

ISLAMIC LAW AS HERMENEUTIC DEVELOPMENTS WITHIN TRADITIONALIST ISLAM IN INDONESIA

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INTRODUCTION

I learned a great deal from Zezen's excellent analysis of Islamic doctrine on the law of war. But I've chosen to address a different issue related to Islamic law. Though off-topic, my comments are not entirely unrelated to today's program, since Zezen is among those who helped me understand my subject.

I have spent nearly forty years researching Islamic law and legal institutions in Indonesia and have worked with a wide range of Indonesian scholars, judges, and lawyers. As my circle of contacts in Indonesia expanded, I was increasingly impressed by the fact that a large share of the most capable scholars in the country have one thing in common: they all spent years studying, often memorizing, impenetrable Arabic legal texts that are consumed with questions like determining the precise moment at which succession opens to the estate of a person turned into stone by the devil, and whether it is permissible to ride on a camel that has consumed wine.¹

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1. N.J. COULSON, A HISTORY OF ISLAMIC LAW 81-82 (1964).

These Indonesians who have training in the classical tradition of Islam are not only some of the country's best scholars; they are also the most socially progressive interpreters of Islamic law. For them, the values of human dignity and equality are the core values of Islam, and the common dignity and equality of all humans must be the foundation for any interpretation of Islamic law. That this vision of Islamic law should come from scholars steeped in the Islamic literature of the Middle Ages came as a surprise. I naturally began the study of Islamic law with a set of assumptions about what I would find. That it would be with scholars from an obscurantist background that I would feel most at home did not accord with those assumptions. How is it, I asked myself, that spending your youth sitting cross legged on the floor in a sarong poring over medieval legal treatises equips you with the critical and analytical skills to be a first rate twenty-first century scholar while at the same time cultivating an understanding of Islam and Islamic law as tolerant, pluralistic, egalitarian, and democratic?

The question is important and deserves fuller consideration than I can give it here. But my abbreviated answer is that, for those who engage with it deeply, Islamic law is not, as it is often portrayed, a set of fixed and immutable rules. Islamic law is rather a rich and complex tradition of inquiry exploring the meaning of virtue and justice in Islam and the Islamic injunction to command good and forbid wrong. Students trained in the tradition acquire a set of moral references and tools of analysis that provide a framework for critical examination of the conditions for human flourishing. While the tradition was long thought to have closed itself off to further growth more than a thousand years ago, Indonesian Muslims have increasingly come to realize that it can be made applicable to the problems of modern life.

ISLAMIC LAW AS METHODOLOGY

Everyone has heard that Islamic law is based on the Quran—the scripture revealed to Muhammad in the seventh century—but what is not widely appreciated is that what is contained in the Quran is not the law itself but what are called “indications” of the law.² The strictly legal content of the Quran constitutes only a small fraction of the text³ and consists mostly of verses stating “broad and general propositions as to what the aims

2. Wael B. Hallaq, *Sharia: Theory, Practice, Transformations* 82 (2009).

3. See generally Knut S. Vikor, *Between God and the Sultan: A History of Islamic Law* 33 (2005). Of the 6200 verses in the Quran only about 350 are relevant to law and the largest number of these deal with matters of ritual practice. *Id.*

and aspirations of Muslim society should be.”⁴ The small number of verses containing explicit rules or norms were revealed casuistically in response to specific historical circumstances and do not, in themselves, constitute a comprehensive set of regulations for any topic.⁵ In addition to the Quran, there is also a second source for Islamic law that is comprised of what might be called precedents from the life of Muhammad and the early days of Islam.⁶ But these precedents, called *hadith* or *Sunnah*,⁷ don’t provide clear answers to most legal questions either. They have a lot to say on many different issues, but their meaning is often obscure, and the body of *hadith* as a whole is filled with inconsistencies and contradictions. There is also a huge problem of determining which precedents are genuine and which are simply unfounded rumor.⁸

Islamic law is the law of God but, for better or worse, God chose not to reveal His law as a finished product. God provided indications or evidence of the law in the Quran and the *hadith* but left it to humans to discover its precise terms through a process of interpreting the meaning of those texts. The specific rulings generated by that process of interpretation are collectively called *fiqh*, which means understanding.⁹ In distinguishing between the law itself—which is called the *Shariah*—and human understanding of the law—*fiqh*¹⁰—the Islamic legal tradition recognizes that the interpretation of texts is a tricky business, and that not all attempts at interpretation are going to get it right.¹¹

The project of interpreting the Quran and *hadith* to extrapolate legal rules was open to anyone willing to invest the effort and acquire the

4. COULSON, *supra* note 1, at 11.

5. *See id.*

6. *See* KHALED ABOU EL FADL, REASONING WITH GOD: RECLAIMING SHARIAH IN THE MODERN AGE 36 (2014).

7. *See id.* The word *hadith* refers to a narrative of the conduct of the Prophet whereas *Sunnah* is the example or the law that is deduced from it. *Id.*

8. For a discussion of the methodology for analyzing the authenticity of *hadith*, see MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 58-116 (Islamic Texts Soc’y, 3d ed. 2003).

9. *See* EL FADL, *supra* note 6, at xl.

10. *See id.* (“[S]hariah was considered to be the immutable, unchangeable, and objectively perfect divine truth. Human understanding of Shari’ah, however, was subjective, partial, and subject to error and change. While Shari’ah is divine, *fiqh* (the human understanding of Shari’ah) was recognized to be only potentially so, and it is the distinction between Shari’ah and *fiqh* that fueled and legitimated the practice of legal pluralism in Islamic history.”).

11. *See* BERNARD G. WEISS, THE SPIRIT OF ISLAMIC LAW 88 (1998) (“[M]uslim jurists. . . [a]s astute observers of the text-critical and interpretive processes involved in the formulation of the law. . . understood perfectly well that certainty in the understanding of the law often lay beyond the reach of the interpreter and that probable constructions of the law were often the most the interpreter could hope to attain.”).

necessary skills.¹² These scholar-jurists understood their mission to be one of discovering the law implicit in the sources rather than making it up themselves,¹³ so early on they developed an elaborate and sophisticated set of rules of interpretation designed to make the process as objective as is humanly possible.¹⁴ This common interpretive methodology, called the science of *usul al-fiqh*, provided standards for evaluating the quality of scholarly interpretations and ensured that the accumulated body of doctrine had a significant degree of consistency and coherence. But with no organizational hierarchy—no supreme court—with the authority to declare the case closed,¹⁵ the interpretative enterprise flourished for nearly one thousand years producing a gigantic literature of interpretations, re-interpretations, commentaries, and commentaries on commentaries. Scholars were convinced that their own interpretations and the interpretations of those who agreed with them were correct, but because, as the saying goes, “God knows best,” they openly acknowledged the possibility that the others might be right and they might be wrong.¹⁶

This recognition of the inevitability of difference of opinion gives Islamic law one of its most characteristic features—its extreme diversity of doctrine. “[O]ne would be hard pressed to find any significant legal issue about which juristic disputations and discourses have not generated a large number of divergent opinions and conflicting determinations.”¹⁷ The existence and acceptability of this diversity is formalized in Sunni Islam with the recognition of four different schools of doctrine or *madhhab*.¹⁸ The

12. KHALED ABU EL FADL, *SPEAKING IN GOD’S NAME: ISLAMIC LAW, AUTHORITY AND WOMEN* 37 (2003) (“In theory, there is no formal bar to becoming a jurist except the attainment of the requisite knowledge of the linguistic practices and conceptual categories of the juristic culture.”).

13. See WEISS, *supra* note 11, at 86 (“Among Sunnis, the use of analogy gained acceptability, as we have seen, only because it was shown not to conflict with the conviction that no law should be formulated apart from the foundational texts.”).

14. For a thorough and readable discussion of the legal methodologies of Sunni Islam, see KAMALI, *supra* note 8.

15. EL FADL, *supra* note 12, at 11 (“Sunni Islam. . . lack[s] a formal institutional and hierarchical structure of authority. There is no authoritative center other than God and the Prophet, but both God and the Prophet are represented by texts.”).

16. VIKOR, *supra* note 3, at 106.

17. EL FADL, *supra* note 6, at xlili. See also MOHAMMAD HASHIM KAMALI, *SHARI’AH LAW: AN INTRODUCTION* 99-122 (2008) (discussing diversity of doctrine in classical Islamic jurisprudence).

18. See CHRISTOPHER MELCHERT, *THE FORMATION OF THE SUNNI SCHOOLS OF LAW* (Ruud Peters & Bernard Weiss eds., 1997), for the leading study of the development of the four canonical schools of Sunni legal thought. See HALLAQ, *supra* note 2, at 60-71, for a summary treatment of the issue. See ISLAMIC LEGAL STUD. PROGRAM, HARVARD L. SCH., *THE ISLAMIC SCHOOL OF LAW: EVOLUTION, DEVOLUTION, AND PROGRESS* (Peri Bearman, Rudolph Peters &

four *madhhab*, named after their putative founders, though adhering to a common jurisprudential theory about the sources of the law and the means of their interpretation, differ significantly on many specific points of law.¹⁹ Moreover, the scholars of one *madhhab* often disagree with other scholars working within the same *madhhab*. This doctrinal diversity was considered both unavoidable and beneficial. Difference of opinion within the community of Muslims, according to a well-known *hadith* report, “is a sign of the bounty of God.”²⁰

THE CRISIS OF MODERNITY

The philosopher Alasdair MacIntyre makes the point that the life of a tradition often includes periods of crisis.²¹ A crisis occurs within a tradition when its methods of inquiry and forms of argument are no longer able to provide satisfactory responses to the concerns that are addressed by the tradition.²² Beginning in the eighteenth century, after operating virtually unchallenged for almost a millennium, the Islamic legal tradition found itself in just such a crisis.²³ Though often described as resulting from European colonialism, the rupture with the past that occurred in the eighteenth century is more accurately explained as a result of the emergence of a new civilizational form which, by its nature, could not be confined to its place of origin. The crisis facing Islamic law consists in adapting to the conditions of modernity.

Frank E. Vogel eds., 2005), for an examination of the significance of the *madhhab* both historically and today.

19. For a careful and nuanced examination of inter-*madhhab* diversity with respect to the law of marriage, see KECIA ALI, *MARRIAGE AND SLAVERY IN EARLY ISLAM* (2010).

20. COULSON, *supra* note 1, at 102.

21. ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* 364 (1988). MacIntyre defines a tradition as,

an argument extended through time in which certain fundamental agreements are defined and redefined in terms of two kinds of conflict: those with critics and enemies external to the tradition who reject all or at least key parts of those fundamental agreements, and those internal, interpretive debates through which the meaning and rationale of the fundamental agreements come to be expressed and by whose progress a tradition is constituted. *Id.* at 12.

The late Patrick Glenn has expanded on MacIntyre’s concept of a tradition and used it to as a framework for understanding law. H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD* 3, 137 (2000). For a discussion of the use of the concept of a tradition in the context of Indonesian Islamic law, see R. MICHAEL FEENER & MARK E. CAMMACK, *Introduction to ISLAMIC LAW IN CONTEMPORARY INDONESIA: IDEAS AND INSTITUTIONS* 1-5 (R. Michael Feener & Mark E. Cammack eds., 2007).

22. MACINTYRE, *supra* note 21, at 361-62.

23. See WAEL B. HALLAQ, *SHARIA: THEORY, PRACTICE, TRANSFORMATIONS* 357-70 (2009).

Overcoming an epistemological crisis, according to MacIntyre, requires the development of new concepts, theories or modes of analysis capable of providing solutions to problems that had appeared insoluble through the use of the tradition's existing methodologies.²⁴ Over the past century Islam has generated a variety of new approaches to the law that, for simplicity's sake, I will refer to collectively as "modernist." None of these new approaches has proven fully satisfactory, and Islamic modernism functions as an alternative to rather than replacement of the "traditionalist" approach of the classical era jurists.²⁵

In the crudest terms, the difference between modernist approaches to Islamic law and traditionalist approaches is that traditionalists recognize the authority of *fiqh* and modernists do not. The term used to describe the traditionalist attitude toward *fiqh* is *taqlid* which means "imitation." For traditionalists, answers to questions of law come through following or "imitating" the efforts of the classical era jurists. The comparable term used in connection with modernists is *ijtihad* which roughly means interpretation. The modernist movement called for a return to the original sources of the law.²⁶ Rather than accepting the interpretations arrived at by the classical era jurists, modernists believe that the answers to contemporary legal problems should be determined through a fresh interpretation of the Quran and *hadith*. Traditionalists adhere to the law of the *madhhab* to which they are affiliated, while modernists, because they

24. MACINTYRE, *supra* note 21, at 361-62.

25. For a summary of efforts to develop a modern methodology of Islamic law, see WAEL B. HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNĪ UŞŪL AL-FIQH 207-54 (1997). Hallaq concludes that none of the proposed approaches is sufficiently well developed to serve as the basis for a modern Islamic jurisprudence. *See id.*

26. The modernist movement to reinterpret Islam's foundational texts in accordance with the conditions of modern society, which was forward-looking and progressive, was preceded by a reactionary revivalist program intent on restoring Islam to the "pure" religion of the Prophet and his Companions and purging the faith of medieval scholasticism and what were regarded as non-Islamic practices such as veneration Muslim saints. The most influential revivalist movement was that founded by Ibn Abd al-Wahab (d. 1792) in central Arabia. The two figures most prominently identified with having launched the modernist movement are the late nineteenth century Egyptian reformer Muhammad Abduh (d. 1905) and Abduh's student Rashid Rida (d. 1835). *See, e.g.*, MALCOLM KERR, ISLAMIC REFORM: THE POLITICAL AND LEGAL THEORIES OF MUHAMMAD ABDUH AND RASHID RIDA (1966); ALBERT HOURANI, ARABIC THOUGHT IN THE LIBERAL AGE, 1798-1939 (1983). On reformist Islam in Indonesia see generally DELIAR NOER, THE MODERNIST MOVEMENT IN INDONESIA: 1900-1942 (1973); JAMES L. PEACOCK, MUSLIM PURITANS: REFORMIST PSYCHOLOGY IN SOUTHEAST ASIAN ISLAM (1978); MITSUO NAKAMURA, THE CRESCENT ARISES OVER THE BANYAN TREE: A STUDY OF THE MUHAMMADIYAH MOVEMENT IN A CENTRAL JAVANESE TOWN, c. 1910S-2010 (2d ed. 2012).

reject the authority of *fiqh*, describe themselves as *sans madhhab* (non-*mazhab*).²⁷

The labels for the two approaches as well as the terms describing their essential methodologies would seem to locate them firmly on opposite ends of the spectrum of social and political conservatives versus social and political progressives.²⁸ One would think that an approach premised on adherence to tradition in the form of emulation of the jurists of the past would promote rigidity, cultural/religious exclusivity, and authoritarianism. The creation of new, modern interpretations of Islam's foundational texts would seem to be conducive to adaptability, pluralism, and democracy. That is not how things have worked out, however. As the anthropologist Clifford Geertz said of Islamic modernism, "Stepping backward in order better to leap is an established principle of cultural change But in the Islamic case the stepping backward seems often to have been taken for the leap itself, and what began as a rediscovery of the scriptures ended as a kind of deification of them."²⁹ And while the modernist approach has often led to dogmatism and exclusivity, approaches grounded in the *fiqh* tradition have in some cases defied expectations in generating understandings of Islam characterized by tolerance and a commitment to humanistic values of freedom and equality.

27. Another factor contributing to the continued salience of the distinction between modernists and traditionalists in Indonesia is the fact that the two approaches are represented by two large mass organizations. Muhammadiyah, the modernist organization founded in 1912, and Nahdlatul Ulama, the traditionalist organization, both run thousands of schools that teach and perpetuate their respective understandings of Islamic law.

28. In a Foreword to a collection of essays on the traditionalist organization Nahdlatul Ulama, Abdurrahman Wahid summed up the conventional stereotype of traditionalist Islam in Indonesia:

Traditionalists are widely supposed to be rather backward in orientation and ossified in their understanding of Islamic society and thought. It is held that their persistence in upholding orthodox Islamic law (i.e., the Sunni *mazhab* or legal schools) leads them to reject modernity and a rational approach to life. Similarly, in matters of theology, their determined adherence to the scholasticism of al-Asy'ari and al-Maturidi is said to have resulted in a fatalistic understanding of submission to God's will and a disregard for the exercise of free-will and independent thinking. Traditionalists are furthermore accused of being too other-worldly in their practice of ritual Islamic mysticism (*tasawuf*). Their activities within the Sufi orders (*tarekat*) give the appearance of forsaking the present world in the hope of gaining eternal happiness in heaven. Thus, the commonly held view of traditionalists is that they are a wholly passive community unable to cope with the dynamic challenges of modernisation, the sort of community that scholars regard as belonging to a dying tradition. Abdurrahman Wahid, *Forward to NAHDLATUL ULAMA, TRADITIONAL ISLAM AND MODERNITY IN INDONESIA* xiii (Greg Barton & Greg Fealy eds., 1996).

29. CLIFFORD GEERTZ, *ISLAM OBSERVED: RELIGIOUS DEVELOPMENT IN MOROCCO AND INDONESIA* 69 (1968).

THE NEO-TRADITIONALIST MOVEMENT IN INDONESIA

The line between modernists who engage in *ijtihad* and traditionalists who remain tied to *taqlid* is not as absolute as it once was. When I first began researching Islamic legal institutions in Indonesia in the 1980s, modernist educational institutions focused exclusively on the study of the Quran and *hadith*; *fiqh* was not part of the curriculum. The curriculum in traditionalist institutions, by contrast, consisted almost exclusively of *fiqh*; for the most part, students encountered *hadith* only insofar as they were discussed by jurists in connection with specific points of law. In recent decades, the difference between the two positions has become somewhat less stark. As discussed below, some in the traditionalist camp now accept the permissibility of a form of legal reasoning referred to as *istinbath*, and modernists generally give greater recognition to the relevance of *fiqh* than was true in the past.³⁰ However, the method of *istinbath* that is practiced by traditionalists is not the same as the method of *ijtihad* practiced by modernists, and the *fiqh* tradition retains an importance for traditionalists that it does not have for modernists.

It is a fundamental premise of traditionalist legal thought that the law (or the closest possible approximation of the law) is to be found in the writings of the great jurists of the past.³¹ *Fiqh* is law, and the study of law is the study of *fiqh*. The prevailing view, moreover, is that the interpretations of the first generations of scholars are superior to the efforts of all those who came afterwards.³² By the beginning of the tenth century, according to standard Sunni belief, the gates of *ijtihad* had swung closed, and “from that time onwards no one might be deemed to have qualifications for independent reasoning in law, and that all future activity be confined to the

30. There is another difference between modernists and traditionalists that has not significantly diminished with the passage of time that reinforces the continued relevance of the categories as a heuristic for understanding Indonesian Islamic law. In addition to its reverence for *fiqh*, a second characteristic feature of traditionalist Islam in Indonesia is its embrace of Islamic mysticism or Sufism. Traditionalist religious practice includes a variety of rituals directed at honoring the dead. Islamic modernism in Indonesia, like reformist movements elsewhere in the Muslim world, condemns these practices as a form of idolatry in which mundane matters are associated with the divine. For a discussion of the continued relevance of the traditionalist-modernist divide in Indonesian Islam, see ROBIN BUSH, NAHDLATUL ULAMA AND THE STRUGGLE FOR POWER WITHIN ISLAM AND POLITICS IN INDONESIA (2009).

31. JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 70-71 (1964).

32. This is based on a belief that the qualifications of the formative era jurists to practice *ijtihad* exceeded the qualifications of all subsequent generations, and thus presuming to improve on their efforts can only be a result of either ignorance or arrogance. See Martin van Bruinessen, *Traditions for the Future: The Reconstruction of Traditionalist Discourse within NU*, in NAHDLATUL ULAMA, TRADITIONAL ISLAM AND MODERNITY IN INDONESIA 163-189 (Greg Barton & Greg Fealy eds., 1996).

explanation, application, and, at the most, interpretation as it had been laid down once and for all.”³³

Historically, the obligation of adherence to the law of the *madhhab* was universally understood to mean abiding by the *fiqh* rulings of one’s *madhhab*. However, some contemporary Indonesian traditionalists, referred to here as “neo-traditionalists,” have embraced a different understanding of the meaning of *taqlid*. Rather than following the *rulings* of the *madhhab*—which means adopting the conclusions of the jurists of the past—these scholars understand the obligation of *taqlid* to require following the *methodology* of the *madhhab*.³⁴ *Fiqh* is understood not as a body of rules but as a hermeneutic.³⁵ There is an important difference between the methodology of *fiqh* and the *ijtihad* practiced by formative era jurists and contemporary modernists. *Ijtihad* involves deriving rules from the Quran and *hadith* directly, while *fiqh* methodology requires adherence to the approved conventions and modes of analysis of the classical tradition and respectful consideration of the views of the great jurists of the past. Ronald Dworkin famously likened the work of a common law judge to a contributor to a chain novel; the next new chapter can take the story in a different direction, but it must do so in a way that is consistent with the novel’s existing plot, characters, tone, etc.³⁶ The basic point Dworkin makes about common law judging is also applicable to working within the *madhhab*; the *fiqh* tradition guides, informs, and constrains the analysis. The use of the term *istinbath*, which means “inference,” to refer to the type of reasoning involved reflects the relatively more modest contribution of the human decision maker in producing the result.

It is not my intention to try to explain the manner in which the approach of *taqlid* to *madhhab* methodology is practiced. But there is one

33. SCHACHT, *supra* note 31, at 70-71.

34. The Indonesian phrase used to refer to this approach uses the Arabic word “*manhaj*” which is from a root meaning “open way; road; method, procedure, manner.” *Bermazhab manhaji* (following the methodology of the *madhhab*) is contrasted with *bermazhab qawli* (following the opinions of the *madhhab*). See MARTIN VAN BRUINSEN, NU; TRADISI, RELASI-RELASI KUASA, PENCARIAN WACANA BARU [NU: TRADITION, POWER RELATIONS, AND THE SEARCH FOR A NEW DISCOURSE] 226 (1994).

35. See Nelly van Doorn-Harder, *Reconsidering Authority: Indonesian Fiqh Texts about Women*, in ISLAMIC LAW IN MODERN INDONESIA: IDEAS AND INSTITUTIONS 33 (R. Michael Feener & Mark E. Cammack eds., 2007) (“*fiqh* [is considered] to be a hermeneutic tool that has the potential to manage a plurality of truths,” citing K.H. MA SAHAL MAHFUD, NUANSA FIQH SOSIAL [Nuances of Social Fiqh] viii (1994)). See also DJOHAN EFFENDI, PEMBARUAN TANPA MEMBONKAR TRADISI: WACANA KEAGAMAAN DI KALANGAN GENERASI MUDA NU DI MASA KEMIMPINAN GUS DUR [PURSUING RENEWAL WITHOUT DISMANTLING TRADITION: RELIGIOUS DISCOURSE OF NU’S YOUNG GENERATION DURING THE LEADERSHIP OF GUS DUR] (2010).

36. RONALD DWORKIN, LAW’S EMPIRE 228-38 (1986).

question raised by the concept that must be addressed. Why would it be thought necessary or useful to carry out a reexamination of issues that have been thoroughly analyzed by jurists of the past if the second analysis employs the same interpretive approach that was used in the first analysis? Is there any reason to believe that the conclusions of twenty-first century jurists will differ from those reached by the scholars of the ninth century? This question is important because it calls attention to a central element of neo-traditionalist thought. The necessity for revisiting questions for which the *fiqh* literature provides clear answers arises from the fact the classical era *fiqh* was produced by jurists who inhabited a social world that was vastly different from the social world of today. This is important because, according to neo-traditionalist scholars, the process of interpretation is invariably shaped by the assumptions and conceptual categories of interpreters. Knowledge is to some degree a product of context and experience, and the interpretations of the sources of Islamic law rendered by jurists living on the Arabian Peninsula more than 1000 years ago might very well differ from those of contemporary jurists who live in Indonesia.

A particularly clear and engaging illustration of the use of a contextualist approach to the interpretation of the sources of Islamic law can be found in a book on inheritance by the late Sayuti Thalib.³⁷ Thalib, who was a modernist but also a believer in contextualism, argued that scholars living in different times and places can arrive at differing conclusions about the meaning of the Quran and *hadith* both of which are equally “true” or “objective.” The Islamic law of inheritance is, for the jurists who produced it, an objective interpretation of the indications contained in the sources.³⁸ For an interpreter from the Minangkabau region of Sumatra, however, that same interpretation is not objective. The problem is not that the Arabs of the Hijaz and the Minangkabau of Sumatra give different interpretations to what they see. The problem, if we can call it that, is that these interpretations are based on having seen different things.

The treatment of inheritance in the Quran is more thorough and more detailed than any other legal subject.³⁹ Even so, there are significant gaps in the scheme described in the Quran that had to be filled through interpretation. The system of inheritance that resulted has a decidedly patrilineal cast. Females are entitled to inherit, and there are some circumstances when a person related to the decedent through a female is

37. See generally SAJUTI THALIB, S.H., HUKUM KEWARISAN ISLAM DI INDONESIA [ISLAMIC INHERITANCE LAW IN INDONESIA] (1981).

38. *Id.* at 156.

39. On the Islamic law of inheritance see generally N. J. COULSON, SUCCESSION IN THE MUSLIM FAMILY (1971).

entitled to inherit. The largest share of inheritance, however, belongs to male relations who are related to the decedent through other males. The category of persons related to the decedent through female blood lines are last in line to inherit. They are “distant kindred.”⁴⁰

The territory that now constitutes Indonesia is home to a variety of different kinship systems with a variety of inheritance schemes. The most common kinship system is bilateral in which relations linked to the deceased through females have the same inheritance rights as similarly situated relations linked through males. There are also systems that favor males and male bloodlines, and the region is home to the world’s largest matrilineal society. Among the Minangkabau from West Sumatra, clan membership is based on female blood lines.⁴¹ Thus, children belong to the clan of their mother and remain in their mother’s clan even after they are married. Property is inherited through one’s mother, and the primary male authority figure in a child’s life is his mother’s brother (because he is a member of the same clan as the child but the child’s father is not).⁴²

Thalib explains that in their designation of family relationships the Minangkabau distinguish between a “child” (*an sich*) and what is referred to as a “banana child” (*anak pisang*).⁴³ The offspring of a woman is (in relation to his/her mother) simply a child, full stop, without qualification.⁴⁴ He (or she) is his mother’s child because s/he is from and belongs to the mother’s family. The offspring of a man, however, is (in relation to his father) a “banana child.”⁴⁵ Every person is, therefore, the “child” of his mother but the “banana child” of his father.

Thalib does not purport to know the origin of the term *anak pisang*, but he suggests that it may have come into use because banana trees reproduce differently from other fruit trees, and for that reason the relationship between a new banana tree, the “child” of another banana tree, and the parent tree is different from the relationship between, for example, the

40. *Id.* at 31. This is in fact a mistranslation of the Arabic term *dhu al-arham*, which means “possessors of a uterine relationship.” Neither the Arabic term nor the English mistranslation is entirely accurate since the relatives included within this category are not necessarily “distant” and include persons related to the deceased through female blood lines.

41. Tsuyoshi Kato, *Change and Continuity in the Minangkabau Matrilineal System*, 25 *INDONESIA* 1, 3 (1978).

42. *Id.* at 4; *see also* FRANZ VON BENDA-BECKMANN & KEEBET VON BENDA-BECKMANN, *POLITICAL AND LEGAL TRANSFORMATIONS OF AN INDONESIAN POLITY: THE NAGARI FROM COLONISATION TO DECENTRALISATION* 52-53 (2011).

43. THALIB, *supra* note 37, at 157; *see also* FRANZ VON BENDA-BECKMAN, *PROPERTY IN SOCIAL CONTINUITY: CONTINUITY AND CHANGE IN THE MAINTENANCE OF PROPERTY RELATIONSHIPS THROUGH TIME IN MINANGKABAU, WEST SUMATRA* 97-98 (1979).

44. THALIB, *supra* note 37, at 157.

45. *Id.*

offspring of a mango tree and its parent.⁴⁶ Banana trees don't grow from bananas, like mango trees grow from mangos. Banana trees grow out "away from" or "at an angle to" the parent tree sprouting from the root of the parent.⁴⁷ This unusual, less "intrinsic," relationship between a new banana tree and its parent, Thalib suggests, may have been what led the Minangkabau to call children who are part of a different family than their parent banana children.⁴⁸

Whatever the explanation for the origin of the term *anak pisang*, the Minangkabau use of an adjective in reference to the child of its father reflects an understanding of social reality in which a father's offspring is not a "child" in the full sense of the word. To speak of children for the Minangkabau is to speak of the children of their mother. The children of a man are in a different category.

The jurists who constructed the law of inheritance inhabited a different social and conceptual reality from the people of Minangkabau.⁴⁹ For Arabs whose tribal affiliation is based on agnatic descent, it is descendants through male blood lines that are truly children.⁵⁰ Offspring who trace their descent through females—the grandchildren of their mother's parents—are, in Arab society, the equivalent of banana children.⁵¹ It stands to reason, therefore, that a person's uterine relations were considered distant. If, however, the Quran had been revealed and interpreted in West Sumatra, where it is agnatic relations that are distant, an objective interpretation of its provisions relating to inheritance would have looked very different.⁵²

One arena in which traditionalist-oriented Indonesian Muslims have been particularly active is in efforts to re-define the rights of Muslim women. The Quran introduced reforms that dramatically enhanced the position of women in society. However, rules that represented an improvement to the rights of women a millennium and a half ago are seriously out of touch with modern sensibilities and economic realities. Improving the status of women is a goal that is being pursued by groups and individuals holding a wide range of views on Islam. What distinguishes the work of traditionalist Muslim reformers in Indonesia is that they articulate their arguments using the concepts and methodologies of classical *fiqh*.

46. *Id.* at 157-58.

47. *Id.*

48. *Id.*

49. *Id.* at 158.

50. *Id.*

51. *Id.*

52. *Id.*

To give a flavor to the way contemporary Indonesian Muslims are employing the classical legal tradition to generate new Islamic understandings of the rights and role of women, I will briefly describe one initiative in which I was peripherally involved. The project was carried out by a non-governmental organization called the Fahmina Institute⁵³ that was established in 2000 in the City of Cirebon on the north coast of Java. The principal founder of the organization is Kiyai Haji Husein Muhammad.⁵⁴ The title “kiyai” used with Husein’s name indicates his status as a traditionalist-oriented religious scholar. As with most kiyai, Husein is also the head of a *pesantren*, a type of Islamic boarding school where traditionalist Islam is taught and perpetuated. Three other individuals who joined Husein in establishing the Fahmina are teachers in his *pesantren*.

Fahmina operates in a number of different program areas, but much of its work has been focused on issues of gender. In the mid-2000s, Fahmina created and implemented an educational program addressing Islamic doctrines on issues directly affecting the lives of women. The program proved so successful that Fahmina decided to publish a lesson manual that could be used by others wishing to use the course. The text titled, “Dawrah Fiqh Concerning Women,”⁵⁵ contains ten lessons or modules. For each lesson the facilitator is given a set of learning objectives, a list of points for discussion, and teaching techniques or group activities adapted to that particular lesson. Many of the lessons also include charts or other graphic representations of the material, and some include case studies addressing specific issues facing Muslim women as topics for discussion. Most of the lessons are also accompanied by a short reference article on the topic of the lesson prepared by one of the authors or another prominent Muslim scholar.

53. “Fahmina” is an Indonesianization of two Arabic words meaning “our understanding” or “our perspective.” This name was chosen to express an intention of “raising awareness that what is conventionally regarded as truth is in actuality limited to contextually-based human understanding.” See Fahmina, Profil Yayasan Fahmina, Fahmina Inst. (May 20, 2015), <https://fahmina.or.id/profil-yayasan-fahmina/>.

54. For an English language discussion of Husein Muhammad’s re-interpretation of key Quranic verses related to women, see Yusuf Rahman, *Feminist Kiyai, K.H. Husein Muhammad: The Feminist Interpretation of Gendered Verses and the Qur’an-Based Activism*, 55 AL-JAMIAH: J. OF ISLAMIC STUD. 293 (2017).

55. See K.H. HUSEIN MUHAMMAD ET AL., DAWRAH FIQH PEREMPUAN: MODUL KURSUS ISLAM DAN GENDER [Dawrah Fiqh Concerning Women: Manual for a Course on Islam and Gender] 1 (Marlene Indro Nugroho-Heins, trans., 1st ed. 2006). An English translation of the text was published as DAWRAH FIQH CONCERNING WOMEN: MANUAL FOR A COURSE ON ISLAM AND GENDER (2006). Page citations refer to the English version. In some cases, however, I have used my own translation of the Indonesian original. The text explains that *dawrah*, an Arabic word not in common use in Indonesia that means “turn” or “circle,” refers to training outside the context of a formal educational institution and was chosen for the title of the manual because the text employs pedagogical methods that differ from conventional schools. *Id.* at 5.

The first two lessons are relatively brief and are designed to introduce the themes and goals of the course and cultivate an atmosphere conducive to discussion and trust. I will focus on Lessons Three through Five that outline what is described as a gender equality-based methodology for investigating *fiqh*. Lessons Six through Nine apply these ideas to more concrete matters relating to the lives of women. These latter lessons address the socio-historical background of early Islamic society, *fiqh* from women's perspective and a strategy for reform, a woman's life cycle according to *fiqh*, and applied Islamic jurisprudence in Indonesia. Lesson Ten is an assessment of the course.

Lesson Three is titled "Basic Concepts in Islamic Teachings." The stated objective is to provide the students with an understanding of basic concepts in Islam and the connection between these basic concepts and the values of gender equality and social justice.⁵⁶ The lesson begins by dividing the participants into small groups and having them write down some of the most important terms from Islam or words that they hear used in discussions of Islam. The facilitator then leads a discussion relating topics identified by the students to what is presented as the three basic themes in Islam—the oneness of God, the mission of the Prophet Muhammad, and the obligation of humans as agents of God to establish justice, human solidarity, equality, and benevolence.⁵⁷

The second part of the lesson is a presentation by a guest speaker. The outline of points to be covered in the presentation begins with an explanation of the history and early days of Islam, the life of the Prophet Muhammad and the revelation of the Quran.⁵⁸ The speaker is also instructed to discuss Quranic texts that were revealed in the early days of Islam and the lives of some of the early converts to Islam who exemplify Islam's focus on the principles of social justice and equality. The text mentions, for example, Sumayyah, an African woman living in slavery to one of Mecca's most powerful tribes. Sumayyah was among the first to convert to Islam and was persecuted by the enemies of Islam who saw the Prophet's growing group of followers as a challenge to their privilege and authority.⁵⁹

Lesson Three includes a reference article written by Musdah Mulia, a prominent academic and gender activist who is best known for having led a team that prepared a proposed Islamic law of marriage and inheritance

56. *Id.* at 32.

57. *Id.* at 33.

58. *Id.* at 33-34.

59. *Id.* at 34.

premised on the complete equality of men and women.⁶⁰ The article is titled “Tauhid: A Source of Inspiration for Gender Justice.” Tauhid, which literally means “to fully appreciate oneness,”⁶¹ is the term used to describe Islam’s strong version of monotheism that condemns anything that in any way detracts from God’s absolute unity and indivisibility. Musdah observes that the principle of *tauhid* is often thought to be applicable solely to the relationship between God and humans—a doctrine regarding the attributes of God, the pillars of faith and similar matters. But a full appreciation of the principle of *tauhid* is inseparable from the everyday concerns of social relations among humans, including the relationship between men and women.

The conviction that no human equals Allah and that He has no offspring or incarnation has given rise to the principle of the equality of humankind, as all humans are Allah’s creatures. No human is superior to any other; all are fundamentally equal. No human may be deified in the sense of being made the source of guidance and support, to be feared, prayed to, and regarded as unquestionably correct. A king cannot be a god to his people, a husband cannot be a god to his wife.⁶²

Islam’s embrace of the values of equality and freedom grounded in the principle of *tauhid* is total and unqualified. The historical circumstances in which the Quran was revealed, however, prevented the immediate implementation of these values and necessitated a gradualist approach to their full realization. Slavery, for example, is plainly incompatible with the principle that all human beings are free and equal before God. However, because slavery was practiced and accepted at the time the Quran was revealed, it was not possible to abolish it immediately. The Quran introduces changes to make slavery more humane, but those changes were not intended to set rules for all time. Rather, the changes introduced in the Quran were intended as first steps toward the complete eradication of the practice.⁶³ Similarly, because of the social mores of seventh century Arabia, the full emancipation of women could only be achieved gradually. One example is the treatment of the rights of women to inheritance. In Arab society before Islam, women were regarded as property and were themselves objects of inheritance; with the arrival of Islam, women

60. For an English language summary of the proposal, see Siti Musdah Mulia & Mark E. Cammack, *Toward a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft to the Indonesian Compilation of Islamic Law*, in ISLAMIC LAW IN MODERN INDONESIA: IDEAS AND INSTITUTIONS 128-45 (R. Michael Feener & Mark E. Cammack eds., 2007).

61. MUHAMMAD ET AL., *supra* note 55, at 39.

62. *See id.* at 41-42.

63. *Id.* at 46-47.

assumed their proper place as subjects having the same right to inherit as men. But to prevent social upheaval and in recognition of the existing social structure in which men bore the full burden of providing for the physical needs of the family, the inheritance portion of women was fixed at half that of men. This rule that is adapted to attitudes and conditions of seventh century Arabia is not appropriate for the twenty-first century. "In circumstances in which women play an important role in the economy, as they often do today, the rules regarding division of inheritance should be reconsidered to bring them into conformity with the fundamental aim of Islam, i.e., the welfare of humankind."⁶⁴

Lesson Four is entitled "Interpreting the Quran." The objectives for this lesson include: understanding the historical context in which the Quran was revealed; appreciating the connection between seventh century Arab society and Islam's mission of liberating humankind in general and women in particular; becoming familiar with Quranic texts relating to women and texts given in response to questions from women; appreciating the existence of different methods of interpreting the Quran and the relationship between those methods and commonly accepted interpretations; understanding the way socio-historical factors influenced the interpretation of texts relating to women; and gaining an understanding of the principle of gender equality in the Quran and learning the methodology for arriving at gender-just interpretations of the Quran.⁶⁵

The lesson begins with small group discussions of texts related to women designed to convey an appreciation for the way subjective factors shape how the texts can be understood. This is to be followed by a presentation by a guest speaker demonstrating the possibility of applying a gender-friendly (or non-gender-biased) interpretation of Quranic texts related to women. The outline of points to be made in the presentation instructs the speaker to describe the conditions of Arab society at the time the Quran was revealed; explain and illustrate the essentially casuistic character of much of the legal content of the Quran which consists of texts revealed in response to specific circumstances or in answer to specific questions; explain the various factors that result in differing interpretations and provide illustrations of the way specific texts have been interpreted differently and the wide variety of interpretations even within the classical tradition; present alternative modes of interpretation grounded in an understanding of Islam's central mission of liberating humankind and supporting women; outline some of the issues related to women

64. *Id.* at 48.

65. *Id.* at 64.

addressed in the Quran, such as physical violence against women, divorce, sexuality, and independence; and demonstrate how Quranic texts related to those issues have been given both gender-biased and gender-friendly interpretations in both the classical tradition and modern writings.⁶⁶

The points to be made by the speaker are elaborated in a reference article by Husein Muhammad. Quoting a prominent twelfth century legal scholar, Husein explains that in interpreting the Quran it is “necessary to understand its historical background,” the state of the Arabic language at the time the Quran was revealed, and “the traditions and customs of the Middle Eastern communities regarding their language, behavior, and patterns of interaction at the time the Quran’s texts appeared.”⁶⁷ It is also important in interpreting specific Quranic texts to distinguish between verses that were revealed during the earliest years of Islam when Muhammad and the community of Muslims were in Mecca, and verses revealed during the later period after the community had migrated to Medina. The verses in the two periods have a different character because of differing needs and purposes. The texts revealed in Mecca laid out principles that were to serve as the foundations of a new social structure, while the texts from the Medinan period put those principles into practice in giving form and shape to the new structures. As a result, the texts revealed in Mecca “are mostly concerned with describing and defining *tauhid* and various universal human values, such as equality, justice, freedom, pluralism, and human dignity.”⁶⁸ The texts from the Medinan period were addressed to those who had already accepted Islam and state more concrete and detailed rules for the governance of the community. In establishing rules for the new community, “[t]he Quran needed to address social reality as it actually existed, including the discriminatory attitudes toward women.” Because the Meccan verses state universal values that form the basis of Islam, verses stating specific rules must be interpreted in light of those values. Husein points out that this principle can be found in the writings of the classical era jurists: “General rules or legal universals are certain, while particular or specific rules are relative/probable [and t]herefore the general or universal norms ought to prevail.”⁶⁹

After examining the social position of women in seventh century Arabia and summarizing some of the Quranic texts regarding women, Husein addresses two specific texts regarding men’s authority over women. He writes, “[w]hen read literally, without an awareness of their context or

66. *Id.* at 66-68.

67. *See id.* at 81 (quoting Abu Ishaq al-Shatibi).

68. *Id.* at 82.

69. *See id.* at 91 (quoting Abu Ishaq al-Shatibi).

connection to other texts, it is easy to conclude that God made men the leader, authority, controller and teacher of women, while women are to be led, restrained, controlled and taught.”⁷⁰ Husein then argues—based on other Quranic texts and *hadith*, information about the circumstances in which these verses were revealed, the views of various scholars, and principles of Quranic exegesis—that the specific rules in these texts regarding men’s exercise of authority over women should be interpreted as exceptions to the general principle of human equality expressed elsewhere in the Quran. The rules represent an improvement over the existing practice, but they should be understood as incremental steps toward the ideal of full human equality rather than timeless standards for the relations between the sexes.⁷¹

Lesson Five is about interpreting *hadith*. *Hadith* is the term used to refer to specific reports of the words or actions of Muhammad that comprise the *Sunnah*, the second primary source for discovering the law. The learning objectives for the lesson include learning the terminology used in the study of *hadith*; understanding the system of classifying *hadith* and how the classification of a *hadith* affects its use as a source of legal rules; understanding the methods used to interpret *hadith* and the relationship of methodology to the development of different schools of thought; and learning the method used to interpret *hadith* from the perspective of gender.⁷²

The lesson begins with an exercise that illustrates some of the problems of using *hadith* as a basis for formulating normative rules. The participants are divided into groups of sixteen, and each person in the group is assigned to one of five “levels.” There is only one person in Level One. Level Two has two people, Level Three has four people, Level Four has eight people and Level Five has one person. The individual in Level One is provided with a message which she communicates separately to the two individuals in Level Two. The members of Level Two each transmit the message to the members of Level Three. The transmission of the message should also include the names of the persons earlier in the chain, e.g., “A told me that B told her that” The same process is used to transmit the message from Level Three to Level Four. The eight individuals in Level Four then each report the message they received, together with the chain of transmission linking the message to its origin, to the person in Level Five. This last person in the chain then writes down each of the eight reports she

70. *Id.* at 87-88.

71. *Id.* at 88-89.

72. *Id.* at 100.

has received and is instructed to decide which among the eight is most authentic.⁷³

The outline of the expert presentation on *hadith* instructs the speaker to explain the two parts of a *hadith*—the *matn* or material content of the message—and the *sanad*—the chain of persons who transmitted the *hadith* from the Prophet to its being recorded⁷⁴—and then introduce one of the more well-known *hadith* relating to women to illustrate how the circumstances of the original transmission of a *hadith* and the audience to whom the statement was made can result in varied understandings of its meaning.⁷⁵ Other points to be made in the presentation include an explanation of the categorization of *hadith* as “legally valid,” “good,” or “weak” according to their likely authenticity; the necessity to consider whether the statement attributed to Muhammad was made in his capacity as a prophet, a political authority, or a husband; the existence of different opinions among both classical and contemporary scholars on the function of *hadith* in relation to the Quran; and an explanation of how a critical evaluation of both the *sanad* and *matn* of *hadith* by classical era jurists shaped their interpretation, and how those same methods can be used to undertake a reinterpretation of *hadith*.⁷⁶

The author of the reference guide for Lesson Five is Faqihuddin Abdul Kodir, who is also one of the authors of the manual.⁷⁷ Faqihuddin explains the difficulties and uncertainties inherent in the project of evaluating the authenticity of a narrative passed down orally through several generations before being recorded.⁷⁸ One problem is determining the historical accuracy of the chain of transmission.⁷⁹ In addition to examining the *sanad*, *hadith* scholars also conducted a critical evaluation of the *matn* as a part assessing the authenticity of *hadith*.⁸⁰ The content of the *matn* can cast doubt on authenticity if there exist two or more versions of the same *hadith* that are inconsistent with each other.⁸¹ Other factors considered as indicators of possible unreliability include an inconsistency between the *matn* of a *hadith* and a text in the Quran, the existence of two inconsistent *hadith*, and an

73. *See id.* at 107.

74. *See id.* at 102-103.

75. *Id.* at 103.

76. *Id.* at 100-103.

77. *Id.* at 111.

78. *See id.* at 111-13.

79. *See id.* at 113-16.

80. *Id.*

81. *Id.*

inconsistency between the narrative contained in a *hadith* and historical fact. Each of these problems is illustrated with examples.⁸²

The first step in determining the value or meaning of a *hadith* as the basis for a legal rule is an inquiry into its authenticity. Then comes the problem of interpretation. The first obstacle to arriving at a correct interpretation lies in the nature of language. Arabic, like all languages, is the product of and functions against a cultural background. Uncertainty and diversity with respect to the meaning of a *hadith* is inescapable because “[t]he communication of ideas by means of linguistic symbols and the interpretation of those symbols by readers carries an inevitable risk of diverse, incompatible, and even reductionist or distorted understanding.”⁸³ Faqihuddin gives examples of *hadith* in which the same words generate different interpretations and examples of divergent interpretations resulting from differences in the wording of two versions of the same *hadith*. He also illustrates the use of a literalist approach to interpretation and an approach that takes account of contextual factors.⁸⁴

In the last section of the paper, Faqihuddin shows how interpretive approaches recognized as valid by classical era scholars can be used to produce new understandings of *hadith* compatible with contemporary social realities. “*Hadith* texts regarding ‘relations between men and women’ are a portrait of a particular-social cultural reality” and should be “understood based on the logic of their historical role of furthering a process of transformation in the direction of justice and the general welfare.”⁸⁵ *Hadith* describe responses to particular circumstances, and “[a]s records of particular cases, they might seem to be supportive of a social reality characterized by gender bias.”⁸⁶ While some *hadith* use language “that in a literal sense places women in an inferior position [those *hadith*] should be understood in their context and assimilated to the broader transformative spirit that characterizes the Quran and other *hadith*.”⁸⁷

A thorough analysis of the reasons traditionalist Islam has produced many of Indonesia’s best and most progressive thinkers is beyond the scope of this essay. I will briefly touch on just two aspects of the matter. The first concerns the educational system that produces them. The scholars I am calling neo-traditionalist were almost all educated in *pesantren*. They are properly classified as traditional because they are trained in the “religious

82. *See id.* at 116-21.

83. *Id.* at 121.

84. *See id.* at 123-24.

85. *Id.* at 125-26.

86. *Id.* at 126.

87. *Id.*

sciences” that comprise the Islamic scholarly tradition. This includes, among other subjects, theology, Quranic interpretation, *hadith* studies, and Arabic grammar. But the queen of Islamic sciences, at least in Indonesia, is the study of *fiqh*.⁸⁸

Pesantren education is not designed to develop critical thinking skills. Quite the opposite. The early stages of the process consist of a laborious line-by-line translation of dense Arabic-language legal treatises. The objective is simply to comprehend the meaning of the text. Some extraordinary students commit the text to memory. As *pesantren* students, called “*santri*,” gain facility with the language and literary form of the *fiqh* literature, they proceed more quickly. But the goal of the process remains the same—to “learn” the text. It is in one respect similar to the case method of legal education in the common law. American law students learn to “think like a lawyer” by having the techniques of common law legal analysis and argument modeled for them in judicial opinions. Similarly, students of *fiqh* learn to “think within the *madhhab*” by digesting the works of the great masters of the discipline. The two systems differ in that American law students study the common law method in order to practice it themselves, while students of *fiqh*, for the most part, remain in the position of passive observers. Nevertheless, those *santri* who spend years immersed in study, who, to paraphrase Karl Llewellyn, “pickle” themselves in *fiqh*,⁸⁹ eventually become socialized in the vocabulary and techniques of a rich and complex tradition of intellectual and moral inquiry.

Pesantren education, in addition to training *santri* in the methodologies of *fiqh*, equips students with two important scholarly competencies: an appreciation for rigorous and disciplined thinking and an acceptance of the inevitability of intellectual and moral ambiguity. Historically, however, it did not encourage dissent or critique. Until the emergence of the neo-traditionalist movement, the universal message was one of unquestioned acceptance of the authority of *fiqh*. What happened, then, that enabled Husein Muhammad and others like him to set aside the taboo against independent thinking and begin to view the tradition critically?

I will not attempt to give a full answer to that question, but one critical part of the story concerns the example of a group of extraordinary intellectual pioneers who emerged beginning in the 1970s. The most influential figure is Abdurrahman Wahid, a charismatic personality of

88. VAN BRUINESSEN, *supra* note 34, at 163-89.

89. Llewellyn counseled first year law students to “Immerse yourself for all your hours in the law. Eat law, talk law, think law, drink law, babble of law and judgments in your sleep. Pickle yourselves in law—it is your only hope.” See KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 96 (1930).

prodigious intellect and scion of Indonesia's most prominent traditionalist Muslim family who became head of the country's largest Islamic organization and served a brief and undistinguished stint as Indonesia's president.⁹⁰ Wahid had no formal training outside the Islamic sciences, but he was a passionate autodidact of catholic interests who spoke English, French, Dutch, and German (in addition Indonesian, Javanese, and Arabic). As with traditionalist Indonesian Muslims generally, Wahid's religious beliefs and practices included significant elements of Islamic mysticism or Sufism. This, together with a Javanese cultural sensibility rooted in Java's pantheistic Hindu-Buddhist past, instilled in Wahid a deep appreciation for the values of tolerance and pluralism. Most importantly, Abdurrahman Wahid was a visionary who imagined and evangelized an understanding of Islam that synthesized its rich tradition of religious inquiry with the critical approaches of the Western intellectual tradition.

Abdurrahman Wahid presented young Indonesian Muslims with a vision of Islam that was both relevant to their experience and possessed the poetry and heft of its long history. Because of his position as head of the Nahdlatul Ulama, the main organization of traditionalist Indonesian Islam with more than 50 million members,⁹¹ Wahid's example signaled permission for thoughtful Muslims to view the faith not through the paradigm of religious conviction but as a part of history.⁹² This occurred at a time when conditions in Indonesia offered unprecedented access to the world of critical scholarship. Economic prosperity made it possible for larger numbers of *santri* to continue their education after graduation from the *pesantren*. Most attended one of the country's state Islamic institutes (Institut Agama Islam Negeri; IAIN). The faculties of the IAIN included a new cohort of Western-trained scholars, beneficiaries of increased funding to study abroad, who introduced their students to the critical scholarship of Muslim thinkers that was often banned in other parts of the Muslim world.⁹³ The Suharto government's policy of promoting cultural and

90. For an excellent biography of Abdurrahman Wahid, see GREG BARTON, *ABDURRAHMAN WAHID: MUSLIM DEMOCRAT, INDONESIAN PRESIDENT* (2002).

91. See BUSH, *supra* note 30, at 2. Nahdlatul Ulama was founded in 1926 by Abdurrahman's grandfather to counter the growing influence of reformism in Indonesia. See HARRY J. BENDA, *THE CRESCENT AND THE RISING SUN: INDONESIAN ISLAM UNDER THE JAPANESE OCCUPATION, 1942-1945* 50 (1958); see also M.C. RICKLEFS, *A HISTORY OF MODERN INDONESIA SINCE C. 1200* 212 (4th ed. 2008).

92. This change in attitude is often described as a shift from a posture of *pengajian*, which means "recitation," to one of *pengkajian*, which means "investigation." See VAN BRUINSEN *supra* note 34, at 221.

93. The list of scholars whose writings have been influential in Indonesia includes Nasr Hamid Abu Zayd (Egypt), Muhammad Arkoun (Algeria), Mohammad Abed Al Jabri (Morocco), Asghar Ali Engineer (India), and Fazlur Rahman (Pakistan).

devotional expressions of Islam while repressing all forms of political Islam created a space for organizing and dialogue among like-minded scholars.

CONCLUSION

The significant achievement of the neo-traditionalist movement has been to articulate the Islamic legal tradition in terms that are compatible with the epistemological assumptions of modernity. Adherence to the methodologies of *usul al-fiqh* gives discipline and rigor to their analysis. And while many (but not all) modernists tend to address the challenges of modern life using the reductionist modeling techniques of the applied sciences, neo-traditionalist thinkers, with perspective gained from a deep and sympathetic engagement with the interpretative efforts of past generations of jurists, approach contemporary problems with an appreciation for the complexity of social life and a tolerance for ambiguity and disagreement in seeking solutions to those problems.

When I first began studying Islamic law in Indonesia, I found it puzzling that so many of Indonesia's best and most progressive thinkers come from a traditionalist background. I have now come to realize that what once struck me as a paradox in fact makes perfect sense. My initial confusion resulted from a failure adequately to appreciate that the Islamic legal tradition is not a compendium of rules but rather "a methodology for a reflective life that searches for the Divine, and ... a process of weighing and balancing the core values of Shariah in pursuit of a moral life."⁹⁴ The neo-traditionalist movement (in which Zezen Mutaqin is a rising star) aspires to make this methodology relevant to the lives of contemporary Indonesian Muslims. I wish them success in their efforts.

94. EL FADL, *supra* note 12, at 268.