

***Domestic Violence and the Islamic Tradition***, by Ayesha S. Chaudhry (Oxford Islamic Legal Studies, Oxford: Oxford University Press, 2013), xii+258 pp., ISBN: 978-0-19-964016-4, \$58.00 (hb)

This work is simultaneously ambitious and yet extremely narrow. That is both its strength and its flaw. The book's strengths are the vast number of sources the author incorporates in her research. The book's flaws result from the extremely narrow focus of the author's attention in using those sources. The excessively narrow focus of the author's attention results in reductionist interpretations of her data in a way that undermines the categorical nature of her conclusions. Ironically, and despite the avowedly normative motivations underlying her book, the author is surprisingly reticent about her own hermeneutic position with respect to the critical question of the book: How should we understand Qurʾān 4:34, sometimes referred to as the "beating verse." The author also occasionally misreads some of her primary texts, resulting in some serious errors. These errors, which, while not necessarily undermining her overall thesis, detract from the book's overall credibility. Finally, readers could take issue with some aspects of the author's methodology, which require deeper consideration.

The first part of the book, which consists of three chapters, is anchored in the pre-colonial Islamic tradition that grew out of 4:34. The second part, in two chapters, focuses on modern, post-colonial treatment of the same verse. The two parts are roughly equal in length, although Chapter 4, which focuses on modern Muslim responses to 4:34, is the longest chapter of the book – sixty pages. There, she divides Muslim responses into four questionable categories of *traditionalist*, *neo-traditionalist*, *progressive*, and *reform*. It is only the last group that makes a clean break with the misogyny of the pre-colonial Islamic tradition in her estimation. The three chapters of Part I take as their subjects the writings of pre-colonial Muslim exegetes and Sunnī jurists. The second chapter of Part II emphasizes what she calls "the pliable" nature of the Qurʾānic text in the hands of modern Muslims, and the ease with which modern Muslims can take a shared memory of the

Prophet Muḥammad's exemplary behavior and deploy it for radically different ends.

The key to understanding this book, however, is its highly personal introduction. The author explains that this study grows out of her concrete experience as a Muslim woman who grew up, simultaneously, in a very conservative Muslim household, characterized by very patriarchal and hierarchal gender relations, and in a very self-professed liberal and progressive society, in which gender egalitarianism was an important element of public identity – Canada. The tension between these two conflicting ideals was brought out most clearly in 4:34, whose plain sense enforced marital hierarchy, exemplified in a husband's privilege (duty) to exercise coercive force against a recalcitrant wife (*nāshiz*). Quite understandably, the author was looking for a voice that could reassure her that this verse did not mean what it seemed to mean, but she could not find such a voice, even among a younger generation of religious leaders whom otherwise appeared reasonable and progressive. This disappointment ultimately led her on the journey that produced this book.

While some may find biographical details such as this uninteresting, irrelevant, or maybe even inconsistent with true scholarship, this reviewer has no objection to committed scholarship. I think the author is to be commended for stating with such clarity the nature of the almost existential crisis that lay behind her scholarship. At the same time, however, there is no connection between the existential sincerity of scholarship and the persuasiveness of its arguments. We must respect an author's sincerity, and we can even applaud the overtly political aims of a scholarly project, but in so doing, we cannot ignore its scholarly shortcomings.

The most problematic feature of the book is also laid out in the introduction. There, she identifies the concept of "cosmology" as the key hermeneutic tool to understanding Muslim reactions to 4:34. Chaudhry tells us that a cosmology is "a representation of a perfect world, a vision of the world as it should be rather than merely as it is; in the case of the Muslim scholars under study, idealized cosmologies are visions of the universe as it would exist if all humans submitted entirely to God's laws." According to Chaudhry, the pre-colonial Muslim tradition is united by a "patriarchal cosmology," the distinctive feature of which is that women's connection to God is mediated through their husbands. Modern Muslims, however, or at least some of them, have adopted what she calls an "egalitarian cosmology," in

which men and women each have equal access to God, and relate to one another as equals rather than as a superior (husband) to an inferior (wife) (p. 11).

One glaring problem with this approach is that it lacks any theoretical connection between and among the Qurʾān, human beings, and “cosmology:” whether in the pre-colonial era, when the “patriarchal cosmology” dominated, or the post-colonial era, when the “egalitarian cosmology” erupts to challenge patriarchal cosmology, her use of “cosmology” is entirely exogenous to the Qurʾān. The Qurʾān appears to be little more than an empty vessel, whose meaning is filled by this mysterious concept. The author, moreover, provides no account for how cosmologies arise, and their relationship to human agency, if any. As a result, “cosmology” is deployed in the manner of a *deus ex machina* to avoid answering difficult questions related to historicity, morality, and claims of transcendence.

One might also challenge her account of the content of patriarchal cosmology on its own terms. Chaudhry claims that, pursuant to this cosmology, a woman can only obtain recognition as pious through the mediation of her husband, who functions as a kind of “shadow deity” or “demi-god.” (pp. 42-43). This, Chaudhry claims, is a natural conclusion of an ethical system in which “the rights of husbands and God were intertwined and indistinguishable.” (p. 65 n. 29). Chaudhry is correct that a wife is barred from performing at least *some* supererogatory acts of worship, but this is not because the husband is a shadow deity or a demi-god; rather, it is a function of the conflict between her contractual duties as a wife to her husband, which are obligatory to fulfill, and her desire to perform a supererogatory act of piety, which is not. Indeed, she even expressly notes this rationale (p. 126, n. 110), but interprets its significance through the heuristic of patriarchal cosmology rather than that of Islamic ethical theory which (1) universally prioritizes the performance of obligations over supererogatory acts, and (2) universally entangles obligations owed toward other human beings with obligations owed to God through the notion that God is entitled to the *just* performance of all human obligations (*ḥuqūq al-ʿibād*). In other words, whenever a human being discharges an obligation he or she owes to another human being, whether that other is her husband or wife, he or she is also performing an act of piety, at least if the proper intention is present. On the other hand, if he or she fails to fulfill an obligation of justice, he or she is also committing a sin, even if the reason for failing to do so is

the performance of a supererogatory act of devotion. Accordingly, a bankrupt is not allowed to give his property in charity, but must rather use it to repay his creditors, even if they are rich. In a contemporary setting, a popular Islamic website has even advised workers that they are not permitted to perform supererogatory prayers at work if their employer objects.

There is nothing peculiar, then, in circumscribing a wife's right to perform certain supererogatory acts if they conflict with her obligations toward her husband. That is not the problematic feature of this doctrine; rather, it is the *scope* of her obligations under the contract that is problematic (or potentially so), not that the marriage relationship mediates her relationship to God, for that is a ubiquitous feature of Islamic ethical thought generally. And indeed, even in pre-colonial legal texts, the requirement that a wife obtain her husband's prior permission to perform supererogatory acts of devotion was not categorical, but limited to situations where it might conflict with the husband's rights under the marriage contract.

Another problem with her use of patriarchal cosmology as a framing heuristic is that it overdetermines her analysis, causing her to make conclusions that seem to be undermined by the very evidence she produces in the book. For example, she admits that we should not assume that scholars found the right of husbands to strike their wives to be "unproblematic," (p. 81), but only a few pages later, she tells us that "jurists were ethically untroubled by the right of husbands to physically discipline their wives." (p. 97). She attempts to resolve this seeming contradiction by maintaining a distinction between "procedural" concerns – which she admits scholars had – from presumably substantive ethical concerns which she claims they lacked. "Procedure," however, is not value-free. The very fact that scholars were concerned that husbands follow a proper procedure indicates that they had a substantive, ethical conception of violence that was directly connected to the wife's welfare as a person, and not by virtue of her fixed place as an inferior in a "patriarchal cosmology." I believe she reaches this erroneous conclusion in part based on her assumption that the remedies provided by Islamic law for domestic violence were inadequate (p. 97). But that assumption of inadequacy was not informed by baseline principles of retaliation and compensation that apply for torts in Islamic law outside of the marital context. Once that is taken into account, it becomes apparent that the remedies for a wife

are not substantially different than those available to non-wives in cases of intentional and non-intentional tort.

Chapter 4 is in many ways the most interesting portion of the book. Aside from the questionable taxonomy of modern Muslims, however, there is a larger problem in her approach: she does not seem to take the *genre* of writing seriously. Unlike the works analyzed in Part I, much of the material she analyzes in Chapter 4, particularly from authors she describes as *Traditionalist* and *Neo-Traditionalist*, are pastoral in nature. Accordingly, it makes little sense to compare them to works written by scholars for scholars. It would have been a lot more interesting and valuable in this regard had she used pre-colonial works directed toward the laity as her relevant comparator rather than works of exegesis and law.

There are, unfortunately, some important misinterpretations of legal doctrine. The Ḥanafis do not require husbands to discipline recalcitrant spouses (p. 103). From the perspective of Islamic law, no school ever mandates the application of discipline, coercive or otherwise. Indeed, both Shāfiʿīs and Ḥanafīs justify the husband's monetary liability in the event of the wife's death as a result of spousal violence on the grounds that the husband was under no obligation to discipline the wife in the first place. Chaudhry also misreads certain provisions regarding what a judge should do when investigating claims of marital discord and possible abuse: he does not have the wife live with him (p. 122), or send his own wife to live with the disputing couple (p. 114). Rather, what these texts envisioned was that the judge would remove the wife from the marital home and place her into a "safe space" pending investigation of the bona fides of the dispute.

There is no doubt that modern Muslims react radically differently to 4:34 than their pre-colonial predecessors. But whether that can be attributable to a wholly exogenous change in cosmologies is disputable. Moreover, as her own reticence in providing an interpretation to 4:34 indicates, "reformist" attempts to erase the plain-sense meaning of 4:34 which permits husbands to use coercive discipline against their wives, do not seem very persuasive. It appears, therefore, that the Qurʾān does have some content independent of readers' subjective commitments after all.

If this is the case, must modern Muslims abandon fidelity to the Qurʾān if they wish to live in a world of gender egalitarianism in which husbands do not have the legal right to discipline their wives using

force? But there may be another way: instead of viewing the Qurʾān as exhausting the Muslim ethical domain, such that a proscription on physical discipline must be rooted in the Qurʾān for it to be legitimate, could not Muslims agree to prohibit husbands from disciplining their wives via physical force, in furtherance of trans-generational Qurʾānic values of non-domination and mutual respect and generosity between spouses, as an act of their own self-determination rather than as an act of scriptural interpretation? If Muslims can accept their own right to make rules, they will be liberated from the need to force the Qurʾān to speak on their behalf. They would instead speak about the kind of social world they wish to inhabit, their justifications for that world, and how to bring that world into existence. Muslims would exit the domain of text fundamentalism – reactionary or progressive – and enter the domain of the historical.

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