

Paper Presented at

AMSS 34th Annual Conference

**“Muslims and Islam in the Chaotic Modern World:
Relations of Muslims among Themselves and with Others”**

Cosponsored by
Temple University, Philadelphia, PA
September 30 – October 2, 2005

**“Women in the Sunnah of Muhammad: ‘Amal ahl al-Madinah
and its Potential Impact on Women in Islam”**

**By: Phillip Hoefs
(Ph.D. Student, Department of Religion
Temple University, PA)**

The “hadith versus ‘amal ahl al-Madinah” debate is frequently perceived as a purely historical endeavor, and consequently when brought up at all, usually a historical footnote in a larger work on Islamic jurisprudence.¹ This paper proposes to re-examine the historical debate in Islamic jurisprudence over how best to discover and preserve the Sunnah of the Prophet Muhammad. It is the contention of this paper that seriously revisiting this debate can provide much needed insight into the topic of women in Islam in addition to contributing a more positive perception of such scholarship within the Muslim community.

A cursory glance at the argument will show several components, all leading to the need for scholars to re-examine this oft-forgotten question for its impact on Muslim women. First it will give a brief overview of current scholarship on women in Islam and point out some of the tensions yet to be resolved. Then it will shift to the debate over

¹ For instance Wael Hallaq, in *The History of Islamic Legal Theories: An Introduction to Sunni usul al-fiqh* (Cambridge: Cambridge University Press. 1997.), makes reference to ‘amal ahl al-Madinah at a few junctures, notably pages 20 and 80, but the subject does not receive considerable attention beyond a few paragraphs.

‘amal ahl al-Madinah, recently revisited by Yasin Dutton’s *The Origins of Islamic Law*, in order to highlight some of the limitations of the hadith corpus.² Most significantly the paper will explore the hadith’s susceptibility to omission and consequent neglect of elements of the Prophetic Sunnah. It will then be argued that these limitations are directly relevant to the study of women’s status in Islam. As this paper is only intended to introduce this hypothesis, the paper will conclude with a discussion of avenues of inquiry for future study.

Two Approaches to Women in Islam

First let us begin by examining some of the current scholarship on women’s religious and legal status within Islam. So far as it is relevant to this topic, this scholarship generally falls into what I would like to label as two separate groups, Qur’anic exegesis and modern jurisprudence. Individually each group of scholarship is responsible for compelling research and has made valuable contributions to the field of study. Additionally, the two groups share the intention to affect real change amongst Muslims. Yet when the scholarship from the two groups is put together, in an attempt to form an overarching theory, it leaves an awkward gap. What needs explanation is the historical process by which the exegeses of the first group could be accurate, yet explain how the present jurisprudence came to be. After briefly examining the two groups and

² *Hadith* (or *ahadith* pl.) is defined by Yasin Dutton, on page 231 of *The Origins of Islamic Law: The Qur’an, the Muwatta’ and Madinan ‘Amal* (London: RoutledgeCurzon. 2002.), as “a saying or report, especially of the Prophet and/or his Companions; also used collectively to indicate the body of such sayings and reports to indicate the body of such sayings and reports preserved in the *hadith* literature.”

their criticisms, this gap, and the role of ‘amal ahl al-Madinah³ in potentially bridging it, will be explained in more detail.

The first scholarly group concerned with women’s status in Islam emphasizes Qur’anic text and exegesis. Aminah Wadud-Muhsin’s *Qur’an and Woman* and Nimat Hafez Barazangi’s *Woman’s Identity and the Qur’an* are examples of recent works that could be classified in this group. Generally these texts criticize widely referenced exegeses that lack female input. For instance, what concerns Wadud-Muhsin “most about ‘traditional’ tafasir is that they were written exclusively by males.”⁴ Examining the consequences of the lack of female commentaries and female interaction with the existing commentaries Barazangi writes,

The traditional and prevailing Muslim emphasis on educating the Muslim woman in order for her to play merely a complimentary and domestic role contradicts Qur’anic principles and is in discord with the realities of Muslim women. The lack of Muslim woman’s self-identity and identification with the Qur’an as the source for her autonomous spiritual and intellectual existence proves that such a role contradicts the Islamic principles of justice, human trusteeship (*khilafah*), and the equilibrium (*taqwa*).⁵

Not only is Barazangi arguing that women’s voices have been silent from the tafasir,⁶ but that this silence has created a state where women’s lives do not meet Qur’anic standards. In order to correct this state of affairs she attaches importance to women being able to autonomously interpret the Qur’an. Hence the necessity of Qur’anic exegesis done by female scholars.

³ Yasin Dutton on page 230 defines ‘amal as “action, practice, especially that based on the established legal principles and precepts of the Madinan community.” I have chosen to use the more cumbersome, but ultimately more exact, term ‘amal ahl al-Madinah in the same manner that Dutton defines ‘amal. I have done this because ‘amal and ijma’, or consensus, are sometimes used interchangeably, specifically when referring to places other than Madinah. ‘Amal is also sometimes referred to as simply ‘practice,’ without reference to any geographical location. Both definitions are too broad and inexact for the purposes of this paper.

⁴ Wadud-Muhsin, Amina. *Qur’an and Woman*. Kuala Lumpur: Penerbit Fajar Bakti Sdn. Bhd. 1994. Pg. 2.

⁵ Barazangi, Nimat Hafez. *Women’s Identity and the Qur’an: A New Reading*. Gainesville, FL: University Press of Florida. 2004. Pg. ix.

⁶ *Tafsir* (pl. *Tafasir*): Qur’anic exegesis.

Yet these texts do not argue that women's voices must be added to, and merely parrot the existing discourse, but that when new female perspectives are added, the resulting "reading," to borrow a phrase from Wadud-Muhsin,⁷ is a unique contribution and may challenge the existing discourse. Consequently when these works introduce female perspectives their exegesis is frequently at odds with other widely read tafasir with respect to female rights and standing. Wadud-Muhsin, for instance, is heavily critical of the works of Sayyid Qutb, Abul A'la Maududi, and Abu al-Qasim Mahmud al-Zamakhshari, and in her scholarship directly challenges these earlier works. However, despite Wadud-Muhsin's criticisms of these earlier tafasir, we should not make the mistake of thinking that there is a monolithic body of "traditional tafasir" that agree with each other on all points. Disagreement, or at least difference, between various tafasir is not unusual.⁸ We should not, however, minimize the disagreement between this particular group of scholarship and the tafasir it is criticizing to the level of the disagreement between the different texts used by Wadud-Muhsin, because the magnitude is certainly more pronounced. Yet the presence, and frequent acceptability, of disagreement within the Muslim scholarly tradition should remain a conscious thought in our minds not only when considering these modern tafasir, but also when later re-examining 'amal ahl al-Madinah.

While the scholarship concerned with Qur'anic exegesis is correct in emphasizing the prominence of the Qur'an, such an approach does have limitations. Because the scope of these works is largely limited to the Qur'an the authors do not, unfortunately as well as understandably, devote extensive time to linking their individual exegesis to the

⁷ Wadud 1.

⁸ A brief example to demonstrate this can be found in Wadud-Muhsin, on page 37, where Sayyid Qutb differs with Maududi and al-Zamakhshari over the question of gender being used to assign superiority.

hadith. Moreover the neglect of the hadith also accompanies a wider absence of historical examples that demonstrate the tenets of the exegeses in practice.

The neglect of history and the Sunnah causes this scholarship to run the risk of ceding early historical authority, and in some cases the Prophet Muhammad and his early community, to its opponents because it fails to develop a legitimate counter narrative to the existing one or provide a plausible theory as to why the more popular narrative, that is tied to the historical and existing jurisprudence of which many writers in the second group are critical, became so dominant. Ironically the same male-dominated scholarly milieus that produced the now-criticized tafasir were also responsible for the collection, preservation and transmission of the hadith. For these works to criticize the tafasir for their limitations, and male dominated structure, yet then willingly subject themselves to the same scholarly structure's construction of the Sunnah of the Prophet is an inconsistency that ought to be resolved, or at least explained. The hadith provide, at least in the eyes of many Muslims, historical authority through the Prophet Muhammad.⁹ While the authority of the Qur'an is undeniable, the importance of the hadith, and the Sunnah of the Prophet Muhammad, primarily through the hadith,¹⁰ cannot be underestimated. Thus the exegesis, despite its intention, is historically undercut so long as it is either incapable or unwilling to seriously link its arguments to the life of the Prophet Muhammad. In order to do this the hadith must be engaged. Failing to do so would leave this scholarship with Qur'anic interpretations that have an undefined

⁹ Conceptualizations of the Prophet Muhammad's authority have not been exclusively historical but have extended over all Muslims. Shafi'i, for instance, explicitly argued that obeying the Prophet was tantamount to obeying God. For this argument see Khadduri, Majid. *Islamic Jurisprudence: Shafi'i's Risala*. Baltimore: The Johns Hopkins Press. 1961. Pg. 114.

¹⁰ Please note that some authors make no distinction between hadith and Sunnah. Thus any importance that this paper would attach to the Sunnah, such writers would also attach to the hadith. For examples see the next page.

relationship to the Sunnah of the Prophet and his early community. In this circumstance the preexisting narrative remains as strong as before and the scholarship that relies on that narrative continues to have the sanction of the Prophet.

The second group of scholarship relevant to our task focuses on modern Islamic jurisprudence and law, exemplified by *Women in Muslim Family Law*, by John L. Esposito and Natana J. DeLong-Bas, *Towards an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, by Abdullahi Ahmed An-Na'im, and *Speaking in God's Name: Islamic law, Authority and Women*, by Khalid Abou El-Fadl. This second group largely centers on the existing jurisprudential tradition. To this extent it must undoubtedly turn its attention to those factors and concepts that have molded that tradition. In this respect it is impractical for these scholars to ignore the hadith, because their impact on the jurisprudential tradition is significant. Consequently this scholarship's concern is not to revisit what is largely seen as a bygone argument that has little relevance to modern, or even much historical, jurisprudence outside of the Maliki *madhhab*.¹¹ Esposito and DeLong-Bas make no mention of any other means of transmitting the Sunnah other than hadith.¹² An-Na'im, when discussing the Sunnah, does not even bother to note a distinction between the hadith and the Sunnah, referring to hadith as "reports of Sunna."¹³ While these works do address methodological concerns within jurisprudence, and are frequently critical, their willing acceptance of the capability of the existing hadith corpus to represent the Sunnah of the Prophet limits their ability to

¹¹ *Madhhab* (pl. *Madhahab*): a school of jurisprudence.

¹² Esposito, John L. & Natana J. DeLong-Bas. *Women in Muslim Family Law*. Syracuse: Syracuse University Press. 2001. Pgs. 5-6.

¹³ An-Na'im, Abdullahi Ahmed. *Towards an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. Syracuse: Syracuse University Press. 1990. Pg. 23. While An-Na'im's statement does not preclude the concept of Sunnah being broader than hadith reports, his surrounding discussion does not indicate that he conceives of Sunnah more broadly. For his discussion of Sunnah and skepticism about being able to reinvestigate the Sunnah see pages 21-23.

link their findings and arguments to the Qur'anic exegesis group because they fail to provide a comprehensive narrative that would compliment the exegeses.

Abou El-Fadl's work is an exception to the other two. He does not accept the existing hadith corpus without reservation and puts forth a methodological critique. He argues that, "each tradition attributed to the Prophet is the end-product of an authorial enterprise."¹⁴ Consequently Abou El-Fadl seeks to scrutinize the individual transmitters and examine their historical contexts and personalities in greater detail than was done by the traditional hadith collectors, who generally speaking limited themselves to the reliability, character, and religious faith of the transmitters. In this regard he does raise the need to reexamine individual hadith and states that "there is also the issue of creative selection and recollection."¹⁵ However his endeavor to scrutinize each person in the chain of transmission seems questionable. Concern must be raised about where he would get such detailed information on each transmitter. Also his inquiry would likely be limited to certain hadith and thus is not really a positive reconception of the Sunnah at all, rather it is a critical tool that Abou El-Fadl would like to use to isolate and attack individual transmitters, thus throwing out any narrations that may have gone through them. Therefore his attack is not on the hadith as a format as much as it is the individual transmitters of the hadith. The structural limitations of the hadith are actually noted only to justify the critical method he wants to implement. Even after implementing his method it is more likely that he would find the Sunnah silent on certain issues, because he would feel justified in neglecting those hadith where he finds questionable transmitters, than he would actually be trying to reconceptualize the Prophetic Sunnah.

¹⁴ Abou El-Fadl, Khaled. *Speaking in God's Name: Islamic Law, Authority and Women*. Oxford: Oneworld Publications. 2001. Pg. 88.

¹⁵ Ibid.

These two aforementioned approaches in conjunction with each other cause a problematic gap in analysis. If the exegesis of the first group is accurate and yet the law is in its criticized current state then how the law came to be in this form is an overarching question that must be answered. The overall approach needs to be historically situated. If the egalitarian injunctions of the Qur'an, found among the first group of scholars, are the product of a strong reading, that is not merely a product of the authors' particular time and place, and are essential to the message of the Qur'an¹⁶ then it must be more widely found in the Sunnah of the Prophet. If it is not found, or cannot be found, then how the Prophet Muhammad could have failed to pass those teachings along or why he would have neglected to include them in the message become questions. However extensively pursuing either of these avenues is problematic within the Muslim community because it runs the risk of directly criticizing the Prophet. Such action would not only run against the teachings of Islam,¹⁷ but would be sure to meet the resistance of Muslims and result in no change being affected. Rather than scrutinizing the Prophet it is more productive to examine the Sunnah that has been passed down, and the process by which it occurred. If this latter route is taken an explanation is needed to explain who, and for what reasons, disregarded the egalitarian Qur'anic injunctions in favor perceptibly patriarchal practices.

In the midst of this aforementioned gap, and the need for a bridge, it would be fruitful to revisit 'amal ahl al-Madinah. 'Amal ahl al-Madinah's importance lies in its resistance to the idea that the hadith could properly convey the Prophetic Sunnah. In this

¹⁶ I do believe that the authors of these works would prefer this to be the case. For instance, while observing that the Qur'an allows varied distribution of labor between the sexes across different societies, on page 104 Wadud-Muhsin writes, "Not all drudgery should be arbitrarily attributed to women, nor all social, political, and economic recognition be attributed to men." While she recognizes cultural negotiation of gender roles, she argues that there are restrictions on the degree of that negotiation, which means that she is not taking a purely relativist position.

¹⁷ Keep in mind that Shafi'i explicitly linked obeying with Prophet with obeying God. See footnote 9.

respect it is directly relevant to the existing conceptions of the Prophetic Sunnah. Not only were some of the concerns of the proponents of ‘amal ahl al-Madinah legitimate, but also the qualms with the concept of, and primary reliance on, the hadith are highly relevant to the concerns of women’s status in Islam and could address how the Qur’anic injunctions could have been both historically grounded in the Prophet Muhammad’s time and yet not retained their status in the growth of the law.

Doubting the Authenticity of the Hadith

Before we can move onto ‘amal ahl al-Madinah we must unfortunately discuss the largely Western criticism of early Islamic history and its authenticity. Beginning with Ignaz Goldziher and Joseph Schacht and continuing through many other scholars, much Western scholarship has exhibited an intense skepticism with regards to whether the hadith and Prophetic Sunnah were even vague concepts to the Prophet Muhammad’s community and Companions, let alone concepts with real content. This type of scholarship alleges that the hadith, and the idea of relaying specific verbal transmissions from the Prophet and through a chain of narrators, were fabricated after the Prophet’s death to give existing opinions and pre-Islamic ideas validation within Islam.¹⁸ This argument is relevant to our discussion because ‘amal ahl al-Madinah is contemporary with the same time period of which Goldziher and Schacht are skeptical. Indeed almost

¹⁸ For this argument see Schacht, Joseph. *An Introduction to Islamic Law*. Oxford: Clarendon Press. 1964. Pg. 34. Also see Goldziher, Ignaz. *Introduction to Islamic Theology and Law*. Andras and Ruth Hamori trans. Princeton: Princeton University Press. 1981. Pg. 40. For a response by a Muslim author see Al-Azami, M. Mustafa. *On Schacht’s Origins of Muhammadan Jurisprudence*. Riyadh: King Saud University. 1985. For elaboration of this trend in Western Scholarship see Rahman, Fazlur. *Islam*. Chicago: University of Chicago Press. 1979. Pgs. 44-9 and Humphreys, R. Stephen. *Islamic History: A Framework for Inquiry*. Princeton: Princeton University Press. 1991. Pgs. 82-4. A detailed overview can be found in Motzki, Harald. *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*. Marion H. Katz trans. Leiden: Brill. 2002. Pgs. 2-49.

any text in the West dealing with Islamic jurisprudence in its early stages is forced to take a position on this issue.

While this paper does utilize ‘amal ahl al-Madinah to point out some of the drawbacks of the hadith, it does not in any way advocate following Goldziher and Schacht’s theory. The goal of this paper is to offer a hypothesis for Muslims. Thus for our purpose the relevant judge of what is authentic and what is not within Islam in the end lies with the Muslim community itself. While the contributions of non-Muslim scholars to both Muslims and the field of Islamic Studies is invaluable, those contributions are checked by Muslim retention of control over their own faith. Whatever attraction some Western scholars might have to this theory it has largely been attacked by Muslim writers and been at the center of a highly polemical debate that demonstrates the resistance of Muslims to the theory. Commenting on this polemic debate Harald Motzki writes,

The fact that the majority of Schacht’s critics have been Muslims probably contributed to the fact that their objections and attempts at refutation have met with little approval from the Schacht’s adherents. That is the present state of affairs. The opinions are contrary and irreconcilable.¹⁹

To the extent that this paper is striving to impact Muslims, basing an argument on a theory that essentially attempts to undercut the basis of the entire Islamic faith is counter productive and destructive. The argument, which in its extreme forms amounts to a vicious attack on Islam, is external to the Muslim community to such an extent that it is of little use when discussing matters internal to Muslims. Consequently this paper will proceed with the premise that the ability to self-define, at the very least in the non-academic sphere, rightfully belongs to that religious community.

¹⁹ Motzki 49.

This paper will not argue that the hadith are fabrications or that they are incapable of accurately and reliably relaying the Prophetic Sunnah on a given matter. By all means the hadith have proven to be a remarkable means of transmitting vast quantities of Islamic knowledge. The concern of this paper, however, will be the structure of hadith transmission and its ability to comprehensively relay as clear of a picture as possible of the Sunnah. Arguing that elements of the Sunnah may not have been preserved in the hadith does not mean that the hadith that have been passed down are necessarily fictitious or invalid. Instead this paper posits that the existing hadith are potentially imbalanced in their treatment of women, not necessarily out of direct and conscious maliciousness or fabrication, but out of neglect and omission, similar to the way in which the hadith were criticized by those in favor of ‘amal ahl al-Madinah.

Context of the ‘Amal Ahl al-Madinah and Hadith Debate

Soon after the Prophet Muhammad’s death there were numerous struggles taking place as various groups struggled to assert the supremacy of their own understanding of the Prophet’s Sunnah. In fact it is the time in which Muslim jurisprudence was being more widely articulated and new questions were being wrestled with. The role of the Sunnah of the Prophet Muhammad in the religion of Islam, and within the law that was to form such an integral part of the religion, was still a debated issue.²⁰ This should not be interpreted to mean that the early Muslim community doubted the validity of the Prophet’s Sunnah, nor its authority. Instead there were significant questions about how best to discover the content, most particularly the legally critical proscriptions and

²⁰ For discussion of the debate over the Sunnah see Hasan, Ahmad. *The Early Development of Islamic Jurisprudence*. Islamabad, Pakistan: Islamic Research Institute Press. 2001. Pg. 90-109.

prohibitions, of the religion taught by the Prophet, through his words and personal example, and whether individual pieces of content, as transmitted, were at all valid.²¹ It was not settled whether the Sunnah was most reliably found in verbal reports attributed to the Prophet (hadith) or in the living practice of the community that had been sanctioned by the Companions of the Prophet Muhammad.²² The early legal schools, most notably the Maliki and Awza‘i schools, held that the living practice of the community, although not necessarily the same community in each case, ought to be upheld as embodying the Sunnah of the Prophet.²³ In opposition the proponents of the hadith argued in favor of the supremacy and authority of the hadith as the embodiment of the Sunnah.²⁴

In addition there existed at this time a general argument between what were known as Traditionalists, who stressed strict adherence to the reported Sunnah, however they argued that it was reported or known, and those who were characterized for their use of human reason.

On the one hand stood a group of scholars who thought that all human conduct must be firmly regulated by authoritative texts, and that human reasoning has no place in religious matters. On the other hand stood the rationalists, many of whom belonged to the Mu‘tazlite movement, who attempted to discredit such texts and held the Quran sufficient to explain everything.²⁵

It is within this larger argument that ‘amal ahl al-Madinah and the hadith are being disputed. Thus, in terms of this debate, we can think of both groups as parts of the Traditionalist camp and consequently not being diametrically opposed to one another. Presumably proponents of either hadith or ‘amal ahl al-Madinah would have found the

²¹ Hallaq 25.

²² Hasan 97-104.

²³ Ibid. 97-102. While I am aware that some question the usefulness of assigning schools of thought at such an early period, I have decided to use them here. Even if they were not formal schools, the existence of scholars with the views typically attributed to these schools establishes those viewpoints at that juncture in history. For the convenience of argument it is more straightforward to use these labels.

²⁴ Ibid. 87.

²⁵ Hallaq 18.

other more favorable to a pure rationalist that discounted the Sunnah altogether and relied solely on the Qur'an. Nonetheless, those approaches among the Traditionalists that resisted the ahl al-hadith²⁶ largely relied on either local practices or juristic opinion and were thus capable of being labeled Rationalists. Indeed much of Shafi'i's criticism of the Madinans in his *Risala* is because their methods cause them to drift too close to arbitrary human reason, both in their willingness to uphold local practices against the hadith as well as their tendency to exercise personal judgment.²⁷ Of course if this was true it would have pushed the proponents of 'amal ahl al-Madinah to the perimeter of the Traditionalists, virtually branded them as Rationalists, and strengthened ahl al-hadith's claim on the tradition. However, given Imam Malik's emphasis on the living tradition of Madinah as the embodiment of the Sunnah it is unlikely that he and scholars of similar views would have self-identified as Rationalists rather than Traditionalists, irrelevant of the allegations leveled against them.²⁸ Nonetheless it is important to keep in mind that Shafi'i and other proponents of the hadith are arguing with the supporters of 'amal ahl al-Madinah while a larger argument, within which both can be seen as on the same side, is ongoing.

Strengths of 'amal ahl al-Madinah and potential criticisms of hadith

Even under the articulated hadith methodology, that was to some extent a byproduct of Shafi'i's arguments, the Madinan traditions may have actually been stronger. In order to ensure the validity of a hadith, according to the science of hadith,

²⁶ *Ahl al-Hadith*: The people or proponents of the hadith.

²⁷ As an example text to demonstrate some of the early criticisms of 'amal ahl al-Madinah and to refer to a text that stressed the use of hadith I have decided to use Shafi'i's *Risala*, as found in Khadduri, Majid. *Islamic Jurisprudence: Shafi'i's Risala*. Baltimore: The Johns Hopkins Press. 1961.

²⁸ See Malik's letter to al-Layth ibn Sa'd in Dutton, pages 37-8.

numerous factors come into play. For one, the trustworthiness of the individual transmitters is important to ensure that they are not known for dishonesty, lack of religious adherence, or poor memory. Also it is preferable to have the same tradition passed through several separate lines of transmission meaning that more than one person in each generation was aware of this tradition and can account for its authenticity.²⁹ Under the science of hadith, individual hadith that meet these standards are preferred; yet ‘amal ahl al-Madinah, because of its non-textual form, is thrown out. This raises a significant problem because in terms of science of hadith the traditions recorded through ‘amal ahl al-Madinah should in theory be classified as *mutawatir*.³⁰ If the practice was widely accepted in Madinah and had been done since the time of the Prophet, then everyone in the community served as a transmitter of the tradition.³¹ In the case of Madinah this means that the early community of Companions transmitted its traditions, which were taught to it by the Prophet, to the Successors; they in turn taught those same traditions to their own children, who passed it on. In this way the entire community was linked to the traditions, and the integrity of the whole community validated its authenticity. The argument could be raised that because the tradition was not relayed in narrative form, with a formal *isnad*,³² that there was no guarantee from specific, trustworthy individuals that it was valid. Nonetheless there were trustworthy residents of Madinah whose knowing and tacit acceptance of the practice could have legitimated its authenticity; in much the same way that the Prophet’s knowing silence on a particular

²⁹ For description of hadith criticism see Hallaq 60-8 and Rahman, Fazlur. *Islam*. Chicago: University of Chicago Press. 1979. Pg. 64.

³⁰ *Mutawatir*: possessing numerous lines of reliable transmission. It also represents the most authoritative category of hadith. Dutton, on page 233, defines it as a hadith “with so many transmitters among the Companions that it cannot be supposed that any forgery has taken place.”

³¹ See footnote 28.

³² *Isnad*: the chain of authority, transmission or narration of a hadith.

matter was deemed as acceptance of it.³³ Furthermore hadith with numerous lines of transmission were and are valued more highly, or at least thought to be more reliable, than isolated hadith because they have many lines of transmission. The many lines of transmission though may only exist on one end of the isnad in a hadith, not on both ends as it did in the case of ‘Amal ahl al-Madinah.³⁴ Consequently ‘amal ahl al-Madinah could, by virtue of Madinah’s status as the Prophet’s city, easily trace itself back to the Prophet through numerous personages at each stage of the transmission. In this way the city and its practices occupied a unique status.

Because of its unique status, as an entire community taught by the Prophet, there is an assumption that Madinah had a particular claim on the Prophet’s Sunnah. The ahl al-hadith, and writers like Shafi‘i, wanted to argue that the Sunnah was knowable through hadith. Yet if one presses and asks what was sought through the hadith, it is as not just the Sunnah, but in fact the totality of the practices of the Prophet’s community. In this sense hadith scholars try to reconstruct the Prophet’s Madinah, the city that lived according to the Sunnah. Yet those in favor of ‘amal ahl al-Madinah could have argued that the Prophet’s Madinah did not need to be rediscovered or reconstructed from

³³ Consider for instance hadith that are narrated saying that the Prophet saw a certain practice and yet made no mention of it. The type of Sunnah that results from these hadith, *al-sunnah al-taqririyah*, is generally used as evidence to show the permissibility of that practice. As an example consider the following narration in *al-Muwatta’*, recorded in Bewley, Aisha Abdurrahman. *Al-Muwatta of Imam Malik ibn Anas: The First Formulation of Islamic Law*. Granada, Spain: Madinah Press. 1997. Pg. 58:

Yahya related to me fro Malik from Ibn Shihab from ‘Ubaydullah ibn ‘Abdullah ibn ‘Utba ibn Mas‘ud that ‘Abdullah ibn ‘Abbas said, “I came riding up on a donkey while the Messenger of Allah, may Allah bless him and grant him peace, was leading the people in prayer at Mina, and I was at that time nearing puberty. I passed in front of part of the row, dismounted, sent the donkey off to graze, and then joined the row, and no-one rebuked me for doing so.

The key issue in the narration is that ‘Abdullah ibn ‘Abbas was not rebuked for his action. Consequently actions done without comment from the Prophet, so long as it can be presumed that he could have known that it occurred, are plausibly acceptable.

³⁴ Dutton 36.

fragments of information, but instead was already there in the living traditions of the city that could be observed in its interplay and workings.

This raises the question of the objective of the Sunnah. While all sides of the issue would agree that the Sunnah is there to shape the expected and approved of conduct of a Muslim, the manner in which that knowledge is seen may vary. In some cases, the isolated hadith may become a snapshot that goes unbalanced by other known traditions. In terms of the totality of what the Sunnah would look like, the individual hadith is only a brief fragment. In this sense the hadith could be taken out of context, not just in relationship to its overall historical context but in its relationship to a holistic vision of the Sunnah as well.

An additional point in favor of ‘amal ahl al-Madinah is that it had an entire community that could act as a check upon questionable teachings that may not have had normative value. In this sense if someone asked a question and received an atypical answer in Madinah there would 1) be other avenues of knowledge to contradict the faulty or misguided information and/or practice and 2) communal condemnation, rebuke or correction of the person that provided that answer and the person that received the answer when it was acted upon it or relayed to someone else. However, in other areas, where knowledge was much more limited and Companions and other knowledgeable figures were less frequent, the potential for one person to provide incorrect information or simply provide their own judgment that may go against the normative practice is far more possible.³⁵ There the possibility of social correction though was only possible for so long before the practice would become ingrained in the area and become that community’s

³⁵ See Bulliet, Richard W. *Islam: The View from the Edge*. New York: Columbia University Press. 1994. Pgs. 27-8.

normative practice. In a city full of knowledgeable people the correction would come much quicker than it would in an outlying area where, early on, there may have only been a few people with extensive knowledge of the Sunnah.³⁶

Even in those cases when a hadith is mutawatir, ‘amal ahl al-Madinah may still be authoritative. The reason for this is that the hadith may be sound, but it does not follow that there is “any normative value to the actions.”³⁷ This in no way invalidates the hadith or means that the Prophet did not say or do what the hadith records. What it does mean though is that the hadith may only reflect an unusual situation that was not how the Prophet typically instructed his community. For the primary purpose of jurisprudence the normative practice has to be sought out because it more reflects the Prophet’s Sunnah as it is directly related to communal practice. The communal normative practice is the starting point to instructing anyone in how to follow the Prophetic Sunnah. The tension over what was and was not normative is readily demonstrated in the widely known difference over where to place the hands during prayer. Malik, in the Muwatta’, referred to hadith that indicated that the Prophet placed his right hand over the left in prayer yet according to ‘amal ahl al-Madinah the prayer was done with both hands at the side. Because it was the practice of the community, the Madinans disregarded the hadith as normative.³⁸ When faced with this question of where to put the hands during prayer a later scholar, who disregards ‘amal ahl al-Madinah as a source of jurisprudence, may find several different valid hadith about the Prophet praying. While they could all be recognized as valid, ultimately the scholar would seek to find which is authoritative, and

³⁶ We should also be conscious that even having a Companion present does not mean that a given level of knowledge resided with that individual. While honorific, that title does not ensure that the individual Companion had extensive interaction with or knowledge of the Prophet.

³⁷ Dutton 175.

³⁸ Dutton 46.

which to teach to those new Muslims who may come looking for instruction on how to pray. The jurist could accept that there are numerous ways to validly make the prayer and thus allow the person to choose. But doing so would overlook the fact that even though the Prophet is recorded as praying different ways at different occasions, he taught his community one normative way to pray. This suggests that, regardless of the Prophet's personal variations in prayer, the method of prayer that is to be taught to the new Muslim was not any of these variations, but instead the normative one. The only way to be sure of the normative way of praying is to follow the norm of the community, which for the Madinans meant unequivocally following 'amal ahl al-Madinah.

In the prayer scenario above we can observe the tendency of hadith to record uncommon and unusual events, not the mundane commonplace things that would actually form the bulk of the Sunnah. This does not imply that the hadith do not include activities that may be perceived as mundane. After all, in comparison to other similar figures, the Prophet Muhammad's life is recorded in remarkable detail. However while a hadith records an occurrence that looks mundane and commonplace, it does not necessarily follow that the circumstances surrounding the occurrence were commonplace. This is particularly relevant to hadith that take place as part of a specific narrative. With respect to those hadith, the reason why that particular event or occurrence of that practice, as opposed to the others, was significant enough to warrant being recorded needs to be considered. Commonplace occurrences and practices may not necessarily generate enough interest or attract direct notice so that they may be relayed in the form of a hadith. Dutton notes that people have a tendency to remember unusual or eventful things and the

circumstances that surrounded them.³⁹ Thus these sorts of occurrences may be far overrepresented in the hadith literature. Seeing them repeatedly reported would make the practice or opinion found in such unusual cases appear to be more normative than it actually ought to be. While of interest in certain circumstances, these hadith are of little value in determining the Prophet's normative Sunnah.⁴⁰

An additional factor that deserves consideration is that hadith are frequently the result of a question and answer process. Ahmed Hasan states "People around the Companions must have asked them about the conduct of the Prophet on different problems."⁴¹ Richard Bulliet, while noting that the *Sira* was an attempt to relate narratives of the Prophet's life, writes,

But tens of thousands of hadith came into circulation outside the framework of such narratives, and there is little to indicate that they are merely fragments of what were once sustained narratives or descriptions put together by the people that knew Muhammad personally. They appear most often, rather, to be answers to questions.⁴²

Essentially the question, the asking, necessitates the answer, which in the mind of the hearer becomes the hadith. For example, someone comes to a Companion and asks how to pray and the Companion then provides an answer, which the hearer legitimately passes on, in their mind at least, as a hadith. While this is straightforward it is also troubling for a variety of reasons. For one it reverses the role of teacher and student in terms of determining what type of knowledge is to be conveyed. In Madinah, the teacher, the community, imparts its knowledge and teaching to the student irrelevant of the student's desire to find out that information. The learner is surrounded by information that bombards them irrelevant of their desire to seek it out. The student, the receiver of

³⁹ Dutton 174.

⁴⁰ The non-normative hadith may still be useful for jurists, but ought to be recognized as limited to particular circumstances.

⁴¹ Hasan 92.

⁴² Bulliet 27. Bulliet's discussion of this process is covered in pages 27-36.

knowledge, does not have the ability to shape the knowledge they encounter beyond not listening or paying attention, which would likely be mitigated to some degree in Madinah by the communal setting and its ability to determine the repercussions of such actions. However with respect to hadith that are relayed in question and answer form, the roles are reversed. This is not to say that the teacher became the student, but it does mean that, at that juncture, the student exercised discretion over what would and would not be taught. Ahl al-hadith's limitation of the Prophetic Sunnah to hadith means that largely matters that someone had the need or desire to directly ask about are those that can reasonably be expected to have been passed on. As a result information that was not directly asked about is neglected unless of course someone thought it was significant enough to relate at the same time for no reason other than to preserve it. That latter type of information, because it needs to be consciously recalled, is likely to derive from the atypical situation, simply because it is more memorable, as has been discussed above.

Moreover the questioner also had the significant power of formulating the questions. The importance of formulating the proper question should not be underestimated. Asking a question without providing all of the relevant information can have an impact on the answer. The responder, in order to answer the question properly, has to ask what the questioner is assuming in the question and thereby neglecting to include. While referring to the modern question and answer process that is still vital to the transmission of knowledge in Islam Taha Jabir Al-Alwani writes that modern day scholars must "teach people how to phrase questions accurately so as to elicit appropriate

and correct answers.”⁴³ While Al-Alwani is not writing about the same time frame his comment is still relevant to the extent that it demonstrates how asking a question of a jurist in a certain way can greatly impact the answer that is given, and thus slant the knowledge being imparted to the questioner. While at times the need to ask questions is undeniable, the consequences of extensive reliance on this manner of transmission should at least be contemplated. Whether to ask a question, who asks the question, and how they ask the question are all ways in which the questioner exercises control over the answers they will ultimately receive and later attach to an isnad to form a hadith. Thus while the question and answer process appears straight forward it is actually a complex process, and particularly if it is a primary means by which knowledge is being imparted at a specific juncture in time.

The questioners may also have asked questions that met their religious expectations and needs. This is not to say that Christianity or Judaism or another religion was responsible for the hadith or that the hadith were limited by those faiths, as Schacht wanted to argue. Rather that the individual converts and their immediate descendants, who were discovering Islam as they continued in the religion and encountered more situations where knowledge was required and reached a level of understanding where they were able to pursue further knowledge, were in large part responsible for obtaining information and when left on their own in a certain matter are likely to have asked questions relevant to their previous and present lives. While it is important to link Islam to the religious expectations and needs of those entering it, reliance solely on hadith leads to confusion where those expectations and needs do not interact with the Prophet’s

⁴³ Taha Jabir Al-Alwani . “Towards a Fiqh for Minorities: Some Reflections” in Zahid H. Bukhari, Sulayman S. Nyang, Mumtaz Ahmad & John L. Esposito eds. *Muslims’ Place in the American Public Square*. Walnut Creek, CA: AltaMira Press. 2004. Pg. 12.

Sunnah, instead they frame the Prophet's Sunnah. The Sunnah becomes framed to the extent that it passes through a prism of expectations as it is relayed through the hadith, and then later scholars use those resulting hadith in the attempt to reconstruct a vision of the Sunnah for future generations. Additionally, by framing the Prophet's Sunnah through hadith, other elements, that did not have a place within this new framework, would be neglected because they were not asked about. However as long as the Sunnah was identified with 'amal ahl al-Madinah it could interact with newcomers, meet their needs, yet still maintain itself distinctly from the newcomer's preconceived framework by virtue of its communal practice and its conscious effort to preserve its practices. Yet once the Sunnah moves into hadith form, only those properly recorded statements and practices, with consciously retained chains of transmission, were authoritative. This remains highly problematic because of the gaps in what would have been recorded in such form.⁴⁴

'Amal ahl al-Madinah and Women in Islam

While not a text concerned with Islam, Miriam Peskowitz's *Spinning Fantasies: Rabbis, Gender, and History* contains an argument that is highly relevant to this discussion. Peskowitz argues "gender can be most powerful in its ordinariness, in things

⁴⁴ We should take note that even after the shift of determining the content of the Sunnah to the hadith that other traditions could have been put into the hadith corpus by fabricating a line of transmission. However fabricating numerous lines of transmission through multiple generations that could survive the scrutiny of the hadith scholars is a both a conscious and serious undertaking. Therefore it is possible that such fabricated hadith would have been recorded, but may still not possess enough lines of reliable and distinct transmission to later be considered mutawatir. Moreover, given the stress of this paper on common aspects of the Sunnah and its contention that these may have escaped notice would make the conscious inclusion of these elements in the hadith corpus unlikely. In addition, constructing an isnad that would survive scrutiny for such a hadith is not a given, and would mitigate the amount of such traditions that would have been recorded. Also if the process of constructing an isnad to validate this tradition was relatively easy, even though it had not been formally transmitted, then the efficacy of the system of hadith criticism in its entirety is called into question.

that become common, nearly invisible, until they seem to be natural.”⁴⁵ Peskowitz’s work centers on common stories and images and descriptions of work that typically would escape notice. The issue of what is ordinary, and what is so ordinary that no one paid conscious attention to it, but simply did it, is directly related to ‘amal ahl al-Madinah’s criticism of the hadith, as elaborated earlier in this paper. Subsequent emphasis on the ordinary and its profound impact on gender in a historical context could cause significant contributions to the study of women in Islam.

Undertaking such a study would require more historical scholarship dedicated to women in the early Muslim community. While a work like Leila Ahmed’s *Women and Gender in Islam* discusses female status in pre-Islamic Arabia and the Prophet’s community her emphasis is far more on 19th and 20th Century developments in Egypt, and to a lesser extent the Abbasid period.⁴⁶ Nonetheless she at least attempting to develop a picture of the Prophet’s community and the roles women had within it, as well the changes that were introduced. Work of such kind is invaluable in determining the cultural factors that would have influenced the outlooks of newly converted Muslims. For instance, Ahmed’s work also covers the pre-Islamic practices in Egypt, the Roman Empire and Persia and more detailed work of this kind may aid scholars in determining the pre-Islamic legal status of women in those societies, their social standing and their public roles.⁴⁷ Moreover, the public roles of women could impact female roles in the question and answer process. It would need to be answered how likely women would

⁴⁵ Peskowitz, Miriam B. *Spinning Fantasies: Rabbis, Gender, and History*. Berkeley: University of California Press. 1997. Pg. 21.

⁴⁶ Ahmed devotes pages 41-78 to the Prophet’s community both during his life and in the immediate period following his death, while 79-101 cover the Abbasid period, and 127-234 is devoted to the 19th and 20th Century in *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven: Yale University Press. 1992.

⁴⁷ See Ahmed 11-37 for this discussion.

actually be to ask questions of a knowledgeable person. Furthermore it needs to be determined whether women would have had access to such persons or whether men were asking the questions that resulted in the hadith regarding women. While work like Ahmed's is valuable, Ahmed's outlook needs to be distinguished from Peskowitz's because Ahmed is not consciously emphasizing the ordinary, but piecing together what she can from the sources that she has available. Yet if such scholarship were to follow Peskowitz's method, then new sources may come available.

The most exciting source would actually be the hadith. While this paper has noted concerns about them, they are still an unbelievable historical resource. However looking for hadith whose subjects are women would not be the most fruitful approach. Instead looking for the ordinary would mean looking for hadith that are not about women, yet searching the context and elements that are not the main point of the hadith for evidence of women's lives. From this approach observations could be put together to form a better picture of how women were actually commonly living their lives in the Prophet's community in ways that hadith transmitters did not relate. Essentially, keeping the criticisms of 'amal ahl al-Madinah in mind while examining the hadith will permit scholars to look beyond just the explicit references to women and consider all kinds of hadith that before were not considered relevant to their research because they did not deal directly with the veil, marriage or other such issues.

Beyond the value of its criticism to researchers engaging the hadith, 'amal ahl al-Madinah is also important to the outcome of such research. One of the criticisms that could be made of the approach advocated above is that even if the findings of this kind of scholarship were sound, they provide historical data about the society but do not

explicitly provide Sunnah, and thus still lack the sanction of the Prophet Muhammad. Thus even though the contexts may have occurred, it does not follow that they have any grounding in the Prophet's message or would have been recognized at the time as Sunnah because nothing about them was recorded in the hadith. In this situation the freedom that 'amal ahl al-Madinah provides to go beyond the hadith in order to find the Sunnah, and in fact its argument that the Sunnah is found in the common lives of the people means that the question of whether these findings would be part of the Sunnah is suddenly far more open than it was before. However this is impossible so long as scholars who write about gender continue to accept the hadith as the totality of the Prophet Muhammad's Sunnah.

Being able to reconceptualize the Sunnah through an argument that actually has historical grounding in the Islamic tradition, and was advocated by figures held in high regard, such as Imam Malik, would allow scholars to write about women in Islam, and especially the historical situations of Muslim women, with a more secure footing in Islamic jurisprudence than has largely been possible before. By echoing earlier concerns and redirecting them towards topics that may not have even been the explicit concerns of those earlier scholars the critique would suddenly have a historical basis. This basis could provide not only a critical tool to examine the Sunnah and subsequent jurisprudence, but also provide a positive counterargument that could build an image of the Prophet and his community that embodies some of the principles of the Qur'anic exegeses being produced by more recent scholars. This paper seeks to open this avenue of inquiry.

Bibliography

- Abou El-Fadl, Khaled. *Speaking in God's Name: Islamic Law, Authority and Women*. Oxford: Oneworld Publications. 2001.
- Ahmed, Leila. *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven: Yale University Press. 1992.
- Al-Alwani, Taha Jabir. "Towards a Fiqh for Minorities: Some Reflections" in Zahid H. Bukhari, Sulayman S. Nyang, Mumtaz Ahmad & John L. Esposito eds. *Muslims' Place in the American Public Square*. Walnut Creek, CA: AltaMira Press. 2004.
- Al-Azami, M. Mustafa. *On Schacht's Origins of Muhammadan Jurisprudence*. Riyadh: King Saud University. 1985.
- An-Na'im, Abdullahi Ahmed. *Towards an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. Syracuse: Syracuse University Press. 1990.
- Azami, M. M. *Studies in Hadith Methodology and Literature*. Plainfield, IN: American Trust Publications. 1977.
- Barazangi, Nimat Hafez. *Women's Identity and the Qur'an: A New Reading*. Gainesville, FL: University Press of Florida. 2004.
- Bewley, Aisha Abdurrahman. *Al-Muwatta of Imam Malik ibn Anas: The First Formulation of Islamic Law*. Granada, Spain: Madinah Press. 1997.
- Bulliet, Richard W. *Conversion to Islam in the Medieval Period: An Essay in Quantitative History*. Cambridge, MA: Harvard University Press. 1979.
- , *Islam: The View from the Edge*. New York: Columbia University Press. 1994.
- Dutton, Yasin. *The Origins of Islamic Law: The Qur'an, the Muwatta' and Madinan 'Amal*. London: RoutledgeCurzon Press. 2002.
- Esposito, John L. & Natana J. DeLong-Bas. *Women in Muslim Family Law*. Syracuse: Syracuse University Press. 2001.
- Goldziher, Ignaz. *Introduction to Islamic Theology and Law*. Andras and Ruth Hamori trans. Princeton: Princeton University Press. 1981.
- Hallaq, Wael B. *The History of Islamic Legal Theories: An Introduction to Sunni usul al-fiqh*. Cambridge: Cambridge University Press. 1999.
- Hasan, Ahmad. *The Early Development of Islamic Jurisprudence*. Islamabad: Islamic Research Institute. 2001.

- Humphreys, R. Stephen. *Islamic History: A Framework for Inquiry*. Princeton: Princeton University Press. 1991.
- Khadduri, Majid. *Islamic Jurisprudence: Shafi'i's Risala*. Baltimore: The Johns Hopkins Press. 1961.
- Motzki, Harald. *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*. Marion H. Katz trans. Leiden: Brill. 2002.
- Peskowitz, Miriam B. *Spinning Fantasies: Rabbis, Gender, and History*. Berkeley: University of California Press. 1997.
- Rahman, Fazlur. *Islam*. Chicago: University of Chicago Press. 1979.
- . *Major Themes of the Qur'an*. Minneapolis: Bibliotheca Islamica. 1989.
- Schacht, Joseph. *The Origins of Muhammadan Jurisprudence*. Oxford: Clarendon Press. 1959.
- . *An Introduction to Islamic Law*. Oxford: Clarendon Press. 1964.
- Spellberg, D.A. *Politics, Gender, and the Islamic Past: The Legacy of 'A'isha bint Abi Bakr*. New York: Columbia University Press. 1994.
- Stowasser, Barbara Freyer. *Women in the Qur'an, Traditions, and Interpretation*. Oxford: Oxford University Press. 1994.
- Wadud-Muhsin, Amina. *Qur'an and Woman*. Kuala Lumpur: Penerbit Fajar Bakti Sdn. Bhd. 1994.