WOMEN IN THE WRITINGS OF MUHAMMAD ᶜABDUH

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Abstract

The "Woman question" in Islam, under its various titles – "women in Islam", "women's rights in Islam", "the status of women in Islam", "gender in Islam" – is one that has been a topic of heated debate for the last century, and continues to be a field of intense debate and thriving scholarship. Likewise, pioneers of modern Islamic reform are often referred to in relation to modern discourses on gender, and the issue of gender is often touched on in discussions of these pioneers' reform projects, but often in a generic and superficial manner. While the Egyptian reformist scholar Muhammad ʿAbduh is a figure often referred to in this context, this aspect of his thought has never been studied in detail. This study aims to deepen the study of these two questions – gender and reform – and the intersection between them. Various general books on "the father of Islamic reform" exist, often devoting a few pages to "women's reform" (or more commonly referring to the question of women's reform under the few pages devoted to ʿAbduh's "social reform"), creating a rather vague view of this critical figure's views on this topical question, often with unsubstantiated generalisations.

 This study aims at addressing this through a detailed study and analysis of ʿAbduh's own discourse on women in order to discover its themes, distinctive characteristics, the questions it poses and the answers it attempts to give, as well as the tensions and contradictions within it. The study locates the gender question within the bigger context of the reform discourse that emerged in a specific historical context in response to the Muslim world's encounter with modernity. The study further addresses the extent of ʿAbduh's influence on subsequent discourses on women and his legacy which continues to be contested and competed over. The study provides, for the first time, a detailed study of ʿAbduh's writings on women and gender, based on primary sources, and addresses the overlaps between various rival trends often seen as distinct, pointing to the multiple and diverse roots of the contemporary genre of "Muslim feminism", which indeed draws influence from the reformist views of ʿAbduh, but not necessarily through a single linear and coherent route.

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"His is all praise in the former and the latter (state)"

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INTRODUCTION

The "Woman question" in Islam – under its various titles: "women in Islam", "women's rights in Islam", "the status of women in Islam", "gender equity in Islam" – is one that has been a topic of heated debate for the last century, and continues to be a field of intense debate and thriving scholarship.

The methodologies and approaches to "women's reform" vary greatly, between those that do not recognise the centrality of the normative sources of Islam, or approach them in a fragmentary, static, and superficial manner, or approaches based on a re-interpretation of those sources. The dynamics that have shaped the history and evolution of Muslim societies point to the continued relevance of the Qur'an and the Sunna, as well as the legacy of Islamic jurisprudence that was developed out of them. Thus, it is argued that approaches that recognise the centrality of these sources, and attempt to understand them on their own terms have the greater potential to appeal to Muslim societies. This is attested by the renewed interest in this field and its widening appeal to various sectors of Muslim women.

Within those, one also finds a multitude of approaches. Two broad trends that are interlinked yet divergent are the "Islamist reformist" and "Muslim feminist" trends. Both base their arguments and discourses on an acceptance of the Qur'an as the central normative text in Islamic thought and practice, and propose to re-interpret it as a response to the requirements of a modern context. They differ, however, in their appraisal of the Sunna, of the heritage of Islamic jurisprudence, and on the limits of re-interpretation and the nature of the interpreters, among others. These differences are reflected in their different terms of reference and their different audiences, with the latter being more accessible, more known to, and more favoured in western academia.

While differences are often emphasised between the two trends above, often assumed to be distinct and opposed, there is in fact a lack of a clear defined line of departure between the

two, as has been analysed in recent studies by authors[1] who emphasise the overlap between "liberal" and "Islamist" approaches to gender reform. This overlap is evident in their competition over the monopolisation of the title of "reformist", and the appropriation of the legacy of the 19th century reform movement.

It is common to categorise the current debate over gender in Muslim societies into three groups: the Conservatives or Traditionalists – who refuse to engage in creative new interpretations of the text or to criticise opinions held by earlier scholars in the tradition of *fiqh*; the Liberals or Secularists who call for a new discourse that marginalises the religious sources opting for a discourse presented in non-religious and often Western terms; and the Reformists or Revivalists who call for new interpretations of the religious texts, accepting both the authenticity and centrality of the texts and the continued relevance and efficacy of *fiqh* and religious sciences, while stressing that the two are distinct and the latter are a human effort that can be criticised and rejected.[2]

The Muslim feminist discourse is often situated as part of the new "liberal reformist" thought –in the above categorisation – and in opposition to "Islamist" discourses. The "liberal reformist" trend is seen to be "consolidating a conception of Islam and modernity as compatible, not opposed", articulated by "Reformists, who emerged in the closing years of the century as part of an internal response to political Islam … Muslim thinkers – such as Mohammad Arkoun, Nasr Abu Zayd and Abdolkarim Soroush".[3] Nevertheless, in order to strengthen its position and influence, the Muslim feminist discourse has developed the tendency to seek to find deeper roots within the Islamic framework. Interesting in this debate between the two trends discussed above is the attempt to appropriate the reform movement of the 19th century and to lay sole claim to be the heirs of figures such as Muḥammad ʿAbduh. This brings to mind similar attempts by voices from the opposite sides of the Muslim spectrum to appropriate both the founding figures of the reformist school, and their disciples from various trends (for instance, Qāsim Amīn in Egypt, Ṭāhir Al-Haddād in Tunisia), an effort that has continued to this day, in a battle over legitimacy and representation.

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[1] Such as Sherine Hafez, Lila Abu-Lughod, Leila Ahmed, Mervat Hatem and Margot Badran

[2] Mir-Hosseini, Ziba, "The Construction of Gender in Islamic Legal Thought: Strategies for Reform". *Hawwa: Journal of Women in the Middle East and the Islamic World*, 1/1, 2003, pp 3-20.

[3] Ziba Mir-Hosseini, *Voices of Islam*, Volume 5, *Voices of Change*, edited by Vincent Cornell, Omid Safi and Virgina Gray Henry, Westport, Connecticut and London, 2007) pp. 85-113, p. 101.

This points to the complex nature of the debate on gender in Muslim societies, and the confluence of political and historical dimensions in its evolution. It also points to the need for a closer and deeper reading of the early reformist school's writings on the gender question, in order to critically assess the current gender discourses in Islamic thought, their reformist claims, and their potential to resolve these tensions and bring about significant change.

The telling of the history of "the Arab women's movement" often starts from Qāsim Amīn, and reflecting the polarisation of the current intellectual and political scene in the Arab world, Amīn's position and contribution is selectively presented and appropriated by some and against others, whereas a return to Amīn's own writings, relations and stances rejects such simplification. This study aims to go back further in time, to a figure that is less polarising, that is uniting and widely referred to in the context of women's reform, yet without any detailed study or analysis of his contribution. My aim is to transcend polarisation, enrich the writing of the history of Arab and Muslim feminism, and highlight the social, political and historical dimensions of all writings on women, and the complex and diverse nature of all discourses on women and women's reform.

My aim is to analyse ʿAbduh's writings on women, locate them in their historical context, within his own reformist discourse and within various contemporary discourses on women at his time. Highlighting and analysing ʿAbduh's contribution to the cause of Arab women's reform will provide useful findings for understanding the subsequent evolution and bifurcation of Egyptian and Arab gender discourses, and evaluating current projections of differences and appropriations onto the formative period of the end of the nineteenth century.

The late-nineteenth century Islamic Reformist discourse on gender has not been studied in so much detail, although, because of its complex and rich nature, it seems to continue to influence the mainstream discourses on gender in the Muslim world, rendering it deserving of a more serious and indepth analysis. While pioneers of this modern Islamic reform are often referred to in relation to modern discourses on gender, and the issue of gender is often touched on in discussions of these pioneers' reform projects, this is done in a generic and superficial manner. No one has studied in detail and in depth the writings of these pioneers on gender in a comprehensive way, rather than focusing on a single *fatwā* or interpretation presented in an isolated way.

I plan to explore this discourse through the writings of the "father of Islamic Reform", Muḥammad ʿAbduh, in order to discover its themes, its distinctive characteristics, the questions it poses and the answers it attempts to give, as well as the tensions and contradictions within it.

I will locate the gender question within the wider context of the reform discourse that emerged in a specific historical context in response to the Muslim world's encounter with modernity. The motivation is providing the basis for exploring the evolution of this discourse and the historical and political contexts which led to its divergent interpretations and appropriations, in order to understand the current competing discourses, addressing the extent of ʿAbduh's influence on subsequent discourses on women and his legacy which continues to be contested and competed over. However, tracing that evolution in addition to an in-depth study of the original discourse is beyond the scope of this thesis. Nevertheless, the study of this discourse will provide the necessary foundation for exploring such interesting questions in the future. This study aims to provide, for the first time, a detailed study of ʿAbduh's writings on women and gender, based on primary sources, and addresses the overlaps between various rival trends often seen as distinct, pointing to the multiple and diverse roots of the contemporary genre of "Muslim feminism", which indeed draws influence from the reformist views of ʿAbduh, but not necessarily through a single linear and coherent route.

a. Reading ʿAbduh

In order to answer the questions posed above, this work is primarily centered on reading, analysing, contextualising and critiquing ʿAbduh's writings on women. The daunting nature of this task is partly due to the "irregular" nature of ʿAbduh's writings: they are not to be found in fixed separate clear coherent books, but are diverse in nature, length and style, and are scattered in various media and contexts: from articles, treatises and letters, to *fatāwā*, speeches and *tafsīr* lecture notes (written down, summarised, and expanded by his disciple, as will be discussed below). Out of these, ʿAbduh's writings on women have to be, on the one hand, extracted, and on the other read within the wider context of ʿAbduh's compiled writings (5 volumes).

ʿAbduh's intellectual and practical reform efforts had various dimensions, but were concentrated on religious-based ethical and social reform. His writings on women followed the

same pattern, with the major themes being education, reform of family law, and innovative Qur'anic re-interpretations in order to correct misconceptions about the nature of women. Unlike, for instance, the "father of women's liberation" Qāsim Amīn, ʿAbduh did not set out to write a book (or even a dedicated article) on women, covering all contentious issues. His writings on women are situated within his broader concerns such as the reform of Shariʿa courts, modern Qur'anic interpretation, or promotion of education. In fact, other than education, family law reform, and interpretation of verses on the essence of women, certain themes that are frequently found in other contemporary discourses on women, such as the question of veiling and seclusion, women's public participation or women's work are absent in ʿAbduh's writings. This is partly due to the fact that ʿAbduh did not write any dedicated works on women, as mentioned above – I estimate that what he wrote on women comprises no more than 10% of his writings. Furthermore, ʿAbduh's writings are often general and vague, as a strategy for uniting rather than dividing – unless there is an urgent need for change and a significant possibility of its success. In addition, the themes that are absent are related to practices that are neither fixed nor uniform, affecting rural/urban, rich/poor women in different eras differently. Finally, such practices were already changing, and ʿAbduh possibly judged that discussing them could contribute to further polarisation, rigidity and defensiveness, especially as they were stressed in the colonialist discourse.

Out of the above themes, I focus on the one on which ʿAbduh's writings on women concentrated: family law – the reform of men's and women's understanding of the family and of Islamic rulings on marriage, polygyny and divorce, and reform of those laws. ʿAbduh's views on these areas are extracted from his articles, *tafsīr* and *fatāw*ā. These are analysed and evaluated in Chapters 4-7, including the question of the common attribution of chapters from Qāsim Amīn's book – *Tahrīr al-Mar'a* – to ʿAbduh (See below).

In addition, an important dimension of ʿAbduh's writings on women, one which receives less attention than his proposals for family law reform, is covered in my discussion of his views on women's nature, essence and equality, in Chapter 3, as revealed in his commentary on verses dealing with the creation of men and women.

ʿAbduh's most important theological work is most probably his *Risālat al-Tawḥīd*, originally given as a series of lectures in his exile in Beirut. This is followed by his two responses to

orientalist critiques of Islam: his reply to Gabriel Hanotaux, *Al-Islām wa'l-Naṣrāniyya, bayna'l-ʿIlm wa'l-Madaniyya* and his reply to Farah Antoun *Al-Islām wa'l-Radd ʿalā muntaqidīh*. Although these do not deal with women explicitly, they are of great importance for understanding ʿAbduh's thought in general, his reform methodology and motivation. These as well as a selection of his articles in *al-Waqāʾiʿ al-Miṣriyya* and *al-ʿUrwa al-Wuthqā* were first compiled by Rashīd Riḍā, while Muḥammad ʿImāra's compilation is more comprehensive. ʿImāra's compilation also includes ʿAbduh's other important work, his *tafsīr* of a number of Qurʾanic chapters, both the parts published separately by ʿAbduh and those published in *al-Manār* and compiled later by Riḍā.

The compiler of ʿAbduh's complete works Muḥammad ʿImāra analysed texts attributed to ʿAbduh and – to some extent – distinguished between what was written by him and what was written by others: "we distinguished between his own writings and those of al-Afghānī, Rashīd Riḍā, Saʿd Zaghlūl and ʿAbdullāh al-Nadīm, for the first time in the history of the thought of these figures".[4] However, confusion persists when writing about ʿAbduh' ideas, with even experts sometimes wrongly attributing to him what he possibly – or in some cases, definitely – had not written. This is a result of the fact that ʿAbduh had written few complete books himself, with his writings including a large number of newspaper articles or reports of circles or speeches given by him. The use of pen-names, the custom of publishing under one's mentor's name and vice-versa, and methods such as the dictation of ideas, which were all common at the time, make the task of distinguishing ʿAbduh's own writings even more complicated. Another complicating factor is the politicisation of ʿAbduh's works and the wish of some to highlight certain aspects of his thought while undermining others.

For instance, ʿImāra described the second volume of Riḍā's *Tārīkh al-Imām*[5] (compiling ʿAbduh's writings) as "weak… comprising only a sixth of what is really ʿAbduh's" and also as "disfigured, for politics played a part in the material included in it".[6] Riḍā himself even wrote that certain articles – and more shockingly certain sentences – were left out. According to Riḍā, Fatḥī Zaghlūl suggested removing certain parts – particularly articles of *al-ʿUrwa al-Wuthqā* –

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[4] ʿImāra, *al-Aʿmāl al-Kāmila li'l-Ustādh al-Imām Muḥammad ʿAbduh*, Cairo: Dār al-Shorouk, 2006, vol. 1, p. 18.
[5] Muḥammad Rashīd Riḍā, *Tārīkhrīkh al-ustUstādh al-Imām al-Shaykh Muḥammad ʿAbduh* (, Cairo: Dār al-Faḍīla, 2003)..
[6] *Aʿmāl*, vol. 1, p. 204.

that would anger the British and Riḍā agreed to "remove what was purely political and in relation to Egypt, Sudan and mobilising the Muslim world and India against Britain, but leave general reform articles... but he also asked to remove certain sentences from certain articles, which I only reluctantly agreed to".[7]

ʿImāra notes that although he first tended towards trusting the conclusions of the committee formed after ʿAbduh's death to compile his works, he became suspicious due to inconsistencies. Fatḥī Zaghlūl who compiled 35 articles from *al-Waqāʾiʿ* was close to the British and the Khedive, implying that he tended to remove or reduce ʿAbduh's articles supporting the ʿUrābī revolution. Among the supporting evidence cited by ʿImāra was the fact that Zaghlūl compiled 30 articles by ʿAbduh in 1881 including a number criticising the revolution and calls for a parliament, while during the six months in the beginning of 1882 when ʿAbduh supported the revolution, only one – apolitical – article was included. Also in some articles ʿAbduh referred to previous related articles which formed part of the same series, of which only one out of six was included, while others (in support of the revolution) were left out. Thus ʿImāra decided to ignore compilations of that committee and go to the original sources. He found 65 rather than 34 articles written by ʿAbduh in *al-Waqāʾiʿ*. Although he gives many arguments to support his conclusions, not all of the articles included were explicitly ʿAbduh's, indicating once again the persistent confusion about ʿAbduh's writings.

In addition to the political factor, the Sufi/orthodox split and secularist/Islamist split among ʿAbduh's followers have led to a similar bias in highlighting or rejecting particular aspects of ʿAbduh's thought. This is the case for instance in relation to works of philosophical Sufism such as *Al-Taʿlīqāt ʿalā Sharḥ al-Dawānī li'l ʿAqāʾid al-ʿAḍudiyya*. ʿImāra concludes this latter was the work of al-Afghānī, based on arguments such as ʿAbduh's age, the writing style and a number of other supporting arguments detailed over 16 pages – in addition to ʿAbduh's own explicit confirmation of that attribution to his mentor in the introduction he wrote to the work. However, others[8] argue that ʿImāra's and Riḍā's conclusions are motivated by their wish to deny ʿAbduh's Sufi dimension.

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[7] ibid.

[8] Such as AbdʿAbd al-RazzaqRazzāq ʿAid, *Muḥammad ʿAbduh, Imām al-Ḥadātha wa al-Dustūr*, Beirut and Baghdad: The Iraqi Strategic Research Centre, 2006, and Oliver Scˡahrbrodt, *Islam and the Bahaʹi Faith: A Comparative Study of Muḥammad ʿAbduh and ʿAbdul-Baha ʿAbbas,* London: Routledge, 2007.

Sadly, the same confusion reigns in relation to one of ʿAbduh's most important works – his *tafsīr* of the Qurʾan. While his own *tafsīr* of the last thirtieth part of the Qurʾan was separately published and conclusively attributed to him, the rest of the *tafsīr* was reports of the *tafsīr* circles by his student Riḍā – a part published during his life and presumably checked by him,[9] and another published in the years following his death. In addition ʿAbduh's circles did not cover the entire Qurʾan, being interrupted by his death, reaching verse 126 of the fourth chapter, Sūrat al-Nisāʾ. Riḍā then continued to publish his own *tafsīr* under the same name of *Tafsīr al-Manār*, reaching Sūrat Yusuf. Riḍā explicitly states that following ʿAbduh's death, his own *tafsīr* tried to follow the same methodology but deviated from it.[10] However, it is surprising that even specialist Orientalist scholars fell into this confusion, such as Goldziher in his book on *tafsīr* where he attributed to Muḥammad ʿAbduh the words of Riḍā.

Anyone who wishes to analyse ʿAbduh's views on any issue should approach with caution *Tafsīr Al-Manār*, which – one must remember – was not written by ʿAbduh word for word, but compiled by Riḍā during the lectures delivered by ʿAbduh. In the absence of ʿAbduh's approval of what was published after his death, one cannot be absolutely certain that each word is to be attributed to ʿAbduh and not to Riḍā. This is a point that requires further research, and one which is often neglected by most researchers.

The compiler of ʿAbduh's complete works, Muḥammad ʿImāra comments on this issue, and criticises Muḥammad Rashīd Riḍā for unnecessarily confusing his words and those of ʿAbduh by not clearly marking the difference between the two, particularly after ʿAbduh's death. However, although ʿImāra stresses that he has, in his edition of ʿAbduh's works, taken care to extract what ʿAbduh himself had said/written,[11] there is no guarantee that he has been completely successful in that quest.

Scholars who have analysed the style and methodology of ʿAbduh's *Tafsīr* stress that one must bear in mind it was not a word-for-word report:

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[9] Up to verse 224 of Sūrat al-Baqara.

[10] Riḍā admits the difference between the 2two parts- "when I took over the writing after his death I contradicted his methodology by writing extensively on matters related to the verse from the Sunna whether in relation to its *tafsīr* or to the ruling; as well as ookinglooking into the meaning of terms or phrases and into matters of difference between scholars; and in extensively referring to related verses in other *Sūras* as well as long side-notes to discuss matters which Muslims needed to understand. p 197.

[11] ʿAbduh, *al-Aʿmāl*, vol. 1, p. 246-9.

I believe that what was reported was a close report of what the *Imām* said rather than an exact report of all that he said, nor does it convey all that he believed.[12]

While Shaḥāta notes that "the circles of Muḥammad ʿAbduh were such that the listener would be able to write them down fully without adding a letter, in view of his concise and exact style, as if they were a written chapter read by a reader",[13] long side-notes are found in the *Tafsīr* attributed to him. ʿAbd al-Ghaffār ʿAbd al-Raḥīm, in his *Imām Muḥammad ʿAbduh and his Tafsīr Methodology* notes that *Al-Shaʿb* newspaper published *Tafsīr Juz' ʿAmma* by ʿAbduh "in five consecutive editions in a short space of time, each edition in the thousands of copies. As soon as they were out, they were taken. That was because it was a concise *tafsīr* in a style close to the people. In contrast *Tafsīr al-Manār* had side discussions that sometimes took up 50 or 75 pages".[14]

Another major difference between ʿAbduh's and Riḍā's *tafsīr* methodologies was ʿAbduh's tendency to interpret the Qur'an without reliance on other *tafāsīr* and on narrations. In fact, Riḍā had explicitly criticised ʿAbduh's neglect of narrations and his "deficiency in the sciences of Hadith".[15] In contrast Riḍā's method was to "at times reject the *imām*'s *tafsīr* on the basis of *aḥādīth* he considered authentic"[16] and "at times reject the *tafsīr* of some *mufassirīn* because the related *aḥādīth* contradicted it".[17]

Shahāta warns that Riḍā's role was more than simply a scribe, as he sometimes elaborated on ʿAbduh's original ideas, and sometimes contributed his own additions: "sometimes the author of *al-Manār* presents *al-imām*'s ideas, simplifying and explaining them fully in such a way that it may seem to you that he himself is the source of the idea and explanation".[18] Similarly, in her *Qur'anic Christians: An Analysis of Classical and Modern*

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[12] Introduction by Muḥammad Abū Zahra to ʿAbdallah Shahāta's *Methodology of Imām Muḥammad ʿAbduh's Tafsīr of the Qur'ān*, iv. Shaḥāta, ʿAbd Allāh Maḥmūd, *Manhaj al-Imām Muḥammad ʿAbduh fī Tafsīr al-Qurān al-Karīm*. Cairo: Al-Majlis Al-Aʿlā li-Riʿāyat Al-Funūn Wa'l-ādāb Wa'l-ʿUlūm al-Ijtimāʿiyya, 1984.
[13] Shaḥāta p. 201.
[14] ʿAbd al-RahīmRahīm, ʿAbd al-Ghaffār. *Al-Imām Muḥammad ʿAbduh wa Manhajuhu fī al-Tafsīr*, Cairo: Dār al-Anṣār, 1980, p. 237.
[15] *Tārīkh*, vol. 1, p. 6.
[16] Shaḥāta, p. 204.
[17] ibid., p. 210.
[18] ibid., p. 208.

Exegesis,[19]Jane Dammen McAuliffe criticises Adams, Goldziher and Schacht for reducing Riḍā's role to a "scribe".[20]

Nevertheless, Shahāta stresses that "Rashīd Riḍā was a trustworthy reporter, reporting *al-imām*'s ideas and explaining and simplifying them, praising what was correct and warning against any errors".[21] He reminds us of Riḍā's invaluable contribution to preserving ʿAbduh's thoughts on *tafsīr*: "Who knows what would have been the fate of *al-imām*'s views on *tafsīr* had Riḍā not transmitted them to us? The schools of many prominent scholars were lost in the past because their disciples did not publish them".[22]

Thus when ʿAbduh passed away, he left behind thriving and diverse schools of thought inspired by his personality, his ideas and his life, but also a persistent ambiguity regarding his actual writings. This lack of certainty about the attribution of ʿAbduh's compiled works fully to him is a constant preoccupation throughout this work, and distinguishing between what he wrote and what was likely the words of others is a major challenge, primarily in relation to two questions: the attribution of chapters from Qāsim Amīn's *Taḥrīr al-Mar'a* to ʿAbduh, and the distinction between ʿAbduh's words in *Tafsīr al-Manār*. For the former, I assess the arguments of the compiler of ʿAbduh's work for including those chapters in ʿAbduh's works, and compare ʿAbduh's own writings on the subjects on polygyny and divorce with chapters on the same subjects in *Taḥrīr al-Mar'a* as a further contribution towards an opinion on the question of their attribution to ʿAbduh. The second question is a more complex one and which emerges at numerous points throughout this work. I use the following sources: the compiled *Tafsīr al-Manār* published in 1927 (and subsequent versions), the Complete Works of Muḥammad 'Abduh, edited by Muḥammad 'Imāra (1979, 1991 and 2006), which tries to exclude some additions of Riḍā's, *Tafsīr Juz' 'Amma*, written by ʿAbduh himself and published during his life, and *Al-Manār* Journal during the years it published notes from ʿAbduh's *tafsīr* lectures (1900-1912) – it should be noted that the lectures were delivered over five years, while the notes were published over twelve years. I adopt the strategy of relying on the serialised *tafsīr* published in *Al-Manār* journal

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[19] Jane Dammen McAuliffe, *Qur'anic Christians: An Analysis of Classical and Modern Exegesis*, Cambridge University Press, 2007.

[20] Another work on modern *tafsīr* which includes an analyses of ʿAbduh's *tafsīr* methodology is Baljon, J. M. S., *Modern Muslim Koran Interpretation*, E. J. Brill, 1961,

[21] Shaḥāta, p. 209 .

[22] ibid., p. 209-210.

during ʿAbduh's life. As that only extends to the first chapter and part of the second chapter, for subsequent chapters (until the middle of the fourth chapter), I critically analyse and compare the two versions (the compiled and serialised) as well as relevant writings of ʿAbduh's and Riḍā's to reach a conclusion.

b. Works on ʿAbduh and Women

While most works on ʿAbduh devote a few lines or a few pages to "ʿAbduh and women" or "ʿAbduh and women's reform", often under "ʿAbduh and social reform", only a handful of works attempted a closer look at this aspect of ʿAbduh's thought and reform activities. They range from general papers on ʿAbduh and women, with pertinent conclusions but no detailed analyses of the texts, to more detailed analyses of one aspect of the subject such as marriage, divorce, education or polygyny.

Samira Haj's *Reconfiguring Islamic Tradition: Reform, Rationality, and Modernity* falls under the second of the two categories described above. According to Haj, ʿAbduh's aim was to "restore Islamic orthodoxy by reordering Islamic knowledge for the sake of informing and regulating social practices under the new modern condition".[23] ʿAbduh envisioned the "construction of a new Muslim subject", as fundamentally moral with a concern for the public good", to depend on reform of the institutions of education, law and family. Haj stresses that this vision was not the liberal modern self of Europe, but drew on a long-standing history within the Islamic tradition of "subjective interiority".[24] Haj highlights particularly the Mu'tazilite concept of rationality and Al-Ghazālī's "hermeneutics and technologies of the self".[25]

It is "in line with his strategy of first reviving a Muslim subject" according to Haj, that "ʿAbduh placed huge importance on the family as a site for moral development".[26] Haj argues that "Abduh imagined the future family to be both nuclear and monogamous; marriage should be founded on love, compassion and mutual respect between two adult individuals". However, Haj

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[23] Haj, p. 74. Samira Haj, *Reconfiguring Islamic Tradition: Reform, Rationality, and Modernity*, Stanford, CA: Stanford University Press, 2009, p. 74.
[24] ibid., p. 110.
[25] Ibrahim Moosa, *Ghazali and the Poetics of Imagination*, quoted by Haj, p. 111.
[26] Haj, p. 127.

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bases her arguments about ʿAbduh's vision of marriage, his criticism of the traditional definition of marriage and of arranged marriage, as well as his description of polygyny as degrading, and his opposition to segregation and veiling, exclusively on the chapters from *Tahrīr al-Marʾa*, which she simply presents as "ʿAbduh's section on family" within Amīn's book.

Surveying ʿAbduh's reforms of the court system, Haj stresses that he "did not question the importance of Shariʿa law for the advancement of Egypt as a modern nation-state". He criticised the khedives' introduction of European laws into Egypt, which were ineffective because no one understood them and few abided by them. Haj holds that ʿAbduh upheld the Islamic view that the Shariʿa is the source of the law "implicitly discarding the liberal European view that the state ought to be the source of law".[27]

Haj's main weakness in her analysis of ʿAbduh's view of marriage and divorce is the fact that she bases her conclusions on the chapters on marriage, divorce and polygyny from Qāsim Amīn's *Tahrīr al-Marʾa*. As well as the uncertainty in the attribution of the chapters used, Haj does not refer to or analyse ʿAbduh's views on those topics as expressed in the *Tafsīr* and ʿAbduh's articles.

Fahmy Taufiq Muḥammad Makbul's PhD thesis: *The Development of Reform Concepts in Nineteenth-Century Egypt with Special Emphasis on Shaykh Muḥammad ʿAbduh and his Group*[28] predictably touches on "Abduh's Views on Women" in seven pages of the thesis. Makbul emphasises the concept of women's equality in ʿAbduh's *tafsīr*. Similarly to Haj, Makbul assumes ʿAbduh's "involvement in Amin's writings" citing ʿImāra, al-Ṭawīl, Hourani and Vatikiotis for support. The main subjects addressed by ʿAbduh in relation to women's reform are concluded to be the education of women, reform of divorce laws and control of polygyny. Makbul also underlines the significance of Abduh's call for the enlightened women of his generation to form a society for the service of women and the establishment of schools and welfare centres for girls.

In her thesis on Egyptian women and family law reform, Hoda Helmy discusses the roots of the Egyptian modern feminist movement, tracing its roots to the "reformist movement". Starting with al-Ṭahṭāwī, Helmy then highlights ʿAbduh and his time as the "phase of

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[27] ibid., p. 139.
[28] Victoria University of Manchester, 1983.

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liberation".[29] Helmy attributes progress in women's status in this phase to "the courage of khedive Ismail and intellectuals such as Muḥammad ᶜAbduh and his disciples". Helmy notes that ᶜAbduh talks less about women's education, which had become an accepted matter, and more about the reform of their marriage relations and calling for restricting polygyny and divorce.[30]

Another thesis on Muslim family law, Du'a Mahmoud Abd Fino's *The Influence of the Concepts of Qawama and Wilaya in the Formation of the Status of Muslim Women in Light of Maqasid al-Shariᶜa*, refers to ᶜAbduh's views on the subject,[31] but falls into making conclusions about ᶜAbduh's views on *qiwāma* based on Riḍā's statements.

Muḥammad ᶜImāra, the compiler of *The Complete Works of Muḥammad ᶜAbduh* discusses ᶜAbduh's views on "the cause of women" in his *Islam and Women in Muḥammad ᶜAbduh's View*.[32] ᶜImāra unequivocally argues that ᶜAbduh's thought was "the greatest effort in Islamic *ijtihād* by the greatest Muslim mind which looked into the Qur'an and Sunna to find within them – using the mind of the enlightened Muslim – the cure for the illnesses of our contemporary societies, and in particular those of family life".[33]

Unlike Haj's study, ᶜImāra considers ᶜAbduh's writings on family reform in his articles, *tafsīr* and *fatāwā*. Imāra argues that "the Muslim world in general remains behind the progressive enlightened stance adopted by *al-Ustādh al-Imām* on family issues in general, and particularly marriage, divorce and polygyny".[34] Imāra highlights the link between ᶜAbduh's family law reform and his wider reform views, in which the family represents the building basic unit of a strong reformed united nation – a recurring theme of nationalist discourse at the time, although ᶜImāra does not link ᶜAbduh's views to that discourse.

While ᶜImāra focuses on ᶜAbduh's alarm at the "disintegration" of the Egyptian family, he correctly notes that ᶜAbduh did not blame that state on women and did not "unlike others, place sole responsibility on women because she 'induces *fitna*' but rather places more responsibility on

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[29] Helmy, p. 283. Helmy, *The status of women in Islam: A comparative study with particular reference to Egypt.* PhD Thesis, University of Wales, Lampeter, 1994, p. 283.

[30] ibid., p. 285.

[31] Du'a Mahmoud Abd Fino, *The influence of the concepts of Qawama and Wilaya in the formation of the status of Muslim women in light of Maqasid al-Shariᶜa* (, Thesis, University of Birmingham, 2004), pp. 184-189.

[32] ᶜImāra, 1975: *Al-Islām wa'l-Mar'a fī Ra'y Muḥammad ᶜAbduh*, Cairo, Al-Qāhira Lil-Thaqāfa al-ᶜArabiyya, 1975.

[33] ibid., p. 4-5.

[34] ibid., p. 11.

men".[35] Instead ʿAbduh goes beyond this "superficial view of the problem" to relate it to "incorrect understanding of the Shariʿa view of the relationship between men and women and of family relations".[36] ʿImāra highlights the important and revealing, but rarely referred-to quote from ʿAbduh, where he relates degrading views of women to the pre-Islamic *jāhilī* views from which Islam "liberated women and gave them equal rights to men".[37] ʿImāra highlights ʿAbduh's assertion that, before Islam, "people did not view women as important for the success or corruption of their social life, until revelation taught them that".[38] However, "people in each epoch only take from revelation as much as they are ready for, and the Qur'an's rulings for the reform of families – in good treatment of women – was not fully practiced by the *umma,* but it was rather forgotten by it, returning to the ignorance of *jāhiliyyā*".[39] Although ʿImāra does not explicitly stress this, the quote is important in its setting of the text (the Qur'an) as the ideal expression of women's liberation, and not any application of the ideal in practice, not even that of the first generation of Muslims. This principle is one that is often ignored, both by later reformists who focused on Islam's liberating principles without distinguishing between the ideal principles and their imperfect expression in Muslim societies, thus setting early Muslim society as the complete ideal model, and by critics of ʿAbduh who failed to discern this distinction and agreed with later reformists by insisting that "reformist Islam" in general only looks back in time to a perfect golden age to be duplicated uncritically.

Imāra emphasises ʿAbduh's belief in a "real equality between men and women in rights and duties",[40] and sees no contradiction between that equality and ʿAbduh's emphasis of men's "leadership" within the family which is a necessity of division of roles. Although ʿImāra accepts ʿAbduh's justification of this leadership and its consequences (such as discipline), he suggests that this justification is on the basis of particular "natural and acquired" leadership characteristics, and are thus not necessarily restricted to men absolutely.[41] In relation to "discipline", ʿImāra chooses to selectively focus on ʿAbduh's statements which consider the

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[35] ibid., p. 13.
[36] ibid.
[37] ibid., p. 16.
[38] ibid.
[39] ibid.
[40] ibid., p. 17.
[41] ibid., p. 18.

husband's right to "discipline" to be restricted, not the norm, and not morally commendable, while not commenting on other statements which consider it something natural and un-condemnable.

Imāra's book is more of a compilation of articles and sections from the *tafsīr* which addressed ʿAbduh's views on marriage, divorce, polygyny and equality, than an indepth analysis and contextualisation of ʿAbduh's writings on women. The compilation is indeed useful and extensive, if not comprehensive. Interestingly he does not include the chapters on marriage, divorce, polygyny and *ḥijāb* from Qāsim Amīn's *Taḥrīr al-Marʾa* although in his compilation of ʿAbduh's complete works, he strongly – if not completely convincingly – argues in support of the claim that they were written by ʿAbduh. According to ʿImāra, ʿAbduh's writings on women constituted "a contribution of rationalist enlightened Islamic *ijtihād*" which are important in their content as well as the "advanced Islamic methodology of interpreting Islamic texts" they demonstrate.[42]

Fatima Ouzouil agrees with ʿImāra's view on ʿAbduh's contribution to Islamic discourse on women and their liberation, but laments the lack of progress since his time:

> In reality, Muḥammad ʿAbduh's contribution was an important founding step as part of a process which did not see significant progress over the period in question. It established the foundation for solving a problem that still exists. He sought to produce an enlightened reading of religious texts that does not contradict progress and does not obstruct Muslim women's enjoyment of a number of rights. In his view religion was not a factor in establishing patriarchal domination, attributing the latter to the state of intellectual stagnation and social decline. Subsequent discourses, however, did not deepen the rational element in his contribution, nor did they look into the foundations of that domination in the social, political and cultural histories of Muslim societies, away from religion. Instead, they repeated the same hypotheses he adopted, in one way or another, in various phases.[43]

Whereas ʿImāra stresses ʿAbduh's enlightened, progressive and radical aspects in ʿAbduh's writings on women, Fraj Ben Romḍān, in contrast, exposes the shortcomings, ambiguities and contradictions in the same writings. In his *Qaḍiyyat al-Marʾa fī Fikr al-Nahḍa*

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[42] ibid., p. 40.
[43] Fatima OuzouilZahra Ozraouil, *Al-Masʾala al-Nisāʾiyya filfiʾl Khiṭāb al-ʿArabī al-Hadīth*, Cairo: al-Majlis al-Aʿlā lil-thaqāfaliʾl-Thaqāfa, 2004, p. 322.

(The Question of Women in the Naḥḍa Thought),[44] Ben Romḍān highlights that despite the *Nahḍa* school (Arab renaissance reform school) reformists' promotion of women's education and family law reform, "when one turns to some theoretical fundamentals, one finds a not insignificant amount of contradiction and confusion". Most importantly, although reformists seemed to embrace the principle of equality between men and women, their maintenance of gendered hierarchies, particularly within the family, exposes "the fundamental contradiction which has become a fixed characteristic of all those who talk about the woman question from an Islamic perspective".[45] This contradiction, in Ben Romḍān's view, demonstrates the urgency of the cause of women's reform in practice, like other practical pressing problems at the time, which led to the hasty formulation of incoherent theories more focused on practical results than theoretical adequacy. In other words, "it is in the nature of this [reformist] vision to adopt premises then decline to take them to their eventual conclusions".[46]

Another criticism of the reformist school's approach to the question of women was its marginalisation of women, as individuals, on the one hand, and on the other the exaggeration of women as tools for social reform: thus on the level of theoretical foundations, the reformist discourse was patriarchal, assuming a gendered division of social roles, whereas on the other hand it made the reform of women the starting point and key to everything, as some sort of magical wand of reform. Ben Romḍān sees this as an expression of reformists' personal experience, after failed reform attempts, leading them to seek refuge in the cause of women's reform, particularly in the case of Tahar al-Haddad.[47] Ben Romḍān emphasises the patriarchal view of reformists which believed in a natural division of social roles, and glorified the institution of the family. However, Ben Romḍān follows the classical view of these characteristics as resulting from colonised societies taking refuge in the last sphere of resistance against cultural invasion, and does not relate this belief to the rise of the modern bourgeois family cult prevalent at the time. Another "paradox" highlighted by Ben Romḍān is the discrepancy between the author of the discourse and its object, as all those who wrote on the subject of women were men. He does not seem to be aware that this is of course an illusion, due

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[44] Fraj Ben Romḍān, *Qaḍiyyat al-Mar'a fī Fikr al-Nahḍa*, Sfax, Tunisia: Dār Muḥammad ʿAlī al-Hāmmī, 1988.
[45] ibid., p. 19.
[46] ibid., p. 18.
[47] ibid., p. 75.

to the over-emphasis on male reformers at the expense of the women who wrote on the subject even before these "pioneering men", as has been highlighted in more recent literature. The third criticism is the "utilitarian" nature of reformist writings on women, which focused on women's education and work, and the related issues of unveiling and mixing of the sexes, suggesting that "women's liberation" in the view of these reformists meant the activation of an unused means of production.[48] I believe this is not a fair assessment of ʿAbduh's writings on the subject, which focused on family law reform as well as education, and unlike others, did not dwell on women's alleged "unproductivity".

Nevertheless Ben Romḍān stresses the "positive content which is not to be undermined when compared to the condition of women at the time".[49] He also credits ʿAbduh with greatly influencing all subsequent writers on the question of women in the nature of the topics addressed and the manner in which they were approached. He further credits the reformist trend of having developed an effective idea that "placated conservatives and status-quo supporters and paved the way for later pioneers who wrote on this question theoretically or applied it in practice" that is that "the condition of Arab Muslim women had nothing to do with Islam" and that Islam granted women a high status and called for their reform.[50] Importantly, despite the incoherence within the reformist school's writings on women, Ben Romḍān notes the overall connectedness of the thought of *Nahḍa*, such that the "faulty methodology, exaggerated conclusions and generalising rulings" evident in the discussion of the question of women are present throughout the Nahḍa thought in general, as "an authentic school and clear expression of this sensitive historical juncture", which accounts for it being the most effective movement in criticising social conditions and acting to change them.[51]

Unlike others who ignore the uncertainty about alleged authorship of chapters from *Taḥrīr al-Marʾa*, or unquestionably accept the attribution, Ben Romḍān briefly discusses these claims, suggesting that they were likely part of campaigns against both Amīn and ʿAbduh aimed at belittling Amīn's book and distracting from its essence.[52]

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[48] ibid., p. 76.
[49] ibid., p. 19.
[50] ibid., p. 18.
[51] ibid., p. 22-23.
[52] ibid., p. 31.

In *Qaḍiyyat al-Mar'a fī Tafsīr al-Manār*,[53] Monji al-Chemli discusses the "issue of women in *Tafsīr al-Manār*". To his credit, Chemli acknowledges the inextricable nature of the *Tafsīr* which cannot be completely attributed to either ʿAbduh or Riḍā, and hence prefers referring generically to *Tafsīr al-Manār* (although he sometimes attributes passages to ʿAbduh without caution). Chemli highlights the difficulty in determining the *Al-Manār* views on women, as it is ordered classically, and not thematically, but concludes that the main gender-related issues addressed within it are: equality of men and women, polygyny, divorce, women's education and public participation, and *ḥijāb*. On the question of gender equality, "*Tafsīr al-Manār* believes the answer lies in commitment to the text, interpreting it in a way that makes it a means for reforming the status of women".[54] Chemli notes, on the basis of ʿAbduh's emphasis on the superior treatment of women in Islam, "*Tafsīr Al-Manār*'s absolute defensive approach to Islam's position on women, and general rulings with little historical scrutiny, as characteristic of apologetics and conservative *salafism*".[55]

Chemli highlights ʿAbduh's *tafsīr* of sūrat al-Nisā' emphasising women's equality with men in rights and obligations. However, that equality is not absolute, as leadership must go to the men, referring to the *tafsīr* of *al-qiwāma*. ʿAbduh's rationalisation of the concept of *riyāsa* "could have been appealing, had it not been for the fact that it is based on premises that are not free from arbitrariness",[56] basing men's leadership on their "greater knowledge of interests and greater strength and wealth". However, Chemli wrongly attributes a further justification of men's leadership to ʿAbduh – women's hypothetical trading of their equality for a financial compensation – which is in fact Riḍā's view as expressed in his own writings, as I point out in later chapters.

Chemli highlights the differences between ʿAbduh's and Riḍā's views on polygyny. ʿAbduh's writings, since 1881, on polygyny view it as harmful to Egyptian society and impeding its reform, stressing the restrictive nature of the Qur'anic verses on polygyny, while stopping short of basing a complete ban on polygyny on the Qur'an. In contrast, Riḍā's view is more

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[53] Monji el-Chemli, Qaḍiyyat al-Mar'a fi Tafsīr al-Manār, *Hawliyyāt al-Jāmiʿa al-Tūnisiyya*, 3, 1966, pp. 5-27.
[54] ibid., p. 12.
[55] ibid., p. 9.
[56] ibid., p. 10.

conservative "clinging to the traditional justifications of polygyny"[57] although recognising its restricted and conditional nature. On divorce, Chemli focused on ʿAbduh's disapproval of divorce, out of his concern for family stability and social stability, and highlights ʿAbduh's rejection of triple divorce and of "*taḥlīl*" marriage. He does not focus on ʿAbduh's expansion of women's access to divorce.

Chemli stresses ʿAbduh's call for women to "learn the duties and rights due to their Lord, their husbands, children, families, their nation and their faith". He highlights the difference between ʿAbduh's encouragement of women's education, which was general, and Riḍā's, which was more specific and restricted.

Chemli's conclusion is that the stance of the authors of *Tafsīr al-Manār* on the question of women is sometimes "reservedly reformist" and at other times "old and rigid, based on a *salafi* vision – returning to the position of women in the first phase of Islam".[58]

c. Knowing ʿAbduh

In addition to ʿAbduh's writings, attention to his activities, evolution and connections can give further insights. ʿAbduh is undoubtedly one of the most studied figures in modern Arab history. His life, thought and works are the subject of hundreds of studies, papers, books and theses. ʿAbduh addressed the questions that emerged out of the critical point in the history of Egypt (and the Arab and Muslim worlds) which are still being debated to this day, such that he "represented the concentrated historical expression of the birth of the modern intellectual in the chronological sense".[59]

Portrayals of ʿAbduh vary just like studies of his life and thought. One of the earliest and most important studies of ʿAbduh is Charles Adams's *Islam and Modernism in Egypt: A Study of Modern Reform Movement Inaugurated by Muḥammad ʿAbduh*.[60] Adams defines modernism as "an attempt to free the religion of Islam from the shackles of a too rigid orthodoxy, and to accomplish reforms which will render it adaptable to the complex demands of modern life. It is

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[57] ibid., p. 14.
[58] ibid., p. 25.
[59] ʿAid, p. 6.
[60] Charles Adams, *Islam and Modernism in Egypt: A Study of Modern Reform Movement Inaugurated by Muḥammad ʿAbduh* (Oxford: Oxford University Press, 1933).

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inspired and dominated chiefly by theological considerations".[61] He emphasises ʿAbduh's novel interpretation of the text, which "gives reason full authority in interpreting revealed text" and promotes the "precedence of reason over the literal meaning of the divine law in the case of conflict between the two".[62] ʿAbduh held that if there is contradiction, "reason must believe that the apparent sense was not intended. It is then free to choose between interpreting the passage consistently with the rest of the words of the prophet in whose message the doubtful passage occurs, and between resigning the matter to God and His Knowledge".[63] However, ʿAbduh does not always apply this – or rather what may have seemed reasonable to him no longer seemed reasonable to some Muslims – particularly women – a century later – who made use of the principle of "re-interpreting" or "resigning the matter to God" when facing religious texts which seemed to contradict reason.

Adams highlights ʿAbduh's emphasis of the "absolute equality of all men in their essential nature and inherent rights, including women".[64] ʿAbduh compares the status of women in other nations belying "the claim of Europeans to be the first to honour women" – though admitting that "Muslims have been at fault in the education and training of women and acquainting them with their rights".[65] Adams also highlights ʿAbduh's letter to an English clergyman where he distinguishes between laws that are open to modification according to circumstances like divorce, polygamy and slavery.

Adams' work remains the most "well-integrated study"[66] of ʿAbduh, conscious of "the vital relation which existed between the character of his thought and his activities as a reformer".[67]

There are numerous primarily biographical works on ʿAbduh, such as those by Sedgwick,[68] Uthmān Amīn,[69] and Rashīd Riḍā's *Tārīkh al-Ustādh al-Imām al-Shaykh*

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[61] ibid., p. 1.
[62] ibid., p. 129.
[63] ʿAbduh, *al-Aʿmāl al-Kāmila li'l-Ustādh al-Imām Muḥammad ʿAbduh*, vol. 3, p. 451.
[64] Adams, p. 151.
[65] ibid., p. 152.
[66] Suhail Ibn Salim Hanna, "Biographical Scholarship and Muhammad ʿAbduh", *The Muslim World*, Vol. 59, issue 3-4, July 1969, p. 300-307, p. 302.
[67] Adams, p. 108.

Muḥammad ʿAbduh. In his paper on "Biographical Works on Muḥammad ʿAbduh", Suhail Hanna notes that despite all the above works and others, there is no "definitive biography" and there remains the "lack of a solid, complete, balanced, integrated, fair and sensitive portrayal of ʿAbduh's life".[70]

In addition, a number of works focused not on ʿAbduh's life and activities but on religious, legal and intellectual reform in his thought. The main studies include Jacques Jomier's *Le Commentaire Coranique du Manār: tendances modernes de l'exegese coranique en Egypte*,[71] Goldziher's *Die Richtungen der Islamischen Koranauslegung*,[72] Malcolm Kerr's *Islamic Reform: The political and legal theories of Muḥammad ʿAbduh and Rashīd Ridā*,[73] and Horten's *Muḥammad ʿAbduh: sein Leben und seine theologisch-philosophische Gedankenwelt*.[74]

Horten's two-part study of ʿAbduh's life and ideas concluded a negative evaluation of ʿAbduh's intellectual reform: "How much that is unacceptable still shackles the flight of his thought! There still remains fundamental rubbish to be carted away in order to create room for a new building".[75] Horten's comments betray a tendency by some orientalists to write off "Islamic reform" as, in their view, one must do away with what they deem unacceptable so that a completely new building can be constructed – thus always ending with a disappointed evaluation of ʿAbduh's contribution for not going far enough.

Whereas the early decades of the twentieth century brought a number of important western works on ʿAbduh which enthusiastically translated some of his works and presented his life and ideas to a western audience, with a generally sympathetic evaluation of his reform project, at least in terms of ideas if not actual achievements, the middle decades of the twentieth century saw the publication of a new genre of works on ʿAbduh. The general decline of enthusiasm for "Islamic modernism" in the Muslim world, with its replacement by its two heirs –

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[68] Mark Sedgwick, Muhammad ʿAbduh, (Makers of the Muslim World) (Oxford: Oneworld, 2010).
[69] 'Uthman Amīn, *Al-Ustādh al-Imām Muhammad ʿAbduh: Rāʾid al-Fikr al-Masrī*. Translated by Charles Wendell (Washington, D.C.: American Council of Learned societies, 1953).
[70] Hanna, p. 307.
[71] (*The Manār Commentary on the Qurʾan: Modern Trends in Qurʾanic Exegesis in Egypt*). Jacques Jomier, *Le Commentaire Coranique du Manār: Tendances Modernes de l'Exégèse Coranique en Égypte*. Paris: Maisonneuve, 1954.
[72] Goldziher, Ignac, *Die Richtungen der Islamischen Koranauslegung*. Leiden, Brill, 1920.
[73] Berkeley: University of California Press, 1966.
[74] *Beitrage zur Kenntnis des Orients*, xiii (1915), 85- 114; xiv (1916), 74-128.
[75] ibid., p. 128.

secularism and Islamism/revivalism – contributed to the emergence of negative evaluations of ʿAbduh's reform project, judging it to be rather unsuccessful. In addition to Kerr's generally negative evaluation of ʿAbduh's contribution to Islamic reform, a different image of ʿAbduh appears in the work of Elie Kedourie, *Afghānī and ʿAbduh: An Essay on Religious Unbelief and Political Activisms in Modern Islam*.[76] In this study, Kedourie calls into question the authenticity of al-Afghānī and ʿAbduh as Muslim reformers, and instead regards the two men as unbelievers exploiting religious discourse purely for political ends. Professor Mohsen Mahdi discusses "Kedourie's debunking tactics"[77] and Arnold Toynbee also detects Kedourie's urge to debunk and remains mistrustful of his conclusions, in his review of the work.[78] Nevertheless, Kedourie's study suggests that "in the wester of the psychological-physical happenings and in the bulk of ʿAbduh's work, there are many clues that have remained untapped by sympathetic and critical biographers".[79]

Leaving aside Kedourie's motivations, I believe that the prior stance adopted by researchers on ʿAbduh – whether sympathetic or unsympathetic – has been one of the reasons for both the partly-arbitrary attribution of chapters from *Taḥrīr al-Mar'a* to him, and for the lack of interest in a detailed, indepth, critical study of ʿAbduh's writings on women. A sympathetic view on ʿAbduh and desire to highlight his positive contribution to "women's liberation" is an implicit factor in, for instance, ʿImara's efforts to attribute the chapters to ʿAbduh.[80] However, a detailed study of ʿAbduh's writings on women could result in a view of ʿAbduh as more "liberal" or more "conservative" than those with a pre-determined view of ʿAbduh – and on "women's liberation" – may prefer.

Another book also "casting doubts on their [Afghānī and ʿAbduh's] posterior perception as Sunni reformers of Salafi provenience"[81] is Oliver Scharbrodt's *Islam and the Baha'i Faith: A Comparative Study of Muḥammad ʿAbduh and 'Abdul-Baha 'Abbas*. However, Scharbrodt's

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[76] New York: Humanities Press, 1966.

[77] Mohsen Mahdi, "Jamal al-Din al-Afghani", *Arab Journal*, IV, 2, 3, 4 (1967), 17-22.

[78] Arnold Toynbee, "Book Reviews", *The Royal Central Asian Journal*, 54:1 (1967), 105-106.

[79] Hanna, "Biographical Scholarship and Muhammad ʿAbduh", p. 306.

[80] Similarly, Leila Ahmed implicitly supports this by indirectly arguing, within her overall negative discussion of Amin's work, that the chapters attributed to ʿAbduh are more rational and balanced. Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*, Yale University Press, 1992, p. 161.

[81] Oliver Scharbrodt, *Islam and the Baha'i Faith: A Comparative Study of Muḥammad ʿAbduh and 'Abdul-Baha 'Abbas*, London: Routledge, 2007, p. 170.

work does not embrace sweeping judgments on ʿAbduh's alleged agnosticism but criticises them as well as "standard narratives on his allegiance to Sunni Islam",[82] seeing both as simplistic constructions of orthodoxy and heterodoxy that ignore the evolution in ʿAbduh's thought.

Scharbrodt presents ʿAbduh and Abul-Baha as "religious dissidents who made use of the creative output of charismatic authority in order to develop alternative readings of the Islamic tradition which would accommodate Western modernity without blindly imitating it".[83] They also "experienced the precarious character of religio-political dissent" and moved on to non-charismatic models of religious authority, with ʿAbduh dissociating himself from religious dissidence and buttressing his credentials as a *mujaddid* and a Sunni reformer.[84] He "returned to traditional scholarly authority" but wanted to create a new type of "activist religious scholar who is socially active and politically conscious without becoming too closely associated with governmental policies",[85] moving away "from politics to the private sector".[86] The evolutions and incomplete transformations in ʿAbduh (and Abul-Baha) led to intellectual legacies and movements with "tensions and contradictions which had to be resolved by their disciples and successors".[87] Scharbrodt also links these tensions to patterns in Muslim historical experience and inherent tensions within Islam. In my study of ʿAbduh's writings on women, I consider the different – and sometimes contradictory – views expressed by ʿAbduh in various media and contexts, and possible causes.

Scharbrodt's study advocates a novel look at movements that have acquired standardised portrayals: reformism, modernism, traditionalism and Sufism. In addition to his conclusions, Scharbrodt's method of placing two figures from seemingly completely dissimilar movements in a common context in relation to each other to reveal "the common ground shared" by them and "the processes that led to the parting of their ways"[88] is insightful and useful for studying other apparently dichotomous movements: for instance the two branches of the ʿAbduh school, or current feminist and Islamist groups.

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[82] ibid., p. 170.
[83] ibid., p. 84.
[84] ibid., p. 98.
[85] ibid., p. 141.
[86] ibid., p. 143.
[87] ibid., p. 144.
[88] ibid., p. 28.

Vatikiotis portrays ʿAbduh as a "humanist", in his "Muḥammad ʿAbduh and the Quest for a Muslim Humanism".[89] Vatikiotis' introductory remark that "the contact between East and West... has been further complicated by the unreadiness of the Muslim to rationalise, since his religion never constituted for him an abstract intellectual system"[90] suggests early on a not entirely sympathetic view of the chances for "Islamic reform".

In Vatikiotis' view, ʿAbduh's humanism begins with his introduction of "a novel concept of social responsibility" and the idea that Islam is "a social religion which has combined in its message the welfare of man in this world and in the hereafter".[91] Despite the shortcomings of his thought, he "came closest to a reformulation of the fundamental position of Islam", but his "rationalist-humanist" reformulation of Islam had to contend with major "solidly anti-liberal forces" within Islam. Vatikiotis insists on the "humanist", "anti-revolutionary", "anti-pan-Islamism" singular nature of ʿAbduh. Articles or passages that do not fit into this image, such as ʿAbduh's emphasis of "Islamic patriotism" above "national taʿaṣṣub" are undermined and ignored as "full of contradictions and erroneous presuppositions".[92]

ʿAbduh's main aim, according to Vatikiotis, was "to activate the belief in God into social action", hence his emphasis on social action, justice, public interest. However, his failure is mostly due to the insurmountable obstacles inherent in Islam itself which are opposed to "humanism of any kind in Islam". This echoes Cromer's remark that "Islam cannot be reformed; that is to say, reformed Islam is Islam no longer"[93] – which reveals that negative evaluations of ʿAbduh's reform efforts by a number of intellectuals are often less about their unsympathetic stances on ʿAbduh, and more about their unsympathetic stances on the possibilities of Islamic reform itself.

d. Situating ʿAbduh: Islamic Reform

ʿAbduh did not write in a vacuum, but is to be read within various discourses: within scholarly Islamic scholarship, within the revivalist discourse, and within nationalist discourses.

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[89] Vatikiotis, P. J., "Muḥammad ʿAbduh and the Quest for a Muslim Humanism", *Arabica* 4.1 (1957): 55–72.
[90] ibid., p. 55.
[91] ibid., p. 59.
[92] ibid., p. 63.
[93] Cromer, *Modern Egypt*, vol. 2, p. 229.

Undoubtedly, he was first and foremost a reformer, promoting "Islamic reformism", or "Islamic modernism". This movement has been the subject of various studies, such as Gibb's *Modern Trends in Islam*,[94] Albert Hourani's *Arabic Thought in the Liberal Age, 1798–1939*,[95] Fazlur Rahman's *Islam*,[96] Nadav Safran's *Egypt in Search of Political Community: An Analysis of the Intellectual and Political Evolution of Egypt, 1804-1952*,[97] Charles Kurzman's *Modernist Islam*,[98] *Pioneers of Islamic Revival*, edited by Ali Rahnema,[99] Hisham Sharabi's *Arab Intellectuals and the West: The Formative Years, 1875-1914*,[100] and Basheer Nafi's *The Rise and Decline of the Arab-Islamic Reform Movement*[101] and "The Rise of Islamic Reformist Thought and its Challenge to Traditional Islam".[102]

As well as the material on ʿAbduh's life and thought, the above works are highly relevant to the understanding of ʿAbduh's environment, the nature, diversity and evolution of the reform movement he belonged to, and the various definitions and portrayals of this movement.

Taking the history of thought as his method, Hourani pays close attention to what ʿAbduh wrote and thought on the discourse of reform and links his reformist thought to circumstances in which ʿAbduh lived and grew up. According to Hourani, 'Abduh's reform was based on a "distinction between what is essential and unchanging in Islam and what is inessential and could be changed without damage", the "compatibility of reason and religion", "adopting Ibn Taymiyya's distinction between *ʿibādāt* and *muʿāmalāt*" and "identifying traditional concepts of Islamic thought with dominant ideas of modern Europe".[103]

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[94] Gibb, *Modern Trends in Islam*, Chicago: University of Chicago Press, 1947.

[95] Hourani, Albert, *Arabic Thought in the Liberal Age, 1798*–1939. Cambridge: Cambridge University Press, 1983.

[96] Fazlur Rahman, *Islam*, Chicago: University of Chicago Press, 1979.

[97] Nadav Safran, *Egypt in Search of Political Community: An Analysis of the Intellectual and Political Evolution of Egypt, 1804-1952*, Cambridge, Mass.; London : Harvard University Press, 1961.

[98] Charles Kurzman (ed.), *Modernist Islam, 1840-1940: A Sourcebook*, New York: Oxford University Press, 2002.

[99] Ali Rahnema (ed.), *Pioneers of Islamic Revival*, London and Atlantic Highlands, NJ: Zed Books, 1994. Particularly Yvonne Haddad's paper: *Muhammad ʿAbduh: Pioneer of Islamic Reform*, 30–63.

[100] Hisham Sharabi, *Arab Intellectuals and the West: The Formative Years, 1875-1914*, (Baltimore, MD: John Hopkins University Press, 1970).

[101] Basheer Nafi, *The Rise and Decline of the Arab-Islamic Reform Movement*, London: Crescent Publications (UK) in association with The Institute of Contemporary Islamic Thought, 2000)

[102] In *Islamic Thought in the Twentieth Century*, edited by Suha Taji-Farouki and Basheer M. Nafi, London: I. B. Tauris, 2008.

[103] Hourani, p. 148.

Hourani highlighted ʿAbduh's "tendency to blur intellectual distinctions and refusal to open old controversies",[104] which agrees with and explains his selective, gradualist incomplete reform in some areas of which authors such as Kerr and Horten had complained. The ambiguity of some of his views allowed him to influence a broad and diverse set of individuals and groups. Nevertheless, Hourani stresses the importance of ʿAbduh's influence, as "his teaching was in the end to be rejected by many of those to whom he addressed himself, but remained working beneath the surface, the unacknowledged basis of the religious ideas of the ordinary educated Muslim".[105]

Hourani, however, added that ʿAbduh's attempt to reconcile Islam and modernity was destined to result in eclecticism and more seriously to distort the "authentic" Islam for future generations, generating more confusion. Regarding the charges of agnosticism, Hourani gives a mixed response, judging that while theses charges cannot "stand against evidence of his own writings and of those who knew intimately the movement of his thought", "the doubts have a certain validity" pointing to "a sort of eclecticism". [106]

Sharabi divides Arab intellectuals into conservatives, reformists and modernists, ranging between modernism "a positive attitude toward innovation and change and toward western civilization" and "traditionalism", "a negative attitude toward all types of innovation and toward the west". Reformists occupied the space in the middle. While reformism is categorised by some as "Islamic modernism", Sharabi holds that reformism was "modernising only in a special sense and a limited degree" and was "at heart tradition-bound", "not much more than an enlightened conservatism". The result was that reformism "opposed the secularisation and "westernisation" elements of social modernisation more effectively than conservative traditionalism ever did".[107]

Between the poles of conservatism and modernism, Sharabi identifies four trends composed of two pairs: Islamic conservatism and Islamic reformism, describing both as "tradition-bound", and Christian Westernism and Muslim secularism, described as "modern-

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[104] ibid., p. 162.
[105] ibid., p. 130.
[106] ibid., p. 141.
[107] Sharabi, *Arab Intellectuals*, p. 10.

oriented".[108] ʿAbduh's reform movement, according to Sharabi was far from the Protestant reform movement, but rather "a neo-orthodox movement", which "could neither free itself from the weight of traditional dogmatism nor properly adapt itself to the new modern concepts".[109]

Sharabi's depiction of the reform movement, particularly in his emphasis of both its "traditionalism" and its emergence primarily as a reaction to the European political and cultural threat, as well as his positive depiction of "secular modernism", as two completely opposed categories, exemplifies traits of the "modernisation theory" which was still dominant at the time. However, the rise of post-modern and post-colonial critiques contributed to the emergence of a more nuanced view of the terms "modernism" and "traditionalism". My study of ʿAbduh's writings on women assesses these views of the reform school by questioning the "traditionalism"/"modernism" of ʿAbduh's views and the extent of western influence on them.

Samira Haj's *Reconfiguring Islamic Tradition: Reform, Rationality, and Modernity* falls under more recent studies critical of previous portrayals of ʿAbduh, reform and tradition. Haj notes that ʿAbduh has been depicted "as a liberal humanist, a liberal *salafi*, and sometimes as an agnostic… never regarded as a fanatic or a fundamentalist in spite of his insistence on the letter of the Qur'an and the Shariʿa, the two defining features of 'fundamentalism'".[110] According to Haj, ʿAbduh questioned the "singular humanist secular image of modernity" which is based on "the assumption that modernisation will inevitably lead to the retreat of religion from the public into the private nonpolitical domain, as it did in the Western hemisphere".[111]

Haj addresses doubts about ʿAbduh's faith expressed by some, linking them to the above "traditional orientalist view" of Islam. She notes that from Hourani's perspective, what is "even more reprehensible than ʿAbduh's commitment to Islam is his invention of a fictitious Islam" stripped of its "true and authentic meanings" and infused with "liberal and democratic qualities that it never had".[112] In contrast, Haj sees ʿAbduh as "neither a traditionalist nor a liberal but as a Muslim reformer who was critical of both traditionalist religious authority and colonial

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[108] ibid.
[109] ibid., p. 48-49.
[110] Haj, p. 67.
[111] ibid., p. 68.
[112] ibid., p. 70.

modernity",[113] of both *taqlīd* and *taghrīb*. He sought to "both challenge and accommodate the changes in his age… to ensure the continuity of Islamic authority in the context of an overwhelming colonial modernity".[114]

Haj situates ʿAbduh "within an intellectual genealogy of *tajdid-islah*". Far from trying to recreate a past historical moment or fabricate a new Islam, Haj argues that ʿAbduh "drew on multiple tendencies and arguments within the tradition in order to establish a counter-discourse that could vie with the established Islamic orthodoxy, on the one hand, and Europeanisation, on the other."[115] Haj also disagrees with Hourani's assumption that ʿAbduh's rationalism is "constructed on a frame of Comptean positivism". In fact, Hourani himself, decades after the appearance of his seminal *Arabic Thought in the Liberal Age*, admitted that his background and training had not allowed him to perceive the indigenous roots of reformers' ideas which he had exclusively viewed as products of western influence.[116]

Haj highlights ʿAbduh's defence of Ashʿarīsm and adoption of Ghazālī's doctrine of the mean, or *mizān* – the middle-of-the road balance between two extremes – adding that it does not demonstrate his "traditionalism" or "conservatism" as Kerr suggests, but an adoption of a successful historical example of selective incorporation of new concepts and practices into the mainstream orthodox discourse enabling it "to overcome incoherence and reassert its religious authority".[117] In my study, I assess how far ʿAbduh strays from Islamic "tradition", and his attitude towards it.

In addition to the stimulus provided by western encroachment, Basheer Nafi emphasises the internal mechanisms of renewal and revival and the "cycles of reform" in Islamic history, arguing that "deviation and correction are inherent features of the Islamic experience".[118] In his study of the rich history of Islamic reform, Nafi places ʿAbduh and other late-nineteenth century

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[113] ibid., p. 71.
[114] Ibid., 92.
[115] ibid., p. 72.
[116] Hourani, *The Emergence of the Modern Middle East*, London: Macmillan in association with St Antony's College, Oxford, 1981, pp. xiv-xv.
[117] Haj, p. 87-89.
[118] Nafi, *The Rise and Decline of the Arab-Islamic Reform Movement*, p. 15.

reformists within the same tradition of reformism, but recognises the difference that while previously reform reflected "a conversation between the self-past and reality", modern reformism faced a more complex interaction which added the element of western imperialism.

Nafi stresses that reformists' vision of Islam was readily affected by their perceptions of the demands of modern times: "modernity, however it was perceived, was the internalized, powerful influence against which the project of Islamic reconstruction and revival was envisioned".[119] Reformists sought to grasp elements of western strength and introduce them to their own people – hence their discourse was bound to generate a mainly positive image of the west.

Nevertheless, Nafi notes that the reformist movement's views of the west were largely selective, non-historical and incohesive, exhibiting "some of the gravest of its inner contradictions" and reflecting "the deepening sense of self-decline and inability to repel Western military, economic and cultural challenges".[120] They lacked a deliberate methodological approach, a historical context and a frame of reference. However, Nafi stresses that reformists did not embrace everything western, but rather "Islam represented the only frame of reference that the reformists, whether ulama or statesmen could imagine", "reformists' opposition to the increasing Western penetration of Islamic societies was genuine" and "the positive projection of the West in reformist thought was equally employed as a weapon in the ongoing conflict with the traditionalist circles as it was an expression of appropriationist and assimilationist attacks."[121] In my study of ʿAbduh's writings on women, I assess the extent of western influence on his views, in terms of ideas, stances and motivations.

Whereas Nafi uses the "reformist" label for ʿAbduh and his school, Charles Kurzman, embraces the "modernist" label in *Modernist Islam: 1840-1940: A Source Book*, which presents selected writings of modernists who "typically believed that it was not only possible but imperative to show how "modern" values and institutions could be reconciled with authentically Islamic ideals."[122] Unlike traditionalists and secularists, modernists "saw the tension between

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[119] Nafi, "The Rise of Islamic Reformist Thought", p. 40.
[120] ibid., p. 44.
[121] ibid., p. 44.
[122] *Modernist Islam, 1840-1940: A Source-Book*, edited by Charles Kurzman, Oxford University Press, 2002.

Islamic faith and modern values as a historical accident, not an inherent feature of Islam".[123]
According to Kurzman, modernism distinguishes this movement from previous Islamic reform
movements, and from contemporaneous religious traditionalists. It also distinguishes them from
their successors: "from secularists who downplayed the importance of Islam in the modern
world... and religious revivalists who espoused modern values (such as social equality, codified
law, and mass education) but downplayed their modernity."[124] Whereas early use of the term
"modernism" was more neutral and descriptive, the label was subsequently challenged either by
modern reformers who preferred the term "reformism", or by more secular reformers who saw
the early modernists and those associated with their legacy as more traditional than modern, and
hence undeserving of association with modernism – preferring labels such as salafists, islamists,
fundamentalists or neo-traditionalists. Also with the rise of political movements based on Islamic
reform ideas and their hostility to Sufi trends – seen as "traditional" – a re-habilitation of the
term "traditional" occurred, associating traditionalism not with conservatism but with
authenticity and purity, whereas rival "Islamist"/"fundamentalist" trends were more frequently
described as "modernists" which acquired connotations of alien roots and lack of authenticity,
depth and coherence. Some prefer the use of the terms 'reformists' or 'revivalists' to
'modernists', since these were the terms used by the protagonists themselves, who often referred
to the hadith, "God sends to this nation at the beginning of every century someone who renews
its religion".[125] My preferred use in this work is the term "reformist" which is less value-laden
and describes more closely the principal concerns and methods of these figures, and it is the term
used by the figures of this trend themselves and their contemporaries.

e. Temporalising ʿAbduh: ʿAbduh's Era and Legal Reform

Abduh's era is one of change, conflict, resistance, transformation, failures, and hopes.
While ʿAbduh's writings – and those of fellow reformists and other contemporaries – help
readers learn about this critical phase of Arab and Muslim history, conversely, to understand,
appreciate and contextualise ʿAbduh's writings and thought, one needs to study the legal, social,

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[123] Kurzman, p. 4.
[124] ibid., p. 6.
[125] See Kurzmann, p. 81, for Riḍā's reported various chains of narration for this ḥadīth.

economic, political and cultural history of that era. As a result, my work has an important historical dimension, particularly focusing on the history of legal reform, social change, and the women's movement in Egypt and the Middle East, drawing on those historical accounts, and aiming to contribute to them.

Whereas earlier studies of Islamic reform movements, and of Middle Eastern history in general, used the writings of reformers, politicians and thinkers to create an intellectual history of the Middle East, the last decades of the twentieth century saw a growing interest in "social history", focusing on the relationships between power and wealth as key to understanding historical evolutions. While scholars more familiar with the classical "intellectual history" tradition, such as Hourani, appreciated the new insights provided by social history, they warned that "the danger of social history is that it may tend to reduce the lives of individual human beings to movements of classes or other collectivities". An attempt to correct this is "linking socioeconomic change to another kind of change, that of collective mentalities."[126] Hourani advocated an integration of all these approaches to the study of the history of the Middle East, "we need to show historical processes as reflected in the minds of individuals who are able to articulate them and, in so doing, to change their nature."[127]

Abduh's era was a time of thriving debate, scholarship, reform and activism, witnessing the rise of the nationalist movement, the spread of literacy, printing and journalism, educational reform including the reform of al-Azhar, and legal reform including reform of the Shariᶜa courts. ᶜAbduh was involved in all these activities and debates.

The major transformation of judicial structures occurred with the reinforcement and consolidation of central state administration in Ottoman Turkey and Egypt during the whole course of the nineteenth century. Although such measures started in the eighteenth century, both in scope and tempo, the changes in nineteenth century Egypt were unprecedented.

In the seventeenth century Shariᶜa courts were the centre-piece of the legal system, administering criminal, civil, and family Islamic law; non-religious state law, or *qanun*, was an exceptional legislation dealing with penal, administrative taxation, land and military matters. At the close of the nineteenth century, Shariᶜa courts became restricted to hearing family,

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[126] Hourani, "How Should We Write the History of the Middle East?", *International Journal of Middle East Studies*, Vol. 23, No. 2 (May, 1991), pp. 125-136
[127] ibid.

inheritance and endowment property cases. Furthermore Islamic family law underwent a semi-codification by the state. Many scholars, who saw the radical change of the centuries-old legal system and the loss of their own status and influence, opposed the state's reforms.

Oussama Arabi describes how "Islamic law has successfully been recast into a utilitarian tool to be used by governing elites in furthering modern goals such as national integration, economic development and egalitarianism".[128] Arabi prefers to refer to "positivisation of the Shariʿa", the process of integration of Shariʿa into the modern state political structure, rather than "legal reform".[129]

Abduh's support of the process of standardisation and codification of Islamic law draws criticism from scholars who studied the process and its shortcomings and lasting effects. According to Arabi, ʿAbduh sought the unity of Islamic law "to the point of a 'sacrilegious' break with the millenary tradition of tolerance of judicial differences on the altar of the centralising state".[130] This placing of blame on ʿAbduh and the reform school is not entirely justified, since the process of centralisation and standardisation had begun decades before ʿAbduh. Muḥammad Qadrī was asked in 1875 to put Hanafi family law in the form of a code of personal status which served as a manual for lawyers and judges. Muḥammad ʿAlī had already in his first penal legislation on 1829 initiated a process of massive borrowing of western codes and judicial structures and patronised the translation of European legal codes as a means of their successful implementation in Egypt. In 1849, new judicial structures, secular tribunals were being established and adjudicated criminal and commercial disputes under the new Europeanised codes rather than Islamic Shariʿa. Nineteenth-century legal modernisation culminated in the Mixed Courts of 1876 (adjudicating litigation involving foreigners) and the National Courts of 1883, both of which applied commercial, civil, procedure and penal laws that were primarily of French inspiration.

Abduh's project was "the creative integration of Islamic norms into the rationality of the modern Egyptian state",[131] through *ijtihād*, *talfīq* and *takhayyur*. The problem with those tools,

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[128] Oussama Arabi, *Studies in Modern Islamic Law and Jurisprudence*, The Hague: Kluwer Law International, 2001, p. 32.
[129] ibid., p. 195.
[130] ibid., p. 22.
[131] ibid., p. 32.

according to Wael Hallaq, is that they do not conform to the centuries-old tradition of Islamic jurisprudence, but only seek to maintain an illusory preservation of that tradition. For Hallaq,

> Codification is not an inherently neutral form of law, nor is it an innocent tool of legal practice, devoid of political or other goals. It is a deliberate choice in the exercise of political and legal power, a means by which a conscious restriction is placed on the interpretive freedom of jurists, judges, and lawyers.[132]

Arguing against the dominant reductionist view of Shariᶜa as rigid, monolithic and unchanging, Wael Hallaq has devoted his efforts to a deeper study of the history of Islamic jurisprudence,[133] emphasising that the tradition of Islamic jurisprudence was a system where "plurality was not seen as a problem" but as "conducive to both legal flexibility and legal change". This proficient juristic activity was further strengthened by the fact that "the religious ethic was the…. final arbiter of legal legitimacy" and the entire system was "supported by financially and administratively self-sufficient and independent institutions". None of these elements exist in modern Muslim legal systems, but what remains of the traditional system are "remnants of mutilated doctrine patched up in a disparate and methodologically deficient manner", which are "incapable of further development and change" due to their disconnection from their original "vibrant school tradition".[134] Thus, despite all the continuous references to "Shariᶜa" or its revival or renewal, according to Hallaq, "traditional Shariᶜa can surely be said to have gone without return".[135]

Nevertheless Hallaq believes "the legality and legal-mindedness that governed Muslim life for so many centuries is again required to surface in order to redress the havoc that the problems of cultural and religious crises have wreaked".[136] The solution then is "to alter what can be altered" to "remold legal theory" rather than try to "sweep modernity aside". Although that is indeed what ᶜAbduh attempted to do, Hallaq is strongly critical of his attempts and of later "religious utilitarians" who "fail to produce a cogent legal theory or methodology and thus offer nothing more than shallow juristic devices that at best attempt to justify the existing arbitrariness

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[132] Wael Hallaq, "Can the Sharia be Restored?", *Islamic Law and the Challenges of Modernity*, Haddad & Stowasser, (eds.). Walnut Creek: Altamira Press, 2004, p. 23.
[133] Amongst other works, Hallaq, *Authority, Continuity and Change in Islamic Law*, Cambridge: Cambridge University Press, 2001, and *A History of Islamic Legal Theories*, Cambridge: Cambridge University Press, 1997.
[134] Hallaq, "Can the Sharia be Restored?", p. 42.
[135] ibid., p. 42.
[136] ibid., p. 43.

of state legislation".[137] Despite the current Muslim states' exploitation of pseudo-Islamic legal reform for political ends, Hallaq still stresses the role of the state in the required "revival of Islamic law", as "the state must re-create the necessary conditions for a modern version of Islamic law to be constructed and to evolve largely on its own".[138] Again, that seems to have been the view of ʿAbduh who opted for the use of official positions to reform official legal and educations institutions. However, his attempts had met with opposition from various quarters: conservative scholars, the khedive, nationalist leaders allied with the khedive, and the colonial administration. His disciples continued the same attempts, succeeding to incorporate themselves into state administration, with mixed results.

f. The Object of ʿAbduh's Reform

Understanding and assessing ʿAbduh's writings on women requires an understanding of the situation of women in 19th century Egypt, the changes it has undergone as a result of legal, political and socio-economic developments, and the various discourses on women.

Whereas early studies of Egyptian (and Middle Eastern) women's lives at the turn of the century focused on the "improvements" in family law and positive changes in the status of Egyptian, and Arab women in general, due to the advent of modernity, more recent studies have questioned such early optimistic views. More recent historiography on women in the Muslim world generally views the codified reforms in family laws carried out by the nationalist elites of the post-Ottoman era as a form of state patriarchy that these elites needed to enact under the influence of European imperial powers. Simultaneously, these historians highlight the considerable degree of freedom, choice and autonomy enjoyed by women in the Ottoman era.

The change occurred in the nature of historiography of the Middle East and in approaches to modernisation theory. Judith Tucker, a pioneer of the application of "social history" to women in modernizing Arab states, particularly in Egypt in her detailed study of *Women in Nineteenth-Century Egypt*, analysed changes in women's lives in a period where Egypt underwent great political and economic developments. Tucker focused on four dimensions of women's roles and

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[137] ibid, p. 47.
[138] ibid, p.47.

status and how they were affected by the changes of the nineteenth century: access to property, family relations, participation in social production and the public sphere, and ideological definitions. *Women in Nineteenth-Century Egypt* constituted not only the first comprehensive study on realities of Middle Eastern women, but for the first time lower-class women were at the heart of such an investigation.

Tucker's study and similar historical works attempted to correct "problems in historiography of women in the Middle East".[139] Tucker calls Middle East history "a stepchild of 'orientalism'" continuing to bear "the imprint of its birth up to the present in its use of sources, its methodology, and its isolation".[140] Most studies of "Middle Eastern women history" tended to "not emphasise the effects of Egyptian integration into a European market on the organisation of economic and social activities, but rather the transfer of western ideas about women's roles which gradually permeated and transformed the receiving society".[141] To avoid the same pitfall, I draw on these new approaches to the history of Middle Eastern women in order to discover possible concrete socio-economic changes in the lives of Egyptian women which could have motivated ʿAbduh's ideas and reforms, rather than seeing them as motivated by abstract motivations.

Later historical studies of Middle Eastern women moved away from sweeping generalisations to reveal, based on growing evidence, especially court records, "the diversity and complexity of social organisation in societies where Islam is the dominant religion". The emerging picture was one where modernisation, unlike previously thought, had mixed effects on the situation of women. One of the main changes resulting from the new socio-economic set-up was the change in the private-public configuration: "The firmer the differentiation of these two spheres became, the more women were isolated from each other and placed under the authority of their male family members".[142]

Tucker emphasised the potential of court records to study women's activities as well as their own perceptions of their rights under the law. While courts applied Islamic law according to a specific *madhhab*, mostly the Hanafi *madhhab*, judges often demonstrated a flexible and

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[139] Judith Tucker, "Problems in the Historiography of Women in the Middle East: The Case of Nineteenth- Century Egypt", *International Journal of Middle East Studies*, Vol. 15, No. 3 (Aug., 1983), pp. 321-336.
[140] ibid., p. 321.
[141] ibid., p. 324.
[142] ibid., p. 331.

accommodating approach to women's cases.[143] Such historical works, mostly based on court records, which have been very useful for understanding the significance and context of ʿAbduh's proposed family law reforms. Bishara Doumani's *Family History in the Middle East: Household, Property, and Gender*,[144] Ron Shaham's *Family and the Courts in Modern Egypt*,[145] Yossef Rapoport's *Marriage, Money and Divorce in Medieval Islamic* Societ,y[146] Kenneth Cuno's *The Pasha's Peasants: Land, Society and Economy in Lower Egypt*, Amira Sonbol's *Women, the Family, and Divorce Laws in Islamic History*,[147] and Judith Gran's "Impact of the World Market on Egyptian Women",[148] are useful studies of the transition to modernity and its effects on women's lives and family structure, challenging the widespread view of pre-modern family as uniformly extended, stable and polygynous.

Another useful development was the linking of social history and legal studies, enabling a look at the interaction between legal texts and opinions and the way they were understood and applied. Judith Tucker's more recent *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* deals with gendered legal discourse and social relations in seventeenth- and eighteenth-century Syria and Palestine, drawing on *fatāwā* literature and Shariʿa court records. The major themes in the legal discourse on gender were marriage, divorce, parenthood, and sexuality. Tucker shows that this discourse highlighted gender differences, but at the same time proved flexible and responsive to changing conditions. In agreement with Wael Hallaq's emphasis of the use of *ijtihād* as part of the established tradition of Islamic jurisprudence, rather than a modern innovation, Judith Tucker's *In the House of Law* highlights the possibility of change and fluidity in a scholarly tradition based on a plurality of authoritative texts, as before the modern codification of Shariʿa, no one definite set of texts embodied the whole of Islamic law.

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[143] ibid., p. 333.
[144] Doumani, Beshara, ed. *Family History in the Middle East: Household, Property, and Gender*, Albany: State University of New York Press, 2003.
[145] Shaham Ron, *Family and the Courts in Modern Egypt: A Study based on Decisions by the Shariʿa Courts, 1900-1955* (Studies in Islamic Law and Society, V. 3), Leiden: Brill, 1997.
[146] Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, Cambridge University Press, 2007.
[147] Sonbol, Amira, ed., *Women, the Family, and Divorce Laws in Islamic History*, Syracuse: Syracuse University Press, 1996.
[148] *MERIP Reports* No. 58 (Jun., 1977), pp. 3-7.

Middle Eastern historiography continued to evolve. Iris Agmon describes the shift from focusing on social institutions using quantitative methods to analyse patterns of behaviour and trends of change in Middle Eastern societies, to a move toward anthropology, linguistics, and literature.[149] This change of orientation entailed historical investigations focusing on human relationships and the meanings attributed to them; in such investigations, historians employed textual analyses and methods of microhistory and, more frequently than in the previous fifty years, structured their studies as narratives. Marilyn Booth's *May Her Likes be Multiplied: Biography and Gender Politics in Egypt*[150] and Amira Sonbol's *Beyond the Exotic: Women's Histories in Islamic Societies*[151] are examples of this trend.

Each different approach to the history of Middle East women and Muslim family law has its own advantages and shortcomings, and despite the integration of various approaches within single works, the emergence of new perspectives and application of new methods to the study of "Middle Eastern women" and "Middle Eastern history" makes it necessary for anyone analysing debates on women to seek to build a complex understanding of these through reliance on books from a variety of disciplines: law, religion, political history, social history, literature and others. Works that combine elements from all the above continue to constitute indispensible reading, such as Leila Ahmed's *Women and Gender in Islam: Historical Roots of a Modern Debate*, and Beck & Keddie's *Women in the Muslim World*.[152]

g. Contextualising ʿAbduh's Writings: Contemporary Discourses on Women

With the aim of understanding and assessing the significance or ʿAbduh's writings on women, this work analyses other writings in the same period, particularly in Egypt and on women, from the mid-nineteenth century to the early twentieth century. A number of works have focused on the broader discourse on women, moving away from complete reliance on religious and legal texts to analysing writings on women in nationalist and colonialist discourses, most

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[149] Iris Agmon, "Women, History and Ottoman Sharia Court Records: Shifting Perspectives in Social History", *Hawwa: Journal of Women of the Middle East and the Islamic World* 2 (2004): 172-209.

[150] Marilyn Booth, *May Her Likes be Multiplied: Biography and Gender Politics in Egypt*, Berkeley: University of California Press, 2001.

[151] Amira Sonbol, ed., *Beyond the Exotic: Women's Histories in Islamic Societies*, Syracuse University Press, 2005.

[152] Lois Beck & Nikki Keddie, *Women in the Muslim World*, Harvard University Press, 1978.

importantly by Leila Ahmed, Lisa Pollard, David Mitchell, Mervat Hatem, Fawziyya Ghassani, Nimat Hafez Barazangi, Omnia Shakry, Afsaneh Najmabadi, Hanan Kholoussy and Lila Abu-Lughod. I draw on these to highlight aspects of ʿAbduh's discourse on women that are similar/different from the broader nationalist discourse.

While earlier works on discourses on women and the "women's liberation" movement focused on their supposed male pioneers, more recently interest has grown in the previously-ignored women writers. Among the growing literature in this field, Beth Baron focused on women's magazines in turn-of-the-century Egypt,[153] Marilyn Booth looked into the autobiographical works of turn-of-the-century Arab women, such as ʿĀ'isha Taymūr, Zaynab Fawwāz, and Mayy Ziyāda,[154] and Mervat Hatem has provided an alternative reading of ʿĀ'isha Taymūr and Malak Hifnī Nāṣif's lives and writings.[155]

Understanding the effect of these discourses, including reformists' discourses, on contemporary Arab and Muslim women's movement requires an understanding of the roots and emergence of the women's movement at the turn of the century. The works of Margot Badran, Soha Abdel-Kader, Beth Baron and Lama Abu-Odeh discuss the emergence of the Egyptian women's movement and its evolution. All these works briefly mention ʿAbduh as having provided motivation/legitimisation/support for the women's movement, but do not provide any details or analysis of ʿAbduh's contribution.

The above approaches and studies point to the complexity of the "women's question", in which law, religion, history, culture and politics merge. This continues to be the case today. Lama Abu-Odeh in "Egyptian Feminism: Trapped in the Identity Debate",[156] discusses how the involvement of all trends and groups in the discussion of women's issues and the tense manner in which they did so partially explains the slow progress in change in relation to this question. Abu-Odeh attributes the lack of rapprochement or interaction to the fact that each trend saw this as a

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[153] Beth Baron, *The Women's Awakening in Egypt: Culture Society and the Press*, Yale University Press, 1997.

[154] Marilyn Booth, Booth's *May Her Likes be Multiplied: Biography and Gender Politics in Egypt*, Berkeley: University of California Press, 2001.

[155] Mervat Hatem, ""A'isha Taymur's Tears and the Critique of the Modernist and the Feminist Discourses on Egypt", in *Remaking Women, Feminism and Modernity in the Middle East*, ed. Lila Abu-Lughod, Princeton: Princeton University Press, 1998; "The 1919 Revolution and Nationalist Constructions of the Lives and Works of Pioneering Women Writers", *Reinvisioning Egypt, 1919-1952*, ed. Amy Johnson, Arthur Goldsmidt and Salmon Barak, Cairo: American University in Cairo Press, 2005.

[156] In *Islamic Law and the Challenges of Modernity*, Haddad & Stowasser, eds., Walnut Creek: Altamira Press, 2004.

"battle" to be won – for secularists it was a battle for 'enlightenment' and 'liberation'; for nationalists a battle for 'independence' and 'nation-building'; for Islamists a battle for 'identity' and 'morality'. Each camp had no interest in understanding the other camp's motives and fears, nor in self-critique, locking the debate in repetitive polemics and apologetics.

The writing of the history of women's liberation in the Arab world has focused on Qāsim Amīn and seeing it as a movement born with that book. This overlooks women, whose writings preceded – and were more radical than – Amīn, such as Zaynab Fawwāz and 'Ā'isha Taymūr. It also overlooks books from a more religious perspective. Recent works have started to challenge this incomplete and unrepresentative history of women's liberation in the Arab world. Yet much work remains to be done to present these unknown contributors to the discourse on women. As for ʿAbduh, although his name appears in most of these historical reconstructions, it is always in a brief and general way, focusing on his fatwa on polygyny with no background or context, and without linking him to contemporary discourses. The same applies to other figures such as Rifāʿa al-Ṭahṭāwī Fāris al-Shidyāq, al-Afghānī, al-Kawākibī and others who contributed to those discourses on women, but whose contribution is overlooked or only briefly alluded to without elaboration. Of these, al-Ṭahṭāwī has perhaps received more attention than other reformers, with an already established prominent position as a pioneer of Egyptian nationalism and liberalism, and being the most prolific writer amongst them.

Abduh's influence is also acknowledged on modern interpretations of women-related religious texts, and his name appears often – if briefly – in the works of authors such as Barbara Stowasser, Asma Barlas, and Amina Wadud, for instance. The works of Aziza al-Hibri, Fernea and Bezirgan, Mernissi, amongst other Muslim feminist interpretations, have also benefited from ʿAbduh's reformist ideas and methods, as have more "mainstream" Islamist authors on "women in Islam" such as Muḥammad al-Ghazālī, Yūsuf al-Qaraḍāwī, ʿAbd al-Halīm Abū Shuqqa, Rāshid al-Ghannoushī, and Husain Faḍlallah.

The history of women's reform/liberation was traditionally presented as the case of elite modern-educated male reformers. Later critics corrected this bias by including the contribution of women writers as well as the voices of women of other classes and backgrounds. My study of ʿAbduh points to another need: correcting the writing of the history of women's reform in Egypt

(and the Arab and Muslim worlds) by including the important contribution of non-secular male and female voices.

While a study of 'Abduh's writings on women benefits from the various approaches to family law reform, women's movements and discourses on women and gender in Islam and in modern Egypt, it can also provide useful material and conclusions which can in turn benefit these areas, particularly overcoming the "battle-mode" dichotomous relation between various trends as described by Abu-Odeh.

Translations and Transliterations

I have mostly used Muḥammad Abdel-Haleem's *The Qur'an* for translations of verses from the Qur'an, although I occasionally used alternatives, as indicated. All translations from Muḥammad ʿAbduh and other primary sources are mine. Arabic words have been fully transliterated, following the Journal of Islamic Studies transliteration system, except words commonly used in the English language. Arabic names have also been transliterated, except where authors have themselves transliterated their names differently..

CHAPTER 1

MUḤAMMAD ʿABDUH, FATHER OF MODERN ISLAMIC REFORM

Perhaps no other Egyptian figure has been the subject of as many studies, in the Arab as well as western worlds, as Muḥammad ʿAbduh. His fame owes as much to his ideas as it does to the groups, movements and events of which he was a part, and to the critically influential historical period through which he happened to live. ʿAbduh's life, thought and works are the subject of hundreds of studies, papers, books and theses. The issues he raised, discussed, challenged or promoted have dominated intellectual discussions in the 20th century Arab world and still do, such that his name still frequently appears in various media – from scholarly works to magazine articles and television debates.

1.1 Context & Influences

1.1.1 Revival, Reformism and Modernism

The nineteenth century was a period of great political and socio-economic changes, as well as intellectual and religious reform. Questions of reform and progress preoccupied thinkers and scholars in the *Nahḍa* or renaissance/awakening school, particularly the central question: "how did the Arab and Muslim worlds decline while the West was in ascendance, and how can that state be changed?"

The term 'modernist' was the preferred term used by western scholars to describe Muslims who sought to reconcile their faith with modern values such as constitutionalism, nationalism, freedom of religious interpretation, scientific investigation, women's rights and

modern education. There was an existing polarisation between two principal trends characterised by avid westernisation and rigid conservatism. The third trend which emerged combined the following characteristics: rejection of both westernisation and rigidity; reform of society based on reform of religion; establishing a modern civilization on Islamic principles and positive interaction with other civilizations.[157] The term 'reformists' or 'revivalists' is preferred by those who see this nineteenth-century movement as part of the long chain of reform movements throughout Islamic history.[158] These shared the same characteristics of criticising *taqlīd* and calling for a return to the pure sources and new interpretations of Islam.

This movement was far from monolithic, with variations and even disagreements on virtually all subjects, comprising "state-building and limits on state power; elitism and egalitarianism; discipline and liberty; Europhilism and anti-imperialism… mysticism and abhorrence of mysticism; strategic use of traditionalism and rejection of traditional scholarship; return to pristine early Islam and updating of early practices in keeping with historical change".[159]

Western observers tended to be intrigued but skeptical about the chances of such a venture, since they were convinced that Islam was incompatible with modernity. For observers such as Lord Cromer, reformists were "too much tainted with heterodoxy to carry far along with them the staunch conservative Moslem. On the other hand they are often not sufficiently Europeanised to attract the sympathy of the Egyptian mimic of European ways".[160]

The context in which ʿAbduh lived and acted was critical and of great consequence on him and the evolution of his thought, and thus will be central to the study of his writings.

1.1.2 Rural Origins: Simplicity, Conservatism, Pride

Like the majority of Egyptians at the time – and indeed today – ʿAbduh grew up in a typical Egyptian village. In 1849, he was born in Maḥallat Naṣr in the Egyptian Delta, into a modest family of knowledge and piety with local influence. ʿAbduh was keen to emphasise in his

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[157] ʿImāra, *Islamic Intellectual Trends*, p. 10-11.

[158] On cycles of reform in Islamic history, see Basheer Nafiʿ, *The Rise of Islamic Reformist Thought and its Challenge to Traditional Islam*.

[159] Kurzman, p. 5.

[160] Lord Cromer, *Modern Egypt*, p. 180.

short autobiography that although his family was of modest means, they held a position of respect locally. This awareness seem to have had a profound influence on ʿAbduh who wrote that "dignity and prestige have no relation to wealth"[161] highlighting his parents' character, good deeds, and background of opposition to injustice.[162] The persecution of ʿAbduh's father – and other villagers – at the hands of unjust rulers engendered within him a strong hostility to political authoritarianism, and particularly that of the Muḥammad ʿAlī dynasty. The relatively simple and family-centred village upbringing also clearly affected ʿAbduh's views on family ties and materialism, as a natural consequence of the contrast he later experienced between the rural and urban settings.

ʿAbduh describes his childhood as "just as was the upbringing of the majority of those from the middle class in Egypt".[163] Nevertheless, his father seems not to have had an ordinary farmer's life in mind for his son Muḥammad. ʿAbduh began to learn to read and write from his father and local village teachers, and finished memorising the Qur'an in two years. Aged thirteen, his father sent him to the Aḥmadī Mosque in Ṭanṭa – then the greatest centre of Islamic learning in Egypt after al-Azhar – to continue his education. However, ʿAbduh's experience was so negative that he despaired of education altogether. Put off by the rote learning of traditional texts where he "teachers would surprise us with grammatical and juristic terms we did not understand, nor would they care to explain their meanings to those unfamiliar with them",[164] ʿAbduh left after one and a half years, returning to the village in 1865, to get married and work in agriculture.

1.1.3 Sufism: Sheikh Darwīsh

The second lasting influence on ʿAbduh was to come from his maternal uncle. He succeeded in liberating ʿAbduh from his aversion to education. He convinced him to read to him treatises from the Shādhilī *ṭarīqa* such that after one week, he "had no concern other than

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[161] *Aʿmāl*, vol. 2, p. 313.
[162] ibid., p.315- 316.
[163] ibid., p. 312. ʿAbd al-Razzāq ʿAid, in *Muhammad ʿAbduh: Imam of Modernity and Constitutionalism*, holds that this sociological term (middle class) was not used by others at that time, p. 310.
[164] *Aʿmāl*, vol. 2, p. 322.

acquiring perfect knowledge and manners".[165] ʿAbduh's love of learning was rekindled, and he returned to education, re-joining al-Aḥmadī mosque in Ṭanṭa until 1869.

ʿAbduh's uncle had the greatest influence in his life prior to his meeting with al-Afghānī. He described him as "the key to my happiness… who, in a few days, took me out of the prison of ignorance into the vastness of knowledge, from the chains of *taqlīd* to the freedom of *tawḥīd*".[166]

Sheikh Darwīsh's influence would be lasting and manifest in his manners for the rest of his life. As his student and prominent Egyptian philosopher Muṣṭafā ʿAbd al-Rāziq wrote: "the influence of *taṣawwuf* and Sufi teachings on the *Imām* were evident in his manners".[167] Darwīsh also encouraged him to study logic and mathematics, which were not taught at al-Azhar.

Although ʿAbduh expressed his indebtedness to *taṣawwuf*, saying that "all the blessing I enjoy in my religion, praise be to God, is due to *taṣawwuf*",[168] he also criticised in retrospect the "corruption of pseudo-Sufis of our time whose ways are even worse than the disobedience and deviant whims of those who corrupted Sufism before them".[169] Nevertheless spirituality and ethics remained among his major interests and concerns. ʿAbduh lamented the absence of those disciplines in modern religious teaching[170] and his interest is clear in the texts he chose to teach, edit and publish.

1.1.4 Al-Azhar: Orthodoxy and Sufi Reformism

In 1866, ʿAbduh went to Cairo to join al-Azhar.[171] Al-Azhar at the time had two groups: a conservative legalistic group, and a less conservative Sufi-leaning group. ʿAbduh attended lectures by both, studying under Shaykh ʿIllīsh, al-Rifāʿī, al-Jīzāwī, al-Ṭarābulsī, al-Baḥrāwī and others from the former group, but was closer to scholars of the latter, mainly Sh. Ḥasan Raḍwān (d. 1892), Sh. Ḥasan al-Ṭawīl and Sh. Maḥmūd al-Basyūnī.

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[165] ibid., p. 325.
[166] ibid.
[167] Muṣṭafā ʿAbd al-Rāziq, *Muḥammad ʿAbduh*, Cairo: Dār al-Maʿārif lil-Ṭibāʿah, 1946, p. 28
[168] *Aʿmāl*, vol. 3, p. 556.
[169] ibid. vol. 4, p. 388.
[170] *Tārīkh* p. 390.
[171] *Aʿmāl*, vol. 1, p. 26.

He was particularly influenced by Shaykh Ḥasan al-Ṭawīl who "used to teach the books of Ibn Sīna and Aristotle's logic, which were unusual within al-Azhar".[172] He was also taught by Shaykh Muḥammad al-Basyūnī, who gave particular attention to literary style, Arabic literature and oratory.[173] Despite ʿAbduh's strong criticism of the rigidity of the content and methods of teaching at al-Azhar, he was undoubtedly influenced by his years of learning at this institution which continued to be central to his life and his later reform efforts. He studied at al-Azhar for ten years before graduating in 1879. The delay in being awarded the ʿālamiyya certificate was due to the opposition of members of the Azhar committee who disliked his novel ideas and his association with al-Afghānī, until he was eventually supported by Shaykh Muḥammad Mahdī al-ʿAbbāsī.[174] It was also Shaykh al-Ṭawīl whom ʿAbduh would accompany to meet al-Afghānī, the next major influence in his life.

1.1.5 Al-Afghānī: Politicisation

Jamāl al-Dīn al-Afghānī visited Cairo in 1869 and 1871, and ʿAbduh met him in his second visit, while still a student at al-Azhar. ʿAbduh was drawn to his circles, which satisfied his unfulfilled longing for new ideas and stimulating discussions. The young student developed a strong admiration for the charismatic scholar after a long discussion of *tafsīr* and Sufism, "for Sufism and *tafsīr* were the coolness of his eyes, or as he said, the key to his happiness".[175]

Al-Afghānī transformed ʿAbduh's spiritual immersion in inner reflection into an immersion in public service, motivating him to begin writing and teaching, even before his graduation, starting with books on logic, philosophy and *taṣawwuf*, such as Miskawayh's *Fī Tahdhīb al-Akhlāq*",[176] demonstrating ʿAbduh's view of his own primary role as social and cultural reformer and educator.

In addition, al-Afghānī's revolutionary spirit drew ʿAbduh into direct political activism. He joined *al-Ḥizb al-Waṭanī al-Ḥurr* (Free National Party) with al-Afghānī, with the slogan "Egypt for Egyptians". Al-Afghānī was expelled from Egypt in 1879, and ʿAbduh exiled to his

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[172] ʿAbdullāh Shaḥāta, p. 13.
[173] ibid.
[174] Sedgwick, p. 12-14.
[175] *Tārīkh*, p. 25.
[176] *On the Refinement of Morals.*

village for their political activism. The National Party joined the ʿUrābī movement following the ʿAbdīn demonstration of 9 September 1881, with ʿUrābī becoming the defence minister and acting head of government in early 1882, and provoking the British to end the threat of Egyptian independence through the attack on Alexandria and the imposition of British occupation in July 1882. ʿAbduh was exiled to Beirut then joined al-Afghānī in 1884 in Paris where they produced the famous, though short-lived, *al-ʿUrwa al-Wuthqā* which promoted reform and unity and campaigned against imperialism. This intense political experience would help elaborate ʿAbduh's choices and accentuate the difference between him and al-Afghānī, the difference between the reformer and the revolutionary.[177]

1.1.6 Western Influences: How Significant?

Muḥammad ʿAbduh, like preceding reformers, acknowledged the West's advancement and Muslims' backwardness, but with differences in views of that relationship – between al-Afghānī's viewpoint calling for confrontation in view of the West's role in causing and maintaining our backwardness for the sake of hegemony,[178] al-Ṭahṭāwī 's viewpoint calling for catching up with the West's advancement and arguing that following in its footsteps does not constitute an abandonment of identity, the Christian intellectuals' viewpoint regarding modern nationalism as compatible with adopting the West as a model for advancement, and conservatives seeing any western influence as a threat. Muḥammad ʿAbduh's reformist school thus had an open, but complex, attitude in its approach to the West.

ʿAbduh's time saw an intensification of the penetration of western ideas and writings into Egypt, which had already begun from the early years of the century and expanded under the rule of Ismail. The movement of translation accelerated during al-Ṭahṭāwī 's time who was appointed director of the School of Languages in 1835 where he and his students translated European works including legal codes, military manuals, and books on science and history. Even Rashīd

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[177] ʿImāra, *Aʿmāl*, vol. 1, p. 45.
[178] ʿAbduh's generally positive view of the West is unlike al-Afghānī's, and in this regard, ʿAbdullāh al-Nadīm represents al-Afghānī's true legacy, with his absolute aversion to and distrust of everything foreign, even language.

Riḍā published several reviews of translated European works, often those related to the ideas of progress, in *al-Manār*.

It was also a time of thriving free press, particularly by Christian Arab intellectuals who settled in Egypt. ʿAbduh was familiar with these papers, and started writing in the press early on, publishing articles in al-Ahrām, as early as 1876, when he was still a student at al-Azhar. One of the books ʿAbduh taught in his informal pre-graduation circles was François Guizot's *al-tuḥfa al-adabiyya fī tārīkh tamaddun al-mamālik al-ūrubbiyya* (History of Civilisation in Europe), which he and al-Afghānī reviewed in *al-Ahrām*.[179]

Abduh referred to western authors and writings in his articles and books, including Guizot, Spencer, Renan and Hanotaux. He, like other modern reformers used concepts and terms of Enlightenment Europe. He was influenced by the ideas of progress and scientific advancement. Although he stressed that the mission of the Qur'an was ethical reform, his *Tafsīr* fell into justifying scientific theories on the basis of Qur'anic verses. For instance, he defended natural selection and survival of the fittest based on Qur'an verses.[180] He argued that God revealed religions as divine intervention to correct human behaviour, every time they deviated from the right path, and that revelation was according to the evolution of humanity.

ʿAbduh was clearly fascinated with Europe and saw it as a source of inspiration: "I never once went to Europe that there was not renewed within me hope of the change of the present state of Muslims to do something better".[181] He was deeply conscious of European advancement, and in contrast the state of Egypt which had "gone down to the abyss – ḥaḍīḍ - of decline - inḥiṭāṭ". His fascination did not lead him to believe in complete emulation of European ways or to blame Egyptian backwardness on culture and faith, as had been preached by European scholars and politicians. Instead, he applied his conviction that education was the key to all success and progress to his observations of Europe, concluding: "I do not find a reason for their advanced wealth and power other than advancement in knowledge and science, which led them to guidance, they realised their benefits and they acquired them".[182] ʿAbduh preached that the

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[179] ʿImāra, *Aʿmāl*, vol. 1, p. 28.
[180] ʿAbd al-Raḥīm, p. 306.
[181] Riḍā, *Al-Manār*, vol. 8, p. 466.
[182] *Aʿmāl*, vol. 1, p. 323.

positive characteristics that led to Europe's progress were in fact universal and were best embodied by early Muslim practice.

His attribution of European advancement to superior education and his own unshakable belief in education as the key to reform led him to read a number of European writings on theories of education, which often agreed with his own perspectives. One of the works ʿAbduh admired was Herbert Spencer's On Education, which he had, as an exercise, read in French and translated into Arabic.[183] ʿAbduh's educational reform plans were peppered with such Spencerian ideas as the "utility" of certain subjects, the importance of active as opposed to rote learning, and the need to educate mothers. ʿAbduh promoted Spencer's interest in moral education, and Spencer's argument that acquisition of science was a prerequisite for national strength.184 ʿAbduh's works also echoed Leo Tolstoy's emphasis on the importance of religious morality for individual happiness and correct functioning of society.185

1.2 The Many Faces of ʿAbduh

What is this sheikh who speaks French, travels to the lands of the Franks, translates their books, refers to their philosophers and discusses with their scholars; issues *fatwas* unheard of previously, participates in charity associations, raises funds for the poor and needy? If he is one of the men of religion, let him spend his life between the mosque and his home, and if he is a man of this world, then we see that he is doing by himself more than all the rest altogether![186]

ʿAbduh's biographers focused on the many different aspects of his life and writings. Muḥammad al-Bahiyy saw him as a political leader struggling against colonialism and foreign domination. Muṣṭafā ʿAbd al-Rāziq concluded he was a social reformer whose project included political reform as one aspect. ʿUthmān Amīn saw ʿAbduh's reform as "ethical reform with religion as a tool",[187] while Horten and Adams saw ʿAbduh's reform as religious leading to

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[183] ʿAbduh visited Spencer during his visit to London.
[184] Indira Falk Gesink, *Islamic Reform and Conservatism: Al-Azhar and the Evolution of Modern Sunni Islam*, London: I.B Tauris, 2009, p. 167.
[185] ʿAbduh wrote a letter to Tolstoy expressing his great admiration for him.
[186] *Tārīkh*, vol. 3, p. 268.
[187] Uthmān Amīn, p. 95.

ethical. This is due to the fact that ʿAbduh was, in various phases of his life, involved, and often leading, a number of reform projects in diverse domains.

1.2.1 Educator

Teaching seemed to be ʿAbduh's preferred occupation, and the one of which his opponents tried to deprive him. Even before graduation he began to hold circles for students, teaching philosophy, ethics, theology, al-Afghānī's teachings and translated books. After obtaining his Azhar diploma, al-ʿĀlamiyya, granting him the title of ʿĀlim and permission to teach, he was appointed as a history teacher in Dār al-ʿUlūm, a modern school with the aim of preparing Azhar students for work as judges or teachers in government schools. He introduced Ibn Khaldūn's *Muqaddima* (published by al-Ṭahṭāwī in 1857). He was also appointed as a teacher of Arabic sciences in the schools of linguistics and management.[188]

In 1879, al-Afghānī was exiled and ʿAbduh's teaching career was interrupted as a result of his political views and association with al-Afghānī. He was dismissed by Khedive Tawfiq and sent to his village. In 1880 he was reinstated by Prime Minister Riyāḍ Pasha and appointed sub-editor of the official gazette *al-Waqāʾiʿ al-Miṣriyya*, becoming its editor in October, with the role of supervising all publications. His articles mostly dealt with education, linguistic style and reform, and modern sciences. He frequently criticised the state of education in Egypt.[189] In March 1881 the supreme council of the department of education (*al-Majlis al-Aʿlā li'l-Maʿārif al-ʿUmūmiyya*) was established and ʿAbduh was appointed a member. ʿAbduh joined the nationalist movement when Britain occupied Egypt and actively participated in the rebellion, leading to his imprisonment and exile to Lebanon.

In 1884 he joined al-Afghānī in Paris where they founded *al-ʿUrwa al-Wuthqā* society and started publishing the weekly pan-Islamist anti-British paper. After 18 issues (March 13 to October 16 1884), it was terminated and ʿAbduh left for London.[190] Eventually he settled in Beirut, where it was a time of reform under Midḥat Pasha. ʿAbduh started teaching at al-Madrasa al-Sulṭāniyya, teaching Arabic, Jurisprudence, theology, logic and Islamic history. He also had

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[188]Sedgwick, p. 15.
[189] ibid., p. 29-31.
[190] ibid., p. 44.

tafsīr circles three nights a week at al-Bāshūra mosque, which were attended by Sunnis, Shias, Christians and Druze. These continued for two years, but they were not recorded.

In Beirut ʿAbduh also wrote a proposal for the reform of Ottoman education, and a proposal for reform in Syria, and began writing a proposal for the reform of education in Egypt. He also wrote letters to *Shaykh al-Islam* in Istanbul and the governor of Beirut with recommendations for educational reform. There he also wrote *Risālat al-Tawḥīd*, a summary of his lectures on theology. In 1888 ʿAbduh was permitted by the Khedive to return to Egypt.

ʿAbduh believed in education as the key to all reform and success. In 1881, in an article on gradual reform through education, titled "the error of the wise", he wrote that "whoever seeks the good of the country, let him strive for nothing other than perfection of education, then everything that he was seeking would be accomplished… without exhausting the mind or the body".[191] Scharbrodt points out that Abduh's attention to education is a result of his association with the "Sufi model of education which stresses individual transformation and its beneficial effects on wider society rather than imposing values and changes from the top".[192]

Indeed after their exile from Egypt, ʿAbduh pressed his teacher al-Afghānī to "go somewhere far away and establish a school to develop leaders and reformers".[193] However, due to his mentor's influence, and the absence of other viable options, ʿAbduh continued his participation in revolutionary activities for another year. His later activities after his separation from al-Afghānī show once again his unwavering belief in education as the key to change. He believed in postponing certain political and social reforms until people were 'prepared', through education, to comprehend and assume those changes. Thus, the expansion of education was amongst his main aims, and he helped to establish an Islamic charity with the aim of founding private schools, promoting education – including education for girls – and helping the needy, in 1892, becoming its president in 1900. He was also one of the founders of the Egyptian university, later Cairo University.

However, ʿAbduh promoted class-based education – the schools of his Islamic charity association targeted the poor children of manual workers, but only aimed at providing them with education that perfected their skills and enabled them to raise their salaries, except in the cases of

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[191] *Aʿmāl*, vol. 1, p. 322.
[192] Scharbrodt, *Islam and the Bahai Faith*, p. 99.
[193] *Aʿmāl*, vol. 1, p. 74.

"exceptional students" who showed exceptional abilities to follow different professions than those of their fathers, and the association would help them in that regard. These schools also promoted skill-based jobs rather than governmental clerical work.

ᶜAbduh's focus on education to the detriment of addressing other factors in Egypt's development attracted criticism. ᶜImāra highlighted this weakness in ᶜAbduh's reform vision and efforts, pointing out how at a time when the country was living under occupation in 1896, suffering countless social and economic problems calling for a revolution to radically change society once it is liberated from occupation, ᶜAbduh believed that the country lacked nothing other than education.[194] Moreover, his efforts in educational reforms – Imāra believes – could have accomplished a higher degree of success had he taken a more revolutionary route, which would have attracted the revolutionary nationalist trend he opposed.[195]

One of the fields of reform to which ᶜAbduh devoted a significant part of his time and effort was the reform of education at al-Azhar. In 1895 he succeeded in convincing the khedive ᶜAbbas Helmī to form an Azhar managing committee, which succeeded in introducing many reforms.[196] However, reforms were opposed by many Azhar sheikhs. In particular Sheikh al-Azhar Sālim al-Bishrī, appointed in 1899, was close to the khedive and opposed any reform, canceling scholarships and annual exams. In 1903 Sheikh ᶜAlī al-Biblāwī was appointed and he supported ᶜAbduh's reforms. However, a group of opposition scholars led by Sheikh Muḥammad al-Rifāᶜī organised petitions criticising the Azhar administration committee. Around the same time, ᶜAbduh issued the Transvaal *fatwā*, which was used by his opponents to tarnish ᶜAbduh and claim he wanted to merge Islam with Christianity.[197] There were rumours of khedive plans to dismiss ᶜAbduh which were stopped by Cromer.[198] Eventually, when ᶜAbduh found himself unable to execute his reform plans, he resigned from the administration committee.

Perhaps despairing of rigid education at al-Azhar, ᶜAbduh's aim was to give this generation an Islamic education and a national consciousness, after he despaired of traditional structures. His focus was on western-educated youth who were dazzled by western modernity, "for whom belonging to their religion is an insult, and being seen to be committed to it an

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[194] ibid., p. 154.
[195] ibid., p. 84.
[196] Sedgwick, p. 76.
[197] ibid., p. 111.
[198] ibid., p. 112.

embarrassment, so they know that belief in God and divine revelation to His prophets does not belittle the mind nor is it a deviation from true science, nor a fault in leadership, nor a weakness in politics".[199]

Despite the significant results achieved through ʿAbduh's lectures, articles, and educational reforms he was able to introduce, the limited success of ʿAbduh's educational reform plans, due to resistance by conservatives, the khedive and the British administration, must have led ʿAbduh to question his exclusive reliance on education as the sole key to change in Egypt. Although he was aware of the limited success of his educational reforms, ʿAbduh still believed, even after leaving al-Azhar that

> I have kindled a fire within the precincts of al-Azhar, which no hand can put off… if it does not blaze forth today or tomorrow it would do so in three decades; and then it would be more than a simple blaze.[200]

1.2.2 Social Reformer

ʿAbduh's interest in social issues is apparent from his early articles as a student, and his project continued to be principally a social project, despite its diverse dimensions.

Abduh's idealistic view of family life was influenced by his rural roots which idealised family ties which are weakened in industrial and commercial settings. ʿImāra criticised that idealisation and ʿAbduh's wrong belief that "mutual hatred and seeking revenge" – rather than socio-economic factors – are behind family disputes, although ʿImāra himself attributes such family problems to "values of the new society in relation to financial dealings and life matters", although they were not necessarily a modern phenomenon.[201]

Many of ʿAbduh's articles criticised social ills and promoted civic values.[202] He believed in slow gradual social change through raising awareness and changing mentalities. He believed any other way would fail and be counter-productive:

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[199] *Aʿmāl*, vol. 3, p. 517.

[200] Quote from Mahmdul Haq, *Muhammad Abduh: A Study of a Modern Thinker in Egypt,* p. 75.

[201] *Aʿmāl*, vol. 1, p. 171.

[202] "Our Public Venues" – criticising wasting time and crude language in cafes, "Our Government and Charity Organisations", "Love of Poverty or the Peasant's Misjudgment", "Bribery", "Hashish", "Modesty and its Requirements", "Civilisation", "Knowledge in Society", "Funeral Customs", "Superstitions", "Education in State Schools", "Justice and Knowledge", "Effect of Knowledge in Religion and Belief", "Power and Law", "Patriotism", "the Human Need for Marriage", "Polygyny" and many other examples.

It is wrong, or rather ignorant, to require the nation to follow ways unfamiliar to it... It is wiser to preserve the nation's customs entrenched in its members' minds, then call for improvements that are not far from them. Once they are accustomed to them, something higher can be asked of them, gradually. Thus, not long would pass before they leave behind their backward habits and ideas for what is higher and more refined, without their realising.[203]

As part of his focus on social reform, ʿAbduh demonstrated a special interest in family reform. He stressed that "the nation is composed of families and the reform of the nation depends on the reform of families".[204] Thus he devoted significant efforts to reform the family through his articles, his *tafsīr*, his *fatāwā*, and his proposals for the reform of family law and Sharīʿa courts (which dealt mostly with family law).

It is mostly in the context of family reform that ʿAbduh wrote about women, focusing on their education in order to fulfill their role in the family. His *fatāwā* on polygyny and divorce were critical for the course of legal reform in Egypt and continue to be as controversial today as they were when they were first issued. His *tafsīr* also stressed women's equal rights and duties as independent individuals, which is also emphasised in his *fatwā* on women's financial independence, rejecting the European-based law requiring the husband's permission for managing a wife's bank account.[205]

Although ʿAbduh promoted charity and the improvement of the lives of the poorest sections of society, he – like most reformers of his time – still believed in a class-based Egyptian society, with various roles expected of each class. He did, however, criticise the exploitation of workers and peasants. In 1900, at the time of the longest workers' strike in Egypt's history involving 30,000 tobacco factory workers, ʿAbduh's view was solicited on the Islamic view of disputes between workers and employers and the legitimacy of strikes. ʿAbduh argued that the matter was not a simple dispute to be left to the two sides, but that Islam requires the government to intervene in the economy in the interest of the masses.[206]

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[203] *Aʿmāl*, vol 1, p. 321.
[204] ibid., vol. 4, p. 215 (*tafsīr* of verse 83 of al-Baqara).
[205] ibid., vol. 2, p. 512.
[206] ibid., vol. 1, p. 150.

1.2.3 Political activist and leader

ʿAbduh had become involved in political work under the influence of al-Afghānī. Together they were involved in founding the National Party, which had the aims of opposing foreign interference; "Egypt for Egyptians" – reducing the power of Turks and Circassians and transforming power from absolute individual rule to one based on *shūrā* and restricted by the constitution, law and deputies. The national party was "a political, not religious, party, composed of men from diverse faiths. Whoever ploughs the land of Egypt and speaks its language belongs to it".[207]

However ʿAbduh's gradualist social-focused approach meant that he was against the revolutionary trend for many months in 1882, and continued to advise against it, arguing that "what one should start with is education and training in order to form men who would undertake the responsibility of representative government (...) it is not wise to grant the people what they have not been prepared for".[208] He was initially opposed to the ʿUrābī group and to military coups. Although he believed in constitutional reform, he held that people were not ready for complete political change, and feared "this turmoil could bring on foreign occupation whose cause would be eternally cursed".[209]

ʿAbduh believed in the central role of the middle classes in change, in "control of despotic governments, the restriction of their powers and imposing *shūrā* on them, establishing equality between the people", once those classes have been expanded and education becomes widespread, which was not the case in Egypt.[210] That stance and suspicion towards ʿUrābī continued until the ʿAbdīn protest. Only then did he join the revolution, in order to unite ranks against foreign intervention, once Khedive Tawfīq sought help from the British. Once ʿAbduh joined the ranks of the revolution, he did so fully and unreservedly. It seems, as ʿImāra noted, that the heat of the revolutionary moment melted his cold rationalism. He defended the revolution against criticisms similar to those he had previously used: "our country is undoubtedly no different from others where *shūrā* has been achieved, gaining its resources, and subsequent

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[207] ibid., vol. 1, p. 399.
[208] ibid., p. 341.
[209] ibid., p. 341.
[210] ibid., p. 343.

benefits, in terms of its acceptance of public interest, readiness for good, ability to distinguish between what is appropriate and what is not, loving the former and disliking the latter, joy at reform and sadness at corruption".[211]

ʿUrābī's forces suffered a devastating defeat at the hands of the superior British army, many wealthy members of the nationalist party abandoned it, and the Ottoman sultan declared ʿUrābī as a disobedient rebel. Following the failure of the revolution and the return of the Khedive to power, ʿAbduh was arrested and imprisoned for three months where he was maltreated. The failure of the revolution and dismantling of the national movement would leave a lasting and deep influence on ʿAbduh. His lawyer Broadley said that "spirit and body alike seemed crushed out beyond hope of recovery by the cruel reaction born of shipwrecked hopes and the agony of despair".[212]

All the above led ʿAbduh to tend towards a return to his former 'reformist' anti-revolutionary roots. According to Riḍā, he urged al-Afghānī to focus on developing a group of enlightened leaders. However, under the influence of his restless teacher, and in the absence of alternatives in exile, he continued his political activism, most importantly through the famous *Al-ʿUrwa al-Wuthqā*.

Al-ʿUrwa al-Wuthqā had four themes: *al-Jāmiʾa al-Islāmiyya* (the Islamic union), *al-Rābiṭa al-Sharqiyya* (the Eastern bond), *al-Mas'ala al-Miṣriyya* (the Egyptian question), *al-Mas'ala al-Sūdāniyya* (the Sudanese question). In ʿImāra's opinion, it was a continuation of the Egyptian nationalist party, with the aims of "reviving Islamic countries out of their weakness and ending Britain's dominance in eastern lands".[213] Its methods included recruiting members and building links to European social and political movements striving for liberation.

Others, such as ʿAid, argue that *al-ʿUrwa al-Wuthqā*, with its "religious references" (*jihād*, rights of Muslims, supporting Islam, hostility to the enemies of Islam – most importantly the British) is unrepresentative of ʿAbduh's thought.[214] This is yet another example of the way different scholars choose to focus on certain works written by/attributed to ʿAbduh and take them

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[211] Article "On Shūrā", 13 December 1881, in *Aʿmāl*, vol. 1, p. 388.
[212] A. M. Broadley, *How We Defended Arabi and His Friends: A Story of Egypt and the Egyptians*, p. 228.
[213] *Aʿmāl*, vol 1, p. 75.
[214] ʿAid, p. 347.

as representing his "real thought" while rejecting/belittling/questioning others, instead of accepting all as integral to ʿAbduh's complex life.

ʿAbduh's revision of his participation in the revolution and despair of direct political work and popular revolution against occupation did not happen suddenly following the ʿUrābī revolution, but seems to have evolved over a number of years. Nevertheless, his aversion to politics cannot be equated with support for occupation. In a meeting with Lord Hartington during ʿAbduh's visit to London in 1883 as a representative of *al-ʿUrwa al-Wuthqā*, Lord Hartington argued that the majority of Egyptians were ignorant and hence could not really be opposed to foreign rule. ʿAbduh replied angrily that aversion to foreign rule was part of human nature. ʿAbduh even described the spread of education and science under Muḥammad ʿAlī, and Egyptian villages which all have literate individuals.[215] His negative view of the British could still be seen in some of his articles. For instance, in 1886 he wrote rejecting the claim that the Egyptians were responsible for the British occupation, writing that the cause was "British greed, as agreed by the world's politicians".[216]

Following the banning of *al-ʿUrwa al-Wuthqā* in 1884, ʿAbduh travelled to London then to Paris, before settling in Beirut. ʿAbduh's Beirut residence was devoted to education and writings.[217] He finally returned to Cairo in 1889,[218] following a khedival pardon by Khedive Tawfīq. ʿAbduh's revolutionary political activism with al-Afghānī and his secret societies seemed to be part of his past, once he returned to Cairo and turned 40.

In Egypt, ʿAbduh opted for a different way of dealing with the British colonisers, submitting a proposal to Lord Cromer for reforming education in Egypt. This was a result of his past experience, as well as hostility from the Khedive who refused to allow ʿAbduh to teach out of fear of his influence. He was appointed as a judge, first in Banha province to keep him away from Cairo, but later was promoted and moved to Cairo. ʿAbduh's preference for dealing with the British rather than the Palace opened up the door for nationalist criticism, with collusion from

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[215] *Aʿmāl*, vol. 1, p. 702.
[216] ibid. p. 90.
[217] Whereas Sedgwick notes that ʿAbduh's letter to Afghānī in December 1884 marked "the end not only of what was without doubt the most important relationship in Muhammad ʿAbduh's life, but also of Muḥammad ʿAbduh's political activism", ʿImāra differs and notes that he maintained his relation with Afghānī while in Beirut and wrote some political articles and letters, following the same principles of *al-ʿUrwa al-Wuthqā*.
[218] While Hourani and Sedgwick used 1888.

the Palace, particularly after ʿAbduh stood against Khedive ʿAbbās' attempts to usurp the *waqf* lands, when ʿAbduh resorted to seeking Cromer's help in 1899.

His position also brought upon him his mentor's anger who intensified his reproaches in his letters after settling in Istanbul in 1892. Al-Afghānī's reproaches became increasingly unbearable for ʿAbduh.[219] Perhaps this explains ʿAbduh's initial silence upon al-Afghānī's death, not taking part in the eulogies on the day of his death on 9 March 1897. Nevertheless, he expressed his intense sadness at the loss of his mentor whose favours he considered to exceed those of his father's.[220]

ʿAbduh's stance vis-à-vis the British, appeasing Cromer and the occupation, was based on his view that his direct battle was not to be fought with them, but rather with obstacles to the reform of al-Azhar, *awqāf*, Sharīʿa courts, and education, all of which he saw as his priorities and his vehicles for progress. The British welcomed and encouraged this stance as it provided them with much-needed calm and stability. ʿAbduh's view of politics seems to have been an inherent conviction, not just a tactic, as he defended his position and called others towards it. That is what he did when he visited Tunisia and Algeria, advising the scholars there to "endeavour to acquire religious and secular sciences; seek to acquire wealth and develop society; have peaceful relations with the government and avoid preoccupation with politics."[221] He nevertheless added that if conciliatory efforts failed to resolve problems with the government "they would be excused for their anger towards it and plotting against it".[222]

He rejected calls for boycotting the British, arguing that seeking help and expertise from foreigners of different creeds and races and cooperating with them to that end are permissible by law and religion. This was based on his naive assumption that his interests – education and reform – could not be opposed by the British "for there could be no contradiction between the interest of the British and the interest of Egyptians in this aim".[223] According to ʿImāra, this stance was also fed by his engagement in inter-faith dialogue which led him to believe that the British were more tolerant, in terms of religion, in comparison with other occupiers. In the end,

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[219] *Aʿmāl*, vol. 1, p. 35.
[220] ibid.
[221] *Al-Manār* (22 October 1903), quoted in *Aʿmāl*, vol. 1, p. 92.
[222] ibid.
[223] *Aʿmāl*, vol. 3, p. 183.

"colonialism benefited a lot from Muḥammad ʿAbduh's political stance, whereas he benefited very little from colonialists' formal support for his projects".[224]

As for ʿAbduh's view of the ruler and his nature and powers, he held that "the *umma* possesses the right to control the ruler, and can depose him whenever it sees an interest in that, for he is fully a civil ruler".[225] He also denied any parallels between the Caliphate and theocracy, arguing that the *qāḍī*, *muftī* or *shaykh al-islām* "do not have the least authority over beliefs or legislation (…) and any power exercised by any of these is civil".[226]

One question that was debated at the time was the one posed in "*al-Jāmiʿa al-ʿUthmāniyya*" magazine: "which is better: granting Easterners freedom before they are worthy of it, or preparing them for it before they achieve it?" ʿAbduh supported the latter.[227] His response, *Al-Mustabidd al-ʿĀdil* which he had written in May 1899 and which was published by Farah Antoun,[228] had made that term associated with ʿAbduh. The "Just despot", as envisioned by ʿAbduh, had a temporary set mission: to unite the nation and prepare the ground for democratic institutions, by forming local councils, administrative councils, and finally parliament once people have become familiar with participation in public affairs. Arguments continue to surround the question of whether ʿAbduh intended his description of such a ruler as a model. ʿAbduh's evaluation of Muḥammad ʿAlī's rule may suggest otherwise. Indeed he was among very few reformers to have a very critical view of Muḥammad ʿAlī's authoritarianism, at a time when the nationalist movement celebrated Muḥammad ʿAlī's policies. Although he recognised the material progress achieved under Muḥammad ʿAlī, he lamented that it was progress at the ruler's service rather than the nation. In 1902, he wrote that Muḥammad ʿAlī was "a trader, agriculturer, brave soldier, astute despot, but he oppressed Egypt and killed its true life".[229]

Thus, ʿAbduh seems to be averse to authoritarianism, yet his bitter experience of the failure of the ʿUrābī revolution and the post-revolution incoherent and divided nationalist movement which often sided with the Khedive and conservatives – ʿAbduh's main opponents – made him also averse to politics altogether. Moreover, his convictions and nature tended towards

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[224] ʿImāra, *Aʿmāl*, vol. 1, p. 85.
[225] ʿAbduh, *Aʿmāl*, vol.3, p. 310.
[226] ibid., p. 311.
[227] See his letter to the magazine, in *Aʿmāl*, vol. 1, p. 844.
[228] ibid., p. 845.
[229] Al-*Manār* (7 June 1902) in *Aʿmāl*, vol. 1, p. 839.

gradualism and moderation, which made him suspicious of coups and revolutions, preferring to focus on education and slow reform, since "whoever hastens something before its due time, will be punished by being deprived of it".[230]

As noted by Kerr, "it would be fruitless to try to present Abduh's political ideas as a systematic structure".[231] He generally supported constitutional principles, but had no specific views on the mechanism or timeframe for their application. Although he saw the details of political organisation as something to be elaborated by society, Kerr noted that "occasionally he spoke of the Sharīʿa as prescribing social laws both in general and in detail, and these laws he extended on occasion to constitutional questions in a manner reminiscent of medieval jurists".[232] Although he rejected the claim that Islam prescribes "theocracy" insisting that the authority of the ruler is "civil in every respect", he denied that there can really be any separation of religious and temporal powers. His aversion to politics and disinterest in elaborating any coherent political theories can be attributed to the complexity of this field where the harmony that ʿAbduh yearns for is impossible to achieve. In Kerr's words: "in politics he seems to find the disunity and destructive competition that is opposed to his notion of the coincidence of revelation, moral temperament, and reason, and the natural cohesion and consistency of human activities and interests when rightly guided".[233]

1.2.5 Jurist and *Muftī*

ʿAbduh's Azhar training qualified him to teach religious sciences and to issue *fatāwā* - or juristic opinions. ʿAbduh seemed more inclined towards the career of a teacher than a judge, but his opponents tried to restrict his influence by limiting him to the latter. Nevertheless, ʿAbduh succeeded in being just as influential and controversial in his judicial career.

After his return to Egypt from exile, ʿAbduh was appointed as a judge in Banha and then in Cairo. In 1889 he was appointed as a judge in the national court, and in 1891 at the court of

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[230] ibid., p. 338.
[231] Kerr, p. 146.
[232] ibid., p. 148.
[233] ibid., p. 151.

appeal in Cairo. In early 1899 he was appointed member of the legislative council, and in June of that year he was appointed Grand *Muftī* of Egypt.[234]

ʿAbduh often criticised the state of *fiqh* and *fuqahā*. Although a jurist by training, he seems to agree with the traditional division between *fuqahā* and *mutaṣawwifa*:

> Sufis started going far away from *taṣawwuf* gradually, until this class became completely extinct except what we know, and with the weakening of this class, we lost religion, and *fuqahā'* who are far from *taṣawwuf* - which is religion itself – gained control…*fuqahā'*, due to being far from *taṣawwuf* were ignorant of the politics and state of their country, and due to their ignorance of politics, they did not know how to implement judicial rulings.[235]

ʿAbduh criticised the state of *muftīs* and judges in Egypt, but he also proposed practical steps for their reform. He also detailed reforms for Sharīʿa courts and the administration of *awqāf*.[236] His detailed report on reform of Sharīʿa courts included a number of proposals, including extending the jurisdiction of Sharīʿa courts, and not restricting the position of judge to the Hanafi *madhhab*.

The same year he was appointed a *muftī*, on 25 June he joined the legislative Shūrā council established in 1883, comprising 30 members as an advisory body. It seems by the end of the century, ʿAbduh had established himself as a leading figure, perhaps the most prominent in the Arab world after al-Afghānī's death, which forced the Palace to accept him begrudgingly.

As a member of *Majlis Shūrā al-Qawānīn*, according to his colleague Ḥasan Pasha ʿAbd al-Rāziq, ʿAbduh succeeded in removing the state of disagreement and hostility between the *Majlis* and the government which had led to the freezing of a number of projects of reform.[237] Riḍā stressed ʿAbduh's unusual approach to work as a Grand *Muftī*. Whereas in the past all major files would be passed to the Grand *Muftī* simply for formal approval, "in contrast, *al-ustādh al-Imām*[238] would ask for the whole case file and study it then issue a *fatwā* based on what he believes to be the truth, while pointing to the evidence".[239]

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[234] Segwick, p. 77.
[235] *Aʿmāl*, vol. 3, p. 551.
[236] Reform of mosques and imams through his membership of *Majlis al-Awqāf*.
[237] *Tārīkh*, vol. 1, p. 725.
[238] This is the title commonly used for ʿAbduh, translated as "the teacher and leader".
[239] *Tārīkh*, vol. 1, p. 646.

ʿAbduh supported the modern movement towards official codification of Fiqh: "how could this scattered mess reasonably serve as a law by which the people should abide?... It is necessary to reform this obvious flaw in our legal system, which has deprived people of their rights and jeopardized security".[240] He argued that judges were not all equipped to derive the correct verdicts from the texts, and even those who were could fall into invalid conjectures. To avoid corruption and injustice "it is necessary that the articles of the law be written explicitly, indicate rulings in a straightforward manner, apply to all possible cases, be set forth in logical categories, and use simple linguistic constructions".[241]

Although a proponent of judicial reform, even in his role as a *muftī* and jurist, ʿAbduh was faithful to his gradualist approach, believing that laws could not be imposed unless people were convinced of their suitability. He strongly argued, in various contexts but most clearly in his article on "Change of laws in accordance with the conditions of nations"[242] that in order for people to abide by laws, they must be suitable for their conditions and needs:

> It is not permissible to apply the law of one group of people to another group who differ from and surpass the first in level of understanding, because the law will not suit their state of thinking and will not match their customs and traditional habits… need is the guiding master, and the first teacher. When people properly recognise need, they strive to fulfill it. They are restricted by it, and do not go against its dictates and prescriptions. If the institution of laws within a nation is motivated by its need for them, it will not contravene them simply because of circumstances.[243]

The above quotes partly explain the fact that, despite his criticism of *taqlīd*, as a judge and *muftī*, ʿAbduh on the whole followed the same orthodox methods and restricted himself to the opinions of the Ḥanafī *madhhab* – sometimes even contradicting his own views on the same issue as expressed elsewhere in his *tafsīr* or articles.

However, in a number of *fatāwā*, he deviated from the expected opinions and expressed novel perspectives – often meeting with great opposition and condemnation. It is important to remember that the opposition was not simply to his views, but brought together a 'coalition' of figures and trends with political, professional, juristic and even personal disagreements with him.

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[240] *Aʿmāl*, vol. 1, p. 337.
[241] ibid.
[242] ibid., p. 333-339.
[243] ibid., p. 334.

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ʿAbduh's rivals awaited any *fatwā* or declaration to ignite campaigns against him.[244] It is these – few – controversial *fatāwā* (out of 944 recorded *fatāwā*) that have become well-known and the focus of most studies of ʿAbduh as a jurist. Among the most well-known such *fatāwā* are the Transvāl *fatwā* permitting Muslims living as a minority to eat food prepared by non-Muslims and to adopt their dress,[245] and his *fatwā* allowing Muslims to deposit money in banks and draw interest on it, with certain conditions.[246]

Critics often decried what they saw as ʿAbduh's innovations, insisting that his position requires him to restrict himself to the orthodox views of the Hanafi *madhhab*, since he was not a *mujtahid*. Riḍā responded to ʿAbduh's critics, on the basis of two arguments: that

> All scholars have said that *taqlīd* of certain *imāms* in certain issues and *taqlīd* of other scholars in other matters is permissible, and there is no famous scholar who does not have *fatāwā* that contradict the *madhhab* to which he belongs. Secondly: that he is a *mujtahid* – indeed how could the one who engages in the *tafsīr* of the Qur'an in the manner he does and presents proof on the basis of the Qur'an for the rejection of *taqlīd* and how the one guilty of *taqlīd* deserves God's anger and punishment, himself be a *muqallid?*[247]

Riḍā then added that the above "does not contradict the fact that he issues *fatāwā* for the government and judges following the Hanafi *madhhab*, for they ask him for that in particular rather than his own *ijtihād*, whereas when he is asked about his own opinion he gives *fatwā* according to it".[248]

1.2.6 Religious reformer

ʿAbduh wrote that his primary mission was to "liberate the mind from the chains of *taqlīd*, and to understand religion in the way of the early generations of the *umma*, before the emergence of disputes, and to go back to the study of its early sources".[249] For ʿAbduh, *taqlīd* was worse than a crime, for the *muqallid* is "trivial with no importance, as if he did not exist, for Islam came to liberate minds from their slavery and free them from their chains, and take them

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[244] Sedgewick, p. 129.
[245] *Aʿmāl,*, vol. 2, p. 500.
[246] ibid., vol. 1, p. 783-6.
[247] *Tārīkh*, p. 689.
[248] ibid.
[249] *Aʿmāl*, vol. 2, p. 312.

out of the humiliation of imprisonment and slavery, such that we find that the Qur'an condemns the *muqallidīn* – imitators – describing them in worse terms than criminals.[250]

This war on *taqlīd* and return to of the *salaf* clearly has much in common with the salafism of the *wahhābī* trend. However, ʿAbduh criticised *wahhābī* Salafism, because even though it also waged a war on *taqlīd*, its limiting of the value and role of reason led it to fall back into the danger of *taqlīd*. In contrast ʿAbduh's rationalism is evident. He talks about religion as "one of the scales of human reason",[251] and considers reason to be the way towards knowing and believing in the divine, for "reason is the source of conviction in belief in God, His knowledge and power and belief in the message… whereas revelation is the source of what follows that: the unseen such as the hereafter and details of worship".[252] For ʿAbduh, Islam is a religion in which "reason and religion were brought together for the first time in a holy book, conveyed by a messenger".[253] He repeatedly argued that Islam recognised Man's "free will and independence of opinion and thought, thus perfecting for him his humanity".[254]

Thus ʿAbduh was critical of "the group of Muslims that claimed to have removed the dust of *taqlīd* and removed the veils separating them from reflecting on the verses of the Qur'an and the content of the Hadith in order to understand God's rulings within them" but "had narrower horizons and worse arrogance than the *muqallidīn*". Although "they condemned innovations and removed some of what had been added to religion", their literalism meant they were "no supporters of science nor lovers of civilisation."[255] ʿAbduh's Salafism was to return to the sources to seek inspiration from what is pure and fundamental in order to use it as the starting point and the catalyst for building a new society – hence it is not a return to duplicate that early society, nor is it a building on new alien foundations. Thus, ʿAbduh's efforts were divided between two groups, the orthodox imitators, hostile to rational enquiry and novel interpretations, and the modern-educated elite that is dazzled by superficial aspects of western culture. His aim was to convince the former that modernity was not incompatible with their Islam, while convincing the latter that Islam was not incompatible with their modernity.

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[250] ibid., vol. 3, p. 535.
[251] ibid., p. 451.
[252] ibid., p. 382-383.
[253] ibid. p. 382.
[254] ibid., p. 469.
[255] *Islam & Christianity*, in *Aʿmāl,* vol. 3, p. 335.

In ʿAbduh's view, reason and revelation are different paths to the truth and fulfill different functions, but cannot contradict each other. Conclusions of both reason and revelation may be either decisive (qaṭʿī) or suppositional (ẓannī), with the decisive always taking precedence. But most of the indications from both sources are of the suppositional kind and therefore are open to interpretation. Logical inconsistencies should not be accepted at face value. Still, when further rational investigation fails to reconcile the contradiction, the matter should be "committed to God in His omniscience", that is, a rational explanation exists although it has not yet been discovered.

One such example is ʿAbduh's view of free will. After a rational reconciliation of free-will and divine pre-destination, ʿAbduh dismissed any lingering ambiguities, warning against the quest "to seek to penetrate the secrets of Destiny… it is forbidden to us to plunge into this abyss and occupy ourselves with what reason is virtually incapable of attaining".[256] Being primarily interested in an intellectual reform aimed at practical reform, ʿAbduh considered such quests as unnecessary, as discussions of the free will issue have always proved fruitless, and occupying oneself with such unattainable secrets only leads to "destruction of Sharīʿa, obliteration of obligations, and invalidation of that unpremeditated rational judgment which is fundamental to religious faith".[257] This pragmatism is, according to Kerr, an expression of ʿAbduh's "distaste for pure speculation and his reluctance to probe the roots of fundamental theological problems when their direct relevance to the needs of the individual believer is not established".[258]

As discussed as part of his view of social reform, ʿAbduh stressed the flexibility and adaptability of laws and applications of revealed principles according to time and place. This emphasis on variation and adaptation in society led Kerr to conclude that in ʿAbduh's view, prophets have "a purely spiritual function", not "to explain the practical details of material welfare but leave this to man's ingenuity, within the broad and tolerant limits of sound religious faith".[259] Experts, such as Kerr, who stress ʿAbduh's "secular" view of social and political norms, note that ʿAbduh's break with tradition was "incomplete and equivocal" since he also wrote that "the Quran established for men laws conforming to their interests; the utility of observing them

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[256] ibid., p. 411.
[257] Kerr, p. 113.
[258] ibid., p. 117.
[259] ibid., p. 142.

and applying them has been proved. Justice is established by them and the whole social order has been organised by them as long as their limits are respected".[260] Kerr explains this "contradiction" by the fact that "ʿAbduh hedged his espousal of secular notions and avoided a clear-cut rejection of orthodox conceptions".[261]

ʿAbduh stressed the absence of religious authority in Islam, to the extent of arguing that it is "a fundamental in Islam to topple religious authority and uproot it altogether".[262] He sought to reinstate revelation as the source of teachings and inspiration. This was evident in the attention and effort he devoted to the re-interpretation of the Qur'an and a new way of access to the Qur'an as a source of guidance for all people. ʿAbduh stressed that the purpose of *tafsīr* is "to try to understand the meaning and wisdom of divine revelation, in terms of beliefs and rulings, in such a way that attracts hearts and incites them to action and towards the guidance contained in the words, such that they achieve what God described as "guidance and mercy" and other similar descriptions".[263] He criticised the misunderstanding of *tafsīr* as a complex study of lengthy linguistic, juristic and theological discussions, lamenting how "the student of *tafsīr* would read the old books of *Tafsīr* and find everything therein except *tafsīr* – linguistic sciences, sects and schools, jurisprudence."[264]

As regards the Hadith, ʿAbduh did not deviate from the orthodox approach, although he implicitly criticised the Muslims' "obsession with narration".[265] In *Risālat al-Tawḥīd*, ʿAbduh seems to only accept the authenticity of *mutawātir* hadith (reported through multiple authentic chains of narration), and considered *āḥād aḥādīth* (narrated by a single chain of narration) to lack the authenticity to make them binding on all. ʿAbduh states that what a Muslim is required to believe is "the Holy Qur'an, and what has been authentically continuously reported fulfilling all conditions – that is, 'what has been reported by a group such that it is impossible that they could have colluded in lying'".[266] ʿAbduh explicitly details that "what must be believed must be restricted to what is explicit in the report, and is not to include both what is suppositional and

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[260] *Risāla*, *Aʿmāl*, vol. 3, p. 460.
[261] Kerr, p. 143.
[262] *Aʿmāl*, vol. 3, p. 306.
[263] Introduction to *Tafsīr al-Manār*, vol. 1, p. 25.
[264] ibid., p. 7.
[265] *Aʿmāl*, vol. 4, p. 608.
[266] *Risāla*, *Aʿmāl*, vol. 3, p. 496.

what is *qatʿī*.[267] ʿAbduh seems to reject *āḥād aḥādīth*, which constitute the majority of *aḥādīth*, as a basis for beliefs: "as for *āḥād* reports, it is obligatory to believe in their content for the one who has received the report [directly] and who believes in the authenticity of its narration. As for the one who has not received the report, or the one who has, but has a doubt regarding its authenticity, and it is not a *mutawātir*, the fact that he does not accept it does not undermine his faith."[268] Although ʿAbduh seems to have avoided any separate in-depth explanation of his view of hadith, he emphasises in a number of statements the difference between the Qur'an and Hadith in their reliability and authenticity. For instance, when discussing the Qur'an as a basis for faith in prophecy, he describes the Qur'an as a miracle "whose content is *mutawātir* and whose presence has been continuous – that alone is evidence, whereas everything beyond it in *akhbār* (reports), whether their chain of narration is considered authentic, known, or weak, does not imply certitude (*qatʿ*) for Muslims. When such are used as proofs, they are used to support what is already certain".[269] This is supported by later authors: Muḥammad Ḥusayn al-Dhahabī reports that ʿAbduh was reluctant to use *āḥād aḥādīth* in *tafsīr*. Riḍā also reported that ʿAbduh rejected *isrāʾīliyyāt* [Judeo-Christian reports] and *fitan* [reports about matters such as the Anti-Christ) *aḥādīth*, even when reported in *Ṣaḥīḥ* collections. It is not clear, however, whether ʿAbduh is specifically discussing the reliability of *āḥād aḥādīth* for *ʿaqāʾid* – matters of faith [270] - which would not be unique to him – or whether it also extends to the use of such *aḥādīth* in *fiqh* rulings, which could be problematic. In any case, we cannot find any systematic approach to the criticism of Hadith in ʿAbduh's writings.

According to his own short autobiographical text, ʿAbduh considered his second aim, after liberating the mind from the chains of *taqlīd*, to be reforming the Arabic language style. Many of the texts he taught or edited and published dealt with Arabic literary style. His early move from the use of *sajʿ* - widely used at the time – in his articles to prose was a sign of "the critical move caused by ʿAbduh in moving the Arab mind from the prison of medieval *taqlīd* to

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[267] ibid.
[268] ibid., vol. 3, p. 496-497.
[269] *Al-Islām wa'l-Naṣrāniyya*, in *Aʿmāl*, vol. 3, p. 300.
[270] Elsewhere Abduh explicitly stresses that "in the case of *ʿAqāʾid* and *tawḥīd*, *āḥād aḥādīth* are not taken as basis even if authentic" *Aʿmāl*, vol. 3, p. 552.

the vastness of the modern age".[271] In 1900, he participated in founding the society for the revival of Arabic sciences and became its president.

ʿAbduh's religious reform had the aim of inducing moral reform leading to comprehensive reform in society. Perhaps it is this practical aim that led some scholars to deny ʿAbduh the title of religious reformer or intellectual. In Horten's view, ʿAbduh's methods were not scientific and his results deficient, "not once does he undertake the search for a solid critique of knowledge";[272] "Pure science one cannot find in him, philosophy is for him almost a defection from the faith. To seek in him questions of world view of scientific content is therefore almost a fruitless undertaking".[273] Horten's negative evaluation of ʿAbduh's efforts is tempered by his condescending excusing comment that "it would be a great injustice to expect of an Oriental completed results in fields in which the West itself is still far from such results. Muḥammad ʿAbduh had to reckon with his environment and was dependent on it. Its surpassing backwardness allows the work of our reformer to appear in all the clearer light, and makes us forgive him many failings".[274]

Malcolm Kerr's evaluation shares the same dissatisfaction with ʿAbduh's intellectual contribution, noting that "his ideas provided a better basis for apologetics and polemics than for social reform and cultural rebirth".[275] This was due to the fact that "ʿAbduh was prudent and pragmatic, avoiding sharp breaks with traditional dogmatic formulas and elaborating what was novel in his thought only to the extent demanded by clear and present needs."[276] Kerr, however, recognised that "ʿAbduh was a conservative by language and manner and a radical by the implication of many of his teachings. For a reformer, to be doctrinaire or systematic is not always a virtue, and one can admire the humane, tolerant, practical, conciliatory spirit that prevented Abduh from so being."[277] Indeed this approach, although ʿAbduh was not short of enemies, "made his message more palatable to the orthodox and established a common ground of discourse between them and the products of modern secular education."[278]

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[271] ʿAbd al-Razzāq ʿAid, p. 55.
[272] Horten, xiv, p. 128.
[273] Horten, xiii., p. 85.
[274] ibid. 128.
[275] Kerr, p. 105.
[276] ibid.
[277] ibid.
[278] ibid., p. 105.

Kerr suggests that Muslim reformists had two options "the first is to assign separate spheres of competence to reason and revelation, along lines roughly similar to the Thomist tradition in Catholicism" and the second is "to recognise the parallel competence of both reason and revelation within the same sphere, denying that there is either a separation or a conflict between them".[279] The perceived ambiguities and unresolved contradictions, in this view, are due to the fact that "it was this approach, in which reason and revelation form an integrated combination, and which is more congenial to the Islamic religious outlook, that Muḥammad ʿAbduh and many other modernists adopted".[280]

This 'wrong choice', that Kerr criticises in the reform project of ʿAbduh – and subsequent related projects – led to the "duality of themes… on the one hand, that Islam, unlike other religions, carries its own revealed message in public matters and that this message must be taken seriously; on the other hand, that Islam endorses, in effect, the modern liberal values familiar in the West and does not deprive men of independence and latitude of judgment and action… engaged in establishing the comprehensive relevance of the Quran and Sunna, yet forever seeking permission from the Quran and Sunna (and, happily, obtaining it) not to be bound too restrictively by the Quran and Sunna".[281] In other words, this "incomplete" and "hedged" intellectual reform, according to such critics, merely served "to provide Islam with a fashionable image".[282]

> Indeed ʿAbduh repeatedly made his aim clear:
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> to use the Muslim's confidence in his religion to reform his affairs. It can be said that the aim they all have is to correct beliefs and remove the errors which had affected their understanding of religious texts; once beliefs are free from innovations, actions will as a result be freed from error and inconsistency, conditions are redressed, understanding is enlightened with true sciences – religious and worldly-, their morals are refined with sound capabilities, and reform would flow from them to the *umma*.[283]

Scholars such as Horten and Kerr held that ʿAbduh had no coherent project for intellectual reform, and that all ʿAbduh's writings were driven by the social and political ends he had in mind. Indeed ʿAbduh believed in the futility of abstract theories disconnected from reality.

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[279] ibid., p. 107.
[280] ibid.
[281] ibid., p. 211.
[282] ibid., p. 213.
[283] *Tārīkh*, vol. 2, p. 459.

He believed that "the traditional discussions in which Azhar scholars spend their lives are not equal to one hour's effort if they do not benefit people in their actions and the running of their lives".[284] He was explicit about the use of religious zeal, understanding and interpretation as a tool towards reform: "the religious factor is among the strongest factors in the morals of the elite and the masses, and its authority over them is higher than that of reason".[285] Indeed he was convinced that any other basis for reform would be futile, since

> The souls of Egyptians have been filled with submission to religion such that it has become part of their nature; whoever seeks to reform them through other than religion would have sowed a seed that is unsuitable for the soil in which he planted it, it will give no fruit and his effort would have been in vain.[286]

1.3 ʿAbduh's Legacy

The conditions of ʿAbduh's era as well as his personality enabled a diverse following, brought together by the common hope and desire to lead their nation to revival and progress. The change in circumstances, perhaps more so than their mentor's death, led to their divergence and the creation of distinct trends – often at odds with one another, and often claiming to be the legitimate heirs of the revival and reform project while denying the other those labels.

As a result of the diversity of ʿAbduh's works (in terms of medium, style and context), the change and evolution during his tumultuous life, the lack of complete books written directly by him, and sometimes the ambiguity of his words and as well as real or apparent contradictions therein, ʿAbduh's words have been interpreted differently or selectively by different trends.

When ʿAbduh passed away in Alexandria on July 11 1905, aged 56, he left behind thriving and diverse schools of thought inspired by his personality, his ideas and his life, but also a persistent ambiguity regarding his actual words. Nevertheless, the influence of Abduh's ideas spread far beyond Egypt's borders – to the rest of North Africa, Turkey, South-Asia, Malaysia and Indonesia and beyond.

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[284] see *Tārīkh* vol. 2, p. 943, *Tafsīr sūrat al-ʿAsr*, p. 7.
[285] *Aʿmāl*, vol. 3, p. 438.
[286] ibid., p. 113.

CHAPTER 2

THE 'WOMAN QUESTION' IN NINETEENTH-CENTURY EGYPT

ᶜAbduh did not write in a vacuum, nor did he initiate the discussion of the woman question in Egypt. He contributed to the already existing discussion, responded to some of the already-posed questions, but in his own way and as part of his own reform project. He is to be read within the context of a growing debate both in Egypt, and in Istanbul and other capitals of the Ottoman Empire.

2.1 The Nineteeth century: A Time of Change

The nineteenth century has been called "the Ottoman Empire's longest century", which saw the increasing encroachment of western powers on its affairs and territories, the introduction of radical administrative reforms in a desperate rush to redress the balance of powers, and the precipitation of social, economic, cultural and political changes as a result. The *Tanzimat* period (re-organisation) in Turkey (1839-1876) formally began with the Rose Garden decree (*Khatt Sherif* of *Gulhane*) of 1839 – which spoke of the need to eliminate inequality and create justice for all subjects. In 1856, another imperial decree (*Khatt Humayun*) reiterated the state's duty to provide equality and stressed guarantees of equality for all subjects, including access to state schools and state employment. In the Ottoman Empire, just as in Europe and the US, women were only slowly included in such "modern" notions of equality, and the above decrees did not discuss women.

New developments included the emergence of the press, the translation of European works, and modern educational institutes (medicine, administration, military training,

languages). Women's education expanded, and as early as the 1840s women began receiving education in state schools. By the end of the century, one in three school-age girls were attending state primary schools.[287] Not all the new reforms had an "equalising" effect.[288]

Egypt not only experienced the effects of these changes as one of the capitals of the Ottoman Empire, but it also had its own major project of centralisation and modernisation under Muḥammad ʿAlī. Egypt's viceroy who 'liberated' it from the French occupation and gained some autonomy from the Ottoman Empire, consolidated his rule by eradicating the old Mamluke ruling elite and bringing all under a powerful centralised bureaucracy, including agricultural production, trade, education, and the religious establishment with their *Awqāf*. Egypt's peasants, constituting the overwhelming majority of its population, who had previously experienced no great changes under the French occupation, became the object of the state's interference and regulation. In addition to radical changes in the modes of production and trade, the drafting of men and women into *corvee* labour (in industrial factories and public works) and the army also disrupted the lives of peasants, and weakened family structures and resources. The transition from a subsistence economy to statist industrialisation facilitated Egypt's incorporation into the European capitalist economy, and inaugurated an age of thriving European presence and influence in Egypt. Modern colleges were opened to train staff to fill government posts. Foreign instructors were imported. Muḥammad ʿAlī and his successors hired European teachers for their children, but children of the lower ranks of the elite started to be educated in modern schools. About fifty primary schools were set up. A Woman's Medical College was established as early as 1832. A printing press was established in 1822, and an official newspaper was founded in 1828.

All the above socio-economic changes had important consequences for the various classes of Egyptian women: "elite women (wives and daughters of princes, prominent scholars, military commanders and landowners); middle-class women (wives and daughters of traders, artisans and jurists); 'common' or working women (home commodity sellers, midwives, beauticians, wailers, itinerant sellers and peasants); and the class of slaves and servants".[289]

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[287] Donald Quataert, *The Ottoman Empire, 1700-1922*, Cambridge : Cambridge University Press, 2000, p. 66.
[288] ibid.
[289] Saḥar ʿAbdel ʿAzīz Sālim "Image of Egyptian women in Sources Reporting on the French Campaign in Egypt", in "*Al-Khiṭāb ḥawla al-Mar'a*" (The discourse on women), Faouzia Ghassānī, ed. ,p. 48.

These various classes were affected by the socio-economic changes in very different ways. Yet, those differences tended to be often ignored by most discourses on women which tended to be homogenising, talking about one "Egyptian woman" – that of the urban upper and middle classes. Judith Gran has shown that generally upper-class Egyptian women found their horizons expanded, while women of the lower middle class experienced just the opposite.[290]

Muḥammad ʿAlī's successors continued along the same lines: further integration into the European market, sponsoring student missions to Europe, attracting European professionals and businessmen, and expanding the public education and health systems. The first state secondary school for girls was established in 1873. Foreign presence in Egypt continued to increase (religious missions, schools, diplomats and thousands of businessmen). The foreign population of Egypt jumped from 3,000 in 1850 to 70,000 in 1878 and 120,000 by 1897[291] (excluding Syrians, who were Ottoman subjects). In addition to the numerical importance of this foreign presence, Europeans enjoyed absolute freedom under the Capitulations system and the assistance of diplomatic intervention, acquiring a stranglehold over the country's economy.

At the end of this brief overview of the nineteenth century, it is important that, although the narrative begins here, it is not to imply that no changes had taken place in the preceding centuries, or that the changes that took place were all positive. While those assumptions had been the basis of much of what was written on 'modernisation' in the Muslim world, new historical research has questioned their accuracy. Works by scholars such as Sonbol, Spellberg, Peirce, Ahmed, Zilfi, Keddie, Baron and others have explored the lives of Middle Eastern, particularly Ottoman, women, before 1800, through studying court records, *fatāwā*, proverbs and other records to gain an insight into women's lives and the gender system before the modern era. Such research has dispelled misconceptions of the pre-modern era as one of constant stagnation, and of modern changes as unilinear or progressive.

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[290] Gran J., "The Impact of the World Market on Egyptian Women", *MERIP Reports*, 58, 1977, p. 4.
[291] Soha Abdelkader, *Egyptian Women in a Changing Society 1899-1987I,* Boulder, colo.; London: Lynne Rienner, 1987, p. 19.

The Contexts of the Discussion of Women

Although women were not openly central to official discourses, their mention is prevalent in various contexts – the description of the social customs of Egyptians or Europeans, analyses of the reasons for the Muslim world's decline, and discourses of occupation and nationalism.

2.2 Travel literature: Curiosity about gender differences between East and West

2.2.1 Al-Ṭahṭāwī (1801-1873) in Paris

The themes dominating ʿAbduh's writings – reform, reasons for the West's progress, accommodation of modern concepts in Islamic thought – were also among the major preoccupation of an earlier Azhari scholar Rifāʿa Rāfiʿ al-Ṭahṭāwī, who, within those contexts, touched on the topics of women's education, chastity, marriage, work, etc. Al-Ṭahṭāwī's early attempt to provide a comprehensive Arab-Islamic model of modernity clearly had an influence on ʿAbduh, including the channels he used for the propagation of his ideas, such as his positions in the official press and in educational institutions.

Sent as an imam to accompany a group of students on a mission to Paris (1826-1831), Rifāʿa al-Ṭahṭāwī rose to prominence as one of modern Egypt's most influential intellectuals. In addition to his Paris memoirs *al-Dīwān al-Nafīs fi Īwān Bārīz*, or *Takhlīs al-Ibrīz fi Talkhīs Bārīz*, and other books, he became a pioneer in the movements of translating western texts into Arabic,[292] reform of the Arabic language, and development of the education system.

Muḥammad ʿAlī sponsored two institutions for the production of knowledge about Europe: Dār al-Alsun (School of Languages) and student missions abroad. The translation and publication of texts on geography and history of European nations "exposed Egyptians to a very specific, positivist teleology of historical and national development… where the habits and

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[292] Jamal Mohammed Ahmed, *Intellectual Origins of Egyptian Nationalism*, London, Oxford University Press for Chatham House, 1960, p. 10.

customs of rulers and ruled alike were assumed to have produced a particular kind of 'modernity'".[293] The accounts of Egyptians sent abroad produced an image of modern European society and institutions according to which Egypt can model itself. In these accounts, "intimate details of domestic activities stood out as prominent features and were used as units of measurement"[294] of modernity. Al-Ṭahṭāwī was the most prominent figure in both state-sponsored movements: translation and travel accounts producing an image of modern Europe. Although these institutions began from the 1820s, the images they produced had their most forceful effects on the generation of the last third of the nineteenth century.[295]

Al-Ṭahṭāwī's description of Parisian society constitutes "the first positive and comprehensive account of a European society in the Arabic language".[296] It contains numerous comments on French women and French homes, and comparisons with their Egyptian counterparts. Al-Ṭahṭāwī's confirmation or rejection of certain assumptions regarding French women indicates that interest in the different attitudes towards women predated his trip to France. The difference between French and Egyptian women which was among those differences highlighted by commentators on the French occupation on both sides, persisted as a matter of interest and concern among Egyptians, as seen from al-Ṭahṭāwī's comment: "And since one is often asked by many people regarding the condition of women of the Franks, we have revealed their condition".[297] Al-Ṭahṭāwī describes, in great detail, and often with open admiration and childish awe, French women's dress,[298] the cleanliness of their homes,[299] their beauty,[300] female writers,[301] women travelling alone,[302] and the various forms of Parisian entertainment, including theatres, parks and ballrooms, favourably comparing the 'civilised' French dance with the 'vulgar' Egyptian women's dance.[303]

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[293] Lisa Pollard, *Nurturing the Nation*, Berkeley: University of California Press, 2005, p. 25.
[294] ibid., p. 15.
[295] ibid., p. 18.
[296] Alain Rousillon, "L'occident dans l'imaginaire des homes et des femmes du Machrec et du Maghreb. Vingtieme sciecle", *Revue d'histoire*. 82, April-June 2004, p. 71.
[297] *Al-Dīwān al-Nafīs fī Īwān Bārīz*, or *Takhlīṣ al-Ibrīz fi Talkhīṣ Bārīz*, p. 278.
[298] ibid., p. 139.
[299] ibid., p. 134.
[300] ibid., p. 99.
[301] ibid.
[302] ibid., p. 110.
[303] ibid., p. 139.

In al-Ṭahṭāwī's writings we also find the same link made between a nation's 'civility' or 'barbarism' and between its respect for women, which later becomes one of the central themes of both colonial and nationalist discourses: "The greater the respect for women is amongst a people the greater their civility and good manners, for withholding women's rights, in that in which they should have freedom, is a sign of barbarian nature".[304]

Al-Ṭahṭāwī proves to be open to different conceptions of chastity and ready to 'correct' prejudices, for instance, about French men's "lack of jealousy over their women".[305] However, this does not necessarily lead him to approve or seek to adopt French gender relations, nor is he able to see the latter outside the power relations of 'leadership': "The main issue is that they are wrong in giving leadership to women";[306] "their men are slaves of women and under their command, whether or not they are beautiful".[307] Indeed, maintaining the current gender power relations, whilst "improving women's conditions", would continue to be an implicit or explicit concern of all writers on the "woman question", including the "liberation discourse".

Generally, throughout his *Takhlīs*, although al-Ṭahṭāwī does not disguise his admiration for many aspects of French women's lives, his work – when compared with later works that took up the same theme of comparing Muslim/Egyptian and European attitudes to women – is more descriptive of western customs in relation to women, neutrally and without judgment. This may well be because, at the time, there was no strong suggestion that they constituted a plausible alternative, and so did not undermine traditional customs which were still well established and unthreatened. His works are also more optimistic than later writings, as there was a feeling of greater confidence in Egypt's ability to advance. Later writings were more conscious of Egypt's 'backwardness' and the threat of colonisation. For instance, different attitudes to women's seclusion and veiling, which would later become central to the heated debates of the "woman question" are merely mentioned as different customs: "And the custom of this country is to reveal the face, head, neck and what is below it, and the back [of the head] and what is below it, and the arms up to the shoulders."[308] Elsewhere al-Ṭahṭāwī seems to approve of unveiling more

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[304] In al-Ṭahṭāwī's introduction to his translation of Depping's *A Historical View of the Manners and Customs of Nations*. Cited in Ronak Husni and Daniel L. Newman, *Muslim Women in Law and Society*, Routledge, 2007, p. 2.
[305] *Takhlīs*, p. 276-278.
[306] ibid., p. 276.
[307] ibid., p. 95.
[308] ibid., p. 67-68.

explicitly, explaining that "there has been some confusion regarding women's chastity which does not result from their covering or uncovering, but the source of that is good or bad upbringing".[309] However, it is not clear whether he is limiting the validity of this rule to the French context or whether he believes it to be also applicable to the Egyptian context.

While the condition of Egyptian women only implicitly appeared in al-Ṭahṭāwī's *Takhlīṣ*, his subsequent involvement in the building and development of the state education system led him to more explicit discussions of Egyptian women, their potential, the need to educate them, and the content of their education. Again, in al-Ṭahṭāwī's characteristic generalisation which at times leads to contradictions, he praises women's virtues and equal mental abilities, whilst simultaneously emphasising the "different form in their natures". While he stresses that physical differences are small and relate to "masculinity and femininity and things related to them", he reminds that "their natures, in terms of strength and power, are below those of men."[310] This ambiguity in stance vis-à-vis the concept of "equality" when applied to the context of gender will persist through the writings of later reformers, and through writings on "women in Islam" to this day, where, generally "equality" is emphasised and accepted in matters such as education, while self-contradiction surfaces when dealing with contexts of authority and power, where difference and superiority are emphasised.

The function of women as mothers, to become the most common context in which women are discussed, and one of the main themes of the turn-of-the-century nationalist discourses, makes its appearance in the context of women's essential nature and the need to educate them: "Among what is also found in women is the strength of rational faculties, and the heightened sense of correct understanding … Thus primary upbringing of children is specific to them."[311] The education of girls was a cause promoted during the nineteenth century. By al-Ṭahṭāwī's time, debates centred mostly not on the legitimacy of educating girls, but rather on the content of that education. In his *Al-Murshid Al-Amīn*, written upon Khedive Ismail's request to be taught in the first secondary-level state girls' school, al-Ṭahṭāwī suggested teaching girls "what is suitable for them such as reading, matters of religion, and all that is suitable for women

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[309] ibid., p. 278.
[310] Quoted in *Ḥaṣād al-Fikr al-ʿArabī al-Ḥadīth fī Qaḍāyā al-Marʾa*, edited by Lajna minaʾl Bāḥithīn (Committee of Editors), Beirut: Muʾassasat Nāṣir lil-Thaqāfa, 1980, p. 176-180.
[311] ibid., p. 181-2.

including sewing and embroidery" but added that in the future it may be necessary to also teach them "writing and some principles of useful knowledge concerning home management… calculation/mathematics and the like" In addition, "boys and girls are both to be taught morals, good manners and good behaviour.[312]

Girls' education was justified by the benefits it would bring to their future husbands "for that would increase them in good manners and intelligence, make them worthy of knowledge, and fit to participate in speaking and giving opinion with men… to remove the silliness and foolishness that result from the ignorant women's mixing with her likes", but also "to enable the woman, when the need arises, to undertake the work done by men to the extent of her ability and strength… for work protects women from what is improper, and brings her closer to virtue".[313]

Al-Ṭahṭāwī's writings thus represent an intermediate phase between pre-modern/early modern approaches, such as that of al-Jabartī, and those following the occupation of Egypt by the British, both of which are characterised by the implicit and explicit opposition to western influence. In contrast, al-Ṭahṭāwī's historical context allowed him to view the western experience in a less threatening way, and to propose educational reforms that were not yet complicated by British interference and obstacles.

2.2.2 Edward Lane and Stanley Lane-Poole in Egypt

The publication of the *Description de l'Egypte* by the French scholars who had accompanied Napoleon's French occupation of Egypt, and Britain's political interest in Egypt encouraged interest in everything Egyptian, and the nineteenth century saw the proliferation of travel accounts on Egypt. Just as Muslim travelogues wrote about the differences between Muslim and European women, western travelogues' accounts of the East devoted significant space to expounding those differences, stressing the superiority of European traditions and attitudes in relation to women, and relating the inferiority of Muslim women to the religion of Islam.

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[312] Al-Ṭahṭāwī, *Al-Aʿmāl al-Kāmila*, vol. 1, p. 296.
[313] Al-Ṭahṭāwī, *Al-Murshid al-Amīn, Al-Aʿmāl al-Kāmila*, vol. 2, p. 393.

Several studies have explored the indulgence of European travel literature with the erotic Oriental Other, uncovering the obsession with the 'Muslim woman' who, in the eyes of the European male viewer, was far more 'oriental' than the man.[314] As Valentine Moghadam remarked, "the constructed oppression of 'Muslim women' was central to what Edward Said has identified as the Orientalisation of the Middle East".[315]

Clearly fully aware of such accounts, Ottoman author Fatima Aliye (1862-1936), as early as 1891, published *Nisvan-i-Islam* (The Women of Islam) addressing "Europeans… whose ideas concerning us are so mistaken and false that they are a cause of amazement", demonstrating awareness of what is written in "the books of Europeans in all their languages, known as travellers' books" adding that "anyone who reads these books and looks at their content thinks that he/she must be reading fiction books or comical stories".[316] Muslim scholars were clearly aware of European representations of Islam and Muslim nations, as can be seen from the responses written, for instance by Tunisian Muḥammad Ibn Abī al-Ḍiāf's *Risālat al-Mar'a* (Essay on Women) in response to the criticisms of France's consul in Tunis Leon Roche, Qāsim Amīn's "*Les Egyptiens*" in response to Duke D'harcourt's *Egypte et les Egyptiens*, and Muḥammad ʿAbduh's responses to Hanoteaux, Ernest Renan, Isaac Tiller and others.[317]

The views expressed by Orientalist scholars on Egyptian women can be seen from the influential *Account of the Manners and Customs of Modern Egyptians* (1836), written by Edward Lane (1801-1876). The outcome of his observations during his residence in Egypt, the book has been reprinted a great number of times and has had a significant influence on subsequent western Orientalist scholarship. They are also often referred to in the colonialist discourse, as seen in the British Consul in Egypt Lord Cromer's frequent references to Lane and Lane-Poole. The focus on the – inferior – domestic customs of Egyptians, particularly women,

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[314] Lisa Lowe, 1991, *Critical Terrains: French and British Orientalisms*, Cornell University Press, NY and London. See also Judy Mabro's *Veiled Half-Truths: Western Travellers' Perceptions of Middle Eastern Women*, Rana Kabbani's *Europe's Myth of Orient*, Malek Alloula's *The Colonial Harem*.

[315] Haideh Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis*, London: Zed Books, 1999, p.32.

[316] Carter Vaughn Findley "La soumise, la subversive: Fatma Aliye, romancieʿre et feministe", *Turcica*, 27, 1995 153–72.

[317] Rashīd Riḍā also reported in his journal *Al-Manār* (vol. 5, p. 666, 1 December 1902) that "as soon as this new Christian century started, a large number of Europe's most prominent writers preoccupied themselves with the question of the future of Islam, writing lengthy articles, each presenting his view, with some bringing glad tidings, and others warning".

which began in the travel literature of the nineteenth century continued through the colonialist discourse, as travel accounts shaped "an Egyptian landscape on which the colonial experience was later played out".[318]

Direct encounter with the 'East' is as preceded by curiosity and pre-formed assumptions as was al-Ṭahṭāwī's encounter with 'the West'. Even where observations do not conform to the established assumptions, they are often explained away in such a way that the assumptions can safely remain unchanged. Thus the absence of face-veils and strict segregation among the vast majority of Egyptian women[319] does not preclude a long and detailed description of the life of "Egyptian women" secluded in the harem, although, being restricted by the inaccessibility of women's quarters to foreign men, Lane's account of life in the harem must rely on second-hand reports. And, according to him, the reason for the surprising rarity of polygynous marriages[320] is "for the sake of domestic peace, if for no other reason". Thus "at precisely the same time that monogamous, bourgeois couples and modern, single-family dwellings became the products of Egyptian modernisation and centralisation, European travellers were emphasising Egypt's polygamy, extended families, timeless domestic practices, and bizarre sexual habits".[321]

Lane's lack of direct access to women and their homes does not prevent him from forming a conclusive judgment on their treatment and upbringing of their children: "In the treatment of their children, the women of the wealthier classes are remarkable for their excessive indulgence; and the poor for the little attention they bestow, beyond supplying the absolute wants of nature".[322] At the same time we are told that "the care of their children is the primary occupation of the ladies of Egypt",[323] but that "the parents seldom devote much of their time or attention to the intellectual education of their children".[324] We are told that "the higher and middle orders of Muslims in Egypt are scrupulously clean, and the lower orders are more so than in most other countries",[325] but that "with the exception of those of the wealthier classes, the

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[318] Lisa Pollard, *Nurturing the Nation*, p. 51.
[319] "In upper Egypt the burko' is very seldom seen… Many of the women of the lower orders even in the metropolis, never conceal their faces", *Account of the Manners and Customs of Modern Egyptians* (1836), p. 65.
[320] ibid., p. 147
[321] Lisa Pollard, *Nurturing the Nation*, p. 48.
[322] Lane, p. 69.
[323] ibid., p. 198.
[324] ibid., p. 73.
[325] ibid., p. 299.

young children in Egypt, though objects of so much solicitude, are generally very dirty, and shabbily clad. The stranger here is disgusted by the sight of them."[326]

The theme of the 'failure' of Egyptian parenthood, and particularly motherhood, and the responsibility of that failure for all the ills of Egyptian society, later becomes more pronounced in both the colonial discourse which asserts its moral position as Egypt's guardian, and the nationalist discourse which adopts as its mission the reform of domestic norms and the 'training' of mothers in order to produce good modern Egyptian citizens.

Edward Lane's great-nephew, Stanley Lane-Poole (1854-1931), writing half a century after his great-uncle, at a time when Britain's interference in Egypt was no longer hidden, having occupied the country in 1882, contains more strongly and explicitly pronounced judgements on Egyptian social customs, not only stressing their inferiority and their deep roots established since childhood, but also the impossibility of their reform, despite superficial "improvements" brought about by European influence on Egypt's elite.[327]

By the time Lane-Poole was writing, the formula was complete: the clearest marker of difference between the East and West is the position of women. Eastern and western women are so completely different in their character, their relationship with their husbands, their upbringing of their children, and their ordering of their homes, that they have nothing in common. And Egyptian women's corrupt influence is inevitably passed on to their husbands and children, guaranteeing the perpetuation of Egypt's corrupt and inferior state. Moreover, there is no hope of reform, since this inferior position of women is based on the religion of Islam, which governs all aspects of life in Muslim society.

> The fatal spot in Mohammedanism is the position of woman… Their education is entirely neglected; as for their morals, they are simply taught to make themselves seductive to their husbands… True love is too rare in the East, and faithful devotion to one woman is not to be reckoned among ordinary Muslim virtues…. And this false relation between husband and wife makes itself felt in the bringing up of children. The early years of childhood, perhaps the most critical in a whole life, are tainted by the corrupt influences of the harem… As long as the Mohammadan religion exists, the social life with which it

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[326] ibid., p. 71.
[327] Stanley Lane-Poole, *Islam: A Prelection delivered before the University of Dublin March 10,* 1903, Dublin: Hodges, Figgis, 1903. In the chapter on "The European Element", Lane-Poole talks about the material developments introduced to Egypt, and the illustrations chosen to demonstrate this are western-style arcades, ships, canals and waterworks, and the picture of a woman wearing a European hat with no face or hair veil with the simple caption "European Improvements" p. 125.

has unfortunately become associated will also survive; and so long as the latter prevails in Egypt we cannot expect the higher results of civilisation.[328]

Egyptians' parenting is again criticised and discredited, the ignorant fathers for failing to develop their children's intellect "for the excellent reason that he seldom knows anything himself",[329] while the mothers are only implicitly present through the "corrupt influences of the harem". It is not sufficient to point out the religious basis of Egyptian women's position, but it must be repeatedly emphasised that it is "unalterable", "incontrovertible" and that they have "always" been thus treated, offering no possibility of any improvement, whether through education – a major cause of the emerging nationalist movement – or otherwise.

Interestingly, Lane-Poole's view of Egyptian peasants (i.e. the overwhelming majority of Egypt's population) is no less negative than that of women, although the roots of the peasants' character are not to be confused with those of women's position. They are both lacking in intelligence, unable to be independent or think for themselves, and in need of 'guardians'. Of the Egyptian peasant, we are told "we cannot expect him to be intelligent… He is not, certainly, fit at present to govern himself … He needs nursing and guiding and protecting (against himself as against his oppressors) like a child for many years".[330] Both peasants and women are infantilised, but it is women who are singled out as responsible for society's corruption and "diseased condition", and the "failure to set women on their true level has done more harm than anything else to Muslim society."[331] Echoes of this approach can be seen in Egyptian men's discourse on women, including the "liberation discourse": The focus is on women as the locus of the nation's backwardness; their situation is abstracted and treated away from the rest of the country's socio-economic problems, and compared to an theoretical external ideal, rather than to the state of Egyptian men.

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[328] ibid., p. 133-6.
[329] ibid., p. 80.
[330] ibid., p. 57.
[331] ibid., p. 43.

2.3 Historical Accounts of the Occupier and Occupied:

2.3.1 Al-Jabartī and the French invasion

Napoleon Bonaparte's excursion into Egypt in 1798, in order to sever his rival England's route to India, brought the French and the Egyptians into direct contact with an alien culture. The extent of the influence of the French invasion on social, cultural and political ideas and its position as the principal catalyst of revival are matters of intense debate. The fundamental discontinuity between the eighteenth and nineteenth centuries, and the view that the "modern" era followed centuries of "political anarchy, intellectual and cultural sterility, and economic and demographic decline"[332] have been questioned by some historians. They argue that the idea that the modern revival began with Muḥammad ʿAli and/or Napoleon only emerged later, while "scholars, like Al-Jabartī failed to perceive Napoleon and Muḥammad ʿAlī as initiators of a new and better era",[333] tending to look back with nostalgia to past eras. They also argue that the view that the revival occurred after a long period of decline was a result of a number of contributing factors, not only foreign rhetoric, but internal discourses, including classical polemic Ottoman political writings on decline following the "golden age" as early as the sixteenth century, the rhetoric of the *Tanzimat* reformers who emphasised decline as a way of legitimising reform, and the writing of history patronised by King Fuād and Fārūq.[334] It is interesting to note that ʿAbduh wrote very critically on Muḥammad ʿAlī and his legacy.[335] Judith Tucker notes that "the French invasion had little impact on Egyptian society at its roots".[336]

Nevertheless, the impact of the French invasion – Egypt's first encounter with the West since the Crusades – can be deduced from al-Jabartī's description of that event as one of "fierce fights and important incidents; of the momentous mishaps and appalling afflictions; of the multiplication of malice and the acceleration of affairs; of successive sufferings and turning

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[332] See Cuno K. M., "Muhammad Ali and the Decline and Revival Thesis in Modern Egyptian History", in *Iṣlāḥ am Taḥdīth: Miṣr fī ʿAhd Muḥammad ʿAlī*, Symposium organised by the Egyptian Society for Historical Studies, 9-11 March 1999, ed. Raouf Abbas, Cairo: al-Majlis al-AʿAl lil-Thaqāfa, 2000, p. 94.
[333] ibid., p. 105.
[334] ibid.
[335] *Aʿmāl*, vol. 1, p. 839.
[336] Tucker, "Problems in the Historiography of Women in the Middle East: The Case of Nineteenth-Century Egypt" p. 33, *International Journal of Middle East Studies*, 15, 1983.

times; of the inversion of the innate and the elimination of the established; of horrors upon horrors and contradicting conditions; of the perversion of all precepts and the onset of annihilation".[337]

The theme of difference dominates discourses of the invader and invaded. Napoleon's hundred scholars wrote in their famous study of Egypt, "Everything, in this people, carries the imprint of a striking contrast with the habits of European nations. This difference is the result of climate, civil institutions and religious prejudices".[338] The difference was most visibly seen in the appearance, view and attitude towards women. Christopher Herold, in his *Bonaparte in Egypt*, wrote that there were no women to be seen except "a few women… whose aspect struck the French as unappetising. Their sole garment was a shirt, usually blue and always dirty; they went barefoot and bare-salved, smeared kohl on their eye-brows, painted their fingernails red, and blithely exposed any part of their anatomy save their faces".[339]

Egyptians found the French attitude just as bizarre and condemnable. Egypt's most prominent historian of the time, ʿAbdurraḥmān al-Jabartī, in his chronicle of the French occupation of Egypt, wrote about the colonisers:

> They follow this rule: great and small, high and low, male and female are all equal. Sometimes they break this rule according to their whims and inclinations or reasoning. Their women do not veil themselves and have no modesty… They have intercourse with any woman who pleases them and vice versa.[340]

What most provoked al-Jabartī was the "humiliation and degradation… when the French, in their desire of and submission to women… sought to win over other women and undermine their minds".[341] The attraction of the French was such that "many a Frenchman became engaged to the daughters of local dignitaries, the latter giving their daughters away, in their greed for power and favour". These wives defied local customs and sentiments by marrying the French who were occupiers and who "pretend to embrace Islam", by behaving like French women, and

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[337] *ʿAjāʾib al-athar fī al-tarājim wa al-akhbār*, edited by Thomas Philipp and Moshe Perlmann, Stuttgart: Franz Steiner, 1994, vol. 3, p. 1.
[338] Commission des sciences et arts d'Egypte, *Description de l'Egypte*, Paris: Imprimerie Imp riale, 1809-1828, p. 83.
[339] Herold, *Bonaparte in Egypt*, London: H. Hamilton, 1963, p. 71.
[340] Al-Jabartī, *Al-Jabartī's Chronicle of the First Seven Months of the French Occupation of Egypt (Tārīkh Muddat al-Faransīs bi Miṣr)*, edited and translated by S. Moreh, Leiden: Brill, 1975, p. 48.
[341] ibid.

by rising socially and gaining privileges, while others, like the ʿulamā', suffered "humiliation and degradation".[342]

Al-Jabartī described at length the defiance of social mores and reversal of the social hierarchy. While the traditional elite were humiliated, Egyptian women married to French officers "would walk in the streets, take interest in public affairs and current regulations... preceded by guards and servants who would pace with batons to pave them a path, as if for a governor. Women commanded and forbade".[343] Al-Jabartī clearly shows the same concern seen in al-Ṭahṭāwī's writings with gender relations, social hierarchies, 'dominance' and 'submission', which has endured in all discourses on women.

However, this concern seems to be more of a reflection of a state of insecurity in the face of externally-imposed changes and loss of status. The same shock and dismay is not apparent in Al-Jabarti's description of other instances of female public appearance or political participation, as for instance in his report of women's protest at Muḥammad ʿAli's policies, on 5 Rabīʿ al-Awwal 1229, (Feb. 25, 1814) when "a large group of women tax farmers went to al-Azhar Mosque and shrieked in the jurists' faces, disrupting their classes and scattering their satchels and papers, causing the shaykhs to disperse to their homes. A large number of the populace joined the women and they kept up their uproar… declaring, 'We will come every day in this manner until they release our shares, our incomes, and our stipends!'"[344] This use of gender to express dissatisfaction with socio-economic and political changes and to express political aims was to persist through the reformist and nationalist discourses.

2.3.2 Lord Cromer and the Colonialist Discourse

While Muḥammad ʿAlī succeeded in avoiding direct European intervention in Egypt's administration, his successors would end up mortgaging Egypt to its European creditors and reducing it to bankruptcy, leading eventually to the beginning of Britain's 'veiled protectorate' in 1879. In 1881, this developed into direct occupation as the order Britain had always sought to preserve became threatened by the coalition that emerged between the constitutional demands of

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[342] ibid.
[343] ibid., p. 163.
[344] *Al-Jabartī's History of Egypt*, edited by Philipp & Perlmann, vols. III & IV, p. 285.

Egyptian elite and the demands of junior military officers. The new ʿUrābī government promised an end to the absolute power of the Turkish elite and their European creditors. ʿAbduh was a prominent leader in the ʿUrābī movement, and its end would have a profound impact on his views on political action and social change.

Britain first watched as the 'new' and 'old' orders negotiated and confronted, but finally intervened to preserve the position of the Khedive and overthrow the new nationalist government. The ʿUrābists were defeated within eight weeks by the British forces, who responded to the nationalist uprising by placing the country under direct military occupation. The failure of nationalist aspirations would have a profound effect on the Egyptian elite who came – with the continued penetration of colonialist themes – to accept their defeat not as a result of foreign intervention and the superior weaponry of the occupiers, but as a sign of the 'unreadiness' of the country for self-rule and the prematurity of calls for change.

The British colonial representation of Egyptian society and women in particular was overwhelmingly negative and judgmental, in contrast to the descriptions of scholars of the French expedition a century earlier, which were more similar to al-Ṭahṭāwī's mixed observations. In *Description de l'Egypte*, we are told about the "beauty and prosperity" of Harem women and the "strength and lightness" of working peasant women.[345] Egyptian mothers are characterised by "happiness and courage". Descriptions are not entirely free from condescension, but – unike later colonialist writings – balance their criticism with admiration for positive qualities. While "the Egyptian" does not enjoy "our delights and pleasures or our physical or spiritual qualities", he nevertheless "knows more than us the meaning of natural emotions".[346] And readers are warned that "we would be very wrong to think that Muslim women – although they submit to their husbands' control – can be treated by authoritarianism and injustice by their husbands, for on the contrary, their status is good to a large extent… they achieve an undoubted influence over the minds of their husbands who can never mistreat them or even scold them".[347] All these warnings and balancing qualifications disappear in the instrumentalist colonialist discourse later.

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[345] ibid., p. 56
[346] ibid., p. 58.
[347] ibid., p. 85.

The British colonial representation of Egyptian society and its discourse on women in particular had a lasting effect on the Egyptian nationalist discourse on women. The colonial discourse can best be seen from the writings of Lord Cromer, British Agent and Consul-General from 1883 to 1907. Cromer and ʿAbduh were known to have a relationship of mutual respect, and Cromer is credited with supporting ʿAbduh's promotion to various prominent official posts. Following the shock of the defeat of the ʿUrabi movement, ʿAbduh came to believe in the futility of political action dependent on external aid or on the khedive's cooperation. This led him to prefer focusing on building the people's self-confidence and capacity through educational, social, ethical and judicial reform, where possible benefiting from British support, despite his opposition to the occupation in principle. The complex relationship is clear from Cromer's mixed praise and criticism of ʿAbduh in his *Modern Egypt*.[348]

Chapter XXXIV of his *Modern Egypt* is entitled "The Dwellers in Egypt", seemingly refuting the existence of the Egyptian people claimed by nationalists. Nevertheless, these "dwellers" share a 'mental constitution' to which their inferiority is attributed. The 'Oriental mind' or 'character' is no new concept, as seen in Lane-Poole to whom Cromer often refers, but it is used to great effect in colonialist discourse. This new subject of colonial politics, the individual character or mentality, rather than institutions, systems or laws, was to later be replaced by 'race' and then 'culture'.

The reader is moved to sympathise with the European in his almost impossible mission of civilising 'the Eastern', by virtue of the absolute opposition between the two species, and the Eastern's:

> Want of accuracy, which easily degenerates into untruthfulness, is, in fact, the main characteristic of the Oriental mind … His reasoning is of the most slipshod description… the grave and silent Eastern, devoid of energy and initiative, stagnant in mind, wanting in curiosity about matters which are new to him, careless of waste of time and patient under suffering… his love of intrigue is inveterate… He reposes unlimited faith in his own cunning, his fatalism which accepts the inevitable, and with his submissiveness to all constituted authority.[349]

Here one can see more than a few common themes between the colonialist discourse on "the oriental character", and the nationalist movement's discourse on women, including the

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[348] Cromer, *Modern Egypt*, vol. 2, p. 179-180.
[349] ibid., p. 146-161.

"liberation" discourse of Qāsim Amīn and others. In the latter, the same characteristics of "laziness", "lack of curiosity", "carelessness of waste of time", "love of intrigue", and "cunningness" are reflected onto Egyptian women, whereas the "new modern Egyptian man" embodies the "western" qualities of the "energetic" conscious reformer.[350]

Having given such a bleak summary of the state and 'character' of Egyptians in general, Cromer then focuses on the state of Egyptian women, as if it were particularly degraded, even though the entire population has already been described as mentally and morally inferior in all respects. Cromer singles out two main phenomena of the "degradation of women in Mohammedan countries" and markers of difference "between the position of Moslem women and that of their European sisters". These two points, which continued to raise heated debate in the "discourse on women", are seclusion and polygamy.[351] By seclusion, Cromer means both the physical veil – "the face of the Moslem woman is veiled when she appears in public", and other restrictions which mean that "she lives a life of seclusion". In contrast, "the European" woman's situation is superior and ideal, as "the face of the European woman is exposed to view in public. The only restraints placed on her movements are those dictated by her own sense of propriety". The condition of European women is not only perfect, but is presented as a result of Christian teaching: "The monogamous Christian respects woman; the teaching of his religion and the incidents of his religious worship tend to elevate them… The Moslem, on the other hand, despises women." Seclusion is harmful for women "as seclusion, by confining the sphere of woman's interest to a very limited horizon, cramps the intellect and withers the mental development of one-half of the population in Moslem countries", and also has "a deteriorating effect" on society "inasmuch as women, in their capacities as wives and mothers, exercise a great influence over the characters of their husbands and sons".[352]

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[350] Many studies in post-colonial literature have exposed the 'feminisation' of occupied eastern men in the colonialist discourse. See for instance Mrinalini Sinha's *Colonial Masculinity: The "Manly Englishman" and the "Effeminate Bengali" in the Late Nineteenth Century*.

[351] The twin questions of *hijab* and polygyny continue to pre-occupy both sides – critics and apologetics. For instance a 1934 book entitled *Qawlī fi'l-Mar'a, wa Muqāranatuhu bi-Aqwāl Muqallidat al-Gharb* (My view on Women, and its Comparison to the Views of Imitators of the West), by Sheikh Muṣṭafa Ṣabrī, the last Ottoman Shaykh al-Islam who settled in Egypt after the end of the Caliphate, is fully devoted to those two questions, justifying their necessity. Beirut Dār al-Rā'id al-ʿArabī,1982.

[352] Earl of Cromer, *Modern Egypt*, vol. 2, p. 156.

As for polygamy, like Lane and Lane-Poole, Cromer ignores statistics and observations that polygamy is rare and decreasing in Egyptian society, insisting that "the East is polygamous, the west is monogamous". Cromer adds that "the effects of polygamy are more baneful and far-reaching"[353] than seclusion, though he does not detail those effects. While visitors to Egypt, decades before Cromer, had all reported the rarity of polygamous marriages, Cromer recognises that polygamy has "of late years" decreased, but attributes its fall to "education and association with Europeans".[354]

Immediately after discussing the ills of Egyptian family life, particularly the degradation of women, Cromer moves on to the subject of the different standpoints from which the European and the Oriental approach the subject of government, thus instilling the link between the two, and making the former responsible for the latter. As Lisa Pollard explains in her *Nurturing the Nation*, just as in British colonies in India and Africa,

> For the British, Egyptian politics were synonymous with familial habits – marital practices, living arrangements, relations between parents and children – of Egyptian rulers… The realpolitik of British foreign policy was thus undergirded by the *moralpolitik* of domestic affairs, turning familial practices into family politics – in essence, domestic mores as measures of the ability of the nation to govern itself.[355]

In the colonial – and later in the opposing nationalist – discourse, the subjects of politics and governance on the one hand and family life on the other become inextricably linked to the point of being confused. Re-organising the family becomes a political action and a principal part of the nationalist struggle, bringing the 'nationalist question' and the 'woman question' into an unbreakable union.

Identifying the Egyptian character as the root of decline, its reform through education became the cause of the nationalist movement, and the focus on education as the key to all progress is strongly present in ʿAbduh's writings. But, the colonialist discourse is quick to downplay the link between education and "self-governance", and to point out the predicted failure of education without the presence of the foreign tutor, for then "a relapse would inevitably ensue".[356]

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[353] ibid., p. 155-7.
[354] ibid., p. 158.
[355] Lisa Pollard, *Nurturing the Nation*, p. 3.
[356] *Modern Egypt*, p. 536-8.

This is perhaps the reason for Britain's lack of support for Egyptian state education, leaving the responsibility to fall on private initiative, as clear from the establishment of several charity associations with the provision of free or subsidised education for poor boys and girls being among the main priorities, including the Islamic Charity Association chaired by Muḥammad ʿAbduh. Cromer still warned that "it, of course, remains an open question whether, when the Egyptian women are educated, they will exercise a healthy and elevating influence over the men. The few Moslem women in Egypt who have, up to the present time, received a European education are, with some very rare exceptions, strictly secluded… All that can at present be said is that those results must necessarily be uncertain".[357] Again, Cromer moves the focus away from the issue of education, on which consensus existed among Egyptians, to the controversial issue of seclusion. This would seem to influence the choice of writers on women's reform to take up, avoid, or oppose this call.

Nevertheless, the colonialist discourse emphasised in very strong, sometimes exaggerated, terms the inseparability of reforming "the position of women" and social advance, and the importance of women's liberation for the advance of "Christian Europe", stressing that "Change the position of women, and one of the main pillars, not only of European civilisation but at all events of the moral code based on the Christian religion, if not Christianity itself falls to the ground."[358] This 'colonial feminism', as Leila Ahmed remarked, was merely used to legitimise Britain's 'civilising mission'.[359] While at home, Europeans were far from agreeing on the extent of women's liberation, and Cromer himself was a staunch opponent of the Suffragette movement in Britain, he strongly held that "the position of women in Egypt, and in Mohammedan countries generally, is, therefore, a fatal obstacle to the attainment of that elevation of thought and character which should accompany the introduction of European civilisation".[360]

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[357] ibid., p. 542.
[358] ibid., p. 538.
[359] See Leila Ahmed, *Women & Gender in Islam*, p. 153.
[360] *Modern Egypt*, vol. 2 p. 538-9.

2.4 Reformist discourses: Elevation of woman central to elevation of the nation; woman as a primary cause of the nation's backwardness

'Easterners' for their part were not simply an isolated, passive object studied and presented by 'westerners'; they were conscious of these representations and discourses. This is not to say that their own discourse is simply a reiteration of, or reaction to, the foreign discourse. Nevertheless, the two discourses are far from being isolated from or ignorant of one another. Ibrāhīm Al-Muwayliḥī, in an article on reform published in *Miṣbāḥ al-Sharq* on 25 May 1899, wrote about the efforts of reformers who "will soon bring back to the East its most brilliant glow, and erase from its pages the word 'barbarity' which Western authors never leave out in their descriptions of Eastern nations".[361] This awareness of both the perceived decline of the Muslim world relative to its past and to the ascending West, and of the western discourses regarding the diagnosis and causes of that decline and of the West's supremacy is evident in the reform discourse of the second half of the nineteenth century. While the East's backwardness was generally a point of agreement between the internal and external discourses, the same is not true of the factors identified as causes of that state.

Even though the discourse on women evolved over decades, the final decades of the nineteenth century saw the intensification of discussions of the 'woman question', as part of attempts to make sense of the changing conditions of Muslim societies, confront internal decline and external threats, and elaborate the image of the sought-after society. As Moghadam points out, this feature is common to various 'discourses of change', not just to turn-of-the-century Egypt, noting that "in examining revolutions and revolutionary states from France to Iran, one finds that the 'Woman Question' assumes a prominent position in revolutionary discourses and in the programmes of the new states"[362] as "women frequently become the sign or marker of political goals and of cultural identity during processes of revolution and state building, and when power is being contested or reproduced".[363]

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[361] *Ibrāhīm Al-Muwailiḥī: Al-Aʿmāl al-Kāmila, Taqdīm wa Taḥrīr Roger Allen*, Al-Majlis al-Aʿlā li'l-Thaqāfa, 2007, p. 229.
[362] Valentine Moghadam, "Introduction and Overview", *Gender and National Identity: Women and Politics in Muslim Societies*, Valentine Moghadam (ed.), London: Zed Books for United Nations University, 1994, p. 10.
[363] ibid., p. 2.

Three prominent figures in the long list of reformers who were deeply conscious of the Muslim world's decline, who analysed the causes of that decline and the way out of it are Jamāl al-Dīn al-Afghānī, ʿAbdurraḥmān al-Kawākibī and ʿAbdullāh Al-Nadīm. The first is known to have had a major influence on ʿAbduh's thought, the second was one of his contemporaries, who was part of his circle while in Cairo where he settled in 1898,[364] while the third was a close associate particularly through the years of political activism.

2.4.1 Al-Afghānī: Reviving the East's Glory & Mothers' Mission

The East's decline, its causes, and the way to re-vitalise the East to regain its glory were the predominant themes in the writings of Jamāl al-Dīn al-Afghānī, known as 'the awakener of the East'. While colonialist discourse often blamed religion for the Muslim world's backwardness, al-Afghānī sought to absolve Islam of that responsibility, arguing instead that it had, through the principles of liberating the mind and uniting its adherents by the bonds of faith and language, created a successful civilisation, that only declined when it abandoned those principles. Following that diagnosis, al-Afghānī called for liberating and uniting Muslims and the acquisition of knowledge and modern sciences. He summarised how to acquire this knowledge: for men "and those beyond the age of learning", to reform them through lectures, national associations, mixing between different religious communities and exploring ways of reforming the country through speeches, publications, and good examples. While women are not explicitly included in the reform programme directed at adults, they figure prominently in the reform programme relating to children: "As for children, first [you should] educate women well, and secondly, close state schools before them and open for them independent schools".[365]

The mother's assigned mission is broad:

As for the child, he/she needs to be looked after by the mother as a nursling, then as a toddler, providing perfect health care, so that they are healthy in their bodies and minds; then she must feed them the love of the homeland (*waṭan*), and gradually teach them the required sciences; and should not extinguish their natural rebelliousness by teaching them

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[364] Al-Kawākibī's *Umm al-Qurā* was serialised and reproduced in *Al-Manār* throughout 1902-1903, as well as a biography of Al-Kawākibī and an obituary when Al-Kawākibī died. See *Al-Manār*, vol. 5.

[365] *Al-Aʿmāl al-Kāmila li Jamāl al-Dīn al-Afghānī*, *Complete Works of Jamāl al-Dīn al-Afghānī*, edited by Muḥammad ʿImāra, Dār al-Kātib al-ʿArabī li'l-Ṭibāʿa wa'l-Nashr, 1968, p. 279.

to lie, and should make work beloved to them, train them to be active, while keeping in mind their age.[366]

While it is not explicitly stated whether women are included in the educational programme directed at adults, and while al-Afghānī does not discuss how the mother is to acquire the education to enable her to fulfil the mission assigned to her, he does elsewhere warn against limiting education to men – primarily because of women's role as mothers:

> Gentlemen, I warn you against believing that you will gain the benefits of civilisation, obtain knowledge and sciences, acquire the tools for advancement and happiness, and reach the height of glory and honour, if knowledge amongst you is limited to men. I seek refuge for you against ignorance of the fact that we cannot come out of the lowliness of unawareness and ignorance, from the prison of humiliation and poverty and from the trap of weakness and stagnation as long as women are deprived of their rights, not knowing their obligations, for they are the mothers who will produce the primary education and the basic morals.[367]

On the question of equality, al-Afghānī did not explicitly address the matter. However in a gathering where he was asked to give his opinion, he seemed to approach the matter in the reformists' "utilitatarian" logic, i.e. by focusing on the associated practical benefits or harms, noting that he has "not found in all that an explicit opinion, or a definition of the demand for equality, or the benefit that may result."[368]

Al-Afghānī held that in men's and women's "make-ups, there are things that are lacking and others that are abundant, and neither is considered a fault or a perfection", which indicates "the necessity of difference in their actions". Woman's function is to "manage the kingdom of the home … raise the children ... and draw on their pure slate the images of courage, virtue and bravery". Thus women's work outside the home "degrades the status of the woman" as it undoubtedly means that "there will undoubtedly be a loss that results from her abandoning of the home and its management, and of the child and his upbringing, that will be much greater than that benefit".[369] In contrast, the mother's role is glorified, as "Man, in his features, his nutrition, and the first teachings imprinted onto him, is the creation of the mother-woman, indebted to the mother-woman, a pupil of the mother-woman, whether he grows up to be virtuous or corrupt".

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[366] ibid.
[367] Lecture in Alexandria, on 24 May 1879, *Silsilat al-Aʿmāl al-Majhūla*, p. 81.
[368] Al-Afghānī, *Al-Aʿmāl al-Kāmila*, p. 524.
[369] ibid., p. 525.

By fulfilling her duty and role as "the educator of men, who feeds them virtue", women "would have excelled the greatest of men in his knowledge and work".[370]

Similarly with seclusion, al-Afghānī could not see "in the sayings and writings of those who call for it, that they ever mentioned the least benefit from it".[371] And while he believed that "the *ḥijāb* is a veil which, if lifted suddenly, will mostly reveal evils of corruption and immodesty, acceptance of vice, and indifference to public surveillance", he believed that "if women stopped at unveiling, and did not use it a means to corruption, the matter would not need any discussion."[372] Thus, as would be seen with later reformists following the same line, such as Rashīd Riḍā, with respect to the question of "unveiling", there is an ambiguous and inconclusive stance, that views the question not as a purely religious *fiqhī* one, but one whose benefits and harms are to be carefully assessed. Their stance can be summarised as non-opposition to "unveiling" (in the sense of ending the seclusion and complete invisibility of women), but a cautioning against "going beyond limits" and "sudden unveiling" which would lead to corruption and immorality. This would seem to be ʿAbduh's view, although he avoided addressing the issue directly altogether.

2.4.2 Al-Kawākibī: Women's liberation in a wider context

ʿAbdurrahmān al-Kawākibī (1854-1902) was a Syrian reformer contemporary of Afghānī and ʿAbduh, whose two main contributions, *Umm al-Qurā*, first serialised in *Al-Manār* in 1900, and *Ṭabāiʿ al-Istibdād*, first serialised in *al-Muʾayyad* in 1900 "form a profound and brilliant analysis of the decrepitude of the Muslim world in general and of the Arab portions of it in particular, of its causes and of possible remedies".[373]

Al-Kawākibī's treatment of women's reform shares some of the characteristics of the discourse on women of other reformers, but departs from that discourse significantly in some other respects. In *Umm al-Qurā*, Al-Kawākibī details the various causes of stagnation (*futūr*),

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[370] ibid., p. 528-9.
[371] ibid., p. 525.
[372] ibid.
[373] George Antonius, *The Arab Awakening: The Story of the Arab National Movement*, Simon Publications, 1939, p. 97.

enumerating religious, political, ethical, and other causes which include "failing to pay attention to the education of women".[374]

Al-Kawākibī legitimises the call to educate women by reference to the Muslim past "where amongst our women there were those such as ʿĀ'isha, Mother of the Believers, may God be pleased with her, from whom we have taken half of our religion, and hundreds of female companions and *tābiʿiyyāt* [the generation after the companions] who were narrators of Hadith and jurists, as well as thousands of scholars and poetesses". As a further argument in favour of women's education, Al-Kawākibī points out its practical benefits and the harmful consequences of women's ignorance on the family: "on the morals of sons and daughters" and "on the morals of husbands" since "men, by nature, incline towards their wives, and women are definitely more able than men in the field of influencing morals".[375]

However, out of all those causes, al-Kawākibī identifies *istibdād* (despotism) as the principal disease affecting the Muslim world, or the East, which turns religion into a tool of control, prevents the circulation of knowledge, corrupts morals and human relations, and exacerbates social and economic inequalities. Thus he places gender relations within a wider socio-political context. This focus on the primacy of political change is one characteristic – among others – which sets al-Kawākibī apart from his contemporary reformers, including ʿAbduh.

Al-Kawākibī analysed the effects of political despotism and absence of freedom on social relations – including gender relations –, holding that "each individual among the *usarāʾ* [captives/slaves] of despotism is himself a despot; if he was able he would make his wife, family, tribe and all humans and even his Lord Who created him, follow his opinion and his command".[376] The despotic ruler sits at the top of a chain of despotism and persecution of those weaker than himself: failing to direct anger towards the despot, "the *usarāʾ* … persecute a vulnerable group, or foreigners, or they oppress their wives, etc."[377] And since knowledge is liberating, it "does not serve minor despots either, such as arrogant religious leaders, ignorant

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[374] *Umm al-Qurā*, Al-*Aʿmāl al-Kāmila li'l-Kawākibī*, Beirut: Markaz Dirāsāt al-Wiḥda al-ʿArabīyya, 1995, p.364.
[375] ibid., p. 370.
[376] ibid., p. 442.
[377] ibid., p. 503.

parents, foolish husbands, and all heads of weak groups".[378] Thus al-Kawākibī goes further than any of his contemporaries in linking gender relations to power relations, and political despotism to gender inequalities, demonstrating an acute awareness of the value of freedom and its relation to society's morals.

While Al-Kawākibī shares the belief of other reformers that education is one of the main solutions to the crisis of the Muslim world, he differs in his understanding of what constitutes *tarbiya*, what qualities it is hoped to instil in children, and who is responsible for it. He describes the sought-after new generation "who know that they were created free so they reject humiliation and slavery; who wish to die in dignity rather than live in humiliation; who work hard to earn a prosperous life, the life of a nation in which each is an independent authority ruled by nothing but religion".[379] One perceives a difference between the qualities of industriousness, obedience and discipline sought to be instilled into children in the discourse on motherhood and upbringing of nationalist reformers, and al-Kawākibī's emphasis on the qualities of freedom and independence.

> As for the process of *tarbiya* and who is to assume it, al-Kawākibī defines it as
> the *tarbiya* of the body to the age of two, and that is the function of the mother or the custodian (hāḍina), then the *tarbiya* of the *nafs* (soul) to the age of seven, which is the function of the two parents and the family altogether, then the *tarbiya* of the *'aql* (mind) until puberty, which is the function of teachers and schools, then comes the *tarbiya* by example – relatives and companions, until marriage - for which coincidence is responsible, then comes the *tarbiya* by companionship, which is the function of the two spouses until death or separation. And *tarbiya* after puberty must be accompanied by *tarbiya* by surrounding conditions, by society, by the law or political system, and by the person's *tarbiya* of him/herself.[380]

While reading al-Kawākibī, it becomes evident that he was deeply aware of political and social dimensions and their importance and influence on the process of *tarbiya*. He stresses the comprehensive nature of *tarbiya* as a social process, in which parents and the family are important, but so are the school, society, the law, and the political system. This is unlike the emphasis on mothers as having full responsibility for forming the characters of their children, seen in al-Afghānī and other reformers, and becoming more pronounced in nationalist discourses

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[378] ibid., p. 462.
[379] ibid., p. 372.
[380] ibid., p. 496.

on motherhood and women's reform. This exclusive role of *tarbiya* bestowed on women and their restriction to a single model is, according to some, a modern alien phenomenon and differs from the traditional Islamic discourse which addresses fathers and mothers equally.[381]

However, since al-Kawākibī seems to differ from those who view women exclusively as mothers and carers, he also seems to expect greater social and economic contributions from women. In the context of discussing inequality in production and distribution, Al-Kawākibī criticised the monopoly of the majority of wealth in the hands of those who contribute the least to production.[382] In this context, by focusing on 'productivity' and 'economic contribution', and by holding that "moralists agree that a human cannot be truly free unless he/she has an independent occupation",[383] Al-Kawākibī ends up generalising and condemning the 'non-productivity' of 'women', proposing that "one half of humanity – which totals one and a half billion – depends on the other half, and the majority of that dependent half is made up of urban women" – a questionable statistic, since the majority of women, certainly in Arab societies, were not urban.[384]

While it is not clear whether al-Kawākibī is suggesting women should seek paid employment outside the home, his respect for working men and women is implied in various chapters of his two books. For instance in *Umm al-Qurā*, he recommends that the father should "bring up his children, both male and female, with the view that each of them, upon reaching adulthood, can live independently, relying on his/her own earnings, even if outside their homeland".[385]

2.4.3 ʿAbdullāh Al-Nadīm

By the end of the nineteenth century, it was clear that the woman question occupied a central place in the modernising discourse in Egypt and was essential to the nationalist project. Nationalist papers of various trends discussed women's education and proper mothering, which

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[381] See for instance Umayma Abu Bakr, *The image of Man in Islamic Writings Between Old and New Interpretations*, in ʿAisha Taymur, Tahaddiyāt al-Thābit wa'l mutaghayyir fi'l qarn al-Tāsiʿ ʿAshar, edited by Hoda El-Sadda, 2004.
[382] Al-Kawākibī, *Aʿmāl Kāmila*, p. 475.
[383] ibid., p. 482.
[384] ibid., p. 474-5.
[385] ibid., p. 328.

acquired an important place in the project for the advance of the nation. The reform of motherhood and domesticity became a constituent part of the nascent national discourse. This transformation was promoted along scientific lines in accordance with modern, hygienic, and rational principles for developing "productive members of society".[386]

The orator, journalist and political leader ʿAbdullah al-Nadīm who – alongside ʿAbduh and others – had a prominent role in the ʿUrābī revolution, shared ʿAbduh's combined interest and involvement in both political and social reform. Following years of exile and hiding after the failed ʿUrābī revolution, he published the paper *Al-Ustādh*.[387] *Al-Ustādh* was best known for carrying satirical attacks on Lord Cromer and his policies, so much so that Cromer demanded al-Nadīm's expulsion from Egypt. A regular section was entitled "*Madrasat al-Banāt*" (Girls' School) which was written in Egyptian dialect rather than formal classical Arabic, and often dealt with home management, hygiene, as well as religious education. A similar section called "*Madrasat al-Banīn*" (Boys' School) dealt with hygiene, religion and civic education. *Al-Ustādh* proposed that women should be educated, and that they should learn reading, sewing, and religion (particularly rights of the husband).[388] *Al-Ustādh* also announced the publication of a weekly newspaper called "*Al-Murabbī*", published in "normal language – the language of women and children" which would be "dedicated to them, having nothing to do with men and their matters, on the subjects of raising daughters and sons and talking about them from the day of their birth".[389]

Through his "*Madrasat al-Banāt*", we see al-Nadīm's promotion of a single model for girls, also seen in his opposition to calls for widening women's roles, through his imaginary dialogues between Egyptian women published in his paper. Recalling al-Kawākibī's comments on women's non-productivity, Al-Nadīm also argued that women did not work equally hard as men – not in order to propose that women should engage in more work outside the home, but in order to reject the notion of equality and to emphasise "the difference between men and women":

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[386] See, for instance, Omnia Shakry's "*Schooled Mothers and Structured Play: Child Rearing in Turn-Of-The-Century Egypt*", p. 126 in L Abu-Lughod's *Remaking Women: Feminism and Modernity in the Middle East*.

[387] Published weekly in 1892-1893; printed 1345 copies (compared with 2775 by *Al-Ahrām*, 1455 by *Al-Muqaṭṭam*, 1300 by *Al-Muqtaṭaf*, 1200 by *Al-Mu'ayyad* and 740 by *Al-Hilāl*) and printed 2840 copies towards the end of its publication.

[388] *Al-Ustādh*, Issue 11, Year 1, 1 November 1892, p. 246.

[389] ibid., Issue 34, Year 1, 11 April 1893, p. 804.

Thus we know that the peasant woman works harder than the man; that the poor urban woman works equally as hard as the man who has an easy job, unlike the carpenter, the blacksmith or the builder, for instance; that the middle-class woman is the least hard-working; and the wealthy woman has no concern except her gentle self… Therefore if the lady who asked the question reflected on this classification and this discussion she would know the difference between the man and the woman, and would see that the deceptive attempts of wealthy ladies to claim equality with men are unacceptable, according to those of knowledge.[390]

Whilst admitting that peasant women work harder than men, the focus, as in most writings on women, is on the minority inactive "wealthy ladies". In his characteristic satirical and "close to the man on the street" style, al-Nadīm published imagined dialogues between Egyptian women, in Egyptian dialect, concerning family life. A number of these focused on the suffering of women whose husbands engage in drinking, gambling and prostitution, how they were to deal with the disintegration of family life, and how they were to stop their husbands' debauchery while their "going out is prohibited by *shar*ᶜ (Islamic law) and customs."[391] Al-Nadīm, through these dialogues, rejected the possibility that women could reject their husband's authority, even if their husbands were drunk or failed to maintain their families, insisting that husbands are to be treated with respect and humility regardless of their behaviour.

In the face of colonial interference and influence, Al-Nadīm opposed any relaxing of the custom of seclusion of women. *Al-Ustādh* criticised the spread of prostitution calling for further restrictions in the face of the growing decline in public morals, "to strictly prevent women from going out and to close the doors in the face of any (female) entering the house other than their relatives and those they trust".[392] The spread of prostitution and other social problems were attributed to the disruption of the old order "when Europeans entered Eastern countries through trade and domination, they corrupted the morals of men and women by the so-called modernity of theirs which in fact is a return to animalism".[393]

Al-Nadīm represents a major trend in the nationalist movement, which took up the question of women as a symbol of resistance of foreign influence and dominance. Proponents of this discourse, on the whole, opposed any major change in the situation of women, particularly in

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[390] ibid., Issue 7, Year 1, 4 October 1892, p. 161.
[391] ibid., Issue 10, Year 1, 25 October 1892, p. 229.
[392] ibid., Issue 19, Year 1, 27 December 1892, p. 438.
[393] ibid.

terms of access to the public space and any relaxation of "seclusion", linking any such relaxation to the spread of corruption and immorality. Nevertheless, they did not oppose the cause of women's education, but espoused it, as it became a matter of national consensus. However, they solely approached women's education within the context of producing better mothers able to produce better sons for the good of the nation, focusing on "home management, hygiene, and religious education".

All three reformers – al-Afghānī, al-Kawākibī and al-Nadīm – shared the belief in the importance of educating women as a way of advancing the nation. Apart from that, in their different approaches, they represent 3 trends in Islamic reformers' discourse on women: ambivalence towards changes in women's conditions except in an instrumentalist way, and maintenance of clear division of gender roles; contextualisation of women's subordination within political despotism and economic deprivation; and strong rejection of western influence and interference leading to a rejection of any discussion of women outside the context of equipping them for a better performance of 'traditional' roles. All three approaches are reflected in contemporary Muslim discourses.

2.5 Direct Discussion of "Equality" and "the Liberation of Women"

While the above reformist discourses touched on the subject of women as part of their comprehensive reform projects, their discussion was often vague and inconclusive. The 'marginality' of the question did not necessitate explicit clarification of what exact changes were to be adopted in women's upbringing and education, their social role, and their relationship with men. However, several factors, among which the precipitation of socio-economic changes affecting traditional family structures and the desire to build a new 'modern' Egyptian nation, the western discourse on the backwardness of eastern societies and of eastern women in particular, and the thriving women's press (discussed briefly at the end of this chapter) and discussion of the above questions in the newly formed press all prompted a number of authors to address directly such questions as: are men and women equal? Can they be equal, and should they be equal? Who is responsible for women's ignorance and backwardness? How are women responsible for

society's backwardness? What should women be taught? What other social changes are needed to 'elevate' women? What are women to be liberated from? What are the benefits of their liberation? The setting for most of these discussions was the emerging Egyptian popular press.

2.5.1 Shiblī Shumayyil and Social Darwinism

The generation of ʿAbduh was not exclusively influenced by the thought of Muslim reformers such as Al-Afghānī. They were also, to various extents, influenced by the new concepts of progress and scientism. Social Darwinism was so much in vogue in late-nineteenth-century Europe that its principles were greatly influential on both colonialist and the opposing nationalist discourses. This theory classified humans in a hierarchy at the top of which the white European male sat, having won the race for 'survival' by virtue of being the 'fittest'. In *Colonising Egypt*, Mitchell highlights this influence, concluding that "Le Bon, in sum, was probably the strongest individual European influence in turn-of-the-century Cairo in the political thought of Egypt's emerging bourgeoisie".[394] According to Le Bon, every nation had a "mental constitution" that was composed of its sentiments, ideas and beliefs, and was created by a process of slow, hereditary accumulation. ʿAbduh admired Le Bon's book, and visited him in Egypt. He also read Herbert Spencer's "*On Education*" and visited him in London. Likewise, he was familiar with the Egypt-based Syrian literary circles, seen for instance through his debates with Farah Antoun, or his letter read at the ceremony celebrating Salmān al-Bustānī's translation of the Eliad.[395]

One of the social Darwinism enthusiasts was Shiblī Shumayyil (1850-1917), a Syrian Protestant secularist doctor who studied in Paris and moved to Cairo. He was greatly influenced by social Darwinism which he promoted in his writings, particularly through his medical journal *Al-Shifāʾ*, as well as through the main Syrian/Lebanese journal *Al-Muqtaṭaf*, published in Egypt. In a lecture delivered at the *Iʿtidāl* (Moderation) Association in Cairo, published in *Al-*

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[394] Mitchell, p. 123.
[395] *Al-Aʿmāl al-Kāmila*, vol. 2, pp. 376-7. Familiarity with western concepts and thinkers was not exclusive to a few 'modernist' scholars. For instance, an article was published on 17 November 1902 (vol 5, p. 601) in *Al-Manār* entitled "The future is for Islam" by Sheikh Muḥammad Tawfīq al-Bikrī, the head of the Sufi Sheikhs. The author quoted from Spencer, Hugo, Le Bon, Voltaire, Demolin, De Castrie (who wrote *Ideas and Impressions of Islam*), Lechatelet who wrote *Islam in the nineteenth century*, De Vintason who wrote *Christians and Islam*, Renan, Diderot, Huxley, Carlyle, and others.

Muqtaṭaf,[396] Shiblī Shumayyil explicitly and exclusively addressed the question "Are women and men equal?"

The question, Shumayyil tells us, is "a purely scientific matter" and should be simply resolved by recourse to science's objective, conclusive, and universal laws. His choice was indeed an effective one, as can be seen in the acceptance of the "facts" he quoted from various sources, even by those (women) who wrote back to reject his conclusions. Referring purely to European scientists, philosophers, and anthropologists – seen as objective and infallible – Shumayyil applied to the above question the principles of social Darwinism. Just as the nineteenth-century 'science' of anthropology linked the 'backwardness' of non-white peoples to their physical features, Shumayyil sought to settle the long discussions regarding the equality of men and women by appealing to their physical differences. Thus he discussed at length the differences between men's and women's weights, heights, muscles, feet, movements, etc. to conclude that men are physically and intellectually superior, that "the male is more rational than the female by the consensus of all philosophers and scientists".[397] Furthermore, men are ethically superior, while women are "more cunning and treacherous", "frivolous, unstable, extreme, more so than man, and are more inclined to fables and to stubbornness, imitation and clinging to old customs, and more talkative and cowardly than them".[398]

In addition, the superiority of men over women is held to be the characteristic of 'higher' civilisations: "Woman is further below man the more established man is in civilisation and urbanism, while she equals him or excels him the closer he is to primitiveness and savagery, physically and mentally". Thus "the dominance of man over woman" is not only a fact, but "among the necessities of development and vice versa". Hence, following this rule, all those who wish the good of their nations and aspire to be 'modern' and 'civilised' should avoid upsetting the current gender balance, and "we seek that in the future, our women would not be able to excel men or be equal to them… on the basis of the laws of progress".[399]

Although Shumayyil's views may be seen as shocking, they represent perhaps the only coherent treatment of the question, and its conclusion is in fact no different from the conclusions

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[396] *Al-Muqtaṭaf*, V11, pp. 355-360 and 401-405, March and April 1887, included in *Ḥaṣād al-Fikr al-ʿArabī al-Ḥadīth fī Qaḍāyā al-Marʾa*, pp. 89-110.
[397] ibid., p. 97.
[398] ibid., p. 98.
[399] ibid., p. 109.

of all others who wrote on the subject, although their arguments were different. What grants Shumayyil's discussion an air of respectability and 'modernness' that allows its entry into the 'modern' discussion of the 'woman question' in Egypt's modern press is its 'scientific' language, its reference to a European model and its insistence on the necessity of adopting such a course of action for 'the greater social good'. Those two last points were often the motivations and justifications used by the various calls for the "liberation of women".

2.5.2 Qāsim Amīn & the Liberation of Women

If Shiblī Shumayyil's article prompted a number of letters from female readers opposing his views and conclusions, Qāsim Amīn's book "*Taḥrīr al-Mar'a*" provoked one of the most heated debates, with many books written, journals founded, and articles published in response. Since we have already seen that the issues of equality of men and women, women's education, polygamy and seclusion were already discussed in the writings of men and women, the reaction provoked by the book may be puzzling when one reads its content. The difference, however, is perhaps not only the strong criticism of Egyptian social customs, the attack on their self-image, or the recommended changes, but also the status of the person who made them – a Muslim male upper-class Egyptian judge.

While other reformers promoted women's education (and a few miscellaneous rights) as one of the necessary steps towards 'progress' and 'development', and criticised women's ignorance as one of the causes of backwardness and inferiority, Qāsim Amīn argued that "degradation in the status of women among us is the most important obstacle preventing our advance towards our reform".[400] In addition to their ignorance of hygiene and proper upbringing of children, we are told that "the Egyptian woman does not know the taste of love",[401] that she is "ignorant of the value of life",[402] and that "the Egyptian wife, whoever she may be, knows nothing about her husband, except that he is tall or short, white or black. As for her husband's

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[400] Qāsim Amīn, *Taḥrīr al-Mar'a*, p. 133.
[401] ibid., p. 42.
[402] ibid., p.30.

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intellectual or moral value, his behaviour, his honesty, his sensitivity of feelings, his knowledge or his work… her mind does not understand any of that".[403]

Here we get a glimpse of the effect of the various precipitated political, cultural, social and economic changes on Egyptian families, the instability of which is here attributed to the incompatibility between the 'new Egyptian man' of the upper and middle classes, western-educated, "sensitive" and possessor of new "tastes", who suffers because his wife is left behind and still does not belong to the new modern life. This highlights the link between the 'new modern man' and sought-after 'new woman' explored by a number of scholars of post-colonial studies who have linked the need for "civilised housewives" to the needs of male reformers who wanted to enhance their own enlightened image.[404]

Amīn singles out the status of women as the clearest symbol of degradation, and the most important cause of the nation's backwardness. In addition to their failure as wives, Egyptian women's failure as mothers is condemned for its production of children devoid of the valued characteristics of industriousness and sensitivity. Amīn describes Egyptian women's seemingly appalling state of ignorance, vulgarity and decadence. Interestingly, he does not compare Egyptian women to Egyptian men, but to European women – perhaps so as not to threaten gender relations, or perhaps in order to avoid the realisation that the causes of ignorance and backwardness affect both Egyptian men and women. This is in contrast to al-Kawākibī's treatment of women's status within the context of social, economic and political conditions.

In contrast, when discussing European women, Amīn only speaks of them favourably. Here we see the remnants of al-Ṭahṭāwī's childish admiration for French women, but without the latter's critique of some of their behaviour, highlighting the disappearance of all self-confidence under the influence of colonisation and its discourse:

> Do Egyptians think that the men of Europe, despite the fact that they have reached a degree of perfection of thought and feeling that enabled them to discover the power of steam and electricity… can neglect to know the way to protect women and their chastity?[405]

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[403] ibid., p. 40.
[404] For instance, see Jayawardena's *Feminism and Nationalism in the Third World.*
[405] *Taḥrīr al-Mar'a*, p. 110.

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While the image of Egyptian women is painted in the bleakest of colours, the European woman is presented as living in a paradise of complete equality and freedom. Just as Cromer compared Egyptian and Muslim women to an imaginary ideal European Christian woman, it is difficult not to smile when reading about Amīn's imaginary perfect European society where "there is no difference between the two sexes" and the perfectly liberated European women who "will, in a short period, reach a status in which they attain all that they have been seeking in equality with men in all rights" and who may even soon "excel men in the field of progress and advancement".[406]

Of course, Amīn made it clear that that perfect equality is not what he proposes for Egyptian women, for he did not deem education beyond the primary level to be necessary for girls. He also made it very clear that the cause of women's liberation is primarily to serve the nation, or in other words, men, for "Can the perfection of man be attained if woman is lacking? And can men be happy except due to women?"[407] Throughout, Amīn addressed his "fellow brothers", exhorting them to educate their daughters and wives, to build a modern family life based on love and free of polygamy, and to end the seclusion of women, since *"ḥijāb* as we have got used to it is a great obstacle that obstructs woman's elevation and hence obstructs the nation's progress".[408] At the end of *Taḥrīr al-Mar'a*, Amīn recommends establishing an association open to *fathers* who wish to bring up their daughters according to this proposed method.[409]

In addition to education and an end to polygamy, unilateral divorce and the practice of seclusion, Amīn also touches on the issue of women's work. Similarly to al-Kawākibī, he focuses on the small minority of upper and middle-class Egyptian women who do not work outside the home, and attacks the indolence and non-productivity of "women". While other writers – male and female – complained about the new phenomenon of men failing to maintain their families (for instance, al-Nadīm and Fawwāz), Amīn appears not to recognise men's financial responsibility for women, or women's non-financial contributions, by holding that

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[406] ibid., p. 135.
[407] ibid., p. 56.
[408] ibid., p. 85. It is important here to point out that *ḥijāb* in Qāsim Amīn's writings denotes not the actual veil or clothes, but the state of complete seclusion and restriction. This meaning, which agrees with the linguistic and Qur'anic usage of the word, is different from its current use to denote the headscarf/veil, which Qāsim Amīn did not oppose, although confusion has led many to later interpret his call differently.
[409] ibid., p. 191.

"woman's ignorance and her lack of education have resulted in her not using her rational faculties and physical abilities to be a living active being that produces as much as it consumes, as opposed to her current state of dependence, living by the work of others".[410] Furthermore, Amīn seems to justify women's deprivation of their rights by their lack of financial contribution to the family, ignoring the daily income contributions of most peasant women to their families:

> Exempting women from their foremost duty, that is qualification to earn herself the necessities of life, is the cause of her losing her rights, for since man is responsible for everything, he reserved the right to enjoy every right, and all that remains for women in his opinion is similar to the needs a pet's owner grants his pet, out of his own grace, in return for entertaining him.[411]

The controversy and attacks that followed *Taḥrīr al-Mar'a* only made Amīn more determined to repeat the same ideas and develop them in his second book, *Al-Mar'a al-Jadīda*,[412] published a year after *Taḥrīr al-Mar'a*. Unlike *Taḥrīr al-Mar'a*, which despite its criticism of social practices, had "remained squarely within the traditional religious framework",[413] in his later book, Amīn was more explicit in his belief in the West's superiority and the need to look towards it for inspiration.

While the issues addressed by Amīn were not novel and had previously been addressed by other scholars and writers, his dedication of two books to the topic earned him a pioneering position in any subsequent writings on the issue, and served to strengthen the topic's position as "worthy of close inspection and of being called the mother of all matters, due to its close relation to all our vital principles".[414] It also initiated the heated discussion on the matter of "ḥijāb", which continues to occupy a great part of discussions of "women's liberation" from all sides.

2.5.3 Muḥammad Farīd Wajdī & The *Muslim Woman* versus the *New Woman*

Among those who wrote prompt responses to Amīn's books was Muḥammad Farīd Wajdī who wrote *Al-Mar'a al-Muslima: Raddan 'alā Kitāb al-Mar'a al-Jadīda*,[415] to contribute to this

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[410] ibid., p. 60.
[411] ibid., p. 27.
[412] Cairo: Maṭba'at al-Ma'ārif, 1900.
[413] Husni & Ronak, *Muslim Women in Law and Society*, p. 5.
[414] Wajdī *Al-Mar'a al-Muslima* (1901), p. 4.
[415] *The Muslim Woman: A response to "The New Woman".*

important matter which he – and most of those writing about Egypt's state and future at the turn of the century – deemed "the mother of all matters". Wajdī bases his arguments on "facts of natural sciences" and "precise sociological analysis",[416] and even argues against ending the practice of seclusion on the basis of the Larousse encyclopaedia and "the famous socialist philosopher Proudhon", Auguste Comte, and other western thinkers.

Wajdī did not disagree with Amīn's premise that the elevation of women was essential to "the nation's perfection and improving its social condition", or that the current state of women was "unsuitable" and in need of "improvement that is suitable for this era" but "disagreed with anyone who believes in the necessity of following the model of any other nation in any of our vital issues, particularly that of women".[417] His main disagreement with Amīn is on the latter's apparent acceptance – more clearly so in his *al-Mar'a al-Jadīda* – that western civilisation was the highest model achieved by humanity, insisting instead that Islamic civilisation represents the perfect human civilisation, while at the same time employing the same tools of scientific positivism and theories of progress and development as Amīn. Whereas Amīn described the degraded state of Egyptian women in exaggerated terms in order to mobilise men to change it, Wajdī, in his opposition to the proposed change, argued that "the only thing Muslim women need in order to reach the most perfect point possible for her kind is to learn the necessary principles of the sciences".[418] And while Amīn idealised the position of western women, Wajdī argued that "women in materialist civilisation are not perfect nor are they heading towards perfection despite their decorated appearance".[419]

Wajdī referred to quotes similar to Shumayyil's about the difference between men and women's physical and mental abilities, emphasising men's superiority. However, commenting on quotes regarding women's preoccupation with beauty and indifference to injustice, Wajdī argued that such attributes were not inherent, but were due to the lack of "true Islamic education". He also argued that western thinkers quoted by Amīn to support the identical natures of men and women are "the exception" while "woman remains there [in the west] the object of

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[416] Wajdī, p. 12.
[417] ibid., p. 5.
[418] ibid., p. 201.
[419] ibid. p. 200.

the severe judgments of philosophers".[420] In fact, Wajdī at times criticised the "extreme" harshness of western descriptions of women's inferiority, although he still included such descriptions to strengthen his arguments. He argued that the only result of the calls for women's liberation is the "mobilisation of the world's scholars against those people [proponents of liberation] and making women a plaything in their mouths: One says she is in an infantile state, and another says she is not refined, and yet another says more, which pains us Muslims as our faith commands us to treat women well."[421]

Women's "natural function" was summarised by Wajdī as "preserving the human species", i.e. "pregnancy, childbirth, breastfeeding, and upbringing".[422] Women's work and political activism endanger that function and are thus "a rebellion against the laws of nature… a neglect of her natural function on which depend her perfection and happiness, and a preoccupation with what harms her and her society".[423] This argument is strengthened by numerous quotes from western thinkers about "the miserable and pitiful state" of working western women, and the social problems caused by their work.

Out of the book's thirteen chapters, four are devoted to *ḥijāb*, discussing whether it is necessary, beneficial, sustainable, and an obstacle to women's accomplishment. *Ḥijāb* – by which Wajdī means segregation - is strongly defended as "the only guarantee for woman's independence and freedom".[424] Wajdī argued that women were "virtuous" and "more ethical", but that *ḥijāb* is necessary to protect them from men's "evil" and "temptation", which – responding to Amīn's argument – will not disappear even with education. Wajdī also defended men's right to maintain or end segregation, by virtue of their maintenance of women and provision for them, arguing – rightly – that even "women's liberators, when they express their views or make their demands, only address men themselves".[425]

The primacy of the issue of segregation can be seen from the titles of the works of another of those who wrote prompt responses to *Taḥrīr al-Mar'a*, the rising businessman and nationalist figure Talʿat Ḥarb, who wrote *Tarbiyat al-Mar'a wa'l-Ḥijāb* in 1899 and *Faṣl al-*

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[420] ibid., p. 19.
[421] ibid., p. 53.
[422] ibid., p. 23.
[423] ibid., p. 24.
[424] ibid., p. 12.
[425] ibid., p. 113.

Khiṭāb fi'l-mar'a wa'l Ḥijāb in 1901. As is clear from the titles, what provoked men in Amīn's book was not the call for education, but the first explicit call for abandoning the custom of *ḥijāb* or seclusion, and the feeling that social life and its hierarchy as they knew it was no longer secure. Secondly, it is also apparent that those who rejected and condemned *Taḥrīr al-Mar'a* most strongly were figures from the Egyptian nationalist trend, whose priority was opposing British occupation first rather than weakening the current political or social structures. Both Wajdī and Ḥarb were associated with the nationalist leader Muṣṭafā Kāmil, the editor of *al-Liwā'* which published critical reviews of the book. Thus, they presented a trend which shares Al-Nadīm's opposition to the ending of seclusion, but employs 'modern', 'scientific' western terms, rather than religious arguments.

2.5.4 Rashīd Riḍā, *Al-Manār* and the *New Muslim Woman*?

Rashīd Riḍā, the Lebanese reformer who is most well known as Muḥammad ʿAbduh's biographer, collector of his works, and his closest disciple, was a regular contributor to debates in the Egyptian press, through his monthly journal *Al-Manār*, published between 1899 and 1935. Since its early years, *Al-Manār*, as a journal "the primary purpose of which is promoting the education of boys and girls",[426] promoted girls' education. Riḍā, however, stressed the importance of the basis of such an education, which should be "in accordance with the guidance of Islam and the reform it has come with" rather than "as an imitation of the civilisation of Europe".[427]

Riḍā shared other reformers' belief that a change in the state of women was necessary for the nation's progress, and the belief in the importance of women's education as a factor in the West's progress: "When the people of Europe paid attention to the reform of their social matters and the advancement of their civil life, they paid attention to the upbringing and education of women, which had a great impact on their advancement and development".[428] The state of women had deteriorated because "Muslims did not give the principles established by Islam to elevate women the necessary attention to reach the level of perfection, just as they had done with

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[426] *Al-Manār*, vol. 1, issue 1, Shawwāl 1315, (February 1898) p. 11.
[427] ibid.
[428] *Al-Manār*,., vol. 2, issue 15 (24 June 1899), p. 332.

other general social principles… And what prevented them from that is nothing but the customs they inherited from their forefathers".[429]

The focus on re-organising homes and re-training mothers that became an essential part of the nationalist discourse in turn-of-the-century Egypt is found in Riḍā's *Al-Manār* which stressed the reformers' belief that "current prosperity and the future happiness of the nation are achieved through the management and order of the home and the upbringing of the children, both of which are in the hands of women".[430] *Al-Manār* thus published numerous articles focusing on home management, health and hygiene, child psychology and education, including a serialised translation of Rousseau's *Emile*. This was a common feature of publications of that time, which often had a section on "Woman and Family", "Home Management", "Woman & Child" which were often translations of entire articles or books from European sources.

Considering the above views of Riḍā's, and his involvement in promoting girls' education both in theory and in practice, as well as the fact that Qāsim Amīn was closely associated with Muḥammad ʿAbduh, it is not surprising that he would devote many pages of his journal to the discussion of Qāsim Amīn's books. Indeed Riḍā praised Qāsim Amīn as being among those who were closely associated with ʿAbduh, describing the three judges (Amīn and Saʿd and Fatḥī Zaghloul) as "those of whom Egypt is proud and by whom one can demonstrate that Egyptians are worthy of governing themselves – who are among the Ustādh's closest disciples".[431]

Although Riḍā praised Amīn's book, he appeared to sympathise with some of the book's critics, particularly with regard to the issue of *ḥijāb*, although it appears that he was more critical of Amīn's methods and arguments than with his conclusions. Riḍā agreed with Amīn's call for restricting the practice of *ḥijāb* to the limits prescribed by the Sharīʿa and for reducing the current social practice of seclusion – only after proper education. However, he disagreed with "expanding in elaborating on the harms of *ḥijāb*, and on the behaviour of women after proper education, such as mixing with men and participating in their discussions and work", not because he disagreed with those changes in principle, but because it "encouraged the westernised to

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[429] ibid.
[430] *Al-Manār*, vol. 2, p. 455 (30 September 1899, No. 29).
[431] *Al-Manār*, vol. 2, p. 247 (no. 16, 1 July 1899).

precipitate the imitation of western customs that they desire".[432] This mixed approach – supporting a gradual expansion of women's rights, but fearing the "precipitation" and "exploitation" of that liberation and refusing to view the question of women outside of the conflict with "westernisation" is the one that still dominates most writings on "women's rights in Islam", where neither the colonialist or westernising project nor that of "resistance" to it have been willing to let go of the "liberation of women" as a weapon in their conflict.

In contrast to Amīn, Riḍā preferred that "whoever writes about reform should speak generally about matters which are not to be immediately implemented",[433] which is the way adopted by ʿAbduh. Riḍā wanted to downplay the controversial part of Amīn's book, and direct attention to the part that, to him, was more important. Thus he emphasised again that "the purpose of this book's author cannot be rejected by any wise person who knows the position of his nation among other nations and is aware of its needs and of that which would revive it – that is the education of women".[434]

When Amīn published his second book, which differed from his first in its emphasis on the superiority of western civilisation and the necessity of following its path, as well as basing his call on "scientific arguments" and "the laws of nature" rather than on a religious foundation, Riḍā still published a positive review praising the book and its author, and criticising its attackers.[435] He only disagreed with the emphasis on other causes of decline and the marginalisation of the role of religion in the process of reform.[436] Riḍā again repeated the same criticism that "the author went to extremes in elaborating on the harms of strict application of *ḥijāb* and exaggerated greatly in making the success of Muslims dependent on removing the *ḥijāb*".[437]

The mixed praise, criticism, and justification with which Riḍā approached Amīn's books highlights the ambiguity of Muslim reformers vis-à-vis the calls for immediate radical changes, their preference of gradualism, of focusing on practical changes whose benefits are clear to all, and their avoidance of confronting the majority's cherished customs. The relation between this

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[432] ibid.
[433] *Al-Manār*, vol.2, issue 18 (15 July 1899), p. 285.
[434] ibid. issue 24 (26 August 1899), p. 370.
[435] *Al-Manār*, vol. 3, issue 32 (6 February 1901), p. 850.
[436] ibid., p. 854.
[437] ibid., vol. 4, p. 31.

position and that of ᶜAbduh, and the question of ᶜAbduh's alleged involvement in the writing of *Taḥrīr al-Mar'a*, will be addressed in later chapters.

2.6 Women's Discourses

While I have, in the preceding sections, focused exclusively on "the woman question" in the writings of men – that is the discourse *on* women – I have done so not to marginalise the writings of women at the same time or preceding those of men – that is the discourse *of* women – but in order to position men's writings in the context in which they were written and read at the time. In fact, despite the integration of the two discourses, particularly through the involvement of female figures in the nationalist movement, the writing of the history of 'women's liberation' continued till very recently as a primarily male achievement. It was not until recently that historians and feminists studying the history of Middle-Eastern women's movements started questioning the undisputed position of men like Qāsim Amīn as "the father of Arab feminism".[438] These criticised the exaggeration of the role of men, at the expense of women who wrote at the same time, preceding, and succeeding Amīn, both on the reform of women and social reform in general, and who were critical of both those who wished to maintain old social customs despite their lack of religious legitimacy and harmful effects on women and on society, and those who took western women as the model of the required change. They also replaced the uncritical reading of the writings of male "liberators of women" as motivated by selfless sympathy with women, exposing instead their male-centredness, their expression of a male insecurity at a time of rapid change and foreign domination and a desire to reconstruct a modern man like Amīn's "modern man with modern tastes and aspirations" while projecting the old negative characteristics of "backward", "ugly", "disorderly" and "ignorant" on women, and their re-iteration of colonialist discourses on Muslim society and Muslim women. Some, like Leila

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[438] See for instance Beth Baron, *The Women's Awakening in Egypt*, which explores the lives and writings of the female writers who pioneered the Arab women's press, setting them in their social contexts, against the backdrop of late nineteenth and early twentieth century changes.

Ahmed, went as far as to call Amīn the "son of Cromer and colonialism" rather than the "father of Arab feminism".[439]

Women's writings were in the form of books – mostly collections of poems and biographical compendia – but particularly articles published both in newspapers (men's press, as they were still owned, managed, edited and contributed to almost exclusively by men) - throughout the 1870s and 1880s, and later, starting from the 1890s, in women's magazines. Just as the press in general developed rapidly in the last quarter of the nineteenth century, so did women' journals, catering for a growing number of literate women, and mostly covering, as well as biographies of women role models and news of women around the world, the new priority of the turn-of-the-century middle classes – the transformation of the Egyptian home, through instructing women on how to be modern, educated, hygienic mothers.

Unlike men's writings on the 'woman question', which typically addressed other men, women mainly wrote for each other, as their articles were mostly published in women's magazines, but they did also write for men by submitting their articles to other papers. While male writers condemned the "appalling backwardness and ignorance" of Egyptian women, women generally did not dwell on the notion of female backwardness. Instead they lamented the restrictions imposed on women and their shared suffering. They generally discussed women's happiness and suffering, while men like Amīn focused on what causes men's or the nation's progress or decline. However, while women writers focused on the state of women, they did not limit themselves to promoting women's rights as a "minority group", but linked their state to social reform – particularly in later writings such as those of Malak Ḥifnī Nāṣif and Nabawiyya Mūsā. They also criticised the imitation of foreign women in superficial matters, rather than occupying themselves with practical reform matters, and criticised men's admiration of European culture and European women, manifested in their marriage to European women, which women like Malak Ḥifnī Nāsif strongly criticised and wished to limit. Women writers like Nāsif expressed suspicion and exasperation with men's criticism of and sometimes attacks on women, both traditional and modern: "Men should let us scrutinise their views and select those that are

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[439] Ahmed L., *Women and Gender in Islam*, p. 163.

most appropriate, rather than be as despotic about liberating us as they have been about enslaving us. We are weary of their despotism".[440]

Nevertheless, female writers did not explicitly call for equal economic and political rights with men, nor for identical roles. They affirmed basic gender differences, while arguing against women's mental inferiority. They did not challenge men's authority, preferring to appeal for men's assistance.[441]

Interestingly, while the issue of segregation or *ḥjāb* received the greatest attention of men in their discourse on women, women generally did not discuss unveiling – although in practice some of them uncovered their faces. Although they condemned restricting women to their homes and preventing them from access to education and "public women's gatherings", women writers generally did not discuss the matter of dress. This difference shows how while men's discourse was more polarised between those who took the western woman as a model and those who wished to keep Egyptian women in their unchanged state, women's discourse was more flexible and diverse. Later writers, such as Malak Ḥifnī Nāṣif explicitly criticised men's obsession with veiling and unveiling, advising women to be suspicious of men's calls and their motivations.[442]

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[440] Nāsif, Malak Ḥifnī, *Al-Nisā'iyāt: Majmūʿat Maqālāt Nushirat fī al-Jarīda fī Mawḍūʿ al-Marʾa al-Miṣriyya*, Cairo: Multaqā al-Marʾa wal-Dhākira, 1998, p. 9.
[441] Baron, p. 117-121.
[442] *Al-Nisā'iyyāt*, p. 202.

CHAPTER 3

WOMEN, CREATION AND EQUALITY

In this chapter I discuss the view of woman as an independent being and how the concept of "woman" is formed in relation, or opposition, to "man" in Muḥammad ʿAbduh's writings. This will be achieved primarily through an exploration of *tafsīr* of *al-Manār*, with emphasis on the origins and nature of "woman" and to whether any "innate feminine qualities" are assumed.

3.1 Creation: Equivalence and partnership, or inferiority and dependence?

Several underlying perceptions of women that are strongly and deeply entrenched in the popular imagination can be traced to, or at least strongly reflect, some of the interpretations of the Creation Story.[443]

Al-Baqara contains the longest passage in the Qur'an dealing with the creation of Ādam, his presentation along with his wife with the test of the Tree, and their subsequent exit from the Garden. It is primarily through these verses on the Creation, the Test, the Fall and the Exit that I analyse ʿAbduh's interpretations as relates to the view of women.

Just as the verses of the Qur'an go from the scene of the creation of Ādam, the dialogue with the angels and Iblīs' (Satan's) refusal to prostrate to Ādam, to another scene of Ādam and his wife in the Garden, Muḥammad ʿAbduh goes from his discussion of the former to a discussion of the latter scene, without speculation on when, where and how Ādam's wife was created. ʿAbduh, true to his exegetical methodology does not focus on historical details, but rather on the "moral" or "lesson" intended from the Qur'anic story, which in this case is that "the

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[443] Of course this is not peculiar to the Islamic context, as perceptions of women are also strongly shaped by the Biblical Creation Story in the Judeo-Christian tradition.

happiness of this species was made dependent on following the guidance of God and its misery, on abandoning it".[444]

On the creation of Ādam's wife, Ḥawwā', ʿAbduh quotes verses that refer to the creation of spouses in a gender-neutral manner and with an emphasis on the creation of mutually-dependent spouses from one another:

> As for His [God's] saying in sūrat Al-Nisā' '*O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women*', and in sūrat Al-Aʿrāf '*He it is Who did create you from a single soul, and therefrom did make his/her mate that he might take rest in her*', more than one of the *mufassirīn* (exegetes) have said that the meaning is 'from/of its own nature/species', as He said in sūrat Al-Rūm '*And one of His signs is that He created mates for you from yourselves that you may find rest in them, and He put between you love and compassion*'.[445]

ʿAbduh then explicitly rejects common misinterpretations of the above verses, insisting instead that "the meaning here is that He created spouses from the same nature as ours; it cannot be that what is meant is the creation of each wife from her husband's body". He further stresses that "there is no text in the Qur'an that obliges us to understand 'And He created from it (*minhā*) its spouse' in that way, in order to be identical to Genesis". The difference is that "the story in the Qur'an is not an historical narration as in the Torah that is in the hands of the people of the Book. Rather the Qur'an mentions it as a moral".[446]

ʿAbduh rejects the *tafāsīr* which, speculating on the creation of Ḥawwā', and, finding details to satisfy their curiosity neither in the Qur'an nor in the Hadith, resorted to including biblical reports. Almost all traditional *tafāsīr*, even those that were free of any reports placing blame on Ḥawwā' for Ādam's fall from the Garden, nevertheless fell into the assumption of her creation out of Ādam's rib. What is remarkable is that while most of the classical exegetes criticise *isrāīliyyāt*,[447] that did not prevent them from all falling into the use of the same sources they had criticised in their introductions to their works of *tafsīr* when it came to the Creation story, even if, at times, they commented that what they had included is baseless. This failure to refrain from avoiding such narrations both reveals the strength and wide acceptance of such

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[444] ʿAbduh, *al-Aʿmāl al-kāmila*, vol. 4, p139.
[445] ibid., p. 142.
[446] ibid., p. 142-3.
[447] Naʿnāʿa, *Al-Isrāīliyyāt wa atharuhā fī kutub al-Tafsīr*, Damascus: Dār al-Qalam, 1970, p. 234-350.

interpretations at the time, and explains the lasting influence of such images on popular conceptions of Eve and "her progeny". It also reveals the harmful consequences of the distinction adopted by scholars between the precise scrutiny required with *aḥādīth* used for deducing *aḥkām* (religious rulings) and the lack of strictness tolerated in relation to the use of Hadith in other areas such as *tafsīr* and *raqā'iq* (spiritual admonition), although the influence of the latter can be extremely harmful and lasting.

The more or less ubiquitous nature of this assumption in classical *tafsīr*, and the fact that ʿAbduh clearly relies on, and refers to, the classical *tafsīr* authorities in his own work, imply that his decision not to include such a reference is a conscious one.

As the author of *The Qur'an and Women: a Liberation Reading* notes, "universal history and the popular imaginary are marked in an indelible manner by the same belief that transcends time, cultural space, religious dogmas and the history of civilisations – this belief stipulates that Adam – as a man – was the first creation by God, and that Eve, the woman, was created from one of his ribs".[448] Moreover, the pervasive and lasting nature of this influence can be seen in the presence of such an image even in the writings of Egypt's "Father of women's emancipation", Qāsim Amīn, who wrote that

> It is said in the religious narrations that are recorded in revealed books that God created Eve from Ādam's rib, and that, I think, is a gentle symbol [pointing to the fact] that man and woman form one whole which can only be complete through their union. It is from this meaning that westerners took their naming of woman as man's half, which is an eloquent expression clearly implying that woman and man are two parts of one body, each needing the other, in order to achieve completeness through union.[449]

Whether this demonstrates Amīn's focus on practical changes rather than deeply-rooted psychological change, or whether it is a consequence of his unlimited admiration of everything western, such that he is less critical in his approach to western discriminatory notions than to 'eastern' ones, requires a more complete analysis of his writings. However, Amīn's quote highlights the significance of ʿAbduh's unprecedented emphasis on women's independent origin and explicit rejection of her "derivative" origin.

ʿAbduh's recommended methodology in interpreting the Qur'an is

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[448] Asma Lamrabet, *The Qur'an and Women: a Liberation Reading*, p. 25.
[449] Amīn, *Taḥrīr Al-Mar'a*, p. 33.

not to look at the different exegeses except to understand a single term the meaning of which among Arabs is unclear to you, or the connection between one term and another where the connection is lost to you; then go for what the Qur'an directs you to, and commit yourself to what it implies, and add to that seeking the Prophetic Sīra, restricting yourself to the reasonable (*maʿqūl*) and authentic, turning away from what is weak and rejected.[450]

Thus his chosen interpretation of the verses on the creation of men and women agrees with his methodology of not relying on exogenous sources and restricting himself to the Qur'an as a first point of reference, followed by the authentic Hadith.[451] Also, based on Charles Ādams' conclusion that ʿAbduh's two principal themes are the compatibility between reason and religion and between science and Islam,[452] it is likely that one of his motivations in adopting this interpretation is "eliminating any fixed interpretation of the text, thus opening a vast space for freedom of enquiry and thought for the mind and scientific development, in such a way that the religious person does not fall into reservation, tension, rigidity or inflexibility".[453]

ʿAbduh's explicit rejection of the traditional position with regards to the origin of women, and his appeal to other verses in the Qur'an and to rational arguments to reject such a view may point to an awareness of the importance and wider significance of this point. We also see signs of such an awareness in his chosen interpretation of the command to Ādam and Ḥawwā' to dwell in the Garden: "And We Said: O Ādam, dwell you and your wife in the garden."[454] Most classical *mufassirīn* commented on the 'redundant' "you" used in the command expression "dwell you and your wife", emphasising that it is a grammatical necessity, since it is not correct to add "dwell and your wife" without the inclusion of "you" after the verb of command, and that "He [God] did not address them [women] at first to highlight that he ['Ādam'] is the one addressed

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[450] Riḍā, *Tārīkh al-Ustādh al-Imām*, vol. 2, p. 559.

[451] It is interesting to note that ʿAbduh did not discuss the *hadith* that is often used to support the prevailing interpretation of the verses regarding the creation of women. Although the hadith itself does not refer to the creation of Eve from Ādam, or of a woman from any man, the presence of the rib in a *hadith* relating to women has led to this *hadith* being used in this way. Although not all classical works of Tafsīr include this *hadith* in that context, the *hadith* seems to have made its entry into Tafsīr in Ibn Kathīr's *Bidāya* (1:80) (according to Haddad & Smith in Al-Hibri, ed. Women and Islam, p. 137). While ʿAbduh does not refer to the hadith, Rashīd Riḍā does, perhaps due to the frequent use of this *hadith* as an argument by those opposing ʿAbduh's interpretation. Riḍā insists there is no link between the two, and proposes a different interpretation of the word 'ḍilʾ' in the *hadith*, instead of the common literal meaning - See *Tafsīr Al-Manār*, 1999 edition, vol. 1, p. 231.

[452] Adams C., 127. This can be seen in ʿAbduh's keenness to 'rationalise' any supernatural events which is evident in his interpretations of miracles, angels, and other matters in the Qur'an.

[453] Ghannouchī R., *Al-Marʾa bayn al-Qurʾān wa Wāqiʿ al-Muslimīn*, p. 17.

[454] Qur'ān, 2:35.

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by the ruling, and that the 'auxiliary' follows it/is dependent on it", according to Al-Bayḍāwī (d. 1280), a classical 13th century scholar whose work was one of those taught at Al-Azhar.

In contrast, ʿAbduh interprets this verse as a deliberate emphasis on the partnership between men and women. Having commented that "it is correct that 'Ādam' may be a reference to the human species, just as the name of a tribe's forefather is used to refer to the whole tribe",[455] he then explains why Ādam and his wife are both mentioned, even though such an interpretation would make the mention of 'Ādam's wife' unnecessary,

> It is to highlight comprehensiveness, and that woman's capacity is like man's capacity in all human matters; thus ordering Ādam and Ḥawwā' to inhabit is *amr takwīn* (a command referring to God's will rather than human action); that is God created humans as males and females like so, and ordered them to eat whatever they wish, indicating permissibility of all good things and intuition to know what is good, and the prohibition of the tree is an indication of intuition of knowing what is evil, and that human nature requires disliking it and avoiding it.[456]

3.2 Eve and Essential Feminine Characteristics

The creation narrative does not only have implications for the matters of woman's origin and her dependence or independence, but clearly also for her essential nature or characteristics. Classical *tafāsīr* which relied on biblical narrations fell into essentialising her as a 'temptress', associating her with the characteristics of betrayal, deception, and cunningness; and others go as far as linking such qualities to her physical peculiarities, by adopting the biblical presentation of menstruation and child-bearing as a curse and punishment for her role in causing Ādam's disobedience and Fall.

In the verse which appears five verses before the creation story, God enumerates His bounties to the believers in Paradise, among them having "purified spouses" (Al-Baqara 25). While the word for spouses (*azwāj*) could refer to both male and female spouses, and the word "purified" can be understood to mean both physical and spiritual purification from all imaginable defects, as the word 'purification' is understood elsewhere in the Qur'an, the majority of works of classical *tafsīr* opted for interpreting the expression to mean the purification of wives for their

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[455] ʿAbduh, *Aʿmāl*, vol. 4, p. 144.
[456] ibid., vol. 4, p145.

husbands from physical impurities – particularly menstruation, and from character defects – particularly deception and cunningness.

We find that although ʿAbduh interprets the 'purification' to be comprehensive "that there is no blameworthy physical impurity, including what is natural in this world such as menstruation and post-natal bleeding, nor any emotional/psychological defect", he seems to fall into associating women with particular 'defects' "such as cunningness (*makr*) and plotting (*kayd*) or any bad morals because they have been purified in every way".[457]

However, this is an example of the persistent ambiguity in attributing *Tafsīr Al-Manār* literally to ʿAbduh. The above wording is the one found in Riḍā's complete *Tafsīr Al-Manār*, according to the 1999 edition,[458] and ʿImāra accepts the attribution to ʿAbduh.[459] However, going back to the original publication of the commentary on this passage, which appeared on 27 December 1901 in *Al-Manār*, we find the more general statement without any specification of any particular physical impurities or characteristics: "that is extremely cleansed and purified, such that there is nothing blameworthy about them such as uncleanliness or impurities because they have been purified in every way".[460]

This highlights the warning I discussed in the literature review, regarding the need to approach ʿAbduh's writings with caution, particularly *Tafsīr Al-Manār*. As I had warned, while the compiler of ʿAbduh's complete works criticises Riḍā for unnecessarily confusing his words and those of ʿAbduh, ʿImāra himself did not completely succeed in his quest to carefully extract what ʿAbduh himself had said/written. The uncertainty regarding the above commentary on "purified spouses" (probably added by Riḍā) is a case in point, and other examples will be mentioned later.

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[457]ibid., p. 105. In contrast, in Sūrat Āl ʿImrān, where Maryam, mother of Jesus is told by the angels that she has been "purified", ʿAbduh differs from *Tafsīr Al-Jalālayn*'s interpretation of "purification" to mean virginity or "freedom from the touch of man" [some classical works of *tafsīr* interpreted "purified" to mean freedom from menstruation and virginity]. Instead ʿAbduh says that "what I chose is to take it to have a more general meaning, that is purified from anything that is considered negative such as bad morals or undesirable characteristics, etc." (*Aʿmāl* vol. 5, p. 32).

[458] *Al-Manār* 1999, vol. 1, p. 194. Interestingly the 1985 abridged edition of *Al-Manār* in 3 volumes by Qāḍī Muḥammad Aḥmad Kanʿān, revised by Zuhayr Al-Shāwīsh adds a further quality "such as cunningness (*makr*), plotting (*kayd*) and jealousy (*ghīra*)" vol. 1, p. 42.

[459] *Aʿmāl*, vol. 4, p. 105.

[460] *Al-Manār*, Issue 20, vol. 4, p. 772.

The inserted chosen characteristics expose the common emphasis of cunningness and plotting as inherent characteristics of women which can be found in various contexts in Islamic literature. It is used both as a justification for why they must be kept under control, and a consequence of their inherent weakness and dependence – that is, because women are weak and dependent, they have resorted to cunningness and plotting, since these are the weapon of the weak;[461] because they are weak and dependent, they must be protected and maintained; and because they are cunning, they must be kept under control. Ironically some of those who called for women's education, in the second half of the nineteenth century, also justified such a call by appealing to women's nature, by stressing that among the benefits of education is that it "helps woman to struggle against/push away (*mudāfaʿa*) deviant desires that are rooted in her by nature"[462] (secular author Buṭrus al-Bustānī d. 1883), since "woman, without knowledge, is a great evil in the world, if not the greatest evil one can conceive of".[463] Similarly the failure of many of those – predominantly men – who promoted women's education to address deeply-rooted conceptions of women as inferior and culpable beings, can be seen in another member of the prominent al-Bustānī family,[464] a contemporary of ʿAbduh, Salīm al-Bustānī who wrote that "the first woman to be mentioned in the oldest sacred histories is our mother Eve, who lost the Bliss of Eden by eating from the fruit and feeding our father Ādam from it. And most men are easily led like their forefather",[465] again emphasising women's power to mislead and corrupt, despite their weakness. The quotes show that view was far from restricted to conservative religious scholars.

Although we cannot entirely be sure about the attribution of the above interpretation, we find that elsewhere, ʿAbduh deliberately rejects other essentialising descriptions of women – here the assumption that women are associated with excessive desire and sexual degeneracy. While commenting on the command to divorced women to "maintain/hold themselves" (Al-Baqara, 228), he rejects those who "claimed that the meaning of '*tarabbuṣ bi'l anfus*' is to restrict them

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[461] For instance, Shibilī Shumayyil wrote that "it is a matter of consensus that woman is … more cunning than man, and more deceptive, because she is weaker than him, and trickery and deception are the weapon of the weak" (quoted in *Ḥaṣād al-Fikr al-ʿArabī fī Qaḍāyā al-Marʾa*, p. 97).

[462] Dāya, *Al-Muʿallim Buṭrus Al-Bustānī, Dirāsa wa wathāʾiq*, Beirut: Manshūrāt Majallat Fikr, 1981, p. 74.

[463] ibid., p. 79.

[464] ʿAbduh was familiar with the Syrian literary circles in Egypt. An example is a letter written by him that was read at the ceremony to celebrate the completion of the Iliad's translation by Salmān al-Bustānī.

[465] Quoted in *Ḥaṣād al-Fikr al-ʿArabī al-Ḥadīth fī Qaḍāyā al-Marʾa*, p. 83.

and prevent them from falling under the control of forbidden desire, and who justified that on the basis that women are more 'desirous' than men. Some of them estimated this severity and excessiveness to be many times that of men and went into detail in measuring it".[466] He strongly condemns such claims as "rejected and among the worst of sayings, without any knowledge or proof, for men have been and still are the ones who seek after women and desire them, and then they wrong them further by controlling their natures and judging their feelings, and then they follow one another in such opinions".[467] Here we find ʿAbduh's more critical side, which rejects widespread (but baseless) views, and criticises patriarchal interpretations that on the one hand exclude women, and on the other speak on their behalf. We also find his more sympathetic side to women, representing women as "wronged", rather than "culprits" and "temptresses".

This exaggeration of women's sexual 'zeal' has also manifested itself in Muslim writers and scholars' social critiques which focus on social degeneracy/immorality and corruption, blaming these on women's seductive powers. In contrast, overall, we find a more sympathetic attitude to women in Muḥammad ʿAbduh's writings, who often blames men for low standards of social morality.[468] This departs from the tendency of some earlier, and later, writings which link woman to sexuality and desire, instead presenting her as a human being and social actor. The focus on women's purity and sexuality is, according to Soha Abdel-Kader, manifested in practices such as female circumcision and 'virginity tests'. However, she writes that, although a lot has been written on the former, not much has been written on the latter:

> Closely related to the strict code of purity and chastity of village culture is the virginity test whereby a bridegroom or midwife on the wedding night, using the finger or a sharp object, breaks the virgin bride's hymen and then publicly, amid jubilation and cheering, displays the resulting blood on a white kerchief or scarf... If the practice of female circumcision is shrouded in secrecy, the virginity test rites are even more so. Not a single source, old or new, even makes brief reference to the practice.[469]

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[466] *Aʿmāl*, vol. 4, p. 618. For instance, Al-Ṭabarsī in *Majmaʿ al-Bayān* quotes from *Kitāb al-Nubuwwa* that Ādam was created from mud and Eve from Ādam. Man's zeal (*himma*) is for mud and water while the zeal of women is for man" (in Haddad & Smith p. 141, Hibri A. ed. *Woman and Islam*). See also Shiblī Shumayyil "Man eats more than the woman, but she is greedier, that is she has a greater appetite than his" in *Ḥasād al-Fikr al-ʿArabī fī Qaḍāyā al-Mar'a*, p. 93.

[467] *Aʿmāl*, vol. 4, p. 618.

[468] See for instance ʿAbduh, *al-Aʿmāl al-kāmila*, vol. 2, p. 42. Also see ʿAbduh's severe criticism of men's habits and obscene discussions, p. 46.

[469] Soha Abdelkader, *Egyptian women in a changing society 1899-1987*, p. 37. Interestingly, Judith Tucker notes in her study of eighteenth-century fatawa that "the muftis were unanimous in their condemnation of the practice of

However, this ignores ʿAbduh's strong and explicit condemnation of this practice in his discussion of wedding rites in Egyptian villages, where in fact he describes the practice of 'virginity tests' as part of rural wedding rites, with extreme derision and condemnation.[470]

Also, ʿAbduh departs from and explicitly disagrees with the link between 'menstruation' and 'uncleanliness' and other negative descriptions, established in classical interpretation of another verse of Al-Baqara. After defining menstruation as a natural healthy process, ʿAbduh explains the command in the verse to refrain from engaging in marital relations during the menstrual period because it can cause discomfort and harm particularly to the wife. He criticises the widely used *tafsīr* of *Al-Jalāl* for interpreting "'*adhā*' as uncleanliness, following [the interpretation of] others, whereas its apparent meaning - *ḍarar* [harm] – is medically confirmed, hence there is no need to adopt another meaning."[471]

3.3 Testimony and Gender Difference

An obvious issue that is directly relevant to the discussion of women's characteristics is that of women's testimony, and the various interpretations of the verse dealing with that issue, again in the chapter of Al-Baqara.[472] Classical *tafsīr* discussed two main points that are relevant to this discussion. The first is the meaning of "*an taḍilla iḥdāhumā fa tudhakkira iḥdāhumā al-ukhrā*",[473] almost unanimously understanding "*taḍilla*" to mean "forgetfulness" on the part of one of the two women, which is the cause of the need for the other woman to "*tudhakkira*" or remind her. The second point is that they speculated on the reason for women's "forgetfulness", which

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testing a bride's virginity on her wedding night and returning her to her family should she fail… Virginity or lack thereof on the part of the bride was irrelevant, according to the muftis, to the constituting of a marriage", p. 67.

[470] *Aʿmāl*, vol. 2, p. 99.

[471] ibid., vol. 4, 606.

[472] O you who believe! when you deal with each other in contracting a debt for a fixed time, then write it down; and let a scribe write it down between you with fairness; and the scribe should not refuse to write as Allah has taught him, so he should write; and let him who owes the debt dictate, and he should be careful of (his duty to) Allah, his Lord, and not diminish anything from it; but if he who owes the debt is unsound in understanding, or weak, or (if) he is not able to dictate himself, let his guardian dictate with fairness; and call in to witness from among your men two witnesses; but if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two errs/forgets, the second of the two may remind the other. (Qur'an, 2:282)

[473] "so that if one of the two errs, the second of the two may remind the other" (Qur'an, 2:282).

they attributed to her essential nature, which inevitably leads to forgetfulness. This of course raised the question of why, if it is so inevitable, could one expect that the testimony of two women, both so likely to forget, could be relied upon, a question which some ignored, and others justified by using the logic of probability – that two are more likely than just one to reach the required level necessary for completing the testimony.

ʿAbduh departs from the classical interpretations in this case, in a way that is quite innovative, yet at the same time does not take his chosen logic to its ultimate conclusion. Although in tackling the second point – that of the reason for the need for two women – he differs from classical *mufassirīn*, in his approach to the first (understanding the word "*taḍilla*"), he prefers to rely on the unusual interpretation of the classical *mufassir* al-Ṭabarsī. Here we find the characteristic feature of the reformist school after ʿAbduh – that of calling for *ijtihād* in reaching new interpretations unbound by those reached by previous scholars, but without rejecting all the rich heritage of Islamic sciences. This feature of the reformist school has been accused of selective *taqlīd* or termed *talfīq* (patching) by some, while the reformist school insists it is a conscious characteristic of their school that is in harmony with their view of *tajdīd* not as a destruction of the past, but as an activation of the early freedom of *ijtihād*, and a 'purification' of Islamic heritage from 'external influences' that are not intrinsic to the text. ʿAbduh, thus, wrote

> Some said that it means: in case one of the two testimonies is lost (*taḍilla*) from one of the two women, so that the other woman reminds her; thus they took the first "*iḥdāhumā*" (one of the two) to refer to the testimony and the second to refer to the woman. Al-Ṭabarsī supported this by holding that forgetting the testimony is not called 'ḍalāl' because 'ḍalāl' means 'ḍayāʾ'- loss – and a woman cannot be lost, and used as proof for the distinction between 'ḍalāl' and forgetfulness ('nisyān') God's saying 'ḍallū ʿannā" and "*lā yaḍillu rabbī wa lā yansā*' (Sūrat Ṭāhā, 52).[474]

ʿAbduh's student and compiler of his *tafsīr*, Muḥammad Rashīd Riḍā, wrote as a footnote to this that "*al-Imām* approved this opinion by mentioning it".[475]

Having eliminated the issue of forgetfulness as essential to women, there remained the need to justify the need for two women. ʿAbduh's interpretation has offered those wishing to reach a new interpretation of this verse decades after ʿAbduh, the basis and the logic to follow in

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[474] ʿAbduh, *Aʿmāl*, vol.4, p. 752.
[475] *Al-Manār*, vol. 9, p. 408.

their quest. Although, as previously stated, ʿAbduh does not take his logic to its ultimate conclusion, it is significant because it has provided his successors with the necessary tools. ʿAbduh wrote:

> *Mufassirīn* spoke about this, and took its cause to be [women's] nature/constitution (*al-mizāj*). Thus, they said the woman's *mizāj* is affected by cold causing forgetfulness, which is unproven (*ghayr muḥaqqaq*). The real reason is that women are not usually involved in financial transactions and other dealings, and hence their memory in this field tends to be weak, while it is not so in domestic matters which is their [principal] field/occupation where their memory is stronger than men's. That is, it is the norm for humans, males and females, that their memory is stronger in matters that are part of their interest and in which they are often involved.[476]

The contextualisation of the text and linking it to social and historical conditions, rather than to physical or psychological qualities, implies that it is changeable rather than fixed, universal and eternal. However, this important principle established here by ʿAduh is not only undeveloped by not insisting on its immediate application, but by further suggesting that, in fact, this historical and social norm – women's exclusion from financial matters – though not inevitable or eternal – has not in fact changed at the time of ʿAbduh's writing. The commentary adds: "This [women's unfamiliarity with financial transactions] is not contradicted by the involvement of some foreign women nowadays in financial matters, for it is uncommon, and nothing can be based on it, since general rulings are based on the majority in things and the norm in them".[477]

It is not clear whether this stance is due to ʿAbduh's caution about the use of 'contextualisation' of the text and how far it can taken, his attachment to the status-quo and refusal to accept – or his inability to foresee – its change, or to his considered judgment that society had not in fact changed so much to require a change of ruling in this matter, though it may be the case at some point in the future. This caution and avoidance of immediate change are features not specific to ʿAbduh, but also shared by those who are closely identified with the women's liberation movement such as Qāsim Amīn.[478] This further underlines ʿAbduh's

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[476] ʿAbduh, *Aʿmāl*, vol. 4, p. 752.
[477] ibid., vol. 4, p. 752.
[478] For example Amīn is careful to stress that he is "not among those who call for equality between men and women in education", *Taḥrīr al-Marʾa*, p.90.

pragmatic and gradualist approach, and that in many ways, he was not always revolutionary, but a man of his time.

However, again reflecting those who emphasised the latent effects of ʿAbduh's thought and methodology, it is worth noting that those clearly influenced by ʿAbduh did eventually develop his analysis to argue that the testimony of women in financial matters should be accepted, in view of the fact that women have become more involved in financial matters, as Maḥmūd Shaltūt did half a century later.[479]

Again, here, caution is recommended. The publication of this part of the *tafsīr* appeared in *Al-Manār* in July 1906,[480] that is after ʿAbduh's death. Hence, although ʿImāra accepts its attribution to ʿAbduh, it is not absolutely certain, given the fact that Riḍā added further comments on the issue (found in Riḍā's complete *tafsīr*, but not in ʿImāra's edition), and the fact that the sentence "This is not contradicted by the involvement of some…" appears at the end of a paragraph which started with "*Al-Ustādh Al-Imām* said…" (to distinguish from the preceding paragraphs which were Riḍā's), and the paragraph following that sentence also started with "*Al-Ustādh Al-Imām* said…", which may indicate that the sentence was Riḍā's inserted comment in the middle of ʿAbduh's words. Another possible indication is the fact that the only punctuation mark in the (long) paragraph at the end of which the sentence appears is the full-stop before the beginning of the sentence in question, possibly indicating that is separate from the rest of the paragraph.

The image that emerges from the study of ʿAbduh's *tafsīr* of the selected verses is one of women as independent individuals, essentially possessing the *potential* to be equal to men in terms of human characteristics. However, that may not be the case in reality, due to various factors, notably among which in ʿAbduh's view is education. Thus it is important to distinguish between ʿAbduh's view of how women *are*, and how they *could be*. The distinction helps us to understand apparent contradictions between ʿAbduh's statements which emphasise gender equality, and others – as we shall see in later chapters – that accept apparent discrimination. The former apply to an ideal situation while the latter apply to reality. This reminds us of his comment on the command to Ādam and his wife, where he emphasised the partnership between

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[479] See Zebiri, *Maḥmūd Shaltūt*, Oxford: Clarendon Press, 1993, p. 64.
[480] *Al-Manār*, vol. 9, p. 407-409.

them on this earth, stressing that "woman's capacity is like man's capacity in all human matters". However this partnership and equality may be more of an image aspired to than an actual reality.

Nevertheless, what is clear is ʿAbduh's desire to clarify principles and sound understanding of the text, alongside the promotion of specific practical rulings. While the latter must be gradual, realistic, prioritised, and with consideration for the context of its application, the former is fundamentally important because it is less constrained, yet no less important as it is the foundation of later practical developments. This is expressed explicitly in the following statement demonstrating ʿAbduh's understanding of the relationship between the text and context in the process of reform:

> People, because of their ignorance of all dimensions of social interests, used to see no importance for women in the success or corruption of social life, until revelation taught them [about it]. However, people, in each era, take from the revelation as much as they are ready for. Indeed the rulings brought by the Quran for reforming the state of homes through good treatment of women have not been completely implemented by the *umma*, but it has rather forgotten most of it nowadays, and has gone back to the ignorance of the *jāhiliyya*.[481]

In the above context, one realises the importance of ʿAbduh's confrontation of set prejudices and stereotypical views of women and social practices supported by those views, through his re-interpretation of verses related to the origins, essence, qualities and independence of women. His re-interpretations of these themes were often novel and daring, with a clear aim of challenging and discrediting the view of women as dependent beings possessing essential and unchanging negative and threatening qualities. That tendency is significant since it was not only rare in the context of *tafsīr* – whether by classical scholars or ʿAbduh's own contemporaries – but also seen in the context of other social, cultural, legal and political writings at the time, including by non-religious authors seen as liberal figures and pioneers of women's liberation, who, nevertheless, failed to challenge some of these views or even reiterated them.

Also interestingly, sensitivity to the profound roots of internalised, sub-conscious norms and degrading views of women based on specific interpretations of religious texts on women's origin and nature is found more prominently in women's writings in the 19th century. Writings by men, including reformists who criticised the situation of women and sought to "liberate"

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[481] *Aʿmāl*, vol. 4, p. 644.

them, often focused primarily on education and to a secondary extent on legal reform, often paying little attention to religious and cultural bases for degrading views of women.

This realisation and re-interpretation of such verses in order to challenge and change prevailing social norms based on religious and cultural perceptions, will become more prominent and visible in subsequent modernist *tafsīr*,[482] as well as feminist writings, based on a conviction that "even though a Qur'anic hermeneutics cannot by itself put an end to patriarchal, authoritarian, and undemocratic regimes and practices, it nonetheless remains crucial".[483] Abduh's contribution to the reinterpretation of these verses, thus paved the way for later efforts to "contest readings of the Qur'an that justify the abuse and degradation of women" and to "establish the legitimacy of liberatory readings".[484]

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[482] For instance *tafsīr* works by ʿAbduh's student Muḥammad Shaltūt, Tunisian scholar Muḥammad Ṭāhir Ben ʿAshour's *Al-Taḥrīr wal-Tanwīr*, Muḥammad Husayn Ṭabaṭaba'ī's *tafsīr*, and others.

[483] Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'ān*, Austin, TX: University of Texas Press, 2002, p. 2.

[484] ibid., p. 3.

CHAPTER 4

THE MARRIAGE CONTRACT

4.1 Marriage & the Islamic Family System in ʿAbduh's Thought

Since his earliest articles published in *al-Waqāiʿ al-Miṣriyya*, through his *Tafsīr al-Manār* and work as a judge, and his pronouncements as Grand Mufti, the issues of the family and its reform have figured prominently in ʿAbduh's reform project. His interest in this field can be traced back to a number of factors. First, ʿAbduh's rural upbringing – where family values are sacred and family solidarity is fundamental to social and economic life – certainly influenced his concern about the upholding of family values, and alarm at the disintegration of traditional family ties. Of course, this is not divorced from the traditional Islamic promotion of marriage and family building where the family institution is seen as the basic social building block and a bulwark against social discord and disorganisation.[485] Moreover, ʿAbduh's focus on education and social reform rather than political change clearly led him to focus on the family as the starting point for reform. Finally, ʿAbduh's professional career, with his involvement in *iftā'* and Shariʿa courts where a large number of cases were related to family law must have reinforced his belief in the primacy of this field. Of Abduh's 944 recorded *fatāwā*, 100 are related to family law (while 727 were related to financial dealings, including inheritance, waqf, guardianship, wills, women's financial independence, etc. which are also related to the family).[486]

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[485] See Judith Tucker, *In the House of Law: Gender and Islamic Law in Ottoman Syria and Palestine.*
[486] *Aʿmāl*, vol. 2, p. 485-6. Similarly Judith Tucker in her study of Ottoman court records notes the high percentage of court cases in Shariʿa courts related to family law.

4.1.1 Definition of marriage

The juristic definition of marriage in Islam – although not a controversial matter classically since classical books of Islamic jurisprudence do not always provide definitions and the emphasis is on legal rulings – has come under severe criticism for reducing marriage to a contract that resembles a sale or property exchange. As early as Qāsim Amīn, this criticism was raised by non-jurists against jurists who often defined marriage as "a contract through which the man takes possession of the woman's sexual parts, not finding a single word implying that there is anything between the husband and wife other than enjoyment of the fulfilment of physical desire, and devoid of any reference to the moral duties that constitute the greatest expectations two cultured people could seek in one another".[487]

The criticism is based on the definition, adopted by some scholars, which uses the word "possession/ownership" (*milk*), specifically of "enjoyment of the woman", as well as the consequent acceptance of the use of words implying possession, granting/gifting or sale in the contract of marriage. ʿAbduh's discussion of marriage accepts that the physical aspect of marriage is a fundamental one, as he builds his arguments for the need for marriage on that basis, like all classical discussions of marriage, which all start from the need for procreation through the fulfilment of sexual desire.

However, he regards the identification between marriage and sale as having no relation to the Islamic view, as he identifies that to be a feature of the pre-Islamic Arabian view of marriage, which the Qur'an came to modify, in order "to contest the previous convictions of not taking the marital bond seriously, as they used to see it as a contract of slavery or sale or rent of cheap and precious commodities, or rather they used to regard it as even below that".[488] It is for that reason that "their habituation to such maltreatment and familiarity with it cannot be undermined except by glorifying the matter of marriage and emphasising its importance through promises of reward and warnings of punishment, for it is not easy for the man who used to regard his wife as a maid or below that, to make her equal to himself simply through a command".[489]

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[487] Qāsim Amīn, *Taḥrīr al-Marʾa*, included by ʿImāra in *Aʿmāl*, vol. 2, p. 70.
[488] ʿAbduh, *Aʿmāl*, vol. 4, p. 639.
[489] ibid., p. 640.

4.1.2 Purpose of marriage

As early as 1881 ʿAbduh published an article entitled "Humans' Need for Marriage".[490] ʿAbduh starts from the recognition of the natural instinct "to seek association and procreation", as a divinely instituted attribute in order to preserve the continuity of the human species, and facilitate cooperation to bring about benefit and avoid harm for one's spouse and relatives. In this he does not differ from the traditional Islamic positive view of sexuality as a natural and legitimate human need that is to be fulfilled within the institution of marriage.

ʿAbduh's discussion of the need to build a family attempts to rationalise this need away from the textual sources and purely on the basis of reason and logic. To address the question of the invalidity of unrestricted fulfilment of sexual desires, ʿAbduh starts from the necessity of the "exclusivity of pleasure" and the "unique attachment that necessitates the unique pledge of cooperation",[491] for the ideal preservation and development of the human race.

ʿAbduh concludes from the above arguments that "humans' happiness in their life, and the preservation of their existence in this world, are dependent on the restriction of that desire through a rule that regulates its use, sets limits at which each individual must stop, and necessitates the exclusivity between the husband and wife, thus avoiding transgression, and demonstrating the exclusive commitment between each individual and his wife, and between each wife and her husband". The result is that "each seeks the good of his spouse", which is a social necessity, to which all "revealed laws" have devoted attention, specifying laws governing the contracting of marriages, enjoining good companionship between the spouses, and preserving the stability of the home through fulfilling "the obligations and needs of each member". And since the aim is to form new bonds in society, marriage within the closest degrees of kinship is prohibited, and it is recommended that it be between two unrelated families, to form new common interests, making all individuals "turned towards the focus of unity and solidarity, freeing people from the pain of discord and evil of hatred".[492]

Clearly family solidarity, within the extended family, is recognised as a principal purpose of marriage and a social mechanism of the greatest importance. In his *tafsīr* of verse 4:36,

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[490] *Al-Waqāʾiʿ al-Miṣriyya*, No. 1055, 7 March 1881, in *Aʿmāl*, vol. 2, p. 66-69.
[491] *Aʿmāl*, vol. 2, p. 66-67.
[492] ibid., p. 69.

ᶜAbduh outlines how one's responsibility extends, in a progressive way, from one's duties to one's parents, to duties to one's extended family, all the way to needy members of society, in a way that unites and strengthens society as a whole:

> If a person fulfils his duties to God, such that his creed is correct and deeds are good, then fulfils the rights of parents such that his state and theirs are good, the unity of nuclear families – composed of parents and offspring – ensues, and as a result of its uprightness, this unit gains strength. Then, if it helps other units related to it through family ties, and they in turn help it, these mutually-cooperative households acquire a great strength enabling them to help those needy people who have no relatives who can spare them the need to (seek help from) those unrelated to them.[493]

In a second article, on the "Benefits of marriage-based family ties", ᶜAbduh emphasises the equivalence of blood ties and marriage ties, necessitating the same rights, rulings and respect associated with blood ties. ᶜAbduh does not regard this emphasis on marriage as a means for bond-building as specific to Islam, noting that this was a prominent feature of human societies.

Thus ᶜAbduh's discussions of marriage tend to emphasise the social function of marriage, as leading to the building of a family and the provision of an environment in which children are educated, and a set of social ties that promote solidarity and cooperation in society. Thus, marriage is defined by "the trusting companionship between the two spouses, and their joint seeking of a single goal, that is preserving themselves and their progeny, and providing whatever is necessary for protecting them, developing them, and taking them to the point at which they can be independent".[494] As Judith Tucker noted in her study of *Gender and Islamic Law in Ottoman Syria and Palestine* analysing the work of three prominent muftis, marriage is primarily seen as a means "to channel and fulfil the sexual drives of both men and women"[495] which "institutes arrangements of shared nurture and rights of sexual companionship".[496] However, the social dimensions, although not so prominent in the classical discussions of marriage where "no larger purpose is made explicit", are not completely absent, as "the consistent valuing of marriage for all members of the community, the emphasis on matches that respect social barriers, the close attention to the material details of the arrangements, and the recognition that marriage channels

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[493] ibid., vol. 5, p. 216.
[494] *Aᶜmāl*, vol. 2, p. 96.
[495] Tucker, *In the House of Law*, p. 44.
[496] ibid., p. 46.

powerful sexual drives all point to an institution that serves the needs not just of the two individuals but of a community".[497]

ʿAbduh repeatedly characterises the relationship between husband and wife as a 'partnership' and a "pledge of co-operation", to enable "pregnancy and procreation which is the purpose of marriage",[498] and the protection and perfect development of that progeny. Thus, while marriage legitimately fulfils the natural "need for pleasure and association", "the purpose of marriage is not merely fulfilling the physical desire, but rather the purpose is the pledge between the two spouses to share all life matters and unite in everything.[499] The function of marriage as a mechanism of cooperation and procreation is emphasised in the interpretation of the wisdom of creating humans in pairs "male and female, in order to achieve companionship and cooperation for a happy life, protecting offspring and perfecting their development".[500]

Alongside this 'functional' view of marriage emphasising its social dimension, ʿAbduh also highlights, particularly in the *Tafsīr*, its religio-ethical and emotional dimensions. Arguing that marriage is not only a purely juristic matter, but rather "a matter of religion and a means for reward and closeness to God",[501] he held – in contrast to the view of some classical scholars – that "the Muslim cannot leave marriage with the intention of worship and drawing nearer to God, because He, may He be glorified, has mentioned to us His blessing that He created for us from amongst ourselves spouses to find tranquillity therein, and has further instructed us to ask him, as in the verse, "'O our Lord, bestow on us, from our spouses and our children, a coolness for our eyes'… Thus cohabitation, through legitimate marriage, in the way leading to procreation is among the greatest forms of worship".[502]

Moreover, for ʿAbduh, the relationship between husband and wife is not purely a physical one, nor is it merely a mechanical bond for specific social and economic purposes. Rather, "the marriage bond is the strongest bond and most deeply rooted in human nature",[503] through "the mercy that God has instilled between men and women".[504] The intimate nature of this

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[497] ibid.,
[498] *Aʿmāl*, vol. 5, p. 626.
[499] ibid., p. 609.
[500] ibid., p. 311.
[501] ibid., p. 216.
[502] ibid. p. 617.
[503] ibid., p. 641.
[504] ibid., p. 649.

relationship is such that "each shares all his/her secrets with the other, knowing all about them, and affection takes root between them",[505] to the extent that "the man unites with his wife, and the woman with her husband, through the amalgamation of souls and the unity of interest, until it is as if each has become the other".[506] This unity is reflected in the fact that "both the husband and wife are called '*zawj*' [spouse], taking into account the fact that they are in essence a single '*zawj*' [pair] composed of two elements which were then joined to become one in essence, though in appearance they are two. Thus, a single term was used for both to imply that the plurality of form does not contradict the unity of essence".[507]

Linking marriage to one of his ever-present preoccupations and a principal tool for reform in his view, ʿAbduh associates the success of marriage with education. The benefits of marriage can only be realised if people understand the fundamental purpose of marriage and follow divine guidance in this regard, such that "each spouse believes with certainty that he/she only joins his/her spouse in order to be a pillar of happiness for him/her and an aid to fulfil the human function of preserving progeny and taking them to the level of perfection".[508] Such understanding can only follow from "the good upbringing of both males and females, their spirits adorned with virtues and their minds with true knowledge"[509] which makes the focus of the spouses the preservation of their progeny and that of their relatives their support in that mission. With people's minds unaware of divine wisdom and occupied with temporary pleasures, marriage ties have turned into a "cause for enmity and severe rivalry"[510]. The cause is the failure of education and the weakness of minds – as marital problems are either due to the woman's ignorance, which is due to her lack of education, or the mistreatment of the husband's family, due to their lack of good judgment.[511] This disintegration of marital ties, at all social levels, has weakened society, as individuals seek their own interest and abandon any concern for the public good.

ʿAbduh's alarm at this breakdown of the social function of marriage and the disintegration of family ties is clear in the strong terms he uses in his criticism, going as far as to

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[505] ibid., p. 629.
[506] ibid., p. 645.
[507] ibid.
[508] ibid., vol. 2, p. 95.
[509] ibid.
[510] ibid.
[511] ibid.

accuse Egyptian practices in this regard of embodying nothing of the Qur'anic view of marriage and family.[512] ʿAbduh believed this crisis was particularly alarming in Egypt:

> Natural ties – through marriage and all forms of relations – have become the weakest in Egypt, and the most deteriorated out of all countries. Whoever looks at their state, and observes the disputes, arguments and mutual harm between spouses, and their mutual plotting, thinks that these are not from among the people of the Qur'an, and even deems them all to be of no religion or law, but rather their gods are their whims, and their laws are their desires, and further notes that dealings between traders in business are better regulated and respected than is the case in marriage, and are stronger ties than the ties of marriage.[513]

The "weakening and breakdown of the marital bond in our times" has, according to ʿAbduh "reached an unprecedented level unseen in any previous time in Islamic history" as a result of "the spouses' corrupted nature and breaking God's limits from the two sides".[514]

4.2 Arranging Marriage

Marriage and family life in nineteenth century Egypt – and the rest of the Arab and Muslim worlds – have recently become the subjects of various studies, exploring the extent to which customs have changed upon the arrival of 'modernity' or remained ruled by 'tradition'. While the pre-twentieth-century Arab family is often thought of as having been uniformly extended rather than nuclear, and arranged by family rather than based on spouses' choice, more recent research, based on court records, by historians such as Judith Tucker, Beshara Doumani, Philippe Fargues, Kenneth Cuno, Afaf Marsot and others, questions the view of Arab marriage and family as uniform and unchanged until contact with Europe.

Nevertheless, the end of the nineteenth century, as seen in an earlier chapter, did witness a thriving debate on "the woman question", which touched on the subjects of marriage arrangements. Authors such as Qāsim Amīn called for more opportunities for prospective partners to meet and become familiar with one another in order for marriage to be based on love and friendship. As for ʿAbduh, who made numerous proposals for the reform of family courts,

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[512] ibid., vol. 4, p. 667.
[513] ibid., vol. 5, p. 677.
[514] ibid., vol. 4, p.631.

and the reform of laws relating to marriage and divorce, little research has been conducted on his exact views on how marriage is to be arranged. The rare studies that go beyond general statements on ʿAbduh's family reforms propose that "ʿAbduh recommended that the practice of arranged marriage be discarded".[515] However, such claims are in fact based on Amīn's writings, some of which have been attributed to ʿAbduh. Since that attribution is far from certain, it is wise to seek ʿAbduh's view through analysis of other sources. This section seeks to shed light on ʿAbduh's views on the principal and controversial principle of marriage guardianship, based on his *tafsīr*, *fatāwā*, and other relevant writings.

4.2.1 Verse 2:232 – Guardianship

Though marriage is "among the greatest forms of worship" and "the strongest bond and most deeply rooted in human nature",[516] it is juristically a civil contract between consenting parties.[517] As such, discussions of the marriage contract in *fiqh* involve the eligibility of the parties, their legal capacity, the conditions for the contract's validity, continuity and dissolution, etc.

The discussion of the marriage contract classically centred around two principal – and closely interlinked – matters: *al-Awliyāʾ wa'l Akfāʾ* – "Guardians and Suitable Partners",[518] two topics of wide differences between scholars. The divergence fundamentally begins with the interpretation of a number of verses and narrations, with one group concluding that a woman may in principle conduct her own marriage contract, and the second requiring her guardian to conduct the contract as a condition for its validity – while seeking the woman's acceptance (if she is not a minor, and in the opinion of some, only if she has not previously been married). *Kafāʾa* (eligibility of the suitor) is then introduced as a way of preserving the woman's

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[515] Samira Haj, *Reconfiguring Islamic Tradition*, p.129.

[516] *Aʿmāl*, vol. 5, p. 641.

[517] Although this aspect of the marriage contract has been emphasised to differentiate it from the sacramental nature of, for instance, Christian or Hindu marriage, some authors have criticised this overemphasis and the misunderstandings of Muslim marriage as a pure contract with no religious dimensions. See for instance Tahir Mahmood, Personal Laws in Crisis, New Delhi : Metropolitan Book Co., pp. 63-66.

[518] Al-Zaylaʿī's commentary on *Kanz al-Daqāʾiq*. Al-Zaylaʿī was among the medieval scholars whose works ʿAbduh praised and deemed worthy of being taught.

guardian's involvement in the matter of her marriage (as well as a way of limiting the guardian's authority).

In Egypt, where the Hanafi *madhhab* had become the official *madhhab* in the judicial system, the most common Hanafi opinion was officially adopted: that an adult woman may conduct her own marriage contract, but her guardian can demand that the marriage be annulled if the husband is of lower status, or if the *mahr* is below that due to her peers. This was the view adopted in Qadrī Pasha's proposed Code of Personal Status.[519] Whether this opinion was followed in practice – i.e. whether women often married without their guardians' consent, or whether social custom – and the prevalence of the Maliki and Shafiʿi *madhāhib* which were still followed in matters of ritual rather than the official *madhhab* – meant that the majority of marriages were contracted by the woman's guardian, is another matter. Already in 1544, even in Turkey, where the Hanafi *madhhab* was prominent, an Ottoman decree forbade women in any circumstances to marry without the consent of a male guardian.[520]

The complex diversity of juristic opinions on guardianship in marriage, with its differences and similarities, seems to be based on a view of guardianship as a duty of the guardian, a right, or as a synthesis of both. While the guardian has the right to conclude a marriage on his ward's behalf and to give his consent or object to her choice, it is his duty to exercise that right in her best interests and he is enjoined to take her wishes into consideration. To fulfil this duty he must have the right to participate in the decision-making process. To merit this right, his ability to exercise it in the best interests of the ward must be demonstrated, since if he practices ʿaḍl (unfair prevention of marriage), he is considered to have exceeded the limits of his right, or failed in his duty. Thus the crux of the disagreement between the Hanafis and the

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[519] *Al-Aḥkām al-Sharʿiyya fi'l-Aḥwāl al-Shakhṣiyya*, Muḥammad Qadrī Pasha, edited by Muḥammad Aḥmad Sirāj and ʿAlī Jumʿa, Dār al-Salām, 2006, Article 34, vol. 1, p. 119.
Article 51: "the free sane adult male has the right to marry, even if he is *safīh* (weak-minded, lacking in responsibility), without the interference of a guardian. Similarly, the free adult female, whether virgin or previously married, has the right to marry without a guardian, and her marriage is valid and binding if the husband she marries is *kufʾ* for her, and the *mahr* is the *mahr al-mithl* (equivalent to her peers) for her", ibid., p. 148.
[520] By the Supreme Judge Ebussuʿūd, following the order of Sultan Suleyman. See Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition*, Edinburgh University Press, 1997, p. 168. Judith Tucker's study of peasant women in nineteenth-century Egypt concluded that, at least for this class, "young women could choose their husbands and arrange their own marriages as long as the groom was "suitable", that is of similar social standing, and offered a *mahr* appropriate to the bride's social status and personal qualities. Despite the occasional bid by a relative to block a woman's choice, the courts invariably recognized her ability to marry without the permission, or good offices, of her family", p. 52.

majority of the jurists is that the majority restrict the freedom of choice of the woman and require her guardian's opinion to be taken before the contract is made so that his wishes be fulfilled. Abū Hanīfa gives the woman freedom in making the contract, but still protects the right of the guardian by allowing him to dissolve it if the marriage is to someone not her equal or if the dowry is less than that appropriate to her status.

Although ʿAbduh does not explicitly raise the issue in his articles on marriage, he seems to express, in his *tafsīr* of a number of verses, support for the view requiring the guardian's conduct of the marriage contract. Commenting on verse 2:220, concerning marriage to a polytheist, ʿAbduh remarks that "the change from *tankihū* (active form of the verb of *nikāh*, with the subject being men) and *tunkihū* (the action of marriage attributed to men, with the object being women) gives the impression that men are the ones who contract their own marriages and those of women of whom they are guardians, and that a woman does not contract her marriage independently, but rather there must be a guardian".[521]

ʿAbduh's commentary on verse 2:232 begins by recognising that the aim of this verse is "prohibiting ʿaḍl, that is the prevention of women from marriage", based on the pre-Islamic control of women's affairs by men, as "in the customs of *Jāhiliyya*, men controlled the marriage of women, such that only the woman's *waliyy* could enact her marriage, and he may give her in marriage to a man she hates or prevent her from marrying the one she loves, simply according to his own whims".[522] However, it seems from a later statement, that what is condemnable in those customs according to ʿAbduh, is not the guardian's right to enact the woman's marriage, but rather the absence of women's consent, for – he added – "Islam recognised the *wilāya* (guardianship) of close relatives, and prohibited ʿaḍl, that is prevention from marriage, and the *waliyy*'s marrying a woman without her consent; thus fulfilling both interests".[523]

If the above two comments were indeed ʿAbduh's – which is far from certain – he would appear to adopt the view that marriage is a matter of concern to both the woman and her

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[521] *Al-Manār*, vol. 8, p. 247. There is, however, no explicit attribution to ʿAbduh, and it is possible that this view is in fact Ridā's, as there is a very long and detailed discussion of marriage between Muslim men and women and men and women who are polythesists or "people of the book", and ʿAbduh is only mentioned once in the entire discussion, and not in relation to guardianship.

[522] *Aʿmāl*, vol. 4, p. 641.

[523] ibid. The comment also appears in the original version (*Al-Manār*, vol. 8, p. 528), but as part of the long introduction of each tafsir section, which is often written by Ridā to link to the previous section and introduce the context.

guardian, in which neither can take sole charge and make an independent decision. The consent of both the guardian and the woman is necessary. In this, he differs from the view of Mālikīs and Shāfiʿīs who accept the concept of "coercive guardianship" or *wilāyat al-jabr*, which entitles the father or grandfather of a woman, minor or adult, so long as she has not been previously married, to give his daughter (or granddaughter) in marriage, without her consent, although they consider it recommended to obtain her consent. He also differs from the dominant official Hanafi view that an adult woman may contract marriage herself, although the guardian may object if the suitor is considered of unequal status. This view is similar to that of early schools such as that of al-Awzāʿī who permitted women to contract marriage, although the guardian's permission was required to make it binding, and of Abū Thawr who permitted women to contract their marriage, if the guardian permitted it.[524]

4.2.2 Restricting the Woman and Guardian's Rights: *Kafāʾa*

The second part of the verse "do not prevent them from marrying *if they reach agreement according to maʿrūf*" has also been used by those who uphold women's right to contract marriage in order to restrict that right, and enable guardians to "prohibit" certain marriages, that is to minimise the scope of what is considered wrongful prevention of marriage – ʿaḍl. ʿAbduh commented on the phrase, that

> He said 'if they reach agreement according to *maʿrūf*', i.e. if those seeking marriage, both men and women, consent, that is if the man and the woman accept one another as a spouse. He said "between them" implying that there is no harm in the man's proposing to the woman herself, and agreeing with her to marry her, in which case it is forbidden to practice ʿaḍl, that is prevent her from marrying him [the chosen husband] if that mutual consent in the proposal was through acceptable ways, according to the Sharīʿa and custom, such that there was nothing prohibited in it nor anything undermining honour or bringing disgrace to the woman or her family. Scholars used this verse as proof that preventing a woman from marrying her non-equal is not prohibited, for instance in the case of a noble woman wanting to marry a lowly man who would undermine her, and undermine her people's honour and dignity, in which case she should be discouraged through admonition and advice. Some scholars also allow ʿaḍl if the *mahr* is below *mahr al-mithl* [the *mahr* due to her equals].[525]

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[524] See al-Shawkānī, *Nayl al-Awṭār* (Cairo: al-Maṭbaʿah al-ʿUthmānīyah al-Miṣrīyah, 193), p. 125.
[525] *Aʿmāl*, vol. 4, p. 643.

Al-Manār's version then added that "*al-Ustādh al-Imām* said: if a woman wished to marry for less than the *mahr* of her equals, and the motive is not immorality that undermines dignity nor the following of whims and desires, and instead the motive is seeking a man of good character likely to provide good companionship and a good life, although he cannot pay a high *mahr* in addition to the other marriage expenses, then *ʿaḍl* is not permitted, and the marriage should be allowed."[526] It is not clear whether or not in the above comment, ʿAbduh is giving credence to the concept of *kafāʾa* in marriage, considered of principal importance by Hanafīs in particular, since there is no explicit approval by ʿAbduh of this concept, apart from the mention that it is the opinion of "scholars". The fact that ʿAbduh's *tafsīr* generally seeks the meaning and implications of the words in the verses more so than what other scholars had understood those to be, and the fact that his own explicit comments on the above verses focused on the prohibition of preventing marriage rather than the justification of that prevention, lead us to question whether the above commentary is fully attributable to ʿAbduh. The fact that ʿAbduh's explicit opinion is that the *mahr al-mithl* is not necessary and that waiving it does not justify *ʿaḍl* logically support the suggestion that the references to other scholars' opinions justifying *ʿaḍl* for certain conditions were not ʿAbduh's but Ridā's.

The lengthy commentary on the second part of the verse, containing no rulings, but rather admonition, follows the pattern of ʿAbduh's emphasis on the Qurʾan's spiritual message, beyond the purely legalistic. This further emphasises the essential aim of the verse, that is to change men's attitudes towards women, from *Jāhiliyya* customs, to God-consciousness:

> admonition is giving advice and reminding of goodness and truth, in a manner that softens the heart and urges towards action… As for those who do not have that true faith… then admonishing them is of no benefit, because they follow their own whims in the treatment of women, and imitate what they found their fathers and associates doing.[527]

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[526] *Al-Manār*, 15 September, 1905, No. 14, vol. 8, p. 530. This is again not entirely a novel opinion, even in Hanafī *fiqh*, as "Abū Yūsuf said that the guardian has no right to object if the *mahr* is below *mahr al-mithl*, because that is not a necessary cause for disgrace, and because she has the right to give up her right to the *mahr* once it has been specified, thus there is no point in objecting so that it is raised to *mahr al-mithl* for it to be given up afterwards" (Abū Zahra, p. 168).

[527] *Aʿmāl*, vol. 4, p. 643.

ʿAbduh further underlines the verse's emphasis on the evils of ʿaḍl, and the merits of respecting women's wishes, showing greater concern over the evil consequences of ʿaḍl, than for the circumstances which can justify it:

> The Qur'anic injunctions concerning the prohibition of preventing women's marriage and their good treatment in all situations are conducive to the growth of its followers and the perfection of their state, and that it is purer for their honour and their lineage, and more protective of their honour and prestige, because preventing women from marriage and restricting them can be a cause for their disobedience and a corruption of their characters, as well as a cause for the corruption of the order of homes and the misery of children… as in the case of a guardian who prevents his ward from marrying the one she loves and marries her to the one she hates, following his whims or the customs of his people, as the Arabs used to do. Would you then expect that their life would be successful or that they would respect God's commands in their relationship?[528]

The later version of this (published in the compiled volumes of *Tafsīr Al-Manār* by Ridā) differs slightly, but significantly, from the one originally published in *al-Manār* journal. The modified version is surprisingly the one adopted in ʿImāra's compilation of ʿAbduh's works, rather than the original version above. In this version, the prohibition of preventing women's marriage to their chosen partners is followed by a condition: "what is meant by "that" is forbidding the ʿaḍl of women – according to limits and conditions".[529] The difference is the omission of the general intent of the verse "the good treatment of women in all cases" alongside "the prohibition of preventing women's marriage", but more significantly, the addition of "according to limits and conditions", which restricts the scope of the prohibition, allowing for preventing women's marriage for considerations of *kafā'a*. This, and ʿAbduh's detailed elaboration on the evils of ʿaḍl – without any qualification – supports the attribution of the above comments on "*bil maʿrūf*" taken to mean what does not "bring disgrace to the woman and her family" to Ridā.[530]

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[528] ibid., p. 644, and *Al-Manār*, vol. 8, p. 533-534.

[529] *Aʿmāl*, vol. 4, p. 644.

[530] Elsewhere, a clear and strong justification of marriage guardianship for women and control of their marriage partners is expressed, but by Ridā: "The Islamic Sharīʿa has forbidden women from giving themselves in marriage, instead making their marriage in the hands of their guardians and their own, for both their approval [the women and their guardians] is required. This is so even though it has given them [women] rights to manage their wealth that have not been granted by any other religion/law. Rather you find that people from all sorts of nations and tribes of various trends and faiths agree in their disapproval of women's independent marriage, and on the necessity of giving that matter to her guardians and family." (*Al-Manār*, vol. 8, p. 210)

Far from being merely a theoretical concept constructed by jurists in the contexts of their discussions of marriage and guardians, it is clear, from *fatwā* requests received by *al-Manār* from as far as Malaysia, that the importance of *kafā'a* had not disappeared, although its applicability to certain aspects was contested.[531] Ridā's answer showed that his opposition to *kafā'a* was not absolute; he focused only on weakening the arguments for *kafā'a* based on *nasab* – noble lineage – and emphasising that the concept of *kafā'a* on the basis of lineage is not based on texts (from the Qur'an and Sunna), but on considerations of interest and harm, and are hence related to customs, and hence open to change.[532] Also far from being a matter concerning far-away lands, the contemporary case of the marriage of Ṣafiyya al-Sādāt, daughter of Sheikh al-Sādāt, from a prominent family of Ashrāf (descendents of the noble prophetic line) and head of a Sufi order to the owner and editor of *al-Mu'ayyad* Sheikh ʿAlī Yūsuf, a wealthy writer with close links to the Khedive but of humble origins, demonstrated that *kafā'a* was still a potent weapon in disputes over marriage guardianship. Although ʿAbduh and Ridā did not explicitly side with either party,[533] *Al-Manār* took the occasion to clarify again that *kafā'a* was a matter of *muʿāmalāt* (worldly dealings) that depends on changing social perceptions of what constitutes an honourable or disgraceful match.[534] Although this was written by Ridā, the latter insisted that his view was approved by ʿAbduh who had read the *fatwā* "regarding *kafā'a* and *awliyā'* and have found it agreeable".[535]

4.2.3 Context & Considerations for the Above Views

Notwithstanding the doubts raised above regarding the attribution of views on guardianship and *kafā'a* to ʿAbduh, a few considerations are to be kept in mind regarding the context and

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[531] Al-Manār, no. 15, 3 September 1905, vol. 8, p. 584.

[532] ibid., p. 587.

[533] Ridā was a close friend of Yūsuf, both being editors of reformist newspapers, but ʿAbduh did not view Yusuf favourably, in view of his uncritical support for the Khedive who obstructed ʿAbduh's reform projects. In his *Tārīkh al-Ustādh al-Imām*, Ridā wrote: "I told *al-Ustādh al-Imām* that the greatest cause of Sheikh ʿAlī's displeasure vis-à-vis him is his belief that he [ʿAbduh] was behind his friend Judge Sheikh Ahmad Abu Khṭtwa's ruling in his case that he [Yusuf] was not *kuf'* for the daughter of Sayyid Abdel-Khāliq al-Sādāt. He replied: You know that I agree with what you had written in *al-Manār*, which was re-published in *al-Mu'ayyid*, on *kafā'a*. As for my opinion of Sheikh ʿAlī and al-Sādāt as individuals, they are eligible for one another, but in disgrace rather than honour!" *Tārīkh*, vol. 1, part 2, p. 595.

[534] *Al-Manār*, No. 10, 30 July 1904, vol. 7, p. 347-348.

[535] Al-Manār, No. 15, 3 September 1905, vol. 8, p. 584. This reported approval is printed after ʿAbduh's death.

possible motivations of the apparent lack of a clear support for women's contracting of their own marriage. ʿAbduh was not as interested in theoretical discussions as he was in practical application, particularly through his experience in Shariʿa courts which mainly dealt with family law cases. He was less interested in theoretical opinions which were rarely followed in practice. The question here is: how common were marriage contracts conducted by women independently?[536] Al-Rāzī had suggested that verse 2:232 possibly commanded guardians not to prevent women from marrying, not because it was their right to assume this guardianship (as many jurists and exegetes had proposed), but because "women generally follow their guardians' decision in the matter of marriage, even though they [guardians] are obliged to consult them, and because they are living under them, thus they [guardians] have the ability to prevent them as they have the ability to give them in marriage".[537] Similarly ʿAbduh probably knew that in practice, regardless of theoretical rights of women or guardians to contract marriage, guardians did assume this role and the social reality had to be managed by regulating and restricting that role, rather than categorically rejecting it regardless of practical applicability.

ʿAbduh's descriptions of marriage customs indicate that it was the groom's parents who selected the bride and paid the *mahr*, indicating very little input from the groom, and presumably the bride.[538] In fact, contemporary discussions of marriage practices – by women and men – did not seem too concerned about the legal issue of the *waliyy* or rejecting its necessity. What they did discuss and demand is the woman's right to be involved in selecting her future partner, stressing that women had a greater – or at least – equal right to participate in marriage arrangements. For instance Qāsim Amīn simply criticised marriages where the bride – in

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[536] Evidence from historical studies does not seem to be conclusive. Judith Tucker in her *In the House of Law: Gender and Islamic Law in Ottoman Syria and Palestine* notes that "a woman thus needed to enter a marriage willingly; coercion invalidated marriage arrangements. Such a position did not, however, preclude a firm family hand in marriage arrangements… Women in their legal majority still had marriage *walīs*, those people who were legally entitled to arrange their marriages for them, but the *walī* had to communicate fully all details of a proposed arrangement and honour a woman's refusal of a marriage." However, she added that "A woman in her legal majority also had the right, so far as the Hanafi jurists were concerned, to arrange her own marriage… All the jurists were careful to point out, however, that the legal *wali* could raise objections to a marriage if the groom were not suitable, or if the *mahr* were not fair." pp. 50-51. In her *Problems in the Historiography of Women in the Middle East: The Case of Nineteenth- Century Egypt*, Tucker notes that "many women… enjoyed a wide degree of latitude in the choice of marriage partners", p. 330.

[537] *Tafsīr al-Fakhr al- Rāzī*, vol. 2, p. 386.

[538] Similarly, Judith Tucker, in her study of marriage contracts in nineteenth century Nablus, concluded that "agreement on the *mahr*, and, indeed, the decision to undertake marriage at all was, to varying degrees, a family affair". Tucker, Judith, *In the House of Law*, p. 51.

particular, but in many cases also the groom – did not even see the prospective partner, or only saw a glimpse of them, without being given a chance to get to know them sufficiently to make an informed decision.[539] In fact, the issue of guardianship, far from being a disappearing concern, has survived and continues to operate, in a modified way, in modern Middle Eastern and North African societies and laws.[540]

Thirdly, as is clear from ʿAbduh's articles on marriage and family, he was concerned about the break-up of families and loosening of family ties. Preserving the partnership between women and the guardians as both having a say in the matter of marriage could be seen as more conducive to family harmony and stability, rather than insisting on theoretical rights than could in practice endanger that harmony and stability further. Moreover, the preservation of the guardian's involvement can be seen – as it has traditionally been seen – as being in the interest of women themselves. As shown by historical studies of Ottoman marriage contracts, support from the woman's family of birth was instrumental in strengthening the woman's position when negotiating conditions in the marriage contract, in alleviating the interference of the husband's family, in resolving marital conflict, etc.[541] The greater involvement of the family in arranging marriage, according to Judith Tucker's study on marriage contracts in Nablus, seems to ensure the stability of marriage – which is one of ʿAbduh's concerns – since "the contracts thus suggest that marriage was a more permanent relationship in affluent circles" in which families tended to be more involved in the negotiation of the conditions of marriage.[542]

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[539] *Tahrīr al-Mar'a*, p. 143.

[540] See Nasir 1990, pp. 51-53, El-Alami 1992, Welchman, Women and Muslim Family Laws in Arab States, 2007, pp. 768-75. The *Islamic Family Code* (proposed by a number of Egyptian jurists) proposes, under Article 52 on the conditions for the validity of marriage: "The marriage contract must be in the presence of two witnesses, and the contract should be conducted by the bride's guardian if she is previously un-married and below the age of majority; if she is above that age, it is recommended that her guardian conducts the contract; the previously married woman may conduct her own contract". p. 37-38. In the explanatory notes, various ahadith and rational arguments are brought to support the validity of the adult woman- whether or not previously married- contracting marriage. However, they added that "they [those of the above opinion] still recommend that the bride authorises her guardian to conduct her contract in order to preserve her modesty before people, and so as not to act outside what people are accustomed to in marriage". P. 183 *Mīthāq al-Usra fī'l Islām*, International Islamic Committee for Women and Children, Dār al-Ṭibāʿa wa'l-Nashr al-Islāmiyya, 2006. www.iicwc.org

[541] See, for instance, Fariba Zarinebaf-Shahr, "Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century" in Amira Sonbol (ed.), *Women, the Family, and Divorce Laws in Islamic History*, Syracuse University Press, 1996, p. 84.

[542] Tucker, "Ties that Bound: Women and Family in Late Eighteenth and Early Nineteenth Century Nablus", in Beth Baron and Nikki Keddie, eds., *Shifting Boundaries: Women in Middle Eastern History and Theory*, 1991.

4.3 *Mahr*

Apart from the guardian and witnesses, the contract generally included the *mahr*. In his *tafsīr* of verse 4:3, ʿAbduh strongly criticised the linking of *mahr* to the sexual capacity of the woman by some scholars – following their definition of marriage as ownership or exclusive powers over the wife's sexual capacity. ʿAbduh defined *mahr*, also known as *ṣadāq*, as "that which is willingly given to the woman before the consummation of the marriage", adding that "it must be noted that this gift has a meaning that is higher than the one perceived by those who call themselves scholars, that *ṣadāq* and *mahr* are in lieu/compensation of/for the sexual organs/capacity or a price for it". Strongly rejecting that suggestion, ʿAbduh emphasised that "rather the relationship between the two spouses is higher and more honourable than that between a man and his horse or his maid". He supported this by the linguistic meaning of the word "*niḥla*", which is another Qur'anic term used for *mahr*, signifying a gift without expected return. He also went back to the Qur'anic definition of marriage as "love and mercy", linking it to *mahr*, which therefore must be understood as "a sign of love and establishment of kinship and strengthening of the bonds of love and mercy".[543] Distancing marriage further from a material exchange, he highlighted the fact that *mahr* "is obligatory and not optional like the case of sale or rent (where payment can be waived). Hence, the ʿurf of people has been not to stop at this gift, but the husband follows it with further gifts and honours."[544]

The view of *mahr* as compensation, however, continues in the writings of other reformists, who, although they rejected its view as compensation for sexual services, in their quest to justify everything through rational arguments, proposed that women's enjoyment of marital financial rights (maintenance and *mahr*) could be used as a further justification for the man's leadership of the family. For instance, Riḍā, in the context of justifying men's leadership position suggests that

> There is also another acquired reason, that supports the natural reason (for superiority), that is men's spending out of their wealth on women; for *mahr* comprises a compensation for women and a reward for entering – through the marriage contract – under the

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[543] *Aʿmāl*, vol. 5, p. 183.
[544] ibid., p. 184.

leadership of men. Shariʿa has honoured women by granting them a reward for something required by nature and the system of life.[545]

As for the amount of *mahr*, ʿAbduh clarified that there is neither textual basis for limiting it to a particular minimum or maximum, nor did "the early predecessors limit the *mahr* to a specific limit".[546] However, the burdening of the groom – or his parents – with high *mahrs* is something that ʿAbduh criticised in his article on wedding customs, in which he regrettably described how the groom's parents "pay – for the *ṣadāq* – what satisfies her [the bride's] parents, even if that burdened them with a great debt and a heavy burden".[547]

Following from the above discussion on marriage guardianship, *kafāʾa* and *mahr* seemed to be considered the family's – rather than the bride's – right, such that guardians could object to a marriage arranged by a woman to a groom who was not suitable, or where the *mahr* was lower than that due to a woman of her status. This juristic view agrees with the prevailing practice, where "agreement on the mahr, and, indeed, the decision to undertake marriage at all was, to varying degrees, a family affair".[548] ʿAbduh, in contrast, clearly considered the *mahr* and the determination of its amount to be the bride's right, such that she can waive that right if she so wishes:

> If a woman wished to marry for less than the *mahr* of her equals, and the motive is not immorality that undermines dignity nor the following of whims and desires, and instead the motive is seeking a man of good character likely to provide good companionship and a good life, although he cannot pay a high *mahr* in addition to the other marriage expenses, then *ʿaḍl* is not permitted, and the marriage should be allowed.[549]

Conclusion

ʿAbduh's views on the elements of the marriage contract, including guardianship, *kafāʾa* and *mahr* are in harmony with his conception of the function of marriage and family. His criticism of guardians' abuse of their position to prevent women from marrying their chosen spouse and rejection of justifications of that prevention on the basis of *kafāʾa* or *mahr* concord

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[545] Riḍā, *Nidāʾ lil Jins al-Laṭīf*, p. 27.
[546] ibid., p. 199.
[547] ibid., vol. 2, p. 98.
[548] Tucker, *In the House of Law*, p. 51.
[549] *Aʿmāl*, vol. 4, p. 643.

with his emphasis on the aspects of partnership and spiritual union of marriage. On the other hand, his apparent lack of clear support for a woman's right to contract marriage independently agrees with his view of marriage as a cooperative function for the creation of stable families and strong societies.

A lot has been said about the change in the view of marriage and family with the advent of modernity. A number of studies focus on the modern Egyptian adoption of the bourgeois companionate view of marriage focusing on the nuclear family, compatibility of husband and wife, and their defined complementary roles as spouses and parents. Many studies have focused on the methods – state policies, education curricula, press debates, nationalist discourses – employed to establish this modern view. Although some, such as Samira Haj, suggest that ʿAbduh's writings on marriage and family are part of this debate displaying his adoption of the modern companionate view of marriage as opposed to traditional family-based arranged marriage, such suggestions tend to be exaggerated and not based on any explicit statements by ʿAbduh. For instance, Haj relies fully on quotes (on choice of spouses) from *Taḥrīr al-Mar'a* – without any clarification of, at least, the ambiguity of the attribution.[550]

On the basis of his confirmed own writings, ʿAbduh's view of marriage has elements that are indeed common to the modern concept of companionate marriage: emphasis on emotional intimacy, compatibility, selection of spouse and his/her education to be a good parent, social function of marriage, etc. However his writings display an acceptance of – or ambivalence towards – other aspects of "traditional marriage" such as the role of the bride's guardian, the principle – although restricted – of *kafā'a*, and the importance of the extended-family system, seen by ʿAbduh as a cooperative solidarity network that is the basis for social stability and prosperity. Moreover the above elements associated with modern companionate marriage apparent in ʿAbduh's writings are not alien to traditional Islamic literature. The family's function in relation to education and character development is well-developed in Islamic literature, from Ghazālī to Ibn Khaldūn.[551]

Also, although ʿAbduh does describe the family as a basic building-block of society the reform of which is essential for the reform of society, it is not clear how much this is to be read

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[550] Samira Haj, *Reconfiguring Islamic Tradition*, p. 128-131.
[551] See, for instance, Fuad Baali, Social *Institutions: Ibn Khaldun's Social Thought.*

as part of the modern discourse on the adoption of the state-promoted modern family model, since the family as building-block of society is not entirely a novel concept in Islamic heritage. As we had seen, many *fiqh* rulings were conceived with the view of the family as a social institution worthy of the greatest protection. One third of the Qur'an's legal injunctions relate to the family and its regulation. Judith Tucker had noted how, in the eyes of the Levantine muftis in her study, "Marriage was key to social harmony … a basic social building block, a bulwark against social discord and disorganisation".[552] In traditional literature and *fiqh*, the nuclear family is a recognised unit – within an extended system. Although it is commonly believed that Middle-Eastern societies were principally composed of extended-family households until the twentieth century, there are no complete statistics to determine whether nuclear or extended family was the norm at the turn-of-the-century – for instance, the mid-19th century census under Muḥammad ʿAli, suggests that, at least in Cairo, the majority of households were nuclear families.[553] Judith Tucker's study of *Women in Nineteenth-Century Egypt* also noted that "it was the nuclear family, the husband and wife unit, that formed the basis for much business and property holding, not the larger extended family of received wisdom and inheritance law logic".[554] Abduh's concern about the weakening of the values of mutual cooperation within extended families could thus be a result of the contrast between his rural upbringing and his urban reality – but also concern about the effects of Muḥammad ʿAlī's policies on family stability. There could also be an influence of European concerns about changes in family structure following industrialisation.

ʿAbduh emphasised education as key to the success of marriages and highlighted the spouses' and their wider families' lack of understanding of the purpose of marriage as a principal cause of marital problems. This is again similar to the modern preoccupation with "teaching" parenting skills – particularly focusing on the mother – and decrying "ignorance" – particularly women's – as a principal cause for marital problems, children's problems, and even men's reluctance to marry. However, ʿAbduh's view on education and marriage differs in its emphasis on religious education to learn each spouse's and family member's rights and duties and to motivate them to fulfil them, rather than the modern preoccupation with skills. It also differs on

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[552] Tucker, *In the House of Law*, p. 40.
[553] Philippe Fargues, "Family and Household in Mid-Nineteenth-Century Cairo", in *Family History in the Middle East: Household, Property, and Gender*, Edited by Beshara Doumani, p. 38.
[554] Tucker, *Women in Nineteenth-Century Egypt*, p. 100.

decrying both men's and women's ignorance of the real nature of marriage, and the need to educate both for a better understanding of marriage.

Thus ʿAbduh's discourse on the family combines both reformist Islamic elements which can be seen as a continuation of classical reformist discourses (re-reading the sources to re-interpret them and to motivate Muslims to understand divine injunctions and apply them) and a modernist nationalist discourse influenced by modern concepts of family, society and governance. Or in other words, this points to the overlap between the various discourses in Egypt – and the rest of the Muslim world – and their various inspirations, as opposed to the tendency to place figures into distinct camps. Where ʿAbduh was critical of prevailing rulings and practices in the contracting of marriage and where he promoted reform, he did so generally in a cautious measured manner, finding grounds from orthodox sources and being careful not to seem to break too radically from accepted practice. This tendency (which will also be apparent in ʿAbduh's views and proposals for reform in other areas) is due to his pragmatism and reliance on social acceptance and readiness rather than pure legal reform, which require gradualism and avoidance of alienating the majority of the population.

CHAPTER 5

THE MARITAL EQUATION OF RIGHTS AND DUTIES

Marriage in Islam is a contract entailing a number of provisions from the contracting parties. Those provisions are open to negotiation and agreement, and conditions are often inserted, which if not abided by can result in the contract being breached.[555] This ability to negotiate the terms of the marriage contract, as attested to by historical records of marriage contracts in Shariʿa courts in pre-modern times, offered the possibility of altering the balance of the marital relations, reducing the powers enjoyed by husbands and handing wives greater maneuverability by offering them the option of leaving unsatisfactory marriages for a wide range of reasons.[556]

This situation differs greatly from the view of the marital relationship as consisting of pre-defined and fixed rights and duties and the view of husbands' authority over their wives as absolute. As Sonbol argues, this view has, to a great extent, resulted from the codification of *fiqh* in the modern era, based on the Hanafi *madhhab*, under colonial influence, and informed by the modern patriarchal state, which deprived Shariʿa courts of the flexibility that characterised them in pre-modern times.[557] Thus, scholars, such as Amira Sonbol, Lama Abu-Odeh and Ziba Mir-Hosseini, suggest that the modern view of marriage, unlike commonly believed, does not re-articulate classical Islamic approaches. The standardization of marriage restricted the possibility of a future wife's negotiation of the terms of the marriage. The wife's principal enforceable right

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[555] In theory, this is specifically true for the Hanbali madhhab, although court records show the use of conditions to be widespread throughout various ages of Islamic history. See, for instance, Amira El-Azhary Sonbol, "History of Marriage Contracts in Egypt", *Hawwa,* vol. 3, no. 2, July 2005, 159-196,.For the views of the various *madhāhib,*on stipulations in the marriage contract see Muḥammad Abū Zahra, *Muḥāḍarāt fī ʿAqd al-Zawāj wa thāruh*, p. 198-203.
[556] See, for instance, Amira al-Azhary Sonbol *Women, the Family, and Divorce Laws in Islamic History*, Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* and *Women in Nineteenth-Century Egypt.*
[557] Sonbol, "History of Marriage Contracts in Egypt".

remained that of financial maintenance. Thus, marriage became a simple equation of maintenance in return for absolute obedience.

19th-century writings – whether by nationalist reformers, social commentators or women authors –[558] addressed these aspects of the marital contract through the following dimensions: the scope and limits of the husband's duty of financial maintenance in marriage, the extent of the wife's financial independence, the extent of the husband's right of "obedience" and discipline", spousal and parental duties and the modern division of labour within the family, and the 'modern training' of wives and mothers. In these discussions, marital rights and duties, religion, morality, law, politics and national aspirations were tightly interwoven. Women's rights and duties in marriage became "tropes" for larger national concerns.

In this chapter, I discuss ʿAbduh's view of the "marital equation" and its twin duties of maintenance and obedience. I compare ʿAbduh's views to classical scholars and his contemporaries, and assess the influence of his approach on subsequent legal reform.

5.1 *Nafaqa* – an Absolute Right/Obligation?

Although the provision of *nafaqa* is considered one half of the marriage equation,[559] husbands were not always committed to the fulfillment of that duty, while insisting on the continuation of the marriage and of their authority. This seems to have been a principal cause of marital disputes – Tucker asserts that "the greatest proportion of court records that were related to marriage, outside of the contracts themselves, were those concerned with the nafaqa that a husband owed his wife.[560] This question was also raised in the Egyptian press in the late

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[558] Clearly all three are not mutually exclusive.

[559] Maintenance is due the wife if she "places, or offers to place, herself in the husband's power so as to allow him free access to herself at all lawful times" and if "she obeys all his lawful commands for the duration of marriage." Jamal J. Nasir, *The Islamic Law of Personal Status*, p. 98. In Hanafi *fiqh*, *nafaqa* is in view of *iḥtibās* or exclusive confinement: "According to the Hanafis, when a wife confines herself to her husband's house and does not leave it except with his permission, she shall be regarded as 'obedient'.... Thus the cause which entitles her to maintenance, according to the Hanafis, is her confining herself to her husband's home." *The Five Schools of Islamic Law*, Muḥammad Jawād Maghniyya, p. 357-58.

[560] Tucker, *In the House of Law*, p. 74.

nineteenth century by both female and male writers, such as ʿĀ'isha Taymūr and ʿAbdullāh al-Nadīm.

In her book *Mir'āt al-Ta'ammul fī al-Umūr* ("A Reflective Mirror on [some] Affairs") published in 1892, prolific writer and poet Taymūr expressed her concern over the emergence of what she saw as "problematic behaviour and strange social practices". Islamically, men were required to provide for women by giving them a *mahr*, providing for women's food, clothing and housing in accordance with the status of the wife and the husband, and providing for their infant children. Taymūr stressed that "these obligations were required by Qur'anic verse (*al-naṣṣ*) and community consensus (*al-ijmāʿ*)". However, the "modern Egyptian husband" not only neglected those duties, but "was intent on enjoying himself and avoiding any kind of exertion or work… He spent his time in bars in the company of friends where they listened to music, gambled and drank". Such excesses led to the breakdown of respect between husband and wife, as well as severe economic hardships for the family. Taymūr believed that such behaviour by modern men and their failure to fulfill their financial obligations forced women to "take over the responsibilities of their households" and hence, "authority passed to the wives as the goddesses of management and the source of utility. Men gave up their leadership position that entitled them to respect and dignity."[561]

We had already seen in a previous chapter how the famous journalist and orator ʿAbdullāh al-Nadīm frequently and strongly condemned problems which he believed were brought by "the European contamination of Eastern lands" such as drinking, gambling and prostitution. However, what al-Nadīm was adamant about was that, condemnable as such behaviour was, it could not in any way justify the reversal of marital roles or the refusal of wives to respect and obey their husbands.[562]

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[561] Quoted in Mervat Hatem, *The Nineteenth Century Discursive Roots of the Continuing Debate on the Social-Sexual Contract in Today's Egypt*, p. 73, Hawwa, vol. 2, No 1, 2004.

[562] Similarly, in a less direct and explicit way, Amīn upheld masculine authority by addressing men rather than women, by presenting women as passive, and by turning a blind eye to men's excesses, focusing instead on the 'suffering of modern men' and on women's 'degradation'. See Chapter 2.

5.1.1 ʿAbduh's proposals for the enforcement of husbands' duties

ʿAbduh recognised the importance of the matter of maintenance as a duty of the husband and the complications resulting from the divergent views of the various *madhāhib* on implications of the husband's failure to fulfill that duty. In his comprehensive review of the state of Shariʿa courts and proposals for their reform, ʿAbduh repeatedly referred to problems in dealing with the issue of marital maintenance, highlighting in particular problems associated with the refusal/inability to provide maintenance in the case of poor, absent or imprisoned husbands.[563] ʿAbduh expressed great concern for such "common misfortunes and frequent complaints seen all around the country", where the failure of the Hanafi-based Shariʿa courts to resolve such matters was leading to grave consequences for those women and for social stability, as "many women are pushed to sell themselves out of *fitna* or need".[564]

While the Hanafi *madhhab* recognised the husband's duty of maintenance, it did not offer an easy way out for those whose husbands persistently refuse to fulfill this duty, offering measures that were no longer practical, enforceable or effective. Not only were the maintenance laws in the Hanafi *madhhab* inadequate for dealing with new *nafaqa*-related problems, but the modern state's drive to standardise court procedures and codify *fiqh*, without regard for protecting people's interest or *maṣlaḥa*, had led to restricting options that had been open to women under the more flexible traditional Shariʿa judicial system. For instance, in his comments on the new code of procedure, ʿAbduh noted that the new law requiring cases to be brought before the court in the district where the defendant resides had caused difficulties for women whereas "before the Code, matters were easier, in the case of a wife filing against her husband who has left her without *nafaqa*... Previously, the case was considered by the court of the district where the wife resides, and a verdict was issued in her favour... That facilitated matters for poor wives, while that facilitation has now been prohibited by the new Code". ʿAbduh recommended that "matters should remain as they were before the Code".[565] ʿAbduh's detailed review of the effects of changes in court procedures towards the end of the nineteenth century on women's lives highlights the fact that procedural law reform is as important as substantive law reform.

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[563] *Aʿmāl*, vol. 2, p. 653.
[564] ibid., p. 275-6.
[565] ibid. vol. 2, p. 244.

ʿAbduh believed that the principal cause of the above problems was restricting jurists to the Hanafi *madhhab*, and failing to look beyond the rulings to their intent and to the interests of people and justice. He proposed following the opinion of Imām Mālik which recognises court rulings in absentia, without repeated summons of the defendant and without a representative, instead summoning the former after the verdict. If matters remained as they were, the expenses should be shouldered by the recalcitrant absent defendant, not the wife, as a deterrent and punishment, as was the opinion of al-Sarkhasī and al-Turjumānī. ʿAbduh here was criticising a situation where the reform of Shariʿa Courts and codification of *fiqh*, while being developments he had supported and promoted, were led by the new modern educated elite of technocrats rather than the traditional scholars who had the best understanding of the *fiqh* system. This paradox would continue to cause a certain degree of tension between reformist scholars and the modern state to the present day.

Implicitly bemoaning the secularisation of the justice system which gradually led to the restriction of the powers of Shariʿa courts in Egypt,[566] ʿAbduh criticised the system which delegated the execution of verdicts to a separate executive system unrelated to the courts, leading to the non-execution of a large proportion of verdicts.[567] Moreover, even where a verdict could be successfully executed, ʿAbduh lamented the difficulty of ensuring the continuity of compliance, due to the many "tricks resorted to by defendants in order to evade the execution of verdicts, without any mercy towards their children or any concern for their wives".[568] Even if the authorities succeeded to confiscate the husband's salary, it is not sufficient in the case of "government clerks with low salaries and numerous children".[569] Here the dominant opinion in Hanafi *fiqh* was fully exploited by husbands who realised that the law offered no solution to a woman whose husband is unable to provide maintenance. The law only went as far as assisting

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[566] On developments in the court system in Egypt see N. Anderson, "Law Reform in Egypt: 1850-1950", in *Political and Social Change in Modern Egypt*, P. M. Holt ed., p. 217-24; N. Anderson, *Law Reform in the Muslim World*; N. J. Coulson, *A History of Islamic Law*; B. Cannon, *Politics of Law and The Courts in Nineteenth-Century Egypt*; F. J. Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt*; R. Shaham, *Family and the Courts in Modern Egypt*.

[567] Among other aspects of the new code of procedure of Shariʿa courts criticised by ʿAbduh, "the new code of procedure stipulates that implementation is by the administrative authority, in order to facilitate matters and reduce expenditure. However, that undermines the Shariʿa courts… The resulting harm is unlimited, most importantly that rulings are not implemented, such that not more than 10% of rulings are implemented." *Aʿmāl*, vol. 2, p. 274.

[568] ibid., p. 277

[569] ibid.

the complaining wife to gain access to the "visible assets" of her husband, without allowing for the possibility of an exit from such a marriage where the husband claims inability to maintain his wife, and does not allow her to claim back from him any money borrowed for maintenance, unless there had been a previous court ruling or certified mutual agreement setting the level of maintenance.[570]

As regards penalties for husbands who refuse to pay *nafaqa*, while able to do so, the Hanafi *madhhab* allows for their imprisonment, after a number of warnings by the judge. However, ʿAbduh lamented the fact that judges were not making use of that opinion. In the case of such husbands who "push their children towards demise and their wives towards committing sins, and bring through their [these men's] evil actions corruption to the country", ʿAbduh called for their imprisonment "as Shariʿa – as well as reason – dictate" as the mere threat of imprisonment would act as a very effective incentive, inducing prompt compliance of husbands.[571]

However, while ʿAbduh suggested ways to ensure compliance by husbands or to punish or deter recalcitrant ones, he believed such methods to be only partial solutions, which are not only difficult to enforce, but also fail to guarantee a return to normal family life, often leading to women being trapped in an endless cycle of misery. ʿAbduh was convinced that the only effective solution in the case of continued refusal – or inability – to provide maintenance was divorce. In contrast to the Hanafi opinion, ʿAbduh insisted on provision of *nafaqa* as a principal condition for the validity and continuity of marriage, as "it is known in the rulings of Shariʿa that whenever it is certain that the husband is unable to maintain his wife, and that marriage is harming his life and leading him to contravene God's limits, then marriage becomes prohibited for him".[572]

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[570] If the amount of monthly maintenance had been decided by a judge or by a mutual agreement, the arrears of maintenance stand and are payable by the husband whenever asked to unless exempted by the wife. However, if no such agreement or judgment exists, the right of the wife to demand unpaid maintenance lapses if she fails to demand it for more than a month. Moreover arrears of maintenance, even when set by agreement of judgment, lapse by the death of either spouse, divorce, or *nushūz*. The difference between the Hanafis and the other Sunni schools regarding the question is that the other schools regard maintenance as ʿ*iwaḍ al-iḥtibās* (consideration of the wife's exclusive confinement) with no gratuitous element at all unlike the Hanafis, hence it is considered a debt and the wife has the right to sue for arrears. El Alami & Hinchcliffe, *Islamic Marriage and Divorce Laws of the Arab World*, London: Kluwer Law International, 1996, p. 21-22.

[571] *Aʿmāl*, vol. 2, p. 280.

[572] ibid., p. 278.

For ʿAbduh, disregard for this principal responsibility was evident in – and responsible for – "the large number of poor men who marry more than one wife, and many of them have four, three, or two wives, while they are not able to maintain them".[573] He suggested as a solution that

> each marriage registration clerk should ask any person whose wealth is unknown, whether he is already married. If he is, how will he provide for his wives and children? All that must be noted in the contract, and a specific amount of income must be determined for anyone who wishes to marry more than one wife… in order to limit the scope of harm, since nothing in Shariʿa prohibits that, but it is rather an example of enjoining the good and forbidding the evil.[574]

The reaction to a similar proposal in 1920 to restrict a man's right to marry a second wife on the basis of his inability to fulfill his duty of maintenance indicates the great opposition ʿAbduh's suggestion must have been met with two decades earlier. Opponents argued that no classical scholars considered the ability to provide equally for all wives to be a condition to be assessed by the judge prior to the marriage contract, and rejected the claim that a consensus existed on the prohibition of marriage for he who is unable to provide maintenance, concluding that "the proposal to outlaw polygamy, in all its three articles, contravenes religion, opposes Shariʿa and contradicts logic, and people should not be forced to abide by it through any punishment legislated by the ruler, as it would be enforcing the following of an illegitimate order".[575] What concerns us here is not polygyny which will be dealt with in a later chapter, but the strong rejection of any attempt to limit the husband's absolute authority and rights and the clear discounting of any reciprocal duty, including the supposed other half of the equation – the provision of maintenance.

Similarly, Aisha Taymūr's analysis of the causes of breakdown of the old marital balance was vehemently rejected in a long rebuttal published in *al-Nīl* newspaper (later collected and published in a booklet entitled *Lisān al-Jumhūr ʿalā Mirʾāt al-Taʾmmul fī al-Umūr*) by Azhari

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[573] ibid.

[574] ibid.

[575] *Mudhakkira biʾl-Radd ʿalā Mashrūʿ al-Qānūn al-Khāṣ bi baʿḍ Aḥkām al-Ahwāl al-Shakhṣiyya, wa maʿahā mawād al-mashrūʿ al-mushār ilayh. Response to the Proposed Amendments of Certain Personal Status Laws, with the Text of the Said Proposal*, Cairo: Maṭbaʿat al-taḍāmun al-Akhawī, p. 14-23. Although the document does not carry a publication date, it is a commentary on the proposed 1920 law. There is no author mentioned on the booklet, but the introduction is signed by Maḥmūd al-Dīnārī, Muḥammad al-ʿAnānī and Husayn al-Bayyūmī. All three are Azhar scholars; the second was the head of the Mālikis.

scholar shaykh ʿAbdallah al-Fayyūmī. Al-Fayyūmī rejected Taymūr's entire analysis, to the extent of challenging the notion that the word "right" appeared in the Qur'an. His extremely masculine reading of the Qur'anic verses and the prophetic tradition justified the abuse of the marriage contract by men of the younger generation which Taymūr had criticised. He denied that men had any obligations *vis- -vis* women in marriage. If women consent, their husbands do not even have to pay them any *mahr*. Men do not have to support their wives if it was understood from the very beginning that they did not have the capacity to do so. A man/husband's inability to bear economic responsibility did not make a woman/wife equal. If she was unhappy with the marriage contract, she could file for divorce, but she could not usurp his leadership right.[576]

In the case of a marriage that has already taken place, and where the wife complains of the husband's non-fulfillment of the duty of maintenance, ʿAbduh's proposal again contravened Hanafi *fiqh*. He argued, on the basis of a variety of principles and arguments, for the validity of his proposal, and for the urgent need for it in view of the failure of the current system. ʿAbduh saw the problems related to maintenance as an example of the "preponderance of errors in verdicts" caused by the inability of insufficiently qualified judges to extract rulings from original texts, particularly on controversial and complex issues. Such matters are not explicitly and definitively defined in the *sharʿī* texts, but are "questions that require one to investigate and arrive at rulings that avoid harm and establish justice, while not contradicting Shariʿa but being rather from its essence". Such unqualified judges were not able to arrive at an appropriate ruling using their own *ijtihād*. Nor were they able to easily find the appropriate opinion in the vast heritage of *fiqh*, because of the complex and changing nature of such matters according to time and place.

However, in his official proposal on the subject of maintenance of the wives of prisoners, absent husbands, or husbands who are unable or unwilling to provide maintenance,[577] ʿAbduh did

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[576] See Mervat Hatem, "The Nineteenth Century Discursive Roots of the Continuing Debate on the Social-Sexual Contract in Today's Egypt", *Hawwa*, Volume 2, Number 1, 2004, pp. 64-88(25).

[577] "Concerning the question from the interior ministry regarding the Shariʿa solution to the complaints of women whose husbands are sentenced to long prison sentences, and have left them without any *nafaqa* or provider for them and their children…This, and similar, issues are the subject of frequent complaints and widespread misfortune, such that the ministry (*ḥaqqāniyya*) regularly receives, from around the country, requests to find a solution for the misfortune of these needy women who are harmed in their religion and living, and their children who suffer corruption of characters and deeds, as well as the consequent chaos and confusion for the *umma* as a whole… Thus I decided to look into the following matters:

1. The issue of prisoners as mentioned in your letter.

not present his solution as one arrived at through consideration of *maṣlaḥa*, but rather as one based on *ḍarūra* – necessity:[578]

> What is seen and cannot be doubted is that women in any of the above cases resort, by necessity, to indecency and committing what contravenes religion and morality, otherwise they would perish. There is no way to save them from those two harmful ends except by divorcing them from their husbands. This is what has been made necessary by the state of people's corruption in belief and character. Any other attempted solution other than divorce is imaginary and cannot be realised… Whenever necessity is proven, it must be taken into consideration, according to the Qur'an, Sunna and the consensus of the *imāms* and the *umma*.[579]

ʿAbduh's appeal to the concept of *ḍarūra*[580] shows further how extremely serious and urgent he considered the issue to be. Furthermore, perhaps in an attempt to gain greater acceptance for his proposal, he explicitly distanced it from the contested and controversial "*ijtihād*", stressing that "ruling in consideration of necessity is not *ijtihād*, for *ijtihād* is used in matters that are open to a variety of opinions, whereas in the case of necessity, there is no such scope". As a form of reassurance for those who only take the most dominant and strongest opinion in the *madhhab* to be valid for judicial verdicts, which was in fact officially required of judges by the Code of Shariʿa Courts, ʿAbduh reminded that "*fuqahāʾ* have explicitly said that

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2. The issue of the husband's inability, or reluctance, to maintain his wife, as is the case in the majority of the lower classes, and a large number of the middle and upper classes.

3. The issue of the absent husbands who send no news or whose absence is prolonged, and who had not left any money for their wives and children, or have left money, but the wives are unable to take possession of it. The wives naturally need a way out of this situation, particularly if they are young.

4. The issue of husbands who cause difficulty and harm to their wives such that there is no way to a marital life together. *Aʿmāl*, vol. 2, p. 653-4.

[578] *Maṣlaḥa* literally means an interest or benefit, usually translated as public interest or welfare. The concept is found in legal works since the 8/9th century, but was developed by al-Ghazālī in the 11th century who argued that *maṣlaḥa* was God's purpose (*maqṣad*) in revealing divine law, more precisely to preserve for mankind the five essential elements of their wellbeing (religion, life, intellect, offspring and property). Whatever protects these elements and averts harm from them is a *maṣlaḥa*. Later scholars such as al-Rāzī and al-Qarāfī developed the concept and widened its use as a method for deriving rulings. From a subsidiary legal principle within the rubric of legal analogy, *maṣlaḥa* was developed, particularly by 14th century scholars al-Ṭūfī and al-Shāṭibī into an independent criterion for deriving rulings. This later model of *maslaha* was most enthusiastically received in the modern period. Riḍā published al-Ṭūfī's work in *al-Manār*.

[579] *Aʿmāl*, vol. 2, p. 655.

[580] *Ḍarūra*, literally meaning necessity, is an indispensable necessity which, if not met, may cause severe hardship resulting in loss of life – known or suspected. *Ḥāja* on the other hand, is a need which, when unsatisfied, affects convenience and efficient performance of an act. Relaxation of rulings is allowed under the rule: "necessities (*ḍarūrāt*) justify that which may be unlawful". If a *ḥāja* becomes general or universal and the entire society or a group of the society is confronted with hardship, this would call for relaxation. See Felicitas Opwis, "Islamic Law and Legal Change: The Concept of *Maṣlaḥa* in Classical and Contemporary Islamic Legl Theory" *Shari'a: Islamic Law in the Contemporary Context*, Abbas Amanat and Frank Griffel (eds.), pp. 62-82.

ruling according to *marjūḥ* (weaker) opinions is prohibited when there is no necessity, but where there is, then the judge may rule according to it, without permission from higher authorities. Hence judges who follow the Hanafi *madhhab* could rule on the basis of *ḍarūra*, once it is proven, without having contravened the Hanafi *madhhab*; yet they avoid doing so".[581]

Previously there had been courts belonging to the various *madhāhib*, and a ruling by one judge was accepted by another judge from a different *madhhab*, allowing litigants freedom to choose which court to take their case to, in order to favourably resolve their problem.[582] However, the rise of the Hanafi *madhhab* as the official Ottoman *madhhab* led to a situation where judges were either not allowed – or deemed it unacceptable – to accept a ruling on the basis of a *madhhab* other than the Hanafi one. ʿAbduh stressed that "*fuqahā'* have permitted *fatāwā* according to the Maliki *madhhab* when there is *ḍarūra*; and there is no greater *ḍarūra* than what we are currently witnessing". As a further reassurance to hesitant judges, ʿAbduh added that "if a ruling [according to a different *madhhab*] is by the order of the ruler who appoints judges, then there is no dispute over its permissibility".[583] Thus, instead of challenging the leading position of the Hanafi *madhhab* or urging the use of *ijtihād* (through use of *maṣlaḥa*) – both of which he had done elsewhere in his writings – ʿAbduh preferred to employ the more pragmatic strategy of seeking approval of his proposal through appealing to familiar arguments from within the Hanafi *madhhab* in order to reassure judges. This shows his awareness of the dominance of the mentality of the *taqlīd* era, where the view most likely to receive wide endorsement and application was the one shown to comply with the position of the *madhhab*; "no longer was it the case that a view was rendered orthodox merely by the fact that it issued from an authorised jurist; it was now the *madhhab* as a whole that conferred this status upon a view".[584] In addition, ʿAbduh felt, as already expressed in his analysis of the problem, that the use of *ijtihād* itself, even if accepted, was probably not possible, as the judges lacked the necessary training, having become used to following *fiqh* manuals.

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[581] *Aʿmāl*, vol. 2, p. 655.
[582] See Amira Sonbol, "Women in Shari'ah Courts: A Historical and Methodological Discussion", Fordham International Law Journal, vol. 27, issue 1, 2003. 225-, p. 234.; Nelly Hanna, "Marriage Among Merchant Families", in Women, the Family and Divorce Laws, Sonbol, ed., p. 146.
[583] Aʿmāl, vol. 2, p. 656.
[584] Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihab Al-Din Al-Qarafi*, Leiden: Brill, 1996, p. 82-3.

In his discussion of strategies for gender reform,[585] Mohammad Fadel stressed the need for reformers to "first exhaust possibilities for reform implicit in traditional methods before introducing arguments outside of that tradition… that are capable of winning over a critical mass of Muslim support". Andrew March has called this "the Reformer's Dilemma", where an "effective reformer" is likely to exhaust "revisions to applied doctrine" before resorting to changes in "methodological or foundational doctrines".[586] ʿAbduh's approach demonstrates this pragmatic strategy, focused more on acceptance of his reform proposal than constructing a radical coherent methodology.

On the above basis, ʿAbduh then argued that "it is necessary to follow the Maliki *madhhab*'s rulings on *nafaqa*, absent, disappeared, or imprisoned husbands or those who cause harm to their wives".[587] With consideration of "what *ḍarūra* in our country calls for",[588] ʿAbduh extracted eleven articles from Maliki fiqh, and as a final reassurance, he obtained the approval of Sheikh al-Azhar and the Maliki Mufti of these articles. Five of these were related to *nafaqa*:

1. If the husband refuses to maintain his wife, then if he has visible assets, and does not claim inability, but insists on refusing to pay *nafaqa*, the judge orders immediate divorce. If he claims inability, then if he does not prove it, divorce is ordered immediately. If he does prove inability, he is granted a maximum of one month, within which to provide *nafaqa*, otherwise divorce is ruled.
2. If the husband is ill or imprisoned, and refuses to pay *nafaqa* for his wife, the judge grants him a period within which he may recover or be released from prison. If the period of illness or imprisonment is prolonged, such that harm or *fitna* is feared, the judge orders divorce.
3. If the husband is absent, in a nearby place, and does not leave *nafaqa* for his wife, the judge sends him a warning through the known methods, and sets him a deadline. If he does not send *nafaqa* for his wife or return to provide *nafaqa*, the judge orders divorce after the deadline. If the husband is away in a distant place, a distance of ten days or over, or in an unknown location, and it is proven that he possesses no money from which the wife may spend, the judge orders divorce.
4. If the absent husband has money, or a debt or deposit with someone else, the wife has the right to demand the payment of *nafaqa* from that money or debt, after taking an oath that she deserves *nafaqa* from the absent husband and that he has not left her any

[585] Mohammad Fadel, "Is Historicism a Viable Strategy for Islamic Legal Reform? The Case of 'Never Shall a Folk Prosper Who Have Appointed a Women to Rule Them'", *Islamic Law and Society*, 18 (2011) 131-176.
[586] Andrew F. March, "Law as a Vanishing Mediator in the Theological Ethics of Tariq Ramadan" (September 26, 2009). *European Journal of Political Theory*,10 (2):177-201, p. 169.
[587] *Aʿmāl*, vol. 2, p. 656.
[588] ibid.

money or appointed anyone to provide for her. The absent husband can contest upon his return.

5. The divorce by the judge on the basis of non-maintenance is revocable, and the husband may return his wife if his ability to maintain is proven and his willingness to pay *nafaqa* is expressed during the *ʿidda*. If his ability is not proven or he is not willing to pay *nafaqa*, revoking the divorce is not permitted.[589]

Thus, on the basis of the non-negotiability of the fundamental right to *nafaqa*, ʿAbduh made a comprehensive proposal seeking to eliminate problems related to refusal or inability to provide maintenance and to give women a way out of the trap in which they often found themselves. While not implemented during his life, the spread of ʿAbduh's ideas and appointment of several of his students in official positions, the weakening of the religious establishment and modernisation of the legal system, and the contemporary changes in the rest of the Muslim world (The Ottoman Family Rights Law of 1917 incorporated opinions from other *madhāhib* as well as weaker opinions from the Hanafi *madhhab*) contributed to the adoption of most of ʿAbduh's proposals through the Personal Status Laws of 1920 and 1929, which remain the basis of contemporary Egyptian personal status law. Moreover, "the Egyptian path to family law reform represents the rule rather than the exception in the Islamic world".[590] These reforms are particularly significant since family court records continue to show that "the grounds most frequently referred to by women to seek divorce are the lack of maintenance or the husband's absence".[591]

5.2 Obedience and *Nushūz*

Whereas ʿAbduh emphasised the husband's fundamental duty of providing *nafaqa* and considered marriage to be no longer sustainable in the case of its non-fulfilment, he seemed to uncritically accept the dominant Hanafi view which links *nafaqa* arrears to *nushūz*. The dominant

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[589] ibid., p. 657-8.
[590] L. Abu Odeh, "Modernizing Muslim Family Law, the Case of Egypt", *Vanderbilt Journal of Transnational Law*, Vol. 37, Oct, 2004, p. 1050.
[591] Nathalie Bernard-Maugiron and Baudouin Dupret, "Breaking Up the Family: Divorce in Egyptian Law and Practice", *Hawwa, Journal of Women of the Middle East and the Islamic World* 6 (2008) 52–74, p. 56. See also Shaham R., "Judicial Divorce at the Wife's Initiative: The Shariʿa Courts in Egypt, 1920-1955", *Islamic Law and Society*, volume 1, Number 2, 1994, pp. 217-257.

opinion not only holds that a wife can only demand payment for *nafaqa* unpaid over a long period (over one month) if the amount of maintenance had been previously set by a judge or by mutual agreement, but even in the presence of such an agreement or judgment, the arrears would lapse in the case of death of one of the spouses, divorce and – in the opinion of some scholars – the wife's rebelliousness or *nushūz*.

Of particular interest is ʿAbduh's *fatwā* in response to a question concerning a man whose wife brought him before the judge and asked the latter to set for her a daily *nafaqa* to be paid by the husband, which the judge did, after which she spent one year at her parents' house. Her husband claimed she was *nāshiz*, which she admitted before the judge, who issued a ruling on that basis. The question for ʿAbduh was, "Does this ruling then revoke her right to the *nafaqa* due to her for the previous year?", to which he responded:

> They [Hanafi scholars] have said that the judicially set *nafaqa* is forfeited in the case of *nushūz*, that is if the husband owes his wife a set *nafaqa* for a number of months, and then she becomes *nāshiz*, the *nafaqa* for those months is no longer due, unless the judge had ordered her to borrow it, in which case it is still due. Thus the *nushūz* of this woman after the setting of *nafaqa*, proven by her confession, and ruled by the judge, cancels the *nafaqa* of the previous period, since she had not borrowed money; hence she has no right to demand that previous *nafaqa*.[592]

Although this *fatwā* was explicitly issued following the Hanafi dominant opinion,[593] even in his above proposal for reforming laws regarding marital maintenance – largely based on other than the Hanafi *madhhab* – ʿAbduh avoided an explicit discussion of the issue of *nushūz*. This is despite the availability of alternative opinions from the three other *madhāhib*, providing that arrears of maintenance stand until payment or exemption by the wife.[594] ʿAbduh's proposal, moreover, in the case of an absent husband, required the wife to take an oath that "she deserves

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[592] *Fatwā* 159, ibid, p. 666.

[593] Similarly, responding to a question regarding a poor husband who does not fulfill his duty of *nafaqa*, he responded that "as the husband is poor and unable to provide *nafaqa* for his wife, the judge orders him to borrow in order to pay, as they [Hanafi jurists] have said". *Aʿmāl*, vol. 2, p. 663.

[594] The alternative opinion was adopted in the reformed law of 1920, where a wife is able to claim maintenance arrears without a previous mutual agreement or court ruling, and arrears stand until payment or exemption by the wife. Moreover the wife's divorce or *nushūz*, or the husband's death, do not impinge on the wife's right to recover arrears. However, Article 11-B (Article 11 bis 2) still declares that "If a wife refuses to live with her husband without having a right to do so, her maintenance may be stopped from the date of refusal. Refusal without right shall be taken into consideration if she does not return to the matrimonial home on her husband's demand". Hence, although *nushūz* does not lead to the lapsing of previous *nafaqa* arrears, it does lead to non-eligibility for maintenance from the time of *nushūz*. Welchman, 2007, p. 171.

nafaqa from the absent husband",[595] which is vague and does not specify whether marriage on its own makes the wife "deserving" of maintenance – as suggested by his emphasis on it as a central duty of the husband's – or whether other conditions apply.

ʿAbduh's response did not question the validity of the ruling on the wife's *nushūz*, nor look deeper into the case, although historical studies show that "maintenance and obedience suits were often a disguise for more profound marital disputes" and spouses often "used the court system as a means of inflicting damage on each other or on a third party through legal tricks".[596] He did not ask what the ruling was based upon, while there are differences of opinion regarding what constitutes and what justifies disobedience or desertion of the marital home. He did not ask for instance whether or not the husband's non-provision of maintenance preceded the wife's leaving the conjugal home,[597] or whether or not the husband had summoned his wife to return to the conjugal dwelling. Nor did he ask why it took one year for the husband to accuse her of *nushūz*, while experience showed that "a few husbands took no initiative to return their wives to the conjugal dwelling either by reconciliation or by execution of an obedience decree through the state authorities. Moreover some deliberately prevented their wives from returning to their obedience in order to justify their non-provision of maintenance".[598]

While ʿAbduh proposed radical changes in the law to allow women access to divorce, in recognition of the fact that women, under the Hanafi-based law applied at the time, had little chance to leave an unhappy marriage, it is strange that he did not recognise here that such a situation could be a reason behind a woman's desertion of the family home. In fact several studies have shown that a husband's filing for *ṭāʿa* (obedience) is a sign that the marriage has irreparably broken down, and is sometimes used as a strategy for the husband to avoid the financial repercussions of divorce (by repudiation) by pushing the wife to file for *khulʿ*, forcing her to give up her financial rights.[599] Perhaps this is a result of the brief nature of *fatāwā*, and the assumption that all such questions and possibilities had already been taken into consideration by

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[595] *Aʿmāl*, vol. 2, p. 657-8.
[596] Shaham, p. 97.
[597] ibid., p . 95.
[598] ibid., p . 83. In fact, ʿAbduh, in two other places, implicitly recognises these common practices or "tricks": in the context of discussing the jurisdiction of Shariʿa, he mentions, without further comment, "when a man claims his wife's *nushuz* in order to cause her *nafaqa* and housing costs to be forfeited", (*Aʿmāl*, vol. 2, p. 242), and similarly in two similar examples (ibid., p. 249, 274).
[599] See, for instance, Shaham, *Family and the Courts in Modern Egypt*, p. 83.

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the court that ruled on the wife's *nushūz*. Or perhaps it is simply that ʿAbduh ruled on the basis of current laws which restricted grounds for divorce, whereas his proposal would make such a situation unnecessary, as an unhappy wife would be able to request judicial divorce rather than simply leave the marital home. Or perhaps it is a reflection of the persistence of the view of marriage as primarily based on the balance between the twin rights/duties of maintenance and obedience,[600] such that ʿAbduh's insistence on the primacy and necessity of the husband's fulfillment of the duty of *nafaqa* (failing which leads to divorce) can only be maintained if the reciprocal duty of obedience is also strongly upheld.[601]

This brings us to the central question of rights and duties in the marital context, which emphasises obedience as a wife's duty and a husband's right – an issue that entails a number of important consequences. While reformist scholars were keen to emphasise marriage's companionate nature, as a partnership of love and mercy, and of cooperation between the spouses to produce useful and pious members of society, they were not willing to re-interpret the sources to do away with imbalances in the marital relationship or its view as a hierarchical power structure. This paradox persists in Islamic writings – that is, the question of "how to reconcile the message of fundamental equality in Muslim doctrine with the specific inequality that is the basis for the relationship of the believer-husband with his believer-wife".[602]

Here I analyse ʿAbduh's discussion of *Nushūz*, *Qiwāma*, Obedience and Discipline, with reference to classical and contemporary interpretations of verse 4:34.[603] In medieval Islamic law,

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[600] Nasir explains the jurists' logic: "Since it is the *tamkeen* [being available], and not the marriage contract itself that makes maintenance the lawful right of the wife, this right shall be lost if the husband is denied access to the wife." Nasir, p. 99. Maghniyya summarises the requirements of obedience: "If a wife leaves her husband's home without his permission or refuses to reside in a house which fits her status, she shall be considered 'disobedient' and shall not be entitled to her maintenance according to all the schools" p. 359.

[601] Although the view of marriage as a contract where financial security is provided to the wife in return for obedience has been strongly criticised in feminist literature, Muslim feminists have themselves not escaped the same equation, as some have now resorted to calling for the elimination of "the right to obedience" only by forfeiting the right to maintenance and demanding that women should contribute equally to the family's finances. However, Lama Abu Odeh argues that breaking the maintenance for obedience equation does not necessarily entail rejecting the husban'd duty of maintenance. "Egyptian Feminism: Trapped in the Identity Debate", 16 Yale J.L. & Feminism 145-191 (2004), pp. 188-191. As Lynn Welchman points out in "A husband's authority: Emerging Formulations in Muslim Family Laws", Moroccan family law is an example of a reformed view of marriage where obedience is no longer demanded while maintenance is. *International Journal of Law, Policy and the Family* (2011) 25 (1): 1-23.

[602] Mernissi, *Women and Islam: An Historical and Theological Enquiry*, p. 68.

[603] "Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their wealth; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you, do not seek a way against them; surely Allah is High, Great".

nushūz meant primarily the wife's refusal to respond to her husband's sexual needs. In addition, the wife is required not to leave the house without her husband's permission. Medieval scholars also debated whether working outside the house or refusal on the part of the wife to do housekeeping was a sign of *nushūz*. The most immediate legal effect of *nushūz* is suspension of *nafaqa*. In contemporary Islamic law, more elements are associated with *nushūz* in addition to the medieval ones. The refusal of the wife to respond to her husband's sexual needs without a justified reason is still considered the most prevalent cause of *nushūz*. However, in addition to the contractual justifications of the husband's right to *istimtāʿ* and the wife's availability which prevailed in medieval Islamic law, we are now more likely to find quasi-psychological-medical explanations for the husband's position as leader of the family and his right to obedience, as discussed below.

5.2.1 *Qiwāma* and Men's and Women's Shares

"Men are *qawwāmūn*…"

While al-Ṭabarī interpreted *qiwāma* as a position of responsibility within the family requiring care, patience, and tolerance on the part of the husband, later exegetes put increasing emphasis on the authority of the husband, which is presented in similar terms and of a similar nature to political leadership of the *umma*, emphasising obedience, right to discipline, and condemnation of rebellion. This leadership is, furthermore, not based on merely contingent socio-economic factors such as financial maintenance, but on intrinsic natural gender differences that make the male superior, and hence eligible for leadership in the spheres of politics, religion, and the family.

Modernist interpretation continues this theme of parallels between political power relations and the family structure.[604] As the basic building block of society, family is seen as a microcosm of the *umma*. Again the husband is viewed in a similar way to the caliph. However,

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[604] This link between theories on government and marriage is not specific to Muslim authors: "Conjugal relations and the marriage contract were as central to political debate as the relation between king and subject and the social contract. The terms, or what were held to be the terms, of the two contracts were used to argue about the proper form of marriage and political rule". Carole Pateman, *The Sexual Contract*, Cambridge: Polity Press, 1988, p. 90. See also Mary Lyndon Shanley, "Marriage Contract and Social Contract in Seventeenth Century English Political Thought", *The Western Political Quarterly*, Vol. 32, No. 1 (Mar., 1979), pp. 79-91.

since the view of political leadership had itself changed in the modern era, ʿAbduh was keen to stress that this leadership is to be characterised by justice rather than authoritarianism:

> What is meant by '*qiyām*' here is leadership (*riyāsa*) by which the led (*mar'ūs*) acts according to his/her own will and choice, not that he/she is oppressed, deprived of willpower, not doing anything except that to which he/she is directed by his/her leader (*ra'īs*).[605]

However, while the *mar'ūs* is presented as a free individual, the *ra'īs* preserves a wide scope of authority:

> The fact that a person is *qayyim* (in charge of/responsible for) over another, implies guiding him/her and watching over him/her in executing what he/she had guided him/her to do, that is to follow up his/her actions and education.[606]

Mirroring the limited development in political thought in the region, ʿAbduh's political ideals seemed to oscillate between the model of the "just benevolent despot" (*al-mustabidd al-ʿādil*) and constitutional democracy. While he abhorred absolute despotism and considered justice and the rule of law to be principal features of good governance, he was more concerned about developments in the fields of educational, intellectual and religious reform and rather ambivalent about the form of government that enabled such developments.

Similarly, social equality was also a concept partially embraced by the reformists, who decried extravagance and social inequality and promoted social solidarity, while mostly addressing the benevolence of the middle and upper classes – to whom most of them belonged – to help the 'less fortunate', without radically attacking existing social hierarchies. Equally in the family context, the values of benevolence, cooperation and justice[607] were emphasised, with no radical questions posed regarding the validity of the existing power hierarchy.[608]

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[605] *Aʿmāl*, vol. 5, p. 223.

[606] ibid.

[607] More recently Heba Rauf Ezzat further emphasised justice as the main characteristic of *Qiwāma*, by analyzing the use of *Qiwāma* in the Quran, not only to describe family relations, but to describe God, and as a characteristic that both believing men and women are commanded to strive for, in both cases *qiwāma* being linked to *qisṭ* (fairness). See Heba Rauf Ezzat (p. 197). She identified *Shūra* as a second 'political value' within the family, which is also mentioned in the Qur'an in different contexts in relation to Muslim society and the Muslim family (p. 200). Rauf Ezzat used similar terms to the one ʿAbduh used to characterise family relations "the leadership- *riyāsa* – of the family is a consultative *riyāsa*, not a despotic one" and explicitly stresses that "to a great extent, it resembles *Imāma* or *Khilāfa* at the state level" (p. 201).

[608] It is helpful to remember that hierarchies are seen as an essential part of nature in social Darwinism, which was very influential at the time. Le Bon – whom Timothy Mitchell considers the most influential thinker in turn of the century Egypt- believed that "nature does not know such a thing as equality… Not only does nature not know

Moreover, the basis of this leadership is emphasised as natural rather than contingent, based on the 'preference/superiority' (*faḍl*) of the man. However, the unity of the structure is emphasised in order to limit this 'preference', since the two are like 'organs of the body', again borrowing an image originally used to describe the *umma* and its solidarity,[609] here used to imply that unity and harmony do not contradict difference and a 'soft hierarchy':

> What is meant by "preferring some over others" is preferring men over women, and had He said "by that with which He preferred them (masculine) over them (feminine)" it would have been more concise and more explicit. However the wisdom in expressing it this way is related to "do not wish for that with which God preferred some of you over others", that is to imply that the relationship between woman and man and between man and woman is like that between the organs of a body and the rest of the body, such that man is like the head and woman is like the body.[610]

Comparing ʿAbduh's [and most classical *tafāsīr*] interpretation of the verse, which focuses on '*faḍl*' interpreted as essential superiority, and ʿĀ'isha Taymūr's reading of the verse, one finds that the latter highlights the contingent justification of *Qiwāma* in addition to the '*faḍl*' bestowed on men – that is "by that which they spend out of their wealth". Taymūr appears to accept that there is a male preference/superiority, according to the classical arguments that such privileges as *imāma* and *khilāfa* were exclusive to them:

> The Qur'an explicitly identified the bases of the rights that men had over women and those that women had over men… A man provided for the needs of his wife striving to protect and look after her. God explained His judgment regarding male privilege by citing their access to affairs that enhanced reason and religion. It entitled them to the rights to guardianship (*wilāya*), religious leadership (*imāma*) and political rule (*khilāfa*).[611]

However, Taymūr stressed that such privileges were justified by their "access to affairs" and were also balanced by the additional duties expected of men, that is providing for, protecting, and looking after their wives. This balance was important, because it demonstrated that, at least partly, men's leadership was not natural, but contingent, and not absolute, but

equality, but since the beginning of the ages she has always realised progress by means of successive differentiations- that is to say, by increasing inequalities" (p. 296-7 of *The Psychology of Revolution*).

[609] Elsewhere ʿAbduh uses the same image to describe the relationship between the *umma* and the prophet, as a body and a head, again emphasising unity. *Aʿmāl*, vol. 3, p. 445. The same image/analogy is also common in Christian writings on the relationship between husband and wife, and also between Christ and the Church.

[610] *Aʿmāl*, vol.5, p. 223.

[611] Quoted in Mervat Hatem's "The Nineteenth Century Discursive Roots of the Continuing Debate on the Social-Sexual Contract in Today's Egypt", *Hawwa: Journal of Women of the Middle East and the Islamic World*, vol. 2, No 1, 2004, 64-88, p. 73.

conditional on fulfillment of their duties. Taymūr's acceptance of this balance agrees with what Deniz Kandiyoti describes as the "patriarchal bargain",[612] where women adhered to this marital balance, which may have disadvantaged them in certain ways, but also offered them a number of privileges. However, as we have seen, even such a reading was not acceptable to scholars such as Al-Fayyūmī, who were adamant that men's leadership was natural and absolute, and that their privileges were not affected by their fulfillment of any financial obligations. Al-Fayyūmī was incensed by Taymūr's "innovatory" interpretation. He accused her of ignorance of the contextual meaning of the Qur'anic verses she cited.[613]

Surprisingly, while one could say that ʿAbduh's view of the marital relationship is not different from Taymūr's, since he also strongly emphasised men's financial obligations, and the serious consequences in the case of their non-fulfillment, ʿAbduh's interpretation of the verse pays no attention to its mention of "by that which men spend out of their wealth", focusing instead on 'faḍl'. This is particularly surprising since, as highlighted by contemporary feminist interpretations,[614] this verse comes in the middle of verses that address financial issues and family relations, a context which ʿAbduh himself had stressed in relation to a preceding verse (see below).

The *Tafsīr* then continues, making the popular link between *Qiwāma* and "not coveting that with which God preferred others" in a preceding verse of the *sūra*. However, going back to ʿAbduh's comments on the "coveting" verse,[615] we find that, unlike Riḍā, he focused not on the occasion of revelation but on the relationship of the verse to the preceding verses, which seems to have little relation to gender-specific "coveting". ʿAbduh stressed that the context is warning against "usurping other people's wealth unlawfully" and guiding to "what would block the path to any violation of wealth, life or any rights, that is coveting instead of each using their talents to work hard and earn whatever good they wish for".[616]

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[612] Kandiyoti, "Bargaining with Patriarchy", *Gender & Society*, September 1988 vol. 2 no. 3 274-290, p. 275.

[613] Hatem, "The Nineteenth Century Discursive Roots of the Continuing Debate on the Social-Sexual Contract in Today's Egypt", p. 76.

[614] See for instance Ghada Karmi, "Women, Islam and Patriarchalism", in Yamani (ed.) *Feminism and Islam: Legal and Literary Perspectives*, Reading: Published for Centre of Islamic and Middle Eastern Law, SOAS, by Garnet, 1996, p. 74.

[615] "And do not covet that by which Allah has made some of you excel others; men shall have the benefit of what they earn and women shall have the benefit of what they earn; and ask Allah of His grace; surely Allah knows all things" (Quran: 4:32).

[616] *Aʿmāl*, vol. 5, p. 222.

Riḍā, in contrast, mentioned various narrations regarding the cause of revelation, mostly attributing coveting to female companions who felt excluded from jihad and had a lesser share of inheritance. Riḍā then reported that ʿAbduh said:

> The reason for these various reports is confusion in understanding this verse, while its meaning is obvious: that God has set actions/roles for men and women, such that what is for men, they would have a reward for it that is not shared by women, and what is specific to women, they have a reward that is not shared by men, and neither of the two should covet what is specifically for the other.[617]

However, after that general interpretation which leaves the action of "coveting" open to be attributed to either men or women, a more specific interpretation is elaborated focusing on "women's roles" and admonishing women not to covet "men's roles":

> He further made the command general in addressing both groups, while men had not wished to be women nor to share in women's job – that is birth, raising children and other such known acts – but it was rather women who had wished for men's jobs. They had wished for the most specific of men's roles – protecting the land and defending the truth by force… The wisdom in this is that such wishes, which are born out of noble spiritual life, should not exist, for wishing for such work is very alien to women, and is caused by the fact that the *umma* – in its early life – brings women and children together with men who all participate in all life's aspects, and such spirit spreads through it. Thus whoever is familiar with the history of Islam and the Arabs' renaissance through it, and the life of the Prophet and his Companions would see that women were side by side with men in every act and every ordeal, such that they used to come and take the oath of allegiance alongside men as reported in the chapter of Al-Mumtaḥana, and they used to accompany men in their battles to treat the wounded, and fulfill many such duties. Then God wanted women to specifically care for the homes, and men to be devoted to hard duties outside the home, so that each would perfect his/her work, and fulfill it sincerely.[618]

There is repeated emphasis in the above commentary, through reference to a number of unrelated verses and contexts, to stress women's domestic role as a divinely ordained one. As seen in Chapter 2, there was a thriving literature on "skilled home management", which *Al-Manār* was no stranger to. The strict division of the "private" and "public" spheres, and the theoretical confinement of women to the former, ignored the fact that most Egyptian women, both rural and urban, could not afford such a confined role as a "home mistress". Such concepts have continued to dominate discussions of gender roles, and have come to be seen as religious

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[617] ibid., p. 220.
[618] ibid., p. 221 (*Al-Manār*, vol.13, p. 333).

and cultural norms, rather than a modern discourse associated with political, social and economic circumstances. Scholarship in Middle Eastern studies has shown how the normative bourgeois family structure is a product of recent historical processes — of the encroachment of colonial modernity, of eugenics discourses, of imperial nationalism, of capitalist modes of production, and of the influence of the discourses of liberal secularism (e.g. Najmabadi, 1998; Shakry, 1998; Tucker, 2002). Such studies argue that such discourses did not express a "reversion" to traditional values, but their re-invention within the sphere of Islamic thought. The above quote could be read in support of such arguments, as ʿAbduh – or probably Riḍā – qualified the early period of the Muslim community where women were involved in "every aspect of life" as something temporary before which they were required to return to the "originally intended" and "natural" division of labour, ignoring the fact that throughout history, Muslim women, to various degrees, continued to have various contributions to the fields of knowledge, business, literature, and even governance. Here reformists are seen as not calling for a complete return to the way of the *salaf*, but presenting a selective reading based on their contemporary situation.

However, only a few paragraphs later, ʿAbduh again emphasised that the context of the verse is coveting wealth, rather than women coveting men's roles/priviledges:

> The obvious meaning is that this is concerning wealth, such that He forbade usurping it unlawfully, then forbade one from wishing he/she had the wealth with which God had blessed the other, because coveting leads to violation…. Since inheritance is subject to coveting by some heirs – particularly those in whose hands wealth is, God enjoined giving each person his/her due right… so let not greed and jealousy of some heirs towards others cause them to usurp any of their share, be they male or female, old or young.[619]

This repeated emphasis raises the question of whether the entire passage regarding men's and women's roles in early Muslim history and the emphasis on a strict separation of roles was in fact an addition by Riḍā, particularly since above, he explicitly mentioned that the point about men not having wished for women's specific roles was his own point and not one made by ʿAbduh.[620] Also, the entire passage in the *tafsīr* of "do not covet…" covering over seven pages only has two short paragraphs explicitly attributed to ʿAbduh, both of which link the act of

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[619] *Aʿmāl*, vol. 5, p. 222.
[620] As discussed in more details in Chapter 1, the manner in which *Tafsīr al-Manār* was compiled and written makes it impossible to distinguish with certainty between ʿAbduh's and Riḍā's statements. This casts further doubt on the certainty of attributing the above statements to ʿAbduh.

coveting to wealth which is the cause of greed and of attempts to usurp the rights of the weak, something which would be more easily attributed to men than to women, men being the ones in possession of wealth, able to usurp it, and resentful of the radical Islamic change which grants property and inheritance rights to women and children, rather than men who are able to carry arms as was previously the case in pre-Islamic Arabia. Disregarding the context – wealth, greed and violation of the rights of the weak, particularly women – most *tafāsīr* have tended to attribute the act of 'wishing' or 'coveting' to women, directed at men's supposed superiority.[621]

However, the view on men's essential superiority over women was, in a later verse, explicitly attributed to ʿAbduh:

> The cause of '*faḍl*' – merit/superiority – is of two kinds, natural and acquired. The natural one comprises that man's nature (*mizāj*) is stronger and more perfect, more complete and more beautiful… We see that the males of all animal species are more beautiful and more perfect than their females, as you can see in the cockerel and the chicken, the sheep and the ewe, the lion and lioness. Facial hair, beard and moustaches, are also part of the perfection and beauty of men's form, such that the hairless man is considered less complete and he wishes that there could be a cure that could grow hair, even if he is among those who regularly shave their beard. The strength of nature and perfection of form leads to strength of mind and good judgment on the essence and consequences of matters, such that scientists say: sound body, sound mind. That in turn leads to perfection in acquired actions, such that men are more able to earn, invent and manage affairs. Thus, for all the above, they have been ordered to provide for women and protect them, and to assume leadership in the community of the home, for each community must have a leader to refer to in order to unite the common interest. [with some additions and clarifications].[622]

The linking of preference and superiority to "natural qualities" seems to agree with the view of ʿAbduh's contemporary social Darwinist Shiblī Shumayyil's view that "the question [of equality between men and women] is a purely natural/physical/biological one; that is it falls under the discipline of zoology, or rather the secondary discipline of anthropology".[623] As discussed in Chapter Two, Social Darwinism was popular throughout the turn-of-the-century period, and its linking of "natural" differences between species, races and sexes to power

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[621] Al-Ṭabarī includes a long list of reports linking the verse to male or female companions wishing to have higher reward or lesser punishment from God because of their different rights and obligations. He does not comment on their authenticity, and concludes that "the (correct) interpretation is that do not, O you men and women, wish for the good and degrees of merit with which God has preferred some of you over others, but let each be content with the share God has set for him/her, and instead ask God of His bounty", vol. 4, p. 31.

[622] *Al-Manār*, vol. 13, p. 406-7.

[623] Shumayyil, *Ḥaṣād al-Fikr*, p. 91.

hierarchies was far from frowned upon. ʿAbduh's comments could be read in this context, although they are also not alien to classical *tafsīr* (where a long list of male signs of superiority were cited, including possession of the beard). It must also be noted that Riḍā informed readers that the passage included "additions and clarifications", but we are unfortunately not able to distinguish between ʿAbduh's words and Riḍā's additions.

However, compare that with Abduh's commentary on the verses of creation, "that woman's capacity is like man's capacity in all human matters",[624] or his assertion that:

> They [men and women] are equivalent/identical in rights and actions, just as they are equivalent/identical in self, feeling, emotion and reason; that is each of them is a complete human being with a mind that reflects on his/her interests, a heart that loves what is convenient and pleasing to it and hates what does not suit it and avoids it.[625]

The marked contrast between the above passages is not unusual, and is in fact quite common in contemporary writings about "women in Islam", where equality is emphasised when discussing the creation of men and women, their religious duties, and their relationship with God. However, in the context of marriage, the husband's leadership is rationalised by recourse to arguments that wholly contradict the claims to equality.[626] Interestingly, this accords with the perceived concern about power relations and gender hierarchies expressed by reformists as early as Jabartī and Ṭahṭāwī in their descriptions of French women. While they were praised, French women were also considered to be in control of French men, and hence disruptive of the natural order. Liberated women – whether from contemporary Europe or from the glorious Muslim past – were admired from afar, but not something desirable in the modern family context. This assertion of women's human worth and equality whilst also maintaining fixed hierarchies in the marital context is, moreover, not specific to Islamic thought. The legitimizing claim of equality, and the simultaneous assertion of gendered hierarchies (or "difference") is characteristic of liberal discourse, in fact being "constitutive dualisms of liberalism", argues Wendy Brown.[627]

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[624] *Aʿmāl*, vol. 4, p. 145.
[625] ibid., p. 620.
[626] See Chapter 3 on "The Woman Question in Nineteenth Century Egypt".
[627] Brown, *States of Injury: Power and Freedom in Late Modernity*. See also Carole Pateman's *The Sexual Contract*: Kant also rejects the suggestion "that there is something contradictory about postulating both equality and legal recognition of the husband as master. He states that the husband's power over his wife 'cannot be regarded as contrary to the natural Equality of a human pair, if such legal Supremacy is based only upon the natural superiority

In fact this twin assertion of equality and hierarchy is often expressed in the same breath when interpreting verse 2:228, which although in a different chapter and context, often appears in commentaries on verse 4:34 and vice versa. Commenting on the ending of the verse "and they have rights equal to the rights men have over them, according to *maʿrūf*, and men have a degree over them", ʿAbduh observed that "the mention of God's Might and Wisdom here has two indications: first giving women rights equal to men's rights, after having been denied those rights by [pre-Islamic] Arabs and all other nations; and the second making man a *ra'īs* over her, such that whoever is not content with these wise rulings would be competing with God in His Might and sovereignty, and denying His wisdom in His rulings".[628]

Leadership in marriage is thus accepted as being based on essential superiority, although it should be characterised by justice and consultation.[629] Hence ʿAbduh was keen to stress that the wife, although '*mar'ūs*', maintains her independent will and rights. Riḍā went further by characterising marriage as a necessarily unequal relationship where the woman is 'compensated' through the *mahr* and maintenance.[630]

5.2.2 *Nushūz* and Discipline

> '*So the good women are the devout, guarding in secret that which Allah has guarded*' …
> '*Ghayb*' here means what one feels shy to reveal, that is they guard all that is related to the matters of marriage that are private between the two spouses such that no one else could know anything about the private matters of one's spouse. Men cannot use the

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of the faculties of the Husband compared with the Wife, in the effectuation of the common interest of the household; and if the Right to command is based merely upon this fact", p. 172

[628] *Al-Manār*, vol. 8, p. 374 (published just after ʿAbduh's death). Although this conforms to the common reading of this verse and its linking of "*daraja*" (the degree) and "*qiwāma*" (guardianship), some authors, both classical and contemporary have pointed out that the context of the "degree" verse is not the structure of marital relations, but rather divorce, since all the preceding verses deal with divorce procedures rather than marital life. See Wadud, *Qur'an and Woman*, p..68. Al-Rāzī's *tafsīr*, although it does not explicitly say the same regarding "the degree", does stress that the mutual rights referred to (just preceding the "degree" in the same verse) concern divorce rights and not marital rights. *Tafsīr al-Fakhr al- Rāzī*, vol. 3, p. 101.

[629] Cf Locke's use of "the equality between men and women in parenting to debunk only the despotic absolutist nature of paternal power between husband and wife. The husband still exercises power over his wife, but the power is less than absolute." (Zillah Einstein, in Pateman, *The Sexual Contract*, p. 22)

[630] Whether or not Riḍā was influenced by contract theory, his portrayal of the marriage contract is compatible with contract theory where "all familiar arguments became unacceptable because the doctrine of individual freedom and equality entailed that there was only one justification for subordination. A naturally free and equal individual must, necessarily, agree to be ruled by another." (p. 39-40, Carole Pateman, The *Sexual Contract*).

authority of discipline against such women, but rather only against the second type, described in God's saying "and those whose disloyalty you fear".[631]

Here, ʿAbduh's interpretation of the description of "the good women" is again characterised by brevity, without going into the classical discussions of "*qānitāt*" and whether it means devout obedience to God or to their husband. Instead, he concluded that what is implied in the description is that a state of complete mutual trust exists between the two spouses. However, he did not take the opportunity to link this to the description of the "opposite category" of women, who would, obversely, be characterised by untrustworthiness and disloyalty, rather than 'disobedience' and rebellion against the 'natural hierarchy' as popularly understood. Instead, he states:

> *Nushūz* literally means rising, for the woman who denies her husband's rights, regards herself to be above him and attempts to be above her leader (*ra'īs*), and rises above her own nature and what is required by the laws of nature, such that she is similar to the *nāshiz* ground which is no longer straight.[632]

As for the – perhaps most – controversial point in the verse in question – the interpretation of the command "*iḍribūhunna*", ʿAbduh did not regard it as a practice that is "abhorrent to reason or nature" whose "legitimacy" needs justification or "(alternative) interpretation" – although his explicit denial leads one to ask whether he was responding to contemporary questioning of such a legitimacy. Looking at the writings of both Egyptian authors – male and female – and western ones, it is not clear whether this practice was questioned. In Malak Ḥifnī Nāṣif's writings, for instance, there are descriptions of various marital problems and causes of misery for women, but there is no mention of physical punishment. Similarly, Qāsim Amīn mentions many manifestations of "men's disregard for women" and their "despotism" over women, but throughout his entire *Taḥrīr al-Mar'a*, there is no mention of chastisement.[633] It is possible that the reason could be that such a practice was believed to be very rare in the class they were concerned about (they complained more about the psychological neglect of wives by their husbands). Physical chastisement in marriage is often implicitly referred to as a habit

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[631] *Aʿmāl*, vol. 5, p. 223-4.

[632] ibid., vol. 4, p. 408-410.

[633] Judith Tucker also noted in her study of eighteenth-century court records and fatawa that "the muftis were mostly silent on the question of the rule governing a husband's physical abuse of his wife". *In the House of Law*, p. 65.

depending on the environment, implying that it is more common in lower classes.[634] Similarly, Cromer does not mention this amongst his criticisms of Islam. Although, he wrote extensively about "the degradation of Muslim women", he focused on polygamy, divorce, and veiling, and did not explicitly mention physical chastisement.[635] This is perhaps because the issue was still being debated in Europe, and Cromer, being an anti-suffragette supporter, was perhaps not inclined to lend any support to feminist demands.[636]

ʿAbduh does not appear to see any contradiction between the state of "love, affection, harmony and contentment" which should characterise marriage, and chastisement, which is justified as "a matter resorted to in the case of corruption of environment and the spread of corrupt characters", permissible "if a man judges that his wife's abandonment of her *nushūz* depends on it".[637]

ʿAbduh envisioned that such a measure becomes unnecessary and unsuitable "if the environment is reformed and women become responsive to advice and admonition, or to *hajr* (desertion), in which case one must give up chastisement, for each state has a corresponding suitable ruling in Sharīʿa". Here ʿAbduh did not go as far as calling for an end to – or even suspension of – this practice as he had done with polygamy on the basis that the latter "contravenes the original state and the state of perfection, and contradicts the tranquility, affection and mercy that constitute the pillars of marital life". Although ʿAbduh called attention to the Prophet's commands, both through his statements and his own example "in all cases, to be gentle towards women and to avoid wronging them, and to keep them with dignity or release

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[634] This continues to this day. As Lama Abu-Odeh reports, "The definition of harm tends to be elitist, and what is harm for a rich woman is not harm for a poor one. The Court of Cassation thus defined harm as "inflicting verbal or physical injury on the woman in a way that does not befit people of her social status." (Cassation 18/4/1962, No. 28, 29) The Court of Appeals likewise reasoned that "what a woman of a certain social class finds tolerable another of a different social class does not" Appeal 11/12/1965, No. 89, 82)." "Modernizing Muslim Family Law, the Case of Egypt", *Vanderbilt Journal of Transnational Law*, Vol. 37, Oct, 2004, 1043-1146, p. 1135.

[635] Interestingly these were the same themes which received the greatest attention from reformists such as Amīn.

[636] In Britain, in the same period [nineteenth century], it was widely believed that a husband had the right physically to chastise his wife provided that he used a stick no bigger than a man's thumb. Frances Power Cobbe published an influential article in 1878, 'Wife Torture in England', and, in a speech in the House of Commons, supporting women's suffrage during the debates on the Second Reform Bill, John Stuart Mill said that 'I would like to have a Return laid before this House of the number of women who are annually beaten to death, kicked to death, or trampled to death by their male protectors". (Mary Lyndon Shanley, *Feminism, Marriage, and the Law in Victorian England, 1850-1895*, Princeton University Press, 1993), p. 159. In 1895, in Britain, violence became grounds for a judicial separation with the payment of maintenance by the husband.

[637] *Aʿmāl*, vol. 5, p. 224.

them with dignity",[638] he did not resolve the contradiction between this and the practice of chastisement by rejecting either recourse, but by limiting each to a particular case and situation.

ᶜAbduh also emphasised that the triple command was not to be executed simultaneously, but that the verse clearly implied gradual progression from the less severe to the more severe measure: "if they obey you after one of these disciplinary measures, then do not transgress by progressing to the next one, but start with what God started with, that is admonition, and if it does not work, then desertion, and if not then chastisement, and if this itself failed, then one resorts to arbitration." This was not a novel understanding, although it was not unanimous, as some exegetes argued there was no implication of gradual progression. ᶜAbduh further stressed that in the absence of *nushūz*, there was no justification for any of the three measures: "one deduces from this that the *qānitāt* cannot be disciplined even through admonition, let alone desertion or chastisement".[639]

The mixed justification, restriction, and contextualisation of the practice are again expressed in ᶜAbduh's comment on the ending of the verse:

> 'For God is Most High, Great': He [God] added this statement following the preceding prohibition of transgression because the man transgresses against the woman due to the power he feels over her and the feeling of superiority to her, hence God reminded him of His Own Supremacy, Pride and Omnipotence, so that he would fear God and be admonished. And Know that men who oppress their wives in order to try to be masters in their homes are in fact producing offspring who would be slaves to others, that is their children would be raised witnessing the humiliation of oppression and grow up to be like slaves who humble themselves to those to whom they are in need.[640]

The above comment seems to be quite a strong condemnation of physical punishment and its serious long-term consequences on the family and society, which leads one to ask how this sits with the above 'tolerance' and 'justification' of this practice and insistence that it is not 'abhorrent' as expressed by ᶜAbduh. Is it a sign of clear contradictions within his thinking or an example of ᶜAbduh's strong belief in '*tarbiya*' and appeal to moral and spiritual motives rather than purely relying on legal reform? As discussed in Chapter 3, a distinction emerges between ᶜAbduh's view of women's reality and of their potential, leading to apparent contradictions in his

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[638] ibid., p. 225.
[639] ibid.
[640] ibid.

discourse on women. Seeing ʿAbduh's through statements on fundamental principles may cast him as a liberal, while some of his statements accepting discrimination portray him as a conservative. In fact, he is both.

What is interesting is that, although ʿAbduh justified the – conditional – use of the above practice, he did so on the basis of necessity and the "corruption of the environment", rather than on the basis of the husband's right as the leader of the family and as part of his authority. This is in contrast with Riḍā, who explicitly used the latter basis, confidently defending the husband's *authority* to discipline his wife, just as the ruler has the authority to discipline his subjects.[641] Thus, while ʿAbduh did not reject the practice of physical discipline in marriage, he warned against its grave consequences, and restricted its applicability to particular times and environments, hence making it a temporary necessity that would become irrelevant once society is reformed, thanks to the magical wand of education.

Conclusion

ʿAbduh's reform of Egyptian family law was radical when dealing with one half of the equation – *nafaqa*. His proposals provided a way out for women who, under the old Hanafi system, were trapped in marriages where the husband was absent, imprisoned, unable or unwilling to assume his responsibility of providing marital maintenance. However, in his dealing with the second half of the equation, obedience, his tendency was to uphold the husband's authority, while emphasising it was not absolute, but rather a conditional temporary necessity. In addition, ʿAbduh also highlighted the moral aspect that cannot be regulated by law – reminding spouses of God's watching over them, admonishing them not to transgress against the weaker party.

This same tendency has guided all subsequent reform in Egyptian family law. While the marital relation has not been made equal, "the transactional quality of the *taqlīd* marriage contract has been legislatively rehabilitated" by limiting the husband's power in the marital relationship by restricting the interpretation of the wife's duty of obedience in the family, as well

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[641] Riḍā, *Nidā' Lil-Jins al-Laṭīf*, p. 21

as expanding rather drastically the grounds available for her to request a divorce.[642] The result is that while under the Hanafi system, "women get much less and men much more than a transactional contractual arrangement would warrant… marriage is now simply obedience for maintenance; if one is not offered, the other is denied".[643] Lama Abu-Odeh's review of family law reform in the twentieth century in Egypt indicates that the preservation of the 'transactional quality' of marriage while reducing and abolishing additional powers over and above this contractual relationship, through "an intervention in, and modification of, the Hanafi doctrine", has persisted and guided legal reform in Egypt. This appears to be the very strategy proposed by ʿAbduh a century earlier. The emphasis on the moral aspect of the marital relationship, emphasising God's oversight and enjoining mercy and God-consciousness in exercising male authority also continues in much of contemporary Islamic discourse, where, as discussed above, the hierarchy is maintained, while emphasising its limits.

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[642] Lama Abu-Odeh, "Modernizing Muslim Family Law, the Case of Egypt", p. 1050.
[643] ibid., p. 1131.

CHAPTER 6

POLYGYNY

Whilst we have seen in the previous chapter that ʿAbduh's proposals for the reform of family law in the area of *nafaqa* (and divorce) have, on the whole, been adopted, and indeed superseded by later reforms, his proposals for reform in another area of family law have proven to be more controversial, remaining unimplemented and facing unwavering resistance from various quarters. That area is the restriction of polygyny.

6.1 Classical and Modern Discussions of Polygyny

Prior to the second half of the nineteenth century, polygyny had been discussed in Muslim literature. In law and jurisprudence, the discussion was focused on the additional obligation of the polygynous husband to divide his time and provision equally between his wives. Although, on the whole, discussions of polygyny in *fiqh* tended to assume the permissibility of polygyny, without discussions of whether it was an absolute right of the husband, divergence between the views of different schools and scholars on the issue of acceptable conditions to be inserted into the marriage contract showed a difference of opinion on the view of polygyny. Whereas the Hanbali *madhhab* regards the condition stipulated by a wife at the time of the marriage contract that her husband take no other wife as legally binding, leading to the ending of marriage in the case of breaching the condition, the Hanafi school considers it a condition of no consequence, since it is against "the nature of marriage", thus holding polygyny to be a non-negotiable absolute right.[644]

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[644] See Esposito, *Women in Muslim Family Law*, p. 22; Welchman, *Women and Muslim Family Law in Arab States*, p. 99.

While *fiqh* in general limited itself to discussions of the legal implications of polygyny, an insight into whether polygyny was seen as a natural, acceptable, or happy occurrence can be obtained from other literature, including marriage contracts and biographies. Amira El-Azhary-Sonbol, in her study of Ottoman marriage contracts, found that "perhaps the most important condition wives included in marriage contracts concerned polygamy".[645] Leila Ahmed notes that

> Even though accepted practice among the ruling class, the plight of women who shared their husband with other wives or concubines nevertheless appears to have been viewed as unhappy. When contemporary authors reported of a particular woman that she was in a monogamous marriage, they regularly went on to note how fortunate she was in this. Similarly where families were in a position to stipulate monogamy for their daughters, they often did so… For women of the middle and lower classes, uncushioned by personal wealth or wealthy families, polygamy could bring destitution, not just emotional and psychological stress, should a new wife gain enough ascendancy to bring about the divorce of the first wife.[646]

Thus, far from being a clear-cut legally permissible practice, as noted by Pearl and Menski, "polygamy is a controversial issue in Islam. This is not only so because of principled objections to polygamy as an institution, but because the classical Muslim position on polygamy itself is not as simple and uncomplicated as is often assumed."[647]

Discussions of whether polygyny itself was recommended could be found in the non-legal writings of Muslim scholars. While it is true that marriage as such is generally viewed very positively in Islamic thought, scholars discussed the various circumstances when marriage can become an obligatory, recommended, permissible, or discouraged act. In his book *Al-Murshid Al-Amīn*, Rifāʿa al-Ṭahṭāwī quoted Imām al-Ghazālī's view of marriage, which disagrees with those who present marriage – monogamous or polygamous – as commendable and obligatory in all circumstances. Al-Ghazālī warned that

> If there is no need for marriage, such as being unable to provide the *mahr*, or not being ready, or being unable to provide maintenance, then such a person should not marry… for whoever leaves that, he would have unburdened himself and avoided failing in his duties in his religion and honour, keeping himself proud among his peers.[648]

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[645] Amira El-Azhary Sonbol, "History of Marriage Contracts in Egypt", *Hawwa*, vol. 3, no. 2, July 2005, 159-196, p. 175.
[646] Leila Ahmed, *Women, Gender and Islam*, p. 105-106.
[647] Pearl & Menski, *Muslim Family Law*, London: Sweet & Maxwell, 1998, p. 237.
[648] *Al-Murshid*, p. 273.

In the same book, Al-Ṭahṭāwī expressed his personal belief that "it is recommended that one does not marry more than one wife without an obvious reason".[649] The reason could be the absence of children – although even then Al-Ṭahṭāwī warned against the hardships of large families, and that "wives comfort their husbands, but children are their enemies".[650] Neither did he consider polygyny for the legal satisfaction of desires commendable. Al-Ṭahṭāwī warned his readers against the dangers of venereal diseases and the evils of jealousy among wives. While recognising its permissibility, al-Ṭahṭāwī, doubting that absolute justice could exist between wives, quoted the warnings of various scholars, poets and saints that one should not consider polygyny "unless you are ready for eternal misery".[651] Al-Ṭahṭāwī's personal view of polygyny is further clarified through his pledge of monogamy to his wife, in which he made "the continuity of her marriage dependent on not marrying other than her or taking a concubine, such that if he were to do so, his cousin would be definitely divorced upon the conclusion of the new contract".[652]

Al-Ṭahṭāwī's discussion of polygyny can still be viewed as a continuation of 'pre-modern' discussions of polygyny. Whether they promoted or discouraged polygyny, those writings generally did so with more ease and less defensiveness than later discussions of the subject. Ironically, Qāsim Amīn, famous for his opposition to polygyny, demonstrates defensiveness and obsessiveness, both in his opposition to polygyny, and his earlier – less well-known – defence of the practice. In his "Les Egyptiens", written in response to D'Harcourt's book criticising the backwardness of Egyptian Muslims, Amīn wrote a full chapter to justify polygamy as more human an expedient than the repudiation of a first wife or the miserable life of a mistress. He defended polygamy as a remedy to solve the social problems caused by unwed mothers and illegitimate children.[653]

While earlier reformers, such as al-Ṭahṭāwī, wrote about polygyny as a practice whose legality was not questionable or in need of justification, while simultaneously able to discourage it and warn against possible abuses, later authors responded to European criticisms of polygyny

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[649] ibid., p. 138.
[650] ibid., p. 487. See also Imām Shāfiʿī's apparent discouragement of large families based on interpretation of 4:3. *Tafsīr al-Imām al-Shāfiʿī,* compiled and edited by Aḥmad Ibn Muṣṭafā al-Farrān, Riyadh: Dār al-Tadmuriyya, 2006, vol. 2, p. 516.
[651] ibid., p. 148.
[652] Introduction of *al-Murshid al-Amīn.*
[653] *Al-Miṣriyyūn*, p. 77-83.

by defending the practice and justifying it on the basis of a variety of possible benefits. In ʿAlam al-Dīn (Alexandria, 1882), probably written between 1868 and 1872, ʿAlī Mubārak defended polygyny as being sanctioned by divine law, while carefully pointing out that most "Eastern" men had only one wife. He went on to explain the difference between marriage in "the West" and "the East" in terms of demography, claiming that while there were more men than women in France, there were more women than men in Egypt. Another defence of polygyny, against claims that it soured marital relations and upset the household regime, was published by the chief clerk of the Court of Appeals of Cairo in the newspaper al-Ahrām in 1881, who, after working his way through a juridical argument, added that many a man has had only one wife and his relationship with her soured. If that is to be the criterion for prohibiting plural marriage, then marriage should be prohibited altogether![654]

The notion that polygyny could be a perilous endeavour is not a recent one. The Prophet is reported to have cautioned against neglecting a wife, stating that a man who has two wives and favours one over the other will be resurrected at the final judgement with one side of his body drooping.[655] For most of Muslim history, however, the concern for just treatment of multiple wives was seen as a matter to be left to the conscience of the individual Muslim husband. Towards the end of the nineteenth century, modern authors who disapproved of polygyny took a range of positions on whether it should be simply discouraged, legally restricted or prohibited, and what type of role, if any, the state should play in setting limits on polygamous marriages.

Voices had already been raised criticising the practice of polygyny in the second half of the nineteenth century. Fatma Aliye in Turkey had argued that polygyny was specific to the early Arab context and that the Qur'an promoted monogamy. Nevertheless, Aliye argued in her 1892 book, Nisvan-I Islam (Muslim women), that the West held a prejudiced view of Muslim women and that the situation of Ottoman women within a polygamous marriage was more secure than that of mistresses and their illegitimate children in Western societies.[656]

In turn-of-the-century Egypt, women writers began to gently critique polygyny in the pages of the women's press. Rather than call for its direct abolition, these writers depicted the

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[654] Al-Ahrām, 16 March, 1881. Similarly the Tunisian reformer Muḥammad Ibn Abī Ḍiyāf defended polygyny in his response to French criticism. See Husni & Newman, Muslim Women in Law and Society, p. 10.
[655] Narrated by Abū Dāwūd (vol. 2, p. 242), al-Tirmidhī (3:447), al-Nasāʾ ī (7:46), and Ibn Mājah (1: 633).
[656] Cited in Leila Ahmed, p. 138.

hardships women experienced as victims of polygyny.[657] While the reasons for these calls cannot definitively be attributed to one cause, it is unlikely that they were prompted by a rise in the occurrence of polygyny. In fact, even western critics of the practice noted its decline. Writing in the 1840's, Edward Lane noted that "very few of the Egyptians avail themselves of the license, which their religion allows them".[658] Lane further observed that polygyny "is rarer among the higher and middle classes than it is among the lower classes; and it is not very common among the latter…. not more than one husband among twenty has two wives".[659]

Such observations are supported by the available statistics. Judith Tucker notes that "the Mansurah records of 1800 to 1820 suggest, however, that polygamy was by no means widespread among peasant families in the early nineteenth century. In the 14 families for which we have full data, for example, we find only one case of polygamy, one man with two wives".[660] Based on a mid-nineteenth century Cairo census, Philippe Fargues concluded that "only 2.7 percent of married men are recorded with two or more cowives in their households. [661]

In contrast to later colonial observations on the matter, Sir John Bowring's *Report on Egypt* (1823-1838) spoke of polygyny in a practical and even appreciative way, noting that "in a country like Egypt, where the disproportion of females to males is very great indeed, polygamy no doubt assists to fill up more rapidly the vacancies left by the perpetual demand for young men… The disproportion of the sexes is incredibly great: The Government Return states the proportion of women to men to be as 135 to 100. I imagine it to be considerably higher".[662]

However, while the trend, according to most statistics, was towards a decline of an already rare practice, polygyny was gaining more attention in depictions of the east.[663] Lord Cromer singles out two main phenomena of the "degradation of women in Mohammedan countries"[664] – seclusion and polygamy. He considered polygyny to be among the principal markers of difference "between the position of Moslem women and that of their European sisters" and among the worst practices in Egyptian society, exemplifying "the degradation of

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[657] See, for instance, Shajarat al-Durr, "al-Ṭalāq wa taᶜaddud al-zawjāt", *Anīs al-Jalīs*, 1, 7 (1898) 203-206.
[658] Lane, *Account of the Manners and Customs of Modern Egyptians*, p. 147.
[659] ibid., p. 193.
[660] Tucker, *Women in 19th Century Egypt*, p. 53.
[661] Philippe Fargues "Family and Household in Mid-Nineteenth-Century Cairo".
[662] *Report on Egypt*, p. 12-3.
[663] Lisa Pollard, *Nurturing the Nation*, p. 48.
[664] Cromer, *Modern Egypt*, vol. 2, p. 155.

women in Mohammedan countries".[665] Cromer categorically proclaimed that "the East is polygamous, the west is monogamous".[666] Moreover, "Monogamy fosters family life, polygamy destroys it".[667] Despite this extreme alarm, Cromer conceded that "the practice of monogamy has of late years been gaining ground amongst the more enlightened Egyptians", attributing this downward trend to "education and association with Europeans" and the fact that "polygamy is expensive".[668] However Cromer was adamant that "the movement in favour of monogamy cannot be as yet called general. The first thing an Egyptian of the lower class will do when he gets a little money is to marry a second wife."[669] Similarly, while Edward Lane's observations on polygyny were reserved, his great-nephew Stanley Lane-Poole's were much less so, ruling that "faithful devotion to one woman is not to be reckoned among ordinary Muslim virtues."[670]

This concern about the shape of the modern family partly reflects changes in British family culture, particularly the rise of the ideal of companionate marriage in Europe.[671] Writers such as Ahmed (1988) Thornton (2001, 2005) and others have argued that equating modernity with an end to veiling, polygamy, female seclusion, and gender segregation resulted from Western influence on national reformers. Others hold that the concerns expressed by Egyptian writers cannot be entirely seen as a reaction to western criticisms. Various studies of such nationalist writings and calls point to a variety of motivations.

Lisa Pollard has analysed how Egyptian calls for reform of conjugal practices through authentically religious and anti-colonial rhetoric represented their assertion of an indigenous identity, which was essential to the nation-building project to counter the colonial project. Appropriating the colonial discourse, the "relationship between the future of the nation and the transformation of the household became a topic in the press, in the classroom, and, later, in political parties, where otherwise disenfranchised nationalists could address the future of their nation".[672] Practices such as the marriage of minors, unilateral male-initiated divorce, and

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[665] ibid.
[666] ibid.
[667] ibid., p. 157.
[668] ibid., p. 158.
[669] ibid.
[670] Stanley Lane-Poole; *Islam: A Prelection delivered before the University of Dublin March10, 1903*, p. 20-1.
[671] Kenneth M. Cuno, "Ambiguous Modernisation: The Transition to Monogamy in the Khedival House of Egypt", in *Family History in the Middle East*, Beshara Doumani, ed.
[672] Pollard, p. 5.

polygamy, increasingly became viewed as incompatible with a strong and 'modern' Egyptian nation. Happy stable healthy families were needed to serve as a solid foundation for an independent Egyptian nation free of social ills.[673]

Hanan Kholoussy asks why "certain state officials and press writers sought to curtail polygamy if it was not a common practice".[674] She concludes that one of the reasons for the monarchy's desire to promote monogamy is "the state's desire to promote and solidify single, nuclear households that would not be able to constitute a threat to its political and socioeconomic power".[675] The promotion of a nuclear monogamous family, led by nationalist writers and state officials "indirectly denounced large familial networks that could potentially encourage subversive activities against the authority of the state."[676] Hanan Kholoussy argues that "as in its attempts to legally restrict the marriage of minors and divorce, certain state officials, as well as many Egyptian nationalists and feminists, sought to discourage polygamy as yet another means to control, represent, and subordinate the marital habits of the population to the ordered supervision of the nation state."[677]

Mary-Ann Fay, studying the transformation of the upper classes from Mamluke to modern times, uses Deniz Kandiyoti's concept of the "patriarchal bargain: women's strategies of maneuver and resistance within systems of male dominance" to explain the changes in views on conjugal practices. She argues that efforts by upper-class women to introduce family reforms were "primarily an effort to rewrite the terms of the patriarchal bargain within the context of a new, emerging nation state in Egypt."[678] Women's new opposition to polygyny, although it was not a novel practice, and although it was not on the rise, is attributed to political and economic changes in the lives of upper-class women: while "polygamy, concubinage, seclusion, veiling, and restraints on women's sexual autonomy characterised the eighteenth-century upper-class household, its female members also enjoyed rank and status, access to wealth, and considerable

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[673] ibid., p. 340.
[674] Hanan Kholoussy, "The Nationalisation of Marriage in Monarchical Egypt", *Re-Envisonioning Egypt 1919-1952*, Goldschmidt et al., eds., p. 337.
[675] ibid
[676] ibid.
[677] ibid.
[678] Mary-Ann Fay, "The Women's Movement in Egypt, 1904-1923", in *Family in the Middle East*, eds. K.M. Yount and H. Rashad, p. 43.

economic autonomy, influence, and power".[679] However, "the transformation of the warrior grandees of the eighteenth century into the Turco-Circassian ruling elite of the nineteenth entailed the relocation of power from the household to the institutions of the "modern" centralizing state. In effect, women were left to face polygamous unions, men's easy access to divorce, and the inability to choose when, and what age, or even whether to marry, without the compensating factors of life in the eighteenth-century household".[680]

6.2 ʿAbduh's early concerns about Polygyny

ʿAbduh's writings on polygyny preceded the British occupation of Egypt. As early as 1881, he wrote two articles on marriage, the second exclusively devoted to the question of polygyny. This is significant since it precedes Qāsim Amīn's Les Egyptiens (1894) which contained a stronger defence of the practice, although five years later, Amīn's views on the matter seem to have undergone a complete change.

First Articles: "The Need for Marriage" and "Polygyny", 1881[681]

Although ʿAbduh's first article focuses on marriage in general, and not polygyny, his attempt to rationalise the human need for marriage seems to imply both the necessity of monogamy and the possibility of polygyny. To address the question of the invalidity of unrestricted fulfilment of sexual desires, ʿAbduh starts from the necessity of the "exclusivity of pleasure" and the "unique attachment that necessitates the unique pledge of cooperation",[682] for the ideal preservation and development of the human race. However, the arguments used – the danger of jealousy and the will to fight all other rivals (in this both sexes are referred to equally), women's inability to provide for themselves, particularly during pregnancy and breastfeeding and men's reluctance to provide for them unless they are exclusive to them, and the need to

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[679] ibid., p. 43.
[680] ibid.
[681] *Al-Waqā'iʿ al-Miṣriyya*, No. 1055, 7 March 1881, in *Aʿmāl,* vol. 2, p. 66-69.
[682] ibid., p. 67.

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preserve distinct lineage – rule out polyandry while implicitly allowing for polygyny, although the focus is on the general natural human need for marriage.

ʿAbduh's explicit conclusion, however, is that "humans' happiness in their life, and the preservation of their existence in this world, are dependent on the restriction of that desire through a rule that regulates its use, sets limits at which each individual must stop, and necessitates the exclusivity between the husband and wife, thus avoiding transgression, and demonstrating the exclusive commitment between each individual and his wife, and between each wife and her husband".[683] The nuclear family's interest is paramount in each spouse's decisions, such that "each should see the family interest as his/her personal interest. That is, he/she does not consider any matter to be an interest unless it brings prosperity and development to his/her family".[684]

The above emphasis on exclusivity and unique commitment, with its clear preference of monogamy is also reflected in ʿAbduh's use of the singular "wife", rather than "wives" throughout the article. However, the ambiguity and contradiction highlighted above re-appear at the end of the article as ʿAbduh summarises that "this is what divine laws, the statements of religious scholars and elaborations of the wise have clarified regarding the wisdom behind marriage, regardless of whether it is to one or many (wives)".

As a logical progression, a second article soon followed, dealing specifically with polygyny. In this second article,[685] ʿAbduh's view on polygyny is clarified from the beginning, accepting that Shariʿa has permitted the marriage of one man to up to four women, if he believes himself to be able to ensure fairness among them, otherwise it is not permissible for him to marry more than one. The general permissibility of polygyny is not justified on any natural or social basis, as found in some later writings defending the practice. It is simply taken as an established rule of Shariʿa. It is the conditional prohibition of polygyny which is justified, "because if the man fails to give each [wife] her rights, the order of the home suffers and family life worsens, since the principal pillar for home management is the preservation of unity and affection between the family members".[686]

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[683] ibid., p. 68.
[684] ibid.
[685] *Al-Waqāʾiʿ al-Miṣriyya*, No. 1056, 8 March 1881, in *Aʿmāl*, vol. 2, p. 76-81.
[686] *Aʿmāl*, vol. 2, p. 76.

There is no fundamental/general criticism of polygyny. Instead, there is explicit acceptance on the basis of historical practice, as "the prophet peace be upon him and the companions, God be pleased with them, the rightly guided caliphs, scholars, pious people of all eras until this era, married more than one, while respecting God's commands of establishing justice between them".[687] The emphasis is on the condition of 'adl – fairness/justice – as "scholars have said that justice is one of the rights of marriage, that is obligatory upon the husband just like the rest of the obligatory rights, with no difference between them".[688]

This condition of ʿadl – an essential obligation on the husband – and the associated divine warning, are – in this article and subsequent statements on polygyny – at the core of ʿAbduh's views on the practice and its regulation. ʿAdl within polygyny is no novel concept or invention of ʿAbduh's, being a common concept in juristic manuals, mostly as one of the rights of the wife in a polygynous marriage. However, in ʿAbduh's analysis, the problem lies in the lack of adherence to this obligation and unawareness of the seriousness of its neglect:

> Thus, how – after this divine warning, and this precise necessary obligation which cannot be changed or interpreted away – could polygyny be allowed when there is doubt regarding inability to apply justice between wives, let alone when that inability is confirmed? How can we justify having multiple wives to whom marriage is motivated by the mere fulfilment of a passing desire, and the achievement of a temporary pleasure, indifferent to the consequent harms and the violation of sacred law?[689]

In addition to the divine warning against violation of this divine obligation, neglect of the obligation of ʿadl has "consequent harms", which ʿAbduh details at length: lies and plots by the multiple wives, leading to domestic conflict and violence; revenge and further quarrels and disputes day and night, preoccupying the wives and distracting them from home management; betrayal of the husband since the wives lose trust, as they expect to be divorced at any moment; sowing hatred and jealousy amongst offspring resulting in enmity rather than brotherly support; the husband losing respect; divorce and the suffering of the divorced wife and her children.

In response to those who defend the practice arguing that even where divorce happens, the Shariʿa has made provisions for the divorcee protecting her and her children from such suffering, ʿAbduh highlights the gap between law and reality:

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[687] ibid.
[688] ibid., p. 77.
[689] ibid., p. 78.

Let one not say that such things do not happen since the noble Shariʿa has imposed on the husband the obligation of supporting his divorcee and her children…. For the husband, even if the Shariʿa does require that of him, does not submit to that command which demands large maintenance, except if compelled against his will.[690]

From his experience in family courts, ʿAbduh demonstrates an awareness of the inadequacy of current legal provisions, and a sympathy with women whose experience is far from those theoretical reassurances, an awareness and sympathy that will be also manifested in his later proposals for the reform of Shariʿa courts. ʿAbduh stated that in practice, women cannot demand their rights in court, whether for practical reasons, or out of shame, as in rural areas it is still considered shameful to demand maintenance.

In response to those who argue that the above suffering of divorced women and their children as a result of the husband's failure to maintain them or his mistreatment of them is only seen from the lowest of people, while respectable and wealthy men maintain their divorcees and children and their multiple wives well, so they should not be restricted from having up to four wives or divorcing them if they wish, ʿAbduh again refers to practice, responding:

How can this be true when we see many wealthy men throwing their wives and children out, leaving their children to be brought up by others, not giving them any care or attention? And we often see fathers throw out their older children in order to please their new wives, and extremely mistreating their wives, to the extent that it is very common that the marriage to the second wife is motivated by nothing other than harming the first... In addition, the other harms we previously mentioned such as hostility among brothers and sisters and towards the father are present, and more so in the case of the wealthy than the poor. And it is no use obstinately denying this matter the effects of which are seen in all regions and the evil of which is spread throughout our country and other eastern countries.[691]

ʿAbduh insists that the above description of polygynous marriages and their harms apply to "the behaviour of the majority of our people, rich and poor, when they have multiple wives".[692] The problem is not necessarily with polygyny itself, but the fact that these men behave "as if they did not understand the divine wisdom of its permission, instead using it as no more than a way of fulfilling desires and gaining pleasure, ignoring the real reason behind it".[693]

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[690] ibid., p. 79.
[691] ibid., p. 80-1.
[692] ibid., p. 81.
[693] ibid.

Again there is no discussion of the "wisdom" behind the practice or "the real reason behind it" – which in later writings become essential parts of the discussion of polygyny and its defense. They are simply taken for granted. The problem is seen with the behaviour of the majority of polygynous men, not with polygyny itself. As a result, since most men at this particular time are clearly unable to ensure justice, which is a condition for the permissibility of polygyny, men should avoid it, since "the verse 'then marry as many women as you wish' is restricted by the verse 'if you fear…'"[694]

There is no outright prohibition or condemnation of polygyny, but a strong warning that men "should, before engaging in polygyny, reflect on the justice legally required of them, and the need to preserve unity between offspring, and preserving women from conditions which can lead them to unbecoming actions".[695] Such care and avoidance of injustice and its harmful effects for the family is not seen as impossible, even in our current times "like the case of men who fear God, abide by the Shariᶜa of justice, preserve the rights and sanctity of women, treat them kindly and leave them only when necessary – such pious noble men are not blameworthy if they were to have multiple wives – up to the legal limit – and these, even if their number is small in all countries and regions, their actions are evident and deserving of praise."[696]

Thus permissibility of polygyny, for a certain divine wisdom, is followed by an emphasis on the condition of justice as an essential obligation on the polygynous man. This is followed by a warning that in current practice, this condition is broken by the majority of men, leading to harmful consequences for family life. The theoretical legal provisions for the preservation of harmonious family life or the maintenance of divorcees and their children are not considered an argument for defending polygyny since in practice they are not respected. Hence men are advised to restrict themselves to one wife and warned against going beyond that. However, this is followed by praise for an existing minority of polygynous men who do abide by the theoretical legal provisions, ending with a circular argument rather than a clear ruling.

This clear-cut ruling is what is found in the second of ᶜAbduh's discussions of the question of polygyny.

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[694] ibid.
[695] ibid.
[696] ibid.

6.3 Fatwa on Restriction of Polygyny[697]

From the beginning of this text, it is clear that, unlike the first article on polygyny, it is more defensive and, at least in part, a response to critics – western or others – of polygyny. Such critics, like Lord Cromer, had insisted that the practice was an Islamic affliction. In response, ʿAbduh starts by a denial of that generalisation, instead insisting that "polygyny is not exclusive to the east, nor is monogamy exclusive to the west". The practice is associated with "leaders and the wealthy [who] tended to have several wives in countries where the number of women exceeded that of men, indulging in enjoyment".[698] Although there is no discussion of the Islamic reasoning for allowing the practice, one may assume that the above reasons – seeking of power and pleasure, particularly in circumstances where the number of women outgrew that of men, could still be valid in the Islamic context. What is different is presumably not the logic behind the permission, but the conditions and restrictions imposed in Islam, as "[W]omen were nothing but chattel for pleasure, with no rights, and no attention to justice, until Islam came and prescribed rights for them and made justice towards them obligatory".[699]

The context of the verse is clearly referring to marriage to orphan girls, but ʿAbduh does not discuss whether this specific occasion has any implications for the general rulings concerning polygyny (this has become a feature of more recent interpretations which wish to restrict polygyny through emphasis on the specific context of the verse).[700] The only link mentioned is that "Arabs used to foster orphan girls, then, if they liked their beauty and wealth, they would marry them, while giving them less than the *mahr* they deserve, maltreating them, not maintaining them fairly and usurping their money. God forbade them from doing that... If the weakness of orphan girls leads you to wrong them, and you fear that if you married them you

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[697] *Aʿmāl*, vol. 2, p. 88-92. The *fatwā* was published in *al-Manār* in vol. 28 on 3 March 1927, where Rida wrote "I found these *fatāwā* among the papers of our sheikh *al-Ustādh al-Imām*, so I wished to publish them in view of the state's efforts to restrict the permissibility of polygyny and the current debates on the issue". Note 41 in *Aʿmāl*, vol., 2, p. 692. Although there is no indication of when ʿAbduh wrote the *fatwā*, a possibility – in line with my conclusion that ʿAbduh had not directly written the chapters from *Taḥrīr al-Marʾa* but could have guided Amīn in his writing, particularly in questions of *fiqh* – is that he had written this *fatwā* upon Amīn's request while the latter was writing his book in 1899.
[698] *Aʿmāl*, vol. 2, p. 88.
[699] ibid., p. 89.
[700] See, for instance, Asma Barlas, *Believing Women in Islam*, pp. 190-192.

would not be fair to them, and that the power you have in marriage leads you to transgress and usurp their money and humiliate them, then you can marry other women instead."

The change brought by Islam to this already established practice is to make its permissibility dependent "on the condition that you be just towards them, such that it is not permissible to any Muslim to have more than one wife unless he is confident that he would give each her due right and treat them equally, not preferring one over the other in anything related to the rights of marriage which must be fulfilled. If he fears that if he were to marry more than one he may not be able to be fair, it would be incumbent upon him to restrict himself to one wife."

Although there is no discussion of whether polygyny in itself is necessarily harmful to marriage, ʿAbduh in this text makes it clear that "the matter of polygyny is expressed in such a way that merely implies permissibility, on the condition of justice. If he feared injustice, marriage to more than one is prohibited. Thus there is no encouragement of polygyny, but rather discouragement, as he also said (4:129)."

Here we see the important inclusion of verse 129 while discussing verse 3, which makes no appearance in the previous article. This link is now an established part of arguments for restricting or altogether prohibiting polygyny. Although ʿAbduh does not explicitly write that the two verses imply any such prohibition, he strongly warns that "if justice is not within one's ability, and fear of injustice necessitates restriction to one wife, then how serious is it to exceed that limit!" His understanding of the link appears to be that it emphasises the gravity of the warning to anyone considering polygyny, rather than imposing a legal prohibition. Although polygyny is not prohibited, "Islam has limited polygyny to a maximum of four, and has furthermore constrained the matter to such an extent which if it had been fully comprehended by polygamous men, they would not exceed more than one wife".

Although the verse does not refer to the issue of female slaves, the classical understanding had been that Islam had restricted marriage to a maximum of four wives, while allowing men to take an unlimited number of slaves. ʿAbduh mentions an alternative interpretation of the verse:

> Muslims had agreed that a man is permitted to take an unlimited number of slave women. However, one may understand the verse differently, for the words were in the context of permissibility of having up to four women, and that the condition for permissibility is

certainty of achieving justice. Hence the meaning would be: if injustice is feared, then it is obligatory to restrict oneself to one wife, while taking up to the mentioned number of slave women, i.e. in all cases, it is not allowed to have more than four women, while justice is required in wives but not slaves.

The above interpretation, although not completely unprecedented, is significant, since it demonstrates the desire to interpret the text, in line with established ethical principles and linguistic considerations, regardless of historical practice. ʿAbduh lamented that the above understanding was not taken into consideration, and that, furthermore, the past practice of slavery went even beyond the limits classically adopted by scholars which placed certain conditions on the acquisition of slaves:

> Muslims misused these glorious rules of their religion, excessively indulging in slave girls to the extent their wealth permitted, thus corrupting their minds and those of their children... As for the slavery seen amongst Muslims in the past, it has nothing to do with religion... But is from the customs of the times of ignorance.

Finally ʿAbduh deals with the central question, which was being debated at the time this text was published, and presumably at the time it was written too, that is, given these restrictions and warnings, but also given the legal and historical permissibility of polygyny, is it permissible to officially restrict or ban it? ʿAbduh's answer is that "As for the permissibility of ending this custom – that is polygyny – then that is undoubted".

ʿAbduh does not base this conclusion on the link between verse 4 and 129, but rather on three main grounds which are all based on practical considerations. First, he points to the primacy of the "condition of being certain of achieving justice, which is necessarily absent." There is no discussion of whether this condition is theoretically possible or impossible, rather the fact is that in practice, it is very rare, and that is a sufficient basis for the new rule, for "[E]ven if it is achieved in one case among a million, it cannot be used as the rule. And whenever corruption of spirits is widespread, and it becomes more likely that men will not be fair towards their wives, it becomes permissible for the ruler to ban polygyny and for the scholar to ban polygyny in an absolute way, in view of what is more probable."

In addition to the almost-general contravention of the religious obligation of achieving justice in the equal treatment of multiple wives, the second reason justifying the restriction of polygyny is again a practical one, based on experience, that is the fact that "men's mistreatment

of their wives in the case of polygyny has become widespread, and wives are deprived of their rights to maintenance and contentment. Thus, the ruler and the one in charge of the law may ban polygyny to prevent the widespread harm". Thus the second justification is based on the *fiqhī* rule of '*dar' al-mafsada*' or "preventing harm".

Thirdly, a further justification is added, which can be considered a subsidiary of the above rule of "preventing harm", in this case, harm to children in polygynous marriages, and to family and social stability, since "it has become clear that the root of corruption and enmity between offspring is their different mothers, as each is brought up to hate the other, such that by the time they reach maturity, they have become sworn enemies, and conflict between them continues until they destroy their homes. Thus the ruler or the religious authority may ban polygyny or having many slave women in order to protect homes from corruption."

It is important to note that the restriction of polygyny is not envisaged to be absolute, and in certain cases, the above reasons may not be sufficient to ban polygyny in certain cases, where 'fairness' may require allowing this practice. ʿAbduh uses the frequently referred to case of the wife's sterility as an example of one such case,[701] where, notwithstanding the possible – or probable – harms of polygyny, "it is not fair to prohibit a man whose wife has given birth to no children from marrying another in order to have offspring". Since the prohibition is not founded on an absolute opposition to polygyny, but mainly on the rule of "preventing harm", a balance of possible "benefits" and "harms" needs to be considered in certain cases. Presumably in these cases, the condition of justice must still be fully met.

Such cases, however, are seen as exceptions, while the general rule is that "it is permissible to have a general ban for all men banning them from marrying more than one, except for a necessity which is to be proven before a judge." Although, there is no absolute ban on polygyny, this conclusion is still radical, moving from a situation where polygyny is considered a normal practice that requires no justification, and associated harms are seen as exceptional and avoidable, to regarding polygyny as a practice associated with probable harms, which may be permitted in exceptional cases, for a particular necessity which must be proven before a judge.

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[701] It is interesting that the primary – and more or less sole – justification for polygyny was sterility, while in later justifications (twentieth-century Islamic discourse) and defence of polygyny, men's wish to have another wife to satisfy their 'uncontrollable' desires, becomes a frequently used motive. This is particularly the case in polemical writings, whereas in law, the two legitimate justifications most commonly used remain infertility and inability to engage in sexual relations.

Such a change was seen as too radical, un-Islamic, and was relentlessly opposed. Aware of this opposition, ʿAbduh wrote that such a ban "is not prevented by religion, but it is rather customs that prevent such a ban".

6.4 Polygyny in *Tafsīr al-Manār*

As discussed in a previous chapter, *Tafsīr al-Manār* was published over a long period, during ʿAbduh's life and after his death. The *tafsīr* of the relevant verse (4:3) was published many years after ʿAbduh's death, as the pace of the publication was slower that that of the lectures. However, since the last verse interpreted by ʿAbduh was verse 125 of al-Nisā', we may assume that the *tafsīr* lecture of verse 4:3 was delivered in 1904-1905.

ʿAbduh does not discuss the various opinions concerning the occasion of revelation and various interpretations of the link between orphans and permission of polygyny. He simply states that the context is admonition against usurping the wealth of orphans, even by way of marriage, "saying "if you feel that you fear usurping the wealth of orphan wives, then you should not marry them as God has given you alternatives allowing you to marry up to four women."

The focus again, like in previous discussions of the issue, is centred on the condition of justice, the fear of which leads to the command to restrict oneself to one wife:

> Fearing injustice would be present whether it is expected or suspected, or even if it is imagined, although the Shariʿa may forgive illusion for it is seldom absent in such matters. Thus the one who is allowed to marry more than one is the one who is confident in his ability to be just, such that he has no hesitation or doubts, or when hesitation is very weak.

Again, he stresses the condition of justice and the difficulty of satisfying it in practice, and highlights how the verse itself contains the grounds for its own restriction:

> Having said 'if you fear that you may not be just', He justified that saying 'that is more likely to prevent injustice', that is, closer to avoidance of injustice and unfairness, thus making avoidance of unfairness a cause of the ruling. This affirms the condition of justice and the obligation of abiding by it, and a warning that justice is rare.

The difficulty and rarity of ensuring justice is proven by recourse to the later verse 129:[702]

> And He said in another verse (4:129). Fairness here may be understood as referring to the heart's affection, for otherwise the two verses taken together would imply the impermissibility of polygyny in any case. And because of that apparent meaning, He added 'so do not lean altogether leaving her hanging', for Allah forgives what is not within a man's ability, such as his heart's preference.[703]

The above is an example of the difficulty and complexity of any strategy employed to restrict polygyny on the basis of the condition of justice. Classical scholars did discuss the obligation of justice, but where they were simply concerned with the linguistic meaning, they interpreted "fairness/equal treatment" which is to be sought and the absence of which would be feared in polygyny in an all-encompassing way. For instance, the early *tafsīr* scholar al-Ḍaḥḥāk said that "that you may not be fair" refers to marital relations and love. In another report he said that the meaning was that you may not be fair in preference, love, marital relations, or good company, between four, or three, or two women".[704]

This general meaning is then consistent with the interpretation of the later verse 129 which uses the same word "being fair/just", the possibility of which is denied. Thus, there is no need to distinguish between the meanings of the same word, taking the first to refer to justice in everything, except feelings, and the second to mean justice in everything including feelings. Interpretations which place a central emphasis on justice, using it as a justification for restricting polygyny to a great extent, need to make this distinction between the meanings of the same word used in the two different verses in the same chapter. This distinction is unnecessary in classical *tafsīr* as the two verses are treated separately. Moreover, the emphasis on 'fairness' in such interpretations is not so central or restrictive of polygyny in a legal sense, as there is generally no concern with the question of whether monogamy is preferable or whether polygyny is necessarily to be avoided.

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[702] There is no separate *tafsīr* of verse 129 as the last verse interpreted by ʿAbduh before his death was verse 126 of Sūrat al-Nisāʾ.

[703] *Aʿmāl*, vol. 5, p. 181.

[704] Reported in Ṭabarī's *tafsīr*, *Tafsīr al-Ḍaḥḥāk*, p. 274. See also *tafsīr* of Ibn ʿAbbās, p. 285 "narrated from Ibn Jarīr on the authority of ʿAlī Ibn Abī Ṭalha from Ibn ʿAbbās, regarding the verse "and you will not be able..." that it means love and marital relations.

One rare *tafsīr* which does directly address the above paradox and explicitly addresses the link between the two verses is Abū Ḥayyān's *Tafsīr al-Baḥr al-Muḥīṭ*::

> These are two conditions, with two separate consequence of the condition (*jawāb al-sharṭ*). The first is "if you fear that you will not be just towards orphans", and the consequence is "then marry..". The second is "if you fear that you would not be just", the consequence is "then one only"… Some said that these sentences only included one condition, and one parenthesis (*jumlat i'tirāḍ*), the condition being "if you fear that you would not be just" and the consequence being "then one only" and the *jumla i'tirāḍiyya* being "then marry women who please you, two, three or four". The condition "if you fear that you may not be just" was repeated because the flow was interrupted by the *i'tirāḍ*... The meaning would then be if you fear that you may not be just, then marry only one. He further said that it has been confirmed that justice is not within their ability in his saying (4:129).

However, Abū Ḥayyān then questions the validity of this view which suggests the prohibition of polygyny on the basis of the two verses:

> This view is attributed to Abī 'Alī, and perhaps it is not authentic, as Abū 'Alī was highly knowledgeable of the science of *naḥw*, while this understanding corrupts the *naẓm tarkībī* (compositional structure) of the Qur'an and implies the invalidation of juristic rulings, for if he concluded the above from this verse and the "you will not be able" verse, it would mean the prohibition of marrying more than wife, or the restriction to concubines, and the separation between the condition and its consequence would be a tautology with no consequence, according to this. The justice whose possibility is denied here is not the same as the justice referred to here, the former is justice in the heart's preference, for which man is not accountable, and the latter is justice in number of nights spent and in maintenance, and that is why the possibility of the former was denied, while the absence of the latter was used as a condition."[705]

Thus 'Abduh's interpretation is not different from the classical *tafsīr* and *fiqh* literature in that it recognises the obligation of justice in treatment of multiple wives, focusing on what is measurable, like time spent with, and maintenance spent on, the different wives, and excluding what is immeasurable like feelings. The difference is that 'Abduh sees the lack of justice in the former sense as a basis for the restriction of polygyny due to the difficult condition of justice and the serious warnings against injustice. This leads him to the conclusion that polygyny is a type of exception or necessity (presumably to be evaluated and licensed by a judge):

> Anyone who reflects upon the two verses would know that the permissibility of polygyny in Islam is an extremely constrained matter, in a way similar to necessities which are

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[705] *Tafsīr al-Baḥr al-Muḥīṭ*, vol. 3, p. 172.

permitted to the one who needs them, on the condition of confidence of establishing justice and avoiding injustice.[706]

What characterises ʿAbduh's discussion of the question of polygyny is its reliance on two pillars: the first is theoretical and text-based, that is the condition of justice; and the second is the negative consequences of polygyny seen in practice, which are always discussed in detail, and with reference to practical cases:

> If one, in addition to this restriction, reflected on the harmful consequences of polygyny in this age, he would conclusively say that no one can educate a nation in which polygyny is widespread, for the home which has two wives never achieves stability or order, instead the man and his wives cooperate towards corrupting the home, as if they were enemies to one another, and children end up as enemies. Thus the corruption of polygyny is transferred from individuals to homes, and from homes to the nation.[707]

The harms of polygyny ʿAbduh is most concerned about are those related to family stability and consequently social stability and progress, rather than consequences for the wives concerned. In fact, he often goes back to the past to insist that such grave social harms did not always accompany the practice of polygyny:

> In Islam's early periods, polygyny had benefits, most importantly family and marriage ties which strengthened ties of belonging, and did not cause as much harm as it does today, because religion was well established in the hearts of women and men, and a wife's harm did not go beyond her co-wife. In contrast today the harm goes from each co-wife to her children, then to their father, and the rest of the relatives, sowing enmity and hatred… If you wish to go into the details of the disasters and catastrophes resulting from polygyny, I could cite what would cause skins to shiver, including theft, adultery, lying, treason, cowardice, fraud, and even murder, a son killing his father and vice-versa, or a wife killing her husband and vice-versa. And all these take place and are recorded in courts.[708]

The above could – in addition to ʿAbduh's interest in the question of polygyny and its restriction very early on – indicate that his proposals were not primarily influenced by colonialist criticisms of the practice, but rather by the needs of the reform urgently needed in the Muslim world.

ʿAbduh's final verdict is explicitly based on the second of the above mentioned pillars of the discussion of polygyny. Its restriction is not to be based on any re-interpretation of the verses

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[706] *Aʿmāl*, vol. 5, p. 182.
[707] ibid.
[708] ibid.

(perhaps out of awareness that it can always be rejected or challenged, particularly since there appeared to be 'consensus' on classical understanding of the issue). Instead, it is based on practical matters, on the concepts of *maṣlaḥa* and prevention of harm:

> Thus scholars must look into this issue, particularly Hanafi scholars who control courts and whose *madhhab* is the official one. Since they do not deny that religion was revealed for people's interest and welfare, and that among religion's principles is the prevention of harm, if a matter leads to harms at a particular time while they did not result from it previously, there is no doubt that the ruling should be changed and applied to the present time, according to the rule: prevention of harms supersedes seeking of interests. Thus it becomes clear that polygyny is absolutely forbidden where injustice is feared.[709]

As seen in the previous chapter dealing with ʿAbduh's reforms of the court cases of marital maintenance, ʿAbduh's final proposals are often supported by well-established juristic rules, rather than radical re-interpretations, out of ʿAbduh's pragmatism and understanding of the mindset of the *ulama*-class and the society around him.

6.5 The question of *Taḥrīr al-Marʾa*

The above analyses all that was written by ʿAbduh on the question of polygyny. However, a number of authors also attribute a further text on polygyny to ʿAbduh – according to those authors, the chapters on marriage, polygyny, divorce and hijab of Qāsim Amīn's *Taḥrīr al-Marʾa* were written by ʿAbduh.[710] In fact this is the view of the editor of ʿAbduh's complete works, Muḥammad ʿImāra, and is taken as a fact by many other books on ʿAbduh and on the history of gender reform in Egypt.

ʿImāra argues that the book was "the fruit of joint work between Sheikh Muḥammad ʿAbduh and Qāsim Amīn, that a number of chapters were written by *al-Ustādh al-Imām* separately, and other chapters were written by Qāsim Amīn, then *al-Ustadh al-Imām* formulated the whole book in its final form".[711] ʿImāra argues that it was common at the time to write under

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[709] ibid., p. 183.
[710] See, for instance, Dorria Shafīq and Ibrāhīm ʿAbduh, *Taṭawwur al-Nahḍa al-Nisāʾiyya fī Miṣr*, Cairo 1945, p. 252, 274, 275; Afaf Lutfi al-Sayyid, *Egypt and Cromer: A Study in Anglo-Egyptian Relations*, 1969, p. 187; Leila Ahmed, *Women and Gender in Islam*, p. 159-161.
[711] ʿImāra, *Aʿmāl*, vol. 1, p. 257.

pseudonyms or other authors' names, as was the case with writing books as a joint venture.[712] He further points to "the identical ideas one finds in *Taḥrīr al-Mar'a* and what sheikh Muḥammad ʿAbduh had written in *al-Waqāʾiʿ al Miṣriyya*". In fact, the similarity of ideas, while undeniable, can only point to ʿAbduh's influence on Amīn, and is no proof of his writing the book. What ʿImāra neglects to analyse are the differences – alongside the similarities – between the ideas expressed by the two authors on the same issues, something I will attempt below.

Another argument ʿImāra uses is ʿAbduh's "stance towards the book after its publication, as he supported and defended it indirectly, and abstained from directly commenting on it or participating in the battles around it, particularly when his rivals wished to embarrass him by requesting a *fatwā* on the issue".[713] What he called indirect defence was the support given by Rashīd Riḍā in *al-Manār*. *Al-Manār*'s stance vis-à-vis the book is discussed in a previous chapter, illustrating Riḍā's support of the book and Amīn. However, that could simply be a result of the fact that Amīn was – as Riḍā wrote – "among the *Ustādh*'s closest disciples", and because most of the ideas expressed were similar to, and in part influenced by, ʿAbduh's ideas – some of which were published by Riḍā in *al-Manār*. Moreover, Riḍā's discussion of the book was not all positive, as he disagreed with some of the arguments and conclusions of Amīn, particularly in relation to the most controversial part on *ḥijāb*/seclusion. Finally, Riḍā also published an initially positive review of Amīn's later book *al-Mar'a al-Jadīda*, which is undisputedly Amīn's.

ʿImāra's "conclusive evidence" that the four chapters were – in content and format – ʿAbduh's is, "in light of the well-known intellectual and cultural features and nature of interests characterising the two men",[714] that "in *Taḥrīr al-Mar'a*, particularly in the chapters dealing with the view of Shariʿa and religion, we find a number of *fiqhī* views and discussions which cannot be analysed nor concluded by an author like Qāsim Amīn".[715] ʿImāra notes that:

> The abundance of references to fundamental texts of Islamic jurisprudence, whose names and authors we do not believe Qāsim Amīn's religious knowledge would have enabled him to know, let alone study them, quote from them, with reference to the title, volume

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[712] ʿImāra refers to Aḥmad Shafīq Pasha's report that Qāsim Amīn had proposed to write the book jointly with him, and to Dorriyya Shafīq's statement that "in 1897, *al-Ustādh al-Imām*, Saʿd Zaghloul, Luṭfī al-Sayyid and Qāsim Amīn met in Geneva, and the latter began reading to the imam some chapters from his book *Taḥrīr al-Mar'a* and he agreed with their content. It has even be said that some parts of the book seem to be closer to the style of sheikh Muḥammad ʿAbduh." *Aʿmāl*, vol. 1, p. 258.

[713] ibid., p. 260.

[714] ibid., p. 263.

[715] ibid.

and page number… If we move to the book of *al-Mar'a al-Jadīda* which is undisputedly Qāsim Amīn's, we do not find these Islamic juristic questions, but instead of the names of Muslim thinkers and models of Arab Muslim women, we find the names and titles of western authors and books… names which reflect Qāsim Amīn's culture and interests, and distinguishes them from *al-ustādh al-imām*'s.[716]

While it is true that *Taḥrīr al-Mar'a*, particularly the chapters in question, are full of juristic references, that does not constitute sufficient evidence for the claim that they were written by ʿAbduh. This is because it is a known fact that Amīn was a close disciple of ʿAbduh's and hence, even if it were true that ʿAbduh was the source of the arguments or references, it is conceivable that they were provided at Amīn's request during their private meetings, in addition to public lectures of *tafsīr* etc. which would have influenced Amīn. The fact that *al-Mar'a al-Jadīda* is different from *Taḥrīr al-Mar'a* – which is an established fact – does not indicate that they were written by two different authors, just as the fact that there is considerable difference between Amīn's earlier book *Les Egyptiens* and the later *Taḥrīr al-Mar'a* merely points to the evolution of Amīn's thought as a result of internal and external developments.

I will now focus on the chapter on polygyny, attributed by ʿImāra to ʿAbduh, and discuss the similarities, and many differences between the ideas and views expressed in this chapter, and those expressed on the same topic by ʿAbduh in the three texts discussed above.

The chapter begins with the same insistence on the fact that polygyny is not exclusive to Muslims, being rather "an ancient custom, known before the emergence of Islam, and widespread in all regions, when women were considered a unique species between humans and animals". However, the clear difference is that when ʿAbduh makes the same point, he makes no judgement on polygyny per se, whereas Qāsim Amīn's view is that "it is one of those customs which historical analysis has shown to follow women's position in society. Thus it is found to be widespread when the status of women is low, and it is rare or nonexistent where their status is elevated – unless perhaps where polygyny is due to specific reasons for a specific individual or individuals, not going beyond them." Moreover, Amīn links the practice of polygyny not only to a historical phase where women's status is low, but even in the same society, he links the practice or abstention from polygyny to each man's elevation of mind and view of women:

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716 ibid., p. 265-6.

Even in nations that are familiar with polygyny, one finds that a man who reaches perfection of mind such that he values his wife within his family and knows, on the basis of her rights, the status she deserves by virtue of religion and nature, such a man tends to restrict himself to one wife.[717]

Amīn repeats the same 'common wisdom' that the 'problem' of polygyny had recently declined, ignoring the statistical indication that it had always been low, judging that "this custom has reduced in certain classes in our country, compared to how it was twenty or thirty years ago", attributing this reduction to "the elevation of men's minds and the refinement of their spirit".[718]

While ʿAbduh focuses on the practical problems caused by polygyny, while allowing room for the possibility – though rare – both historically and at the time he was writing, of achieving justice between multiple wives, Amīn focuses on polygyny itself, proclaiming that

It is evident that in polygyny there is great contempt of women, for one cannot find a woman who is pleased to share her husband with another woman, just as one cannot find a man who accepts that anyone shares his wife's love.[719]

While ʿAbduh's own evaluation agrees with Amīn's assertion that, in general, "polygyny is a cause for strife between women and their co-wives, and their husbands, and a cause of misery for the family and relatives", the rare cases where men are fair to their multiple wives are praiseworthy in ʿAbduh's view. In, contrast Amīn stresses that even then, "that rare satisfaction is due to the fact the women see themselves as possessions of men, who have the right to keep themselves exclusive to them or take another as they wish... Just as men in our country regarded themselves as possessions of rulers not so long ago".

Polygyny appears to be primarily not a contravention of the religious obligation of justice and a cause of family and social instability as it is for ʿAbduh, but – for Amīn – an indication of a degrading view of women, and lack of education and refinement of men, for "a refined man who knows what the Shariʿa and justice require of him would not bear the burden of having more than one wife". We have discussed in a previous chapter how nationalist writings on women, by

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[717] *Aʿmāl*, vol. 2, p. 82.
[718] ibid.
[719] ibid., p. 83.

Amīn and others, were reflections of the aspirations and self-image of the "new man", expressed in criticism of the state of women.

In Amīn's discussion of polygyny, there is also reference to women's perspective, which, although touched upon by ʿAbduh, is not considered an essential and necessary problem. In contrast Amīn vividly describes the emotional effect of polygyny:

> There is in women's nature a tendency to dominate over a man's heart. If a woman saw, by the man's side, another woman who has the same tendency in her nature, who would use all means to fulfil that tendency, she would be haunted by anxiety and worry, deserted by tranquility, and her life becomes a painful agony. That state is not hidden from a refined man, so how can he be pleased with such painful punishment?

While ʿAbduh's focus on justice as a condition for polygyny leads him to include the usual concession mentioned in classical *tafsīr* and *fiqh*, excluding feelings from the obligation of justice, Amīn sees no reassurance in that, holding that instead, "women's worry and anxiety are exacerbated by the jurists' affirmation that the husband's justice among his wives does not require equal love, but they only required fairness in maintenance and the like". ʿAbduh's focus remains restricted to "maintenance and the like".

Amīn includes the same concern about the effects of polygyny on children and on social stability, as "children by different mothers grow up within storms of disputes and hostility", contrasting that to "the spectacle of a united family, where children live in their parents' embrace, united by true love... linked through a sacred pledge like the organs of a single body".

While ʿAbduh considers it unfair to make the ban on polygyny general and absolute, passing no judgement on a man who seeks a second wife out of 'necessity', Amīn recognises the possibility of such cases, but still emphasises the moral superiority of monogamy even in those cases:

> There is no excuse for a man to marry more than one, unless perhaps in the case of absolute necessity, such as his first wife suffering from a chronic disease preventing her from fulfilling her marital duties… I say that, although I do not deem it preferable for a man to marry another wife even in such a case or similar cases, for it is no fault of hers, and valour requires him to bear his wife's misfortunes, just as he considers it her duty to bear what could befall him…There is another case which could justify a man's marrying a second wife, while keeping the first if she accepts it or release her if she so prefers, that

is in the case of her being sterile and unable to produce children, for many men cannot bear the ending of progeny in their family.[720]

The practical conclusion is nevertheless identical to ʿAbduh's, that is the possibility of legally restricting polygyny based on its practical consequences. Amīn sees the two verses on polygyny to imply – at the most – permissibility. Then he continues:

> This *ḥalāl*, like all other *ḥalāl* matters, can be affected by other legal rulings such as prohibition, discouragement (*karāha*), etc. depending on the consequent harms and benefits. If there is preponderance of injustice to wives, as is seen in our times, or polygyny resulted in corruption of families, contravention of Shariʿa obligations which should be fulfilled, and enmity between members of the same family, and such phenomena being widespread to the extent of almost being the general rule, it is permissible for the ruler, in consideration of the public interest, to ban polygyny, with or without conditions, as he sees fit for the nation's interest.[721]

The above is the view most similar to ʿAbduh's. It is however, not sufficient for Amīn, as it does not stress the superiority of monogamy, on the basis of its fulfilment of the emotional aspects of marriage, which – as expressed in the chapter on marriage from the same book – are neglected in juristic discussions of marriage. Amīn thus further adds:

> It would be better for men of this age to abandon this custom themselves, and I do not believe that anyone in the future would regret abandoning it. For the enjoyment of women, although it would reduce from the physical point of view, it would increase from the emotional/moral point of view, which should be the aim of anyone seeking marriage.[722]

Hence, although the conclusion that polygyny should be restricted may be the same for the two authors, there are clear differences, between their evaluation of the practice in itself and the arguments they use. While ʿAbduh, as a jurist, focuses on the practical obligations in marriage, and the practical consequences of polygyny, Amīn focuses on the view of women implied by such a practice, as well as its reflection of the nature of men and of marriage. ʿAbduh's criticism of the practice stops at its practical harmful consequences, attributing them to non-adherence to the Qur'anic obligation of justice and to lack of education, while insisting on

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[720] ibid., p. 85.
[721] ibid., p. 86.
[722] ibid.

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exonerating polygyny and polygynous men who do adhere to the limit of justice. Amīn's criticism goes further, passing judgment on the practice of polygyny and those who practice it. ʿAbduh's view is dictated by the model of the *sunna* and the *salaf*, while Amīn's is linked to his view of the "refined man" and the "ideal marriage". It is not clear how that sits with his insistence in his chapter on marriage, that "we only have to listen to the voice of our Shariʿa, and follow the rules of the noble Qur'an and the authentic *Sunna* of the prophet peace be upon him and the actions of his companions, in order to achieve happiness in marriage".

Thus, my conclusion, in contrast to ʿImāra, is that there is no compelling evidence for the claim that *Taḥrīr al-Mar'a* was written by ʿAbduh, and that a comparison of the writings of the two authors on the issue of polygyny reveals similarities, but also clear differences. There is clearly an influence of ʿAbduh on Amīn, but each man remains distinct in their arguments and views, although their practical conclusions may converge.

ʿImāra concludes by highlighting and giving examples of the persisting confusion of the writings of ʿAbduh's with others such as Afghānī or Riḍā, that "this is the first time in the history of this school of thought of great influence in the east's intellectual nature and composition, that a conclusive answer is given to the questions surrounding the attribution of texts produced by Jamāl al-Dīn al-Afghānī and Muḥammad ʿAbduh, then by Rashīd Riḍā in relation to the Qur'anic *tafsīr*, as well as Saʿd Zaghloul and ʿAbdallāh al-Nadīm… giving each his original features… and ending the confusion and mixing in which many researchers have fallen over a period of almost a century."[723]

However, as pointed out in previous chapters dealing with *Tafsīr al-Manār*, and as discussed above regarding ʿImāra's arguments in relation to *Taḥrīr al-Mar'a*, the confusion persists, and more needs to be done to distinguish ʿAbduh's writings from those of others – while accepting that some confusion will inevitably never be resolved.

Nevertheless, ʿAbduh's influence on Amīn is undeniable, and this influence is perhaps what ʿImāra wished to highlight, as his motivation in arguing that the book was the product of ʿAbduh's thought appears to be the book's fame as a pioneer in the "liberation of women":

> While the advanced status reached by Egyptian women today could be attributed to Qāsim Amīn, we hope that the clarification of the relationship between *al-Ustādh al-*

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[723] ibid., vol. 1, p. 270.

Imām and the book of *Taḥrīr al-Mar'a* could be a beginning towards turning our attention to the contribution of this man to this field.[724]

That indication is indeed a significant one and one to be kept in mind, particularly since some authors emphasise a rupture between "religious" figures such as ʿAbduh and "secular" thinkers like Amīn, neglecting the common backgrounds, links, ideas and struggles.

6.6 Polygyny in Twentieth-Century Egyptian Legal Reform

Calls for the restriction of polygyny became recurrent in early twentieth-century Egypt, but any attempt at official legal reform to that end – many at the hands of ʿAbduh's disciples – was often faced with strong opposition. In 1911, Malak Ḥifnī Nāṣif put forward a list of demands to the Egyptian Congress, including the restriction of polygyny, but it was faced with great opposition and the motion was suppressed. In 1920, the first personal status law included the opinions of other *madhāhib*, allowing for stronger enforcement of *nafaqa* and wider grounds for divorce. However, a proposal to restrict a man's right to marry a second wife on the basis of his inability to fulfil his duty of maintenance was rejected.[725]

In 1926, a government-appointed committee tried to introduce further reforms that aimed at restricting polygamy by proposing the inclusion of stipulations in marriage contracts and granting a judge the power to refuse registering a marriage to a second wife if the man was deemed unable to provide maintenance. However, the proposals were rejected by the King in 1927, presumably as a result of widespread opposition.[726] In 1929, PSL No. 25 was passed, including further reforms, but polygyny was left unrestricted. Women's groups and writers continued to call for the restriction of polygyny, often framing their calls within a discourse of modernity and nationalism, presenting monogamy as a necessary characteristic of the new modern Egypt, and a pathway to progress and independence. However, it can be argued that campaigns against polygyny, such as Doria Shafiq's call for the complete abolition of polygyny

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[724] ibid., p. 267.

[725] *Mudhakkira bi'l-Radd ʿalā Mashrūʿ al-Qānūn al-Khāṣ bi baʿḍ Aḥkām al-Ahwāl al-Shakhṣiyya, wa maʿahā mawād al-mashrūʿ al-mushār ilayh.*, p. 63.

[726] Margot Badran, *Feminists, Islam, & Nation: Gender and the Making of Modern Egypt*, 1995, p. 130.

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may have resulted in greater defensiveness of a declining practice. Even Shaykh Muḥammad Muṣṭafā al-Marāghī, who had headed the 1926 commission that had proposed the restriction of polygyny, later wrote in defence of the practice in the Egyptian press in 1935. Such differences and contradictions demonstrate how discussions of marriage often provide "convincing evidence of the cultural and political anxieties that often underwrote experiments in anticolonial nationalism".[727]

Legal reform was primarily led by the secular nationalist juristic elite whose work was guided by two strategies they consistently adopted. The first is what Lama Abu-Odeh calls "difference-splitting" between the religious ʿulamāʾ class and the feminist and liberal trends, always attempting to satisfy both camps and maintain their support of the legal order, the course of legal reform and the authority of the juristic elite.[728] The second is the persistence of the nationalist paternalist vision where all subjects were invested in the nationalist project and nation-building, but where men maintained a privileged position as protectors of the nation and of the family, entailing privileges rather than absolute equality. These two strategies explain the failure of the juristic elite to fully implement clear juristic restrictions of polygyny as proposed by ʿAbduh a century earlier.

Efforts to restrict polygyny through legal reform in Egypt continue, achieving some success, in 1985, through the requirement that the husband must declare his marital status upon the registration of any marriage and the notification of any current wives. However the time it took to achieve such partial success as well as the continued opposition to any radical reform and the defensiveness displayed in discussions of the topic (which increase in proportion to perceived attacks on the practice) may explain the cautiousness with which ʿAbduh had approached the subject over a century earlier and his preference to acknowledge the practice while criticising its modern negative consequences, rather than attacking it and rejecting any historical legitimacy for it.

Even when partial restrictions of polygyny were adopted, such as notification of the first and second wives, or allowing the first wife to sue for divorce on the basis of harm (which must

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[727] Hanan Kholoussy, "The Nationalisation of Marriage in Monarchical Egypt", in *Re-Envisioning Egypt 1919-1952*, p. 340.

[728] Lama Abu-Odeh, "Egyptian Feminism: Trapped in the Identity Debate", *Yale Journal of Law and Feminism* 16, 145-191 (2004).

be proven, rather than automatically assumed to result from polygyny as had been stipulated in the later-abrogated 1979 law),[729] when they were contested by men on the basis of denying men their religiously-mandated right to polygyny, legislators were careful to reject such an accusation by insisting the restrictions do not deny the man's right to polygyny, but only regulate it to ensure protection of women.[730] This demonstrates the shortcomings of legal reform within the framework of accepting and maintaining marital inequality and male privilege. It seems that with the widening of women's access to divorce and restriction of male repudiation, "the threat of repudiation has lost its value as a central tenet of patriarchal authority".[731] As a result, polygyny acquired an even greater position as a symbolic indication of male privilege and a threatening tool to maintain the husband's diminishing authority, which men are unwilling to concede.

In contrast, polygyny was banned in Tunisia in 1956, following similar arguments to those used by ʿAbduh – the impossible (or extremely rare) fulfillment of the condition of justice in the case of marriage to more than one wife. Bourguiba insisted that he was not contravening Islamic principles, and the prohibition was presented within an Islamic jurisprudential framework. The success of the Tunisian polygyny ban in contrast to the failure of successive attempts in Egypt to ban or severely restrict polygyny can be attributed to two factors. The first is the nature of family law reform in Egypt, which has generally been restricted to opinions of known *madhāhib* and scholars, with very rare instances of use of original *ijtihād*. The second is the "difference-splitting" strategy characterising reform efforts in Egypt as described above, with the constant need to satisfy diverse influential constituencies. In contrast, the Tunisiann ban took place in a context where Bouguiba – empowered by the newly-acquired national independence and the successful marginalisation of rivals – had no such constraints, and moreover, used the slogan of "women's emancipation" as a further tool to bolster his legitimacy.

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[729] Lynn Welchman, 2007, p. 82-3.

[730] See Dawoud El-Alami, "Law No. 100 of 1985 Amending Certain Provisions of Egypt's Personal Status Laws", in *Islamic Law and Society*, 1, p. 119.

[731] Rapoport, p. 114.

CHAPTER 7

DIVORCE

Just as the restriction of polygyny was a frequent theme in turn of the century writings on Egypt – by European visitors or colonisers, religious and legal reformers and women writers – so was the issue of divorce. However, whereas the discussion of polygyny – the extent of which was often exaggerated – had the clear end-goal of restriction, that of divorce was more complex. The common perception (which still persists, and the veracity of which will be discussed below) was that divorce was very frequent and on the rise, but discussions centred around the twin concerns of the ease of divorce for men and its very restricted access for women. These two concerns appeared differently in the various contexts indicated above – groups that wrote about divorce had different approaches to those two issues. I will briefly discuss those differences and how discussions of divorce fit within the various religious, feminist, nationalist and colonialist discourses of the time.

7.1 Divorce in Turn-of-the-century Egypt: Perceptions and Realities

7.1.1 Statistics & Trends

A discussion of perceptions of divorce at the end of the nineteenth century in Egypt should begin by asking about its level of prevalence and whether it was rising or declining. Although answering such questions fully and definitively is not an easy – or possible – task given the lack of comprehensive data, there are a number of partial studies that have examined this question. Judith Tucker, who has extensively researched *Women in Nineteenth-Century Egypt*, holds that "[I]f polygamy remained rare throughout the nineteenth century, divorce was

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commonplace".[732] While, as frequently mentioned, men had a theoretically unrestricted right to unilateral repudiation, she maintains that this "male right to divorce his wife without cause or court process was limited, in practice, by economic relations within the family".[733] While women's access to divorce was much more restricted, "the *khul* form of divorce was frequently used by women"[734] where they bargained their financial and other rights in return for divorce.

While repudiation is often seen as arbitrary and harmful to women, and – as we will discuss later – the reform discourse on divorce aimed at restricting it, it was in fact seen as preferable to *khul* by many women. As Tucker explains, "recognising, on balance, the material advantages of *ṭalāq*, many women who wanted a divorce preferred that their husbands repudiate them".[735]

There are no accurate statistics for divorce rates in the period concerned. However, the Cairo census of 1848 represents a very important source for understanding demographic trends. On the basis of this census, Bishara Doumani concludes that divorce was widespread and Cairene Muslims "seem to have made a frequent use of it at this time".[736] This is supported by Qāsim Amīn's own estimate, based on court records, that ¾ of marriages in Cairo ended in divorce – although the national figure is lower, and estimated at ¼.[737] Cuno, who studied the pattern of divorce rates in Egypt during the twentieth century, includes the following crude rates of divorce (measured as the number of divorces per 1,000 population): Year 1898: marriage rate 12.1, divorce 3.30; 1903: marriage 16.6, divorce 5.00; 1935: marriage 13.5, divorce 3.60.[738] He comments that "a crude rate of 3.3 in 1898 based on Amīn's data is plausible, and a rate of 5.0 in

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[732] Tucker, *Women in Nineteenth-Century Egypt*, p. 53.

[733] ibid., p. 54.

[734] ibid.

[735] ibid., p. 55.

[736] Philippe Fargues, "Family and Household in Mid-Nineteenth-Century Cairo", p. 41.

[737] *Aʿmāl*, vol. 2, p. 122.

[738] Kenneth Cuno notes that "Civil registration was not required in historical practice, but the laws of 1880 and 1897 enforced it through procedural laws whereby the courts were instructed not to hear a case involving claims related to marriages and divorces that had not been registered" ("Divorce and the Fate of the Family in Modern Egypt", *Family in the Middle East: Ideational Change in Egypt, Iran, and Tunisia*, Kathryn Yount and Hoda Rashad, eds., p. 198). He also notes that the rates include revocable divorces and re-marriages. "The effect is to raise the annual totals, and hence the crude rates, by some uncertain factor. In those years for which comparable data are available, revocable divorces appear to have accounted for between one-fifth and one-quarter of the aggregate divorce rate" (ibid., p. 200).

1903 based on Cromer's report appears high but not impossible, in light of combined (including revocable) divorce rates of anywhere from 3.2 to 4.7 during the late 1930s and 1940s".[739]

Thus, the data and estimates indicate that divorce was frequent. Was that a new phenomenon, associated with the advent of modernity? Or was it the continuation of previous trends? Again, no comprehensive statistics are available, but partial studies for previous eras provide interesting indications. Rapoport who studied divorce in Mamluk Cairo concluded that "the incidence of divorce in Mamluk society was remarkably high". Based on two contemporary sources, from Damascus and Cairo, Rapoport concludes a "pattern of repeated divorces and remarriages by Mamluk women". In the case of Mamluk Cairo, "at least a third of all the women mentioned by al-Sakhāwī married more than once, with many marrying three times or more. The reason for the high rates of remarriage was mainly the frequency of divorce; according to al-Sakhāwī's records, three out of ten marriages in fifteenth-century Cairo ended in divorce".[740] Although re-marriage was common, "Mamluk cities always had a large population of widowed and divorced women, who did not remarry but lived on wages they received for their work as spinners and seamstresses".[741]

As for the mechanism of those divorces, and whether they were male- or female-initiated, Rapoport noted that "the majority of divorces in Mamluk society were neither unilateral repudiations nor judicial dissolutions, but consensual separations (*khul*) in which wives gave up their rights to some, or all, of their financial rights in return for a divorce".[742] Although men still held the unilateral right of repudiation, "women appear to have initiated divorces as often as men".[743]

Hence, historical research into divorce, although not providing comprehensive or continuous data, paints a picture where divorce was far from rare, where it was initiated by wives as well as by husbands, where *khul* was the most common course undertaken by the divorcing couple, although repudiation was theoretically men's unrestricted right – in practice restricted by the consequent financial obligations and for that reason sometimes preferred by women. Re-

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[739] ibid., p. 201.
[740] Rapoport, p. 5.
[741] ibid., p. 32.
[742] ibid., p. 69.
[743] ibid., p. 88. That women had equal access to divorce, however, does not imply that they were affected by divorce in the same way as men.

marriage seems to have also been common, although there were also significant numbers of divorced women living independently.

7.1.2 Modern Concerns about Divorce

While divorce appears to have been prevalent in Egyptian society based on evidence from Mamluk and Ottoman eras, the turn-of-the-century discourse on divorce reveals increasing concern about divorce as a social problem: focusing on unrestricted unilateral divorce misused by men, the financial, social and psychological plight of divorced women, and the plight of women trapped in undesirable marriages with no recourse to divorce. This dichotomy between reality and perception could be attributed to two possible explanations, one objective and the other ideational.

As discussed in previous chapters, the reformist and nationalist discourses adopted the questions of women and the family as essential fields of reform central to national progress and liberation. A strong stable family came to be seen as the essential building block for a strong and developed nation. Thus, ignoring the principle that, as noted by Doumani's analysis of the 1848 Cairo Census, "the family is as stable an institution as it is ephemeral as a grouping",[744] the breakdown of a marriage through divorce came to be seen as indicative – or a potential cause – of the breakdown of the institution of family and the breakdown of society as a result. Cuno believes that "Qāsim Amīn was the first Egyptian writer to argue that the prevalence of divorce indicated that something was wrong with family life".[745] This can be explained by the fact that "where the nuclear-family household and companionate marriage come to be regarded as normative, a relatively high divorce rate is seen as a social problem".[746]

The idea that divorce is high, rising, and a problem can be partly understood as a reflection of western perceptions. Just as polygyny was a focus of western criticisms, while it was rare and decreasing, because it was 'high' relative to its existence in Europe, similarly, divorce in nineteenth-century Egypt was also high – relative to Europe. As Cuno notes, "the contrast with nineteenth-century Europe could not be more stark. In the Catholic countries

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[744] Fargues, "Family and Household in Mid-Nineteenth-Century Cairo", p. 45.
[745] Cuno, "Divorce and the Fate of the Family in Modern Egypt", p. 208.
[746] ibid, p. 209.

marriages were indissoluble, and most Protestant countries permitted divorce only on limited grounds".[747]

Concerns about divorce fit within the Euro-centric model, where divorce had been very restricted, followed by constantly rising rates of divorce and decreasing rates of marriage, seen as consequences of modernity and increasing women's rights. As Rapoport notes, "the outpouring of scholarly and popular works dealing with the rise of divorce in the West all but disregards the historical examples of past societies in which divorce rates have been consistently high".[748] Such models do not fit the pattern of divorce in Egypt. In the first half of the twentieth century, Egypt was one of several societies having what William Goode labelled a "stable high divorce-rate system". Goode described these systems as follows:

> Although the instability of the individual marriage was very high, the system itself could be relatively stable because – unlike our various modern high-divorce systems in the West – by following tradition and custom, they did take care of the problems created by divorce, with rules for custody, child care, support, and remarriage of the mother, and so on.[749]

To western observers – as well as nationalists and reformists – high divorce rates were a noticeable paradox, for another reason, in addition to comparisons with the situation in Europe. The paradox also existed because it did not conform with their own model of Muslim patriarchy. As Rapoport explains:

> Though inscribed in Islamic law as a patriarchal privilege, divorce undermines the patriarchal social order by destabilising households, increasing the number of female-headed households and debasing the ideal of marriage. If the family was indeed the central building block of pre-modern Muslim society, and an institution that was to be protected from the penetrating eyes of the public gaze, then we would expect the incidence of divorce to be as low as possible.[750]

To nationalist writers, although the idea that marriages were more durable in the past was belied by the data, "the nostalgic constructions of the past legitimate the ideal "modern family" as authentic and reinforce disapproval of divorce".[751] Ignoring data and historical practice, writings multiplied (and continue a century later) on the alarming breakdown of the family and

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[747] ibid., p. 211.
[748] Rapoport, p. 2.
[749] William Goode, *World Changes in Divorce Patterns*. Yale University Press, 1993., p. 16-17.
[750] Rapoport, p. 4.
[751] Cuno, "Divorce and the Fate of the Family in Modern Egypt", p. 210.

its possible eventual extinction as a result of perceived increasing irresponsible resorting to divorce, compared with a mythical past where marriages were more lasting.

Although the perception that divorce was high, rising and problematic can be understood in the context of a developing nationalist discourse promoting the ideal of strong stable families, could there have been some real changes that were taking place, legally, economically and socially, that could have made divorces more problematic? A number of possible factors can be briefly explored.

Studies of marriage and divorce in Mamluk and Ottoman eras indicate that access to a variety of *fiqh* opinions and structures (*muftīs*, *qāḍīs* of different *madhāhib*) provided some flexibility which was used by women to facilitate their access to divorce – without necessarily losing their financial rights. It is possible that the standardisation and codification of *fiqh* in the nineteenth century may have limited women's options, particularly with the adoption of the Hanafi *madhhab* as the official state *madhhab*, which has very restricted grounds for divorce. This is supported by a number of studies on divorce legal reform (e.g. Sonbol (1995), 485-496; Shaham (1997), 101).[752]

As analysed by scholars such as Judith Tucker and Afaf Marsot, Muḥammad ʿAlī's policies – military conscription, forced labour, centralisation of the textile industry, increased male waged labour – placed great strain on peasant families. This may have played a role in a rise in divorce as well as reducing women's ability to negotiate divorce, to live independently after divorce and their chances of re-marriage, which would have all contributed to a problematisation of divorce.[753] As noted by Rapoport, "high rates of divorce swell the ranks of women who are not married at any given time, numbers which were already high under the existing mortality rates. This demographic trend can only be sustained when women can find work and space of their own".[754]

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[752] For instance, while ʿAbduh repeatedly lamented the situation of abandoned wives (a problem which could have been related to the socio-economic consequences of Muhammad ʿAli's policies), Rapoport described how Mamluk "wives could appeal to a Hanbali or Maliki *qāḍī* for a judicial divorce on the grounds of abandonment", pp. 76-77.

[753] See for instance "Decline of the Family Economy" in *The Modern Middle East*. Ed. Albert Hourani et al. (Berkeley, California: University of California Press, 1993).

[754] Rapoport, 44-45. He also indicated the decline of another institution which had supported women wishing to live independently: "The primary function of these *ribāṭs* was to provide shelter for widows, divorcees and abandoned women", p. 40. "The fifteenth century witnessed a decrease in the number of female religious houses. The rapid inflation that accompanied the collapse of the monetary system had a detrimental influence on religious endowments in general, since salaries were fixed by preexisting documents", p. 43.

The problematised perception of divorce in Europe was not solely due to the religious ban on divorce, but the absence of a system regulating post-divorce consequences. Goode had noted that in contrast, in the Islamic family model, "they did take care of the problems created by divorce, with rules for custody, child care, support, and remarriage of the mother, and so on".[755] Nineteenth-century socio-economic changes may have affected this system, contributing to the problematisation of divorce. This could be reflected in concerns about refusal or inability to provide divorced wives with post-divorce maintenance, a concern expressed many times by ʿAbduh.

While the above changes applied particularly to the majority of Egyptian families – the peasant or poor urban classes – upper-class women also found their options reduced as a result of modernisation, in a different way. Studies focusing on this class, such as Mary-Ann Fay's study of Mamluk women, argued that upper-class women had their power, status and choices reduced by modernisation. This affected the "patriarchal bargain" and hence male privileges, including easy divorce, became more problematic for women of this class. This may be reflected in women's discourse, expressed in the women's press and in the demands of the Egyptian Feminist Union which criticised frivolous male divorce, more so than restricted access to divorce for women.[756]

The perception of divorce in turn-of-the-century Egypt as rising, and a serious problem to be addressed, is interesting in view of the statistics and studies that reveal that divorce had always been traditionally high, and possibly higher than contemporary divorce rates. This perception appears to be a product of a combination of ideational changes in thinking about 'the family' and real changes affecting access to divorce and post-divorce consequences. In fact, these factors are not separate but rather inter-linked. The above possible explanations deserve further exploration to produce a fuller picture of the evolution of divorce patterns in Egypt, which should prove to be useful not only for understanding divorce and the discourse on divorce in turn-of-the-century Egypt, but also current debates on divorce in Egypt (and the rest of the Arab and Muslim worlds) which are characterised by strikingly similar concerns.

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[755] Goode, p. 16-17.

[756] "The EFU demands of 1923 included... regulating *ṭalāq* by permitting it only in serious cases and in the presence of a *qāḍī* who would oblige arbitration", Mary Ann Fay, "International Feminism and the Women's Movement in Egypt, 1904-1923", *Family in the Middle East*, Yount & Rashad, eds., p. 50,

7.2 ʿAbduh's writings on divorce

7.2.1 Concern about Family Breakdown & Consequences for the Nation

ʿAbduh did not write any articles specifically on divorce as he had on polygyny, which seems to have pre-occupied him since his early days of writing. However, his early writings on marriage reveal a concern about 'family breakdown' due to deteriorating morality and lack of Islamic education and real understanding of marriage. Yet, it seems to be not the rate of divorce itself that was the main cause of concern for ʿAbduh, but rather the way spouses dealt with each other before and after divorce. Perhaps this supports the suggestion, proposed above, that concern about divorce was partly related to socio-economic changes that affected the set of regulations which traditionally made divorce more accessible and sustainable.

ʿAbduh appears to have been alarmed by what he saw as signs of the breakdown of marital trust, leading to the weakening of family ties and increase in family conflict. Seeing marriage as a covenant of trust and cooperation, and one entailing rights and obligations, ʿAbduh saw family problems as a result of the non-fulfilment of marital rights and obligations – and as indicative of the decline in trust and morality in wider society:

> Look at the state of a nation that has not respected fulfilment of pledges nor cared about commitment to contracts; you would see how God's punishment has befallen it – humiliation losing guidance, and loss of trust even amongst families and offspring. They live as individuals, rather than nations: moving images and devouring beasts, each awaiting an attack from the other if it is within his power. Thus, each is obliged, whenever entering into a contract with another from one's nation, to include as many guarantees as possible and protect oneself against betrayal as much as possible. There is no cooperation, no solidarity, no help or support. Rather they replaced those qualities with jealousy and hatred, enmity and conflict... I have counted the number of cases of conflicts in the court of Banha in one year and found 75 percent of cases to have been amongst relatives, and the rest with others. Had people been loyal, they would have been spared all this affliction.[757]

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[757] *Aʿmāl*, vol. 4, p. 430.

Here ʿAbduh displays the nostalgia characteristic of nationalist writings on the family, where comparisons are made in relation to a mythical past where family relations were characterised by trust and cooperation. This ignores the fact that historically, as court records show, it has always been the case that most court cases were between relatives. It also ignores the fact that detailed marriage contracts were common historically, in which those able to negotiate favourable terms ensured they were documented and legally enforceable. Indeed it can be argued that this was a common feature of the Islamic understanding of marriage as a contract whose terms are partially open to negotiation, and the Islamic understanding of contracts as something encouraged in order to avoid future disputes (e.g. the longest verse in the Qur'an, 2:282, dealing with the documenting of debts).

ʿAbduh's alarm at this apparent breakdown of the social function of marriage and the disintegration of family ties is clear in the strong terms he uses in his criticism. The "weakening and breakdown of the marital bond in our times" has, according to ʿAbduh "reached an unprecedented level unseen in any previous time in Islamic history" as a result of "the spouses' corrupted nature and breaking God's limits from the two sides".[758]

7.2.2 Facilitating Divorce and Ensuring Financial Rights

While making such general sweeping statements about the spread of divorce and weakening of family bonds, ʿAbduh wrote in detail about the Islamic rulings on divorce and post-divorce obligations, emphasising the wisdom behind them and presenting the ideal form of divorce as one that does not destroy the ties of kinship and affection between the spouses and their families and one where financial obligations are carefully met, avoiding any injustice or continuous hostility. Indeed, most of ʿAbduh's writings dealing with divorce focused on facilitating divorce for women and protecting their post-divorce financial rights, rather than the restriction of divorce. The passages expressing alarm at divorce indeed seem rather contradictory and do not fit into the general view of divorce, throughout his *tafsīr* and *fatāwā*. This may suggest that the alarmist passages were influenced by the family-preoccupied nationalist discourse of the time. In such passages, one finds ʿAbduh closer to male nationalist writers, while

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[758] ibid., vol. 4, p.631.

in other passages dealing with legal reforms to increase women's access to divorce and improve their post-divorce situation, one finds a discourse that is closer to a jurist's discourse, and indeed closer to feminist writings.

The main contribution by ʿAbduh to the discourse on divorce deals with criticising the legal processes available to women seeking divorce and seeking their post-divorce rights. ʿAbduh wrote at length regarding the plight of the wives of imprisoned and disappeared husbands, and husbands unable or unwilling to provide maintenance.[759] Supporting the suggestion mentioned above about one of the factors contributing to the changing effects of divorce, ʿAbduh criticised legal reforms that made divorce less accessible and maintenance less enforceable for women. While reviewing conditions in Egyptian Shariʿa courts at the end of the nineteenth century, ʿAbduh proposed reforms that would make maintenance more enforceable. However, with the multiplication of such cases, and the clear inability of the courts to resolve them, ʿAbduh concluded that better access to divorce was needed for women in such situations. He put forward a number of proposals to facilitate divorce for wives of imprisoned, disappeared husbands and those unable/unwilling to provide marital financial maintenance, and divorce based on harm through adoption of Maliki rulings. This seems to have been in response to pressure from women, as ʿAbduh reports in his answer to the "question about how judges can rule on the cases of prisoners' wives whose husbands have not provided maintenance nor divorced them", that there had been "complaints first reported by the inspector of prisons to the interior ministry, later referred to the *ḥaqqāniyya*". In view of this growing problem and the associated social consequences, as official *muftī,* ʿAbduh tried to clarify "the way of Islamically ruling on the matter to resolve the cases of these women".[760] He decided to address the following in one *fatwā* (See Appendix A).

ʿAbduh had shown how laws in force at the time failed to deal with the above problems, as discussed in detail in the chapter on Duties & Obligations in Marriage. New laws were needed, and ʿAbduh proposed several changes to laws dealing with reform. As discussed in a previous chapter, ʿAbduh justified his proposals on the basis of necessity – *ḍarūra* – rather than

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[759] Although "maintenance" in English usually denotes post-divorce payments, I will use throughout this chapter to refer to marital financial maintenance. In the case of divorce, I will explicitly refer to post-divorce maintenance.

[760] Answer written on 5 Rabiʿ II 1318, [1 August 1900] in vol. 2 of Dār al-iftā' 178, p. 76-79. Approved on 6 Rabi II by Maliki *muftī* Sheikh al-Azhar Salīm al-Bishrī.

ijtihād, and based them on the Maliki *madhhab*, getting the approval of the official Maliki *muftī* of Egypt. He presented the proposed reforms as being necessary in order to save women from "perishing" and falling into "indecency" and to protect society from any possible consequences; "any other attempted solution other than divorce is imaginary and cannot be realised".

7.2.3 Post-Divorce Compensation: *Mutʿa*

Following the same logic of focusing on financial responsibilities and material needs, ʿAbduh wrote – in addition to the legally established rights to *ʿidda* and child maintenance – about the right to *mutʿa*, or post-divorce compensation. In the *tafsīr*, he wrote at length about this controversial point, out of a belief in its material as well as psychological importance. Traditionally, there has not been clear agreement on which divorced women were eligible for *mutʿa*, whether this *mutʿa* was obligatory or mandatory, and the amount of that *mutʿa*. *Mutʿa* is referred to in 2 verses:

> There is no blame on you if you divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing. [761]

> For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous. [762]

Commenting on verse 2:236, Abduh wrote that "*mutʿa* varies according to the man's wealth and situation. That is why it was not specified but was left for the individual to determine as he is more familiar with his situation". However ʿAbduh went on to emphasise that the husband should determine the amount "knowing that God has made it obligatory upon him and stressed it by saying '*matāʿan bil maʿrūf ḥaqqan ʿalā al-muhsinīn*'". ʿAbduh interpreted "*maʿrūf*" as "what people are used to and what is appropriate for them according to their classes, living conditions and status". He saw the added description of *mutʿa* as "being '*ḥaqqan ʿala'l muhsinīn*'" to indicate "that it is an obligation while also being an act of benevolence, and not a punishment, as the wisdom behind it, as has been said, is to compensate for the loneliness of

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[761] Qur'an, chapter 2, verse 236.
[762] ibid., verse 241.

divorce. The meaning is thus: if you are believers, with *iḥsān*, perfection, in God's obedience, then you should make this *matāᶜ* appropriate and conducive to this purpose."[763] Hence, ᶜAbduh considered *mutᶜa* to be an amount obligatory on the husband to pay his divorcee, with the aim of compensating her for the divorce, the amount of which is unspecified, but left to the husband to determine, but should be considerable so as to fulfil the purpose for which it was prescribed.

The first verse dealing with *mutᶜa* refers to the case where the wife is divorced before consummation, in which case most jurists believed the wife would be due *mutᶜa* and not the full *mahr*. ᶜAbduh explained the reasons for this compensation, again emphasising the moral purposes of material obligations:

> This type of divorce is disliked and can lead people to think that the husband divorced his wife because he suspected something, hence when he compensates her well, this potential undermining (*ghaḍāda*) disappears, and this good compensation becomes a sort of testimony to her honour and an admission that the divorce was due to him, for his own reasons, and not due to her, because of some fault in her, because God commanded us to protect honour as much as possible.[764]

ᶜAbduh believed that "*maᶜrūf*", "*iḥsān*" and "*taqwā*" were used in the context of prescribing *mutᶜa*, not to indicate that it is recommended rather than obligatory, but rather to encourage the husband to be generous in determining the amount, "simply mentioned here because the obligation had no specific limit, and God loves for one to be generous therein, hence He mentioned *iḥsān* as a reminder, and to indicate that *mutᶜa* is not a punishment." ᶜAbduh believed that taken at face value, "that is what is understood from the verse" – that *mutᶜa* is obligatory. In contrast "however, *fuqahā'* said that *mutᶜa* is recommended and not obligatory, because it was only made a *ḥaqq* (obligation) on the *muḥsinīn* (the benevolent)". He argued that this reasoning is not valid, referring to several examples where "God mentions the word *iḥsān* and *muḥsinīn* while talking about obligatory deeds". He insisted that "it is sufficient to prove its obligation by God's saying 'the wealthy have an appropriate amount and the poor an appropriate amount to pay' and His saying '*ḥaqqan ᶜalā*' (an obligation upon)... Furthermore, the verse of *al-Aḥzāb* commands *tamtī'* (the paying of *mutᶜa*) without using the term *muḥsinīn*."[765]

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[763] *Aᶜmāl*, vol. 4, p. 664.
[764] ibid.
[765] ibid., p. 665.

While generally *fuqahā'* did not consider *mutʿa* to be obligatory, ʿAbduh pointed out that "among those who took *mutʿa* to be obligatory amongst the early scholars are ʿAlī, Ibn ʿUmar, al-Hasan al-Basrī, Saʿīd Ibn Jubair, Abu Qulāba, al-Zahrī, Qatāda, al-Daḥḥāk and others", although "they differed over its amount, and over whether it is prescribed for other than the wife divorced before consummation". Again in the *tafsīr* of the second verse related to *mutʿa*, ʿAbduh argues that "this indicates that *mutʿa* is prescribed for *every* divorced woman".[766] However, after arguing for the obligatory nature of the *mutʿa*, the conclusion tried to reconcile the various interpretations of the relevant verses by suggesting that "the most cautious and middle opinion is that *mutʿa* is different from *mahr*, and that it is a right for the one who is not eligible for a *mahr* [divorced before consummation] and recommended for others." This was possibly a comment added by Riḍā, who often tried to reconcile ʿAbduh's opinion with the majority opinion.

As a further attempt to convince men of the importance of *mutʿa*, ʿAbduh focuses on the importance of the act through the divine wisdom behind it, in order to encourage men to abide by the ruling, clarifying that

> God then concluded these rulings by saying 'thus God clarifies His verses to you so that you may understand', that is God's way is to explain the wisdom behind His rulings in this way, i.e. by mentioning the ruling and the benefit from it, and link it with His remembrance and good counsel which help to abide by it.[767]

Whether ʿAbduh believed that it was more effective to motivate men to abide by this obligation through reminding them of the divine wisdom and the benefit to be achieved, or whether he believed that it was not possible at the time to go against established consensus, his view on *mutʿa* seems to fall under rulings which he discussed in his *tafsīr*, while no trace of that view (its obligatory nature) can be seen in his *fatāwā* where he continued to apply the official *hanafi* ruling. Persisting disagreement about whether *mutʿa* is obligatory for all divorced wives, and the absence of a specific amount meant that it could not be legally enforced. It was not until 1985 that *mutʿa* was made obligatory and specified.[768] Law No. 100 of 1985 "Amending Certain Provisions of Egypt's Personal Status Laws" stipulated that "in addition to maintenance for her waiting period, a woman whose marriage has been consummated and whose husband divorces

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[766] ibid., p. 681.
[767] ibid.
[768] Most provisions of Law 100 of 1985 were included in the 1979 Law no. 44, which was later abrogated because it was ruled to be unconstitutional. See Daoud E. El-Alami, "Law No. 100 of 1985", p. 117.

her against her will and without any cause on her part is entitled to compensation (*mutʿa*) to be assessed as a minimum of two years' maintenance, taking into consideration the status of the divorcing husband in terms of wealth or poverty, the circumstances of the divorce, and the length of the marriage."[769] The provision of post-divorce compensation, as an obligation on the husband, taking into consideration his status, agrees with ʿAbduh's *tafsīr* of verse 2:236. The Explanatory memorandum justifies the amendment by the fact that divorced women are in need of more than the post-divorce *ʿidda* maintenance, and the fact that the basis of the Islamic legislation of *mutʿa* is "*jabr khāṭir al-muṭallaqa*", or consolation of the divorcee, on the basis of verse 2:236 – adding that the *mutʿa* requirement would also "dissuade many from rushing to divorce". While ʿAbduh referred to a list of sholars from the early centuries of Islam who viewed post-divorce compensation as obligatory, the 1985 memorandum referred to the opinions of later scholars – specifically from the established *madhāhib* – who considered *mutʿa* to be obligatory: "al-Shāfiʾī new *madhhab*, the opinion of Aḥmad chosen by Ibn Taymiyya, Ẓāhiris, Mālik (in *Al-Madhhab* of al-Shīrāzī and *Al-Muḥallā* of Ibn Hazm)". On the basis of these, *mutʿa* was made obligatory by article 18, to be no less than 2 years' *nafaqa*.[770]

7.3 ʿAbduh & Contemporary Calls for Restricting Male Repudiation

7.3.1 Divorce in a State of Anger or Intoxication

While the majority of what ʿAbduh wrote on divorce was concerned with facilitating divorce for women and guaranteeing their material rights after divorce, he did express his dissatisfaction with men's unrestricted use of repudiation. This was in relation to divorce in a state of intoxication or extreme anger and to triple repudiation.

In his *fatwā* on "divorce in a state of anger/intoxication",[771] ʿAbduh responded to a question about divorce by an old angry husband. In his answer, he referred to the Hanafi text

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[769] ibid.

[770] ʿIzzat Hasanayn, *Adhwāʾ ʿalā Qānūn al-Aḥwāl al-Shakhṣiyya al-Jadīd Muʿallaqan ʿalayhi wa Mudhayyalan bi Aḥdath Aḥkām Maḥkamat al-Naqḍ*, Maktabat Wahba ,1986, p. 40.

[771] p. 674, *fatwā* no. 167, fatwā date 15 Shaʿbān 1318, vol. 2 of Book 228 of *Dār al-Iftāʾ* records, p. 106.

Radd al-Muḥtār to clarify the view that "the "insane" or "person under shock" – whose actions and statements are different from the norm – as well as the aged whose rational capacities are undermined, as long as they are in such a state, their statements are void". Applied to this case, "if – as the question describes – the man uttered what he understood and what he did not, and his actions included those demonstrating lack of control and comprehension, he has the same ruling as what is mentioned in *Radd al- Muḥtār*, and the divorce is not valid".

It appears that ʿAbduh is stressing the importance of intention in the pronouncement of divorce. However, he did not address other related controversial issues, such as divorce pronounced in jest or unintentionally. Similarly, he did not seem to see the matter of intention as affecting the validity of divorce oaths – a "form of oath that makes repudiation of one's wife contingent on the fulfillment of the sworn undertaking".[772] In a *fatwā* published in *Dār al-Iftā'* Records, ʿAbduh was asked about a married young man who lives with his parents, whose mother agreed to pay a sum to the authorities in order to exempt him from military service, in return for a divorce oath that he would continue to live with them (or his wife would be divorced). When he was excused from the service (without having to pay for exemption), he asked whether moving out of his parents' house would result in his divorce. The answer did not deal with the validity of divorce oaths, but held that the oath was conditional on paying the exemption fee, but since he was not called for military service and no fee was paid, the oath was not relevant. [773]

A number of the *fatāwā* published as part of ʿAbduh's Complete Works (which represent a selection of his *fatāwā*), deal with questions on divorce oaths: no. 163, 168, 169, 170, 171, 172, 173, 174, 175, 176. In all cases, ʿAbduh had no objection to divorce oaths, nor to triple divorce, although his view on the matter is different when approached in his *tafsīr*. This is not an isolated case, as it is similar to the issue of *mutʿa* discussed above as well as other questions, where ʿAbduh's position as *muftī* appears to restricts him to more orthodox views, whereas in his *tafsīr* his interpretations are more liberal. Another explanation could be that he either did not believe the problem of excessive male divorce was an urgent priority (perhaps prioritising widening

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[772] Rapoport, p. 89.
[773] ʿAbduh, *Aʿmāl*, vol. 2, p. 667. *Fatwā* No 162, *fatwā* date 16 Jumāda al-ākhira 1318, vol. 2 of *Dār al-Iftā'* records, no 220, p. 95.

women's grounds for divorce), or that he did not believe people were ready for such a change in the law.

Historically, most jurists accepted triple divorce as well as divorce oaths (and the consequent and related practice of '*taḥlīl*' or formal marriage to permit re-marriage). The most prominent rare jurist who challenged the acceptance of such practices was Ibn Taymiyya. Staunch opposition to Ibn Taymiyya's views highlight "the central role of divorce oaths to Mamluk society", as Rapoport argued. Divorce oaths were not only used within the family (to threaten wives), but also to strengthen promises in social and commercial contexts, becoming "the most solemn form of oath". Divorce oaths acquired political importance too, as according to Rapoport, they "were incorporated into the oath of allegiance (*bayʿa*) used by later medieval Muslim rulers, including the Mamluk sultans."[774]

Against the prevailing consensus, Ibn Taymiyya argued[775] that "intentions supersede the explicit or formal meanings conveyed in speech".[776] Ibn Taymiyya argued that "when a man has the intention of either deterring (*manʿ*) or inciting (*ḥathth*) himself or someone else from or to a certain action, or attesting (*taṣdīq*) or contesting (*takdhīb*) a certain piece of information, he is in fact undertaking an oath."[777] Hence, divorce oaths should not, according to this view, be considered conditional divorces, and the violation of a divorce oath requires an act of atonement, like any oath in the name of God, and not the actual dissolution of marriage. In view of the special political power of such oaths, "guarded by the Mamluk state as a cornerstone of the political order", Ibn Taymiyya's views could not be ignored. After having been prohibited twice from issuing *fatāwā* on this subject, Ibn Taymiyya was eventually arrested.[778]

The issue of divorce oaths is closely related to that of triple divorce, since divorce oaths are usually pronounced in the form of a conditional triple divorce (My wife would be triply divorced if...), and since the two lead to the definitive end of the marriage, necessitating "*taḥlīl*". Ibn Taymiyya considered triple repudiation to be invalid. He argued that repudiation is only valid if it is made in the way recommended by the Prophet – *sunnī* divorce: single revocable repudiation uttered when the wife is in a state of purity. While there is consensus that *sunnī*

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[774] Rapoport, p. 90.
[775] See Rapoport, pp-96-104.
[776] ibid., p. 96.
[777] ibid.
[778] ibid., p. 90.

divorces are preferable, all the orthodox schools recognise the validity of both *sunnī* and *bidʿī* divorces. Ibn Taymiyya, however, argued that *bidʿī* divorces do not bind at all.[779]

The Sunni doctrine on divorce oaths withstood Ibn Taymiyya's attacks. His position never gained wide acceptance among the jurists, nor even spread beyond the Hanbali stronghold in the al-Ṣāliḥiyya quarter in Damascus. In part, this was due to the efforts of the state authorities, which continued to suppress his doctrines long after his death.[780] As Rapoport, noted, Ibn Taymiyya's failed reform attempt and the way it was repressed highlights "the inextricable link between the patriarchal order of the domestic sphere and the patriarchal values at the heart of the political and social order".[781]

7.3.2 ʿAbduh on Triple Divorce

Whereas in his *fatāwā* ʿAbduh seems to accept triple divorce unreservedly, opposition to triple divorce can be found in the *tafsīr*. Commenting on the verse "divorce is (to be issued) twice", ʿAbduh considered triple divorce to be invalid, adding that "jurists and scholars of Hadith agree that the ruling of irrevocable triple divorce (by repeating consecutively or saying 'three times') cannot be deduced from this verse or any other verse in the Qur'an."[782]

A matter related to irrevocable, triple divorce is re-marriage to the triply-divorced wife, which can only take place after a valid consummated marriage to another man. Like Ibn Taymiyya, ʿAbduh, in the *tafsīr*, strongly condemns and rejects attempts to bypass this condition:

> Every Muslim should know that the verse explicitly indicates that the marriage that renders re-marriage to the triply-divorced wife permissible is the valid marriage with genuine desire which achieves the purpose of marriage. When one marries a triply-divorced woman with the aim of enabling her former husband to remarry her, his marriage would be formal and not valid, and the wife is not able to marry her former husband, but this is rather an act of disobedience cursed by God... If she does remarry him, it would be *ḥarām*.[783]

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[779] ibid., p. 97.
[780] ibid., p. 105.
[781] ibid., p. 110.
[782] *Aʿmāl*, vol. 4, p. 626.
[783] ibid., p. 634.

Although ʿAbduh's view on triple divorce seems to be clear and strong, its expression seems to have remained confined to the *tafsīr*, whereas in his *fatāwā*, there seems to be no such opposition expressed, and he continued to apply the contemporary rules on divorce. The reason, as in other questions where Abduh's *fatāwā* did not follow the views he expressed in his *tafsīr*, is that the *fatāwā* were solicited from and given by the official state *muftī* and thus followed the official state *madhhab*, and specifically the strongest and most common view in the *madhhab*. Having said that, as discussed in Chapter 1, there were occasions where ʿAbduh's *fatāwā* did either contravene all expectations (e.g. the Transvaal *fatwā*) or contravene the accepted Hanafi position, while being presented as in fact acceptable within the Hanafi *madhhab*, as in the case of proposed reforms for divorce procedures. Why did ʿAbduh propose far-reaching reforms to extend women's access to divorce on the basis of the inability or unwillingness of the husband to provide marital maintenance, his unavailability, or harm caused to the wife, but on the other hand did not propose any changes to the use of triple-divorce and divorce oaths? Is it because his concern was widening women's access to divorce, rather than limiting the husband's right of divorce? It is possible that ʿAbduh's proposed expansion of women's access to divorce were in response to widespread calls for such reforms and a conviction that such reforms were socially required and acceptable. In contrast, ʿAbduh's judgment may have been that there was neither sufficient demand nor readiness to accept limiting the use of triple divorce and divorce oaths.[784]

Another reason is that ʿAbduh often emphasised the need for people to reform their own understanding and behaviour, before legal reform, hence the splitting of his efforts between education and admonition on the one hand, and legal reform on the other. The two methods are not mutually exclusive, but they often find their expression in the distinct fields of *tafsīr* and *fatwā*. *Tafsīr* and *fatāwā* differ not only in terms of the content, but also the methods and language used. In the *tafsīr*, we find a focus on admonition and reflection on the wisdom behind divorce rulings, rather than simple literal application. ʿAbduh repeatedly highlights how "God wished to establish those rulings within people's hearts through persuasion and reminding them

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[784] In fact, some studies show that women used these male rights as a way out of undesirable marriages, by ending the marriage through inducing the husband to pronounce divorce oaths and then deliberately contravene them. See for instance, Judith Tucker's *In the House of Law*, p. 104-5; Amira El-Azhary Sonbol, "History of Marriage Contracts in Egypt", *Hawwa,* vol. 3, no. 2, July 2005, 159-196, p. 178.

of their benefits and advantages... for understanding a matter together with the wisdom behind it is conducive to real comprehension and admonition which leads to compliance."[785]

ʿAbduh believed that the absence of such understanding of religious rulings and the wisdom behind them prevented Muslims from willingly and fully abiding by those rulings. Repeatedly in the *tafsīr* of rulings on divorce, ʿAbduh highlighted the importance of "advice and reminding of goodness and the truth in a way that leads to softening the heart and inspires action".[786] The lack of such understanding and motivation causes men to "follow their own wishes in the treatment of women, and imitate the ways of their forefathers and peers". He repeatedly stressed his conviction that "religious rulings, including those related to *muʿāmalāt* should be presented to people through admonition that affects hearts", criticising the way rulings are "listed in a dry way as one finds in the books of *fiqh*".[787] As previously discussed, ʿAbduh had an exaggerated faith in the power of education and how it would transform individual behaviour and society as a consequence, which could account for the fact that he spoke at length and in strong terms about certain practices and desired changes, without making use of his position as mufti to enforce any concrete reform in relation to those changes. He was also careful to keep his various roles distinct, as there was in essence a potential conflict between his position of *Muftī* (responsible for overseeing the application of the Hanafi-based law) and that of a caller for reform in his other writings. His previous involvement in the aborted ʿUrābī revolt and the continuing hostility of the Khedive towards him probably led ʿAbduh to avoid a similar fate to Ibn Taymiyya who was demonised and persecuted during his life and beyond.

7.4 ʿAbduh & *Taḥrīr al-Marʾa* Revisited

The above deals with ʿAbduh's writings in relation to divorce, in his articles, *fatāwā* and *tafsīr*. There remains the debated question of whether he also wrote the chapter on divorce from *Taḥrīr al-Marʾa*. Although in the previous chapter, I have already argued against attributing certain chapters of *Taḥrīr al-Marʾa* to ʿAbduh, it is important to briefly compare specifically the

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[785] *Aʿmāl*, vol. 4, p. 667.
[786] ibid., p. 643.
[787] ibid., p. 643.

chapter on divorce from that book, and whether there are any differences to what is directly and explicitly written elsewhere by ʿAbduh on this subject.

In the *Divorce* chapter, Qāsim Amīn, who – according to Cuno –[788] was the first author to write about the danger of rising divorce, saw divorce as a consequence of inappropriate traditional ways of choosing a spouse, often resulting in incompatibility. Amīn believed that "marriage based on such compatibility would be a respected matter in the hearts of the two spouses, and the bond would be so strong that it is not easy to undo". Following the same assumption that divorce in the past had been low, Amīn reasoned that "since nowadays this condition is not respected in marriage, the bond between the two spouses has become weak, coming undone at the first problem encountered." Ignoring material problems which ʿAbduh focused on, Amīn believed that divorce took place "mostly for no reason other than the desire of each to leave a bond for which they see no reason to preserve, and to get out of something which has no value in their hearts."[789]

Amīn expressed an idealistic view of companionate marriage, believing no material problems could affect such a marriage:

> Look at two loving spouses, you would find them in heavenly bliss... Why would they care if the money box is empty, or if there is just lentil and onions on the table? Would the heart's joy in each moment of the day not be sufficient for them?[790]

While Abduh focuses on *nafaqa* – like in classical *fiqh* – Amīn imagines a happy marriage, regardless of such duties. In contrast ʿAbduh recognised that "it is clear that.... financial dealings can affect relations/feelings" [in the context of post divorce *mutʿa*].[791] Like typical nationalist writings on the family and divorce, Amīn imagined a mythical strong, rarely broken, family in the past, and contrasted it with a perceived present of alarmingly rising divorce and weak families:

> How far are we from the state of our families nowadays, where each spouse is the furthest person away from the other spouse?.... The situation ends with the wife abandoning her home to the servants leaving them to do what they like, leading disorder

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[788] Kenneth M. Cuno, "Divorce and the Fate of the Family in Modern Egypt", *Family in the Middle East: Ideational Change in Egypt, Iran, and Tunisia*, Kathryn Yount and Hoda Rashad, eds., p. 208.

[789] *Aʿmāl*, vol. 2, p. 72.

[790] ibid., 74.

[791] ibid., vol. 4, p. 665.

to dominate and the traces of neglect to appear... The wife spends her time in one place thinking about her miserable situation, or leaves her home in the morning to go around to her neighbours to distract herself from her problems. Nor is the man's state any better. He abandons his home, finding solace in cafes or at his neighbours', and when he returns home, he remains isolated from his wife, in silence.[792]

It is noteworthy that the family described above, where the wife can afford to spend the day "reflecting" or visiting her neighbours, neglecting the management of her domestic servants, is hardly typical of most Egyptian women. It appears that while ʿAbduh seems to think of the average – poor – woman/family, focusing on material needs, Amīn seems to have the upper-class family in mind.

Amīn criticised western laws for not accepting divorce and praised *fiqh* for recognising its necessity, although it is not recommended. However he criticised three exceptions: the opinion (particularly in Hanafi *fiqh*) that the word *ṭalāq* leads to execution of divorce even if it not intended, triple divorce, and the fact that jurists take explicit divorce (using the word *ṭalāq*) as revocable, whereas implicit divorce (using ambiguous terms) is irrevocable (*bā'in*). He argued against all those, since "divorce can only be valid if accompanied by the intention of separation".[793] He strongly criticised divorce oaths. Amīn called for the reform of divorce, such that it is done in the presence of witnesses, which he argued is prescribed in the Qur'an, and mentioned by al-Ṭabarī. He suggested the following divorce procedure: inform the Shariʿa judge; appoint mediators; if mediation fails, the judge approves divorce, which must take place before a judge and in the presence of two witnesses.[794] He argued that such a procedure serves the purpose of Shariʿa and does not contradict it, does not deny men's right to divorce, and "serves a great interest that is reducing the number of divorces".[795] Amīn also suggested that educating women would increase the respect due to them and dissuade their husbands from taking divorce lightly.

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[792] ibid., vol. 2, p. 74.

[793] ibid., p. 119.

[794] ibid., p. 121. It is interesting that Amīn's views on divorce seem to have gone through a complete transformation, since he wrote his *Les Egyptiens* as a response to D'Harcourt's criticisms of Egyptian and Islamic traditions. There he had insisted:
"I do not understand/accept at all resorting to the courts to decide on divorce... What are these courts that can rule and restrict the feelings of my heart?... If we were to suppose that these judges can comprehend the details of the dispute and correctly assess the situation, I see no benefit for society to know about the details of my private life and that of my wife and have them displayed publicly or published on the pages of newspapers" p. 85.

[795] Amīn, *Taḥrīr al-Marʾa* , in *Aʿmāl*, vol. 2,, p. 122.

Although Amīn's description of divorce practices and proposed reforms were in the direction of restricting divorce, he ended the chapter with a brief note recommending equalising access to divorce for men and women, arguing that "however much we restrict divorce, women cannot obtain the respect and dignity they deserve unless they are granted the right to divorce". He suggested that this could be achieved either by borrowing from other *madhāhib* like the Mālikī *madhhab* where grounds for divorce are greater, or by continuing to follow the Hanafi *madhhab* while allowing every woman to include a condition in the marriage contract giving her the right to divorce herself whenever needed. Amīn argued that the second option is superior in the sense that certain matters that can make marriage untenable in the views of wives, such as the husband's taking of a second wife, are not valid grounds for divorce in the Mālikī *madhhab*.[796] In contrast, if the wife included the condition of divorcing herself whenever she chose, or in the case of her husband taking a second wife, she would be able to leave the marriage.

Having suggested that the second option was preferable for women, Amīn still concluded that "adopting the first method is wiser and leads to greater control, for placing divorce under the judge's authority is more likely to restrict it and more conducive to protecting marriage". This is compatible with nationalist authors' concern about perceived rising divorce and their principal aim of restricting divorce as part of the mission of protecting the stability of the family. Amīn still ends the chapter by lamenting the situation of oppressed wives, appealing to "every truth-loving man among my compatriots, particularly fathers to come to the rescue of these oppressed weak patient women". Thus, Amīn – like most nationalist authors – preferred to restrict divorce, and avoid widening women's access to divorce, while at the same time portraying women as "weak and oppressed", in need of men's help and sympathy rather than legally enforced equal rights.

There are some similarities between Amīn's and ʿAbduh's approaches to the question of divorce, particularly their concern about the restriction of access to divorce for women in problematic marriages, while at the same time being concerned about a perceived weakening of the Egyptian family. However, there are also clear differences: a more legalistic approach in the case of ʿAbduh as opposed to a more "social" approach by Amīn, a greater blame and

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[796] ibid., p. 123. ʿAbduh briefly addressed the matter of the woman's possession of the right to divorce herself as a condition in the marriage contract in 2 *fatāwā* - See Appendix B.

responsibility placed on husbands in the case of ʿAbduh, in contrast to a more sympathetic evaluation of Egyptian men by Amīn a greater focus on material factors in ʿAbduh, and a preponderance of a will to restrict male divorce over the expansion of women's access to divorce in Amīn's approach unlike ʿAbduh's. These differences support my earlier conclusion that the chapters in question were written by indeed Amīn and not by ʿAbduh.

7.5 ʿAbduh's proposals and Subsequent Divorce Law Reform

The inclusion of stipulations in the marriage contract (common throughout history, but curtailed by the codification of *fiqh*) continued to be among women's groups main demands, but also to be opposed by traditionalists. Only in 2000 was a marriage contract officially approved, when "a much changed and watered-down version of the proposed marriage contract was quietly issued."[797] A number of reforms, however, were achieved, and most of ʿAbduh's proposals for reforming divorce by incorporating views from the Mālikī *madhhab* to widen the available grounds for divorce were adopted in Law no. 25 of 1920 and Law No. 25 of 1929.[798]

Articles 4-6 of Law No. 25 of 1920 allowed women to file for divorce on the grounds of husband's failure to provide maintenance, articles 9-12 allowed judicial divorce if the husband suffers from contagious disease, while articles 12-14 allowed judicial divorce on the grounds of husband's desertion or imprisonment. The arguments used were those put forward by ʿAbduh, by borrowing from other *madhāhib* in order to protect wives and their children. Article 4 is almost identical to ʿAbduh's proposed Article 1 on divorce based on non-provision of maintenance (See Appendix A), while Article 5 combines ʿAbduh's proposed Articles 2 and 3 on absent and imprisoned husbands. Article 6 is identical to ʿAbduh's proposed Article 5 which considers divorce in all the above cases to be revocable and contestable by the husband if he proves his ability and willingness to provide maintenance.[799] In 1929, PSL No. 25 was passed. The new law included further reforms such as women's right to file for judicial divorce on the grounds of

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[797] Mulki al-Sharmani, "Recent Reforms in Personal Status Laws and Women's Empowerment: Family Courts in Egypt", Cairo: American University in Cairo, Social Research Center, February 2008, p. 9.

[798] Ibid.

[799] Muḥammad Hilmī ʿAbd al-ʿĀṭī, *Al-Mabādiʾ al-ʿĀmma fī Tashrīʿāt al-Aḥwāl al-Shakhṣiyya* (General Principles in the Laws concerning Personal Status), Cairo: Maktabat al-Qāhira al-Hadītha, 1962, p. 36.

harm. ʿAbduh's proposed articles 10 and 11 on divorce based on harm are implemented in the 1929 Law Article 6 and subsequent articles on divorce based on harm and mediation. While ʿAbduh detailed examples of harm such as "illegitimate desertion" or "unjustified beating or cursing", Article 6 allows divorce between spouses on the basis of "harm that renders the continuation of marital life between their likes impossible".[800] Also, repudiations that occurred under coercion and intoxication were considered invalid (Article 1), which agrees with ʿAbduh's *fatwā* discussed in Section 7.3.1 above – although the 1929 law did not extend to divorce pronounced in a state of anger. Moreover, repudiations based on conditional oaths made merely with the intention of inciting compliance or avoidance were similarly considered void (Article 2). Triple divorces were to be considered a single divorce (Article 3). [801] As we had seen in sections 7.3.1 and 7.3.2, ʿAbduh had rejected those forms of divorce in his *tafsīr*, while accepting them in his *fatāwā*. The Explanatory Memorandum also follows ʿAbduh's reform strategy of using considerations of "necessity", "protection of wives and children" and Qur'anic arguments to justify reform, while resorting to borrowing established rulings from other *madhāhib* when it comes to specific proposals. For instance in the case of restriction of divorce oaths and triple divorces, the Explanatory Memorandum uses arguments based on wives' interests and Qur'anic verses in the introduction, while explicitly basing the new laws on opinions of established scholars.[802]

Ron Shaham noted that after these reforms, "approximately 50% of applications for judicial divorce were based on the ground of general injury and around 30% on the ground of non-provision of maintenance".[803] The 1929 law also required judges to grant women divorce if they fail to prove harm but still insist on terminating the marriage, which was not explicitly proposed by ʿAbduh. The courts could dissolve the marriage, unless they found the blame for the discord chiefly lay with the wife. That changed with the adoption of Law no. 100 of 1985, which allowed divorce, even if the wife was at fault, in return for her payment of compensation and forfeiture of some of her financial rights. The explanatory memorandum justified the amendment not on the basis of expanding women's access to divorce, but discouraging a "quarrelsome wife"

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[800] ibid., p. 39.
[801] ibid., p. 38.
[802] ibid., pp. 122-125.
[803] Shaham, "Judicial Divorce at the Wife's Initiative: The Sharīʿa Courts of Egypt, 1920-1955", *Islamic Law and Society*, Vol. 1, No. 2 (1994), pp. 217-257, p. 251.

from harming her husband as a stratagem to compel him to repudiate her without compensation.[804] As Lama Abu Odeh noted, "the latter effectively means that Egyptian wives have come close to acquiring access to no-fault divorce. Divorce is conditional, however, upon the woman's willingness to go through an elaborate process of attempted reconciliation with the husband, mediated by the court, as required by the law. This conciliation process is not required when the husband divorces the wife."[805] Resistance to equalising men's and women's access to divorce continued, however, until the year 2000 where the controversial law of *khulʿ*, which does not require the husband's agreement to divorce, was passed – after much resistance. Such a reform went beyond ʿAbduh's proposals, but was based on primary texts from the Qur'an and Hadith, going beyond the opinions of the *madhāhib* – the form of *ijtihād* ʿAbduh promoted but avoided using as the basis of his specific reform proposals.

Debate on the 2000 Law "has not abated since its introduction"[806]. This demonstrates the continued resistance to equal access to divorce for women and perception of divorce as dangerous and destabilising for society. This supports my observation that ʿAbduh's focus on widening women's access to divorce rather than restricting male divorce differed from the tendency of contemporary nationalist discourse and judicial reform. However, the dominance of the nationalist discourse has been reflected in a focus on ʿAbduh's perceived opposition to easy male divorce – although his views were only expressed in his *tafsīr*.

ʿAbduh's varied – and at times inconsistent – writings on divorce reveal once again the different and distinct roles ʿAbduh assumed: teacher and educator aiming at transforming people's understanding and inducing an internal motivation for change, state legislator, reformer, etc. It also reveals once again his pragmatic and gradualist approach with an eye not only on what should be done, but also what is reasonably possible at that particular time. As Kerr noted:

> Abduh was prudent and pragmatic, avoiding sharp breaks with traditional dogmatic formulas and elaborating what was novel in his thought only to the extent demanded by clear and present needs. By doing this he made his message more palatable to the

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[804] Explanatory Memorandum of law no. 25 from 1929. However, in her study of divorce in Egyptian courts, Monika Lindbekk noted that "family courts when assessing the financial consequences of divorce due to discord only mete out compensation in exceptional cases." ("The Enforcement of Personal Status Law in Egypt", *Adjucating Family Law in Muslim Courts*, Edited by Elisa Giunchi, 2014, p. 97.

[805] Abu-Odeh, "Modernizing Muslim Family Law: The Case of Egypt", *Vanderbilt Journal of Transnational Law*, vol. 37, 1043-1146 (2004), pp. 1139-1140.

[806] Lindbekk, p. 100.

orthodox and established a common ground of discourse between them and the products of modern secular education.[807]

This approach seems to have been adopted by his successors, leaving a lasting – but disputed – legacy in the field of Egyptian family law reform.

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[807] Kerr, *Islamic Reform*, p. 105.

CONCLUSION

ʿAbduh's writings on women are a rich tapestry of *fatāwā*, treatises and articles situated in different contexts, aimed at addressing complex and conflicting social demands in an era of great upheaval and flux. ʿAbduh identified and addressed a plethora of religious, intellectual, social and cultural norms in need of reform while seeking to achieve a balance between complying with a faithful understanding of the religious sources and achieving progress and deep-rooted change. This balancing act can be seen throughout his extensive writings, from his defense of women's status in Islam as a rebuttal to colonialist attacks, to his criticism of *taqlīd*-based restrictive family rulings, and from his attempts at producing legal reforms able to respond to modern social questions to his endeavours to reform individuals and society through education and a contextual understanding of Islam as compatible with modernity. He utilised a number of strategies, approaches and innovative ideas to achieve this, as will be summarised below.

8.1 Reform Strategies & Approaches

8.1.1 Islamically-justified women's reform: Social and ethical reform based on religious reform

As discussed in the first chapter, religious reform – both religiously-based social reform and reform of religious thought – was central in ʿAbduh's thought and work. He believed that the nature of Egyptian society made the language of religious reform the most appropriate and effective for achieving real social change. Thus, his reforms in relation to women were expressed using the same logic and language.

Inverting the colonialist discourses which blamed what they described as the backwardness of Egyptian women on Islam, ʿAbduh blamed the ignorance of women and injustices towards them on Egyptians abandoning Islamic guidance, as he described it. He

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repeatedly argued that westerners' allegations about the state of Muslim women were either based on their ignorance of the real situation of women, or on their incorrect attribution of the causes of that situation to Islam. In fact, he presented it as the starkest example of corrupted practice as a result of straying from revealed teaching, as in his view, Muslims' treatment of women demonstrates the distance separating the actions of most Muslims from the beliefs and teachings of their religion – a complete inversion of the colonialist discourse. Nevertheless, he recognised that in order for religiously-based reform to take root, reform of religion itself must first occur.

ʿAbduh believed that the most effective way of precipitating change in the situation of women was to advocate an Islamically-based liberation of women inspired by an understanding of their faith as the guarantor of perfect rights. Indeed, Leila Ahmed suggests that ʿAbduh was "probably the first to make the argument, still made by Muslim feminists today, that it was Islam and not, as Europeans claimed, the West, that first recognised the full and equal humanity of women".[808] Thus, the rights, freedom, justice and equality offered by Islam were presented as not only equal, but superior, to foreign liberation theories.

However, there is a recognition of the advanced status of women in Europe and its honouring of women and care to educate them in the sciences and arts. These positive advantages in modern Europe are presented as an effect of "advances in civilisation and development".[809] ʿAbduh attributes this progress in women's status to "the new civilisation of the last century",[810] rejecting the colonialist claims of the superiority of Christianity and its treatment of women, as was discussed in Chapter 2. Conversely, religion is seen to be central to such progress in the Muslim context.

The use of religious language to justify social reform and the construction of a perfect past is also common to nationalist discourses on women. The difference is that ʿAbduh's employment of religious language, arguments and references is done not only with the purpose of justifying the reform against detractors or conservative opponents, but also, and sometimes more importantly, with the aim of motivating individuals to adopt his proposed reforms, "to use

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[808] Leila Ahmed, p. 139

[809] *Aʿmāl*, vol. 4, p. 621.

[810] ibid.

the Muslim's confidence in his religion to reform his affairs."[811] The backwardness, injustices and social decay observed by ʿAbduh in his society were attributed to ignorance and corruption of morals. What was needed was ethical reform, and in his view, "religion is the most potent factor in the formation of moral traits".[812] The reform and prosperity aspired to would follow from a "reform of spirit" resulting from a reformed understanding of religion; once "their morals are refined with sound capabilities, reform would flow from individuals to the *umma*."[813] Morality for ʿAbduh comprised "faith in God alone, and sincerity in the performance of the prescribed religious duties, and the mutual aid of all humans, to one another, in the doing of good and the prevention of evil as much as they are able to do so".[814] His socially-oriented view of ethics is evident in his focus on social relations, always stressing the two values of cooperation and justice.

The idea of women's liberation, whether it is influenced by colonialist critiques or motivated by nationalist rebuttals of those critiques, is adopted as an Islamic concept and cause; in ʿAbduh's words, women's liberation was among the principles which "the Islamic religion calls for in the most complete and perfect ways". In fact, ʿAbduh believed that the idea that the position of women was of direct and crucial significance for social reform was an indigenous idea, one introduced by Islam: "People, because of their ignorance of all dimensions of social interests, used to see no importance for women in the success or corruption of social life, until revelation taught them [about it]." However, this concept took on different forms according to the context. Although the early practice of the Muslim community is seen as perfect, there are indications that ʿAbduh believed in the importance of the historical context of the application of revelation. He argued that although Islam advocated the most advanced forms of women's liberation, "people, in each era, take from the revelation as much as they are ready for." He went as far as saying that "the rulings brought by the Qur'an for reforming the state of homes through good treatment of women have not been completely implemented by the *umma*". Although it is not explicitly stated, ʿAbduh's assertion that the Qur'anic guidance in relation to women has not been fully implemented can be understood to also apply to the "golden era of Islam" including

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[811] *Tārīkh*, vol. 2, p. 459.
[812] *Aʿmāl*, vol. 3, p. 438.
[813] ibid., p. 247.
[814] ibid., p. 297.

the early practice of the first Muslim community – thus establishing the primacy of the Qur'anic revelation as a source of guidance above the practice of Muslims, including the Sunna. Thus, the Islamic liberation of women is to be achieved through a return to the perfect divine guidance, rather than its incomplete historical applications; thus a new reading and re-interpretation of revelation are necessary.

Although it is not explicitly stated, ʿAbduh set the ground for the very important principle of recognising the social limitations of the particular historical context in which revelation is applied. Thus, while revelation may direct people towards justice and equality, a particular context may not allow for those ideals to be fully implemented. However, future generations may continue to reform society towards achieving those ideals advocated in revelation. This is the basis for ʿAbduh's advocacy for *ijtihād*, inspired by the Qur'an and unrestricted by its historical applications – although by no means disregarding those applications.

This contextual approach is facilitated by ʿAbduh's understanding that "such matters as divorce, polygamy and slavery do not belong to the essentials of Islam".[815] Thus, matters of family law are within the sphere of *muʿāmalāt* that are open to re-interpretation in accordance with new social contexts, taking into account current associated harms and benefits, and guided by the conviction that the purpose of revelation is achieving humans' wellbeing. This, together with ʿAbduh's belief in gradual reform that takes into account changing circumstances and contexts, opens the door to innovative future interpretations that meet social needs as well as embodying the ideals intended by revelation.

A strong basis of extreme importance in 'Abuh's "Islamic liberation of women" was his critique of certain assumptions that had become part of the classical consensus, such as the view that women were created from men and that women's essential nature was different and inferior. Through a re-interpretation of the Qur'an that is freed from the historical opinions of – male – scholars and inauthentic narrations, ʿAbduh insisted on the absence of any basis for such interpretations, rejecting them and stressing women's independent and equal origin and their responsibility and agency expressed in the creation story. This re-interpretation is crucial for reforming the deeply-ingrained religiously-justified cultural perceptions underlying social

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[815] *Aʿmāl*, vol. 2, p. 359.

inequalities. Although ʿAbduh's views were very significant in this regard, they were not always taken to their ultimate conclusions.

Thus, ʿAbduh's discourse on women carries the same characteristics of his general reform discourse: gradualism and pragmatism, reform with a focus on the practical over the theoretical, a maintenance of "strategic ambiguity", inversion of the colonialist discourse, the re-interpretation of the sources with a contextual approach, and a focus on social and ethical reform based on religious reform.

8.1.2 A reformed marriage for the reform of the nation

In ʿAbduh's vision of the reform of the status of women, reform of family was a prerequisite to reform of the nation – also a well-established theme in nationalist discourses on women. However in ʿAbduh's discourse, the assertion that 'the reform of the nation depends on the reform of families' was explicitly presented as a natural as well as divinely revealed principle, as was discussed in Chapter 4.

ʿAbduh was alarmed at the "unprecedented" "weakening and breakdown of the marital bond in our times", resulting from a corrupted understanding of marriage and its proper meaning and function, in his view. Thus ʿAbduh wrote at length to emphasise the divinely-revealed meaning and purpose of the institution of marriage. Marriage is presented as a necessary and natural relationship. Arguing that the lack of veneration for this relationship and resulting problems were due to a lack of appreciation of its profound and diverse dimensions, ʿAbduh dwells on the religio-ethical and emotional dimensions of marriage often neglected in juristic discussions, stressing that marriage is not only a purely juristic matter. The characteristics of "love and mercy" are often emphasised.

In his discussion of *mahr*, ʿAbduh emphasised the elements of "love and mercy" in the Qur'anic definition of marriage and criticised its characterisation as a material exchange in *fiqh*. As well as its emotional and spiritual aspects, ʿAbduh repeatedly described marriage as a pledge of cooperation, of mutual aid towards achieving happiness and contentment, and more specifically towards establishing a stable family and producing and nurturing children.

ʿAbduh's interest in reforming the family is informed by his vision of a society that is composed of mutually-supportive families that are characterised by internal cooperation – or in other words society as a large-scale family. His discussions of marriage tend to emphasise the social function of marriage, as leading to the building of a family and the provision of an environment in which children are educated, and a set of social ties that promote solidarity and cooperation in society.

While cooperation, common interest, mutual care and equivalence are common features of ʿAbduh's characterisation of marriage, it does not seek to transform the family into an egalitarian framework. Rather it seeks to emphasise the values of justice and mercy and widen available rights, while maintaining a "rationalised" hierarchy. While equality of men and women is stressed in contexts such as the creation of men and women, religious capacity and education, differences re-emerge in the context of the laws of marriage – while simultaneously emphasising values of mercy and cooperation.

Examples of this include ʿAbduh's ambivalence towards asserting women's right to conducting their marriages, although he condemned guardians' prevention of women from marrying husbands of their choice on the basis of its consequences for them and for society. Thus justice and woman's freedom are to be defended – but not at the expense of society; a balance between the individual's and society's needs must be sought – an elusive balance and an unresolvable tension.

In this reformed view of marriage, equivalence and mutual rights are emphasised, while at the same time, different roles are assumed. While his *tafsīr* criticised the view of the *mahr* as being a "compensation for the sexual capacity or a price for it", ʿAbduh's reforms of family law were within the framework of widening the rights available to women and restricting men's absolute domination, but without going as far as to equate the rights of both spouses – although some general passages speak abstractly of "equal rights and duties". These rights and duties are, however, defined by ʿurf, or customs, which varies according to time and place.

The undisputed role of the husband remains financial maintenance and leadership of the family. Leadership in ʿAbduh's *tafsīr*, however, is described in such a way that preserves the led person's independence, and where words such as "guiding", "educating", "watching over" are used rather than "commanding" or "controlling". This view is logical within an approach that

seeks to maintain, and activate, the social function of the family as a building block of the wider society and the basis of the network of social solidarity, particularly at a time characterised by "unprecedented family breakdown" – in ʿAbduh's and his contemporaries' perception. The insistence on hierarchy is also part of the modern emphasis on efficiency and management, where the family as a social unit needs, in his view, a clear – but not absolute or unrestrained – hierarchy for effective control. It is also inspired by the then-popular social Darwinism and its accepted hierarchies, and coherent with the contemporary linking of the nature of the state and the family, both of which were being reformed to restrict absolute despotic rule, while maintaining the paternalistic position of leader – or "benevolent despot" who cares for, rather than oppresses, his subjects. The same contradiction and ambivalence is seen in ʿAbduh's ambivalent advocacy of constitutional rule and social equality, both permeated with a persistent belief in a world ruled by hierarchies – although it will not necessarily always be so. In politics, society as well as the family, the principal guiding values were "fairness", "mercy", "solidarity" and "cooperation" more so than equality.[816]

As seen in Chapter 4, ʿAbduh's discourse on the family combines both reformist Islamic elements which can be seen as a continuation of classical reformist discourses (re-reading the sources to re-interpret them and to motivate Muslims to understand divine injunctions and apply them) and a modernist nationalist discourse influenced by modern concepts of family, society and governance. Or in other words, this points to the overlap between the various discourses in Egypt – and the rest of the Muslim world – and their various inspirations, as opposed to the tendency to place figures into distinct camps.

Despite common themes, there are clear differences between ʿAbduh's discourse on the family and the nationalist discourse. Unlike in the latter, ʿAbduh did not seem to have an "ideal family" in mind which is formed in a specific way, where women had fixed specific roles, where polygyny is absolutely condemned, and where divorce is always seen as a disaster. ʿAbduh's vision appears to be more flexible and closer to the view of marriage in classical Islamic rulings:

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[816] Equality was a rather ambiguous concept in turn-of-the-century discourses, vaguely mentioned, simultaneously with a view of hierarchies as natural. For instance the nationalist leader Lutfi al-Sayyid, a pioneer of the secular post-ʿAbduh school called for a return of corporal punishment against workers, the abolition of which reduced productivity (and a practice ʿAbduh had denounced – See *Aʿmāl*, vol. 1, p. 446, 839). Qāsim Amīn defined public opinion as "the mindless masses, enemies of change, servants of falsehood" (*Al-Aʿmāl al-kāmila li Qāsim Amīn*, vol. 1, p. 166).

no particular focus on how the bride/groom should meet or how low/high the *mahr* is; polygyny is discouraged, but with a possibility of achieving justice if practised "as intended", and similarly with divorce, if practised with full respect of Islamic provisions; and no domestic role is rigidly assumed for women.

Abduh's interpretation of verses on men's "preference" focused on financial duties rather than inherent natural superiority. However when discussing leadership in the family, he saw men's nature as "stronger and more perfect" making them better leaders. Leadership in marriage is thus accepted as being based on essential superiority, although it should be characterised by justice and consultation. As discussed in Chapter 5, the family hierarchy is justified in two simultaneous ways: the need for a single leadership of the family unit, and the natural leadership of men, while stressing its benign nature and the complementarity and inter-dependence of the spouses. The logic of exchange is less used by ʿAbduh to justify men's leadership position.

Whereas ʿAbduh theoretically rejected the characterisation of marriage as a material exchange, his attempts to widen women's access to divorce strongly emphasised the non-negotiable obligation of *nafaqa* or financial maintenance in marriage. In his official proposal on the subject of maintenance of the wives of prisoners, absent husbands, or husbands who are unable or refuse to provide maintenance, in response to the repeated complaints of wives, he strongly stressed the husband's obligation to provide *nafaqa* and used it as a way of significantly widening women's rights to seek judicial divorce. It is important to remember that the primacy of marital *nafaqa* was already established by Muslim women historically stressing that obligation by demanding it in court and by using it as a strategy to obtain divorce; in fact historical court records show that lack of maintenance was the most frequently referred to ground for divorce.[817]

However, although he strongly emphasised the absolute right to maintenance, ʿAbduh in return maintained its link with obedience and its abrogation by the wife's *nushūz* - at least in his *fatāwā* – although there is no precise definition of it. The husband's authority included the right to discipline his wife, although ʿAbduh emphasised it was allowed only against recalcitrant wives if the husband judges that it will lead to ending the state of recalcitrance, and the disciplinary

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[817] "Breaking Up the Family: Divorce in Egyptian Law and Practice", Nathalie Bernard-Maugiron and Baudouin Dupret, *Journal of Women of the Middle East and the Islamic World 6 (2008) 52–74*, p. 56. See also Shaham R., "Judicial Divorce at the Wife's Initiative: The Shariʿa Courts in Egypt, 1920-1955", *Islamic Law and Society*, volume 1, Number 2, 1994, pp. 217-257.

steps should be applied in a gradual progressive way. While ʿAbduh did not reject this power of husbands, he stressed the prophet's sayings and examples that discouraged it, but justified its conditional and limited use on the basis of "corruption of environment and characters" to be reformed through education, thus – at least theoretically – envisaging a time/society where the practice is not necessary or acceptable. He also highlighted the moral aspect that cannot be regulated by law – reminding spouses of God's watching over them and admonishing them not to transgress against the weaker party. This mixed reaction to this issue – ambivalence, acceptance, justification, admonition, restriction, condemnation – continues in Islamic literature on this practice. The ambivalence, however, was not necessarily a modern stance: as pointed out, Judith Tucker had noted in her study of eighteenth-century court records and *fatāwā* that *muftis* were mostly silent on the question. Just like the ambiguous nature of the verse and its "circumstances of revelation", jurists seem torn between religiously sanctioning the practice and leaving it to social customs and evolution to resolve.

As well as widening women's grounds for divorce, ʿAbduh sought to restrict men's absolute right to polygyny, by stressing the primacy of the obligation of justice without which polygyny becomes prohibited and by detailing polygyny's contemporary harmful consequences for the family and society, concluding that in order to avoid harm, it is permissible to restrict or ban polygyny.

Thus, ʿAbduh's reform, and subsequent family law reform in general, maintained what Deniz Kandiyoti called the "patriarchal bargain", but tried to negotiate better terms within it. Marriage was still legally a contract of rights and duties, but reforms were introduced to reinforce women's rights such as financial maintenance and their access to divorce, while restrictions were placed on men's absolute right to obedience and to polygyny.[818]

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[818] Lama Abu-Odeh's review of family law reform in the twentieth century in Egypt indicates that the preservation of the 'transactional quality' of marriage while reducing and abolishing additional powers over and above this contractual relationship, has persisted and guided legal reform in Egypt. Abu-Odeh, L. (2005) 'Modern family law, 1800—present. Arab States' in S. Joseph (general ed), *Encyclopedia of Women in Islamic Cultures II*.

8.1.3 Gradual Reform from within orthodoxy

ʿAbduh strongly and repeatedly criticised *taqlīd*, blaming it for the rigidity of certain *fiqh* rulings, their inability to respond to people's modern needs, and the continuous disputes and rivalry of those engaged in *fiqh*. He advocated *ijtihād* in order to produce rulings that were more in tune with people's needs. In a phase characterised by change and an influx of novel challenges, ʿAbduh stressed the importance of the well-known – but often ignored – *fiqh* principle of the change of *fatwā* according to change of time, place and conditions. He strongly argued that in order for people to abide by laws, the laws must be suitable for their conditions and needs, and they must be expressed in an accessible and comprehensible way.

Although ʿAbduh deplored *taqlīd* and advocated *ijtihād*, when it came to specific legal reform, he resorted to the use of established *fiqh* principles such as necessity, public interest, and methods of selective borrowing from other *madhāhib* in order to produce legal reform. Furthermore, while much has been said about ʿAbduh's emphasis on re-interpretation of the Qur'an and his criticism of the complex, contradictory and abstract nature of many medieval classical works, he relied on those classical works not only in his official role as judge and *muftī*, but also considered them a useful basis for arriving at modern reforms.

Responding to the English clergyman's questions about polygyny, divorce and slavery, ʿAbduh clarified that "such matters are not considered by Muslims to be among the fundamentals of religion".[819] Yet he did not dismiss all related legal rulings, but rather praised the juristic heritage on these matters, assuring the questioner that "had you looked into the *madhāhib* of Muslims you would have found the best of what you are seeking".[820] Thus the view of ʿAbduh as an enemy of the heritage of classical *fiqh* who wanted to destroy it or bypass, it in order to solely rely on the fundamental texts, is not entirely justified.

In addition to his regular *fatāwa* issued as the Grand Mufti which followed the Hanafi *madhhab*, even in his proposed legal reforms, ʿAbduh presented them not as novel interpretations of the revealed texts but as derived from well-established principles of *fiqh* and supported by the known *madhāhib.* An example is his proposal for the reform of divorce laws. ʿAbduh first

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[819] *Aʿmāl*, vol. 2, p. 359.
[820] ibid.

stressed the need for the reform, by detailing the inefficiency of current laws and the suffering they caused to women, as well as their harmful consequences for society as a whole. As discussed in Chapter 7, his suggested solutions in his proposal "on the subject of maintenance of the wives of prisoners, absent husbands, or husbands who are unable or refuse to provide maintenance", were presented as being arrived at through consideration of *ḍarūra* – necessity.

While ʿAbduh promoted the principle of *maṣlaḥa* and the need for new laws to protect and achieve people's interests, he did not base his proposed reforms on *maṣlaḥa*, but rather on *ḍarūra*. This is a more cautious strategy to stress the urgency of the reform and to base them on a more easily acceptable rule. *Ḍarūra* and *maṣlaḥa* are not mutually exclusive concepts. A *ḍarūra* is a vital interest. There are several differences between the two. The principle of *ḍarūra* is temporary, while that of *maṣlaḥa* is permanent. When the 'state of harm' ends, all rulings must return to normal. Also, while *ḍarūra* leads to *maṣlaḥa*, the opposite is not true.[821] The temporary nature of *ḍarūra* may account for its easier acceptance, but in the long-term, it may not be as effective and lasting. However, it continues to be a popular strategy for reform in modern reformist Islamic discourses.

ʿAbduh explicitly distanced his proposed reforms from the controversial principle of *ijtihād*, reassuring judges that "ruling in consideration of necessity is not *ijtihād*". Being conscious of how deeply entrenched the mentality of *taqlīd* was, ʿAbduh further reassured these judges that Hanafi judges ruling according to the Maliki *madhhab* on the basis of necessity would not be contravening their *madhhab*. In addition, ʿAbduh possibly felt that the use of *ijtihād* itself, even if accepted, was probably not possible, as the judges lacked the necessary training.

ʿAbduh's careful attempt to achieve acceptance of his proposed reforms through presenting them as rulings based on established and non-controversial rules of *fiqh* demonstrate his pragmatic nature and his focus on achieving acceptance and conviction, or what Andrew March called "the Reformer's Dilemma". Of course such caution does not guarantee immediate success. ʿAbduh's proposals were still met with resistance. However, the resistance to ʿAbduh's proposals was not always a rejection of his arguments, but often involved a combination of rejection of his position and a defence of the established order. Many of his reforms were eventually accepted and adopted – using his own reasoning – decades after his death. As

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[821] See *Shari'a: Islamic Law in the Contemporary Context*, Abbas Amanat and Frank Griffel.

discussed in the thesis, these include the widening of women's access to divorce on the basis of absence, non-provision of maintenance or harm, the establishment of the obligation of post-divorce compensation and the restriction of polygyny.

Although more conducive to acceptance, reliance on "partial and limited *ijtihād*" can also be said to have been subsequently used to delay the elaboration of more radical *ijtihād*. Subsequent legal reform which followed ʿAbduh's cautious attitude and preference for partial methods of reform at the expense of *ijtihād* remained constrained and of limited capacity to extend the ambit of reform on certain points. Approaches that focused instead on his promotion of *ijtihād* and the direction in which his reforms were moving were better able to stretch those limits – although they still face the "Reformer's Dilemma" of finding the most effective way to gain wide acceptance to ensure successful reform.

Despite ʿAbduh's caution, the 'charge' of *ijtihād* continued to be leveled at him. His opponents repeatedly accused him of being unfit for the position of Grand Mufti since he was required to issue rulings on the basis of the official Hanafi *madhhab*. His defence demonstrates the same combination of multiple strategies of *taqlīd* and *ijtihād*, arguing first that even within *taqlīd*, it is permissible to follow opinions from more than one *madhhab*, and second, that in any case he was qualified for independent *ijtihād* outside all the *madhāhib*. This focus on the ruling and indifference to the actual methodology used to arrive to it and its coherence is among the criticisms leveled at modern reformist jurisprudence.[822]

ʿAbduh's pragmatic nature was also evident in his emphasis on gradualism as an essential feature of reform. On the whole ʿAbduh was a reformist and not a revolutionary. He preferred gradual reform that takes the people's level of understanding and "readiness" for change into consideration. This can be seen in the fact that his opinions on issues such as restriction of polygyny were clearly and confidently expressed in his early articles and in the *tafsīr*, while he did not insist on applying them immediately in society. ʿAbduh was not a theorist, but a practical reformer engaged in his close daily involvement in society as a judge, teacher and administrative reformer. His main concern was the long-term success of his reform ideas, which he believed

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[822] See, for instance, Wael Hallaq, "Can the Shariʿa be Restored?" in Yvonne Y. Haddad and Barbara F. Stowasser, eds., *Islamic Law and the Challenges of Modernity*, Walnut Creek: Altamira Press, 2004, 21-53.

depended on choosing the time when people recognised the need for the proposed changes to their customs.

Pragmatism and gradualism explain in part the ambivalent views expressed on matters such as guardianship (See Chapter 4) and triple divorce (See Chapter 7), partially criticising their textual basis without completely rejecting them in practice. Nevertheless this critical approach in questioning and at times, reasoned rejecting of textual evidence used in some *madhāhib* for certain rulings paved the way to future novel interpretations.

The view that ʿAbduh's decision to call for a particular reform or avoid another depends on the expected opposition or the avoidance of controversy does not completely explain ʿAbduh's mixed record of radical and cautious reform. I believe it is better explained by his assessment of the proposed reform's chances of success. For instance his views on certain issues was far from orthodox, and he expressed them in an explicit and forthright manner, in published articles and in his *tafsīr*, yet without demanding immediate application.

A clear example of this is his support for the restriction of polygyny as necessary and Islamically permissible. While polygyny was by all accounts practiced by a small minority of Egyptians, and while historically women who could, placed conditions preventing their husbands from taking a second wife, the modern standardisation and codification of law restricted women's options and contributing to strengthening the view of marriage as a contract involving a fixed set of rights and duties, including the husband's right to polygyny. The colonialist discourse exaggerating and singling out polygyny as a sign of Egyptian inferiority and backwardness further led to a defence of that male privilege, as discussed in Chapter 6. ʿAbduh believed there was a need for the restriction of polygyny. The strategy he opted for was not encouraging or enforcing the placing of legally enforceable conditions in the marriage contract, but resorting to the central authorities' power to regulate and restrict men's resorting to this practice.

In harmony with his view of marriage as a partnership and a pledge of cooperation, ʿAbduh questioned justifications for the often-harmful practice of polygyny. He based his argument on a link between verses 4:3 and 4:129 to point towards discouragement of polygyny in the Qur'an and its prohibition unless one is confident of achieving justice. However, his *tafsīr* of the two verses does not imply a legally enforceable prohibition, but a strong moral warning of

the extreme difficulty, almost impossibility, of achieving the required and obligatory condition of justice.

However, like in his proposed divorce reforms, arguments combined both juristic arguments and others based on the urgent need for reform. In addition to the textually-based condition of justice which is rarely achieved, two further justifications were used to propose the permissibility of restricting polygyny: preventing harm which often results in the mistreatment of multiple wives and their deprivation of their rights to "maintenance and contentment", and preventing the harm which often results from polygamous marriages to children, family stability, and its consequences for society. Exceptions are recognised; since the prohibition is not founded on an absolute opposition to polygyny, but mainly on the rule of "preventing harm", a balance of possible "benefits" and "harms" needs to be considered in certain cases. The conclusion is that "it is permissible to have a general ban for all men banning them from marrying more than one, except for a necessity which is to be proven before a judge." ʿAbduh's recommendation is based on *sadd al-dharāiʿ* – prevention of harm, a principle that is not rejected by Hanafi judges (although it is more associated with the Maliki and Hanbali *madhahib*).

ʿAbduh's silence on certain issues, ambivalent questioning of some, and partial or radical reform of others raises the question of when ʿAbduh was radical and when he was gradualist – what factors determined his stance on an issue? While some, such as those who argue that ʿAbduh co-authored *Taḥrīr al-Marʾa* under a different name to avoid a hostile reaction, believe that popular reaction to ʿAbduh's views determined whether or not he expressed them explicitly, I believe that was not, in fact, a crucial factor. I believe that although there are multiple considerations, the principal factors determining ʿAbduh's decision to push for reform on a particular issue were whether there was an urgent need felt by people, and whether they were ready for change, the two factors which have a decisive effect on the proposed reform's chances of success.

Opposition to ʿAbduh was indeed considerable, and it was not simply opposition to his views, but brought together a 'coalition' of figures and trends with political, professional, juristic and even personal disagreements with him. ʿAbduh's rivals awaited any *fatwā* or declaration to ignite campaigns against him. With his attainment of elevated official positions and the constantly-changing power alliances, the last few years of ʿAbduh's life saw the uniting of a

coalition against him composed of a hostile press, an obstructive khedive, ʿulama challenging ʿAbduh's credentials and reforms and nationalist leaders accusing him of unpatriotism and treason. While one can point to decisions such as ʿAbduh's refusal to publicly give his opinion on the controversial *Taḥrīr al-Mar'a* to argue that popular reaction determined his declarations, one can also point to other controversial opinions he explicitly expressed in that period, despite huge opposition by the political and religious elites. The clearest example is his Transvaal *fatwā*,[823] issued despite the context of his deteriorating relations with Azhar scholars, the Khedive, and nationalist leaders.

Another argument put forward to explain ʿAbduh's radical view on restriction of polygyny points to the influence of British colonialist views on him. What I believe undermines this argument is first the fact that ʿAbduh had expressed his view on polygyny as early as 1881, and second the fact that colonialist discourses often focused on the "twin ills of polygyny and *ḥijāb*" the eradication of which was necessary for the reform of Egyptian society. However, one finds no parallels between ʿAbduh's view on polygyny and his views on *ḥijāb* (seclusion), since he expressed no view on the latter. While he was silent on the matter, the mixed view and ambivalence of Riḍā towards *ḥijāb* can be seen as expressing ʿAbduh's attitude. Riḍā recognised the lack of textual basis for the seclusion of women, but did not see benefit in calls for its immediate abolition. Another difference is that "veiling and seclusion", singled out and attacked in colonialist discourse, are mostly practiced by wealthy urban families, whereas, as ʿAbduh pointed out, polygyny was practiced – with harmful consequences – by the wealthy and poor, the rural and urban. As a social reformer, ʿAbduh's prioritised issues that transcended class and region.

Although ʿAbduh did engage with orientalist and colonialist discourses, his engagement cannot be seen to be a one-way acceptance of those discourses, nor can his views be seen simply as reactions to them. In response to the question of whether ʿAbduh was working within, against or outside "the Islamic Tradition", one would need to consider the paradigm it is measured against, the model defining 'Tradition'. For if one were to draw on Alasdair McIntyre's conceptualisation of tradition as an ever-changing set of socially embodied arguments extended through time, defining and redefining fundamental agreements "in terms of two kinds of conflict:

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[823] See Chapter 2.

those with critics and enemies external to the tradition who reject all or at least key parts of those fundamental agreements, and those internal, interpretative debates through which the meaning and rationale of fundamental agreements come to be expressed and by whose progress a tradition is constituted",[824] ʿAbduh could be considered as engaged in a creative reconstruction of tradition, redefining it in terms of the conflict with external attacks and misrepresentations, as well as internal resistance to change. As such a definitive answer to this will always depend on what is considered to be normative in "the Tradition".

ʿAbduh's emphasis on readiness for reform and preference for gradual reform also explains his focus on educational reform rather than relying purely on legal reform. His vision of marriage as being "the strongest spiritual bond" founded on love and mercy and leading to a strong family characterised by cooperation and unity could not be realised through law alone. ʿAbduh stressed that a reformed understanding of marriage could only follow from "the good upbringing of both males and females, their spirits adorned with virtues and their minds with true knowledge". Thus, ʿAbduh often used moral admonition and emphasised understanding of the *maqāsid* (intended purposes) of rulings so as to motivate humans to abide by them, even if those rulings were not legally enforceable. ʿAbduh believed that the conditions and "capacities" of the subjects were as important as the laws that governed them, and that equal attention must be paid to the reform of those capacities as to the laws themselves.

Although ʿAbduh's emphasis on the education of men and women was part of a general enthusiasm for education as a path to progress, ʿAbduh's discourse on education does not display the obsession with women's ignorance seen in other nationalist discourses (See Chapter 2). He spoke about education in general, with a focus on religious knowledge and education of women about their rights and their duties to God, to themselves, to their families and to society, which is unlike the common nationalist restriction of education for women to specialised training in domestic management and parenting. As well as religious knowledge, ʿAbduh believed women needed "worldly knowledge" according to their changing needs. This view is significant since it does not restrict women to a particular type of education suited to a particular social role.

While this focus on education is positive and can empower both men and women, ʿAbduh's emphasis on raising awareness of the moral and spiritual principles underpinning

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[824] Alasdair McIntyre, *Whose Justice, Which Rationality*, Notre Dame: University of Notre Dame Press, 1988, p. 12.

marriage still leaves them at the level of unenforceable requirements, at a lower degree than the well-defined legal rights and duties in marriage. This focus on these moral principles has continued in later discourses on the family, but whereas ʿAbduh had envisaged that education would ensure their actualisation and enforcement, more often than not they have remained theoretical ideals, often used merely for apologetics.

8.2 Contradictions and Unresolved Paradoxes

8.2.1 Equality or Justice?

While ʿAbduh did succeed in inspiring what can be called an Islamic movement for the liberation of women, the definition of that liberation remained far from clearly defined. While there is an emphasis on its Islamic nature and its distinction from the western version of liberation, it shares the concept of equality while not fully sharing its understanding. While equality of value and common origins and essence are emphasised,[825] differences are still emphasised in certain contexts,[826] resulting in a simultaneous recognition of equality and inequality. This paradox, which persists in subsequent debates on the status of women in Islam, reveals an ambiguous use of the term equality, which is understood differently in different approaches.

The above explains the affinity with the "equal but different" discourse which has emerged in recent times. While few support explicitly considering women as either "inferior" or "identical" to men, it is common for Muslim discourses to emphasise women's "equality in terms of spirituality, rights and duties" and their "different roles".[827] This points to the success of the turn-of-the-century drive, whether by religious reformers or nationalists, to integrate the principles of equality and division of labour.

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[825] See Chapter 3.
[826] See Chapters 4 and 5.
[827] Katherine Bullock, *Rethinking Muslim Women and the Veil*, London: IIIT, 2002, "The Muslim women I interviewed did not agree that believing in male-female difference was to believe that women and men are unequal", p. 58-59.

This confusion and contradiction is seen most clearly in ʿAbduh's – and later reformers' – views on women within marriage. Here equality is still emphasised simultaneously with a view of marriage as an exchange of different rights and duties and the fulfillment of different roles. Scholars such as Amira Sonbol argue that marriage turned into a contract of exchange (maintenance for obedience) with fixed duties and roles as a result of the codification and standardisation of law in the modern period and the influence of modern views of marriage. In fact Muslim women have bolstered this view through their insistence on the husband's obligation of financial maintenance, and modern states have bolstered this through their formalisation of marriage contracts and codification of family law. ʿAbduh followed the same logic, for instance through proposing state restriction of polygyny, rather than the individual negotiation of the terms of marriage through the insertion of conditions in the marriage contract. Lama Abu Odeh has noted the limitations of legal reform based on expansion of the wife's rights and limiting her obligations within the *nafaqa*-obdience equation as well as a suggested way out of this paradox.[828]

A tension remains between two simultaneous views of marriage as the most sacred and intimate spiritual bond and a belief in a "corporatist family" with a social function which must be achieved efficiently. In addition, the family is represented on the one hand as a social unit with a leader with the authority to manage and discipline, at times comparing it to an army or a state with a leader. On the other hand, in other contexts, the emphasis is on cooperation and the limited authority of the husband and the limited duties legally expected of the wife. This is further complicated nowadays with the changing perception of political leadership and its limited powers.

8.2.2   Divorce: Family stability or individual rights?

Concern about family stability as essential for a strong and healthy nation motivated nationalist and reformist movements of family reform, as was the case also with ʿAbduh. Indeed many reforms, including women's education and the restriction of polygyny, were explicitly

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[828] Abu-Odeh, L., "Egyptian feminism: trapped in the identity debate" in Y. Haddad and B. Stowasser (eds), *Islamic Law and the Challenges of Modernity*.

promoted on the basis of their positive effects on the health of the family and hence on society. This concern is also what is often used to justify the view of marriage as a hierarchical relation. However, the primacy of this concern about family stability in discourses on women leads to unresolved tensions. This is seen in the issue of divorce, with simultaneous concern about family breakdown and about the unjust restriction of women's access to divorce. While ʿAbduh criticised men's easy divorce in his criticism of triple divorce or his invalidation of divorce pronounced by a man in a state of anger, he also criticised the restriction of women's access to divorce in marriages where the husband is not fulfilling the duty of providing *nafaqa* or where there is proven harm caused to her. This tension remains unresolved in discourses on women, with various groups – religious scholars, states, women's groups, reformers – torn between widening women's access to divorce and restricting men's right of divorce. This tension is also partly responsible for the misalignment of legal reform and real change as a result of new laws: For instance, the "no-fault" *khulʿ* law passed in Egypt in 2000 was controversial and met with strong opposition from many quarters. But in application, it was still difficult as mediation took significantly longer than provided for by the law, and stigma continued to be attached to *khulʿ*.[829]

It is important, however, to point out that although ʿAbduh criticised both men's excessive use of divorce (triple divorce, divorce oaths…) and women's restricted access to divorce, his criticism of the former was expressed theoretically, without calling for any specific legal reforms in this area, whereas his criticism of the latter was more explicit and was followed by practical proposals for legal reform. However, paradoxically, in most writings that briefly refer to ʿAbduh's women-related reforms, one finds frequent reference to ʿAbduh's "restriction of polygyny and men's excessive divorce", a view that is unsupported by this study, as discussed in Chapter 7, where I showed that ʿAbduh was more concerned about widening than restricting divorce. An explanation for this discrepancy could be the male-oriented nationalist-driven nature of the early accounts of family law reform focused on creating a stable family as a basis for a stable society. Whereas many studies have argued that nationalist discourses on "women reform" and "family reform" aimed at bringing Egyptian family in line with the requirements of a bourgeois household, it is noteworthy that Abduh's efforts to facilitate women's access to

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[829] See Mulki al-Sharmani, p. 40 and Farida Deif, "Egypt, Divorced from Justice: Women's Unequal Access to Divorce in Egypt", *Human Rights Watch* vol. 16. No. 8 (E), p. 49-51.

divorce and his relative lack of obsession with promoting "training" women in "modern" parenting and home-management skills, an obsession of most nationalists, highlight his different perspective on women's reform, which cannot be completely identified with the "male nationalist" discourse on women's reform.

Nevertheless, ʿAbduh's contribution to women's reform continues to be primarily seen through the lens of the nationalist discourse on women: with a focus on promotion of education and "restriction of polygyny and divorce", and less attention paid to his efforts to widen women's access to divorce and improve post-divorce provisions, and to undermine the textual basis for cultural perceptions of women as derivative and inferior.

8.2.3   Between state and society: between education and codification

While ʿAbduh promoted education as a tool of reform, he was also engaged in legal reform. ʿAbduh's enthusiasm for relying on state codification and regulation of family life was due to his concern about effective and efficient reform, and his lack of awareness of the pitfalls and excesses of modern centralised state power. Indeed that enthusiasm was shared by all actors from all trends, including women's groups, throughout the first half of the twentieth century. ʿAbduh saw codification as both inevitable – as it had already been set in motion before him – and useful, since it was available to him in his official position, and a practical alternative to the shortage of judges able to engage in independent *ijtihād*. State codification was thus supported and mobilised in his own reform aims. Post-modern critical theory later facilitated the emergence of a more nuanced understanding of the modern state and its multiple means of control. Feminist critics have applied the concepts of 'governmentality' and 'biopolitics' to describe modern states' regulation of family life for its own ends. Many studies have applied these concepts to Egypt in precisely the same period ʿAbduh was engaged in his reform efforts there. The intrusion of the state into the family was thus promoted by modernists such as ʿAbduh in their belief in the benign nature and pastoral role of the state, ignoring consequences such as the restriction of women's options and the rigidification of perceptions of marriage and gender roles.

The paradox we have is that on the one hand, ʿAbduh advocated reliance on re-education as key to reform and progress, hence a gradual, social-based, bottom-up process. On the other

hand, he supported standardisation of legal and educational systems and the re-appropriation of the power of legislation by the state, hence a centralised, political, top-down process. Both Islamist reformers and secular reformers remain torn and confused between these two options. The dilemma is that the two approaches are not separate, but their intended and unintended results can be contradictory: While education and promotion of *ijtihad* can make social views and norms more open and flexible, potentially facilitating change, the process of codification and legislative change (even if in the direction of reform) can make views of social relations and roles more rigid, limiting the extent of future change.

8.2.4   Unresolved Paradox of What ʿAbduh Really Said

I have analysed chapters of Qāsim Amīn's important book *Taḥrīr al-Mar'a* to assess the validity of claims that they were written by ʿAbduh. I demonstrated that there is no evidence to conclusively support such a claim and exposed several significant differences between the approaches of Amīn and ʿAbduh to the same topics. Hence, I have concluded that *Taḥrīr al-Mar'a* was not written by ʿAbduh and that it is important to limit oneself to ʿAbduh's other writings on women when making claims about his discourse of women. In contrast, I have revealed that there remains persistent ambiguity about the overlap between ʿAbduh's views and Riḍā's views in *Tafsīr al-Manār*. While ʿAbduh's compiled *Complete Works* (by ʿImāra) tried to remove any additions explicitly claimed by Riḍā, I had to exclude further additions by Riḍā which had been kept in the *Complete Works* but which I had shown to be absent from the original serialisation of the *tafsīr* in the published journal. However, I have not been able to resolve the ambiguous attribution of certain opinions to ʿAbduh and Riḍā, in view of the fact that the serialised publication of the *tafsīr* was not completed during ʿAbduh's life. I have highlighted passages which can be probably attributed to Riḍā on the basis of various indications (clear contradiction with ʿAbduh's views, Riḍā's own views expressed in his own writings, punctuation) questioning their attribution to ʿAbduh. However, the ambiguity persists, and deserves further attention, since I argue that Riḍā's contribution to the *tafsīr* is greater than commonly assumed. As well as the widely-recognised fact that Riḍā explicitly added further

comments of his own to *Tafsīr al-Manār*, in view of his explicit and unannounced "elaborations" and "clarifications", there remains a sense of uneasy uncertainty as to what ʿAbduh really said.

8.3 Subsequent Discourses & ʿAbduh's Legacy

ʿAbduh's discourse on women, his strategies of reform, and the contradictions and tensions inherent within them form a significant basis of subsequent Muslim reformist debates on women. Charles Adams' verdict in his study of ʿAbduh that "he did not live to see the fruition of his endeavours; but he set in motion influences which outlived him",[830] and Albert Hourani's suggestion that his ideas "remained working beneath the surface, the unacknowledged basis of the religious ideas of the ordinary educated Muslim"[831] are certainly valid when applied to ʿAbduh's reform efforts in relation to women, as will be explored further below.

8.3.1 Using Islamic references to justify feminist demands

ʿAbduh's promotion of an Islamic liberation of women as a vital part of a general social reform based on a moral reform which is in turn inspired by religious reform continued to influence subsequent discourses on women. Various elements of this approach continued to characterise diverse discourses, from official legal reform articulated in Islamic terms and feminist activists who present their demands as Islamically justified and required, to conservatives using the notion of an Islamic liberation of women as a tool for apologetics and a basis for the rejection of wider reforms.

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[830] Adams, *Islam and Modernism in Egypt*, p. 103.
[831] Hourani, *Arabic Thought in the Liberal Age*, p. 130.

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8.3.2 Justice as the starting point

In ʿAbduh's discourse on women, there is an emphasis on justice– what Leila Ahmed calls "the ethical voice within Islam... a voice insistently enjoining Muslims to act justly and fairly, and constantly reiterating the equal humanity of all".[832] There is a pervasive conviction that all Islamic rulings derive from justice and must be just. This continues to characterise Muslim discourses on women, both those that attempt to stretch the limits of reform, and those satisfied with justifying existing hierarchies on the basis of justice. Ahmed stresses that the belief in the "ethical voice of Islam" continues to inspire Muslim women's understanding of Islam, although it may not be the voice informing those in power, and although lay women do not always perceive the contrast between the two. This is true both of "feminist" and "conservative" women.[833] However, more recently Muslim women have become more conscious of the contrast between the two voices and the need to highlight the ethical egalitarian voice and re-interpret the sources and the law according to it.[834]

This focus on the ethical voice of Islam was also evident in ʿAbduh's initial contributions to the deconstruction of anti-women cultural perceptions, as an equally important need to legal reform. This attention to the importance of pervasive and persistent cultural perceptions of women as inferior, weak, vulnerable, untrustworthy, motivated a re-reading of the sources to uncover roots of such perceptions and purge the texts of such interpretations. The emphasis on women's spiritual equality can clearly be seen in ʿAbduh's interpretation of the Creation story, as discussed in Chapter 3, to emphasise women's equal and independent origin and their full human agency, stressing "that woman's capacity is like man's capacity in all human matters", and his rejection of the link between the rules of testimony and an alleged inherent failing that is

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[832] Ahmed, *Women & Gender in Islam*, p. 229.

[833] Although the two have been mostly seen as opposed, more recent studies have questioned the assumption of a strict demarcation between the two. See Leila Ahmed, *Women and Gender in Islam*, p. 228; L Abu-Lughod, "The Marriage of Feminism and Islamism in Egypt: Selective Repudiation as a Dynamic of Postcolonial Cultural Politics", in Lila Abu-Lughod (ed.) *Remaking Women: Feminism And Modernity In The Middle East* (ed.), Princeton Studies In Culture/Power/History, Princeton University Press, Princeton, New Jersey, 1998; Mervat F. Hatem, "Egyptian Discourses on Gender and Political Liberalization: Do Secularist and Islamist Views Really Differ?", *Middle East Journal*, Vol. 48, No. 4 (Autumn, 1994), pp. 661-676; Lama Abu-Odeh, "Egyptian Feminism: Trapped in the Identity Debate", in *Islamic Law and the Challenges of Modernity*, 183-212 (Yvonne Yazbeck Haddad & Barbara Freyer Stowasser eds., Walnut Creek, Cal.: AltaMira Press 2004); Saba Mahmood, Politics of Piety: The Islamic Revival and the Feminist Subject, Princeton University Press (2011).

[834] See, for instance, works by Leila Ahmad, Asma Barlas, Amina Wadud, Kecia Ali, Khaled Abou El-Fadl.

essential to women's nature. These re-interpretations continued within reformist Islamist trends, to a certain extent. They have been enthusiastically revived and stretched further in late-20th and 21st century Muslim feminist writings.

8.3.3 Focus on education

The image that emerges from the study of ʿAbduh's *tafsīr* of selected verses is one of women as autonomous individuals, essentially possessing the *potential* to be equal to men in terms of human characteristics. However, that may not be the case in reality due to various factors, notably among which in ʿAbduh's view is education. Thus, education acquires a central position in ʿAbduh's discourse on women. Throughout his writings, one cannot fail to grasp his powerful conviction that it is through educating people and changing their perceptions, gradually and consistently, that radical and lasting changes can be achieved.

The same focus on education flows through subsequent discourses on women, as the principal tool of change in the situation of women. While this has generally become uncontroversial, and progress has been achieved, studies question the assumption that the effect of increased education of women is linear and necessarily liberating, nor that it is able to radically reform women's economic and political participation, nor eradicate cultural foundations of negative gender perceptions.[835]

ʿAbduh stressed the need to educate women about their rights and duties, but he argued that women's education should not be restricted to any particular field. However, in conservative discourses the fields that are seen as appropriate for women have not changed significantly and remain restricted, most commonly, teaching and medicine.

8.3.4 Family law reform & family feminism

ʿAbduh's strategies of reform of family law were a leading influence on subsequent official family law reform, as well as discussions on family law within diverse Muslim gender

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[835] Amira El-Azhary-Sonbol, "Muslim Women and Legal Reform: The Case of Jordan and Women's Work", *Islamic Law and the Challenges of* Modernity, edited by Yvonne Yazbeck Haddad, Barbara Freyer Stowasser, Altamira Press, 2004, pp. 213-232.

discourses. In addition, women's groups and male jurists and officials working on family law reform heavily drew on ʿAbduh's proposals and continue to do so.

To a certain extent reformist Islamic discourses proved more conservative and more resistant to radical reform, perhaps because family became even more central to resistance to western attacks on Muslim customs and culture. Mainstream Islamic discourses were particularly more defensive of polygyny and the unique male right to divorce.

The separation of moral injunctions and legal obligations in gender discourses and particularly in relation to family law continue clearly in modern discourses. ʿAbduh seems to have strengthened this, by focusing on the ethical motivation of individuals and their understanding of divine intent so as to inspire them to abide by them, rather than legal enforcements. This has continued, in various gender-related contexts, including official family law formulations and popular manuals, where egalitarian moral tendencies are encouraged, but with no legal effect. This – rightly – opens such statements on egalitarianism to the charge of being mere apologetics.

A related problem is that while marriage has been labeled a matter of *mʿuāmalāt*, instead of interpreting related rulings on the basis of *maṣlaḥa*, they have often been interpreted on the basis of *ʿurf*. Riḍā explicitly uses this argument in relation to *kafāʾa* and to women's domestic duties, simultaneously arguing against textual bases for them, while supporting them on the basis of *ʿurf*.

The insistence on the general equality of men and women while maintaining marital hierarchy is a pervasive feature of the majority of Muslim gender discourses, to various degrees. The general assertion is that unlike western feminism focused on individualism and autonomy, the dominant acceptable form of feminism is one that asserts equality of men and women, but for the sake of family, subscribes to complementarity within marriage and recognition of 'male leadership' within it.

8.3.5 Between defensiveness and apologetics and integration of colonialist themes

ʿAbduh's promotion of an indigenous Islamic liberation of women that is superior to its western counterpart is an example of the presence of the West in his – and other reformers' – discourses as an opposite, rival, model or partner. Simultaneously western advances in the treatment of women are highlighted – to highlight the backwardness of the state of Muslim women and motivate reform – and the shortcomings of western discourses and treatment of women are pointed to in order to emphasise authentic superiority and respond to colonialist appropriation of feminist language to argue for the inferiority of the colonised culture. At the same time, western tools such as modern education systems and state legal standardisation are recruited into the process of indigenous gender reform.

These themes have continued in subsequent gender discourses, being initially common to all mainstream approaches, from the conservative to the liberal, and later moving in divergent directions, with some stressing the negative view of the west which increased and became more exaggerated than found in ʿAbduh's discourse, while others stressed western superiority and accepted the alleged link between the state of women and culture.

8.3.6 Divergences and Convergences

I conclude that ʿAbduh's contribution to the formation of the Arab women's reform movement is more significant and more complex than often thought. The themes, strategies and contradictions within ʿAbduh's discourse on women have had a lasting effect on subsequent divergent trends. In ʿAbduh's writings on women, there is a discourse that brings together overlapping approaches to the question of women (pragmatic, theological, western-influenced, gradualist reformist, radical, patriarchal, social-based, official/state-based...). This overlap was followed by a divergence of discourses: Islamist and secularist, anti-western and pro-western, liberal and conservative... All of these carried certain elements of ʿAbduh's approach. While the nationalist secular discourse was dominant in the first half of the twentieth century, the Islamist reformist discourse became increasingly influential tending towards becoming the mainstream

discourse on women by the end of the century. Other studies question the strict demarcation between these discourses. The challenges posed by the secular discourse (Arab and foreign), as well as the challenge of the neo-traditionalist *salafi* discourse on women in the last quarter of the 20th century were catalysts for the emergence of a bolder feminist discourse stretching the boundaries of "the Islamic liberation of women". ʿAbduh's name, and many of his principles often emerges as an inspiration in these reformist feminist discourses.

Many emphasise ʿAbduh's influence on Arab liberal secular trends and later on recent Muslim feminist trends – in both cases without a detailed study of the exact nature and extent of that influence.[836] This creates an imagined trajectory where ʿAbduh's ideas are perceived to have been carried on through the liberal secular discourse to eventually reside within the Muslim feminist discourse, with the assumption that the latter emerged out of the former. I believe that such conclusions are generalised claims that are not based on a detailed study of ʿAbduh's discourse on women. Tracing the influence of various features of ʿAbduh's discourse on women on the various gender discourses in Egypt throughout the twentieth century needs to be the topic of a complete study, which cannot be achieved in this thesis. Nevertheless, my study of ʿAbduh's discourse led me to the view that the new Muslim feminist discourse has as much in common with the twentieth-century Islamist reformist discourse, as with secular discourses, just as those two discourses have clearly both carried much of ʿAbduh's legacy. Yet the differences between the reformist Islamist trends and the Muslim feminist trends are often highlighted, at the expense of the commonalities and common inspirations. This differs from categorisations[837] of contemporary discourses on women into traditional, neo-traditionalist (combining Islamist reformist and conservative *salafi*) and liberal feminist discourses. Such categorisations ignore the many overlaps and common inspirations and approaches of the Islamist reformist and Muslim feminist discourses and the debt of both to ʿAbduh's reform in general and women's reform in particular.

Miriam Cooke's discussion of "Islamic feminists" and "multiple critique"[838] is useful for

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[836] For instance, works by Beth Baron, Margot Badran, Leila Ahmed.

[837] e.g. by Ziba Mir-Hosseini, as referred to in the Introduction.

[838] *Cooke, Miriam,* "Multiple Critique: Islamic Feminist Rhetorical Strategies", *Nepantla: Views from South* 1.1 (2000) 91-110.

approaching the link between these various approaches, as well as the link between "Islamic feminism" and Abduh and his discourse on women. Cooke describes how Islamic feminists' "multiple belonging" and "multiple critique, a multilayered discourse that allows them to engage with and criticise the various individuals, institutions, and systems that limit and oppress them while making sure that they are not caught in their own rhetoric"[839] allows Islamic feminists to reach out across boundaries and "to invent a contestatory, but also enabling, discourse within the global context that will not be easily coopted."[840] Islamic feminists engage in "challenging and deconstructing traditional interpretations of authoritative texts that have served to construct norms that exclude them as women" as well as "defend their transnational, religious, and national communities against detractors".[841] They are able "to speak effectively to, with, and against several audiences" and develop "an effective strategy of resistance, engagement, and steadfastness".[842]

It is perhaps for these qualities that Muslim feminists look to ʿAbduh for inspiration, as someone who combined theoretical and practical reforms, built alliances with diverse groups, was not easily "categorisable", sought to stretch the boundaries of the Islamic "tradition" by engaging with internal and external critiques and challenges, and whose life and reform efforts, with their shortcomings and contradictions, demonstrated courage, determination, flexibility and evolution. The tensions and contradictions resulting from ʿAbduh's pragmatism and focus on practical reform and broad acceptance of his proposals, sometimes at the expense of radical coherent theoretical reform, are realised by the new Muslim feminist trend which seeks to overcome those tensions and contradictions.

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[839] ibid., p. 100.
[840] ibid., p. 99.
[841] ibid., p. 108.
[842] ibid., p. 109.

APPENDIX A: *Fatwā* on divorce based on absence, inability or refusal to provide *nafaqa*, and harm

1. The issue of prisoners referred to in your letter (prisoners who do not maintain their wives nor divorce them)
2. The issue of the husband's inability or refusal to maintain his wife, as happens with the majority of people from the lower classes of the population as well as many from the middle and upper classes.
3. The issue of the disappeared with no news or prolonged absence whose wives and children are left with no source of income, or with some inaccessible source, or where the wife, as a human being, needs an end to her situation, particularly if she is young.
4. The issue of the husband who harms his wife and causes her suffering such that there is no possibility of marital life.[843]

1. If the husband refuses to maintain his wife, then if he has visible assets, and does not claim inability, but insists on refusing to pay *nafaqa*, the judge orders immediate divorce. If he claims inability, then if he does not prove it, divorce is ordered immediately. If he does prove inability, he is granted a maximum of one month within which to provide *nafaqa*, otherwise divorce is ruled.
2. If the husband is ill or imprisoned, and refuses to pay *nafaqa* for his wife, the judge grants him a period within which he may recover or be released from prison. If the period of illness or imprisonment is prolonged, such that harm or *fitna* is feared, the judge orders divorce.
3. If the husband is absent, in a nearby place, and does not leave *nafaqa* for his wife, the judge sends him a warning through the known methods, and sets him a deadline. If he does not send *nafaqa* for his wife or return to provide *nafaqa*, the judge orders divorce after the deadline. If the husband is away in a distant place, a distance of ten days or over, or in an unknown location, and it is proven that he possesses no money from which the wife may spend, the judge orders divorce.
4. If the absent husband has money, or a debt or deposit with someone else, the wife has the right to demand the payment of *nafaqa* from that money or debt, after taking an oath that she deserves *nafaqa* from the absent husband and that he has not left her any money or appointed anyone to provide for her. The absent husband can contest upon his return.
5. The divorce by the judge on the basis of non-maintenance is revocable, and the husband may return his wife if his ability to maintain is proven and his willingness to pay *nafaqa* is expressed during the *ʿidda*. If his ability is not proven or he is not willing to pay *nafaqa*, revoking the divorce is not permitted.
6. On the disappeared in a Muslim land... the wife can be considered a widow after four years...

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[843] *Aʿmāl*, vol. 2, p. 654.

7. Continued from Article 6

8. On the disappeared during an inter-Muslim war... the wife can be considered a widow once it is confirmed that he cannot be found...

9. On the disappeared during a war between Muslims and others: the wife can be considered a widow after the passing of one year.. In all the above cases of the disappeared, the wife waits the specified period if the husband has left her maintenance and she does not fear *fitna*. Otherwise she may refer her case to the judge who can issue divorce once her claim is proven.

10. If disputes intensify between the two spouses and it is not possible to put an end to them through the methods prescribed in the Qur'an, the matter is referred to the local judge who appoints two mediators from the husband's and wife's relatives, preferably neighbours, or if not possible, then mediators who are not relatives. If these mediators reconcile the couple, so much the better, otherwise they can rule to divorce them; they refer the case back to the judge who has to execute their decision. The divorce is then a single irrevocable divorce, and the mediators cannot add any further divorces.

11. The wife may ask the judge to divorce her from her husband if the latter causes her harm- that is what is prohibited in Shariʿa, such as desertion with no legitimate cause (in Shariʿa) or beating or cursing without a justified cause (in Shariʿa). The wife has to prove such claims through permissible means.

APPENDIX B: *Fatwā* on Delegating Divorce

On whether the condition that the divorce is to be in the hands of the bride's father is valid:

"They said: if the woman pronounces the *ījāb*, which includes the condition that divorce is in her hand, and the husband accepts the marriage on that condition, the marriage is valid, and the condition is binding. However, if the husband pronounced the *ījāb* with the condition, and the woman accepts, the condition is then void. They said: the invalidity of the condition in the second case is due to the fact that the husband possesses the right of divorce before the contract, such that if the woman accepts with the mention of the condition, it would be as if she gave herself that right upon the conclusion of the contract, which she does not necessarily possess, whereas if she begins with the *ījāb*, and the husband accepts with the condition, the condition would obtain after the conclusion of the contract, and the husband would have given her what he does possess, hence it is binding… Hence, the contract is valid and the condition is binding. Then they said: if the husband tells his wife: your divorce is in your hand, or: choose for yourself, without saying: you may divorce yourself when you wish, or whenever you wish, the delegation is valid, but the right only lasts as long as the sitting, and when it is over, she no longer has the right to divorce herself. Thus, according to their arguments, the delegation of the right of divorce is valid since it occurred after the *ʿaqd*, and the bride's father cannot divorce his daughter once the sitting is over, because neither he nor the husband specified "when you wish". We have not found any statements (of Hanafi scholars) regarding a similar case to ours. However, if we were to consider the condition in the contract to be a delegation which occurred after it, the condition would have been meaningless, and it would have been different from the aim of the two parties, for the wife placed the condition of granting the right of divorce to her father in order to avoid her husband's refusal of divorce after the consummation of the marriage or before it in the case of discord. The husband similarly accepted that the right of divorce be in the father's hand in the future when the father wishes, not that he has it during the contract sitting, which would mean that he would have to pay half the *mahr* before leaving, without having acquired any benefit. That would be tantamount to the wife saying: I have delegated you (her father) to conclude my marriage, and you may immediately divorce me. Or that the husband says: "I accept that, and you may divorce her before we leave this gathering", which is extremely ridiculous, and no sane person could mean that…. Which is what I choose, because not mentioning this restriction (whenever you wish) is of no consequence, because the condition itself is only meaningful with its inclusion, and it has only been omitted because it is readily understood. Secondly, the marriage is conditional upon it, and it is as if each said: the marriage is to last as long as this condition holds, and there is no marriage without it, hence the condition holds as long as the marriage does, and it is as if it was explicitly said "divorce whenever you wish". Thirdly saying that the condition took place after the contract of marriage does not equate this case with that of delegation which they mentioned… as in delegating the right of divorce to another person, which is undoubtedly restricted to the time of pronunciation of the delegation, unless otherwise specified. As for our case, the contract was concluded with the condition, hence

it lasts as long as the contract does… Therefore the wife's father has the right to divorce her whenever he wishes- only once.[844]

Similarly another fatwa asking whether a woman who married on the condition that "her divorce is in her hand, such that she can divorce herself when (*matā*) she wishes". ʿAbduh answered that the condition is valid, and she has the right to divorce herself once, as the condition did not specify *kullamā*- whenever.

The above *fatāwā* deal with two formal questions in Hanafi *fiqh* in relation to the condition of *ʿisma* in the marriage contract: whether the condition is valid beyond the sitting where the contract takes place without the explicit inclusion of "*matā shā'at*" (whenever she wishes), and whether the wife has the right to make use of this right only once or more than once, or whether it is necessary to explicitly mention "*kullamā shā'at*" (whenever and every time she wishes). In the above *fatāwā*, ʿAbduh argued against the necessity of explicitly mentioning "whenever", since it would be meaningless to include such a condition, if it were only valid during the writing of the contract. However, he accepts the view that explicit mention of "whenever and every time/however many times" in the contract, otherwise the wife can only use that right once. The problem of course is that either way, such a divorce is only revocable and *fiqh* gives the husband the right to return his wife during the *'idda*, with the possibility of making such a right (assuming a woman is able to include the condition in her marriage contract) useless. Theoretically, however, even if the divorce is revocable, if the wife has the right to use this condition more than a single time, she can eventually leave the marriage after 3 such divorces. Reformers, following Amīn's example, did not seem to be too keen to develop this right of the woman to stipulate her right to divorce herself as part of the marriage contract, as a solution to unequal access to divorce, preferring to either maintain men's monopoly of unilateral repudiation, or delegate some of his rights to the courts.

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[844] *Aʿmāl*, vol. 6, p. 395

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