The majority argued that women must cover their full body except for the face and hands. Some jurists held that women may expose their feet and their arms up to the elbow. Importantly, someone such as Sa'īd b. Jubayr asserted that revealing the hair is reprehensible, but also stated that the Qur'ānic verses did not explicitly say anything about women's hair.<sup>124</sup> Secondly, the jurists frequently repeated that the veiling verse was revealed in response to a very specific situation. As explained above, corrupt young men would harrass and, at times, assault women at night as these women headed to the wild to relieve themselves. Apparently, when confronted, these men would claim that they did not realize that these women were Muslim but thought them non-Muslim slave-girls, and, therefore, not under the protection of the Muslim community. In Medina society any individual was under the protection of either a clan or, if the individual was Muslim, under the protection of Muslims. Therefore, these verses seem to address a very specific, and even peculiar, historical social dynamic. The interaction between the text and the text's social context is not easily transferable or projectable to other contexts.<sup>125</sup> Thirdly, as

noted above, Muslim jurists consistently argued that the laws mandating the covering of the full body did not apply to slave-girls.<sup>126</sup> In fact, it is reported that 'Umar b. al-Khaṭṭāb prohibited slave-girls from imitating free women by covering their hair. Apparently, Muslim jurists channelled the historical context of the verses into legal determinations that promulgated a particular social stratification. However, it is not clear whether the social stratification addressed by the Qur'ān is the same as that endorsed by the jurists. Fourthly, the jurists often argued that what could be lawfully exposed in a woman's body was what would ordinarily appear according to custom (*'ādah*), nature (*jibillah*), and necessity (*darūrah*). Relying on this, they argued that slave-girls do not have to cover their hair, face, or arms because they live an active economic life that requires mobility, and because by nature and custom slave-girls do not ordinarily cover these parts of their bodies. This makes the focal point of the law custom and functionality. Arguably, however, women in the modern age live an economically active life that requires mobility and, arguably, custom varies with time and place.<sup>127</sup> In other words, if the rules prescribing veiling were mandated to deal with a specific type of harm, and slave-girls were exempted because of the nature of their social role and function, arguably, this means that the rules of veiling are contingent and contextual in nature. Fifthly, several reports state that women, Muslim or non-Muslim, in Medina, normally would wear long head-covers – the cloth usually would be thrown behind ears and shoulders. They would also wear vests open in the front, leaving their chests exposed. Reportedly, the practice of exposing the breasts was common until late into Islam. Several early authorities state that the Qur'ānic verse primarily sought to have women cover their chests up to the beginning of the cleavage area. Sixthly, there is a sharp disjunction between the veiling verses and the notion of seduction. Seduction could be caused by slave-girls, or could be between woman and man, woman and woman, or man and man.<sup>128</sup> A man could be seduced by a slave-girl, and a woman could be seduced by a good looking man, yet neither slave-girls nor men are required to cover their hair or faces. Does the fact that a particular man might be sexually enticing to women affect the obligations of concealment as to this man?<sup>129</sup>

These six points are not exhaustive nor thorough, and they are not intended to be a full discussion of the issue of *'awrah* or *hijāb*. Nevertheless, they do indicate that the legal determinations as to the *'awrah* of women were the product of a complex authorial enterprise replete with competing social trends. The story behind the *hijāb* verses is not as simple and straightforward as the C.R.L.O seems to believe. Furthermore, the connection between the *hijāb* verses and the *fitnah* determinations is not as clear as the C.R.L.O alleges. In fact, these points invite us to re-evaluate the interaction between the idea of *fitnah* and the notion of *'awrah*. They also invite us to ponder the extent to which the *fitnah* traditions are indicative of a dynamic according to which there was a largely successful attempt to co-opt and appropriate the *hijāb* verses in the service of an

effort to limit the public role of women. Furthermore, the historical context of these *'awrah* and *fitnah* determinations suggests that contemporary debates on these issues are somewhat anachronistic.

In order to evaluate the authorial enterprise behind the *fitnah* traditions, we need to examine the totality of the evidence including the rhetorical dynamics of these traditions along with their functions and potentialities. For instance, among the traditions that the C.R.L.O jurists frequently cite in support of their argument for the exclusion of women is one which was reportedly transmitted by Ibn 'Umar. In this report, Ibn 'Umar narrates that the Prophet said, "Do not forbid your women from going to the mosque, but praying at home is better for them." A version of this report purportedly transmitted from the Prophet by 'Abd Allāh b. 'Umar, becomes more extreme. It states: "The prayer of a woman in her room is better than her prayer house and her prayer in a dark closet is better than her prayer in her room."<sup>130</sup> The same message is then conveyed but this time through the involvement of a woman who reportedly goes to the Prophet to tell him that she loves to pray in the mosque with him. To this the Prophet responds that he knows that she loves to pray with him but gives her the same advice as above. As a result, the woman went home and prayed in the most isolated and the darkest area of her house until she died.<sup>131</sup> The least one can observe about these traditions are their remarkable vindictiveness – the more removed and inaccessible a woman is, the better, and even the love of the Prophet cannot change that fact. These reports coexist with other traditions that assert that the mosque of the Prophet was full of rows of women lining up for prayers. At times, men arriving late for prayer would pray behind women – men would be in the front rows followed by women, followed by rows of men who arrived late. Yet, the prayers of the men who prayed behind the women were considered valid.<sup>132</sup> These traditions also note that after completing his prayers the Prophet would delay a bit, presumably, to give the last rows an opportunity to leave the mosque.<sup>133</sup> Furthermore, there are reports that some women would stay for long periods and even sleep in the mosque.<sup>134</sup> Importantly, a large number of reports state that the Prophet wanted all women to join the community in 'id prayers, and that he urged even menstruating women to listen to the sermon and join in the celebrations. When some women complained that they might not have a garb to wear, the Prophet advised those women who have two garbs to lend one to a woman without.<sup>135</sup> Interestingly, the early jurist Mālik b. Anas (d. 179/796) held that it is preferable for a woman to perform *i'tikāf* prayers<sup>136</sup> in the mosque and not in her home.<sup>137</sup> In addition, several reports stated that women attended *i'tikāf* prayer with the Prophet in the mosque, and did so during menstruation.<sup>138</sup>

Of course, reports of widespread attendance of prayers by women in mosques create a rather untenable situation. One would have to conclude that all these women ignored the Prophet's advice to pray in dark closets. In response to this tension, we find reports that try to rehabilitate the situation, somewhat. For

instance, a report attributed to 'Ā'ishah asserts that 'Ā'ishah said, "If the Prophet would have seen what women are doing in mosques today, he would have prohibited them [from attending the mosque] as the women of Israel were prohibited [presumably, by Jewish law]."<sup>139</sup> The importance of this tradition is in the fact that it is attributed to 'Ā'ishah, who led an active political life and continued to pray and teach in the mosque in Medina after the Prophet's death. We are not told what it is that women did in mosques after the death of the Prophet and why the law of the Israelites is relevant. Naturally, the mention of the Israelites creates a connection with and validates the traditions regarding *fitnah*, since according to these traditions, women were the first cause of trials and tribulations for the Israelites. Importantly, in the historical context of the Islamic traditions, the Israelites were seen as the prime example of a people who violated God's covenant, and who were banished and exiled in the earth as punishment. Therefore, the symbolism drawn is quite compelling; women might bring the same unfortunate fate to the Muslim nation unless adequately restrained.

Another example of a rehabilitation tradition is one in which Abū Hurayrah narrates that the Prophet said, "As for men, the best rows [in prayer] are the front rows, and the worst rows are the last rows. As for women, the best rows [in prayer] are the last rows, and the worst rows are the front rows."<sup>140</sup> Interestingly, the classical jurists attempt to rationalize this tradition by arguing that it means that there should be a sufficient distance between the last row of men and the first row of women.<sup>141</sup> Nonetheless, this rationalization is not successful in concealing the basic incoherence of the report. In order for the report to make sense, we must read it to mean that men who come to congregational prayers early are the best because they will form the front rows. The worst women, however, are those who come early to congregational prayer, since they will form the front rows, and the best women are those who come late because they will form the last rows. Therefore, if a woman wants to be among the best, she will have to delay as long as possible before going to pray in the mosque – after all, she wants to make sure that she does not end up in the front rows. Assume that all women think in a similar fashion, what happens then? All women make a mad rush to the mosque in the last minute possible, and then fight it out for who ends up in the last rows?

The tradition is logically absurd, and, yet the C.R.L.O, and many other jurists, rely on it in arguing in support of the doctrine of *fitnah*. The best female rows are the last rows because they are the furthest away from men, and the least capable of causing *fitnah*. Confronted with the logical absurdity of the tradition, the C.R.L.O responds, that that is exactly why women should pray at home.<sup>142</sup> But then we come full circle, why did so many women at the time of the Prophet not understand this simple and straightforward point, which invites them all to pray in dark closets instead of bothering with going to the mosque!

Nevertheless, the stratagems of rehabilitation do not end here. Again, in the context of *fitnah* determinations, one finds a rather ambiguous tradition cited by

the jurists. In this tradition, Abū Hurayrah reports that the Prophet said, "Do not forbid women from going to mosques, however, they should go out while they are *tafilāt*."<sup>143</sup> *Tafilāt* comes from the word *tafil*, which means bad smelling. Does this mean that women should go to mosques while protected from *fitnah* by a healthy bad stench? This sharply contrasts with the Qur'ānic injunction that states: "O children of Adam! Take your [full] adornments at every mosque, eat and drink but do not go to excess for God does not like those who go to extremes."<sup>144</sup> Moreover, there are other traditions attributed to the Prophet that advise Muslims, men and women, against undertaking certain behavior, like eating raw onions, before attending congregational prayers because the odor might be offensive to others.<sup>145</sup> Reports coming by the way of Zaynab al-Thaqafiyah maintained that the Prophet advised women not to put perfume on if they wish to attend congregational prayers. However, this advice was transmitted by Abū Hurayrah as a prohibition conveying a degree of hostility towards perfuming women – he reports that the Prophet said, "Any woman who puts on perfume, let her not attend the 'Ishā' prayers [last prayers in the evening] with us."<sup>146</sup> Based on these various traditions, the classical jurists concluded that the word *tafilāt*, mentioned in the tradition above, was used by the tradition to mean that women should not attend congregational prayers while perfumed, but should smell ordinary.<sup>147</sup> Nevertheless, this is hardly the point – the point is that these various traditions allow us to observe a vibrant historical dynamic in which a social issue is being negotiated through the subtleties of language. Observing this social dynamic allows us to assess the authorial enterprise behind the *fitnah* traditions in a more reasonable, comprehensive, diligent and honest assessment.

Part of the historical negotiative process was the co-option and redirecting of reports that described a historical practice into reports of normative warnings against the *fitnah* of women. In several traditions, 'Ā'ishah reports that women at the time of the Prophet would attend morning prayers wearing their cloaks. The women would attend and leave without being recognized because of the darkness (*min al-ghalas*). 'Ā'ishah reportedly says this in the context of arguing that morning congregational prayers should be performed early, at dawn, when it is still dark. Her point is technical and related to the proper timing of prayer.<sup>148</sup> Remarkably, however, this tradition becomes co-opted by some early and modern authorities into a statement against *fitnah*. According to these sources, and according to the C.R.L.O, the lesson of these traditions is that women should not be seen going to and coming from the mosque, or that if they go to the mosque, they should thoroughly wrap themselves in clothing so that no one will recognize them.<sup>149</sup> The rich social context of this debate is best demonstrated in a tradition documented by Muslim: 'Abd Allāh b. 'Umar heard that one of his sons (either Bilāl or Waqid) had forbidden his wife from going to the mosque at night. 'Abd Allāh told his son, "The Prophet has told us not to ban women from going to the mosque at night." The son said, "Nevertheless, I will not allow them [his wife or other women] to go out to the mosque so that they

can use [going out] as an excuse [to do improper things.]" 'Abd Allāh was offended by the response, and said, "I tell you what the Prophet said, and you tell me, nevertheless I will not allow them!" Upset, reportedly 'Abd Allāh refused to talk to his son until he retracted his decision.<sup>150</sup>

In a tradition that is particularly telling and resentful of public participation by women, it is claimed that during the Prophet's lifetime, after finishing prayer, men and women mixed with each other while exiting the mosque. The Prophet reportedly declared the following: "[O women,] fall back for you have no right to be on the road. You should walk on the outer fringes of the road." The narrator of the tradition then comments, "After that, women would walk [to the sides] so close to the walls that their robes would scratch against the walls."<sup>151</sup> Presumably, this testimony is inconsistent with traditions noted above about women taking the Prophet by the hand in the street, and by others describing the mixing of men and women in the market and in the mosque. Nevertheless, that is not the material issue here; what is important is that the tradition conveys a rather powerful message: the roads belong to men, and if women are on the road, they should submissively cower next to walls. The power of these types of traditions is exemplified in the fact that despite the fact that even the scholars of *hadīth* declared this report to be of doubtful authenticity, we find the C.R.L.O relying on it in order to prohibit the mixing of the sexes. The C.R.L.O cites the report in arguing that women should be on the public roads only out of necessity and should stay clear of men.<sup>152</sup> But this report and the fact that it is co-optable and usable in the modern age, serves to emphasize the importance of a diligent search into the authorial enterprise. Earlier on, I called this an issue of the legal competence of the instructions by the Principal. In all situations, by presenting a determination to the common agents, the special agent is not only making representations about meaning, but also about the qualifications of the instructions. The issue is not simply who said what, or who said what about whom, the relevant issue is to thoroughly, comprehensively and diligently investigate the totality of contextual evidence that might enlighten us about the motives, dynamics, values, memory and the construction of reality. For example, noticing that many of the reports that demean, and sometimes honor, women are consistently attributed to Abū Hurayrah, 'Abd Allāh b. 'Umar, and Abū Sa'īd al-Khudrī, a diligent agent must ask why? Is it possible that these traditions were the legal opinions of these Companions, and that these individual legal opinions were misremembered by later generations, and attributed to the Prophet? Is it possible that these Companions were collectively remembered as conservative men and, thus, they became a center for anti-women attributions? In other words, is it possible that people tended to attribute opinions that expressed a conservative view about women to these particular Companions who were collectively remembered as conservative men? Someone like Abū Sa'īd al-Khudrī was an honored and revered Companion of the Prophet, and we find that 1,170 traditions were attributed to him. Out of these, al-Bukhārī accepted only sixteen

traditions as authentic, and Muslim accepted fifty-two.<sup>153</sup> For someone to come in the contemporary age, and argue that perhaps al-Bukhārī and Muslim should have included some or excluded others of the traditions attributed to al-Khudrī, is not heresy – it is simply a diligent discharging of the burdens of special agency.

The duty of diligence is only underscored by the very dynamics of the traditions that demean women. In my view, these traditions are not only demeaning to women, but are also demeaning to men. The often graphic and repulsive nature of these reports is evidence of the fact that they were produced in the context of highly contentious social dynamics. Their wording and style seem intended to shock, challenge, and frustrate a particular social strata or set of interests. By invoking sexually sadistic images, they appear to proclaim the futility of resisting patriarchy. There is a certain deviant eroticism in the image of a woman submissively licking a man's ulcers or promptly submitting to male desires even in the most inopportune moments. In short, these traditions might appear, in our modern age, to be a rather crimped erotic male projection satisfying the fancies of immodest men. Moreover, interestingly enough, some of these reports draw a connection between the empowerment of men and the disempowerment of insular groups such as women and slaves. In these reports, the Prophet is quoted as saying, "The prayers of three kinds of people will not be accepted [by God]: a woman who leaves her home without her husband's permission, a slave who escapes from his master (*al-'abd al-'abīq*), and a man who leads unwilling men in prayer." Variants on this transmission state that a woman whose husband is upset with her, a fugitive slave, and a man who leads prayer despite being hated by his congregation will not have their prayers accepted.<sup>154</sup> The point about leading prayer is a not so subtle reference to early despotic and unpopular caliphs and governors who, as a symbol of legitimacy and hegemony, would forceably lead prayer in the major cities of the Islamic empire.<sup>155</sup> In other words, a segment of these traditions express opposition to the disempowerment and dominance over free men – men ought to be able to choose the person who leads them in prayer, and, by implication, the person who rules over them, in general.

While these traditions affirm the autonomy of free men, they also deny women and slaves their autonomy. A slave who escapes from his master, and a wife who disobeys or displeases her master (husband), are equally reprehensible. By rebelling against their status in life, they lose favor with God. Meanwhile, a despot who denies free men their autonomy and rightful status confronts the same fate. Quite aside from the issue of the technical, chain-of-transmission-focused, authenticity of these traditions, they are indicative of a dynamic and highly negotiative historical process. In fact, I believe that as to the overwhelming majority of the traditions dealing with the role of women in society, the role of the Prophet in the authorial enterprise is minimal. If one adopts the faith-based conviction that the Prophet was not sent by God to affirm and legitimate conservative and oppressive power structures, traditions that

affirm the hegemony of patriarchy would have to pass the strictest level of scrutiny. However, applying this level of scrutiny to these traditions would reveal that there were too many patriarchal vested interests circulating, advocating, and embellishing these types of reports. Consequently, one would have to conclude that the voice of the Prophet in the authorial enterprise behind these traditions is hopelessly drowned and muted.

### *Racism, sexism, and a sense of beauty*

As mentioned earlier, classical Muslim jurists have long debated the nature of beauty (*husn*) and ugliness (*qubh*). As part of this debate, Muslim jurists explored whether the essence of beauty was created by God, whether beauty is recognizable by revelation alone or pure reason and intuition as well, and which manifestations of beauty are inherent and which are derivative. These discourses are remarkably abstract and complex; nonetheless, they need to be rekindled in the modern age. This book cannot do justice to this rich tradition, but one aspect of the discourse needs to be mentioned here. Among the issues debated by Muslim jurists was the extent to which principles of pure reason,<sup>156</sup> observable natural phenomenon, or intuition can be utilized in the verification of the authenticity of traditions. The core-logic of the debate focused on a hierarchy of normativities according to which lower-order values are evaluated in light of higher-order values. These higher-order/lower-order values did not just refer to the five values of *Shari'ah*, but also to moral imperatives. For instance, the Qur'an mandates that justice be established. Classical jurists would proceed to break down the constituent elements of justice, organizing them into necessary elements, lesser order elements, and variables (elements that are dependent on the context). So, for example, the discourse would commence with asking what is necessary for justice? Different responses are possible – justice is equality of treatment, equality of value, equality of opportunity, a strict correlation between rights and duties, or that a person should not suffer for the sins of another. Assume that a jurist encounters a report that states that a deceased person will suffer if his relatives weep at his grave. The lesser-order value conveyed here is that weeping at a gravesite is unacceptable. But the higher-order values mandating justice and that a person should not suffer for the sins of another might create a conflict with this report because the deceased is suffering for the weeping, an act for which he is not responsible. Because of the tension created by the higher- and lower-order values, the question becomes whether the report could be interpreted to resolve the conflict. But before one may get to the issue of interpretation, the very existence of the tension impacts upon the evaluation of the authenticity of the report. The presence of a conflict between a higher order value might be an indication that the report, itself, is unreliable.

This type of analysis was typically undertaken when evaluating the *matn* (substance) of a tradition. This was not a means of preferring reason over



revelation, but a means of insuring that revelation is in fact what it purports to be.<sup>157</sup> This discourse, with its sophisticated distinctions and conscientious explorations is dead and long forgotten in contemporary Islam. Nevertheless, as argued above, the puritan approaches of modern Islam incorporate a variety of normative value assumptions, while sheltering themselves behind screens of objectivity and literalism. These assumptions, however, are neither systematic nor conscientious. I want to illustrate this point with a final example correlating between traditions that are demeaning to a race and traditions that are demeaning to a gender.

A variety of reports have been attributed to the Prophet that explicitly demean Abyssinians, Sudanese, or blacks in general. Typically, these reports claim that ʿĀ'isha, Ibn ʿAbbās, Ibn ʿUmar, Abū Hurayrah, or Anas heard the Prophet say something derogatory towards blacks. One such report claims that the Prophet said, "Choose suitable [marriage partners] for your children, but avoid [marrying] blacks for they are a deformed race (*fa innahu lawnun mushawwah*)."<sup>158</sup> Other reports claim that the Prophet said, "Blacks live guided by their private parts and stomachs" (i.e., they fornicate and eat).<sup>159</sup> Furthermore, Ibn Ḥanbal narrated a report that, in effect, states, God created the white race (*dhurriyyah bayḍā'*) from Adam's right shoulder, and created the black race (*dhurriyyah sawḍā'*) from Adam's left shoulder, then decreed that those on the right (Adam's right shoulder) will enter Heaven, and those on the left will enter Hell.<sup>160</sup> There is no question that these reports are racist – they brand and deprecate a whole race. As such, they share an unfortunate quality with the traditions that degrade women in general – these traditions brand and deprecate a whole gender. And, like the traditions demeaning of women, the racist traditions do not go unopposed. These traditions are contradicted by many reports asserting that the Prophet said all people are equal regardless of their skin color, or that condemn behavior that is deprecating to black Africans.<sup>161</sup> Both the sexist and racist reports are contradicted by traditions that either empower women or black Africans against demeaning attitudes that were prevalent in Arab society. Importantly, numerous jurists and *ḥadīth* scholars rejected the authenticity of the racist traditions and declared them pure fabrications. Despite the fact that the authenticity of these reports were accepted by some, the overwhelming majority of the classical authorities rejected the racist traditions, declaring them to be contrary to Islamic norms (*mughāyira li khuluq al-Islām*). These authorities also objectified the rejection of these reports by deciding that one or more of the narrators involved in transmitting these reports were liars and fabricators. The majority of the scholars of *ḥadīth* found serious defects in the chains of transmission of these reports. However, my contention is that the aversion that the overwhelming majority of the classical scholars felt towards the racist traditions guided their evaluation of the chains of transmission. Put differently, these scholars were prone to disbelieve the transmitters of these reports because, in essence, they felt that the message

conveyed was simply ugly. Additionally, it is likely that these scholars scrutinized the chains of transmission more aggressively and meticulously than if dealing with non-problematic traditions. Furthermore, although notable *ḥadīth* scholars such as Abū ʿAbd Allāh Muḥammad b. ʿAbd Allāh al-Ḥākim (d. 405/1014), Ibn Ḥibbān, and Aḥmad Ibn Ḥanbal considered some of the racist traditions authentic, the overwhelming majority refused to defer to their judgment.<sup>162</sup> Ibn al-Qayyim summed up the attitude of the vast majority of classical scholars in saying, "All the traditions deprecating the Abyssinians and Sudanese are pure fabrications." Importantly, Ibn al-Qayyim argued that a *matn* analysis by itself would be sufficient to reject these reports.<sup>163</sup>

The late Wahhābī scholar Nāṣir al-Dīn al-Albānī (d. 1999),<sup>164</sup> dealing with these traditions, reaches the same result. He quotes extensively from a variety of classical sources in an effort to impeach the transmitters of the traditions. Most importantly, in the context of commenting on one of the classical authorities who accepted the authenticity of some of the racist reports, al-Albānī states:

This is because [the classical scholar who authenticated the report] stubbornly focused on the chain of transmission (*al-sanaḍ*) without carefully scrutinizing the substance (*matn*). This substance (*matn*) conveys a message that can never be endorsed by the *Sharīʿah*. How could a rational person say that this fair and just *Sharīʿah* would condemn all of the Sudanese nation, with all its people, while there are pious and pure people in it, as is the case with all other nations. By God, how would a non-Muslim from Sudan react if he learns that all of his people have been condemned by the Islamic *Sharīʿah*!<sup>165</sup>

I think it is fair to say that al-Albānī is revolted by the ugliness of these traditions, and is not willing to accept them as a matter of principle. He justifiably believes that the *Sharīʿah* cannot endorse this genre of traditions because they violate the ethical principles of the Islamic message. Of course, the analogies to the traditions demeaning to women are apparent. In the same fashion that one could be shocked by reports conveying a deprecating message towards black Africans, one can, just as reasonably, be shocked by traditions that mandate that women walk next to a wall, pray in dark spots in their homes, lick the puss-filled ulcers of their husbands, sexually submit to their husbands on the back of camels, liken women to crooked ribs and black dogs, or cast women as unbridled seducers who are defective in intellect and religion. I suspect that it all depends on the vision of morality and beauty that Islam has instilled in one's heart.

## NOTES

<sup>1</sup> Examples of the *responsa* prohibiting the mixing of the sexes, the prohibition against public employment and the necessity of veiling are translated in the appendix. Many other relevant *responsa* can be found in, Al-ʿUthaymīn, *Fatāwā al-Shaykh*, 1:420–421, 2:757, 2:770, 2:837–838, 2:863–872, 2:873–877, 2:892–899; Ibn Bāz, *Fatāwā Islāmiyyah*, 3:178; *idem*, *al-Fatāwā*, pp. 183–195, 199; *idem*, *Majmāʿ Fatāwā*, 1:349–350; *idem*, *Majmāʿ Fatāwā wa*



- Maqālāt Mutanawwi'ah* (1987), 1:422–431; *idem*, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah* (1990), 3:354–356; *idem*, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah* (1990), 4:242–258; *idem*, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah* (1992), 5:224–240; Ibn Fawzān, *al-Muntaqā*, 3:174–177, 3:242–243, 3:246–247, 3:292–312, 3:329, 4:69–70, 4:176–177, 5:13–14, 5:187–188, 5:263, 5:331–334, 5:385–387; *Fatāwā al-Lajnah* (1991), 1:360–361, 2:14–15; *Fatāwā al-Lajnah* (1996), pp. 339–341; 'Afiī, *Fatāwā wa Rasā'id*, 1/2:478; Ibn Bāz, *Islamic Fatawa*, 313–317.
- 2 Ibn Bāz, *Fatāwā Islāmiyyah*, 3:178; Ibn Fawzān, *al-Muntaqā*, 3:242–243, 3:329, 4:69–70.
- 3 Al-Hindī, *Kanz al-'Ummāl*, 16:339.
- 4 Qur'ān, 4:34.
- 5 Qur'ān, 4:34 states: "Men are the protectors and maintainers of women because Allah has given the one [men] more than the other, and because they [men] support them [women] from their wealth. Therefore the righteous women are devoutly obedient, and guard in [the husband's] absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct, admonish them, refuse to share their beds, and beat them. But if they return to obedience, do not seek against them any means [of annoyance], for Allah is most high and great." Premodern Muslim jurists have generally understood the reference to beating in this verse restrictively. They usually held that beatings cannot be to the face and cannot cause pain or harm. See, Abou El Fadl, "On the Beating of Wives," *Conference of the Books*, pp. 177–188.
- 6 See Abou El Fadl, "On the Beating of Wives," *Conference of the Books*, pp. 167–176; *idem*, "The Beating of Wives Revisited," *Conference of the Books*, pp. 177–188.
- 7 See Qur'ān, 30:21.
- 8 For instance, this tradition is cited in Ibn Fawzān, *al-Muntaqā*, 3:243; *Fatāwā al-Mar'ah al-Muslimah* (1996), 2:678.
- 9 See generally, Ibn al-Jawzī, *Kitāb Ahkām al-Nisā'*, pp. 136–139; al-Shawkānī, *Nayl al-Awtār*, 6:207–208; al-Mubārakfūrī, *Tuhfat al-Ahwadhī*, 4:271–273; Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'būd*, 6:178; Ibn Ḥanbal, *Musnad*, 4:515, 6:89; Ibn Mājah, *Sunan* (1972), 1:595; al-Būṣayrī, *Zawā'id Ibn Mājah*, p. 263. Most of the version are reported in al-Hindī, *Kanz al-'Ummāl*, 16:332–341.
- 10 Al-Mubārakfūrī, *Tuhfat al-Ahwadhī*, 4:271.
- 11 Ibn Mājah, *Sunan* (1972), 1:595.
- 12 Ibn Ḥanbal, *Musnad*, 6:89.
- 13 Ibn Mājah, *Sunan* (1972), 1:595.
- 14 Ibn al-Jawzī, *Kitāb Ahkām al-Nisā'*, p. 137; al-Hindī, *Kanz al-'Ummāl*, 16:333.
- 15 Ibn Ḥanbal, *Musnad*, 4:515; Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'būd*, 6:179. The significance of the word *qatab* (saddle) employed in some traditions, was debated by jurists. Some stated that the use of saddle refers to submission while mounting an animal. Others argued that it is referring to a type of seat used to facilitate birthing. The second use is intended to signify the importance of sexual compliance; even if a woman is in the process of birthing she ought not refrain from fulfilling her husband's sexual desires. This, of course, is an exaggeration, but the point of the exaggeration is to emphasize that even if a woman is preoccupied with some immediate task or is in pain, she must fulfill her husband's sexual desires. See Ibn al-Athīr al-Jazrī, *al-Nihāyah fi Gharīb al-Hadīth*, 4:10; al-Harawī, *Gharīb al-Hadīth*, 2:361; al-Tirmidhī, *Nawādir*, 176; al-Ṭabarānī, *al-Mu'jam al-Kabīr*, 5:200, 208; 8:334.
- 16 Ibn Ḥanbal, *Musnad*, 3:200. Some versions of this genre of reports state that even if the husband's nose is oozing with puss and blood, and his wife licks it, she will not do him justice. Al-Hindī, *Kanz al-'Ummāl*, 16:338; Ibn Abī Shaybah, *al-Muṣannaf*, 3:399.
- 17 All the prostration traditions and the traditions mentioning sexual submission, even on the back of a camel, contain individuals, such as Ayyūb b. 'Utbah, Muḥammad b. Jābir, and Sa'daqa b. 'Abd Allāh, whose credibility is suspect. This has led many scholars to question the authenticity of these reports. Al-Jurjānī, *al-Kāmil fi Du'afā'*, 2:13, 3:139, 4:332, 5:117.
- 18 As explained earlier, *mutawātir* traditions are those transmitted throughout the first three generations of Muslims by such a large number of transmitters that it is highly unlikely that the traditions are fabricated.
- 19 Other traditions attributed to the Prophet provide that for a woman, the one most entitled to her caretaking is her husband, and for a man, the one most entitled to his caretaking is his mother. Another tradition provides: "If a wife would truly acknowledge the rights of husband over her, she would remain standing [in his service] as he eats his lunch or supper until he is finished [eating]." Al-Hindī, *Kanz al-'Ummāl*, 16:331–332.
- 20 Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'būd*, 6:179–180; Ibn Ḥajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 6:314–316, 9:293–294; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 9/10:248–249. Relying on these types of traditions, al-Hakīm al-Tirmidhī asserts that a woman must submit to her husband's sexual desires whether she feels like it or not, even if doing so would cause her hardship. See al-Tirmidhī, *Nawādir*, p. 176.
- 21 Even the C.R.L.O reproduces this apologetic rhetoric by maintaining that Islam gave women their full rights. See Ibn Bāz, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah*, 3:348–350. For this apologetic argument, see also, Doi, *Women in Shari'ah*, pp. 4–10; Rahman, *Role of Women in Society*, pp. 9–45, 92–118; al-Parūqī, *Women, Muslim Society, and Islam*, pp. 6–10; al-Hibri, "A study of Islamic herstory," pp. 207–219.
- 22 Ibn al-Jawzī, *Kitāb Ahkām al-Nisā'*, pp. 139–140.
- 23 In the juristic discourses, women are not normally seen as the social equivalent of slaves to their husbands. Nevertheless, influential pre-modern scholars such as Abū Ḥamid al-Ghazālī have asserted that a wife is a "sort of" slave to her husband, and therefore, she must obey all his commands as long as he does not command her to perform a sinful act. See al-Ghazālī, *Ihyā'*, 2:56.
- 24 Ibn Ḥajar al-'Asqalānī, *Fath al-Bārī* (1993), 10:347.
- 25 Ibn Ḥajar al-'Asqalānī, *Fath al-Bārī* (1993), 10:352.
- 26 Many of these traditions are in al-Nasā'ī, *Ishārat al-Nisā'*, pp. 151–2, 156–7, 157–60, 163–4. See also, Abū Shuqqah, *Tahrīr al-Mar'ah*, for a collection of these reports in four volumes.
- 27 However, some of these commentators go on to say this exaggeration is justified because of the seriousness of the husband's rights. Al-Mubārakfūrī, *Tuhfat al-Ahwadhī*, 4:271.
- 28 For Abū Hurayrah's role in this tradition, see, al-Jirāhī, *Kashf al-Khafā'* (1983), p. 162; Ibn Jār Allāh al-Yamānī, *al-Nawāfiḥ al-'Aṭirah*, p. 277.
- 29 For example, see, al-'Azī, *Difā' 'an Abī Hurayrah*; al-Zar'ī, *Abū Hurayrah*. The late jurist Rashīd Riḍā issued a *responsum* in 1928 in which he defended Abū Hurayrah's credibility. Nevertheless, noted that Abū Hurayrah did transmit Israelite reports through Ka'b al-Ahbār, a Jewish Rabbi and a close friend of Abū Hurayrah. See Riḍā, *Fatāwā al-Imām*, 5:2034–2035.
- 30 Al-Nisābūrī, *al-Mustadrak*, 3:509.
- 31 Ibn Qutaybah, *Kitāb Ta'wīl*, p. 31; al-Mūsawī, *Abū Hurayrah*, pp. 196.
- 32 Ibn Kathīr, *al-Bidāyah wa al-Nihāyah*, 8:106.
- 33 Al-Dhahabī, *Siyar A'lām*, 2:607 n. 3.
- 34 For these reports and others see, al-Dhahabī, *Siyar A'lām*, 2:589, 594–609, 615; Ibn Sa'd, *al-Ṭabaqāt al-Kubrā* (n.d.), 2:362–364, 4:330–335. See also, Ibn Kathīr, *al-Bidāyah wa al-Nihāyah*, 8:109; For instance, it is reported that on separate occasions, 'Ā'ishah and 'Alī openly declared that they disagreed with what Abū Hurayrah reported and would act contrary to his report (*la ukhālīfanna Abū Hurayrah*). Ibn Qutaybah, *Kitāb Ta'wīl*, p. 19. Reportedly, al-Ḥasan al-Baṣrī said that Abū Hurayrah was not reliable, see al-Dhahabī, *Siyar A'lām*, 4:571.
- 35 Ibn Sa'd, *al-Ṭabaqāt al-Kubrā* (n.d.), 2:364, 4:331; al-Dhahabī, *Siyar A'lām*, 2:615–616.
- 36 See al-Dhahabī, *Siyar A'lām*, 2:608–609, 618–619; al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1:341.
- 37 For an example of such an apologetic Sunni work see, Ibn Sa'id, *Naqd al-Marīsī*, 2:617–631. See also, al-Dhahabī, *Siyar A'lām*, 2:615.
- 38 These and similar reports are in Ibn Sa'id, *Naqd al-Marīsī*, 1:617–631. See also, al-Dhahabī, *Siyar A'lām*, 2:600.

- 39 The idea of social effect or impact, as a methodological tool, is conceptually similar to the classical notion of *'ummūn al-balwā* (the widespread affliction) used to evaluate the necessity for exceptional laws.
- 40 As noted earlier, in the contemporary age, *Shaykh* Muḥammad al-Ghazālī was one of the main advocates of *matn* analysis. See, *Shaykh* Muḥammad al-Ghazālī, *al-Sunnah al-Nabawīyyah*; *idem*, *Dustūr al-Wiḥdah*.
- 41 Siddiqi, *Ḥadīth Literature*, p. 114; Baliq, *Minḥāj al-Sāliḥīn*, pp. 36–39.
- 42 Ibn al-Ṣalāh, *ʿUlūm al-Ḥadīth*, pp. 91–92; see also, ʿAbd al-Rahmān al-Rāzī, *Ḥal al-Ḥadīth*; Ṣubḥī al-Ṣāliḥ, *ʿUlūm al-Ḥadīth*, pp. 179–187; ʿItr, *Manḥaj al-Naqd*, pp. 447–454.
- 43 Rahman, *Islam*, pp. 64–67; see also, *idem*, *Islamic Methodology in History*, pp. 27–82. Ironically, the C.R.L.O jurists, themselves, state that *isnād* analysis is insufficient, and that *matn* analysis is imperative. Al-ʿUthaymīn, *Fatāwā al-Shaykh*, 1:269–270. Inconsistently, the C.R.L.O maintains that all traditions documented in *Ṣaḥīḥ al-Bukhārī* are authentic. *Fatāwā al-Lajnah* (1991), 3:345.
- 44 Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 6:177–178.
- 45 Khān, et al., *Nuzhat al-Muttaqīn*, 1:289. See generally on this *ḥadīth*, Zaydān, *al-Mufaṣṣṣal fī Ahkām* (1994); al-Shawkānī, *Nayl al-Awṣār*, 6:207–210; al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 4:271–272.
- 46 Reported by Ahmad, Ibn Hibbān and al-Ṭabarī. See Ibn Hanbal, *Musnad*, 1:236–7.
- 47 There are several *ḥadīth* attributed to the Prophet that assert that a woman's prayer or worship will not be accepted by God if she upsets or disobeys her husband. Other *ḥadīth* assert that the angels will curse any woman who upsets her husband by refusing him conjugal relations. See, al-Shawkānī, *Nayl al-Awṣār*, 6:209–210.
- 48 Ibn Hajar al-ʿAsqalānī claims that he is *ṣadiq* (truthful). Ibn Hajar al-ʿAsqalānī, *Taqrīb al-Tahdhīb*, 1:444. However, Ibn Luhayʿah's reliability was contested. It is reported that he became mentally unstable after his books burned in 170/787. Some considered him unreliable after that event. Others refused to transmit or accept *ḥadīth* from him before or after that event. See, Ibn Hibbān, *al-Majrūḥīn*, 2:11–16.
- 49 Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 9:294. Another report of this genre asserts that every Friday there is a particular hour when all prayers will be answered except the prayers of a woman who had upset her husband. Ibn al-Jawzī, *Kitāb al-Mawḍūʿāt*, 2:177. Ibn al-Jawzī asserts that this tradition is not authentic.
- 50 Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 6:179.
- 51 Al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 4:283–284.
- 52 Qurʾān, 33:35; 4:34.
- 53 In matters of both law and theology, the *ahl al-ḥadīth* approached their subject matter by relying on transmitted knowledge (i.e. *ḥadīth*) and rejecting rationalist methods of inquiry. This is not to say they were simply *ḥadīth* collectors, or *muhaddiths*. *Muhaddiths* could be rationally inclined, since memorizing and collecting *ḥadīth* was a fundamental aspect of legal education, and was not exclusive to the *ahl al-ḥadīth*. Rather, the *ahl al-ḥadīth* rejected the rationalist tendencies among the Muʿtazilah, and the utilization of rationalist methods into legal inquiry. Consequently, their methodology was characterized by an often rigid reliance on tradition. The jurist and school of law most closely associated with the *ahl al-ḥadīth* is Almad b. Hanbal and his adherents. George Makdisi, "Ashʿarī and the Ashʿarites, Part I," pp. 37–80, 38, 48–52; Fazlur Rahman, *Islam*, pp. 115, 146, 231, 239; Goldziher, *The Zāhiris*, pp. 3–5; Melchert, *Formation*, pp. 2–3; Watt, *Formative Period*, pp. 66–67; Weiss, *Spirit of Islamic Law*, pp. 12–14.
- 54 See al-ʿAmīdī, *al-Iḥkām* (1984), 2:48, 62–66; Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl* (1988), 2:184, 215; al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1:321, 333; al-Juwaynī, *al-Burhān*, 1:606. See also the useful discussion in Weiss, *Search for God's Law*, pp. 293–294, 299–300.
- 55 Al-ʿUthaymīn, *Fatāwā al-Shaykh*, 1:188–189; *Fatāwā al-Lajnah* (1991), 3:239–240, 4:289–290.
- 56 This manifested in a rather notorious controversy when the late *Shaykh* Muḥammad al-Ghazālī wrote *al-Sunnah al-Nabawīyyah*. Several conferences were held in Saudi Arabia to respond to him, and a large number of books refuted his arguments or attacked him personally. See, for example, Sultān, *Azmat al-Ḥiwār*; ʿAwdah, *Fī Ḥiwār Ḥādī*; Madkhalī, *Kashf Maḥqif al-Ghazālī*; Ibn ʿAbd al-Rahīm, *Jināyat al-Shaykh Muḥammad al-Ghazālī*.
- 57 The confusion surrounding *uṣūl* and *furūʿ* is aptly demonstrated in the debate over the *ḥijāb* (veil) of the Muslim woman. The majority of Muslim writers argue that the issue of *ḥijāb* is not open to debate or discussion. According to them, a Muslim woman must cover all her body and hair except her face and hands. See al-Albānī, *Ḥijāb al-Marʾah*; al-Mawḍūdī, *al-Ḥijāb*. Effectively, these writers are arguing that the *ḥijāb* is among the *uṣūl* of religion and, therefore, no disagreement may be tolerated. Other writers have argued that the *ḥijāb* is an appropriate subject for debate. See, Sharīf, *al-Marʾah al-Muslimah*; Mernissi, *The Veil and the Male Elite*. I would argue that it is not possible to systematically distinguish between *uṣūl* or *furūʿ*. The focus of the inquiry should be on burdens of proof in relation to the law claimed. If one wishes to maintain that *ḥijāb* is a mandatory and fundamental part of religion, in light of the widespread impact of the law, she/he bears a heavy burden of proof especially if he or she is arguing for a mandatory enforcement of the law. At any case, I don't see how it could be possible to prohibit discussions on the matter of the *ḥijāb*.
- 58 Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 9:253–254.
- 59 For a systematic argument on this point, see Mernissi, *The Veil and the Male Elite*, although I disagree with the author's conclusions.
- 60 Al-ʿId, *Iḥkām al-Ahkām*, 1:157; Ibn Ḥazm al-Zāhiri, *al-Muḥallā bi al-Āthār*, 2:170; Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 2:350, 382–384; Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 2:273–275; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 3/4:382–385.
- 61 Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 2:55–56; Ibn Ḥazm, *al-Muḥallā*, 2:170; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 3/4:383.
- 62 Muḥammad Aḥmad Ismāʿīl al-Muqaddim, *ʿAwdat al-Ḥijāb* (Riyāḍ: Dār Ṭaybah, 1996), 3:22; Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 2:350.
- 63 On the Medinese delegation to the Prophet, see, Lings, *Muḥammad*, pp. 108–112. For a discussion on the more liberal culture of Medina, see, Mernissi, *Veil and the Male Elite*, pp. 142–145.
- 64 Al-ʿUthaymīn, *Fatāwā al-Shaykh*, 1:363.
- 65 Ibn Bāz, *Majmūʿ Fatāwā*, 1:282–284.
- 66 Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 6:187–188; al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 4:280–281.
- 67 Ibn Bāz, *Majmūʿ Fatāwā wa Maqālāt Mutanawwiʿah* (1990), 3:348–350.
- 68 For the text of the report, see Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 6:363.
- 69 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 9/10:298–299.
- 70 Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 6:363–364.
- 71 The narration of this report is also attributed to Abū Saʿīd al-Khudrī and ʿAbd Allāh b. ʿUmar.
- 72 Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 1:483; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 1/2:253–256; al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 7:300–301; Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 12:438–439. In an alternative version of this report the Prophet does not address women at all. Rather, the Prophet was praying with his congregation when the sun eclipsed. Shortly afterwards, the Prophet was overtaken by tremors and nearly collapsed. The Prophet then informs the congregation that he just saw Hell and that women formed most of its population. When asked about the reason for this, the Prophet responds that it is because women are ungrateful beings. Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 9:298.
- 73 Ibn Bāz, *Majmūʿ Fatāwā wa Maqālāt Mutanawwiʿah* (1990), 4:292–294.
- 74 Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 4:220, 6:218, 10:215; Ibn Bāz, *Majmūʿ Fatāwā wa Maqālāt Mutanawwiʿah* (1987), 1:422–431; al-ʿUthaymīn, *Fatāwā al-Shaykh*, 1:382, 2:837–838, 2:856–857; Ibn Bāz, *Islamic Fatāwa*, pp. 309–317; *Fatāwā al-Lajnah* (1996), p. 392; Ibn Bāz, *Majmūʿ Fatāwā wa Maqālāt Mutanawwiʿah* (1990), 3:351–353; Ibn Fawzān, *al-Muntaqā*, 3:300, 5:383.
- 75 For examples of other writers who rely on these traditions and more, see al-Barazī, *Ḥijāb al-Muslimah*; al-Muqaddim, *ʿAwdat al-Ḥijāb*.

- 76 As noted earlier, C.R.L.O jurists agree that the analysis of the chain of transmission is insufficient and that the substance of the tradition must be evaluated as well. The C.R.L.O jurists, however, seem to evaluate the substance of traditions according to a very patriarchal set of values. Al-'Uthaymīn, *Fatāwā al-Shaykh*, 1:269–270.
- 77 See al-Jurjānī, *al-Kāmil fī Du'afā'*, 2:397, 7:104.
- 78 Al-Kāndahlawī, *Awjāz al-Masālik*, 3:156–159; al-Suyūṭī, *Sharḥ Sunan al-Nasā'ī*, 2:62–66; al-Mubārakfūrī, *Tuhfat al-Aḥwadhī*, 2:256–261; Ibn Hajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 1:698–703; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 3/4:450–454; Ibn Qayyim al-Jawziyyah, *ʿAwn al-Ma'būd*, 2:394–402, 405–406.
- 79 Al-Mubārakfūrī, *Tuhfat al-Aḥwadhī*, 2:260.
- 80 The same holds true for traditions attributed to the Prophet that seem to take sides in sectarian conflicts that took place years after the Prophet's death. These reports will often praise Mu'āwiyah or condemn the Khawārij.
- 81 Ibn Qayyim al-Jawziyyah, *ʿAwn al-Ma'būd*, 10:420.
- 82 Al-Zar'ī, *Abū Hurayrah*, p. 65; Ibn Hajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 10:159.
- 83 On the bad omen tradition and the related debates see, Ibn Hanbal, *Musnad*, 2:381; Ibn Hajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 9:137–138; 10:158–163, 212–215, 243–244; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 13/14:440–442; Ibn Qayyim al-Jawziyyah, *ʿAwn al-Ma'būd*, 10:405–421; al-Nasā'ī, *Ishārat al-Nisā'*, pp. 218–222.
- 84 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 9/10:300–301.
- 85 A large number of classical authorities rejected the authenticity of these traditions. Again, this fact does not seem to bother the C.R.L.O. See al-Jurjānī, *al-Kāmil fī Du'afā'*, 4:286, 5:357.
- 86 Ibn Hajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 1:484; al-Mubārakfūrī, *Tuhfat al-Aḥwadhī*, 7:300–301; Ibn Qayyim al-Jawziyyah, *ʿAwn al-Ma'būd*, 12:438–439.
- 87 Al-Mubārakfūrī, *Tuhfat al-Aḥwadhī*, 6:449–450.
- 88 Al-Mubārakfūrī, *Tuhfat al-Aḥwadhī*, 6:449. Another report attributed to the Prophet asserts that obeying women will only earn a man much sorrow and regret. See al-Jurjānī, *al-Kāmil fī Du'afā'*, 4:249, 6:462; Ibn al-Jawzī, *Kitāb al-Mawdū'āt*, 2:177.
- 89 Al-Mubārakfūrī, *Tuhfat al-Aḥwadhī*, 6:449. In 6/628 the Prophet led an expedition to Mecca in order to make a pilgrimage to the Ka'bah. This pilgrimage took place prior to the surrender of Mecca to the Muslims. The Meccans, after having fought three unsuccessful battles against the Muslims, were not inclined to let them into the city. Instead, a settlement was reached which established peace between the Muslims and the Meccans for ten years. This settlement is called the Treaty of Hudaibiyyah. It provided in part that the Muslims would not enter the city, but could return one year later when the Meccans would abandon their city for three days. The Muslims were unhappy that they could not perform the pilgrimage, and refused to perform the rituals the Prophet later commanded. After consultation with his wife, Umm Salamah, the Prophet performed the rituals himself, and the Muslims followed suit. See, Ibn Hishām, *al-Sirah al-Nabawiyah*, 3/4:308–320; Watt, *Muhammad*, pp. 182–188; Salahi, *Muhammad*, pp. 458–478; Kennedy, *The Prophet*, pp. 41–42; Lings, *Muhammad*, pp. 252–256.
- 90 Ibn Khallikān, *Wafayāt al-A'yān* (1998), 2:377–378; al-Dhahabī, *Siyar A'lām*, 4:148.
- 91 Evidence of this process can be seen in the virulently hateful reports of women that were invented and circulated in early Islam. For instance, some reports that were attributed to the Prophet and circulated early on stated that women should not be taught to read or write, and that they should not be housed in luxury. Other reports asserted that women should be kept hungry and needy because once they eat their fill and obtain their needs, they start aspiring to go out of their homes and venture in the streets, and there is nothing worse for women than leaving their homes. On the other hand, if they are kept hungry and needy, they will keep to their homes. Some versions add that instead of writing and reading women should be taught knitting. Some versions add that women should be starved but not to the point of physical harm (*aji'ū al-nisā' jaw'an ḡhayr muḏīr*). Interestingly, these traditions were put in the mouth of 'Ā'ishah and Ibn 'Abbās. However, the various versions

- of these reports were rejected as fabrications by a large number of jurists. See al-Jurjānī, *al-Kāmil fī Du'afā'*, 1:507, 2:395, 5:537; Ibn Jawzī, *al-Du'afā'*, 2:173–174. Importantly, these traditions are not of a higher level of authenticity than the traditions cited and relied upon by the C.R.L.O for its various determinations.
- 92 This also produced a considerable amount of apologetics by Sunni conservative jurists who argued that 'Ā'ishah did not really rebel, and Abū Bakrah did not really oppose her rebellion, and that 'Ā'ishah did not really lead anything. See Ibn Hajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 8:128–129, 13:53.
- 93 Ibn Hajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 9:323.
- 94 Reportedly, this is the reason for the revelation of Qur'an, 33:35. See, also, Ibn Kathīr, *Mukhtaṣar Tafṣīr Ibn Kathīr*, 3:95–96; al-Qurtubī, *al-Jāmi'* (1993), 14:120–121.
- 95 Qur'an, 58:1.
- 96 See al-Zamakhsharī, *al-Kashshāf*, 4:69–70; al-Rāzī, *al-Tafṣīr al-Kabīr* (1999), 10:477–478; al-Ṭabarī, *Tafṣīr al-Ṭabarī*, 7:237–238; al-Qurtubī, *al-Jāmi'* (1993), 17:175–177.
- 97 Qur'an, 24:11. See, also, al-Rāzī, *al-Tafṣīr al-Kabīr* (1999), 8:337–340; al-Zamakhsharī, *al-Kashshāf*, 3:52–53; al-Qurtubī, *al-Jāmi'* (1993), 12:131–134; al-Ṭabarī, *Tafṣīr al-Ṭabarī*, 5:400–406.
- 98 Al-Nasā'ī, *Ishārat al-Nisā'*, p. 54. The incident involving 'Ā'ishah is reported to have occurred in 6/628. She accompanied the Prophet on an expedition against the Banū Muṣṭaliq when she lost her necklace. She left her encampment to retrieve it, and by the time she returned, the army had left. She waited in the encampment hoping someone would return for her. Instead, she was found by Ṣafwān b. al-Mu'aṭṭal, who escorted her to the army's new encampment. When people saw her come into the camp with another man, rumors spread falsely accusing her of infidelity. See, Ibn Hishām, *al-Sirah al-Nabawiyah*, 3/4:297–307; Spellberg, *Politics, Gender, and the Islamic Past*, pp. 61–99; Mernissi, *Veil and the Male Elite*, pp. 177–179; Lings, *Muhammad*, pp. 240–246.
- 99 Abū Shuqqah, *Tahrīr al-Mar'ah*, 2:29–456, has collected and annotated the reports on these incidents and others. See also, Ibn Hajar al-'Asqalānī, *Fath al-Bārī* (n.d.), 2:469; Ibn Hishām, *al-Sirah al-Nabawiyah*, 3/4:411.
- 100 Ja'it, *al-Fīnah* (1989), pp. 145–168; Kennedy, *The Prophet*, p. 76; Mernissi, *Veil and the Male Elite*, pp. 5–7; Spellberg, *Politics, Gender, and the Islamic Past*, pp. 101–149; Hodgson, *Venture of Islam*, 1:214.
- 101 See Abū Hāmid al-Chazālī, *Ihyā'*, 2:57.
- 102 For the different versions, see Ibn Abī Shaybah, *al-Muṣannaf fī al-Aḥādīth*, 3:396–397; Ibn 'Abd al-Barr, *al-Tamhīd li-mā fī al-Muwāṭṭa'*, 1:229–231; al-Bayhaqī, *Kitāb al-Sunan*, 7:291–293; al-Suyūṭī, *al-Jāmi'* al-Ṣaḡīr, 1:507–508; al-Hindī, *Kanz al-'Ummā*, 16:339.
- 103 Al-Nasā'ī, *Ishārat al-Nisā'*, pp. 159–160.
- 104 Many studies on the veil address it in the larger context of women's rights and social status in Islamic history and the modern Middle East. See, Mutahhari, *Mas'ala-i Hijāb*; Mincec, *Veiled Women in Islam*; Ahmed, *Women and Gender in Islam*; Mir-Hosseini, *Islam and Gender*; El Guindi, *Veil, Modesty, Privacy and Resistance*; Mernissi, *Veil and the Male Elite*; Macleod, *Accommodating Protest*.
- 105 Qur'an, 24:30–1; 24:60.
- 106 The term *'awrah* is defined by referring to those parts of the body that must be covered during prayer and that are prohibited from being seen. Ibn Mufliḥ, *al-Mubḏī'*, 1:359. Linguistically, it refers to something faulty (*nuqsān* or *'ayb*) or repulsive (*mustaqbah* or *qubḥ*). Al-Bahūtī, *Kashshāf al-Qimā'*, 1:312; Ibn Nujaym, *al-Baḥr al-Rā'iq*, 1:467. Generally, jurists provide a definition of the *'awrah* when addressing how a Muslim should dress when making obligatory prayers (*ṣalāt*). Interestingly, the earliest traditions on the subject do not reflect a specific discussion on *'awrah*. Rather they address different dress styles and, at least in the case of women, draw distinctions between certain classes of women. For instance, early works relate traditions of the Prophet praying while wrapped in a single *ṭhawb* or garment that draped over his shoulders and covered his front and back (*layukhālifu bayna ṭarafayhi 'alā 'ātiqīhi*). 'Abd al-Razzāq, *al-Muṣannaf*, 1:350, 353. See

also, Ibn Abi Shayba, *al-Kitāb al-Muṣannaḥ*, 1:275–277. Others suggest that it is better to pray with two garments, namely one wrapped around the waist (*izār*) and another draped around the shoulders (*ridāʾ*). Al-Ṣanʿānī, *al-Muṣannaḥ*, 1:349, 353–354, 356; Ibn Abi Shayba, *al-Kitāb al-Muṣannaḥ*, 1:275–276. See also, al-Ramlī, *Nihāyat al-Muḥtāj* (1992), 2:13; al-Bahūtī, *Kashshāf al-Qināʾ*, 1:316–317. However, the conflict over men's proper attire arises when one's garment is too small. One set of traditions holds that if a man's garment is large enough, he should drape it over himself (*mutawashshih*), but if it is small, he should pray with the garment wrapped around his waist (*muttazir* or *yukhālifu bayna farafayhi*). Al-Ṣanʿānī, *al-Muṣannaḥ*, 1:352, 353; Ibn Abi Shayba, *Kitāb al-Muṣannaḥ*, 1:275, 276, 277. See also, al-Qarāfi, *al-Dhakhīrah*, 2:112; Ibn Muflīh, *al-Mubdīʾ*, 1:64. Others argued that he can pray with a single garment as long as part of it can be draped over his shoulder. Al-Ṣanʿānī, *al-Muṣannaḥ*, 1:353; Ibn Abi Shayba, *Kitāb al-Muṣannaḥ*, 1:278. See also, al-Bahūtī, *Kashshāf al-Qināʾ*, 1:318; Muḥammad Amin Ibn ʿAbidin, *Ḥāshiyat Radd al-Muḥtār*, (1966), 1:404. According to the Companion Ibn Masʿūd, if one cannot find sufficient material, then it is permissible to pray with only one garment. However if sufficient material is available, then he should pray with two. However, others such as ʿUmar b. al-Khaṭṭāb disagreed, and held that only one garment wrapped around the waist was sufficient for prayers. Al-Ṣanʿānī, *al-Muṣannaḥ*, 1:356; Ibn Abi Shayba, *Kitāb al-Muṣannaḥ*, 1:278–279. See also, Ibn Rushd, *Bidāyat al-Muḥtād*, 1:159. Incidentally, one report suggests that wearing a garment around the waist was endorsed partly to distinguish the Muslims from the Jews. Al-Ṣanʿānī, *al-Muṣannaḥ*, 1:352; Ibn Abi Shayba, *Kitāb al-Muṣannaḥ*, 1:278. Notably, the term *ʿawrah* does not appear in this discussion. Likewise, it is not used in the early discussion on women's attire in prayer. The traditions instead address the kinds of clothing a woman must wear in prayer, and distinguishes between the appropriate attire for free and slave women. Specifically, al-Ṣanʿānī relates traditions on two issues. The first issue concerns what a free woman must wear when praying. Generally, the items for consideration are a *khimār*, *jilbāb*, *dirʾ sābiḡh*, and *milḥaf*. Al-Ṣanʿānī, *al-Muṣannaḥ*, 3:128–129, 131, 135; Ibn Abi Shayba, *al-Muṣannaḥ*, 2:36–37. See also, al-Māwardī, *al-Ḥawāʾ al-Kabīr*, 2:169; Ibn Muflīh, *al-Mubdīʾ*, 1:366; al-Ramlī, *Nihāyat al-Muḥtāj* (1992), 2:13–14; al-Bahūtī, *Kashshāf al-Qināʾ*, 1:318; Ibn Hazm, *al-Muḥallā*, 2:2:249–250. The second issue concerns whether a slave woman must also wear a *khimār* for prayer? The *khimār* is generally a garment that covers a woman's head. Ibn Manẓūr, *Lisān al-ʿArab*, 4:257; Ibn Muflīh, *al-Mubdīʾ*, 1:366; al-Bahūtī, *Kashshāf al-Qināʾ*, 1:318. The meaning of *dirʾ sābiḡh* generally suggests some type of loose-fitting garment that extends to one's feet. The relevant distinction is that a *dirʾ* does not necessarily cover a woman's head. Ibn Manẓūr, *Lisān al-ʿArab*, 8:81–82; Ibn Muflīh, *al-Mubdīʾ*, 1:366; Lane, *Arabic-English Lexicon*, 1:871–872. *Jilbāb* refers to a garment that is larger than a *khimār* and generally covers a woman's head and chest area, but may also cover her entire body. In some cases it is used as a synonym for *khimār*, and in others for an *izār*. Ibn Manẓūr, *Lisān al-ʿArab*, 1:272–273. And a *milḥaf* is a blanket (*dithār*) or cover which is wrapped over other clothes. Ibn Manẓūr, *Lisān al-ʿArab*, 9:314. Al-Ṣanʿānī reports that the Prophet said that menstruating free women must wear a *khimār*, otherwise their prayer will not be accepted. Al-Ṣanʿānī, *al-Muṣannaḥ*, 3:130, 131; Ibn Abi Shayba, *Kitāb al-Muṣannaḥ*, 2:39–40. The reference to menstruation is generally regarded as a reference to adulthood or the age of majority. Al-Marghīnānī, *al-Hidāya*, 1:43. Women who are not adults are not necessarily subject to this requirement. Al-Ṣanʿānī, *al-Muṣannaḥ*, 3:132. In another tradition, a woman is supposed to wear a *khimār*, a *dirʾ*, and an *izār*, although there is some countervailing traditions against this position. Ibn Muflīh, *al-Mubdīʾ*, 1:366. Some traditions suggest that an acceptable *dirʾ* must be long and loose enough to cover the appearance of a woman's feet, although without a *khimār*, it is insufficient. Al-Ṣanʿānī, *al-Muṣannaḥ*, 3:128; Ibn Abi Shayba, *Kitāb al-Muṣannaḥ*, 2:36. One tradition relates that ʿĀʾisha was seen wearing during prayer a garment around her waist (*muttazirah*), a *dirʾ*, and a thick *khimār*. Al-Ṣanʿānī, *al-Muṣannaḥ*, p. 129. On the other hand, Umm Ḥabībah, a wife of the Prophet, is reported to have worn a *dirʾ*, and an *izār* that was large enough to drape

around her and reach the ground. Notably, she did not wear a *khimār*. Id. Yet another tradition relates that the Prophet's wives Maymūna and Umm Salamah would wear a *khimār* and a *dirʾ sābiḡh*. Ibn Abi Shayba, *Kitāb al-Muṣannaḥ*, 2:36.

- 107 The issue of *ʿawrah* is complex partly because it is extremely difficult to retrace and reclaim the historical process that produced the determinations as to *ʿawrah*. The conventional wisdom maintains that early on, Muslim jurists held that what should be covered in prayer should be covered outside of prayer. This, however, is not entirely true. The dominant juristic schools of thought argued that the *ʿawrah* of men is what is between the knee and navel. A man ought to cover what is between the knee and navel inside and outside of prayer. A minority view, however, argued that the *ʿawrah* of men is limited to the groin and buttocks only; the thighs are not *ʿawrah*. The *ʿawrah* of women was a more complex matter. As noted below, the majority argued that all of a woman's body except the hands and face is *ʿawrah*. Abū Ḥanīfa held that the feet are not *ʿawrah*, and some argued that half the arm up to the elbow, or the full arm, is not a *ʿawrah*. A minority view held that even the face and hands are *ʿawrah* and therefore, must be covered as well. An early minority view held that the hair and calves are not *ʿawrah*. In addition, some argued that women must cover their hair at prayer, but not outside of prayer. Importantly, the jurists disagreed on whether the covering of the *ʿawrah* is a condition precedent for the validity of prayer. The majority held that covering the *ʿawrah* is a *farḍ* (basic and necessary requirement) so that the failure to cover the *ʿawrah* would invalidate a person's prayers. The minority view (mostly but not exclusively Māliki jurists) held that covering the *ʿawrah* is not a condition precedent for prayer – accordingly, this school argued that covering the *ʿawrah* is among the *sunan* of prayer (the recommended acts in prayer), and the failure to cover the *ʿawrah* would not void a person's prayers. A large number of Ḥanafī jurists argued that as long as three-fourth of the body is covered the prayer is valid. Interestingly, Mālik reportedly allowed people to pray naked (*ʿirāh*), if they were unable to procure dressing garments. However he suggested that such people should pray alone so as not to see each other's *ʿawrah*, and remain standing throughout. However if they are praying in the dark of night (*layl muḥlīm*), they may pray in congregation with an *imām* leading them. Saḥnūn b. Saʿīd, *al-Mudawwana al-Kubrā* (Beirut: Dār Ṣadr, n.d.), 1:95–96. See also, al-Qarāfi, *al-Dhakhīrah*, 2:106–107; Ibn Muflīh, *al-Mubdīʾ*, 1:370–374. The Shiʿī al-Ṭūsī adopts the same view and also allows them to pray in congregation during daylight hours, as long as they pray in only one line and in a sitting position. al-Ṭūsī, *al-Mabsūḥ*, 1:87. Al-Bahūtī goes so far as to say that even in this case, congregational prayer remains obligatory. Al-Bahūtī, *Kashshāf al-Qināʾ*, 1:324. See also, Ibn Hazm, *al-Muḥallā*, 2:255–257. Being unclothed for prayers does not allow one to steal clothes out of necessity, according to al-Ramlī. Since one can pray naked, there is no necessity as in the case of stealing clothes to protect oneself from heat or freezing temperatures, or stealing food to prevent death by starvation. Al-Ramlī, *Nihāyat al-Muḥtāj* (1992), 2:12. See also, al-Bahūtī, *Kashshāf al-Qināʾ*, 1:322–324, who addresses the various means by which those without sufficient clothes can pray. The overwhelming majority of jurists held that the *ʿawrah* of a slave-girl, or even a female servant girl, is different. Some jurists argued that the *ʿawrah* of such a woman is between the knee and navel – the same as a man. The other jurists held that the *ʿawrah* of such a woman is from the beginning of the chest area to the knees and down to the elbows. Therefore, the majority agreed that a slave-girl or servant-girl may pray with her hair exposed. A minority view argued that slave-girls should cover their hair in prayer, but do not have to do so outside of prayer. In short, it seems to me that the conventional wisdom is not exactly correct; there seems to be sufficient grounds for differentiating between the *ʿawrah* in prayer and outside of prayer. Furthermore, as noted below, the *ʿawrah* of slave-girls or servant-girls, inside and outside of prayer, raise serious questions about the basis for the historical juristic determinations regarding the *ʿawrah* of women. See, on the law of *ʿawrah*: al-Ṣanʿānī, *al-Muṣannaḥ*, 3:128–136 (documents some of the early opinions). For Māliki school, see: Ibn Rushd (II), *Bidāyat al-Muḥtād*, 1:156–158; Ibn Rushd (I), *al-Muqaddimāt al-Mumakkiḥāt*, 1:183–185; Saḥnūn, *al-Mudawwana* (Dār

- Ṣadr), 1:94; al-Ḥaṭṭāb al-Ra'īni, *Mawāhib al-Jalīl*, 2:177–187; al-Qarāfi, *al-Dhakhīrah*, 2:101–105. For Shāfi'i school, see: al-Shāfi'i, *al-Umm* (Beirut: Dār al-Fikr, n.d.), 1:109; al-Ramlī, *Nihāyat al-Muhtāj* (1992), 2:7–8, 13; al-Māwardī, *al-Ḥāwī al-Kabīr*, 2:165–171. For Hanafi school, see Ibn Nujaym, *al-Baḥr al-Rā'iq*, 1:467, 469–476; Ibn 'Abidin, *Hāshiyat Radd* (1966), 1:405; al-Kāsānī, *Badā'ī al-Ṣanā'ī*, pp. 543–546. For Hanbali school, see Ibn Qudāmah, *al-Mughnī* (Dār Iḥyā' al-Turāth al-'Arabī), 1:601; Ibn Muṣliḥ, *al-Mubdī*, 1:361–367; al-Bahūtī, *Kashshāf al-Qinā'*, 1:315–317. For Ja'fari school, see al-Ṭūsī, *al-Mabsūṭ*, 1:87–88.
- 108 Qur'an, 6:164; 17:15; 35:18; 39:7; 53:38; 24:11; 2:286; 4:32; 33:58.
- 109 Qur'an, 33:58–60. Reportedly these verses were revealed in response to several incidents in which the hypocrites of Medina harassed and molested Muslim women. Al-Rāzi, *al-Tafsīr al-Kabīr* (1999), 9:183–184; al-Ṭabarī, *Tafsīr al-Ṭabarī*, 6:199–200; al-Qurtubī, *al-Jāmi'* (1993), 14:157–158; Ibn Kathīr, *Mukhtaṣar Tafsīr Ibn Kathīr*, 3:114–115.
- 110 Ibn Fawzān, *al-Muntaqā*, 3:14–15, 3:40, 3:56, 3:294, 3:300, 3:307, 3:308, 3:309–310, 3:134–135; Al-'Uthaymīn, *Fatāwā al-Shaykh*, 1:352–353, 1:362–363, 2:825–828; Ibn Bāz, *Fatāwā Islāmiyyah*, 3:182, 3:183–184, 3:189, 3:204–205; Ibn Bāz, *Majmū' Fatāwā*, 2:84–85, 2:173, 2:189–191; *Fatāwā al-Lajnah* (1991), 4:126–127; Ibn Bāz, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah* (1990), 4:242–244, 4:254–258.
- 111 In an extreme example of these seduction obsessed traditions, the Prophet is reported to have commanded that a man not sit in a spot where a woman was sitting until her body heat dissipates. If a man sits in the woman's spot without allowing sufficient time to pass, he is bound to feel her body heat and become aroused. This tradition is considered unreliable by scholars of ḥadīth. See Ibn al-Jawzī, *al-Mawḍū'āt*, 2:162. See al-Makkī, *Manāqib Abī Ḥanīfah*, p. 351, where this position appears not as a ḥadīth, but as the pietistic habit of Abū Ḥanīfah. Regardless of the reliability of the chain of transmission, it seems to me that a man who is aroused by a warm seat where a woman once rested is in need of some serious medical attention. Of course, it is quite possible that as a matter of cultural practice, it was once considered impolite to take a seat that was recently occupied by a woman. Such a cultural practice, if it existed, would not necessarily have anything to do with sexual arousal.
- 112 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 17/18:57–58; al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 6:356–359; al-Jirāhī, *Kashf al-Khaḥā'* (1968), p. 39.
- 113 Ibn Hajar al-'Asqalānī, *Fatḥ al-Bārī* (n.d.), 9:137; al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 8:53; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 17/18:57; Ibn Jar Allāh al-Yamānī, *al-Nawāfiḥ al-'Aḥirah*, p. 306; al-Jirāhī, *Kashf al-Khaḥā'* (1968), p. 183; al-Sakhāwī, *al-Maqaṣid al-Ḥasanah*, p. 428; al-Shaybānī, *Kitāb Taymīz al-Tayyib*, p. 144.
- 114 Al-Jirāhī, *Kashf al-Khaḥā'* (1968), pp. 315–316; 'Abd al-Rahmān al-Shaybānī, *Kitāb Taymīz al-Tayyib*, p. 183. Another tradition asserts: "If not for women, God would have been [faithfully] served on this earth." Although this version has been declared unauthentic by many jurists, it is proof of an atmosphere in which anti-women circulations were common. See al-Jurjānī, *al-Kāmil fī al-Du'afā'*, 6:495; Ibn al-Jawzī, *al-Mawḍū'āt*, 2:162.
- 115 Al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 4:283.
- 116 This version is considered to be of weak transmission. Another version asserts that women have two sources of effective protection, a husband and the grave. See Abū Ḥāmid al-Ghazālī, *Iḥyā'*, 2:58. At the symbolic level, this tradition is consistent with reports that assert that a woman, in total, is a 'awrah. See Ibn al-Athīr al-Jazrī, *al-Nihāyah fī Ḡarīb al-Ḥadīth wa al-Aḥar*, 3:288.
- 117 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 9/10:181.
- 118 Al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 8:53.
- 119 For al-Ghazālī's discussion of this tradition, see Shaykh Muḥammad al-Ghazālī, *al-Sunnah al-Nabawīyyah*; *idem*, *Dustūr al-Wihdah*. The late al-Ghazālī was criticized for doubting the fly-tradition in the 1980's. In the 1920's a Muslim scholar named Muḥammad Tawfiq Ṣidqī was accused of being an infidel for doubting the authenticity of the fly-tradition. Those who attacked Ṣidqī asserted that since the tradition was narrated by Abū Hurayrah and was accepted by Bukhārī, anyone who doubts its authenticity is an infidel. Rashīd Riḍā issued a *responsum* defending Ṣidqī, and calling into question the authenticity of the tradition. Riḍā argued that the fact that the report is in Bukhārī is not conclusive in evaluating the authenticity of any tradition. See Rashīd Riḍā, *Fatāwā*, 5:2043–2045. In a separate *responsum*, Riḍā also held that not all the traditions in Bukhārī are necessarily authentic. Riḍā argued that in general Bukhārī is the most reliable collection of traditions, but Bukhārī was fallible, and it is possible to reject a tradition accepted by Bukhārī if there is evidence challenging its authenticity. Rashīd Riḍā, *Fatāwā*, 5:2049–2051. For premodern juristic discussions on the fly-tradition, see, Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'būd*, 10:324–325; Ibn Hajar al-'Asqalānī, *Fatḥ al-Bārī* (n.d.), 6:359–360, 10:249–252.
- 120 Ibn Hajar al-'Asqalānī, *Fatḥ al-Bārī* (n.d.), 10:158–163, 10:212–215, 10:243–244; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 13/14:433–442; Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'būd*, 10:405–426; al-Jirāhī, *Kashf al-Khaḥā'* (1968), p. 366.
- 121 See for these reports and others Abū Shuqqah, *Tahīr al-Mar'ah*, 2:174–348.
- 122 Qur'an, 33:32, 33:53. Ibn Kathīr, *Mukhtaṣar Tafsīr Ibn Kathīr*, 3:108–109; al-Qurtubī, *al-Jāmi'* (1993), 14:143–148; al-Ṭabarī, *Tafsīr al-Ṭabarī*, 6:195–196; al-Rāzi, *al-Tafsīr al-Kabīr* (1999), 9:178–180.
- 123 Some of the late jurists argued that if a slave-girl will cause a *fitnah* she must cover her breasts or hair. Al-Ḥaṭṭāb relates that although a slave woman's 'awrah is the same as a man's, some have said that it is reprehensible for someone who is not her owner to view what is under her garments, or to view her breasts, chest, or whatever else "leads to *fitnah*" (*wa mā yadū al-*fitnah* minhā*). Consequently, despite having the same 'awrah as men, it is preferred that she bare her head but cover her body. Al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, 2:180, 184. See also, al-Qarāfi, *al-Dhakhīrah*, 2:103–104. Al-Bahūtī relates views suggesting that as a matter of caution (*iḥṭiyāt*), it is preferable that the slave-girl cover herself in the same fashion as an adult free woman, including covering her head during prayer. Al-Bahūtī, *Kashshāf al-Qinā'*, 1:316. Ibn 'Abidin also argues that most of the scholars of the Hanafi school do not permit a slave woman to have her breasts, chest, or back exposed; however it is said that a slave woman's chest is part of her 'awrah only in prayer but not otherwise. Nevertheless, Ibn 'Abidin finds this latter view unconvincing. Ibn 'Abidin, *Hāshiyat Radd* (1966), 1:405. See also, Ibn Nujaym, *al-Baḥr al-Rā'iq*, 1:474; al-Marghinānī, *al-Hidāyah*, 1:44.
- 124 Al-Jaṣṣās, *Aḥkām al-Qur'ān* (1994), 3:410.
- 125 The Zahrī jurist Ibn Ḥazm is adamant in rejecting the authenticity of the reports about the occasion for revelation. Ibn Ḥazm calls these reports outright lies. His proffered reasons for rejecting the authenticity of the reports are morally based. He argues that it is entirely unbelievable that God would seek to protect the Muslim free women of Medina from molestation while leaving slave-girls to suffer. According to Ibn Ḥazm this would be simply wrong. Consequently, Ibn Ḥazm denies that there could be any distinction between the 'awrah of slave-girls and free women. All women, slaves or not, have the same 'awrah. Ibn Ḥazm, *al-Muḥallā*, 2:239.
- 126 Reportedly, the early jurists Dāwūd b. 'Alī and Jarīr al-Ṭabarī, the founder of a now extinct school of jurisprudence, held that the 'awrah of men and women, slave or otherwise, is the same. See al-Māwardī, *al-Ḥāwī al-Kabīr*, 2:167.
- 127 For instance, al-Rustāqī, *Manhaj al-Ṭālibīn*, 8:21, 26, argues that every place and time have their own laws. He states that in some places it is acceptable for women to reveal their hair while in Oman it is considered ugly (*qabīḥ*). He concludes by stating that whatever Muslims see as ugly is, in fact, ugly. Al-Marghinānī, *al-Hidāyah*, 1:44, mentions that slave-girls were not required to wear the veil because they need to work and requiring the veil would cause hardship (*daf'an li al-ḥaraj*). Al-Qarāfi relates a tradition in which 'Umar b. al-Khaṭṭāb asks his son why he was silent about the fact that the latter's slave woman walked about wearing an *izār* like a free woman. Reportedly, 'Umar then adds that if he were to see her, he would hit her for doing so. Al-Qarāfi explains 'Umar's position was relevant only to a very specific historical situation in Medina, in which crazed men would harass slave women but not free women. See al-Qarāfi, *al-Dhakhīrah*,



- 2:103. See also, Ibn Nujaym, *al-Baḥr al-Rā'iq*, 1:474; al-Ḥaṭṭāb al-Ra'īnī, *Mawāhib al-Jalīl*, 2:184.
- 128 Ibn Taymiyyah seems to be one of the few jurists who addressed the issue of homosexual attractions in the context of veiling. See the discussion in Taqī al-Dīn Ibn Taymiyya, *al-Tafsīr al-Kabīr*, ed. 'Abd al-Rahmān 'Amīra (Beirut: Dār al-Kutub al-'Ilmiyya, n.d.), 5:346–353.
- 129 For the six points above see, al-Tabarī, *Jāmi' al-Bayān*, 18:93–95, 22:33–34 (mentions a variety of early opinions including the up to the elbow and the beginning of cleavage area determinations; also mentions the distinction between free and slave girls; mentions the historical practice); al-Nasafī, *Tafsīr al-Nasafī* (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya, n.d.), 3:140, 313, (mentions 'ādah, jibillah, and ḥājah; women need to reveal their faces, hands, and feet by custom, nature, and need; mentions the distinction applicable to slave-girls; mentions the historical practice); al-Jassās, *Aḥkām*, 3:409–410, 486, mentions that slave-girls do not have to cover their hair; mentions the historical practice); al-Kiyyā al-Harrāsī, *Aḥkām al-Qur'ān* (1974), 4:288, 354 (notes slave-girls do not have to cover their faces or hair); Ibn al-'Arabī, *Aḥkām al-Qur'ān* (n.d.), 3:1368–78, 1586–87 (mentions a variety of details to adornments; discusses the rule as to slave-girls); al-Qurtubī, *al-Jāmi'* (1993), 12:152–153, 157; 14:156–157 (mentions that the verse was revealed to address the harassment of women, and to differentiate slave-girls from Muslim women; notes the opinion that held that the verse called for the covering of the bosom area); Ibn Kathīr, *Mukhtaṣar Tafsīr Ibn Kathīr*, 2:600; 3:114–115, (mentions determinations as to the bosom; also notes that free Muslim women must cover their faces); Abū Ḥayyān al-Andalusī, *Tafsīr al-Baḥr al-Muḥīṭ*, 6:412; 7:240–241 (mentions custom, nature, necessity; mentions the historical practice as to revealing the bosom; mentions the distinction as to slave-girls); al-Zamaksharī, *al-Kashshāf*, 3:60–62, 274 (mentions the historical practice, distinction as to slave-girls, the rules as to functionality and custom, mentions that covering ought not cause hardship); Ibn al-Jawzī, *Zād al-Masīr fī 'Ilm al-Tafsīr*, 5:377–378; 6:224 (mentions *mashaqqah* – hardship); al-Māwardī, *al-Nukat wa al-'Uyūn*, 4:90–93, 424–425, (notes the opinion that the purpose of revelation was to instruct women to cover their bosoms; mentions the differentiation as to slave-girls); al-Shinqīṭī, *Aḥwā' al-Bayān*, 6:192–203, 586–600 (mentions a variety of positions; mentions determinations as to revealing the arm up to the elbow and the view that the point is to cover the bosom; mentions the historical practice and differentiation as to slave-girls; author supports covering the face); Ibn Taymiyya, *al-Tafsīr*, 6:23, (notes that the law of veiling does not apply to slave-girls); Fakhr al-Dīn Muḥammad al-Rāzī, *al-Tafsīr al-Kabīr (a.k.a Maḥāṭib al-Ghayb)*, 23:176–179; 25:198–199, (mentions *al-'ādah al-jāriyah* (the habitual custom) and functionality as the focal issues in determining what women ought to cover; mentions the historical practice and the distinction as to slave-girls); Ibn 'Atīyya, *al-Muḥarrar al-Wajīz*, 4:178, 399 (mentions the determinations as to the bosom and arm up to the elbow; mentions the rule of functionality and custom; mentions the historical practice and the distinction as to slave-girls); al-Suyūṭī, *al-Durr al-Manthar*, 5:45–46, 239–241 (mentions the determinations as to the arm up to the elbow and the bosom; notes the discussion regarding the beginning of the cleavage area; mentions the historical practice and the distinction as to slave-girls); al-Burūsī, *Tanwīr al-Adhhān*, 3:57–59, 254–255, (mentions the determinations as to the arm up to the elbow and the bosom; mentions the historical practice and distinction as to slave-girls); Abū Ḥafṣ 'Umar b. 'Alī Ibn 'Adīl al-Dimashqī, *al-Lubāb fī 'Ulūm al-Kitāb*, 14:355–358; 15:588–590 (mentions that according to some reports the verse was revealed to vindicate 'Alī's family. Also mentions that other reports contend that hypocrites of Medina would solicit women at night. Girls who practiced prostitution would respond to their solicitation. The verse was revealed partly to end this practice. Mentions the rule of practice and custom (*mā ulīda kashfuhā*), and functionality and rule of necessity; mentions the distinction as to slave-girls); al-Alūsī, *Rūḥ al-Ma'ānī* (1985), 18:140–142; 22:89, (mentions the issue of functionality and that slave-girls lead an active economic life; mentions custom, habit, and

- nature; mentions the historical practice); al-Sāwī, *Hāshiyat al-'Allamah*, 3:136–137, 288–289 (mentions various positions).
- 130 Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'bud*, 2:277; Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (n.d.), 2:350; al-Hindī, *Kanz al-'Ummāl*, 16:413–414.
- 131 Ibn Hanbal, *Musnad*, 6:417. Another version attributed to the Prophet states that the best prayer for women is that which is performed in the darkest spot of her household, see al-Hindī, *Kanz al-'Ummāl*, 16:415. Abū Ḥamid al-Ghazālī, *Iḥyā'*, 2:57–59 cites a variant of this tradition as support for arguing that women should obey their husbands, and refrain from leaving their homes without a valid cause. The authenticity of these traditions have been called into question by some classical scholars, see al-Jurjānī, *al-Kāmil fī al-Du'afā'*, 5:297.
- 132 This is why the classical jurists held that if a woman prays in the midst of men it is undesirable but her prayers are valid, and if men pray behind the rows of women, the prayers of the men and women are valid. Saḥnūn, *al-Mudawwanah* (Dār al-Kutub al-'Ilmiyya), 1:195; al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 1:296; Ibn Qud-mah, *al-Mughni* (Dār al-Kutub al-'Ilmiyyah), 2:44; Abū Shuqqah, *Taḥrīr al-Mar'ah*, 2:195–202.
- 133 Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (n.d.), 2:350–351.
- 134 Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (n.d.), 2:101–102; Abū Shuqqah, *Taḥrīr al-Mar'ah*, 2:181–194.
- 135 Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (n.d.), 2:469–470, 3:504; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 5/6:418–420. Remarkably, the C.R.L.O attempts to use these traditions to argue for the seclusion of women. The C.R.L.O advances the bizarre logic that since all the women had to wear garbs that must mean that no woman was allowed to attend the ceremonies without being entirely veiled! Ibn Bāz, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah* (1990), 4:255; Ibn Bāz, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah* (1992), 5:231.
- 136 Prayers, usually performed in the last ten days of the month of Ramaḍān, that involve spreading the night in the mosque.
- 137 Saḥnūn, *al-Mudawwanah* (Dār al-Kutub al-'Ilmiyya), 1:295.
- 138 Ibn Qayyim al-Jawziyyah, *'Ilām al-Muwaqqi'īn* (Beirut), 3:26; Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (n.d.), 4:810, 818.
- 139 Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (n.d.), 2:623; Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'bud*, 2:276–277.
- 140 Al-Suyūṭī, *Sharḥ Sunan al-Nasā'ī*, 2:94; al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 2:13–14; Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'bud*, 2:374–375; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 3/4:380; Ibn Jar Allāh al-Yamānī, *al-Nawāfiḥ al-'Asīrah*, p. 137; al-Jirāhī, *Kashf al-Khafa'* (1968), p. 394; al-Sakhāwī, *al-Maqāsid al-Ḥasanah*, p. 248; al-Shaybānī, *Kitāb Taymīz al-Tayyib*, p. 77. Some versions of this tradition were transmitted by al-Khalīl b. Zakariyyā who is not reliable, see al-Jurjānī, *al-Kāmil fī Du'afā'*, 3:511.
- 141 Al-Suyūṭī, *Sharḥ Sunan al-Nasā'ī*, 2:94; al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 2:13–14; Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'bud*, 2:374–375; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 3/4:380.
- 142 Ibn Bāz, *Majmū' Fatāwā wa Maqālāt Mutanawwi'ah* (1990), 4:251; Ibn Fawzān, *al-Muntaqā*, 3:57. Arguably, the meaning of this tradition is figurative. In other words, this is a very awkward way of instructing women to stay as far away as possible from men.
- 143 Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'bud*, 2:273. Some versions of this report have been considered unreliable because al-Khalīl b. Zakariyyā is one of the transmitters. See al-Jurjānī, *al-Kāmil fī Du'afā'*, 3:511.
- 144 Qur'ān, 7:31.
- 145 Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (1993), 2:609–616.
- 146 Ḥajjāj, *Ṣaḥīḥ Muslim*, 2:33–34.
- 147 Ibn Qayyim al-Jawziyyah, *'Awn al-Ma'bud*, 2:273–275.
- 148 Al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī*, 1:402; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 5/6:145–146; Ibn Hajar al-'Asqalanī, *Fath al-Bārī* (n.d.), 2:54, 55, 351.

- 149 Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 1:575, 2:349–350. Al-Nawawī and other jurists respond to this point by saying that the women were not recognizable because of the dark and not because they were wrapped up in clothing. Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 2:55.
- 150 Ṣaḥīḥ Muslim, 2:33. See, also, al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 3/4:383–384; Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 2:275.
- 151 Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 14:190.
- 152 Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 14:190; Ibn Bāz, *Majmūʿ Fatāwā wa Maqālāt Mutanawwiʿa* (1992), 5:238.
- 153 Al-Dhahabī, *Ṣyar Aʿlām*, 3:172.
- 154 Ibn Abī Shaybah, *al-Muṣannaʿ*, 3:399.
- 155 See Abou El Fadl, *Rebellion and Violence in Islamic Law*.
- 156 Pure reason is the method pursuant to which general principles of law are deduced, such as the presumption of innocence or the presumption of continuity.
- 157 Typically, *ahl al-ḥadīth* resolved most conflicts between competing values by resorting to highly contorted interpretations (called *al-tawfiq bayn mukhtalaf al-ḥadīth*). If all else failed, they often utilized the concept of abrogation (*naskḥ*) according to which a tradition of singular transmission could abrogate a whole set of Qurʾānic verses. Trying to avoid bruising encounters with *ahl al-ḥadīth*, Uṣūlī jurists would often declare a problematic tradition authentic, but give it very little weight in legal determinations.
- 158 Al-Hindī, *Kanz al-ʿUmmāl*, 16:295. Some versions of this report do not have the reference to blacks. They simply say choose suitable partners. See al-Jurjānī, *al-Kāmil fī Duʿafāʾ*, 2:467; 4:286, 423; al-Mināwī, *Fayḍ al-Qadīr*, 3:237; 4:66.
- 159 There are a variety of versions of this central theme. Some reports state that the Abyssinians, Sudanese, and blacks if they eat well, they fornicate, and if they are hungry, they steal. Other reports state that the worse slaves are those who are black. Some versions state that blacks are deformed creatures, and others proclaim that a black person is a donkey. Some traditions say the exact opposite; these traditions praise blacks as honest, brave, and trustworthy. See al-Hindī, *Kanz al-ʿUmmāl*, 9:86–87; al-Ṭabarānī, *al-Muʿjam al-Kabīr*, 11:153, 338; al-Khaṭīb al-Baghdādī, *Taʾrīkh Baghdād*, 14:113. On the unreliability of all of these traditions see al-Jurjānī, *al-Kāmil fī Duʿafāʾ*, 3:328; 6:155, 466–467, 7:103.
- 160 Ibn Ḥanbal, *Musnad*, 6:492.
- 161 In some traditions, the Prophet emphasizes the equality of all races. For instance, the Prophet is reported to have said: “Each prophet [before me] was sent specifically to his people, [but] I was sent to every [nation, whether] red or black (*wa buʿithtu ilā kullī aḥmara wa aswada*).” Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (1996), 5/6:6–7. See also, Ibn Ḥanbal, *Musnad*, 1:311, 374, 4:559. In another tradition, the Prophet is reported to have said, “Praise to God, there is only one book of God, and among you [the believers] are nations red, white, and black (*wa fikum al-aḥmar wa fikum al-abyaḍ wa fikum al-aswad*).” Ibn Qayyim al-Jawziyyah, *ʿAwn al-Maʿbūd*, 3:59–60. The following tradition emphasizes that piety and not race is what distinguishes a Muslim. The Prophet is reported to have said to Abū Dharr, “Take note that you are not better than the red or black nations except to the extent you exceed [them] in piety (*taqwā*).” Ibn Ḥanbal, *Musnad*, 5:206. Another report illustrates the concern the Prophet had for people of all races. It states that one day, a black man or woman, who used to sweep the mosque, died. On the day of this person’s death, the Prophet asked about his or her whereabouts. He was told that the person died. After asking why he was not informed, he was taken to the person’s grave and subsequently prayed. Furthermore, the Prophet reportedly said, “People are as equal as the teeth of a comb; they are differentiated only by piety.” Ibn Hajar al-ʿAsqalānī, *Fath al-Bārī* (n.d.), 1:658–659, 3:204–205.
- 162 Al-Jirāhī, *Kaṣḥf al-Khaṣāʾ* (1968), pp. 301–302; al-Suyūṭī, *al-Laʾlī al-Masnūʿa*, 1:443–447; al-Khaṭīb al-Baghdādī, *Taʾrīkh Baghdād*, 14:113; al-Albānī, *Silsilat*, 2:155–161.
- 163 Al-Albānī, *Silsilat*, 2:158.

- 164 A Syrian scholar of *ḥadīth* (*muhaddith*), al-Albānī was formerly a professor of *ḥadīth* at the Islamic University in Medina, Saudi Arabia from 1963–1965 and was the 1999 recipient of the King Faisal International Prize for Islamic Studies. Born in Albania, he moved to Syria with his family at a young age and thereafter began his studies, including the sciences of *ḥadīth* (*ʿilm al-ḥadīth*). During his life, he became prominent throughout the Middle East as an authority on the authentication of *ḥadīth*, and prepared for publication numerous collections of Prophetic traditions.
- 165 Al-Albānī, *Silsilat*, 2:158.