

2013

Marriageable Age in Islam: A Study on Marriageable Age Laws and Reforms in Islamic Law

Jeremiah J. Bowden

Claremont Graduate University, jeremiah.bowden@cgu.edu

Follow this and additional works at: <http://scholarship.claremont.edu/lux>

 Part of the [Ethics in Religion Commons](#), [Family Law Commons](#), [Family, Life Course, and Society Commons](#), [International and Area Studies Commons](#), and the [Women's Studies Commons](#)

Recommended Citation

Bowden, Jeremiah J. (2013) "Marriageable Age in Islam: A Study on Marriageable Age Laws and Reforms in Islamic Law," *LUX: A Journal of Transdisciplinary Writing and Research from Claremont Graduate University*: Vol. 2: Iss. 1, Article 5.
Available at: <http://scholarship.claremont.edu/lux/vol2/iss1/5>

Marriageable Age in Islam: A Study on Marriageable Age Laws and Reforms in Islamic Law

Jeremiah J. Bowden
Claremont Graduate University
School of Religion

One area of Islamic law that has been subject to much criticism as of late is the practice of child-marriage. Some, preferring to view Islam suspiciously, tend to create a caricature of Muslims as morally depraved individuals who force young daughters into marriages to old men for financial gain. Several polemicists commenting on this practice have hurled virulent epithets toward the Prophet Muhammad, whom they believe to be the originator of this abhorrent practice.

A recent flare up of the debate occurred at the 2002 annual gathering of the Southern Baptist Convention, where Reverend Jerry Vines said, “Islam was founded by Mohammed, a demon-possessed pedophile who had twelve wives, and his last one was a nine-year-old girl.” (Carlson 2002) Perhaps even more problematic was the reluctance of the Southern Baptist Convention’s new president to repudiate Vines claims, instead calling them, “accurate.” (Carlson 2002) In an interview on CNN’s *Crossfire* with Tucker Carlson, Jerry Falwell pushed the issue even further by claiming time and again that any man who is fifty-four years old and sleeps with a nine-year-old child is a pedophile. (Carlson 2002) While this may sound like a truism to contemporary readers, I hope to show that this certainly was not the case. It was also rather unfortunate that Hussein Ibish, who was the Director of Communications and Media for the American-Arab Anti-Discrimination Committee and the Muslim respondent to Falwell, claimed to have no knowledge of this tradition and failed to directly address the accusations of Falwell and his ilk. (Carlson 2002)

In the pages that follow, I intend to address the claims of Falwell and others like him by directly engaging the relevant texts and traditions. Simply pretending the texts do not exist, or feigning ignorance, will do little to change the misconceptions people have regarding Islam. I do not claim that I can prove that every Muslim has his daughter’s best interests in mind when he marries her off at a young age, and this is explicit in the examples that follow. However, I should emphasize that the actions of a few should not be generalized to represent the group as a whole. After exploring instances where child-marriage still occurs, I will examine how this practice is currently being reformed in a way consistent with Islamic law. Ultimately, I will argue Muhammad’s actions were moral and provide believers with a universal principle that ought to

be followed. I will do so by articulating al-Ghazali's hermeneutical key to understanding the intention behind Islamic laws, by placing Muhammad's actions into their historical context, and by emphasizing the difference between Islamic culture and Islamic law.

Let me begin by decoding the intention of Islamic law. To do so I draw upon the definition given by the eleventh century legal writings of renowned scholar Abu Hamed Muhammad ibn Muhammad Ghazali (referred to hereafter as al-Ghazali.) Al-Ghazali avowed that God's purpose behind revealing divine law was to bring about *maslaha* (the common good). As Felicitas Opwis makes clear, "this intention was to preserve for humankind the five essential elements for their well-being, namely, their religion, life, intellect, offspring, and property. Whatever protects these elements and averts harm from them is a *maslaha*, and whatever fails to do so is the opposite, namely, *mafsada*." (Opwis 2007, 65-66) When one views the actions of Muhammad, and the rulings of the jurists through this lens, their intentions become much clearer. The reader will also find in the examples that follow that reform is most prevalent where these five aspects are emphasized.

The two authoritative sources of Islamic Law *sine quibus non*, are the *Qur'an* and the *Sunnah*. The Qur'an is relatively silent on the issue of marriageable age, albeit for one verse which states, "And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them" (Qur'an 4:6). According to this verse, there seems to be an affinity between being of marriageable age and the age of mature intellect. Extrapolating from this correlation, Muhammad Iqbal Siddiqi, the author of *The Family Laws of Islam*, claims a constitutive element of having a mature intellect is the ability to understand that one has choices, and the ability to choose the preferential option (the option that is in one's best interest.) Hence, the age of majority, a term Siddiqi equates with marriageable age and the age of mature reason, only occurs after puberty. He states, "A man or woman who has not attained puberty is unable to exercise his or her choice in matters of sexual matters and is unable to decide whether he or she will like or dislike a certain woman or man as wife or husband." (Siddiqi 1984, 68) Thus, one should not marry until one reaches puberty and is able to determine what he or she is looking for in a spouse. However, I think Siddiqi may be reading medieval juristic decisions back into the holy text, a point that will become clearer below.

Let us now turn to the much more fertile ground of the Sunnah – the collected sayings and actions of Muhammad. Due to the dearth of information on marriageable age in the Qur'an, many jurists turned to the Sunnah when developing their rulings on the subject. I begin with the most highly regarded collections of *hadith* (a recorded act or saying of Muhammad) in the Sunni tradition, the *Sahih al-Bukhari* and the *Sahih Muslim*. (Awde 2000, 7) In Bukhari's collection, there are at least three different *hadith*, with varying chains of transmission, which recount the events surrounding Muhammad's marriage to Aisha. The following quote from his collection encapsulates the issue at hand rather succinctly: "The Prophet married her when she was six years old and he consummated his marriage when she was nine years old, and then she remained with him for nine years (i.e., till his death)." (Bukhari 2010, 64-65, 88) A similar account is given in *Sahih Muslim*. "Aisha (Allah be pleased with her) reported: Allah's Apostle (may peace be upon him) married me when I was six years old, and I was admitted to his house when I was

nine years old.” (al-Hajjaj 2010, 3309-3311) I implore the reader to set aside any anachronistic moral judgments for the time being, as I will explore the moral implications of Muhammad’s actions below. Here I merely want to lay out the facts, before exploring the intention behind them. The fact that this tradition is passed down from multiple sources speaks to its authenticity. Hence, the focus of my argument does not rely upon challenging the veracity of the *hadith*, as other apologists tend to do; for the sake of space, I assume them to be accurate. Before doing so, it is pertinent to develop the whole picture, in this case by exploring the related issue of compulsion in marriage.

The connection lies in the idea that since children can hardly decide for themselves, an adult must make the decision for them. It is significant, therefore, to discover what evidence the Sunnah gives for compulsion in marriage. Jamal Badawi, a world-renowned speaker and preacher on Islam, is clear in his articulation of Islam’s position on forced marriage, “The female has the right to accept or reject marriage proposals. Her consent is a prerequisite to the validity of the marriage contract... It follows that if an ‘arranged marriage’ means the marrying of a female without her consent, then such a marriage may be annulled if the female so wishes.” (Badawi 1995, 23) To support his claim, Badawi cites a *hadith* from Ibn-Majah’s collection, “Ibn Abbas reported that a girl came to the Messenger of Allah, and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice[...] (between accepting the marriage or invalidating it.)” (Majah 1952, hadith 1873) A virtually identical account is given in *Sunan Abu-Dawud*¹ and a whole chapter is devoted to the necessity of consent in *Sahih Muslim*.²

Let us now turn to an examination of how marriage laws were traditionally implemented. In Islamic law, marriage is viewed as a contract between two parties; this is quite different from how marriage is traditionally treated in Christianity. Similar to other contracts, the terms of the contract are written out and must be accepted by all parties before the marriage is deemed valid. A religious ceremony, although customary, is not legally (or religiously) necessary. (Anderson 1976, 102) Addressing the purpose of marriage in the Islamic tradition, Judith Tucker posits “having licit sexual intercourse is both the primary motivation, and the most important effect of the marriage contract.” (Tucker 2008, 41) This facet is very important as one attempts to decipher the intentions behind Muhammad’s actions, namely, whether it is the case that he is making sexual relations with young girls permissible for all Muslims, or if he is demarcating a proper age for those relations by waiting three years to consummate his marriage. For the time being, it is perhaps best to return to the issue of consent before we get too far ahead of ourselves.

Historically, when it came to the issue of consent, the minor ward found herself in a unique situation. All of the Sunni legal schools agreed that a girl’s father had the right to marry her off to whomever he chose without consulting her. As minors, children lacked the legal

¹ Abu Dawud, *Sunan Abi Dawud*, trans. Ahmad Hasan. 2 vols. USC Center for Muslim-Jewish Engagement Website. Accessed on 12/13/2010.

<http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/abudawud/011.sat.html>.

¹Book 11, Number 2091.

² Muslim ibn al-Hajjaj, *Sahih Muslim*, Book 8, Chapter 9, Numbers 3303-3308.

capacity to give their permission for marriage. (43) However, this marriage could not be consummated until the minor child reached the age of majority. Here, one might recall that although Muhammad had married Aisha when she was six, he did not consummate the marriage until she was nine. In the period between her betrothal and the consummation of her marriage, the young bride would reside with her parents. Another important *caveat*, according to many jurists, is that upon attainment of the age of majority, the bride could exercise her right to annul the marriage if she so wished, this was called her “option of puberty.” (43)

Each of the four classical legal schools equate the age of majority with the attainment of puberty and the demonstration of adequate mental development. Norman Anderson states, “the test in regard to puberty being the appropriate physical signs, but with the proviso that the minimum age is twelve for a boy and none for a girl, and that puberty may be presumed when either boys or girls reach the age of fifteen.” (Anderson 1976, 103) Until the bride reached the age of majority, she could not be given to her husband. The aim of these laws was to ensure the welfare and interests of the minor party. (al ‘Ati 1977, 77)

As mentioned above, the sayings and actions of Muhammad set a limit as to what is acceptable practice and what is not. By consummating his marriage with Aisha when she is nine instead of when she was six, Muhammad effectively sets a limit to acceptable practice *vis-a-vis* licit sexual relations. While this act might sound deplorable to the contemporary Western reader, he is in fact attempting to show that there is an acceptable age for licit sexual relations and an improper age for those relations. In 7th century Arabia, the proper age for such relations was nine. Some might argue, and quite correctly I might add, that this age has risen dramatically since then. However, there are some Muslims who fail to acknowledge this change and prefer to adhere to inherited practices, who in effect universalize Muhammad’s particular actions without regard for his intentions.

To elucidate further the importance of historical context, a comparison between age-of-consent laws over the course of American history is quite telling. One could begin by citing Christopher Columbus’s complicity in the Haitian sex trade of the 1500s. He writes to a friend “A hundred *castellanoes* are as easily obtained for a woman as for a farm, and it is very general and there are plenty of dealers who go about looking for girls; those from nine to ten are now in demand.” (Williams 1963, 1:36-37) However, I think examples from “post-Enlightenment”, “modern”, American society may be a bit more persuasive.

In 1880, the majority of the United States agreed that a person who was ten years old was old enough to consent to sexual relations. This is only a single year older than Aisha was when she consummated her marriage to Muhammad in 622 C.E., more than 1200 years earlier. Delaware had set the age at seven and only a handful of other states upped their minimum age to twelve. By 2007, age of consent laws in the United States required people to be between fifteen to eighteen years old in order to engage in sexual relations.³

³ Data compiled from the following sources: Magnus Hirschfeld, *The Homosexuality of Men and Women*, trans. Michael Lombardi-Nash (Amherst, New York: Prometheus Books, 2000); Martin Killias, “The Emergence of a New Taboo: The Desexualization of Youth in Western Societies Since 1800” in *European Journal on Criminal Policy and Research* 8 (2000): 466; Mary Odem, *Delinquent Daughters: Policing and Protecting Adolescent Female*

Returning to the writings of early Islamic jurists, further restrictions were placed upon the minimum age for marriage. It was not the case that all nine year old girls were now potential brides, but rather, it was those women who had reached the age of majority. The problem that surfaced in the tradition that followed was a tendency to universalize Muhammad's particular situation – marrying a nine-year-old girl – and then utilizing it as a normative guideline for all believers, regardless of its historical context. As we will see in the examples that follow, instead of grasping the universal truth behind Muhammad's actions – that even when sexual relations would be licit, *i.e.* a groom sleeping with his wife, there is a proper age to engage in such activities – some argue that it is the particular action that ought to be repeated. As a consequence, some jurists argue that since Muhammad had licit sexual relations with a nine-year-old girl, everyone is permitted to do the same.

One region where this flawed reasoning has taken root is Afghanistan during Taliban rule. While the situation there may be slowly changing, it is worth exploring what factors figure into the high prevalence of child-marriage in the region. In Afghanistan, the value of a person is intimately connected to what one can contribute economically to a household. Speaking on this very issue the award author and activist Deborah Ellis asserts, "Girls are valued for the price they can fetch on the bridal market. In Afghan culture, the groom pays the bride's father for the right to marry his daughter. The money is supposed to compensate the parents for the money they spent raising her, and for the services she will no longer be able to provide for them." (Ellis 2000, 141) A man must work for many years in order to save enough money to afford the bride price, thus the reason why the groom is often much older than the bride. (141)

Many girls are married in their early teens or even younger. The Taliban supports this practice by publically declaring that girls are ready for marriage at the tender age of eight and by putting forward policies that limit the availability of education to women. Ellis points out that, "Poverty means that families no longer can afford to keep their girls at home very long, and the lack of educational opportunities reduces girls' employment options to cooking, cleaning, and having babies." (141) Ellis's work illustrates how economics plays an integral role in informing the decisions of parents of young brides, yet my main concern in the current work is determining the role religion plays in influencing the actions of believers. Let us return to this question to see what answers, if any, can be mined from the Afghani example.

In 1978, Afghanistan was under the control of Communist Russia. The Communist government that rule Afghanistan at the time passed laws aimed at reforming the practice of child marriage. It was an attempt to "remove the unjust patriarchal and feudalistic relations which exist between husband and wife." (142) However, their efforts were fruitless. Mullahs and fathers saw as their actions as a challenge to their power and authority. Protests broke out followed by armed resistance and ultimately the deaths of teachers and government officials. Under the new rule of the Taliban, marriage reform was doomed. (142) Zohra Rasekh, a member

Sexuality in the United States, 1885-1920 (Chapel Hill: University of North Carolina Press, 1995); "Worldwide Ages of Consent," AVERTing HIV and Aids, www.avert.org/aofconsent.htm (accessed November 29, 2007). Found in "Age of Consent Laws [Table]," in *Children and Youth in History*, Item #24, <http://chnm.gmu.edu/cyh/primary-sources/24> (accessed June 7, 2012). Annotated by Stephen Robertson

of Physicians for Human Rights, begins her analysis of the situation by highlighting the economic considerations of Afghani parents: “Because of the poverty and devastation, parents have to get rid of their daughters as fast as possible. The families cannot afford to keep the daughters, who will never be able to work outside and bring money into the household.” (143) However, after further reflection Rasekh goes on to state that the main problem is the Taliban’s use of Islam as a justification for the practice, “The Taliban says it is good, it is Islamic, to marry your daughters off while they are young. They say ‘Do not keep your daughters too long at home. After age nine, they should be married!’ This is child abuse [...] These young girls are basically raped, but that is not talked about.” (143) Rasekh then lists several health issues that can occur as a direct result of child-marriage; these include, but are by no means limited to, gynecological problems due to early childbirth, a higher risk of cervical cancer, and a higher risk of suicide and other mental problems such as depression and anxiety. Beyond these concerns, there is the issue of a child raising a child, if the young bride is hardly able to take care of herself, how can she be expected to take care of a small child? (143)

One of the most moving life stories recounted in Ellis’ book is that of a woman named Parvin. Parvin was married when she was eleven to a man fourteen years her senior. She had her first daughter at age twelve, but, she states, “By that time my husband was dead. He fought with the Mujahideen and was killed eight months after we were married. I was a widow at twelve.” (144) With barely any education, Parvin’s career opportunities were severely limited. At the time of the interview, Parvin sold handicrafts and lived in a refugee camp in Pakistan. Parvin was adamant in wanting a different life for her own daughter, “My daughter [who was twelve at the time of the interview] goes to school. I do not want her to marry for a long, long time. When she is ready to marry, I will let her choose her own husband. Right now, she must continue her education. She wants to be an engineer.” (144) For Parvin one possible answer to the blight of child marriage is expanding women’s opportunities, and thus lessening their dependence upon men, through education.

Poverty and a lack of education are two prominent reasons why child-marriage became such a prominent practice in Afghanistan. However, the impact of the literalistic approach of the Taliban cannot be over-emphasized. They made the Prophet’s marriage to Aisha a normative practice for their citizens, while completely ignoring the rationale behind Muhammad’s actions. Perhaps one should point out to them that of all Muhammad’s wives, Aisha was the only virgin and the only nine-year-old. Determining to what extent to one can one claim that the practice is Islamic and to what extent is it cultural is hard to parse out, but an example from a Yemeni enclave in Dearborn, Michigan may help clarify the issue.

In her book, *Mecca and Main Street*, Geneive Abdo tells the story of fifteen-year-old Sherine.⁴ Sherine’s parents arranged for her to be married to Ahmad, a man twice her age, because they feared Sherine would be viewed with suspicion if she were not married by the time she was sixteen, as was the common practice in her neighborhood. Despite much protest on

⁴ Sherine is not the girl’s real name. Abdo uses the pseudonym to protect her privacy, due to the sensitivity of family life in the Yemeni community of Dearborn.

Sherine's part, the marriage occurred nonetheless. Her parents believed it would have been better for Sherine to be dead than to have a bad reputation in her isolated community. (Abdo 2006, 37) As Abdo makes apparent, "Under the Yemeni influence, a certain philosophy took hold of the Dix [the name of the local mosque] followers: the community consensus, not individuals or their families, determined proper moral and religious behavior." (53) Here it is hard to determine which way the causal arrow is going, is it the case that religion is influencing the actions of a group with similar cultural ties, or is it the case that believer's cultural heritage was influencing what was being preached at the mosque? Many women in the neighborhood complained that Yemeni traditions were confused with Islamic practice. Abdo reaches a similar conclusion, "This community provides a feeling of solidarity and offers a clear antidote to mainstream America, where they often feel uncomfortable. Yet the Yemenis cling to tradition, and often they confuse those traditions with Islamic doctrine." (44-45) Distinguishing culture from religion is difficult, and this is especially true when the community one studies is as insular as the Yemenis of Dearborn. Perhaps this distinction can be made more apparent by studying the minimum marriageable age laws among various states in the United States.

Having lived in two different states it is easy for me to see how a person's state affiliation influences their sense of identity and how it provides a distinctive cultural background. The argument can be made that minimum marriageable age laws are a reflection of that cultural background, and it should come as no surprise that they vary significantly from state to state. California, for instance has no minimum age set as long as the participants have parental consent. In New Hampshire and Massachusetts people can get married with parental consent at the rather young ages of thirteen and twelve, respectively. (Cornell Law) I think the case could be made that citizens of these states have analogous backgrounds, the most vivid difference being their affiliation with the state they were raised in or the state they currently reside in.

Returning to the case in Afghanistan, the situation there provides the reader with a good example of how *not* to go about reform. The Russian backed Afghani-Communist regime's suggestion that Islamic law ought to be jettisoned in favor of a Western secular form of law was doomed from the beginning. If marriage reform is to come about and be viable in Afghanistan, it has to do so within an Islamic framework. This is the predicament the nascent government of Iraq now faces and it is to this situation that I now turn.

Since 1959, Iraq's personal status law provided women with some of the broadest rights in the region. (Coleman 2006) The law, which was loosely derived from various schools of Islamic jurisprudence, set the marriage age at eighteen, prohibited arbitrary divorce, restricted polygamy, and reformed inheritance laws. Women made gains in other areas as well, as Senior Fellow for U.S. Foreign Policy at the Council on Foreign Relations in New York Isobel Coleman makes clear, "Under secular, albeit brutal, Baathist rule, Iraqi women made significant advances in numerous areas, including education and employment." (Coleman 2006) This leads one to ask whether the United States efforts to "liberate" Iraqi men and women are having the desired effects.

After the overthrow of Saddam Hussein in 2003, religious leaders in Iraq made it very apparent that they expected the new Iraq to be an Islamic state. One of the first secular laws to be

repealed was the personal-status law, which resulted in the placement of all family laws under the rules of *shari'ah*. However, one should not presume this as an act necessarily detrimental to women. Whether it is or not depends largely upon who is interpreting the legal sources. Coleman states that reform may be easier to come by if feminists adopt an Islamic worldview rather than arguing from a secular viewpoint, "In many Islamic countries, reformers have largely abandoned attempts to replace sharia with secular law, a route that has proved mostly futile. Instead, they are trying to promote women's rights within an Islamic framework. This approach seems more likely to succeed, since it fights theology with theology." (Coleman 2006) Intuitively this makes sense; sometimes one must use the tools of the oppressor to no longer be oppressed.

Uzoamaka Okoye notes that many Muslim feminists "have argued that the Qur'an advances the rights of women and that Prophet Muhammad surrounded himself with independent, self-sufficient women. They [Muslim feminists] argue that fatwas of the jurists are in many ways diametrically opposed to Islamic teachings, the Qur'an and the Sahih Hadith of the Prophet Muhammad." (Okoye 2006, 12) Okoye avers that one obstacle to understanding that women are guaranteed rights under Shari'ah, is the failure to differentiate between Islamic law from Islamic culture. (12)

Some advances have been solidified for women in Iraq after the most recent U.S. invasion. For example, Iraq is attempting to ensure the rights of women by including them in the decision making process. The new constitution grants women twenty-five percent of the seats in parliament. This is quite remarkable considering the United States Congress is only fifteen percent female. (Coleman 2006) Nevertheless, one should not presume that the mere presence of women in parliament will result in equality between the sexes.

The key to garnering equal rights between the sexes, according to Coleman, is education. If women are informed of the rights accorded to them under *shari'ah*, they will be more vocal in making sure they are implemented. To bolster her argument Coleman cites the current environment in Iran: "Iran, with its female literacy rate of more than seventy percent, has shown, educated women inevitably become effective advocates for their own rights." (Coleman 2006) Of course, one of the fears facing reformers in new Iraq is that the adoption of *shari'ah* will result in the country becoming a repressive theocracy like Khomeini's Iran or Afghanistan under Taliban rule. Having already addressed the practice of child-marriage in Afghanistan, I would like to take a moment to consider the changing situation in Iran to discover if it is really the case that women are as oppressed as commonly believed.

Prior to the Islamic revolution of 1979, Iran had a minimum marriageable age of eighteen. However, as Haleh Afshar highlights, "Shi'a *ulama* in general and Khomeini in particular have taken the age of nine for girls as the age of puberty [...] Accordingly immediately after the revolution the age of marriage for girls was lowered to nine. But in an extraordinary retrograde move even this lower age limit was removed." (Afshar 1999, 147) This was consistent with Khomeini's view that the best thing a guardian could do for his daughter is to marry her off before she reached puberty. (147)

Several problems with child-marriage and forced child-marriage followed. This led to a wide-ranging debate over reinstating a minimum marriageable age law. Ayatollahs Mohamad

Ebrahim Jomati and Musavi Bojnurdi led the campaign to amend the Constitution. Jonati tried to convince the *ulama* (the corpus of religious legal scholars) that although the age of nine is given as the age of puberty in some of the *hadith*, “it was the duty of the religious establishment to contextualize these views and revise their position.” (147) Jonati claimed that this revision would be consistent with the *ulama*’s duty of *ijtihad* (exerting personal mental force to come to a decision on a legal matter.) He also states, “it may have been the case that at the inception of Islam when the *ahadis* [*hadith*] were being reported girls did reach puberty at the earlier age of nine... but at the end of the twentieth century this is no longer the case.” (147) This is exactly the argument I have been attempting to make in the current work, although we differ in how reach our conclusions.

During Khomeini’s lifetime, one would not dare question his definition of puberty or his views on marriage for fear of harsh punishments. However, upon his demise in 1989, dissenting views were allowed to come to the fore. Addressing the issue of forced marriage, Bojnurdi fought for the right for all women to have a say concerning their marriage. Specifically, he believed women ought to be able to form their own opinion on the basis of adequate knowledge and understanding of religious source material. Moreover, they should have the ability to negotiate their marriage contracts without external coercion. (148) He then adds, “It is quite obvious that a nine-year-old can do neither and should not be placed in an impossible situation. Since Islam applauds that which is reasonable as being legitimate and abhors that which is not, it is no longer tenable to maintain that age as the legal minimum for marriage for girls.” (148) Again, we hear another voice advocating the historical contextualization of the practice of child marriage.

While the practice of child-marriage has made Iran the subject of much criticism from other nations, it is quite interesting to see the inverse relationship Khomeini’s policies have had on the average age of women who marry. In 1986, seven years after Khomeini had gained power, the average age of newly married women was twenty; by 1996, the average age had risen to twenty-two. (148) The growing corpus of scholars, clerics, and elite Iranian women had a remarkable impact on the perceptions of general Iranian populace. This is perhaps best epitomized in the remarks made by President Khamenei in 1994, where he vocalized his dislike for the practice, calling it “ugly and un-Islamic” and claimed it should end. (149)

The three examples above study societies that are either in dire need of reform or on the cusp of reform. The examples that follow zero in on instances where reform has been implemented successfully and how this has come about. In order to gain a better understanding of the marriage law reform process, one needs to understand its foundations; the *Ottoman Law of Family Rights (OLFR) of 1917* is seen by many as providing that foundation. This is not to say that the state did not have regulations in place beforehand. Previously, as Judith Tucker makes clear, “the Ottoman state over-saw the system of Islamic courts that registered marriage contacts and adjudicated marital conflicts, and even attempted, at times to require all marriages be registered in court.” (Tucker 2008, 70) However, the multiplicity and diversity of schools, doctrines, courts and jurists made comprehensive state control impossible. The OLFR, therefore,

can be seen as an attempt by the state to regulate the practice of marriage and bring its citizens in line with their view of the future.

One area the OLFER focused on was establishing a minimum marriageable age. Articles 4-6 of the OLFER forbid guardians from marrying off girls younger than nine and boys younger than twelve. The OLFER required the permission of the court for the marriages of girls between the ages of nine and seventeen and boys between the ages of twelve and eighteen. To justify the new regulations, drafters of the laws drew upon the writings of three early jurists, Ibn Shubruma, 'Uthman al-Batti, and Abu Bakr al-Asamm, who all argued that there was no legal justification for marrying off a child before she had reached puberty. Tucker illuminates how "In the Explanatory Memorandum accompanying the OLFER, the framers validated these articles not only on the basis of these minority opinions, but also by citing the evils of child marriage and the responsibility of the Ruler to impose rules for the good of the community." (70) The OLFER set the standard for later personal status laws enacted in Algeria, Egypt, Indonesia, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Pakistan, Syria, Tunisia, and Yemen. The majority of these laws required a marriage to be registered with the state in order to be legally recognized. (71) Before the marriage is registered personal information about the couple such as the participants' names, religions, occupations, parents, and marriage eligibility is collected and verified by the court. Denial of registration was the primary means of implementing the new laws. If it was determined that a proposed marriage did not adhere to new regulations on minimum age limits or prohibitions on polygamy, the marriage would not be registered. Those who were party to a marriage in defiance of these laws were often subject to criminal penalties. (71-72)

Norman Anderson spells out the resulting age limitations instituted in various Muslim countries. Since the passing of the *Indian Child Restraint Act of 1929*, citizens of India or Pakistan who marry a groom under eighteen or a bride under fourteen, face penal sanctions. The *Muslim Family Laws Ordinance of 1961* raised the minimum age of a bride to sixteen in Pakistan. Following the precedent set by the OLFER, many countries adopted a minimum age of eighteen for grooms but decided on different minimum age for brides. For instance, a bride must be seventeen in Jordan and Syria, sixteen in Algeria, and fifteen in Tunisia and Morocco. However, a woman does not reach the age of full competence to marry, and the right to marry without the court's or a guardian's permission, until she is twenty in Tunisia and twenty-five in Morocco. (Anderson 1976, 103-104)

The route taken by Egypt was quite different from the cases above. There, the state has not placed any restriction on the guardian's right to marry off his minor child. Yet, as Anderson elucidates, "the exercise of this right has been greatly discouraged by legislation that forbids marriage registrars to register any union in which the bride and bridegroom have not reached the ages of sixteen and eighteen respectively, and that precludes the court from entertaining any matrimonial cause whatever where the parties have not reached these ages." (103) It would be quite myopic to say nothing of the advances made by feminist activists in Egypt in regard to changes to personal status laws, yet space does allow for a full examination of the impact they have had there.

One of the most informative models for reform is that of Indonesia. Indonesia is predominately Muslim, and houses the largest Muslim population of any country in the world. It provides the reader with a stunning example of the importance of reforming laws Islamically rather than imposing “modern” Western notions of morality on citizens from non-Western countries. The reform process there also speaks to the value Indonesians place on the well-being of their children and that emphasizing child welfare can lead to social reform apart from government regulation. During the Dutch colonization of the East Indies (1603 – 1942), debates over child-marriage were quite common; the colonizers would often write of the evils of the practice, how it carried overtones of sexual abuse, robbed children of their childhood, and deprived them of the right to choose their spouse. Differing opinions on child-marriage were couched in terms typical of the culture clash between colonizers and colonized; colonizers promoted their practice as “modern” and classified that of the colonized as “backward.” (Blackburn and Bessell 1997, 108)

Dutch and Indonesian public officials compiled a list explaining why there was a high prevalence of child-marriage in the region in an attempt to correct the roots of the problem:

Because children went to work early, they grew up quickly. Parents wanted to increase the size of the family rapidly, because children were later expected to look after their parents and/or the help of a son-in-law was desired. Parents were keen to receive the contributions which guests customarily made at a marriage feast. People were ignorant of the disadvantages of early marriage both for the couple and for their offspring. Parents were anxious to find a man to care for their daughter at an early age for fear she would later “go astray” and lessen her chances of marriage. (113)

The compilers found two main reasons for the decline of child-marriage in a number of districts – one economic and the other the influence of “the European example.” (113) In districts where parents had enough money to pay a hired hand, the help of a potential son-in-law was less in demand. Somewhat paradoxically, the report also claimed that in districts where the cost of living had risen child-marriage was less frequent because dowry or wedding feasts were less affordable. (113)

Although most child-marriages were essentially nothing more than betrothals, the Dutch found the possibility of early consummation of under-age marriages especially heinous. It was for this reason alone that they took legal action. Article 288 of the *Criminal Law Code of 1915*, mandates that “A man who has sexual intercourse with a woman whom he knows or may well suspect is not yet of marriageable age, and inflicts physical injury on her as a result, incurs a jail sentence of at most four years,” with stronger penalties in cases where the injuries are more serious. (113) In Bandung, the regent took additional action to restrict child-marriage, requiring officials to prevent any marriages with participants under the age of sixteen from being contracted. In a letter to the Director of Civil Service, Rudolf Kern, the Director of Native Affairs, mentions that this action, which was done at the initiative of a “heathen government”,

would become an assault on religion. According to Kern, the only advisable answer would be to rely on the social evolution that was already underway in the Indies. (116)

By 1930, citing the ineptitude of the colonial government to bring about marriage law reform, the women's organization *Isteri Sedar* (Aware Women) began publishing articles denouncing the practice of child-marriage in its journal *Sedar*. The change that they called for was not just in people's behavior but in Islamic law itself. They argued that "women must have the freedom to control their lives and that child marriage was likely to damage the health of both the wife and her offspring." (119) If the government could not be relied upon to protect its most vulnerable citizens, the women of *Isteri Sedar* would shame their fellow citizens into making the right decision.

In 1937, the colonial government of Indonesia put forward one last effort to confront the practice of child-marriage. They did so by launching a draft of an ordinance for optional monogamous marriage for Muslims. As Blackburn and Bessel explain, "Although the main thrust of the proposal was to offer Muslim couples the option of registering monogamous marriages, it also stipulated a minimum age for such marriages: eighteen for men and fifteen for women." (125-126) Despite wide support from women's groups, the ordinance was contested by both Muslim organizations and nationalist parties who viewed this as another means for colonial powers to intrude upon personal affairs. The government ultimately withdrew the proposal after only a few months of discussion. This would be the end of the Dutch's efforts to reform Indonesian marriage practices. (126)

Indonesia gained its independence in 1945 when Indonesian nationalists took control of the state. In 1946, the Ministry of Religion issued a law dealing with the registration of marriage, divorce and repudiation. This was followed in 1947 by an instruction to marriage officials to discourage and avoid registering forced and child marriages. Since this was only an instruction and not a law, it was not fully implemented. (128) Even under a new government, reform was hard to come by, Blackburn claims:

the numerous proposals that were developed between 1945 and 1973 were all doomed to failure because 'it was impossible to reconcile the interests of conflicting groups,' with Islamic groups favoring the status quo, Christian groups lobbying for initiatives that would reinforce their own marriage rules, and most women's organizations and some liberal Muslim groups advocating sweeping reforms. (130)

Marriage reform finally came to Indonesia in 1974, where legislation was adopted that set the minimum ages of sixteen and nineteen for females and males respectively. Further, the legislation deemed that all persons under the age of twenty-one were required to obtain parental consent before marrying. Those who drafted the law claimed population control as one of its main considerations in setting age limits on marriage. (133-135) This may have influenced how citizens reacted to the law, seeing that there was not a direct correlation between the passing of the law and increases in the average age of marriage.

It is plausible that other outside factors played a more crucial role in changing people's perceptions of child-marriage in Indonesia at this time. Certainly one of the major influences on social opinion was the work of child advocacy groups such as the United Nations Children's Fund (UNICEF.) Several of these groups emphasized the lack of education available to young brides and the health risks associated with early marriage such as high maternal and infant mortality rates. One of the most troubling aspects highlighted by these groups was the correlation between early marriage and prostitution. (137) Fathers wanting to protect their young daughters from the perils of unrestricted sexual desire would have a hard time reconciling marrying off their young daughters with the realization that it often leads to such a deplorable situation. The situation in Indonesia demonstrates how education is often more effective than government regulations in bringing about social change.

Conclusion

In the preceding pages I have argued that the polemicists' arguments that claim Muhammad was pedophile have little basis in reality. To prove this I have placed the tradition in its proper historical context and placed it beside America's laws concerning legitimate sexual relations. I find Kecia Ali's assertion that "It is indeed extremely hypocritical and 'self righteous' to judge other centuries, based on new criteria" (Ali 2006, 143) to be right on the mark.

I have also argued that the rulings of both classical and contemporary Islamic jurists intended to promote *maslaha*; the protection of a human's ability to procure the five essential elements for their well-being, namely, their religion, life, intellect, offspring, and property. When the rulings of the jurists are viewed through this lens the reader is able to decipher the universal truth that ought to be mined from Muhammad's actions – that even when it is permissible to have sexual relations, *i.e.* for a groom to sleep with his bride, there is an age when this practice is permissible and an age when it is not.

When the law is viewed in such a way, reform is much easier to come by. This is true because reformers are able to argue that *maslaha* is at stake when the young girls are married at a young age. A marriage of this sort not only affects the intellect, insofar as it limits access to education, but it also jeopardizes the life of the girl and her offspring. Furthermore, as it subjects Islam to ridicule, it also harms Muslims' religion.

Another integral aspect of understanding the debate is being able to distinguish between Islamic culture and Islamic law. This is admittedly not an easy task, but by comparing minimum marriageable age laws between states in the U.S. one gains a better understanding of the role culture plays in determining social *mores*. This is perhaps another reason why simply grafting secular Western marriage laws onto foreign cultures often ends in failure.

However, the main issue I addressed was the logical error that the Taliban and other repressive regimes make when they try to universalize a particular action of Muhammad without taking into consideration the intentions behind his actions. To simply cut and paste historical juridical precedents to contemporary juristic crises closes the gate of *ijtihad* and dooms the practice of Islamic jurisprudence to the realm of insignificance.

Reference List

- ‘Abd al-Ati, Hammudah . *The Family Structure in Islam*. Burr Ridge, IL: American Trust Publications, 1977.
- Abdo, Geneive. *Mecca and Main Street: Muslim Life in America After 9/11*. New York: Oxford University Press, 2006.
- Afshar, Haleh. *Islam and Feminisms: An Iranian Case Study*. New York: St. Martin’s Press, 1999.
- Al-Musnad, Muhammad bin Abdul-Aziz. *Islamic Fatwa Regarding Women: Shari’ah Rulings given by the Grand Mufti of Saudi Arabia Sheikh Ibn Baz, Sheikh Ibn Uthaimin, Sheikh Ibn Jibreen and others on matters pertaining to Women*, translated by Jamaal Al-Din M. Zarabozo. Riyadh, Saudi Arabia: Darussalam Publishers and Distributors, 1996.
- Ali, Kecia. *Sexual Ethics & Islam: Feminist Reflections on Qur’an, Hadith, and Jurisprudence*. Oxford: Oneworldpress, 2006.----- “ Virtue and Danger: Sexuality and Prophetic Norms in Muslim Life and Thought.” In *Journal of Inter-religious Dialogue. Issue 2*. Interreligious Dialogue Website. Accessed on 23 October 2010.
<http://irdialogue.org/journal/issue02/virtue-and-danger-sexuality-and-prophetic-norms-in-muslim-life-and-thought/>
- Anderson, Norman. *Law Reform in the Muslim World*. London: The Athlone Press, 1976.
- Awde, Nicholas. *Women in Islam: An Anthology from the Qur’an and Hadiths*. New York: St. Martin’s Press, 2000.
- Badawi, Jamal. *Gender Equality in Islam: Basic Principles*. Burr Ridge, Illinois: American Trust Publications, 2003.
- Bessell, Sharon, and Susan Blackburn. “Marriageable Age: Political Debates in Early Marriage in Twentieth-Century Indonesia.” In *Indonesia*, Vol. 63 (April 1997), 107-141. Accessed on 23 October 2010. <http://www.jstor.org/stable/3351513>.
- Bousquet, Georges-Henri. *Le Morale de l’Islam et son Ethique Sexuelle*. Paris : A. Maisonneuve, 1953.
- Coleman, Isobel. “Women, Islam, and the New Iraq”. In *Foreign Affairs*, January/February (2006).

<http://www.foreignaffairs.com/articles/61371/isobel-coleman/women-islam-and-the-new-iraq>

Ellis, Deborah. *Women of the Afghan War*. Westport, CT: Praeger Publishers, 2000.

Hoballah, Mahmoud. "Marriage, Divorce, and Inheritance in Islamic Law." In *Understanding Islamic Law: From Classical to Contemporary*, edited by Hisham M. Ramadan (New York: AltaMira Press, 2006), 111-116.

Ilkcaracan, Pinar. "Islam and Women's Sexuality: A Research Report from Turkey." In *Good Sex: Feminist Perspectives from the World Religions*. Eds. Mary Hunt, Patricia B. Jung, and Radhika Balakrishnan. New Jersey: Rutgers University Press, 2001.

Okoye, Uzoamaka N. "Women's Rights Under Shari'a: A Flawed Application of the Doctrine of 'Separate but Equal.'" In *Women's Rights Law Reporter*, Vol. 103 (Spring 2006). New Jersey: Rutgers University Press, 2006.

Rahman, Afzular. *Role of Muslim Women in Society*. London: Seerah Foundation, 1986.

Siddiqi, Muhammad Iqbal. *The Family Laws of Islam*. Lahore, Pakistan: Kazi Publications, 1984.

Treitel, Andrew. "Conflicting Traditions: Muslim Shari'a Courts and Marriage Age Regulation in Israel." *Columbia Human Rights Law Review* Vol. 26:403 (1995): 403-438.

Tucker, Judith E. *Women, Family, and Gender in Islamic Law*. New York: Cambridge University Press, 2008.