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Islam and Gender in the Thought of a Critical-Progressive Muslim Scholar-Activist: Ziba Mir-Hosseini

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This article highlights the scholarly contribution of the Iranian-born Muslim scholar-activist Ziba Mir-Hosseini to the academic field of gender and Islam. In the first part, Mir-Hosseini’s thought is positioned within the larger processes of the shifting loci of authority and normativity in contemporary Islamic discourses, particularly with reference to the emergence of what will here be termed critical-progressive Muslim scholar-activists. There follows a brief justification as to why a study of Mir-Hosseini’s thought in relation to gender and Islam warrants examination. Mir-Hosseini’s personal journey in the field of gender and Islam is then outlined and her major contributions to the field are noted. This is followed by a discussion of the support Mir-Hosseini finds for her ideas in the hermeneutical theories employed by reformist male Muslim scholars, and then an examination of her views on the relationship between Islamic feminism discourses and (neo-)traditional expressions of Islam. Mir-Hosseini’s deconstruction of the assumptions governing classical Muslim family law and ethics that have been re-appropriated and legally enforced by some contemporary Muslim majority nation states is presented next, followed by a discussion of her proposals for the reform of Muslim family law and ethics. The final section discusses Mir Hosseini’s activism with special reference to her involvement with Musawah, the global movement for equality in Muslim family law based in Kuala Lumpur, Malaysia.

Keywords: Ziba Mir-Hosseini; Islamic law; Islamic ethics; Muslim family law; critical Muslims; progressive Muslims; critical-progressive Muslims; Musawah

Broader contextualization: critical-progressive Muslim scholar-activists

The authority of traditionally-educated individuals, the fashioners of pre-modern Islamic tradition, has been seriously disrupted and contested by a number of actors, among the most influential of whom are apologists, puritan-fundamentalists, intellectuals and scholar-activists. This process has gained increasing momentum over the last two decades with the establishment and increased activity of transnational Muslim networks. These networks have opened doors to the emergence of a transnational Muslim public sphere that facilitates dialogical engagement and the creation of discursive communities and new political spaces and identities that draw on the universal principle of the Islamic umma (Sharify-Funk 2008). This public sphere also “fulfils a crucial political function insofar as it offers a discursive space in which Muslims can articulate their normative claims (i.e. Islam) from a multiplicity of positions” (Mandaville 2001, 186). Some of these transnational Muslim networks promote a
more inclusive, pluralist, vibrant civil society that rejects false essentialisms such as modernity vs. tradition, Islam vs. human rights, Islam vs. feminism, etc., and maximizes the engagement and participation of the individual, and especially of Muslim women (186).

Among the important actors involved in this emergent phenomenon are what I have termed critical-progressive Muslim scholar-activists (Duderija 2013), who engage in both textual and “social hermeneutics”2 that entail a “multiple critique” (Cooke 2000, 99–103). This critique simultaneously challenges both (neo-)traditional and puritan Islamic hegemonic discourses on many issues (including the debates on modernity, human rights, gender equality and justice, democracy and the place and role of religion in society and politics) and Western-centric conceptualizations and interpretations, embedded as they are in the values and worldview assumptions underpinning the Enlightenment.

Since the activity and the “multiple critique” of these Muslim scholar-activists is primarily textual or hermeneutic, it is relevant to refer to some of the literature that has established the essentially political character of this interpretive approach.

For example, Friedl, an Austrian-American anthropologist of the Near East, argues that

> [the selection of texts from among a great many that potentially give widely divergent messages, and their exegesis are unavoidably influenced, if not outright motivated, by the political programs and interests of those who control the formulation and dissemination of ideologies. (1997, 146)]

Similarly, Raines and Maguire (2000, 2) remind us that the act of interpretation of the sacred is not only a scholarly task but also a highly political one. In their own words:

> It is a contentious terrain precisely because it continues to deeply affect people in their daily lives. Yes, interpreting the sacred is a scholarly task but it is also a highly political task because interpreting the sacred shapes how power is used in society. To interpret religious tradition is to enter a conflict and to make a choice. Our appropriation of our heritage is never neutral; it displays our intention and purpose for its use. It is taking up sides even if, or perhaps especially if it claims not to.

This organic and symbiotic link between the political and the hermeneutic in critical-progressive Muslim thought has given rise to the notion of what can be termed “social hermeneutics,”3 which can be described as a highly participatory political endeavour enabling critical-progressive Muslim scholar-activists to seek sociopolitical change within a faith-based framework. For these actors, being engaged in social hermeneutics implies that religious knowledge can act as a basis for social transformation, revolution and collective political activism. Critical-progressive Muslim social hermeneutics is also employed to argue for the emergence of religiously persuasive discourse on issues such as gender justice/equality, human rights, freedom of religion and democracy (Abou El Fadl 2009), the establishment of a vibrant public sphere and increased transparency and accountability of political structures and institutions, especially in Muslim majority contexts (An Na’im 2008).

Many critical-progressive Muslim scholar-activists are women. And it is these female critical-progressive Muslim scholar-activists in particular who are dislodging the epistemic privilege enjoyed by traditionally-educated exclusively male religious scholars and clergy. In addition to Mir-Hosseini, they include Amina Wadud, Kecia Ali and Sa’adiyya Shaikh, to name but a few (Duderija 2010). In this context, they play a major role in the process of shifting the locus of authority and normativity in Islamic discourses.

With the focus on gender equality, and particularly the reform of traditional jurisprudence (fiqh) on Muslim family law as one of the pillars of both their scholarship and their activism,4 critical-progressive Muslim scholars subscribe to the idea, stemming from feminist discourses, that the personal is political, thus bringing issues of gender and the Muslim juristic tradition in general to the forefront of Muslim politics. This is the context in which this article aims to highlight the important contribution of Ziba Mir-Hosseini to the academic inquiry of Islam and gender.
The significance of Ziba Mir-Hosseini’s thought on Islam and gender

A very sizeable amount of literature has been written on topics that come under the heading of Islam and gender, involving academic exercises from various, often significantly diverging perspectives. Mir-Hosseini’s contribution to it stands out for a number of reasons. One is that her scholarly engagement with the field of gender in Islam spans nearly three decades (dating back to the mid-1980s), making her one of the pioneers in this field of inquiry. Significantly, Mir-Hosseini’s work on this topic is voluminous and her ideas about gender and Islam often reflect the broader trends among scholars who engage in these discussions. Thus, her work provides an excellent insight into the nature and evolution of these lively debates and the major issues of contention. In this respect, the possibility of the (re)-emergence of a religiously indigenous Islamic feminism, a topic that came to the fore in the 1990s in particular and still dominates many discussions, and the cultural politics surrounding it, occupy a central place. Mir-Hosseini’s important insights have been integral to many of these debates and will be discussed in some detail in this article.

Scholarship on Islam and gender: a personal journey

Mir-Hosseini’s academic career began in the field of legal anthropology. Her introduction to the issues of gender in Islam was a gradual one that had much to do with the social, political and legal repercussions of the Islamic Revolution in Iran. She studied sociology as an undergraduate at the University of Teheran and received her PhD from Cambridge University in 1980. Her thesis explored the impact of the changed economy on marriage rituals and family relations in four Kalardasht villages (in northern Iran) with different ethnic compositions and varying degrees of exposure to tourism (Mir-Hosseini 1980). Upon her return to Iran that same year, newly married, in her late twenties and with a doctorate in her hand, Mir-Hosseini was optimistic about her personal future teaching anthropology and living happily with her new husband in Iran. However, this was not to happen. First, she failed to pass what she describes as “an ideological interview” at Teheran University aimed at ascertaining her “religious/ideological correctness” (including way of dressing) and ability to teach anthropology from what was described as “the Qur’anic perspective” (Mir-Hosseini 2009b, 182). Her “shock” was compounded by her marriage breakdown, which, after the dismantling of the Family Protection Act shortly after the Revolution, had left her “at the mercy of her husband” (183). As a result, Mir-Hosseini educated herself in traditional (Shi’i) jurisprudence pertaining to family law in order to negotiate her divorce in the new Iranian courts presided over by religious judges. In 1984, newly divorced, Mir-Hosseini returned to Cambridge as a postdoctoral student with a mission. The experiences in revolutionary Iran described here had given Mir-Hosseini a “passionate interest in the issue of women’s rights and the working of the sharia” (184). In the second half of the 1980s, she was involved in projects on the theory and practice of Muslim family law, focusing on marital disputes and litigants’ strategies and doing fieldwork in Iran and Morocco. Mir-Hosseini completed her first monograph, Marriage on Trial, in 1992, when she was still finding her feet in terms of her own academic and personal engagement with both feminist discourses and Islam. At that time, she already had major reservations about the literature written in the 1980s in English and French on the subject of gender and Islam by both women from Muslim backgrounds and Islamists, since both approaches assumed that the classical and Orientalist views converged on the idea that Islam’s position on gender was divinely ordained and not subject to alternative perspectives (Mir-Hosseini 2009b, 184–185). This, however, contradicted her own experience and her own understanding of traditional jurisprudence on Muslim family law. Hence her Marriage on Trial was written with the following aim (185):
Instead of condemning the sharia as responsible for all women’s problems, I sought to understand how it operates and in what ways it is relevant to today’s Muslim societies: how individuals, both men and women, make sense of the religious precepts that underlie every piece of legislation regulating their marriages. I also tried to shift the focus from how women are oppressed by sharia rules to how women can manipulate the contradictions embedded in these rules and use the courts as an arena for negotiation.

Upon returning to Iran in the early 1990s, Mir-Hosseini became acquainted with a high ranking Shi’a cleric Hujat al-Islam Sayyid Muhsin Sa’idzadeh, who used to write for women’s magazines under various pseudonyms on gender equality and women’s rights in Islamic law. Sa’idzadeh introduced her to the clerical debates on gender and facilitated her fieldwork in Qom in 1995. The end result was the publication of her second ethnography, *Islam and Gender* (1999), which she wrote not only as an anthropologist but also as an “Iranian Muslim woman who needed to make sense of her faith and culture” (Mir-Hosseini 2009b, 186). During this time she also became interested in collaborative work, which culminated in two documentary films and a book. The first documentary, *Divorce: Iranian Style* (co-directed with Kim Longinotto, 1998), provides a compelling insight into the Iranian divorce courts, documenting the plight of women who have to negotiate their various marriage problems within the confines of traditional patriarchal (Shi’a) Muslim family law. The second, *Runaway* (co-directed with Kim Longinotto, 2001), was about a shelter for runaway girls in Tehran, and “explores issues like child abuse and the unbearable family situations that force these girls to run away” (188). The book *Islam and Democracy in Iran: Eshkevari and the Quest for Reform* (Mir-Hosseini, and Tapper 2006) details the life and work of a reformist Iranian cleric – Hassan Yousefi Eshkevari – “who was imprisoned for over four years (2000–5) because of his liberal views on Islamic law and his advocacy of democracy and women’s rights” (Mir-Hosseini 2009b, 188). Increasingly confident of the merits of Islamic feminism, Mir-Hosseini disagreed equally with Iranian and Western stereotypes of “women in Islam” – images that, in her view did not “reflect a complex reality” (187). In this context she writes as follows (2011a, 73):

As a feminist, an Iranian and a Muslim, I objected to how women were treated in Iranian law and wanted to change it. But my objections were not the same as those implied in Western media discourses or those aired by feminists after the Revolution: I did not see women in Iran as victims, but as pioneers in a legal system caught between religious tradition and modern reality.

Mir-Hosseini particularly felt that the egalitarian view of Islamic feminism that women were expressing in Iran was not being heard either among the traditional clerics or in the West.

### Enlisting the ideas and works of Muslim male scholar reformists in the cause of gender justice in Islam

In order to fortify and authenticate what she considers to be the egalitarian voice of Islamic feminism by enlisting scholarship that is informed by the classical Islamic legal disciplines, Mir-Hosseini turned to the ideas and scholarship of prominent reformist-minded Muslim scholars such as Abdolkarim Soroush, Fazlur Rahman, Nasr Abu Zayd (d. 2010), Mohammad Arkoun (d. 2010), Khaled Abou El Fadl, Muhammad Khalid Masud, Mohsen Kadivar, Hasan Youssef Eshkevari, and to a lesser extent Abdullahi An-Na’im. From this perspective, Mir-Hosseini represents a broader trend among contemporary feminist-minded critical-progressive Muslim scholar-activists such as Amina Wadud and Asma Barlas, whose works have fruitfully engaged with the work of reformist-minded Muslim male scholars. Indeed, as I have noted elsewhere (Duderija under review), there is a growing hermeneutical and conceptual convergence and cross-pollination between contemporary reformist Muslim male scholarship and that of female Muslim feminist-minded scholars.
Mir-Hosseini argues that the main theoreticians behind this reformist Islam did not search for a traditionally persuasive genealogy of modern concepts such as gender equality, human rights and democracy, as did the early nineteenth- and twentieth-century reformers such as Jamal al-Din al-Afghani (d. 1897), Sayyid Ahmad Khan (d. 1898) and Muhammad ‘Abduh (d. 1905), to name but a few. Instead, these reformist scholars place strong emphasis on examining both the assumptions regarding the epistemological aspects of how religious knowledge is produced and the methodological and hermeneutical assumptions governing the pre-modern models of interpretation of the Qur’an and Sunna. In addition, these thinkers revive the more rationalist-oriented approaches to interpretation of the Qur’an and Sunna (Duderija 2011). Mir-Hosseini considers the work of the main theoreticians behind reformist Islam as of “immense importance and relevance” for more gender-just interpretations of the Qur’an and Sunna because they are critically scrutinizing and deconstructing the assumptions that govern traditional and neo-traditional approaches to interpretation, thereby “exposing the contradictions inherent in the earlier discourses on family and gender rights” (Mir-Hosseini 2009a, 42–43).

Unlike what she refers to as traditional and neo-traditional approaches to Islam, Mir-Hosseini is of the view that contemporary reformist religious thinking is in harmony with contemporary human rights consciousness, including on the matters of gender equality, pluralism and democracy, as it is based on a flexible and dynamic understanding of Islam’s sources of normative teachings. Contrary to contemporary puritan and neo-traditionalist approaches, she considers that the new reformist approach does not view the gender inequality embedded in classical fiqh rules as a manifestation of divine justice, but as essentially a product of fallible efforts of male Muslim jurists that go against that very divine justice. Detaching the conceptual link between gender rights and sexuality (discussed below), which Mir-Hosseini considers to be implicit in traditional and neo-traditional approaches, the proponents of reformist-minded approach/es view women’s (and men’s) sexuality to be determined and regulated by familial and social circumstances, not by any arguments based on the concepts of “natural propensities” (i.e. a biologically determined view of human nature) or divine will that feature prominently in non-reformist approaches. Importantly, by being proponents of a brand of feminism that takes Islam as the source of its legitimacy, reformist approaches, Mir-Hosseini goes on, have the capacity to challenge the prevalence – largely uncontested until recently – of non-gender egalitarian interpretations of the Qur’an and Sunna (and hence fiqh) on their own terms and within their own thought parameters. By doing so these reformist approaches seriously question and in the end effectively undermine the legitimacy of the long established and strongly entrenched monopoly of (neo-)traditional approaches as the most authoritative voices speaking in the name of, and hence defining, Islam (Mir-Hosseini 2003, 20–21).

In this context, the central strategy for developing gender-just interpretations of the Qur’an and Sunna in Mir-Hosseini’s thought is the ontological, epistemological and hermeneutical divorcing of Shari’a and fiqh concepts. This differentiation has found its expression in the theories of Muslim reformists. Examples are the differentiation between religion and religious knowledge in the thought of A. K. Soroush, F. Rahman’s “double movement Qur’anic hermeneutical theory,” Abu Zayd’s concept of “tanzil” (revelation) and Khalid Masud’s concept of Shari’a as socially constructed juristic practice (in contrast to Shari’a as a divine law) (Duderija 2011), to which Mir-Hosseini makes reference in her work. All of these interpretational approaches conceptualize and approach the qur’anic text, for interpretational purposes, as essentially a text like any other literary text, operating on a human epistemological plane, a text whose language is socioculturally produced (in contrast to being purely divinely designated), and hence subject to modern literary criticism and post-Enlightenment
hermeneutical methods. The centrality of the Shari’a-fiqh distinction in Mir-Hosseini’s thought is well attested by the prominent place it occupies not only in her academic writings (Mir-Hosseini 2006, 2009a, 32–33) but also on her personal website, which states:

I am a freelance academic passionately involved in the debates on gender equality in law. As a feminist I expose and criticize the injustices these laws continue to inflict on women in some Muslim contexts. As a Muslim, I approach these injustices by stressing one crucial element in the tradition of Muslim legal thought: the distinction between shari’a (the “path” found in the Qur’an and the Prophet’s practice) and fiqh (“understanding,” jurists’ efforts to deduce laws from these textual sources); this distinction enables us to see patriarchal laws not as “divine shari’a,” but as outdated human fiqh … (www.zibarmirhosseini.com)

Mir-Hosseini makes it abundantly clear that this distinction between Shari’a and fiqh is not just about semantics but has very important epistemological and political ramifications. In this context, she repeatedly argues that numerous actors, including traditional Muslim jurists, the Muslim political elite and the ordinary Muslim masses, have mistakenly conflated the two concepts, often for their own ideological reasons, to argue that pre-modern Islamic law is divine and infallible, so as to resist any meaningful legal, political and social reforms, especially those related to gender issues. To put it differently, Mir-Hosseini’s understanding is that “while the Shari’a is sacred, eternal and universal, fiqh is human and – like any other system of jurisprudence – mundane, temporal and local” (2009a, 2009b, 25). Having diagnosed what she considers to be the most fundamental problem, Mir-Hosseini contends that patriarchal interpretations of the Shari’a “can and must be challenged at the level of fiqh” and that the distinction between Shari’a and fiqh is the best way for believing Muslims like herself to both advocate and achieve the goal of gender justice within a faith-based framework (25–26).

**Islamic feminism and the politics of gender**

This section briefly examines Mir-Hosseini’s thought on the emergence of “Islamic feminism,” its relationship with the rise of politically conservative orientations of Islam in the second half of the twentieth century, and her views on what Islamic feminism is, what it promises for the future and the pitfalls it faces.

The first important issue we need to understand in relation to Mir-Hosseini’s views on Islamic feminism is that she continuously emphasizes in her writings that both feminism and Islam are highly contested, evaluative concepts that hold various meanings for the different actors participating in the debates on Islam and gender. The concepts “involve endless disputes about their proper use on the part of their users and are the subject of multiple discourses and widely ranging perspectives that can be addressed at different levels” (Mir-Hosseini 2012). She therefore argues that it is misleading to frame the relationship between Islam and feminism, understood as reified and static concepts, as one of “compatibility,” because this approach obscures the realities of global and local power relations and structures within which both Islam and feminism as concepts operate, and within which Muslim women have to struggle for justice and equality. Instead, Mir-Hosseini suggests that it is much more meaningful to frame the issue in relation to largely unaddressed questions such as: Whose Islam? Whose feminism? Who is speaking for Islam? Who is speaking for feminism?. Given this operating dynamic Mir-Hosseini (2012) employs the concept of feminism in a very broad sense as follows:

it [feminism] includes a general concern with women’s issues, an awareness that women suffer discrimination at work, in the home and in society because of their gender, and action aimed at improving their lives and changing the situation. There is also an epistemological side to feminism; it is a knowledge project, in the sense that it sheds light on how we know what we know about women, family and religious tradition, including laws and practices that take their
legitimacy from religion; this knowledge enables us to challenge, from within, the patriarchy that is institutionalized in a legal tradition.

Mir-Hosseini (1996) points out that she was one of the first scholars to use the term “Islamic feminism” to speak of a new gender consciousness and discourse that emerged in Iran a decade after the Islamic Revolution. She notes that in the 1990s the term became more widely used. However, many scholars or activists to whom this label was attached were troubled by the term and rejected it: the “secularists” considered Islam and feminism to be inherently and diametrically opposed and irreconcilable, while Muslim “traditionalists” did not want to associate themselves with feminism, which they saw as an entirely Western concept and hence antithetical to their faith-based approach (Mir-Hosseini 2012). Mir-Hosseini (2011b) has herself, more recently, questioned the usefulness of the concept of Islamic feminism as an analytical or descriptive tool because of the heavy political and rhetorical baggage it has since acquired. We now briefly turn to the historical context in which the term Islamic feminism emerged and as a result of which it acquired its contemporary political and rhetorical baggage, as Mir-Hosseini explains it.

Mir-Hosseini traces the birth of Islamic feminism to the early 1990s as one of the paradoxical and unwanted consequences of the rising, politically-oriented traditional Islam. She argues that, by the early 1990s, there were clear signs of the emergence of a “new consciousness, a new way of thinking, a gender discourse that is feminist in its aspiration and demands, yet Islamic in its language and sources of legitimacy, versions of which came to be known or described as ‘Islamic feminism’” (Mir-Hosseini 2009c, 28). For reasons discussed above, Mir-Hosseini argues that today it is not easy, or that it is perhaps even futile, to divide these various discourses into neat categories, and to try to generate a definition of Islamic feminism that captures the diversity of positions and approaches of the so-called Islamic feminists. She notes in this context that, as with other feminists, Muslim feminists’ positions are local, multiple and evolving. What is common to all is that they seek gender justice and equality for women, although “they do not always agree on what constitutes ‘justice’ or ‘equality’ or the best ways of attaining them” (29). Mir-Hosseini takes the view that feminist scholarship in Islam or in any other religious tradition is important for a number of reasons including:

1. It facilitates a better understanding of religion and the search for justice.
2. As a knowledge project, it reveals and explains why certain interpretations (i.e. patriarchal) of Islamic legal tradition became more prevalent and others (e.g. egalitarian) were suppressed (Mir-Hosseini 2011b, 72–73). This argument is extended further to assert that historically predominant interpretations of the normative religious sources, which were premised on gender inequality and asymmetry, are neither inevitable nor the only possible interpretations.
3. From a political vantage-point, feminist scholarship in Islam is important because “it can both free Muslims from taking a defensive position and enable them to go beyond old jurisprudential dogmas in search of new questions and new answers” (Mir-Hoseini 2009c, 29).
4. Its importance also lies in the idea, repeatedly highlighted by Mir-Hosseini, that, as the recent history of the Muslim majority world testifies (e.g. Iraq, Afghanistan, Morocco and Iran), there can be no long-lasting and sustainable gains in women’s rights unless patriarchal notions of family and gender relations are debated, challenged and redressed within an Islamic framework. Otherwise, “Muslim women’s quest for equality will remain a hostage to the fortunes of various political forces and tendencies, as was the case in the twentieth century” (Mir-Hosseini 2010). As most Muslim women do not
have the choice of either accepting or rejecting or indeed challenging the patriarchal beliefs and laws, feminist scholarship in Islam empowers women to become the proponents of egalitarian and gender-just visions of Islam (Mir-Hosseini 2006, 644–645). In many of her writings, Mir-Hosseini has referred to, employed and explained the concept of feminism and its troubled relationship with (neo-)traditional Islam, especially its politically oriented expressions. Muslim women, like other women in the world, she argues, have always been conscious of the gender-based discrimination they experience and have resisted it, but they were unable to engender sustained, indigenous feminism until the late 1980s (Mir-Hosseini 2006). One of the main reasons for this is that Muslim women’s demands for equality in the modern era (nineteenth and twentieth centuries) were intimately linked with the discourses surrounding anti-colonialism and nationalism in the Muslim world. Mir-Hosseini (2006, 638) argues that:

Muslim women who acquired a feminist consciousness at the time, and sought equal rights for women, were under pressure to conform to anti-colonialist and nationalist priorities, as well as to the secularist and “modernist” but despotic agenda of the new states. Contemporary western feminists could criticise the patriarchal elements of their own cultures and religions in the name of modernity, liberalism and democracy, but Muslims could not draw on these external ideologies or on internal political ideologies in their fight for equal rights. For both the colonialists and the modernising secularists, “Islam” was the embodiment of a backward tradition that must be rejected or tamed in the name of progress. For anti-colonialists and most nationalists, “feminism” – that is, advocacy of women’s rights – was a colonial project and must be resisted.

She considers that the political context described here resulted in Muslim women being increasingly faced with a painful choice between their religious identity and their newly acquired gender awareness. Importantly, in post-independence times, she continues, the process of codification of fiqh provisions of family law by modernist but undemocratic states gave a new legal force to the gender inequalities prescribed by classical fiqh. With the rise of political Islam in the 1970s, neo-traditionalist texts and their gender discourse became closely identified with the politically oriented traditional Muslim movements, whose political platform was based on the slogan of “Return to Shari’a.” This process culminated in the popular revolution in Iran that brought Islamic clerics to power in 1979. The rise of politically oriented traditional Islam at that time was also evident in the dismantling of reforms introduced earlier in the century by modernist governments in Iran and Egypt, and the introduction of Hudud Ordinances in Pakistan. Yet, around the same time important developments in women’s rights were taking place outside of the Muslim majority world, such as the adoption of the Convention on the Elimination of All Forms of Discrimination against Women by the United Nations in 1979. As the advocates of politically-oriented traditional Islam increasingly attempted, at times successfully, to translate the pre-modern fiqh notion of gender rights into policy, they were subjected to increasing criticism from both feminist-minded Muslims within and those outside. Some of this criticism led to or brought about concrete examples of gender justice activism. The position of the proponents of pre-modern patriarchal interpretations of the Shari’a as absolute and immutable inadvertently brought the classical fiqh books under the close attention and scrutiny of the wider public, with the result that a growing number of Muslim women were questioning the validity of the arguments contained in them (Mir-Hosseini 2012). This resulted in an internal critique of the patriarchal readings of Shari’a14 that was unprecedented in Muslim history, engendering what Mir-Hosseini calls a new phase in the politics of gender in Islam, as represented by what I have elsewhere termed critical-progressive understandings of Islam (Duderija 2013). One extremely important aspect of this phase, argues Mir-Hosseini (2009a, 41, 2010), is that Islam’s presence in the Iranian public square (rather than just in the minds of Muslims) placed women themselves – rather than the abstract notion
of woman in Islam – at the heart of the battle between forces of traditionalism and modernism. As she repeatedly states, from this perspective, Islamic feminism was an “unwanted child of political Islam” (2009a, 2010). Of course, the political context after 9/11, in which both international human rights and Shari‘a have been used as pawns and ideological projects, has further complicated the relationship between Islam and feminism.

Importantly, Mir-Hosseini is of the view that feminist readings of the Shari‘a “become possible, and even inevitable, when Islam is no longer an oppositional discourse in national politics” because, once traditional fiqh-based Shari‘a becomes a source of legislation, its custodians have to deal with contradictions inherent in upholding the family and restoring women to their “true and high” status in Islam, while at the same time retaining the patriarchal mandates of the traditional fiqh-based Shari‘a legal rulings. This is especially so in the context of a contemporary Islamic nation state invested with power to make laws. This inherent contradiction in turn makes space for novel interpretations on a scale unprecedented in Muslim history (Mir-Hosseini 1998, 50–51).

Critique of (neo-)traditional approaches to Muslim family law and ethics

This section presents a brief overview of the major juristic concepts and reasons behind the formulation of the gender-asymmetrical nature of Muslim family law, followed by an outline of Mir-Hosseini’s arguments in this connection.

Traditional Muslim family law contains a number of highly gender-specific rights, duties and norms pertaining to not only the legal sphere but also to the political/governmental, educational, ritual and juridical, as well as to general personal conduct (Mahallati 2009). Most of these gender differences can be traced back to two factors: (i) traditional scholars’ view of the nature of male/female personality and sexuality; (ii) a particular conceptualization and interpretation of the Qur’an and Sunna. The first factor has found its expression in the concept of “gender complementarity”/gender dualism, to which a large majority of traditionalist Muslim scholars subscribe (Duderija 2007). Gender duality is based on the idea that women, unlike men, are highly emotional beings with weak and easily befuddled or, according to some, deficient rational faculties and that women’s potent sexuality is a threat to the (male) public social order. Female sexuality must therefore be highly regulated through mechanisms such as the imposition of veiling, gender segregation and control of women’s mobility by their male guardians (Sabbah 1984).

The gender-differentiated and patriarchal aspects of traditional Muslim laws are also premised upon a certain interpretational model (manhaj, pl. manāḥij) of the Qur’an and Sunna; suffice it here to outline its main delineating features, which can be described as follows:

1. a philologically centred interpretational orientation (i.e. various philological sciences and their role in the process of derivation of meaning are the most decisive and hermeneutically powerful tools for the interpretation of the Qur’an);
2. a “voluntarist–traditionalist” view of the relationship between reason and revelation, law, morality and ontology, which manifests itself in the idea that revelation is the only objective standard in discerning ethical values of good and bad;
3. a belief in the fixed, stable nature of the meaning of the qur’anic text residing in totality in the mind of its Originator, whose will is in principle discoverable objectively (a hermeneutical approach known as “textual intentionalism”), and hence the marginalization of the role of the interpreter in the process of derivation of meaning;
4. decontextualization and the marginalization of qur’anic revelatory background for the purposes of its interpretation; textual segmentalism or lack of a thematic or holistic
approach to interpretation of the Qur’an and Sunna; a largely Hadith-dependent concept of Sunna that conflates the concepts of Sunna and sound (ṣaḥīḥ) Hadith;
(5) and lastly a relative lack of purposive (maqāsid) and ethico-religious values-driven¹⁷ Qur’an-Sunna hermeneutics that is informed by contemporary understandings of ethical terms such as justice and fairness (Duderija 2010).

It is on the basis of gender-dualism reasoning and the nature of traditional manāḥij that qur’anic verses such as Q 4.34: “Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other” (al-rija‘al qawwāmūn ‘alā al-nisā bi-mā faddal Allāh ba’dahum ‘alā ba’d), and Q 2.228: “but men have a degree [of advantage] over them [women]” (wa-li-rija‘al ‘alayhinna daraja),¹⁸ which Mir-Hosseini refers to as the linchpins of traditional Muslim family law, have been interpreted in androcentric if not completely patriarchal ways, leading to the formulation of patriarchal Muslim family law. It has been argued that these verses refer to inherent male superiority or God’s preference for men over women, and to the need for women to be protected/controlled by men. Apart from qiwāmah, daraja and faddāla, other juristic concepts are also important in understanding the patriarchal nature of traditional Muslim family law. They include wilāya (male authority/guardianship of the husband over the wife and children – girls until marriage and boys until the age of majority), ʾiṣma (the husband’s or father’s authority over wife and children), talāq (the husband’s unilateral right to divorce), tamkūn and nafāqa (the wife’s sexual submission in marriage in exchange for her right to shelter, food and clothing), tātā (the wife’s obedience) and mushūz (the wife’s recalcitrance or rebellion). These concepts cannot be discussed at length here for reasons of space, but what needs to be highlighted is that they are all embedded in gender duality concepts and interpretations of the Qur’an and Sunna like those referred to above, which have single-handedly shaped the formulation of Muslim family law by Muslim jurists (Duderija 2014).

An important part of feminist scholarship in Islam, as an epistemological project, in the thought of Mir-Hosseini, is a critical engagement with and systematic critique of the major concepts, epistemological assumptions, broader theological and philosophical worldviews and methodologies on which pre-modern Muslim family law and ethics rest. In this context, Mir-Hosseini, in concert with other critical-progressive Muslim scholar-activists, has offered a systematic and critical deconstruction of the theological, philosophical and jurisprudential assumptions that informed classical jurists’ construction of Muslim family law and ethics, especially those pertaining to marriage and divorce. Her main argument in this respect can be gleaned from the following passage:

In discerning the terms of the Shari‘a, and in reading the sacred texts, classical Muslim jurists were guided by their outlook, the social and political realities of their age, and a set of legal, social and gender assumptions and theories that reflected the state of knowledge and the normative values and patriarchal institutions of their time. Their rulings on family and gender relations were all the product of either juristic speculations or social norms and practices. (Mir-Hoseini 2009c, 25–26)

Mir-Hosseini argues that the (neo-)traditional approaches to gender rights found in classical fiqh texts embody the patriarchal construction of gender rights, in which gender inequality is taken for granted, a priori, as a principle reflected in the world in which their authors lived. As part of this mirroring of the medieval Weltanschauung, Mir-Hosseini argues that traditionalist jurists subscribed to a meritocratic concept of justice that discriminates on the basis of gender, social status and religion, and considered this concept of justice to be a true reflection of the “natural” or God-given state of affairs. She considers that the salient assumptions that underlie fiqh rulings on gender rights and which gave rise to women’s social and moral subjugation are based on the following presuppositions:
(1) Women are created of and for men.
(2) God made men superior to women.
(3) Women are defective in reason and faith.
(4) Femininity is defined by women’s ḥayāʾ (modesty and shyness) and masculinity is constructed in relation to man’s ghīra (sexual honour and jealousy).

She argues that, although these concepts/theories are not based on qur’anic teachings, nonetheless they became the main theological assumptions underlying classical jurists’ efforts to deduce legal rules from the sacred texts. Moreover, these theories became the justification for controlling women and the rationale for their exclusion from public life (Mir-Hosseini 2009a, 34–35). Women’s rights were only discussed in the context of a marriage contract, which was likened to that of a slave contract or an exchange (bayʿ), according to which, in essence, a woman’s sexual and reproductive rights are exchanged for her maintenance. Similarly, women’s sexuality was considered a commodity. This state of affairs fundamentally shaped questions pertaining to wife’s rights to her body/reproductive organs/sex (and by extension her mobility), rendering it under the complete authority (ʾisṭaʿma) of her husband and determining the overall spousal rights and obligations in marriage for both husbands and wives (Mir-Hosseini 2009a, 28–36). Mir-Hosseini maintains that additional gender-rights asymmetries, such as men’s rights to polygamy and unilateral repudiation, women’s lesser share in inheritance, and the ban on women being judges or political leaders, were not a result of a deliberate conspiracy among classical jurists to undermine women but an outcome of the same gender-related theories described above and of the worldview assumptions subscribed to by (neo-)traditionalists.

Changing nature of concepts of justice and ethics and the need to reform Muslim family law and ethics

This brings us to the question of Mir-Hosseini’s views on why and how Muslim family law must change and the main theoretical arguments she employs to argue for change. She is well aware of the difficulties in finding the best approach to bringing about change, as is reflected in the following statement:

How are we to deal with a patriarchal legal heritage so entangled with politics? How can we argue for gender equality within a legal tradition that claims to be “sacred,” yet whose notions of justice and gender rights go against the very grain of our project? How can we challenge the false sanctity of that legal tradition without support from its power base? Should we advocate radical measures, replace this legal heritage with a different code of law? Or should we continue the patchwork and piecemeal reforms that started a century ago? Or, as some Muslim feminist scholars have suggested, should we simply acknowledge that current fiqh-based marriage laws are so compromised that they are beyond repair – an acknowledgement that can free “progressive Muslims” to “pursue a new marriage law” based on Qur’anic verses that foreground equality between men and women and cooperation and harmony between spouses? (Mir-Hosseini 2009a, 38)

Mir-Hosseini maintains that her methodology does not consist in attempting to emulate Muslim jurists (fuqahāʾ), who extract legal rules from the sacred sources by following juristic methodology (usūl al-fiqh). Nor is her approach like that of the majority of Muslim feminists, who go back to the sacred texts in order to “unread patriarchy.” Rather, she seeks:

to engage with juristic constructs and theories, to unveil the theological and rational arguments and legal theories that underlie them; above all, to understand the conception of justice and the notion of gender that permeate family law in Islamic legal tradition, which… [are] shaped in interaction with political, economic, social and cultural forces and with those who have the power to represent and define interpretations of Islam’s sacred texts. (27–28)
In this respect, Mir-Hosseini traces the origins of gender inequality in the Islamic legal tradition by noting a tension, if not outright contradiction, between what she considers to be the ideals of Shari’a (e.g., justice, wisdom, compassion, common good, equality) and “the patriarchal structures in which these ideals unfolded and were translated into legal norms” which have derailed the underlying higher intents and lofty values of Islam (2009c, 25). She considers that contemporary notions of justice, informed by the ideals of human rights, equality and personal freedom, differ significantly from those that underpin rulings in classical fiqh and that this disparity between the traditional and contemporary systems of ethics “is a central problem that permeates debates and struggles for an egalitarian family law in Muslim contexts” (Mir-Hosseini 2013, 7).

Mir-Hosseini argues that, although there is complete agreement among all Muslims that justice is the most important and defining value in the Islamic tradition, there is considerable disagreement among Muslims as to the nature of the concept, its scope and how it should manifest itself in laws. Arguing against the ethical subjectivist position that has been and remains the majority view in the Islamic tradition (Duderija 2011), Mir-Hosseini subscribes to the ethical objectivist understanding of justice that had its roots in the rationalist theology of the Mu’tazila, a religious movement that goes back to the early days of Islam, which considers that the concept of justice has a rational basis, and thus exists independently of revealed texts. According to this view, humanity’s understanding of the concept of justice operates outside the realm of religion, and is subject to change and dependent upon evolution in human knowledge and morality/ethics. Therefore, “any religious text or law that defies our notion of justice should be reinterpreted in the light of an ethical critique of their religious roots” (Mir-Hosseini 2009a, 26–27). In this context, she asserts that the understandings of justice and injustice change over time and that:

The Qur’an and the Prophet’s Sunnah guide us to a path to follow, the Shari’a, and a trajectory towards justice. In the twenty-first century, the provisions of CEDAW – which stands for justice and equality for women in the family and in society – are more in line with the Shari’a than are the provisions of family laws in many contemporary Muslim countries. (47)

Therefore, Mir-Hosseini suggests that arguments and strategies for the reform of Muslim family law need to be concurrently placed within both the Islamic and human rights frameworks. Significantly, she reminds us that it is important to keep in mind that we should not seek to define what justice is once and for all, but to raise our voices when women face and experience injustice and discrimination because of their gender (46–47; Mir-Hosseini 2003, 3). So, for Mir-Hosseini, gender roles and relations, and women’s rights, are “not fixed, not given, not absolute.” She conceptualizes them as negotiated and changing cultural constructs, produced in response to lived realities, through debates that now are going on all over the Muslim world, through the voices of women and men who want either to retain or to change the status quo.

In the final analysis, she believes that “gender in Islam” is, in the end, what Muslim men and women make it to be (Mir-Hosseini 1998, 59).

Mir-Hosseini employs a number of other theoretical and conceptual tools to argue for change in Muslim family law and ethics. One such argument, which is akin to her conceptual distinction between Shari’a and fiqh, is the lack of recognition on the part of those who speak in the name of Islam that their views merely operate at the level of interpretation and that other legitimate interpretational possibilities exist. She laments that this state of affairs has led to the “pervasive polemical and rhetorical trick of either glorifying a faith without acknowledging the horrors and abuses that are committed in its name or condemning it by equating it with those abuses” (Mir-Hosseini 2006, 632).
In her recent work, Mir-Hosseini has also increasingly turned to the concept of *maqāsid al-sharīʿa* (higher intents and purposes of Islamic law) as an important avenue through which Muslim family law and ethics can be reformed. She argues that the patriarchal readings of Islam’s sacred texts can be separated from the ideals and objectives of the Shariʿa (Mir-Hosseini 2009a, 33) and considers that, over time, Islamic legal thought became the prisoner of its own theories and assumptions, thereby negating the ethical and egalitarian spirit of Shariʿa and its call for justice and reform (43).

It is important to remain aware that Mir-Hosseini’s views on reform are nuanced and do not necessarily imply a complete epistemological and hermeneutical break with traditional Muslim family law. She argues that, since the purpose of *fiqh* is in essence to respond to social realities and to the situation on the ground, the reality should dictate how legal mechanisms should be employed. She argues that Islamic jurisprudence, or *fiqh*, has both the potential and the legal mechanisms to deal with women’s demand for equality in law, including the possibility of:

1. the insertion by the state of compulsory and unconditional stipulations in the marriage contract to improve the negotiating position of women in marriage breakdown;
2. redefining the boundary between the moral and legal rights in marriage to expand the wife’s rights and limit the husband’s arbitrary power. Mir-Hosseini cites the example of how the concept of *ʿusur wa-ḥaraj* or *ḍarār* – that is, prevention of hardship or harm – can be defined so as to give women better access to divorce;
3. invoking arguments for change based on the idea in Qur’anic and legal theory of ratiocination (*taʾlīl*), which links the cause with the ruling. She argues that many rulings need to be re-examined in the light of changes that have occurred in modern times with respect to women’s status in society and gender relations;

As outlined in the first part of this article, Mir-Hosseini, as well as being a critical-progressive scholar, is also an activist and a passionate advocate for equality and justice between the genders. Having elaborated on Mir-Hosseini’s main theoretical arguments as to why change in Muslim family law and ethics is needed and possible, we turn now to her activism.

**Activism: the case of Musawah**

Mir-Hosseini has been an active voice in a number of Muslim women’s organizations, notably “Women living Under Muslim Laws” and “Musawah” (www.musawah.org). For reasons of space, analysis here is limited to her involvement with Musawah and her thoughts on what it represents for the future of discourses on gender and Islam.

Musawah (meaning “equality” in Arabic) was initiated in 2007 by the pioneering Malaysian women’s group, “Sisters in Islam” (www.sistersinislam.org.my), and was launched in Kuala Lumpur in February 2009, bringing together Islamic and human rights frameworks “to build an overlapping consensus among Muslim women from diverse backgrounds and perspectives, and to push for legal reform” (Mir-Hosseini 2011b, 67). According to the Musawah website:

Musawah is a global movement for equality and justice in the Muslim family. We call for equality, non-discrimination, justice and dignity as the basis of all human relations; full and equal citizenship for every individual; and marriage and family relations based on principles of equality and justice, with men and women sharing equal rights and responsibilities. (www.musawah.org)

Mir-Hosseini has said that women in Musawah believe that their own arguments are better grounded in both the Islamic tradition and the sources of international human rights law than
are the voices of patriarchy. Musawah advocates also subscribe to the view that any Islamic authority that denies justice as it is understood today cannot be persuasive and should be challenged (Mir-Hosseini 2011b, 74).

One of the main objectives of Musawah, according to Mir-Hosseini, is to include women’s concerns and voices in the production of religious knowledge and legal reform in Muslim contexts. Musawah achieves this by linking scholarship with activism and by bridging what Mir-Hosseini considers to be two gaps in the contemporary Muslim family law debates and in Muslim legal tradition. The first is that the majority of Muslim religious scholars are gender blind, ignorant of feminist theories and unaware of the importance of gender as a category of thought. The second gap is that many women’s rights activists and campaigners in Muslim contexts, in line with mainstream feminism, have long believed that working within a religious framework is counterproductive, which, for reasons discussed above, Mir-Hosseini considers to be misguided and ineffective for securing the long term goals of Islamic feminism (Anwar and Mir-Hosseini 2012).

Musawah’s activism is therefore embedded in a critical feminist perspective and is multifaceted, involving knowledge building, outreach, international advocacy and communication branches (http://www.musawah.org/what-we-do). Its current project is on rethinking the traditional understanding of the concepts of *qiwâma* and *wilâya*. These have been identified by the Musawah leadership, which includes several of the prominent Muslim reformist scholars mentioned above, as the linchpins of gender inequality in the Muslim legal tradition. This project has three components: the production of new feminist knowledge that critically engages with classical jurists’ interpretations of *qiwâma* and *wilâya*; a “Global Life Stories Project” to document the life stories of selected women and men in 11 countries, focusing on how *qiwâma* and *wilâya* are experienced, understood, and contested in their lived realities; and the use of quantitative and qualitative data to show the disconnect between law and the socio-economic realities of Muslim women today (Anwar and Mir-Hosseini 2012).

According to Mir-Hosseini, this project in critically engaging with tradition in Muslim legal thought to enable us to understand the construction of male authority by Muslim jurists, as manifested in family law, and as embodied in the concepts of *qiwâma* and *wilâya*. It argues that *qiwâma* and *wilâya*, as concepts employed to religiously justify male authority over women, are not Qur’anic concepts but juristic constructs, and that laws based on these constructs no longer reflect the justice of Islam. It intends to promote other interpretations that are both possible and more in tune with contemporary lived realities. One result has been the publication in 2013 of a book entitled *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Tradition*, whose main editor was Mir Hosseini. Further publications on this topic are in process of completion.

In summary, Mir-Hosseini (2011b, 74) considers that the launch of Musawah, in addition to other developments in the world, has ushered in an important new phase in women’s struggle for justice and equality, shifting the politics of religion and feminism onto new ground, both globally and locally.

**Conclusion**

Mir-Hosseini’s thought and work is an excellent example of the stance taken by what have been termed here critical-progressive Muslim scholar-activists, who are among the numerous contemporary actors taking part in continuing intra-Muslim debates surrounding the question of who has the legitimacy to speak for and, therefore, define Islam authoritatively and normatively at a time of historically unprecedented fragmentation of religious authority and democratization of religious knowledge in the Muslim majority world. By enlisting the ideas
and theories of some of the prominent twentieth- and twenty-first-century reformist Muslim thinkers, and with a critical deconstruction of the many assumptions governing traditional Muslim jurisprudence and ethics that relate to their views regarding gender relations, especially those embodied in Muslim family law, Mir-Hosseini has contributed significantly to contemporary debates on gender and Islam. She has inspired a new generation of critical-progressive Muslim scholar-activists and should rightly be considered as one of the pioneers of Muslim feminist scholarship who are working on reforming Muslim family law and (neo-)traditional approaches to Islamic law, politics and ethics in general.

Notes
1. Apart from the legacy of colonialism, the intellectual hegemony and supposed supremacy of post-Enlightenment thought, and the tumultuous political, social and economic upheavals in the second part of the twentieth century, particularly in the Middle East, are all said to be threatening traditional interpretative scholarship and creating discursive spaces for new Islamic hermeneutics.
2. For definition, see below.
3. The term “social hermeneutics” is borrowed from the liberation theology tradition in Christian theology, where it has a similar meaning. See Gottwald and Horsley (1983).
4. See, for example, www.musawah.org.
5. For some recent overviews, see, for example, Badran (2009) and Seedat (2013).
7. For the meaning of this concept, see the main text below.
8. For the meaning of “traditional” and “neo-traditional” in the thought of Mir-Hosseini, see footnote 16.
9. In relation to gender rights, she describes the traditional approach as one that dogmatically and uncritically subscribes in its entirety to the classical *fiqh* constructions of gender as found in classical *fiqh* manuals.
10. In relation to gender, this discourse has emerged primarily as a political response to the military, political and cultural hegemony of the West in the twentieth century. The proponents of this approach consider gender equality to be a Western concept alien to the Islamic tradition. In general, they uphold many of the most important assumptions informing traditionalists’ views of gender and their interpretations of Islamic law in its various aspects, despite being aware of the contemporary critiques of traditional concepts of gender relations, which they attempt to explain away or minimize on the basis of an eclectic patchwork of classical legal stratagems or by highlighting the inherent “flexibility” of Islamic law. They do not, however, question the underlying logic and premises that are primarily responsible for the construction of gender asymmetrical rights in Islamic law. An example of this is the idea that the marriage contract allows a woman to stipulate that, should her future husband marry a second wife, her own marriage will be annulled, which does not question the unilateral right of husbands to divorce and have polygamous marriages.
11. To which we shall turn in the next section of this article.
12. This does not mean that Mir-Hosseini considers that there were no Muslim feminists prior to the 1990s. In her recent edited volume *Gender and Equality in Muslim Family Law*, Mir-Hosseini highlights the proto-feminist consciousness of late-nineteenth and twentieth-century Muslim male scholars, particularly Shaykh Tāhir al-Ḥaddād (d. 1935) and Fazlur Rahman (d. 1988). See Mir-Hosseini et al. (2013).
13. E.g. the works of Haideh Moghissi and Haleh Afshar.
14. As represented in the works of Asma Barlas and Amina Wadud, for example.
15. This is not to say that the Islamic nation state is the only birthplace of Islamic feminism. See Badran (2009).
16. By “traditional” is meant here the law developed by classical or traditional Muslim scholars, i.e. either scholars who lived in the medieval period or modern scholars who subscribe to the normative nature of traditional Muslim law. Thus, “traditional scholarship” refers to both classical scholars and modern/contemporary scholars who advocate for the normative nature of traditional Muslim law, including family law.
17. This phrase will be explained in the main text (see page 13).
19. E.g. the works of Asma Barlas and Amina Wadud.
20. ‘Usur wa-haraj or darar is an important ethico-legal principle or rule that Muslim jurists employ when deliberating on certain aspect of Islamic law and ethics. It is based on the idea that the purpose or philosophy of Islamic law is to prevent undue distress and constriction. It is often associated with another such principle namely, the principle of refraining from causing harm and loss to oneself and others (lá darar wa-la dirar). In this context, this would translate to arguing that wives could have recourse to these juristic mechanisms to demand better access to juridical divorce processes on the basis that their marriage is a source of harm and undue distress to them, be it psychological, physical or emotional.
21. For example, she co-authored with Vanja Hamzić Control and Sexuality: The Revival of Zina Laws in Some Muslim Contexts (2010), which examines zinā laws in some Muslim contexts and communities in order to explore connections between the criminalization of sexuality, gender-based violence, and women’s rights activism. It is available on the “Women Living Under Muslim Laws” website: http://www.wluml.org/sites/wluml.org/files/CaS%20e-book.pdf.

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