

# SOME REFLECTION ON POST-ENLIGHTENMENT QUR'ANIC HERMENEUTICS

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## INTRODUCTION

The subject of this symposium, aptly captured in its title, “The Future of Islamic Scholarship,” is a topic of immense importance, particularly at this time in the history of Islam and the Muslim peoples.<sup>1</sup> Islam has a splendid and well-established tradition of vital and influential scholarship. Yet, the future prospects of this tradition are a matter of grave concern for both Muslim and non-Muslim scholars of Islam.<sup>2</sup> Relations between the

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1. I presume that when the symposium organizers use the term “Islamic scholarship,” they really mean to describe scholarship primarily concerned with questions of law and jurisprudence. This is a fair assumption, as it appears that all of the participants in this symposium are lawyers and academics who write and lecture on Islamic law and jurisprudence. I also note that there might be a subtle difference between “Islamic scholarship” and a broader rubric described as “scholarship on Islam.” When I use the term “Islamic scholarship” in this Article I mean to include the broader category, which would also embrace scholarship by non-Muslims on Islam and Islamic jurisprudence.

2. See, e.g., TARIQ RAMADAN, WESTERN MUSLIMS AND THE FUTURE OF ISLAM 158-61 (2004) (discussing the relationship between traditional Islamic scholarship and Muslim attitudes toward political and economic initiatives now frequently encountered in communities governed by modern nation-states); see also BRINKLEY MESSICK, THE CALLIGRAPHIC

Islamic world, the West, and the Far East are at a critical and somewhat dangerous juncture. People concerned about the health of those relations and about the well-being of Muslims and non-Muslims living in the Islamic world have plenty of reasons for distress. Problems arising out of alleged Islamic justifications for self-annihilatory violence or “suicide” missions against combatants in war and innocent civilians, Muslim rejection of Western-inspired democratic and educational reforms, and alleged Islamic rationales for sectarian and ethnic violence are just a few of the reasons causing such anxiety. Scholarship on such topics should therefore be a matter of universal interest. Although not a panacea, competent and well-considered scholarship can offer solutions tending to improve human and societal well-being and reduce tensions. Such scholarship can bring lasting meaning and understanding to ideas and concepts that matter in our lives.<sup>3</sup>

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STATE: TEXTUAL DOMINATION AND HISTORY IN A MUSLIM SOCIETY (1993) (discussing relationship between Islamic texts and authority in twentieth century Yemen); Bradley James Cook, *Egypt's National Education Debate*, 36 *COMPARATIVE EDUCATION* (No. 4) 477 (2000) (discussing tensions between Islamic and secularist approaches to public education in Egypt). For a more general discussion of the role of scholarship on Islam, its importance in the education of Muslims, and the need for fresh and critical thinking by scholars in this regard, see FAZLUR RAHMAN, *ISLAM AND MODERNITY: TRANSFORMATION OF AN INTELLECTUAL TRADITION* (1982).

3. The examples in Western and Far Eastern scholarly discourse are legion. See, e.g., ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* (Fathers of the English Dominican Province trans., Benziger Bros., Inc. 1947) (1273); ARISTOTLE, *THE NICOMACHEAN ETHICS* (David Ross trans., Oxford Univ. Press 1998) (60 B.C.); CICERO, *DE RE PUBLICA DE LEGIBUS* (Clinton Walker Keyes trans., Harvard Univ. Press 1961) (51 B.C.); CONFUCIUS, *THE ANALECTS OF CONFUCIUS* (Simon Leys trans., W.W. Norton & Co. 1997); FREDERICK DOUGLASS, *NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS* (Prestwick House, Inc. 2004) (1845); FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Richard Philcox trans., Grove Press 2004) (1961); MICHEL FOUCAULT, *MADNESS AND CIVILIZATION: A HISTORY OF INSANITY IN THE AGE OF REASON* (Richard Howard trans., Random House Vintage Books 1988) (1961); JEAN-JACQUÉS ROUSSEAU, *A DISCOURSE UPON THE ORIGIN AND THE FOUNDATION OF THE INEQUALITY AMONG MANKIND* (1761); JEAN-JACQUÉS ROUSSEAU, *THE SOCIAL CONTRACT* (Maurice Cranston trans., Penguin Books 1968) (1762); JEAN-PAUL SARTRE, *THE AGE OF REASON* (Eric Sutton trans., Alfred A. Knopf, Inc. 1947); JEAN-PAUL SARTRE, *EXISTENTIALISM IS A HUMANISM* (Carol Macomber trans., Yale Univ. Press 2007) (1946); SENECA THE ELDER, *1 DECLAMATIONS: CONTROVERSIAE, BOOKS 1-6* (Michael Winterbottom trans., Harvard Univ. Press 1974); LAO TZU, *TAO TE CHING* (David Hinton trans., Counterpoint Press 2002); VOLTAIRE, *PHILOSOPHICAL DICTIONARY* (Theodore Besterman trans., Penguin Books 1984) (1764).

This certainly has been true of Islamic scholarship as well. See, e.g., MUHAMMAD ABDUH, *RISALAT AL-TAWHID* (1942) (1897); SHA WALI ALLAH AL DIHLAWI, *DIFFERENCE OF OPINION IN FIQH* (Muhammad Abdul Wahhab trans., Ta-Ha Publishers Ltd. 2003); MUHAMMAD IBN MUHAMMAD AL-GHAZALI, *THE INCOHERENCE OF THE PHILOSOPHERS* (Michael E. Marmura trans., Brigham Young Univ. Press 1997); MUHAMMAD IBN MUHAMMAD AL-GHAZALI, *THE REVIVAL OF RELIGIOUS SCIENCES* (Bankey Behari trans., Sufi Publ'g Co. 1971); MUHAMMAD BAQIR AL-SADR, *FALSAFATUNA* (Dar al-Fikr, 1969) (1958); MUHAMMAD BAQIR AL-SADR, *IQTISADUNA* (Dar al-Fikr, 1968) (1961); AL-IMAM MUHAMMAD IBN IDRIS AL-SHAFI'I, *AL-RISALA FI USUL AL-FIQH: TREATISE ON THE FOUNDATIONS OF ISLAMIC*

This Article suggests that current Islamic scholarship may not be up to this task. It argues that there are three primary forms of scholarship on Islam extant in the world today and that it is often difficult to discern the discursive impact of these forms on the development of critical thinking about problems faced in the Muslim world. The three forms are distinguished by the languages in which they are expressed. One form is expressed in Western European languages and is rarely, if ever, translated into Arabic;<sup>4</sup> the second form is expressed in Arabic and rarely translated into any Western European or Far Eastern language;<sup>5</sup> the third form is expressed in Urdu, Farsi, and other languages spoken and read in Iran and South Asia.<sup>6</sup> Some of the scholarship in this third form consists of material translated from Arabic and a small portion of it, after being translated into Farsi or Urdu,

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JURISPRUDENCE (Majid Khadduri trans., Islamic Texts Soc'y 2003); MUHAMMAD BAQIR AS-SADR, LESSONS IN ISLAMIC JURISPRUDENCE (Roy Parviz Mottahedeh trans., Oneworld Publ'ns 2003) [hereinafter AS-SADR, LESSONS]; AL-TABARI, THE HISTORY OF AL-TABARI (Franz Rosenthal trans., State Univ. of N.Y. Press 1989); AVERROES, TAHAFUT AL-TAHAFUT (THE INCOHERENCE OF THE INCOHERENCE) (Simon Van Den Bergh trans., Luzac & Co. 1954); AVICENNA, THE CANON OF MEDICINE (O. Cameron Gruner & Mazar H. Shah trans., Great Books of the Islamic World Inc. 1999); SYED AHMED KHAN, THE CAUSES OF THE INDIAN REVOLT (Book House 1970) (1873); MUHAMMAD HUSAYN FADL ALLAH, CLEAR GUIDE TO ISLAMIC RULINGS: AL-FATAWA AL-WADIHA: A MANUAL OF ISLAMIC PRACTICE (2001); SHAYKH-UL-ISLAAM IBN TAYMIYYAH, AN INTRODUCTION TO THE PRINCIPLES OF TAFSEER (Muhammad Abdul Haq Ansari trans., Al-Hidaayah Publ'g & Distrib. 1993); TAQI AL-DIN AHMAD IBN ABD AL-HALIM IBN TAYMIYYAH, AL-SIYASAH AL-SHAR'YAH FI ISLAH AL-RA'I WAL-RA'IYAH (Dar al-Kutub al-Ilmiyyah, 1988); RUHOLLAH KHOMEINI, THE ASHURA UPRISING IN THE WORDS AND MESSAGES OF IMAM KHOMEINI (1995); SAYYID ABUL A'LA MAUDUDI, TOWARDS UNDERSTANDING ISLAM (Khurshid Ahmad trans., Idara Tarjuman-ul-Quran 1974); MUHAMMAD RASHID RIDA, THE MUHAMMADAN REVELATION (Yusuf T. DeLorenzo trans., Al-Saadawi Publ'ns 1996); SAYYID QUTB, MILESTONES (1964); SAYYID QUTB, IN THE SHADE OF THE QUR'AN (FI ZILAL AL-QUR'AN) (M.A. Salahi & A.A. Shams. trans. & ed., Leicester 1999) [hereinafter QUTB, IN THE SHADE OF THE QUR'AN].

4. See, e.g., TOSHIHIKO IZUTSU, ETHICO-RELIGIOUS CONCEPTS IN THE QUR'AN (1966); TOSHIHIKO IZUTSU, GOD AND MAN IN THE KORAN: SEMANTICS OF THE KORANIC WELTANSCHAUUNG (1964); SHERMAN A. JACKSON, ISLAMIC LAW AND THE STATE: THE CONSTITUTIONAL JURISPRUDENCE OF SHIHAB AL-DIN AL-QARAFI (1996); RUDOLPH PETERS, ISLAM AND COLONIALISM: THE DOCTRINE OF JIHAD IN MODERN HISTORY (1979); WILFRED CANTWELL SMITH, ISLAM IN MODERN HISTORY (1957).

5. See, e.g., MUHAMMAD 'IMARAH, AL-ISLAM WA AL MUSTAQBAL (1985); 'ABD AL-AZIZ IBN 'ABD ALLAH IBN ABD AL-RAHMAN IBN BAZ, MAJMU' FATWA WA MAQALAT MUTANAWWIYYAH (1992); MUHAMMAD MUTAWALI SHA'RAWI, FATAWA AL-NISA' (2003) (on file with author); MUHAMMAD MUTAWALI SHA'RAWI, JIHAD FI AL-ISLAM (1998); YUSUF QARADAWI, FATAWA MIN AJL FILASTIN (2003). All of these authors are widely read, cited, and emulated by other authors on Islamic law throughout the Islamic world. Dr. Qaradawi's writings are more frequently translated into other languages than the others but much of his work also remains untranslated.

6. See, e.g., AYATULLAH MURTAZA MUTAHHARI, FUNDAMENTALS OF ISLAMIC THOUGHT: GOD, MAN AND THE UNIVERSE (R. Campbell trans., 1985); JALAL AL-DIN MADANI, HUQUQ-I ASASI DAR JUMHURI-I ISLAMI-I ISLAMI-I IRAN (1985); MURTAZA MUTAHHARI, FALSFAH 'I AKHLAQ (1988).

does get re-translated into English, French, German, Spanish, or Italian. Although this scholarship has perhaps had a greater impact than the other two forms, it also does not appear to be generating the kind of critical thinking that seems to be required at this time.<sup>7</sup>

There is no denying that some of the scholarship in each form is very competent and thought-provoking, but there appears to be little or no discourse between the scholars in each linguistic camp. When there is discourse, it tends to be formal, polite, and largely devoid of critical analysis and engagement. The penury of this discourse is most severe in the area of Qur'anic hermeneutics, a central component of Islamic scholarship.<sup>8</sup>

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7. It should be noted that forms of scholarship in two other major language groups also exist. There is a significant amount of Islamic scholarship in the Turkish language, thanks to an increasingly prolific production of material by Turkish universities and institutes. Similarly, Islamic scholarship in the languages of Southeast Asia, particularly material published in the languages of the people of Malaysia and Indonesia, is also important. This material is likewise published at the behest of Islamic universities in the region. Like the three major groups mentioned above, it is rare to find the Turkish and Southeast Asian materials translated into other languages.

8. It is not easy to arrive at a satisfactory definition of hermeneutics. Many scholars have struggled to define it, and it is interesting to note that the eminent Muslim scholar Khaled Abou El Fadl refused to define it, asserting that a definition may not be possible. See KHALED ABOU EL FADL, *SPEAKING IN GOD'S NAME: ISLAMIC LAW, AUTHORITY, AND WOMEN* 118 (2001). He did venture observations that are quite useful here, suggesting that hermeneutics involves "both the understanding of the rules for exegesis and the epistemology of understanding—the study of the constructions of meaning in the past and their relationship to the constructions of meaning in the present." *Id.* Abou El Fadl refers the reader to the work of Hans-Georg Gadamer for further elucidation. See *id.*; see also HANS-GEORG GADAMER, *PHILOSOPHICAL HERMENEUTICS* (David E. Linge ed. & trans., 1976); HANS-GEORG GADAMER, *TRUTH AND METHOD* (2d ed. Continuum 2003) (1960) [hereinafter GADAMER, *TRUTH AND METHOD*]. Gadamer's theories and their relevance to Qur'anic hermeneutics are discussed in more detail below. See *infra* notes 133-136 and accompanying text.

In traditional western philosophy, hermeneutics is generally defined as the "theory or philosophy of the interpretation of meaning." See JEAN GRONDIN, *INTRODUCTION TO PHILOSOPHICAL HERMENEUTICS* 18 (Joel Weinsheimer trans., 1994). In other words, hermeneutics is a "systematic discipline concerned with unearthing the principles regulating all forms of interpretation." SCOTT MASSON, *ROMANTICISM, HERMENEUTICS AND THE CRISIS OF THE HUMAN SCIENCES* 23 (2004). Although the word "hermeneutica" entered the common usage in the West around 1619, the term "is merely the Latinized rendition of the word hermeneutike," and the history of hermeneutics in the western world, as a theory of interpretation, can be traced all the way back to ancient Greek philosophy. GRONDIN, *supra* note 8, at 21. "In Greek mythology Hermes was the messenger of the gods, noted for his speed and athleticism, whose job it was to carry to the people of earth the messages and secrets of the gods of Olympus." DAVID JASPER, *A SHORT INTRODUCTION TO HERMENEUTICS* 7 (2004). Hermes' tasks were to "bridge the gap between the divine and human realms," to "put[] into words those mysteries which were beyond the capacity of human utterance," and to "make that which seems unintelligible into something meaningful and clear to the human ear." *Id.* Hence, hermeneutics owes its traditional definition to "the delivery of [gods'] announcements, warnings, prophecies. . . . [The] *hermeneutiké téchne, ars interpretationis, Kunst der*

This Article suggests that one aspect of Qur'anic hermeneutics,<sup>9</sup> a branch of the discipline that I call Post-Enlightenment Qur'anic Hermeneutics,<sup>10</sup> while controversial and sometimes undertheorized, has the best potential to help tear down the barrier that now exists among the linguistically distinct discourses previously described. In my view, Post-Enlightenment Qur'anic hermeneutics also offers the best possibility for finding solutions to problems of interpretation that bedevil today's Islamic jurists and schol-

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*Interpretation*, art of interpretation as transformation and not theory of contemplation." MAURIZIO FERRARIS, HISTORY OF HERMENEUTICS 1 (Luca Somigli trans., 1988).

Both Plato and Aristotle focused on hermeneutics as a central aspect of their philosophies. Plato contrasted hermeneutic knowledge to that of *sophia* and, according to Plato, "[r]eligious knowledge is a knowledge of what has been revealed or said and does not, like *sophia*, involve knowledge of the truth-value of the utterance." Bjørn Ramberg & Kristin Gjesdal, *Hermeneutics*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2005), <http://plato.stanford.edu/entries/hermeneutics/> (last visited Mar. 10, 2007). For Plato, "a *hermēneutēs* could be an 'interpreter' of the sacred law or a poet expounding divine utterances as a 'spokesman' for the gods, one practicing the 'art of interpretation.'" BRUCE CORLEY ET AL., BIBLICAL HERMENEUTICS: A COMPREHENSIVE INTRODUCTION TO INTERPRETING SCRIPTURE 3-4 (2d ed. 2002) (citation omitted). Aristotle also found the subject worthy of a major treatise in the Organon, the famous *Peri hermēneias*, "On Interpretations." See Richard E. Palmer, A Lecture Delivered at the Department of Philosophy, Southern Illinois University of Carbondale: The Relevance of Gadamer's Philosophical Hermeneutics to Thirty-Six Topics or Fields of Human Activity (Apr. 1, 1999), <http://www.mac.edu/faculty/richardpalmer/relevance.html> (last visited Mar 10, 2007). For Aristotle, "hermeneutics does not connect human beings and gods but is a function mediating between the thoughts of the soul and their linguistic expression." FERRARIS, *supra* note 8, at 5. Thus, Aristotle aims at a theory of *expression* in his references to hermeneutics and this function is confirmed in *Peri hermēneias*. *Id.* For Aristotle, "behind several kinds of different expressions, one can recognize meanings that are identical, stable, and, therefore communicable." *Id.* at 5. "[H]ere Aristotle criticizes the theory of the polyvocal, hence unlimited, meaning of texts and linguistic expressions." *Id.*

9. The enterprise of Qur'anic hermeneutics is as old as Islam. It is often described in Arabic as *ta'wil*, a term that describes the intellectual task of ascertaining the hidden meaning of the language in texts. MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 119 (3d ed. 2003). *Ta'wil* can be concerned with texts other than the Qur'an, although the Qur'an is the preeminent text in the Arabic language. Thus, *ta'wil* can also be applied to poetry, literature, and perhaps even art or music. Another term used to denote a hermeneutical task is the word *tafsir*. The use of this term is now almost synonymous with the idea of Qur'anic hermeneutics and is used in that sense in this Article. Traditionally, there was great debate among the scholars as to whether the proper approach to interpretation of the Qur'an should be described as *ta'wil* (focusing on hidden meanings) or *tafsir* (focusing on explanations and commentary on the text). See Andrew Rippin, *Tafsir*, in 13 ENCYCLOPEDIA OF RELIGION 8949, 8950 (Lindsay Jones ed., 2d ed. 2005). Without choosing sides in the debate, this Article will draw its sources from the *tafsiri* school of Qur'anic interpretation. See *infra* Part I.

10. The label I choose to describe this branch of Qur'anic hermeneutics owes much to the discussion of the phenomenon in Rotraud Wielandt's article, *Exegesis: Modern*. See Rotraud Wielandt, *Exegesis: Modern*, in 2 ENCYCLOPEDIA OF THE QUR'AN 124, 126-29 (Jane Dammen McAuliffe ed., 2002); see also Andrew Rippin, *Tafsir*, in 10 THE ENCYCLOPEDIA OF ISLAM 83 (P.J. Bearman et al. eds., 2000).

ars. I will conclude this Article with a reflective examination of one of these problem areas—the issue of human equality as discussed in the core texts of Islam and as exemplified by the historical and contemporary problems of slavery and slavery-like conditions in Islamic societies. It is my view that hermeneutical examination of the issue of slavery offers the key to resolution of a number of other interpretive issues facing contemporary Islam. I will offer some observations on future trends for Islamic scholarship in this area.

For purposes of this symposium it is important to be clear about the meaning of the term “scholarship.” When I speak of scholarship, I refer to the written discourse and the collective inquisitorial and investigative effort by learned persons to improve our knowledge and understanding of the vast tangible and intangible realms that make up our existence. The roots of Islamic scholarly discourse can be traced to the Prophet Muhammad, his companions, and their successors, many of whom became quite knowledgeable in a variety of jurisprudential, theological, and philosophical areas of inquiry. The Prophet’s seventh century pronouncements on matters of social, legal, religious, and moral concern are central to this discourse. Also, the Prophet, his companions, and their successors’ efforts to explain and interpret the Qur’an and translate the experience of the first Muslims into a coherent system of thought, belief, jurisprudence, and praxis were important aspects of the early scholarly discourse.

As is well known, this discourse underwent a tremendous explosion in complexity and breadth as the Islamic project exploded west to Andalusian Spain and east to the Oxus River in Western Asia.<sup>11</sup> Modern Muslim intellectuals and many scholars of Islam look upon the period of these events, often described as the “Golden Age” of Islam,<sup>12</sup> with great fondness and

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11. See generally MARSHALL G.S. HODGSON, 1 *THE VENTURE OF ISLAM: CONSCIENCE AND HISTORY IN A WORLD CIVILIZATION 197-206* (1974); IRA M. LAPIDUS, *A HISTORY OF ISLAMIC SOCIETIES* 31-44 (2d ed. 2002).

12. See, e.g., TARIF KHALIDI, *CLASSICAL ARAB ISLAM: THE CULTURE AND HERITAGE OF THE GOLDEN AGE* (1985). The period of the “Golden Age” runs roughly from the time of the Prophet Muhammad’s consolidation of his hold on most of the Arabian Peninsula in or about 630 C.E. until about 1258 C.E., when Baghdad fell to the Mongols. The period roughly corresponds to the formation of the new Islamic state on the Arabian Peninsula, the subsequent rise of the Abbasid Caliphate in Baghdad, the later decline of the Abbasids, the simultaneous rise of the Tulunids, the Ikhshidids, the Idrisids, the Umayyads, the Fatimids, and the Ayyubids in Morocco, southern Spain, Tunis, Cairo, and Jerusalem, the rise of the Seljuks in Anatolia, and the early days of the Mamluk Sultanates based in Cairo, Jerusalem, and Damascus. See generally LAPIDUS, *supra* note 11, at 31-192, 283-94; HODGSON, *supra* note 11 at 311. The concept of a “Golden Age” is a contested one, and it is probably more accurate to refer to this period as the “classical” period in Islamic history. Professor Lapidus, for example, argues that there were really two “golden ages,” one occurring during the formative period and the other occurring during the early days of the Ottoman Empire. See Ira M. Lapidus, *The Golden Age: The Political Concepts of Islam*, 524 *ANNALS OF THE*

fascination.<sup>13</sup> It is actually three periods, and the demarcation of these periods, like all such efforts in history, is somewhat blurred. The first period, referred to as the “formative” period, extends from the time of the death of the Prophet Muhammad in 632 C.E. up to the years just before the establishment of the Abbasid Caliphate in Baghdad in 750 C.E.<sup>14</sup> The second period, described by Marshall G.S. Hodgson as “The Classical Civilization of the High Caliphate”<sup>15</sup> began with the founding of a small but powerful agrarian-based centralized state in Baghdad in 692 C.E. and continued with the emergence of an imperial government in Baghdad in 750 C.E.<sup>16</sup> This government, led by a series of visionary Caliphs and characterized by the emergence of elite classes comprised of physicians, jurists, theologians, and soldiers commanding slave armies, flourished for over two hundred years and virtually transformed Islam into a world religion.<sup>17</sup> The third period, characterized by the decline of the Baghdad Caliphate and a concomitant rise of regional sultanates and other local governments claiming caliphal status, began in about 935 C.E. and extended for another three hundred year period until Baghdad fell to the Mongols in 1258 C.E.<sup>18</sup> Although the Baghdad Caliphate at the center of the empire waned in power, the early example it established for the conduct of scholarship and intellectual and religious discourse became the model for the rising outlying sultanates and mini-caliphates.<sup>19</sup> Scholars working in the outer regions continued to proficiently advance the Islamic jurisprudential and theological project in impor-

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AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 13 (1992). Professor Khaled Abou El Fadl has argued that the idea of a “Golden Age” is really a product of the imagination of the salafists and Islamic revivalists who seek to return to a pristine version of Islam. See, Khaled Abou El Fadl, *Islam and the Theology of Power*, 221 MIDDLE EAST REPORT 28, 32-33 (2001).

13. See, e.g., HUGH KENNEDY, *WHEN BAGHDAD RULED THE MUSLIM WORLD: THE RISE AND FALL OF ISLAM'S GREATEST DYNASTY* (2005).

14. See LAPIDUS, *supra* note 11, at 31-66.

15. HODGSON, *supra* note 11, at 231.

16. *Id.* at 233-314.

17. See generally WAEL B. HALLAQ, *THE ORIGINS AND EVOLUTION OF ISLAMIC LAW* 122-93 (2005) (discussing the development of the judiciary, legal reasoning, and legal authority during the first century as well as the dramatic rise of prophetic authority, the crystallization of legal theory, and the formation of the all-important legal schools during the classical period). See also, generally, MARSHALL G.S. HODGSON, 2 *THE VENTURE OF ISLAM: CONSCIENCE AND HISTORY IN A WORLD CIVILIZATION* at 12-200 (describing these events as the establishment of an “international civilization” and “international political order” and offering specific examples of such developments); JOSEPH SCHACHT, *THE ORIGINS OF MUHAMMADAN JURISPRUDENCE* 269-282 (2d ed. 1953) (detailing the crystallization of legal doctrine in the classical era).

18. See LAPIDUS, *supra* note 11, at 112-32.

19. *Id.* See also HALLAQ, *supra* note 17, at 172-77.

tant and profound ways.<sup>20</sup> Most historians consider events occurring in these outlying places as deserving of inclusion in the chronicle of the classical period.<sup>21</sup>

### I. *TAFSIR*: THE TRADITIONAL QUR'ANIC HERMENEUTIC

Almost all of the foundational doctrines of the Islamic religion, including the foundational legal doctrines, matured during the three periods of the classical era. Contemporary scholars of Islam continue to rely heavily upon the discursive materials generated during the formative and classical periods of Islam. There are a number of important threads and genres found in this great store of classical scholarship, but the core of the tradition is the *tafsir* literature—the literature that is concerned with the interpretation of the Qur'an.

*Tafsir* is also not an easily defined concept and there is a serious scholarly controversy surrounding efforts to define it and demarcate its scope and reach. The word is a verbal noun derived from the verb *fassara*, which means “to explain, expound, explicate, elucidate, interpret” or “comment on.”<sup>22</sup> The *tafsir* literature is representative of the hermeneutical tradition in Islam, that is, it is the product of efforts of scholars and exegetes concerned with understanding the meaning of the core Islamic text, the Qur'an, and translating those understandings into interpretations of the text. These interpretations can then, among other things, form the basis for liturgical and juridical decision-making by Muslim actors, including imams, judges, government officials, jurists, political leaders, military commanders, soldiers, parents, heads of families, and ordinary believers. Tradition has shown that opinions of scholars as expressed in the *tafsir* play an important role in the daily lives of Muslims as they seek to understand and translate the teachings of the Qur'an into practical guidance for behavior. Contemplation of the current state and role of the *tafsir* literature should therefore occupy a central place in our consideration of the future of Islamic scholarship.

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20. See, for example, the work of Ibn Rushd in Spain, IBN RUSHD, *THE DISTINGUISHED JURIST'S PRIMER: BIDAYAT AL-MUJTAHID* (Imran Ahsan Khan Nyazee trans., 1994), the work of Imam Shafi'i in Egypt, AL-SHAFI'I, *supra* note 3, and ABU 'ABD ALLAH MUHAMMAD IBN IDRIS AL-SHAFI'I, *KITAB AL-UMM* (1990), and the work of the Uzbek scholar ABU L-QASIM MAHMUD IBN UMAR AL-ZAMAKHSHARI, JADULLAH MAHMUD IBN UMAR AZ-ZAMAKHSHARI, *TAFSIR AL-KASHSHAF 'AN HAQA'IQ GHAWAMID AT-TANZIL WA-UYUN AL-AQAWIL FI WUJUH AT-TAWIL* (Mustafa Husain Ahmed ed., 2d ed. 1953).

21. See HALLAQ, *supra* note 17, at 172-77; HODGSON, *supra* note 11, at 152-200; LAPIDUS, *supra* note 11, at 112-93.

22. HANS WEHR, *fassara*, in *A DICTIONARY OF MODERN WRITTEN ARABIC* 713 (J. Milton Cowan ed., 1961).



John Wansbrough, in his seminal work *Qur'anic Studies: Sources and Methods of Scriptural Interpretation*,<sup>23</sup> assigns “five sequential categories”<sup>24</sup> to *tafsir*. They are: narrative (*aggadic*), legal (*halakhic*), textual (*masoretic*), rhetorical, and allegorical.<sup>25</sup> Andrew Rippin argues that Wansbrough’s categories are, “in true scientific fashion, functional, unified, and revealing.”<sup>26</sup> He points out that the first “true” works of *tafsir*, emerging in the tenth century C.E., combined all five of the categories.<sup>27</sup> The first of these “true” works was al-Tabari’s *Jami’ al-bayan ‘an ta’wil ay al-Qur’an*.<sup>28</sup> Since al-Tabari’s work appeared the literature has flowed in two great streams, *tafsir bi-al-ma’tthur* (“interpretation by tradition”) and *tafsir bi-al-ra’y* (“interpretation by opinion”).<sup>29</sup> *Tafsir bi-al-ma’tthur* depends primarily upon the exegetical traditions of the Prophet, his companions, and the opinions offered by the early scholars of *hadith*.<sup>30</sup> *Tafsir bi-al-ra’y* involves interpretation based upon the “personal opinion” of the interpreter, more specifically his rational, theological, or philological analysis as applied to the text.<sup>31</sup>

This *tafsir* literature, and particularly its division into these two great streams, is influenced by the well-known dispute between the Asharite and Mu’tazilite theologians.<sup>32</sup> Notwithstanding these divisions and disputes, the

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23. JOHN WANSBROUGH, *QUR'ANIC STUDIES: SOURCES AND METHODS OF SCRIPTURAL INTERPRETATION* (1977).

24. This is Andrew Rippin’s phrase. See Rippin, *supra* note 9, at 8952.

25. WANSBROUGH, *supra* note 23, at 119-246.

26. Rippin, *supra* note 9, at 8952.

27. *Id.* at 8953.

28. *Id.*

29. *Id.*; see generally APPROACHES TO THE HISTORY OF THE INTERPRETATION OF THE QUR’AN (Andrew Rippin ed., 1988); THE BLACKWELL COMPANION TO THE QUR’AN (Andrew Rippin ed., 2006).

30. Rippin, *supra* note 9, at 8953.

31. *Id.* Rippin indicates that while al-Tabari’s *tafsir* is often described as being in the first category, interpretation by tradition, this is misleading as al-Tabari often interjects his own opinion on various points. See *id.*

There are a number of other scholars who produced sophisticated and voluminous commentaries in the centuries after al-Tabari. They include al-Maturidi, Abu al-Layth al-Samarqandi, al-Tha’labi, and al-Wahidi. *Id.* Perhaps the most famous Qur’an commentaries in the Muslim world were “those of the rationalist Mu’tazili al-Zamakhshari . . . , the philosopher Fakhr al-Din al Razi . . . , and the Sunni traditionalist al-Baydawi.” *Id.* Ibn Kathir’s *tafsir*, as well as the *tafsir* of al-Shawkani and al-Alusi, are described as in the encyclopedic tradition of al-Tabari and are also widely relied upon as authoritative. *Id.* “The opposite trend toward distillation” is seen, “in popular terms,” in Jalal al-Din al-Suyuti and Jalal al-Din al Mahalli’s *Tafsir al-Jalalayn*. *Id.*

32. The dispute between the Asharite and Mu’tazilite theologians involved many areas of disagreement but the most fundamental areas of contention involved the notion of the createdness of the Qur’an and conceptions of predestination and free will. The Asharites are typically described as “traditionists” and the Mu’tazilites are described as “rationalists.” This division is grossly oversimplified. Further, as Khalid Abou El Fadl points out, much of

*tafsir* literature remains the core of the “classical” Qur’anic hermeneutic.<sup>33</sup> Although there were differences of opinion among the various *tafsir* commentators, all approached the Qur’an with the same primary objective: to arrive at a reliable judgment concerning the meaning of the text.<sup>34</sup> The methods used by these exegetes included grammatical, linguistic, syntactical, philological<sup>35</sup> analysis, consideration of the *asbab al-nuzul* (“the reasons for the revelation”), analysis based on comparison with other verses in the Qur’an, and analysis of the prior understandings of the revelation, including revelation from other Abrahamic faiths.<sup>36</sup> For over five hundred years this body of literature dominated the understandings of the meaning of the Qur’an.<sup>37</sup> The literature has achieved a kind of canonical status and, for ease of reference, I will describe it as the “canonical *tafsir*.”

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the theological dispute about the eschatological origin and role of the Qur’an, and the relationship between God and humanity did not have direct relevance to jurisprudence. ABOU EL FADL, *supra* note 8, at 153-55. Nonetheless, the Asharite approach to the text, which “steer[s] a middle course between the rationalism of Mu’talizism and the anti-rationalism of the Traditionists,” *Id.* at 166 n.26, has become dominant, largely rejecting interpretation based upon freely arrived at personal opinion.

33. Understanding the role of “classical” literature in the hermeneutical enterprise is an important task. Hans-Georg Gadamer observes:

The concept of literature is not unrelated to the reader. Literature does not exist as the dead remnant of an alienated being, left over for a later time as simultaneous with its experiential reality. Literature is a function of being intellectually preserved and handed down, and therefore brings its hidden history into every age. Beginning with the establishment of the canon of classical literature by the Alexandrian philologists, copying and preserving the “classics” is a living cultural tradition that does not simply preserve what exists but acknowledges it as a model and passes it on as an example to be followed. Through all changes of taste, the effective grandeur that we call “classical literature” remains a model for all later writers, up to the time of the ambiguous “battle of the ancients and moderns,” and beyond.

GADAMER, TRUTH AND METHOD, *supra* note 8, at 161.

34. ABOU EL FADL, *supra* note 8, at 118; Rippin, *supra* note 9, at 8950. Rippin observes that the *tafsir* “also functions simultaneously to adapt the text to the present situation of the interpreter . . .,” giving it “a very practical aspect of making the text applicable to the faith and the way of life of the believers.” *Id.*

35. “Philology” is defined as the “love of talk, speech, or argument,” or the “love of argument, learning, and literature.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1698 (1986). Formally, it is the “study of literature that includes or may include grammar, criticism, literary history, language history, systems of writing, and anything else that is relevant to literature or to language as used in literature: literary or classical learning.” *Id.* It includes “historical and comparative linguistics” and “the study of human speech [especially] as the vehicle of literature and as a field of study that sheds light on cultural history.” *Id.*

36. See Rippin, *supra* note 9, at 8952-53 (cataloging the methods used by the exegetes).

37. See Claude Gilliot, *Exegesis: Classical*, in 2 ENCYCLOPEDIA OF THE QUR’AN, *supra* note 10, 99, 110-14. See also Jane Dammen McAuliffe, *Qur’anic Hermeneutics: The Views of al-Tahari and Ibn Kathir*, in APPROACHES TO THE HISTORY OF THE INTERPRETATION

The canonical *tafsir*, even that which relied upon reason and rejected traditional understandings, in a sense became its own tradition. This was largely accomplished in classical times through the scholarly work of the *ulama*, an important indigenous elite in Islamic society. The word *ulama* is the plural of the Arabic word *alim*, which means “learned” or “erudite.”<sup>38</sup> *Ulama'*, when used as a collective noun, means “learned ones” and describes the religio-legal class of scholars who are usually present and active in almost all legal discourse in every Muslim community. Over the centuries and until recently the *ulama* have carried out an important role in juridical decision-making.<sup>39</sup>

In the classical conception of Islamic law, the *ulama* bear the primary responsibility for ensuring that the *Shari'a*, the corpus of Islamic law, and its primary texts, the Qur'an and the Sunnah, are correctly taught, recited, interpreted, and applied by believers, including university teachers, religious and legal authorities, political leaders, and members of the government.<sup>40</sup> The *ulama's* responsibilities flow from the classical view of the Islamic doctrine of *ijma'* (scholarly consensus) which in turn was derived from interpretations of a number of verses in the Qur'an. These verses, particularly 4:59 and 4:83, insist that the believers consult with the *ulu-al-amr* (those who hold authority or command) in resolving disputes concerning interpretation of the Qur'an and other matters of law and policy.<sup>41</sup> Long ago, D.B. MacDonald described the *ulama* as canonists and theologians who “represented and voiced the Agreement of the Muslim people, and that Agreement was the foundation of Islam. In consequence the *ulama*, in whatever stated form they functioned, came to have, in a wide and vague fashion, the ultimate decision on all questions of constitution, law, and theology.”<sup>42</sup> In the formative, classical, and post-classical periods, the *ulama* carried the canonical *tafsir* on their backs and ensured that it remained the central reference point for authoritative interpretation of the Qur'an.<sup>43</sup>

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OF THE QUR'AN 46 (Andrew Rippin ed., 1988); Rippin, *supra* note 9, at 8955 (discussing the consolidation of the classical *tafsir*).

38. See *'alim*, in WEHR, *supra* note 22, at 636.

39. See D.B. MacDonald, *Ulama*, in III E.J. BRILL'S FIRST ENCYCLOPEDIA OF ISLAM 1913-1936, 994 (A.J. Wensinck et al. eds., photo reprint 1987) (1927).

40. See KAMALI, *supra* note 9, at 231-32 (explaining the role of *ijma'* in ensuring correct interpretation of the Qur'an).

41. See *id.*; see also AHMAD HASAN, THE DOCTRINE OF IJMA' IN ISLAM 28-32 (Islamic Research Inst. 1978) (explaining the role of scholars in the formulation of *ijma'*).

42. MacDonald, *supra* note 39, at 994.

43. See Suha Taji-Farouki & Basheer M. Nafi, *Introduction* to ISLAMIC THOUGHT IN THE TWENTIETH CENTURY 1, 5-7 (Suha Taji-Farouki & Basheer M. Nafi eds., 2004) (describing the role of the *ulama* in preserving Islamic knowledge during the pre-colonial era and discussing the change in this role caused by the introduction of modern educational methods in post-colonial Muslim communities).

II. THE IMPACT OF THE ENLIGHTENMENT ON THE *TAFSIR*

It is widely believed that since the demise of the Ottoman Empire, the advent of the European Enlightenment, the rise of the modern nation-state, and the arrival of European colonialism, the view of the *ulama* as espoused by MacDonald is now nothing more than an anachronistic ideal with absolutely no reference to the juridical reality in traditional Muslim communities.<sup>44</sup> Contemporary observers assert that the *ulama* have essentially ceased to function in the way contemplated by the classical conception of the Islamic law.<sup>45</sup> They are often marginalized by largely non-Islamic state entities; and in those communities where they still play an important role, their opinions are greatly influenced by the demands of the government of the day. Suha Taji-Farouki aptly describes the current situation:

In traditional Muslim societies, a single social group spoke authoritatively for Islam: this was the class of the *ulama*. It had held the societal nexus throughout Islamic history, while safeguarding the tenets of the faith from a position of semi-independence from the political system. From the late nineteenth century, the comprehensive changes produced by the impact of European colonialism and modernisation gradually eroded its position. The control of the *ulama* over the educational process and legal systems was broken, and the bases of their economic power and independence were lost. The *ulama* class would discover that its languages and methods were not those of the emerging order, while its traditional Islamic learning was perceived to be less relevant to the new concerns and preoccupations of Muslim societies. . . . In the course of the twentieth century, the traditional impulse to solicit and defer to the opinion of the *ulama* has been considerably weakened, not least by their cooperation with the modern state, and their failure to respond effectively to the overwhelming discursive challenges of the modern era.<sup>46</sup>

Thus there is now little opportunity for jurists and scholars to strive for consensus or to independently engage in a meaningful and critical discourse. This is disturbing because in the classical Islamic view there can be no coherent hermeneutic without the *ijma* (scholarly consensus) of the '*ulama*.'<sup>47</sup> If in fact the '*ulama*' have disintegrated as a collective juridical and interpretive force in Muslim societies, then the Qur'anic hermeneutic, traditionally a strong reference point for juridical and religio-political decision-making in Muslim communities and based upon the canonical *tafsir*,

44. *Id.* at 10-12.

45. See RAHMAN, ISLAM AND MODERNITY, *supra* note 2, at 156-57; see also Cl. Gilliot, '*ulama*', in ENCYCLOPEDIA OF ISLAM 801, 804 (H.A.R. Gibb et al. eds., 1980); M.B. Hooker, '*ulama*', *id.* at 807.

46. Taji-Farouki & Nafi, *supra* note 43, at 12-13 (citation omitted).

47. See KAMALI, *supra* note 9, at 231-32 (citing AHMAD HASAN, THE EARLY DEVELOPMENT OF ISLAMIC JURISPRUDENCE 160 (1970) and IGNAZ GOLDZIEHER, INTRODUCTION TO ISLAMIC THEOLOGY AND LAW 52 (Andras & Ruth Hamori trans., 1981)); see also Gilliot, *supra* note 45, at 801 (asserting that the Sunni '*ulama*' are regarded as the "guardians, transmitters and interpreters of religious knowledge, of Islamic doctrine and law").

becomes a fragmented collage of scattered, unconnected, illogical, and contradictory opinions, like many leaves blowing in a strong wind.

Consequently Qur'anic interpretation has increasingly become characterized by an overblown focus on isolated individual verses of the Qur'an. This emphasis on individual Qur'an verses creates what is essentially an "atomized" *tafsir*.<sup>48</sup> This phenomenon accelerated as the twentieth century unfolded. Of course, as Professor Abdullah Saeed has recently pointed out, there were many colonial and post-colonial Muslim scholars who cleaved to the traditionalist hermeneutical approaches and continued to write *tafsir* that actually differed little from the canonical *tafsir*.<sup>49</sup> He cites the *tafsir* of al-Shawkani, al-Alusi, and al-Maraghi as examples.<sup>50</sup> This branch of the Qur'anic hermeneutic, which inherits much from the *corpus* of the formative and classical interpretations, remains useful in assisting Muslims to understand the commands and the prohibitions of the Qur'an in matters arising in the liturgical practice of the popular religion. The liturgical practice in Islam is roughly analogous to the liturgical practices in the other Abrahamic religions. Prayer occurs at announced agreed-upon times and it follows a universally acknowledged methodology. Prayer services in mosques are similarly widely agreed-upon, with few significant local variations. Liturgical procedures for fasting during the month of Ramadan, commanded and regulated by explicit verses in the Qur'an, are also universally agreed-upon throughout the Islamic world. Liturgical rules governing the pilgrimage, and, to some extent, alms-giving, similarly find little variance in the practice of the popular religion. Even though there have been a few vigorously contested disputes in some of these areas in recent times, these controversies, while important, do not involve attempts to fundamentally reinterpret or abrogate text of the Qur'an.<sup>51</sup>

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48. This characterization was first used by Professor Fazlur Rahman in describing the failure of the Islamic educational system in modern Pakistan. See RAHMAN, ISLAM AND MODERNITY, *supra* note 2.

49. Abdullah Saeed, *Qur'an: Tradition of Scholarship and Interpretation*, in 11 ENCYCLOPEDIA OF RELIGION 7561, 7567 (Lindsay Jones ed., 2d ed. 2005); see also ABDULLAH SAEED, INTERPRETING THE QUR'AN: TOWARDS A CONTEMPORARY APPROACH (2006).

50. Saeed, *Qur'an: Tradition of Scholarship*, *supra* note 49, at 7567 (citing al-Shawkani, *Fath al-qadir*; al-Alusi, *Ruh al-ma'ani*, and al-Maraghi, *Tafsir al-Maraghi*). The Egyptian scholar Sheikh Muhammad Mitwalli al-Sha'rawi might also be included in this group of traditionalists, although his writing and sermons tended to be much more influential in assisting Egyptians in their struggle with modernity. See, e.g., MUHAMMAD MITAWALLI SHA'RAWI, TAFSIR AL-QUR'AN AL-KARIM (Maktabat al-Qur'an al-Karim).

51. The most prominent example is the recent controversy generated by the Professor Amina Wadud's effort to lead the Friday prayer in New York. See Nevin Reda, *What Would the Prophet Do? The Islamic Basis for Female-led Prayer*, MUSLIM WAKEUP!, Mar. 10, 2005, [http://www.muslimwakeup.com/main/archives/2005/03/women\\_imamat.php](http://www.muslimwakeup.com/main/archives/2005/03/women_imamat.php) (last visited May 12, 2007). The Shari'a Scholars Association of North America promptly issued

This Article concerns hermeneutical difficulties that do not generally arise in the interpretation of verses governing the liturgical practices that form the core aspects of the popular religion. The popular religion in Islam and the widely practiced liturgical forms associated with it remain for the most part as they have been for the last fourteen-hundred years.<sup>52</sup> Instead, difficulties arise when Muslims seek to apply the teachings of the Qur'an to issues often found in the modern, liberal, pluralistic, often and secular public square. Understandings of issues involving freedom of expression, freedom of conscience and belief, the emancipation of women, rights of religious, racial, and ethnic minorities, war and *jihad*, and international relations are greatly influenced by the advent of universalist concepts emerging from the Enlightenment and finding prominence with the rise of the modern nation-state and the near-universal acceptance of certain basic principles of international law.<sup>53</sup> The canonical *tafsir* is just not that helpful in approaching these issues in their contemporary context.

### III. THE EMERGENCE OF POST-ENLIGHTENMENT QUR'ANIC HERMENEUTICS

The difficulties encountered by Muslim scholars who sought to explore the relevance of the Qur'an to these new problems caused another form of *tafsir* to emerge after the Enlightenment and the advent of the colo-

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an opinion condemning the practice. See Islamic Sharia Advisory Inst. of N. Am., *Leading Prayer by Women in Islam*, ISAINA.org, Apr. 7, 2005, <http://www.isaina.org/index.php?option=news&task=viewarticle&sid=8#> (last visited May 12, 2007). There are also difficulties caused by innocent charitable donations by Muslims to organizations denominated as terrorist entities by Western governments and more generalized disputes over the question of who are the eligible recipients of Muslim philanthropy, given the prevalent and restrictive interpretation of verse 9:60 of the holy Qur'an. See The Holy Qur'an, Sura At-Tawba 9:60. See also Abdullahi Ahmed An-Na'im & Asma Mohamed Abdel Halim, *Rights Based Approach to Philanthropy for Social Justice in Islamic Societies*, The John D. Gerhart Center for Philanthropy and Civic Engagement, American University in Cairo, Aug. 2006, <http://www.aucegypt.edu/academic/gerhartcenter/documents/Rights-basedPhilanthropyAugust2006.pdf> (arguing for a rights-based Islamic philanthropy based on Quranic and other sources).

52. See, e.g., AL SAYYID SABIQ, *FIQH AL-SUNNAH* (Muhammad Sa'eed Dabas & Jamal al-Din M. Zarabozo trans., 1985) (canonical manual of Islamic ritual and liturgical practices drawing on the earliest sources and still in use today).

53. Fine discussions of the difficult dilemmas presented by the juxtaposition of Enlightenment ideas and universalist approaches to international law with core Quranic concepts seemingly justifying slavery and discrimination against women and ethnic and religious minorities may be found in ABDULLAHI AHMED AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW* (1996) and in ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS* (3d ed. 1999).

nial era.<sup>54</sup> This *tafsir* literature, a genre best described as Post-Enlightenment Qur'anic hermeneutics, is the focus of this Article. I refer to this hermeneutic as Post-Enlightenment and argue that it should be explicitly denominated as such in the intellectual history of Islam for several reasons. First, it is the only form of *tafsir* that explicitly seeks to interpret the Qur'an in light of the challenges posed to Muslim societies by the introduction of Enlightenment values and norms; values and norms that purport to be universalist, secular, and, in some cases, anti-religious or anti-clerical. Second, the new hermeneutic is usefully described as Post-Enlightenment because its development is somewhat similar to the modes of textual interpretation that emerged in Post-Enlightenment Protestant Biblical hermeneutics<sup>55</sup> and perhaps in some aspects of philosophical hermeneutics.<sup>56</sup> Both

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54. See generally MODERN MUSLIM INTELLECTUALS AND THE QUR'AN (Suha Taji-Farouki ed., 2004) (collecting writings about and commentary on ten recent Post-Enlightenment interpreters of the Qur'an). See also Wielandt, *Exegesis: Modern*, *supra* note 10 at 126; Rippin, *supra* note 10, at 87 (citing numerous commentaries on the recent *tafsir*, including J.M.S. BALJON, MODERN MUSLIM KORAN INTERPRETATION (1880-1960) (1968) and J.J.G. JANSEN, THE INTERPRETATION OF THE KORAN IN MODERN EGYPT (1974) and various other examples, including MUHAMMAD 'ABDUH, TAFSIR AL-MANAR (1948) and QUTB, IN THE SHADE OF THE QUR'AN, *supra* note 3.

55. Although the use of the term "hermeneutics" can be traced back to Greek culture, questions of biblical exegesis are what gave rise to the concept of hermeneutics as a theory of interpretation. Abdul Rahim Afaki, *From Biblical to General Hermeneutics: A Historical-Thematic Development*, RENAISSANCE, Dec. 2000, <http://www.renaissance.com.pk/decerecol20.htm> (last visited May 12, 2007). As a part of the broader question of hermeneutics, biblical hermeneutics is related to the question of how one is to understand the collection of texts we know as the Bible. See generally BRUCE CORLEY ET AL., BIBLICAL HERMENEUTICS: A COMPREHENSIVE INTRODUCTION TO INTERPRETING SCRIPTURE (2d ed. 2002). Indeed, the oldest and probably still the most widespread understanding of the word "hermeneutics" refers to the principles of biblical interpretation. Afaki, *supra* note 55. "Throughout the medieval era, two methods were commonly used in interpreting the Bible . . . : grammatical-historical and allegorical. The grammatical-historical method is employed in interpreting the Old Testament in the light of the New Testament and vice versa." *Id.* This method is based on the view that both the scriptures were revealed by God, though at different times. FERRARIS, *supra* note 8, at 7. The other approach, allegorical interpretation has very ancient origins—it was used by the Sophists and the Stoics—and it provides an answer to the need to adapt traditional texts to the mentality of a more advanced age. Afaki, *supra* note 55 (citing WILHELM DILTHEY, SELECTED WRITINGS 251-52 (1976)). This division of methods appears to be roughly analogous to the division in Qur'anic hermeneutics between *ta'wil* (allegorical interpretation) and *tafsir* (commentary based on historical and traditional sources). With the rise of the ideals of humanism of the fifteenth century, Western hermeneutics emerged as a historical and critical methodology for analyzing texts. Thus hermeneutics expanded from its medieval role explaining the correct analysis of Bible. Moreover, "along with several other spheres of learning in the Western world Biblical hermeneutics was also to be benefited from the Renaissance." Afaki, *supra* note 55. During this period, the protestant Reformation brought about a renewed interest in the interpretation of Bible. *Id.* For instance, Matthias Flacius Illyricus, named as "the most important Protestant theorist" by Dilthey, "reject[ed] the church authority in interpreting the Bible" and "argued that if the Scriptures had not yet been understood properly, this did not necessarily

these hermeneutic traditions similarly emerged in the nineteenth and twentieth centuries and sought to universalize the methodologies employed in the interpretation of important religious and classical texts, while drawing benefits and insights from Enlightenment and Post-Enlightenment ideas and approaches to human understanding and the human sciences.<sup>57</sup>

The Post-Enlightenment Islamic *tafsir* can thus be situated in a larger hermeneutical history that transcends all of the Abrahamic religions and takes within its sweep consideration of Western literary, scientific, ethical,

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imply that the church ought to impose an external interpretation to make them intelligible; it merely reflected the insufficient knowledge and faulty preparation of the interpreters.” *Id.* (quoting Kurt Mueller-Vollmer, *Introduction to THE HERMENEUTICS READER: TEXTS OF THE GERMAN TRADITION FROM THE ENLIGHTENMENT TO THE PRESENT 2* (Kurt Mueller-Vollmer ed., 1985) [hereinafter *THE HERMENEUTICS READER*].

The Enlightenment led scholars and hermeneuts to view scriptural texts in the same way that secular texts were viewed. “The process of the secularization of the Bible, begun by the Reformation and continued by eighteenth century rationalism, becomes more radical with the Enlightenment.” FERRARIS, *supra* note 8, at 52. “The rationalist impulse, which fosters the secularization of the sacred text (the study, through the most advanced historical and philological tools, of the biblical tradition as a literary one), originates from the prejudice, influential in the Enlightenment, that the moderns are superior to the ancients and that the more reason is autonomous, the more it is effective.” *Id.* “As far as the development of general hermeneutics is concerned, Chladenius (1710-1759) is the most important figure among the philosophers of Enlightenment.” Afaki, *supra* note 55. *See also* FERRARIS, *supra* note 8, at 64-65. In Chladenius’ view, hermeneutics is the art of attaining the perfect or complete understanding of utterances, whether they be speeches or writings. *Id.*

56. Friedrich Ast is a pivotal figure in examining early modern Protestant hermeneutics, the precursor to the more general theory of hermeneutics that emerged from the Enlightenment. *See* Ramberg & Gjesdal, *supra* note 8. “Among the Romantic thinkers, Friedrich Ast . . . was the most important one who he had a deep impact on [the later] Schleiermacherian approach toward general hermeneutics.” Afaki, *supra* note 55. According to Ast, “[i]ndividual utterances are neither to be understood with reference to their author, nor with reference to their place within the semiotic system, but according to their location within world-history.” Ramberg & Gjesdal, *supra* note 8. “Ast thereby extends the scope of the hermeneutic circle. Originally conceived in terms of the relationship between the parts and the whole of the text, the hermeneutic circle now includes the text’s relationship to historical tradition and culture at large.” *Id.* Afaki notes that:

[H]ermeneutics for Ast . . . [becomes] a three-dimensional activity, that is, it may be the historical, the grammatical or the spiritual (geistige). In the historical hermeneutics, a text is to be understood ‘in relation to the content of the work.’ In the grammatical hermeneutics . . . a text is to be understood ‘in relation to the language.’ And in the geistige hermeneutics, a text is to be understood ‘in relation to the total view of the author and the total view of the age.[.]’

Afaki, *supra* note 55. “[T]he third one was an original contribution of Ast to the rise of general hermeneutics and it is the type . . . which was further developed by Schleiermacher.” Afaki, *supra* note 55.

57. *See* Werner G. Jeanrond, *Hermeneutics*, in *A DICTIONARY OF BIBLICAL INTERPRETATION* 282-84 (R.J. Coggins & J.L. Houlden eds., 1990).



jurisprudential, and sociopolitical advances and innovations.<sup>58</sup> This makes the study of this *tafsir* extremely important because it invites comparison of the trends in the Islamic religion with other trends in Western religious and intellectual history, and it enables us to better understand what is happening in both traditions. Let us now examine some of the particulars of the emergence of Islamic Post-Enlightenment Hermeneutics.

What is the genesis of Post-Enlightenment Qur'anic Hermeneutics and what is its content? Ostensibly it finds its origins in the well-known and much-commented-upon writings of Shah Wali Allah al-Dihlawi, Jamal al-Din al-Afghani, Muhammad 'Abduh, Muhammad Rashid Rida, and Sayyid Ahmad Khan.<sup>59</sup> Their writings and commentaries sought to re-explain the

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58. The influence of Friedrich Schleiermacher and his biographer, Wilhelm Dilthey, on the development of a general theory of philosophical hermeneutics is well-documented. See generally THE HERMENEUTICS READER, *supra* note 55. Although he was a theologian concerned with the biblical text, Schleiermacher was interested in a universal hermeneutics. See Richard E. Palmer, A Lecture Delivered at the Department of Philosophy, Southern Illinois University at Carbondale: The Relevance of Gadamer's Philosophical Hermeneutics to Thirty-Six Topics or Fields of Human Activity (Apr. 1, 1999), <http://www.mac.edu/faculty/richardpalmer/relevance.html> (last visited May 12, 2007). Under his approach, interpretation involves two dimensions: "to understand what is said in the context of the language with its possibilities, and to understand it as a fact in the thinking of the speaker." F.D.E. SCHLEIERMACHER, HERMENEUTICS: THE HANDWRITTEN MANUSCRIPT 98-99 (H. Kimmerle ed., J. Dulce & J. Forstman trans., 1977). Schleiermacher concluded that both of the dimensions should be applied simultaneously on the text to understand it and neither of them is "lower" or "higher" in terms of its importance, rather both are crucially equal. Ramberg & Gjesdal, *supra* note 8. "[Schleiermacher's] project and lectures on [general hermeneutics] did not attract a great following. . . . For theologians . . . the procedures of classical philology and what were called the 'historical-critical method' remained adequate to their task." Palmer, *supra* note 8. "Schleiermacher's biographer, Wilhelm Dilthey, a half-century later, began to see real possibilities for continuing Schleiermacher's general hermeneutics project as a 'general methodology of the humanities and social sciences.'" Palmer, *supra* note 8. "Hermeneutics was for Dilthey still a methodology, but now a general methodology he hoped would become the theoretical foundation for all the humanities and social sciences." *Id.* "Dilthey's most important contribution to hermeneutics might be said to rest in the fact that he is the first to ground hermeneutics in a general theory of human life and existence," seeking to do for the human sciences what Immanuel Kant did for the natural sciences. Ramberg & Gjesdal, *supra* note 8; see also MASSON, *supra* note 8, at 23.

59. See, e.g., CHARLES C. ADAMS, ISLAM AND MODERNISM IN EGYPT: A STUDY OF THE MODERN REFORM MOVEMENT INAUGURATED BY MUHAMMAD 'ABDUH (1933); J.M.S. BALJON, RELIGION AND THOUGHT OF SHAH WALI ALLAH DIHLAWI, 1703-1762 (1986); MAHMOOD AHMAD GHAZI, ISLAMIC RENAISSANCE IN SOUTH ASIA 1707-1867: THE ROLE OF SHAH WALI ALLAH AND HIS SUCCESSORS (2002); ALBERT HOURANI, ARABIC THOUGHT IN THE LIBERAL AGE, 1798-1939 (1983); ELIE KEDOURIE, AFGHANI AND 'ABDUH: AN ESSAY ON RELIGIOUS UNBELIEF AND POLITICAL ACTIVISM IN MODERN ISLAM (1966); MALCOLM H. KERR, ISLAMIC REFORM: THE POLITICAL AND LEGAL THEORIES OF MUHAMMAD 'ABDUH AND RASHID RIDA (1966); HAFEEZ MALIK, SIR SAYYID AHMAD KHAN AND MUSLIM MODERNIZATION IN INDIA AND PAKISTAN (Columbia Univ., Studies in Oriental Culture No. 15 1980); CHRISTIAN W. TROLL, SAYYID AHMAD KHAN: A REINTERPRETATION OF MUSLIM THEOLOGY (1978).

meaning and significance of the core Islamic texts in a way that would be consistent with demands of the nineteenth- and early twentieth-century innovations brought to the Muslim world by a modernizing, colonizing, scientifically-driven, and militaristic Europe.<sup>60</sup> As is the case in the other Abrahamic religions, the rationalist imperatives of Enlightenment thought and the rapid spread of modern ways of living, based on a perceived dominance and superiority of scientific, universalist, and humanistic approaches to life, eventually spawned a whole range of modernist Qur'anic hermeneutical projects. These projects include efforts to craft a "scientific" exegesis of the Qur'an,<sup>61</sup> to offer a "feminist" reading of the text,<sup>62</sup> to read the Qur'an from a literary perspective<sup>63</sup> or as a historical document,<sup>64</sup> to isolate and privilege particular themes in the Qur'an,<sup>65</sup> and efforts by "Islamists" to use the Qur'an as the basis for an Islamic ideology that would be a substitute for an Enlightenment-oriented focus, seen as harmfully dominating the social and political life in many modern Muslim communities.<sup>66</sup> They form the core of the Post-Enlightenment Qur'anic hermeneutic.<sup>67</sup>

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60. See, e.g., KERR, *supra* note 59, at 147-48 (discussing 'Abduh's responses to British efforts in Egypt); HOURANI, *supra* note 59.

61. See TANTAWI JAWHARI, *AL-JAWAHIR FI TAFSIR AL-QUR'AN AL-KARIM* (1932).

62. See ASMA BARLAS, "BELIEVING WOMEN" IN ISLAM: UNREADING PATRIARCHAL INTERPRETATIONS OF THE QUR'AN (2002); FATIMA MERNISSI, *THE VEIL AND THE MALE ELITE: A FEMINIST INTERPRETATION OF WOMEN'S RIGHTS IN ISLAM* (Mary Jo Lakeland trans., 1991); AMINA WADUD, *QUR'AN AND WOMAN: REREADING THE SACRED TEXT FROM A WOMAN'S PERSPECTIVE* (1999).

63. See Rippin, *supra* note 9, at 8956 (citing Ai'shah 'Abd al-Rahman, who writes under the name Bint al-Shati and has produced a Post-Enlightenment *tafsir* entitled *Al-Tafsir al-bayani li 'l-Qur'an al-Karim*). Rippin also cites Nasr Hamid Abu Zayd's work, while acknowledging that it is much more controversial and may not neatly fit the genre. See *id.* On Abu Zayd, see Navid Kermani, *From Revelation to Interpretation: Nasr Hamid Abu Zayd and the Literary Study of the Qur'an*, in *MODERN MUSLIM INTELLECTUALS AND THE QUR'AN* 169 (Suha Taji-Farouki ed., 2004).

64. See Rippin, *supra* note 10, at 87 (discussing historical interpretations).

65. See *id.* (citing Mahmud Shaltut's *MIN HUDA AL QUR'AN*); see also FAZLUR RAHMAN, *MAJOR THEMES OF THE QUR'AN* (1980).

66. The most often cited example of this form of *tafsir* is Sayyid Qutb's *Fi Zilal al-Qur'an* (*In the Shade of the Qur'an*). See QUTB, *IN THE SHADE OF THE QUR'AN*, *supra* note 3. Sayyid Abul A'la Maududi's *tafsir*, *Tafhim al-Qur'an* should also be included in this genre. See MAUDUDI, *supra* note 3. Although these *tafsir* argue that Enlightenment values are corrupting, morally bankrupt, and anti-Islamic, they should be included in the Post-Enlightenment hermeneutical project because it is the perceived impact of Enlightenment rationalism that inspired the authors to engage their readers on the continued relevance and importance of the Qur'an.

67. These projects include the writings of Dihlawi, Afgani, Abduh, Rida, and Khan. See, e.g., ABD AL 'AZIZ IBN AHMED DIHLAWI, *MAJMU'AH YI AZIZI* (Multan, 1983); ABD AL 'AZIZ IBN AHMED DIHLAWI, *SECRET OF TWO MARTYRDOMS* (Chowdhery Muhammad Ibrahim, trans., 1971); NIKKI R. KEDDIE, *ISLAMIC RESPONSE TO IMPERIALISM: POLITICAL AND RELIGIOUS WRITINGS OF SAYYID JAMAL AD-DIN "AL-AFGHANI," INCLUDING A TRANSLATION OF "REFUTATION OF THE MATERIALISTS" FROM THE ORIGINAL PERSIAN BY NIKKIE R. KEDDIE*

I contend that, in spite of the rhetorical force and intellectual power of the various Post-Enlightenment projects, none has had an overwhelmingly positive reception in the traditional scholarly community and among the believers. It appears that the great majority of Muslims, in the West, the Far East, in Africa, and in the Arab heartlands of Islam continue to cleave to traditionalist understandings of the meaning of the Qur'an, even though many of those understandings frequently leave Muslims greatly unsatisfied. Led by a few scholars of Islam, some segments of the Western popular press and intelligence and military communities have claimed that the "Islamist" *tafsir*, referred to above, is convincing an increasing number of Muslims of its claims.<sup>68</sup> They assert that this hermeneutical approach is fueling the development of a "jihadist" ideology that seeks to violently remove Western influences from the Islamic world and reinstate the pristine Islam of the formative years, with extremely negative consequences.<sup>69</sup>

Although probably exaggerated, these assertions may bear some truth, in the sense that the "jihadist" hermeneutic is filling a void created by the unsatisfying impact of the more mainstream and traditional hermeneutics. It is my view, however, that all of these projects, including the Islamist hermeneutical project, have so far failed to spark the kind of discourse in Islamic juridical and religio-political affairs that would help to put the new *tafsir* in the dominant position that such literature has traditionally played.<sup>70</sup> None has become canonical. More significantly, each genre of the *tafsir* I have described appears in Arabic, Urdu, Farsi, or in a Western European

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AND HAMID ALGAR (1983); CHARLES C. ADAMS, ISLAM AND MODERNISM IN EGYPT, *supra* note 59; MAHMOOD AHMAD GHAZI, ISLAMIC RENAISSANCE, *supra* note 59; MALCOLM KERR, ISLAMIC REFORM, *supra* note 59; CHRISTIAN W. TROLL, SAYYID AHMAD KHAN, *supra* note 59.

68. For examples of such scholarship see generally SANDSTORM: MIDDLE EAST CONFLICTS & AMERICA (Daniel Pipes ed., 1993); BERNARD LEWIS, CRISIS OF ISLAM: HOLY WAR AND UNHOLY TERROR (2003); BERNARD LEWIS, ISLAM AND THE WEST (1993); BERNARD LEWIS, WHAT WENT WRONG: THE CLASH BETWEEN ISLAM AND MODERNITY IN THE MIDDLE EAST (2002); DANIEL PIPES, MILITANT ISLAM REACHES AMERICA (2002).

69. See, e.g., Paul Berman, *The Philosopher of Islamic Terror*, N.Y. TIMES MAG., Mar. 23, 2003, at 24; see also IBRAHIM M. ABU-RABI', INTELLECTUAL ORIGINS OF ISLAMIC RESURGENCE IN THE MODERN ARAB WORLD (1996); JOHANNES J.G. JANSEN, THE NEGLECTED DUTY: THE CREED OF SADAT'S ASSASSINS AND ISLAMIC RESURGENCE IN THE MIDDLE EAST (1986); Ayman al-Zawahiri, *On the Islamist Revolution in Egypt (January 2002)*, in ANTI-AMERICAN TERRORISM AND THE MIDDLE EAST: UNDERSTANDING THE VIOLENCE 69 (Barry Rubin & Judith Colp Rubin eds., 2002).

70. *Tafsir* published during the classical period also often appeared in response to discourse on issues of the day, particularly theological concerns, such as predestination, the "createdness" of the Qur'an, and the legitimacy of Shi'a theology and theories of governance. Perhaps the best example of this is the twelfth century Mu'tazilite *tafsir* of Zamakhshari which has become a standard classical reference work for exegetes of the Qur'an. See Rippin, *supra* note 9, at 8953. Perhaps it is still too early in the current development of the Post-Enlightenment *tafsir* to determine whether any of the genres I have described will take hold and become canonical.

language, but almost never in all four languages.<sup>71</sup> The *mufasssirun* (authors of the *tafsir*) in each linguistic community speak to their own interpretive communities and these communities engage in some discourse among themselves within each language cluster, and there is little or no discourse between the communities. The same is also true for the *mufasssirun* of the traditionalist *tafsir*. Because of the limited discourse surrounding each *tafsir*, many Muslims remain unsatisfied with the *tafsir* when they seek to apply it to issues thrust upon them by modern life.

The most important task of contemporary Islamic scholarship, then, is to confront, assess, concretize, critically analyze, understand, empower, make relevant, and perhaps unite (or at least engage and synthesize) the varieties of the Post-Enlightenment Qur'anic hermeneutic that seek to arrive at sound methodologies for interpretation of the Qur'an that will be of broad, positive, and practical use to governments, juridical bodies, international organizations, and individual Muslims faced with the challenges of modern and post-modern life. These methodologies must transcend the linguistic limitations that the discourse currently suffers from and they must also provide a fair and adequate account of the canonical traditions that have heretofore dominated all efforts to interpret the Qur'an. If this scholarship accomplishes these things, it should regain the authority that the canonical *tafsir* possessed in days gone by.

I fully acknowledge that this is a very tall order, describing a task that is an enormously complex and difficult assignment. It requires that scholars of Islam, and the universities, institutions, and patrons that support them, begin to insist that their works be translated into all of the main languages of Islamic scholarly discourse. The task also requires a deeply inward-looking set of actions that in some respects are beyond the scope of this Article. I do believe, however, that this Article can begin that reflective process by exploring one important area where Post-Enlightenment Qur'anic hermeneutics is of pre-eminent importance in today's world and where such scholarship is sorely needed. That area involves the juridical issues of interpretation in regard to the contemporary application of Islamic conceptions of human equality. We live in an Egalitarian Age and no competent contemporary interpretation of the Qur'an can ignore this fact. Clarity in this area is central to the Islamic world's understanding of itself and

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71. There are three recent exceptions to this trend. Much of Sayyid Qutb's thirty-volume *tafsir*, *Fi Zilal al-Qur'an (In the Shade of the Qur'an)*, originally published in Arabic, has been translated into English, Farsi, Urdu, and other languages. See, e.g., QUTB, *IN THE SHADE OF THE QUR'AN*, *supra* note 3. Similarly, Syed Maududi's *tafsir* has similarly been translated into many languages, including English, from the original Urdu. See SYED A. ABU ALA'A MAUDUDI, *THE MEANING OF THE QUR'AN* (1967). Further, Professor Roy Mottahedeh has just recently published an English translation of the first volume of Muhammad Baqir al-Sadr's seminal text on Islamic jurisprudence. See AS-SADR, *LESSONS*, *supra* note 3.

its relationship with the West. Although the clarity must be Qur'anic, it must of necessity also acknowledge the historical reality of the Enlightenment (as well as a number of other important historical phenomena that have occurred in the Post-Enlightenment era, including the rise and decline of colonialism, the emergence of nationalism, two world wars, the advent of the nuclear age, and the civil/human rights revolution of the mid to late twentieth century).

The traditionalist argument might be made that the Post-Enlightenment *tafsir*, particularly the writing of Muhammad 'Abduh and the so-called "scientific" exegetes, essentially "Islamicizes" Enlightenment ideas for the benefit of Muslim audiences. This is a powerful argument, and if it is right, then Qur'anic hermeneutic outside of the realm of popular religion have become essentially moribund and impoverished. If it is wrong, or perhaps only partially right, then there is the hopeful possibility that Muslims can restore the Qur'an to its preeminent position as the most important arbiter of the affairs of life in the Islamic world. Fidelity to the hermeneutical method that I will outline and fidelity to related methods of critical legal history will help us to achieve some clarity in determining whether the traditionalist's argument is a valid one. There are many issues but I will only discuss one, the issue of human equality, as it is the leading issue confronting Muslims in modern life and is the product of the Post-Enlightenment mindset.

#### IV. A QUR'ANIC HERMENEUTIC FOR AN EGALITARIAN AGE

Muslims assert that the idea of universal human equality is a core precept in the Islamic belief system and a central tenet of the *Shari'a*.<sup>72</sup> Islamic egalitarianism, in place since the time of the Prophet Muhammad, greatly facilitated Islam's spectacular growth in the first century after the death of the Prophet, and it has continued to be a powerful catalyst for the expansion of the religion over the past fourteen-hundred years.<sup>73</sup> In spite of these facts, it appears that the Islamic egalitarian ethic is now severely impoverished.

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72. The *Shari'a* is the entire corpus of Islamic law and jurisprudence, encompassing the positive law or "*fiqh*," ("comprehension" or "understanding") and the methodologies for deriving the positive law from the sources, or "*usul al-fiqh*" ("the roots of understanding"). See KAMALI, *supra* note 9, at 2. On the question of Muslim assertions of Islam's insistence on human equality, see generally MOHAMMAD HASHIM KAMALI, *FREEDOM, EQUALITY AND JUSTICE IN ISLAM* (2002) and SAYYID QUTB, *SOCIAL JUSTICE IN ISLAM* (John B. Hardie trans., rev. ed. 2000).

73. See MAJID KHADDURI, *THE ISLAMIC CONCEPTION OF JUSTICE* 143 (1984) (detailing the early egalitarian messages of the Qur'an and the Prophet); BERNARD LEWIS, *THE POLITICAL LANGUAGE OF ISLAM* 64 (1988) (acknowledging Islam's egalitarian message and its impact on caste-based societies in the East and hierarchical and aristocratic societies in the West).

Muslims do not understand their own egalitarian traditions and consequently they are no longer of service to them.<sup>74</sup> They either do not accept their own traditions as valid or they substitute other alien conceptions of equality in their place because, in this Post-Enlightenment age, alien conceptions are easier to apply. Why is this so? The answer to this question is only discoverable through the use of a fresh hermeneutic and critical history. This Article seeks some tentative answers here to illustrate how this fresh hermeneutic might work.

There are two core textual sources for Islamic egalitarianism and they both generally resonate powerfully in the minds of most observant Muslims. The first source is contained in the Qur'an. In *Sura Al-Hujraat* ("The Chambers"), the text provides:

*O Mankind! We created [y]ou from a single (pair) [o]f a male and a female, and made you into [n]ations and tribes, that [y]e may know each other ([n]ot that ye may despise [e]ach other). Verily [t]he most honoured of you [i]n the sight of Allah is (he who is) the most [r]ighteous of you. And Allah has full knowledge [a]nd is well-acquainted ([w]ith all things).*<sup>75</sup>

There is wide agreement among the commentators that this verse is a broad declaration of universal human equality, with piety (*taqwa*) being the only valid basis for making distinctions between human beings.<sup>76</sup> Examination of the writings of the great medieval commentators Zamakhshari, Razi, and Baydawi show that they all concluded that this verse asserts the proposition that the biological equality of human origins leads to an "equality of the human dignity"<sup>77</sup> and that "all belong to one human family, without any inherent superiority of one over another."<sup>78</sup> This argument is supported by the placement of the verse in *Sura Al-Hujraat*, which is concerned with setting out the mutual obligations and respect owed by members of the new

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74. Perhaps the three most significant areas of misunderstanding are in the realms of women's rights, for example, Samera Agha, Egyptian Ctr. for Women's Rights, Comparative Assessment of Women's Rights in the Middle East and North Africa: A Profound Disadvantage, in the 17 Countries Reviewed (2005), [http://www.mediterraneas.org/article.php?id\\_article=414](http://www.mediterraneas.org/article.php?id_article=414) (last visited May 12, 2007), the rights of ethnic minorities, for example, HUMAN RIGHTS WATCH, TARGETING THE FUR: MASS KILLINGS IN DARFUR (2005), <http://hrw.org/backgrounder/africa/darfur0105/darfur0105.pdf>, and the rights of religious minorities, for example, Abdel-Rahman Hussein, *In Egypt, You're Better off Jewish than Bahai*, THE DAILY STAR EGYPT, Dec. 7, 2006, at 8, available at <http://www.dailystaregypt.com/article.aspx?ArticleID=4314> (last visited May 12, 2007).

75. The Holy Qur'an, *Sura Al-Hujraat* 49:13, in THE MEANING OF THE HOLY QUR'AN 1342-43 ('Abdullah Yusuf 'Ali trans., 10th ed. 2004) (citation omitted) (emphasis added).

76. See KAMALI, *supra* note 72, at 52; see also THE MEANING OF THE HOLY QUR'AN, *supra* note 75, at 1342 n.4933 (commenting on *Sura Al-Hujraat* 49:13 and asserting a theological equality); MUHAMMAD ASAD, THE MESSAGE OF THE QUR'AN 794 n.15-16 (1980).

77. ASAD, *supra* note 76, at 794 n.15 (citing Zamakhshari, Razi, and Baydawi).

78. ASAD, *supra* note 76, at 794 n.16 (citing Zamakhshari).

Muslim community in seventh century Medina to each other<sup>79</sup> and with eliminating the hard-hearted tribalism that plagued the life of the “desert Arabs.”<sup>80</sup> The two verses immediately preceding verse 49:13 exhort Muslims to respect each other’s dignity and to refrain from derision, defamation, insult, sarcasm, backbiting, and invasions of privacy.<sup>81</sup> The verses immediately following it condemn the “desert Arabs,” usually referred to as the Bedouin, for claiming they are believers while they continue to adhere to their former pre-Islamic behaviors and fail to show any sign of having adopted the faith.<sup>82</sup>

There is a very interesting shift in addressees for each of these verses. The verses condemning defamation, derision, sarcasm, and the like are addressed to Muslims.<sup>83</sup> However, the verse declaring that the human species comes from one source, and that piety (*taqwa*) should be the only distinction made between human beings, is addressed to all humankind.<sup>84</sup> The verses criticizing the “desert Arabs” for their tribalism are addressed to the Prophet Muhammad.<sup>85</sup> He is instructed to remind them that they have no faith and that adoption of the faith requires an abandonment of their “tribal preferences and prejudices.”<sup>86</sup>

For all its rhetorical force, verse 49:13 is not an explicit declaration of human equality. The interpretation of the verse as a declaration of universal human equality, now unanimous among the modern commentators, is derived from the Prophet Muhammad’s construction of the verse and a number of events that occurred after its revelation.<sup>87</sup> This leads us to the second powerful textual source for assertions of Islamic egalitarianism—the Prophet Muhammad’s farewell pilgrimage sermon, announced in the ‘Uranah Valley of Mount Arafat, near Mecca, about three months before his

79. *Id.*

80. *Id.* at 795 n.17.

81. *See* The Holy Qur’an, Sura Al-Hujraat 49:11-12.

82. *See id.* at 49:14-18.

83. *See id.* at 49:11-12.

84. *See id.* at 49:13.

85. *See id.* at 49:14-18.

86. The reference to “tribal preferences and prejudices” is Muhammad Asad’s, relying on the view of the medieval commentator Razi, who saw the verse as “an allusion to the intense tribalism of the bedouin and their ‘pride of descent’.” ASAD, *supra* note 76, at 795 n.17; *see also* The Holy Qur’an, Sura Al-Hujraat 49:11-18.

87. *See* KAMALI, *supra* note 72, at 52. The “*Shu’ubiyyah* Controversy” was probably the most important of these subsequent events. The word *shu’ubiyyah* is taken from the first line of the verse and is usually translated as “nations.” In the “*Shu’ubiyyah* Controversy”, eighth and ninth century non-Arabs involved in the Abbasid Caliphate used the verse to argue for equal status in the disposition of affairs of the Caliphate and in other political and cultural contexts. *See* Roy P. Mottahedeh, *The Shu’ubiyyah Controversy and the Social History of Early Islamic Iran*, 7 INT’L J. MIDDLE E. STUD. 161, 164 (1976).

death.<sup>88</sup> The Prophet explicitly declared that no human being is superior to any other human being and that the Muslim *ummah* is one brotherhood.<sup>89</sup> Many classical commentators, including al-Tabari, Ibn Kathir, and Zamzkhshari, and a good number of modern commentators, assert that he actually recited or perhaps referred to verse 49:13 during this sermon.<sup>90</sup> These commentators report that he said: “O People! Your Creator is one, and you are all descendants of the same ancestor. There is no superiority of an Arab over a non-Arab, or of the black over the red, except on the basis of righteous conduct.”<sup>91</sup> Other versions of the farewell pilgrimage report that the Prophet cited to an Arab proverb of the same import saying: “People are equal in Islam; people are equal like the surface of a full bucket in terms of their common descent from Adam and Eve; the Arab has no superiority over the non-Arab, nor the non-Arab over the Arab, except in piety to God.”<sup>92</sup>

There are many similar accounts of the Prophet’s sermon on the Farewell Pilgrimage and a good number contain a version asserting the Prophet’s view that piety (*taqwa*) must be the only distinguisher with respect to any judgment on the merit of any human being.<sup>93</sup> What we have, therefore, is fairly strong textual support in the Islamic sources for an egalitarian approach to the affairs of life, ethnic and social relations, and governance. Yet serious issues about the effective implementation of egalitarian norms<sup>94</sup> remain at the heart of most sources of conflict in the Islamic world today. There is also an overarching concern with the Islamic world’s self-perceived inequality in relation to the non-Muslim communities in the

88. See RIDA, *supra* note 3, at 117.

89. See *id.*

90. KAMALI, *supra* note 72, at 52 n.5 (citing commentators). Abdullah Yusuf Ali suggests that the reference in the sermon was to the “Muslim brotherhood” announced in verse 49:10. See THE MEANING OF THE HOLY QUR’AN, *supra* note 75, at 1341 n.4928 (commenting on The Holy Qur’an, Sura Al-Hujraat 49:10).

91. KAMALI, *supra* note 72, at 52.

92. LOUISE MARLOWE, HIERARCHY AND EGALITARIANISM IN ISLAMIC THOUGHT 21 n.43 (1997) (quoting 2 TARIKH AL-YAQUIBI 110).

93. There are a number of versions that do not assert that the Prophet referred to racial equality. These versions also make no mention of verse 49:13, although most do have some reference to piety or “fear of God” in the resolution of human affairs, particularly in regard to relations between men and women. It is fair to say that the accuracy of all of the versions of the sermon relied upon by Muslims is highly contested. One website reports that there are five versions of the sermon in the *hadith*. See Prophet Muhammad’s Last Sermon, <http://www.submission.org/sermon.html> (last visited May 12, 2007). This is not unusual in regard to *hadith*. For other versions of the sermon see for example, Restatement of History of Islam and Muslims, <http://www.al-islam.org/restatement/37.htm> (last visited May 12, 2007); Some Lessons from the Prophet’s Farewell Pilgrimage, <http://www.islaam.com/article.aspx?id=439> (last visited May 12, 2007).

94. Whether these norms concern gender relations, race relations, ethnic relations, socioeconomic status, or religious belief.



West.<sup>95</sup> These concerns present a need for new and fresh hermeneutical study of conceptions of equality in Islam and specifically in the Qur'an. How should that study be undertaken?

Like the other Abrahamic faiths, Islamic philosophical, political, and jurisprudential conceptions of human equality have their origins in the revelational and prophetic texts that comprise the core documents of the religion. While Judaic and Christian sources of our contemporary conceptions of equality and their histories have been well-studied,<sup>96</sup> the Islamic sources on human equality have not been well-examined, and critical studies of the core Islamic conceptions of human equality and their histories are actually exceedingly rare.<sup>97</sup> There are important and powerful reasons for this ne-

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95. See, e.g., U.N. DEVELOPMENT PROGRAMME, THE ARAB HUMAN DEVELOPMENT REPORT 2002: CREATING OPPORTUNITIES FOR FUTURE GENERATIONS (2002). This sociological study, employing several leading Arab social scientists, concludes that the Arab world greatly lags behind all others in three critical areas: political freedom, access to knowledge, and advancement of the status of women. *Id.* at 43. See also *Self-Doomed to Failure*, ECONOMIST, July 6, 2002, at 24. It should be noted that the circumstances documented in these reports are concerned with inequalities between the Arab world and the West and are not religion-specific. Nonetheless, we know that the majority of the Arab world is Muslim.

96. See George P. Fletcher, *In God's Image: The Religious Imperative of Equality Under Law*, 99 COLUM. L. REV. 1608 (1999). See also KIM IAN PARKER, THE BIBLICAL POLITICS OF JOHN LOCKE (2004); JEREMY WALDRON, GOD, LOCKE, AND EQUALITY: CHRISTIAN FOUNDATIONS OF JOHN LOCKE'S POLITICAL THOUGHT (2002); Louis P. Pojman, *On Equal Human Worth: A Critique of Contemporary Egalitarianism*, in EQUALITY: SELECTED READINGS 282 (Louis P. Pojman & Robert Westmoreland eds., 1997).

97. I know of no important classical treatises in Islamic law or jurisprudence that treat, in any depth, the issue of human equality. This may have occurred because before the attention paid to the subject in Enlightenment texts scholars did not regard the issue as jurisprudentially important. One of the best examples of this phenomenon is the important treatise on slavery authored by Ahmed Baba, a fifteenth century African Islamic scholar who was illegally taken captive and held as a slave by agents of the Sultan of Morocco. He vigorously argued that the Sultan's practice of taking free African Muslims as slaves was illegal under the *Shari'a*, but his argument was founded on the principle that no free Muslim could be enslaved rather than on notions of equality. His treatise is devoid of any developed conception of human equality. See Bernard Barbour & Michelle Jacobs, *The Mi'raj: A Legal Treatise on Slavery by Ahmed Baba*, in 1 SLAVES AND SLAVERY IN MUSLIM AFRICA 125 (John Ralph Willis ed., 1985). There is now great interest in the West in the problem of equality, but this interest still has not implicated Islamic conceptions. For example, the seminal collection of studies in *Equality* considers the conceptions of equality found in the Christian, Jewish, and Hindu religious texts and traditions but it overlooks Islam. See Sanford A. Lakoff, *Christianity and Equality*, in EQUALITY 115 (J. Ronald Pennock & John W. Chapman eds., 1967); Emanuel Rackman, *Judaism and Equality*, in EQUALITY 154 (J. Ronald Pennock & John W. Chapman eds., 1967). This is very surprising, given that the Muslim world constitutes one fifth of humanity. CIA - The World Factbook, <https://www.cia.gov/cia/publications/factbook/geos/xx.html#People> (last visited May 12, 2007) (reporting Muslim population as 20.12 percent of world's population). This kind of oversight is fairly typical of studies of the theological and philosophical sources for equality extant in the West. Professor Fletcher's essay and the sources he relies upon are the rare exceptions. See Fletcher, *supra* note 96. Fletcher suggests that the religious sources of the

glect. Because Islamic theological assertions of human equality are so explicit, many Muslim intellectuals and Islamic law scholars are quite complacent about critically exploring the basis, content, and history of the idea of equality. Many have literally taken the religion's egalitarian assertions for granted.<sup>98</sup> Uncritical discussions of human equality in the commentaries of the canonical *tafsir* feed this complacency. This is a near-tragic state of affairs because issues arising out of Muslim misconceptions and misunderstandings of human equality are at the heart of a number of controversies affecting the Islamic world today.<sup>99</sup>

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equality principle emphasize dignity as the key substantive component of equality. *See id.* While I acknowledge that human dignity is an important aspect of the Islamic view of equality, I will argue that the Islamic conception is based firmly in a theocentric worldview and not in a primarily humanitarian worldview, as many people have come to believe. In making this argument, I have benefited greatly from Louise Marlowe's excellent study of the intellectual history of Islamic egalitarianism. MARLOWE, *supra* note 92. Professor Marlowe's study appears to be the only important discussion of the topic.

98. *See, e.g.*, MASHOOD A. BADERIN, INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW (2003); ABUL 'ALA MAWDUDI, HUMAN RIGHTS IN ISLAM (2d ed. 1995); SULTAN HUSAYN TABANDAH, A MUSLIM COMMENTARY ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (F.J. Goulding trans., 1970); Abdul Aziz Said, *Precept and Practice of Human Rights in Islam*, UNIVERSAL HUMAN RIGHTS, Jan.-Mar. 1979, at 63; *see also* William Shepard, *The Development of the Thought of Sayyid Qutb as Reflected in Earlier and Later Editions of 'Social Justice in Islam'*, 32 DIE WELT DES ISLAMIS 196, 221-22, 224, 227-28 (1992) (translating paragraphs 13, 14, 21, 22, and 33 of Sayyid Qutb's *Social Justice in Islam*).

99. Some of the issues implicating contemporary concerns about Muslim conceptions of equality are the racial programs and possible acts of genocide in Darfur, women's full participation in political and economic sectors of Muslim societies, particularly on the Arabian Peninsula and in the Persian Gulf, gender equality in marriage and inheritance law, the Palestinian Question, the tremendous inequities suffered by imported guest workers, domestic servants, and other laborers on the Arabian Peninsula, and the treatment and participation of non-Muslim minorities in majority Muslim societies. For a discussion of the problems in Darfur, see Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General (pursuant to Security Council Resolution 1564 of 18 September 2004), Geneva, 25 Jan., 2004. With respect to the treatment of Muslim African tribespersons in Darfur, the Commission found:

Based on a thorough analysis of the information gathered in the course of its investigations, the Commission established that the Government of the Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law. In particular, the Commission found that Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity. The extensive destruction and displacement have resulted in a loss of livelihood and means of survival for countless women, men and children. In addition to the large scale attacks, many people have been arrested and detained, and many have been held *incommunicado* for prolonged periods and tortured. The vast majority of the victims

Thus, the meaning of equality in the core Islamic texts and the contemporary relevance of Muslim historical understandings of those texts is fundamentally a problem in Post-Enlightenment hermeneutics. Scholars of Islam might not like to acknowledge this fact but I suggest that it is undeniable and that it is only through the methods of critical legal history, with the assistance of a clear and uncompromising hermeneutical analysis, that we can obtain help in providing some relevant contemporary meaning to the texts.

The interpretation of equality is not a problem that is unique to Islam. Philosophers of law and legal scholars operating in the modern Western tradition, unlike scholars in the Islamic law tradition, have devoted a great deal of critical attention to the theoretical basis, content, and history of egalitarian ideas in Post-Enlightenment societies.<sup>100</sup> Indeed, it may very well be that the problem of human equality is *the* central problem in contemporary political life in these societies. Yet, even with all this attention, Western scholars still have great difficulty in making sense of their egalitarian traditions. As Professor George P. Fletcher noted, the modern claim that everyone is entitled to equal treatment actually leads “a double life.”<sup>101</sup> On the one hand we never hear of any respectable argument against the core assertion that equality should be a central value of any robust and mature political system.

Yet, at the same time, there is a pervasive and deeply rooted skepticism among many scholars about the true meaning and viability of egalitar-

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of all of these violations have been from the Fur, Zaghawa, Massalit, Jebel, Aranga and other so-called ‘African’ tribes.

For a discussion of the problems of racial inequality, slavery, and slavery-like conditions in the Islamic Middle East today, see Mohamed Mattar, *Trafficking in Persons: Especially Women and Children in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 *FORDHAM INT’L L.J.* 721 (2003); see also Khaled Ali Beydoun, *The Trafficking of Ethiopian Domestic Workers into Lebanon: Navigating Through a Novel Passage of the International Maid Trade*, 24 *BERKELEY J. INT’L L.* 1009 (2006); Dan Gatmaytan, *Recent Developments: Death and the Maid: Work, Violence, and the Filipina in the International Labor Market*, 20 *HARV. WOMEN’S L.J.* 229 (1997). On equality for women, see Samera Agha, *Comparative Assessment of Women’s Rights*, *supra* note 74; Perry S. Smith, *Silent Witness: Discrimination Against Women in the Pakistani Law of Evidence*, 11 *TUL. J. INT’L & COMP. L.* 21 (2003); Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Laws*, 23 *PENN. ST. INT’L L. REV.* 251 (2004); Leah Riggins, *Note, Criminalizing Marital Rape in Indonesia*, 24 *B.C. THIRD WORLD L.J.* 421 (2004). It is widely reported that between seventy and ninety percent of the married women living in Pakistan are victims of domestic abuse and violence. See, e.g., Human Rights Watch, *Forms of Violence Against Women in Pakistan*, <http://www.hrw.org/campaigns/pakistan/forms.htm> (last visited May 12, 2007).

100. See, e.g., RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* (2000); *EQUALITY: SELECTED READINGS*, *supra* note 96 (collecting essays); AMARTYA SEN, *INEQUALITY REEXAMINED* (1992).

101. Fletcher, *supra* note 96, at 1608.

ian assertions.<sup>102</sup> These scholars argue that equality is in reality a formal and empty concept, devoid of any intrinsic substantive content.<sup>103</sup> They suggest that it is only a relational idea, requiring the thinker to always ask: "Equality of what?" Unless we focus upon the relationship between the equality principle and whatever good or benefit it seeks to promote, we must ultimately conclude that equality for its own sake does not matter.

In this vein, Joseph Raz argues that many egalitarian claims are only "rhetorical" assertions of equality, essentially emblematic claims to entitlement to some benefit or another without real substance or perspicuity.<sup>104</sup> At their worst, these claims are little more than political sloganeering, designed to make us feel good as we respond to the political, economic, or social demands of certain disaffected groups.<sup>105</sup> Raz suggests that socialist and Marxist egalitarian claims were of this type, "claiming for the proletariat the rights and privileges of the bourgeoisie."<sup>106</sup> He argues that, in these circumstances, claims for equal treatment function "contextually rather than normatively" and they are not really about equality at all.<sup>107</sup>

Raz is careful to point out that "rhetorical" assertions of equality are not necessarily bad. They can be profoundly humanitarian, and while not designed to increase equality in an absolute way, they "encourage recognition that the well-being of all human beings counts,"<sup>108</sup> and if "resort to fashionable egalitarian formulations makes them more attractive, so much the better."<sup>109</sup> He also acknowledges that there is a species of egalitarianism, prevalent in the Western tradition, which advances a "strict" view of equality, ostensibly designed to promote equality for its own sake.<sup>110</sup> This view focuses on the normative significance of the absence or presence of equality in a state of affairs rather than the context in which the inequality arises.<sup>111</sup>

In some cases, "strict" egalitarianism will require the waste of important resources in order to achieve equality. In others, it disregards the genuine needs of those who are better off so that we can "equalize" or "level" the comparative situations of the less well-off subjects, in the normative name

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102. See, e.g., Harry G. Frankfurt, *Equality as a Moral Ideal*, in *THE IMPORTANCE OF WHAT WE CARE ABOUT: PHILOSOPHICAL ESSAYS* 134 (Harry G. Frankfurt ed., 1988).

103. The best articulation of this idea is still Peter Westen's seminal article, *The Empty Idea of Equality*, 95 *HARV. L. REV.* 537 (1982).

104. See JOSEPH RAZ, *THE MORALITY OF FREEDOM* 227-28 (1986).

105. *Id.* at 228.

106. *Id.* at 217.

107. *Id.* at 229.

108. *Id.* at 228.

109. *Id.*

110. See *id.* at 229-33.

111. *Id.* at 229-33, 240.

of equality.<sup>112</sup> It considers inequality as an “independent evil” with no intrinsic relationship to the value, right, good, or benefit that we seek to regulate.<sup>113</sup> Raz ultimately rejects this “strict” view of equality as well, finding that it also is empty and formal because it is based on the false presupposition that equality matters even when the good being distributed does not matter to anyone.<sup>114</sup> In Raz’s view, the “hunger of the hungry, the need of the needy, [and] the suffering of the ill,” is what matters, and not our formal concern for equality.<sup>115</sup>

Islamic egalitarian claims, strident as they are, may be vulnerable to these same critiques.<sup>116</sup> If this is so, Islamic law scholars—particularly the “insiders,” to use H.L.A. Hart’s phrase—are living in a fool’s paradise of self-delusion when it comes to modern efforts to establish juridical and social equality in Muslim societies on the basis of Islamic egalitarian norms. They have become intoxicated with the heady rhetoric of Islamic egalitarianism even though they have not carefully examined the theoretical basis, history, and content of their egalitarian tradition.<sup>117</sup>

These shortcomings deeply disturb Muslims and others sympathetic to the Islamic project. The shortcomings suggest that the Islamic conceptions of equality are not truly universal and may not be very useful to Muslims seeking to establish egalitarian political and social orders in the modern world. This leads to the further intimation that Islamic egalitarianism is nothing more than a rhetorical device in the hands of the proponents of the religion. It is useful for political propaganda and religious proselytizing but

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112. *Id.* at 231-33.

113. *Id.* at 240.

114. Raz argues that equality would not matter if, for example, all we were distributing were “grains of sand.” *Id.* at 235.

115. *Id.* at 240.

116. Another line of criticism of modern egalitarian theories may also be relevant to this discussion. This line of criticism, led most forcefully by the writing of the economist Amartya Sen, rejects the emptiness thesis but it ultimately agrees that it is a mistake to focus on the assertion of equality for its own sake. Instead, the egalitarian theorist should be concerned with the relationship between equality and differences in human beings. She must pay close attention to human diversity and craft her theory of equality with that characteristic uppermost in her mind. In this view, the concept of equality has intrinsic substantive value but, it is a value that dynamically promotes the functionings, capacities, and achievements of human beings rather than their static and unchanging physical, material, and social circumstances. SEN, *supra* note 100, at 23-26. These thinkers persuasively suggest that notions of basic equality, particularly formalistic claims of equality based upon the recognition of core human characteristics, are of little use in developing meaningful and effective political, economic, and juridical systems in today’s world. This line of thinking also has much to contribute in any meaningful examination of Islamic conceptions of equality.

117. See, e.g., HAMMUDAH ABDALATI, *ISLAM IN FOCUS* (1997); YUSUF DA COSTA, *THE HONOR OF WOMEN IN ISLAM* (2002); MAUDUDI, *supra* note 3; IMAM FEISAL ABDUL RAUF, *WHAT’S RIGHT WITH ISLAM IS WHAT’S RIGHT WITH AMERICA* (2005); FARID YOUNOS, *GENDER EQUALITY IN ISLAM* (2002).

is without real moral force in influencing the on-the-ground behavior of observant Muslims. The history of the classical interpretations of the Qur'an by the mainstream 'ulama' tends to bear this out. Might it be, then, that the view of human equality championed by the Islamic religion is useless in the realms of modern politics, economics, and war? Do Enlightenment ideologies and methods of philosophical and legal reasoning now dominate, *sub-silencio*, the Islamic discourse on equality? How would the answer to that question be determined?

In my view, we can only obtain answers through the use of a hermeneutic that acknowledges the tradition represented in the texts and that acknowledges that we are presently interpreting the text in sometimes radically different circumstances from those circumstances that gave rise to the tradition. We therefore must know the circumstances that gave rise to the tradition that shapes the current understanding of the meaning of the text and then decide whether that understanding still makes sense in light of contemporary conditions and circumstances. We must use a practical and sound epistemological method that prevents self-delusion in knowing the tradition and knowing how it impacts on our understanding of the text. This approach also requires the precise ascertainment of the current circumstances. Two Qur'anic provisions can be used as examples to illustrate the method. One involves a liturgical matter, the *hajj*, or pilgrimage to Mecca, and the other involves a problem that still has contemporary ramifications, the problem of slavery.

#### A. The *Hajj*: A Problem in Equality?

The ritual of the *hajj* is generally viewed as an important demonstration of the strong egalitarian ethos in Islamic religious belief and practice. The *hajj* is one of the "five pillars" of Islam,<sup>118</sup> and every year several million Muslims—men and women, youngsters and octogenarians, princes and paupers, scholars and illiterates, blacks, whites, Asians, and people of all other racial and ethnic heritages—travel to Mecca as *hajjis* or religious pilgrims in a once-in-a-lifetime sacrifice of time, money, and the routine comfort of daily life. Upon arrival at Mecca's precinct gates, each *hajji* discards his or her worldly possessions and concerns and humbly dons the pilgrim's simple garb and enters into the Islamic status of *ihram*.<sup>119</sup> Every *hajji* then performs the sacred ritual in as near a state of perfect physical equality with every other pilgrim as is possible under the circumstances. The Qur'an, at

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118. The "five pillars" is a description of the five basic obligations of every Muslim, Sunni, or Shi'a. They are *Shahada* (testimony of faith), *Salat* (prayer), *Saum* (fasting), *Zakat* (alms-giving), and *Hajj* (pilgrimage).

119. See *ihram*, in WEHR, *supra* note 22, at 172 (defining *ihram* as a "state of ritual consecration of the Mecca pilgrim").

verse 22:25, explicitly mandates this equality, providing that “We made [the Sacred Mosque] [open] for all people, residents and visitors alike.”<sup>120</sup>

Participation in the *hajj* ritual gives each Muslim pilgrim a profound understanding of the basic sameness of all human kind.<sup>121</sup> The *hajj* celebrates this basic equality in a way that is not replicated in any other human event on earth. Some have described it as a “dress rehearsal” for Judgment Day when all human beings will stand as equals before God and all will be fairly and justly called to account for their deeds.<sup>122</sup> The *hajj* thus cogently demonstrates that Islam’s uncompromising conception of the oneness of God fosters a similarly uncompromising conception of the oneness and basic equality of all humanity.<sup>123</sup>

In spite of the explicit command of the text, we know that the contemporary practice of the *Hajj* limits participation in the ritual to Muslims only. The Qur’anic verse does not distinguish between Muslims and non-Muslims in granting everyone equal access to the precincts of Mecca for the purpose

120. The Holy Qur’an, Sura Al-Hajj 22:25 (translated by author). In the Arabic text of this verse, the word used to convey the idea of equality is *sawaa’*, derived from the triliteral root *sawiya* and meaning “equality.” See *sawiya*, in WEHR, *supra* note 22, at 445. An examination of Lane’s *Arabic-English Lexicon* shows that the word has a comprehensive and complex set of meanings in the Arabic language. It can mean “equal,” “equable,” “uniform,” “flat,” or “level.” EDWARD WILLIAM LANE, 4 ARABIC-ENGLISH LEXICON 1476 (1872). It can also connote “straightness,” “rightness,” “directness,” “symmetry,” or “consistency.” *Id.* at 1476-77. The word (and its derivatives) is used in the sense that connotes the idea of equality at least forty-seven times in the Qur’an. It sometimes conveys the exact meaning expressed in this verse—the establishment of a normative standard requiring Muslims and all human beings to be treated as equals in respect of some benefit or good or obligation mandated by the text or, more often, it rhetorically asks whether two human beings are equal in relation to a theological benefit. See, e.g., verses 3:113, 4:89, 14:21, 16:71, 16:76, 22:25, 30:28, 38:22, 45:21, 57:10, 63:6, in THE MEANING OF THE HOLY QUR’AN, *supra* note 75. I also note that Abdullah Yusuf Ali’s translation is somewhat inaccurate, as the original Arabic verse commands that the Sacred Mosque be open to all “people” and not just “men.”

121. ROBERT R. BIANCHI, GUESTS OF GOD: PILGRIMAGE AND POLITICS IN THE ISLAMIC WORLD 3 (2004).

122. The vision of the *hajj* as a “dress rehearsal” for judgment day is a widely held aspect of the popular religious view of the *hajj*. See, e.g., Kazi Mahmood, *Inside Mecca: An Extraordinary Insight on the Hajj*, ISLAMONLINE.NET, Dec. 17, 2003, <http://www.islamonline.net/English/ArtCulture/2003/12/article05.shtml> (last visited May 14, 2007) (describing a National Geographic video on the *hajj* and quoting a believer who remarked that “[a]ll reminds you of judgment day, no difference in races, no discrimination”); see also Abdul Rashid Gatrad & Aziz Sheikh, *Hajj: Journey of a Lifetime*, 330 BMJ 133 (2005) (describing pilgrims as spending much of the day “standing in humility and prayer, performing a dress rehearsal for the final standing before God on Judgment Day”).

123. Malcolm X, the famous African-American Muslim political leader and civil rights advocate, noted that it was his April 1964 pilgrimage to Mecca and his observations of the diversity of the gathering that convinced him of the moral bankruptcy and falsehood of the racist ideology of the Nation of Islam. See MALCOLM X, AUTOBIOGRAPHY OF MALCOLM X 383-93 (Ballantine Books trade ed. 1992) (1964).

of making the pilgrimage.<sup>124</sup> The verse says the Holy City is open to all.<sup>125</sup> Thus it appears that the rule restricting participation in the *hajj* to only Muslims is not derived from the Qur'anic text.<sup>126</sup> Similarly, there is no Qur'anic text that prohibits non-Muslims from entering or living in the Holy City. During the life of the Prophet Muhammad and for some years after his death the city was apparently open to all.<sup>127</sup> The Caliph Umar ibn al Khattab closed the city to non-Muslims, citing a reliable Prophetic *hadith* stipulating that "[n]o two religions must remain in the land of the Arabs."<sup>128</sup> Similarly, within two hundred years the classical Islamic *fiqh* developed special rules for slaves who performed the *hajj*. These rules also did not implement the Qur'anic egalitarian injunction and the jurists also relied upon *hadith* and reasoning from the texts of the Quranic verses in relieving Muslim slaves of their religious obligation to perform the *hajj*.<sup>129</sup> In contrast, that Muslim women have always participated in the pilgrimage as full and equal *hajjis*.

So it is the tradition that shapes our understanding of the meaning of the verses on the *hajj* and their application. Specifically the Prophetic *ahadith*, as understood by one of the Caliphs acting during the formative

124. See *supra* text accompanying note 120.

125. See *id.*

126. It does appear that the rule prohibiting non-Muslims from participating in the *hajj* was instituted during the life of the Prophet Muhammad, likely during a pilgrimage led by Abu Bakr some years before the Prophet's Farewell Pilgrimage. F.E. PETERS, *THE HAJJ: THE MUSLIM PILGRIMAGE TO MECCA AND THE HOLY PLACES* 52 (1994).

127. *Id.* at 206.

128. *Id.* (quoting a Prophetic saying).

129. Al Sayyid Sabiq, in his venerable liturgical guide, *FIQH US-SUNNAH*, see *supra* note 52, which reports that:

There is a consensus [*ijma'*] among jurists concerning the prerequisites that must be found in a person for Hajj to be incumbent on him:

1. He must be a Muslim;
2. He must be an adult;
3. He must be of a sound state of mind;
4. He must be free;
5. He must have the necessary power and ability.

Anyone lacking any of these conditions is not obligated to perform Hajj. . . . Freedom is an essential prerequisite for Hajj, for this worship needs time as well as financial ability. A slave lacks both, for all his time is spent in the service of his master, and financially he lacks the ability to undertake the obligation.

The guide then quotes *Qur'an* 3:97 in support of the argument that slaves are not obligated to make the Pilgrimage. The verse, as quoted by Shiekh Sabiq, does not distinguish between slave and free but rather imposes a duty on "mankind" to make Pilgrimage to the Sacred House, a duty imposed on all who can find their way there. Many jurists interpret this provision as imposing the duty on all who can afford to make the Pilgrimage. Further, all of the verses in the Qur'an appear to impose the duty of Pilgrimage on "mankind," "people," "the pious," and not just Muslims. See, e.g., *The Holy Qur'an*, Sura ul-Hajj 22 (in its entirety), 2:196-210. The quoted material on *Hajj* is taken from 5 AS-SAYYID SABIQ, *FIQH US-SUNNAH: HAJJ AND UMRAH* at 5 (Muhammad Sa'eed Dabas & M.S. Kayani trans., 1985).



period and by jurists interpreting the Qur'an during the classical period shaped the application of the *hajj* verses. Jurists will tell us that Allah, when announcing the fact that the Sacred Mosque should be open to all, on an equal basis, did not really mean *all*, but only free Muslims.<sup>130</sup> It is the examination and application of the Prophetic *ahadith* and the actions of the post-Prophetic Caliphs that supply the interpretive authority for the juristic opinion that Mecca should remain closed to non-Muslims and that the *hajj* should be limited to Muslims only. The canonical *tafsir* that interpret the Qur'anic pronouncements on the *hajj* incorporate these traditions into the announced understanding of the meaning of the verses, even though there is plain language that would perhaps lead to other conclusions. Further, the tradition relied on in the *tafsir* are not all Prophetic, but rather the result of Caliphal edicts issued after the death of the Prophet.<sup>131</sup>

A universalistic Post-Enlightenment stance might therefore cause a contemporary interpreter to eschew these traditions as not supported by the mandate of the texts. Ordinary linguistic and philological methods of interpretation of those texts may lead the contemporary interpreter to reject the canonical *tafsir* and conclude that Mecca should be again opened to non-Muslims and that perhaps the *hajj* should be an event open to all as well. In my view, Post-Enlightenment Qur'anic hermeneutical theory may not support such an interpretation. That is because the hermeneutic has never asked the interpreter to completely discount the traditions that supply meaning to the text. What is required instead is a rigorous historical analysis of the conditions and circumstances that led to the implementation of the tradition as a determinant of the contemporary understanding. Professor Fazlur Rahman described this process as the first movement of a "double movement" process of interpretation, one that moves from "the present situation to Qur'anic times, then back to the present."<sup>132</sup>

Although this method takes full account of the traditions involved in interpreting the text, it is radically different from the approach followed by the canonical *tafsir*. The canonical *tafsir* is essentially a species of romantic hermeneutics, that is, a hermeneutics that determines the meaning of the text solely by reconstructing the original conditions that surrounded the production of the text.<sup>133</sup> The canonical *tafsir* does employ philological, grammatical, and syntactical reasoning in interpreting the text, but all of these meth-

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130. *Id.*

131. See PETERS, *supra* note 126, at 60-69 for descriptions of these edicts, many of which were issued by Abu Bakr and 'Umar.

132. RAHMAN, ISLAM AND MODERNITY, *supra* note 2, at 5.

133. See Hans-Georg Gadamer, *The Historicity of Understanding*, in THE HERMENEUTICS READER: TEXTS OF THE GERMAN TRADITION FROM THE ENLIGHTENMENT TO THE PRESENT 256, 258 (Kurt Mueller-Vollmer ed., 1985) (describing the romantic enterprise as "the tendency to reconstruct the old because it is old").

ods of reasoning are grounded in and determined by the interpreter's view of the revelation's reconstructed history. Professor Rahman's approach rejects historical reconstruction as the primary referent in determining the meaning of a text.<sup>134</sup> Hans-Georg Gadamer, a German philosopher who had considerable influence on Rahman's thinking and the thinking of several other Post-Enlightenment interpreters, also rejected reconstructive historicism.<sup>135</sup> In famous words, Gadamer, commenting on such thinking in the context of interpreting art, said:

Reconstructing the conditions in which a work passed down to us from the past was originally constituted is undoubtedly an important aid to understanding it. But we may ask whether what we obtain is really the meaning of the work of art that we are looking for, and whether it is correct to see understanding as a second creation, the reproduction of the original production. Ultimately, this view of hermeneutics is as nonsensical as all restitution and restoration of past life. Reconstructing the original circumstances, like all restoration, is a futile undertaking in view of the historicity of our being. What is reconstructed, a life brought back from the lost past, is not the original. In its continuance in an estranged state it acquires only a derivative, cultural existence. . . . [A] hermeneutics that regarded understanding as reconstructing the original would be no more than handing on a dead meaning.<sup>136</sup>

What, then, should be the role of tradition in Post-Enlightenment interpretation of the Qur'an? In the example I have chosen, focusing on the problem of human equality, do we read a Post-Enlightenment understanding of the meaning of the conception of "equality" into the verses on the *hajj* that use that term? Does it make sense to look at "equality" through seventh-century eyes? This question is more difficult than it appears because we must acknowledge that we are interpreting a theological text, one that also has legal and normative implications. So in evaluating the tradition, we must be aware that "the miracle of understanding consists in the fact that no like-mindedness is necessary to recognize what is really significant and fundamentally meaningful in tradition."<sup>137</sup> In the case of the *hajj*, the tradition of limiting participation in the ritual to Muslims only is a centrally important practice that has become part of the understanding of the text governing how the ritual is to be performed. This understanding is greatly en-

134. See RAHMAN, ISLAM AND MODERNITY, *supra* note 2, at 8-11.

135. See GADAMER, TRUTH AND METHOD, *supra* note 8, at 166.

136. *Id.* at 166-67. Gadamer equated the hermeneutic enterprise in interpreting art as essentially the equivalent to the interpretation of literature:

All written works have a profound community in that language is what makes the contents meaningful. In this light, when texts are understood by, say, a historian, that is not so very different from their being experienced as art. And it is not mere chance that the concept of literature embraces not only works of literary art but everything passed down in writing.

*Id.* at 163. He also asserted that all religious texts qualify as literature. See *id.* at 162.

137. *Id.* at 311.

hanced by the *hadith* of the Prophet Muhammad. Because traditional interpretation still has great significance and fundamental meaning for the adherents of the popular religion, we would very likely come to the same conclusion that the seventh century interpreters arrived at, if we look at the tradition in contemporary relation to the text.

Although this conclusion seems right for the *haji*, it may not be so right for the understanding of the verse's application to problem of ingress and egress to Mecca. Of course, Omar may have instituted the rule prohibiting ingress to Mecca by non-Muslims out of a desire to protect the religious integrity of the *haji*. However further historical investigation would be required to find out if this is true. If that conclusion is drawn, we must have the courage to say that the prohibition on ingress to Mecca by non-Muslims is not based on interpretation of the text, which does not support such a conclusion but rather that it based on practical necessities. If those necessities change, or if we find a better way of dealing with the issue, it may very well be that the rule would change.

## B. The Problem of Slavery

The Qur'an contains many verses that discuss and regulate the relationship between slaves and the free.<sup>138</sup> There can be no dispute that the Qur'an clearly took the existence of slavery in seventh century Arabia for granted. It unequivocally accepted slavery as part of the social and economic life of communities that ultimately came to embrace the new Islamic message and sought only to humanize slavery's rules and curb its harsher aspects.<sup>139</sup> Similarly, the *Sunnah* tells us that the Prophet Muhammad received, owned, and made gifts of chattel slaves during his lifetime, and he affirmatively employed chattel slavery as a tool of conquest in war.<sup>140</sup>

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138. See The Holy Qur'an, Sura Al-Baqara 2:221, Sura An-Nisa 4:25, Sura An-Noor 24:32 (permitting and regulating marriage to slaves), Sura Al-Baqara 2:178-179 (establishing law of homicide for slave and free), Sura Muhammad 47:4 (governing disposition and freedom for enslaved prisoners of war), Sura An-Nisa 4:3, 4:24, 4:36 (establishing rules governing relations with concubines), Sura An-Nisa 4:92 (stipulating freedom of slave as expiation for sin), Sura Al-Balad 90:13 (announcing ethical standard urging emancipation of slaves).

139. PATRICIA CRONE, *GOD'S RULE: GOVERNMENT AND ISLAM* 351 (2004); BERNARD LEWIS, *RACE AND SLAVERY IN THE MIDDLE EAST: AN HISTORICAL ENQUIRY* 5-6 (1990); J.O. Hunwick, *Black Slaves in the Mediterranean World: Introduction to a Neglected Aspect of the African Diaspora*, in *THE HUMAN COMMODITY: PERSPECTIVES ON THE TRANS-SAHARAN SLAVE TRADE* 5 (Elizabeth Savage ed., 1992).

140. Although the facts are contested, there is a large body of evidence that the Prophet Muhammad owned a concubine. She was a gift to him from the Byzantine Prelate in Alexandria. Her name was Mariyah and she bore him a son, Ibrahim. See W. MONTGOMERY WATT, *MUHAMMAD AT MEDINA* 294 (1972); see also JONATHAN E. BROCKOPP, *EARLY MALIKI LAW: IBN 'ABD AL-KAKAM AND HIS MAJOR COMPENDIUM OF JURISPRUDENCE* 142 n.95 (2000) (stating that Mariyah was "clearly a slave"). The historical assertion that the Prophet

A textualist, even a Post-Enlightenment textualist, might therefore conclude that the Qur'an would permit human slavery and that any effort to soften or equivocate that conclusion is mere sophistry and an avoidance of the plain meaning of the religious texts. It is here that we can see the merit of Professor Rahman's hermeneutical methodology in full operation. We know that the abolition of slavery is a Post-Enlightenment phenomenon. If we travel back to seventh century Arabia, the circumstances that existed at that time provide ample support to arrive at an understanding of the meaning of the text that would include a judgment that makes slavery lawful under the Islamic law. For example, the verse that requires equality in the administration of the punishment for homicide, verse 2:178, asserts that such punishment shall be carried out "the free man for the free man, the slave for the slave, and the female for the female."<sup>141</sup> Similarly, verse 4:24 prohibits marriage to a woman who is already married to someone else, "except those whom your right hands possess."<sup>142</sup> This phrase, expressed in Arabic as *ma malakat aymanukum*, is an idiomatic expression that describes women captured in war and enslaved by their captors.<sup>143</sup> In such cases it appears that the captor could ignore the slave's marriage to another and could consummate a marriage with her.<sup>144</sup> However, the more common scenario involved the establishment of a concubinal relationship, a relationship that is also arguably permitted by the Qur'an.<sup>145</sup>

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Muhammad owned a slave concubine is often denied by many Muslim scholars. *Id.* They assert that he freed her and married her but they do not cite reliable sources that support that assertion. *Id.* Note that the eminent Islamic jurist Ibn Rushd, in discussing an Islamic rule of law governing sale of slave concubines, cites a *hadith* relied upon by the majority of jurists that frankly acknowledges that the Prophet Muhammad owned Mariyah as a concubine and when she gave birth to his son, Ibrahim, he was said to have remarked: "Her child has set her free." See IBN RUSHD, *supra* note 20, at 476. Ibn Rushd expressed doubts about the authenticity of this *hadith*, however, based on the investigations of the traditionists. See *id.* He attributed the wide juristic reliance on the *hadith* to the jurists' need for a rational rule to deal with the problem of the concubine who gives birth to her owner's child. *Id.* There is also fairly clear evidence that the Prophet ordered the enslavement of the Jewish women and children of Medina after all the male members of their tribe were killed for colluding with his Meccan enemies. IBN HISHAM, LIFE OF MUHAMMAD: A TRANSLATION OF ISHAQ'S *STRAT RASUL ALLAH* (with introduction and notes by A. Guillaume) at 464 (A. Guillaume, trans.)(1967)(1955). There is an extensive and perceptive discussion of these events, including commentary on other versions in ARENT JAN WENSINCK, MUHAMMAD AND THE JEWS OF MEDINA 104-127 (Wolfgang Behn ed. and trans., 1975) (1908); see also W. MONTGOMERY WATT, MUHAMMAD AT MEDINA, *supra*, at 208-20.

141. The Holy Qur'an, Sura Al-Baqara 2:178 (translated by author).

142. The Holy Qur'an, Sura An-Nisa 4:24 (translated by author).

143. See THE MEANING OF THE HOLY QUR'AN, *supra* note 75, at 192 n.537 (translating phrase).

144. See The Holy Qur'an, Sura An-Nisa 4:24.

145. See The Holy Qur'an, Sura Al-Muminun 23:1-6 ("The believers will succeed: those who pray humbly, who shun idle talk, who pay the prescribed alms, who guard their chastity except with their spouses or their slaves—with these they are not to blame . . .").

The seventh century Qur'anic context of slavery is thus unequivocal. Yet, Muslim jurists, applying these verses to contemporary circumstances, are unanimous in concluding that such relationships are no longer permitted by Islamic law and that the text is an anachronism or "obsolete."<sup>146</sup> All of the important examples for this interpretation come from the Post-Enlightenment hermeneutical literature, yet such interpretations have been readily and unquestionably accepted by even the traditionalist commentators. Two examples from the Post-Enlightenment hermeneutical literature are instructive. Muhammad Rashid Rida, writing in the early twentieth century, referred to the emancipatory and liberal treatment of slaves mandated by the Qur'an and argued that the elimination of slavery was therefore one of the purposes of the Qur'anic revelation.<sup>147</sup> In coming to this conclusion, he cited examples from the history of abolition in the Americas and in Sudan and suggested that the abolition of slavery must, of necessity, be a gradual affair.<sup>148</sup> Sayyid Qutb, in his famous commentary on the Qur'an, similarly argues that the Qur'an mandates a struggle to establish a virtuous society.<sup>149</sup> This struggle springs only from piety, and in that spirit, such piety requires the freeing of slaves.<sup>150</sup> The virtuous society is thus one that is slavery-free.<sup>151</sup>

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146. See THE MEANING OF THE HOLY QUR'AN, *supra* note 75, at 875 n.2991 (commenting that slavery is now "obsolete"); ASAD, *supra* note 76, at 540 n.46 (asserting that slavery can be no more); AHMAD IBN NAQIB AL-MISRI, RELIANCE OF THE TRAVELER 458-59 (Nuh Ha Mim Keller ed. & trans., rev. ed. 1994) (observing that slavery is a dead letter).

147. See RIDA, *supra* note 3, at 143-45.

148. See *id.* at 143.

149. QUTB, IN THE SHADE OF THE QUR'AN, *supra* note 3, at 176-79 (commenting on Sura ul-Balad).

150. *Id.*

151. *Id.* In recent times a number of other commentators have also made this argument. The British abolitionist C.W.W. Greenidge, in his important book on slavery, makes the same argument and cites a number of sources as support. See C.W.W. GREENIDGE, SLAVERY 58-65 (1958). He makes extensive use of the argument of Syed Ameer Ali, the Indian Islamic modernist, and he quotes Eldon Rutter, who remarked "The Koran rightly practised would soon bring about the complete cessation of slavery." *Id.* at 65 (quoting Eldon Rutter in *The Holy Cities of Arabia*). He also quotes Bertram Thomas, who said: "In the unabatement of slavery Arabia has been false to her Prophet." *Id.* (quoting Bertram Thomas in *The Arabs*). Greenidge also quotes an Imam, Dr. H. Ghoraba, who gave a sermon in which "he quoted with approval 'a great Moslem scholar [unnamed, but likely Rashid Rida], who claimed that meditation upon the policy of Islam would prove that Islam came to abolish slavery in spite of its recognition of it.'" *Id.* (quoting H. Ghoraba). Verse 4:36 in Sura An-Nisa exhorts the believers to "[b]e good to [their] parents, to relatives, to orphans, to the needy, to neighbours near and far, to travellers in need, and to [their] slaves." The Holy Qur'an, Sura An-Nisa 4:36 (translated by author). The modern Qur'an commentator Muhammad Asad asserts that this verse is also an exhortation to seek the abolition of slavery and maintains that Muhammad 'Abduh held a similar position. See ASAD, *supra* note 76, at 110 n.48.

The Post-Enlightenment Qur'anic hermeneutic on slavery is thus a fine example of a new Qur'anic hermeneutic that acknowledges the egalitarian age that we now live in and interprets the relevant verses in a way that will be consistent with the normative and jurisprudential demands of the age. Such a hermeneutic does not require the wholesale abandonment of the textual provisions but rather that the textual provisions be read in a contextual framework. The interpreter should apply a clear and concise understanding of the historical context that surrounded the revelation and a similarly clear and concise understanding of the current factual circumstances, together with a clear vision of the "effective history"<sup>152</sup> that takes her from the historical circumstances to the present.

The Post-Enlightenment approach to slavery in the Qur'an, championed by a number of commentators, can thus assist scholars in tackling other problems that implicate concerns about equality and its meaning in an Islamic context. Issues involving the political and economic emancipation of women are the first circumstances that come to mind. Similarly, contemporary ethnic and racial conflicts among Muslims frequently have a direct historical relationship to the legacy of slavery. The Darfur crisis and the repeated raiding and pillaging of non-Arab communities by raiders acting with the blessing and permission of the Islamic government in Sudan is a prime example of this legacy.<sup>153</sup> Muslims appear to have no understanding of the relationship between these behaviors and the legacy of slavery. There also appears to be no such understanding with respect to the relationship between the legacy of slavery and the plight of immigrant workers in the Persian Gulf.<sup>154</sup>

Arguments drawn from the human rights literature are likely to fall on deaf ears with respect to these problems. It is the Islamic scholarship, in Arabic, Farsi, and Urdu, that has the best chance of reaching hearts and minds with respect to these problems. Such scholarship, using a Post-Enlightenment hermeneutic that frankly acknowledges a new horizon in terms of human relationships given to us by the abolition of slavery and the consensus of Islamic scholars on this question, can open eyes and cause Muslims to confront their contemporary situation with clarity.<sup>155</sup> This re-

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152. This is Hans-Georg Gadamer's phrase. See Gadamer, *supra* note 133, at 301. I also draw portions of the contextual argument, which uses a similar concept of "effective history" from SAEED, *INTERPRETING THE QUR'AN*, *supra* note 49.

153. See INT'L EMINENT PERSONS GROUP, BUREAU OF AFR. AFFAIRS, U.S. DEP'T OF STATE, *SLAVERY, ABDUCTION AND FORCED SERVITUDE IN SUDAN* (2002), <http://www.state.gov/documents/organization/11951.pdf>.

154. See Nora Boustany, *In Bahrain, Doubts About Reform*, WASH. POST, June 24, 2005, at A28.

155. I have been greatly aided by the work of Professor Abdullah Saeed in this regard. See, e.g., SAEED, *supra* note 49. Professor Saeed argues for a "contextualist" approach to interpreting the Qur'an. See *id.* at 1. He defines this term as follows: "Those scholars

quires a methodology that takes the history and contemporary circumstances into account when arriving at a sound understanding of the meaning of the text. Pure textualism or an effort to discern the seventh-century law-giver's intent, best exemplified by the canonical *tafsir*, are of little service to Muslims when they must confront these modern and post-modern situations. The use of Islamic history and contextual analysis in an effective and realistic way will enable the interpreter to avoid projecting his or her own prejudices onto the text. It will also enable the interpreter to use the history to his or her best advantage to arrive at the result that is contemplated by the text and by the lawgiver.<sup>156</sup>

#### CONCLUSION

Qur'anic hermeneutics is an important component of Islamic scholarship and of central importance in making the Islamic texts relevant and meaningful for contemporary Muslims and for non-Muslims seeking to understand Islam and their fellow citizens who are members of the Islamic community. The hermeneutic of the Qur'an suffers from a number of in-

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who adopt a 'Contextualist' approach to the interpretation of the Qur'an consider that it is important to interpret the Qur'an by taking into account the socio-historical context of seventh century Arabia as well as the contemporary context of Muslims today." *Id.* at 159 n.4. See also RAHMAN, *supra* note 45, at 3-10; FARID ESACK, QUR'AN, LIBERATION AND PLURALISM: AN ISLAMIC PERSPECTIVE OF INTERRELIGIOUS SOLIDARITY AGAINST OPPRESSION 49-81 (1997). He continues:

While the traditional Muslim understanding of revelation holds the Qur'an is the Word of God and not of Prophet Muhammad, it also holds that the language of the Qur'an, Arabic, is a human language, deeply imbedded in human life. Despite attempts by early Muslim theologians to separate the 'revelation' from the mundane by emphasizing its existence on the 'Preserved Tablet' (*al-lawh al-mahfuz*), the understanding of revelation and the revelation itself are firmly grounded in human experience, in the time, place and circumstances of the seventh-century Hijaz in Arabia. The Qur'an is in the language of Mecca and surrounding regions, and its concerns often were directed or indirectly connected to the Prophet and his community. In the Qur'an, references are made to the Prophet's relationship to the people around him and the response of his people to his message. The indifference of the people of Mecca to the poor and the needy is also highlighted. The revelation included instructions to the people to act upon or refrain from certain things. It provided stories of earlier prophets and their peoples as a lesson to the Prophet's contemporaries. The Qur'an refers repeatedly to the places, times, customs, norms, beliefs, values, ideas, institutions, practices, and attitudes of the people surrounding the Prophet.

*Id.* at 27-28.

156. See, for example, William N. Eskridge, Jr., *Gadamer/Statutory Interpretation*, 90 COLUM. L. REV. 609, 644-45 (1990) for an interesting and provocative attempt to apply the Gadamerian approach to interpretation to an immigration statute authorizing exclusion of an alien for engaging in homosexual acts. Professor Eskridge's analysis has also been helpful to me in applying the Gadamerian/Rahman approach to the Qur'an.

firmities these days. The most crucial infirmities are caused by the absence of discourse between linguistic communities seeking to interpret the Qur'an and by the increasing irrelevance of the canonical *tafsir*, even when it is expressed in a language that the believers can understand. This Article suggests that Post-Enlightenment hermeneutics has some potential to break through the barriers presented by these difficulties. One of the best ways to do that is for the scholarship to take on the question of equality, a central issue of contemporary life in the Islamic world.

We live in an egalitarian age. The Qur'an and the project that the Prophet Muhammad embarked upon included strong egalitarian principles but those principles were lost or obscured as the history of Islam and the Muslim peoples evolved. The history of the interpretation of the Qur'an largely confirms that the egalitarian impulse, a core tenet in Islamic jurisprudence and ethics, is not well understood by Muslims. The Enlightenment, perhaps not by design, restored interest in egalitarian ideas and actually provided the impetus for many modern approaches to problems of equality. The Qur'an and Islamic jurisprudence's emphasis on equality predated the Enlightenment by one thousand years. The approach of Islam toward equality may not be the same as the universalist secular approach suggested by Enlightenment initiatives, such as the abolition of slavery, but there is no reason why contemporary interpreters of the Qur'an should not incorporate this Post-Enlightenment history into their understanding of the text. It is part of the contemporary context that Muslims live in. A sound methodology for interpretation of the text should address the context and history of the text. The Enlightenment and its history is therefore just as relevant to Qur'anic interpretation as are the details of the behavior of the Quraishi Arabs in Mecca in seventh century Arabia. The abolition of slavery and its relevance to contemporary interpretations of the Qur'an verses on slavery prove this contention. Perhaps there are other aspects of the text that could benefit from a fresh hermeneutic using a similar approach.