THE “CORRUPTION OF THE TIMES” AND THE MUTABILITY OF THE *SHARI’A*

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**INTRODUCTION**

When a female NDP [National Democratic Party] representative spoke against calls for women to return to the home, referring to the role of women in the time of the Prophet, it is reported that dozens of representatives shouted and banged their seats in protest, and one jumped up asking, "Are you like the women of the Prophet’s time?"¹

It is a commonplace in the discussion of Islamic law, both in academic circles and in the popular press, that conservative advocates of *shari’a* law seek to duplicate the social relationships and mores of the Prophet Muhammad’s lifetime, in seventh-century Arabia. While technological and institutional change may be embraced, proponents of the application of the *shari’a* often argue that such foundational social patterns as the interrelation of the sexes must be preserved (or, more often, reinstated) according to the norms established by the Prophet and the exemplary early Muslims. This insistence often takes the form of literal adherence to what are claimed to be prophetic behavioral norms in the social and religious arenas.

Conversely, the argument that changing social conditions (including the evolving roles of women) require corresponding changes in the concrete norms of the *shari’a* is usually—and, by and large, accurately—associated with Islamic modernists and feminists. Thus, for instance, it is sometimes argued by Muslim liberals that the Qur’anic mandate for polygyny is a time-bound concession to contemporary Arabian social mores, and that companionate monogamous marriage is the ultimate Qur’anic ideal and the rule more appropriate to modern societies.² Similarly, Islamic feminists have argued that verse 4:34’s

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² See, for instance, Muhammad Abduh’s interpretation of verse 4:3 of the Qur’an. Abduh
reference to the husband as the provider and head of the family is a descriptive reference rather than a prescriptive rule, and that such social patterns are subject to re-evaluation based on changing social and economic realities.3

This paper will examine another, less known aspect of pre-modern and conservative (as opposed to modernist, feminist, or liberal) interpretations of the shari‘a. While the modern and liberal willingness to bend concrete norms in view of social change and perceived overall principles has been widely recognized, the extent to which pre-modern and conservative scholars have similarly modified concrete precedents established by the Prophet and his contemporaries has not been similarly acknowledged. Specifically, I will look at ways in which apparently liberating ritual precedents set by the Prophet and modeled by his wives have been marginalized or declared inapplicable on the grounds that Muslims of later generations have morally degenerated to the point that such freedoms are no longer appropriate. This idea has been particularly widely applied to issues of women’s public participation and visibility.

The argument that concrete prophetic behavioral norms could be set aside in view of current (negative) social conditions has been explicitly framed in terms of the shari‘a’s changeability in changing times. Such arguments represent an equal but opposite pre-modern pattern (sustained by modern conservatives) balancing the modern liberal contention that the shari‘a’s strictures on women should be re-evaluated in view of women’s enhanced role and status in modern societies.

This paper will focus on one particularly explicit and extensive example of the deployment of such reasoning by a prominent pre-modern scholar, the Shafi‘i faqih (legal scholar) Ibn Hajar al-Haytami (d. 974 A.H. / 1567 C.E). The subject of al-Haytami’s discussion is women’s access to the Great Mosque of Mecca, a sacred sanctuary that is the site of certain rituals (most importantly, the circumambulation of the Ka’ba, or tawaf) incumbent on both men and women. Many authoritative hadith texts (reports of the actions and statements of the Prophet Muhammad) indicate both that the Prophet sanctioned women’s presence in mosques, including that of Mecca, and that his wives took

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part in the circumambulation of the Ka’ba at times when men were present.

However, by al-Haytami’s time there was already a significant body of juristic argumentation that these precedents did not respond to the needs of later generations of Muslims, who lacked the moral refinement of the Prophet’s wives and Companions. The concrete behavioral models offered by the Prophet and his contemporaries were believed to be modified or superseded by general systematic considerations (rules known in the juristic tradition as *qawa’id*) emphasizing the prevention of harm—in this case, specifically sexual disorder—and the responsiveness of the law to changing social circumstances.\(^4\) Indeed, the disjuncture between the Prophet’s apparent support of women’s mosque attendance (including circumambulation in the Great Mosque of Mecca) and the negative attitudes of later jurists is such that one author has recently complained that “[i]n this case, the traditional sources for Islamic law are subverted to an overarching purpose of limiting *fitna* [disorder] as defined by the predominantly male jurists.”\(^5\)

The underlying coherence of al-Haytami’s analysis in his *fatwa* is the concept of *fitna*, which combines the ideas of sexual temptation and of social disorder. Much like the concept of egalitarianism in modern liberal re-readings of the *shari’a*, the concept of *fitna* (and the paramount necessity of its avoidance) is seen as an overriding principle that transcends the concrete details of the law. According to Khaled Abou El Fadl, *fitna* is “the issue at the core of most juristic determinations mandating the exclusion of women from public places.”\(^6\) He argues that in the rulings of many Islamic jurists, “*fitnah* emerges”—wrongly—“as the core value of Islam.”\(^7\)

Regardless of whether one accepts or repudiates classical jurists’ extensive use of the concept of *fitna*, however, it should be recognized that al-Haytami’s invocation of this concept is not merely an arbitrary exercise of male privilege or a raw reflection of his misogyny (although it may partake of both of these things). Rather, by interpreting authoritative texts in light of what he believes to be a core Islamic value, al-Haytami reflects an important aspect of Islamic legal

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\(^4\) For an overview of the *qawa’id* literature in the four Sunni schools of law and in the Twelver Shi’ite tradition, see Wolfhart P. Heinrichs, *Qawa’id as a Genre of Legal Literature, in STUDIES IN ISLAMIC LEGAL THEORY* 365-84 (Bernard G. Weiss ed., 2002); Mustafa Muhaddiq Damad, *The Codification of Islamic Juridical Principles* (*Qawa’id Fiqhiyyah*): A Historical Outline, 1 *Hikmat* 89 (1995).


\(^6\) KHALED ABOU EL FADL, SPEAKING IN GOD’S NAME: ISLAMIC LAW, AUTHORITY AND WOMEN 232 (2001).

\(^7\) Id. at 235.
reasoning. While the shari’a is frequently represented as the atomistic sum of innumerable individual texts, either directly applied or scrupulously extended to closely analogous cases, the genre of qawa’id (general legal principles) reflects the effort—sometimes halting, and never fully systematic—to rationalize the law in light of a set of underlying principles.8

In this particular case, two main qa’idas are involved. One is that “the prevention of harms takes precedence over the seeking of benefits”9—concretely, in this case, that the prevention of social disorder resulting from extensive female mobility and visibility takes precedence over the benefits of women’s participation in public worship. The second is that legal rulings may change with the changing of “the times,” that is, with changing social mores and needs.10 In a study of a fatwa issued by the Ottoman jurist Muhammad al-Aydini in 1104 A.H. / 1693 C.E., Kevin Reinhart has demonstrated that women’s mosque attendance was one of the primary instances cited to exemplify the fact that in Islamic law, “the perception of a potential ‘deleterious consequence’ (fasad) may lead to a radical reinvention of the law.”11

More specifically, al-Haytami’s argumentation implicitly invokes the theme of “the corruption of the times” (fasad al-zaman). Hayim Gerber has noted that this principle, which posits the ongoing deterioration of social morality until the advent of the end times, “is not a legal one . . . but it is highly significant as a concept connecting law and the wider culture.”12 Despite the lack of overt theoretical justification for its use, the principle of the “corruption of the times” is in some cases used by jurists to advance novel interpretations of the law. It is interesting to note that such interpretations by no means always abridge the rights of women in favor of men; although women

8 Fatima Mernissi, among others, has complained that the atomistic nature of Islamic scholarly discourses prevented the recognition of fundamental ethical principles, such as the Qur’antically proclaimed equality of men and women. See Fatima Mernissi, The Veil and the Male Elite: A Feminist Interpretation of Women’s Rights in Islam 146-47 (Mary Jo Lakeland trans., Addison-Wesley Pub’l 1991) (1987). In a fascinating study, Mohammad Fadel analyzes a contrasting example in which an apparently misogynistic Qur’anic passage (the verse establishing that the testimony of two women is in some situations equivalent to that of one man) was relativized by legal scholars in light of a broader principle of gender equality. See Mohammad Fadel, Two Women, One Man: Knowledge, Power and Gender in Medieval Sunni Legal Thought, 29 INT’L J. MIDDLE E. STUD. 185 (1997). While Qur’anic interpreters might proceed atomistically from verse to verse, Fadel argues, legal scholars were committed to a degree of systematization that required more rigorous consistency in their rulings related to gender. Id.

9 On this principle, see Muhammad Sidqi al-Burnu, Mawsu’at al-Qawa’id al-Fiqhiyya 5:315-16 (Mu’assasat al-Risala, 1424 A.H. / 2003 C.E.).

10 See id. at 8:1100-01.


are routinely stigmatized as a source of sexual disorder, the imputation of declining morals is applied to both sexes without distinction—and was on occasion invoked, for instance, to abridge the rights of husbands over wives. One such example concerns the right of a husband to take his wife on a journey without her consent; while the classical doctrine of the Hanafi school affirmed this right, later jurists successfully argued that the rule must be re-examined in light of the conditions of later times. In view of the corruption of contemporary societies, they argued, a woman might scarcely be safe in her home town—let alone if she were transplanted to an alien place against her will.\(^{13}\)

al-Haytami’s *fatwa* on women’s mosque attendance is an unusually extended legal opinion that offers an uncommonly detailed exposé of the interpretive techniques that were brought to bear on a problem of immediate social significance. Beginning with the vivid dismay of the initial question, which places contemporary social practice squarely in the forefront of the discussion, it traces a complex interplay of authoritative text, juristic tradition, and legal reason.

The *fatwa* itself provides no indication of the concrete situation that might have prompted the composition of such an extensive and impassioned document on this subject. Luckily, in another work al-Haytami describes the events that most probably stimulated his own scholarly intervention. In his work on the birthday of the Prophet Muhammad he writes:

> Around the time that I settled in Mecca, a number of the scholars of the four schools [of Islamic law] in Mecca the Exalted took part in an intense campaign and a concerted effort to prohibit women from leaving their houses to go to the Great Mosque of Mecca (al-Masjid al-Haram) altogether, because of the widespread—nay, incontrovertible—reports about the repugnant acts [the women] were reported to engage in, even in the mosque [itself]. Other [scholars] opposed them, to the point that legal opinions (*fatawa*) proliferated. Some members of each of the two parties composed refutations of the other, and each of the two parties directed questions to the scholars of Egypt according to their own agendas; [the Egyptian scholars] answered each question as was appropriate to it, and correspondence, confusion, and abuse occurred between them that induced sinful, crooked-hearted and heretical persons to support the wrong and leave those offensive activities as they were.\(^{14}\)

The following summary reproduces the main outline of al-Haytami’s argument, while passing over some of his subsidiary points for the sake of brevity and focus.

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al-Haytami’s discussion is in the form of a fatwa, i.e., a responsum (potentially influential when issuing from a jurist of al-Haytami’s stature, but not legally binding) issued in response to an unnamed questioner. Al-Haytami begins by citing what appears to be the full text of the initiating query, one that reveals the extent of his questioner’s discomfort with existing social practice:

In these times, it has become frequent occurrence that women go out to the markets and the mosques to hear preaching, and to circumambulate the Ka’ba, etc., in the mosque of Mecca, presenting themselves in unaccustomed ways that will definitely have a seductive effect. Specifically, they adorn themselves when going out for any of these purposes with the best adornments, jewelry and garments at their disposal, such as ankle rings, bracelets, and gold that is visible on their hands, and large amounts of incense and perfume. In addition, they expose large portions of their bodies, such as their faces, hands, and other parts, and sashay as they walk in a way that is noticeable to anyone who looks at them, whether intentionally or unintentionally. Is it incumbent on the imam or on other holders of authority and power to exclude them from these places, even from the mosques, and even from the mosque of Mecca, despite the fact that they cannot perform the circumambulation (tawaf) outside of it, unlike praying? Or should the two [activities, i.e., circumambulation of the Ka’ba and prayer] be distinguished on that basis?15

Al-Haytami begins by addressing the general question of women’s public visibility, particularly with respect to the exposure of their faces. He first cites Imam al-Haramayn (al-Juwayni, Shafi’i jurist and Ash’ari theologian, d. 478 A.H. / 1085 C.E.) to the effect that there is an ijma’ (binding consensus) in the Shafi’i school that it is permissible for a woman to appear in public with her face uncovered; it is incumbent on men to avert their eyes. Opposed to this is a statement by al-Qadi ‘Iyad (Maliki, d. 544 A.H. / 1149 C.E.), who states that there is a general ijma’ of the ‘ulama’ that women are to be forbidden from doing so. These two opinions, al-Haytami observes, are not necessarily in conflict; (unidentified) distinguished scholars have argued that the exposure of a woman’s face is permissible with respect to the woman herself, but that it is permissible or even obligatory for the authorities to prevent women from exposing their faces for fear of their seductive effect on other people. By this logic, al-Haytami continues, it is incumbent upon the authorities to prevent women from appearing in

public at all if they engage in any of the behaviors described in the question, which are all very likely to have a seductive effect. Furthermore, al-Juwayni’s opinion should be interpreted to refer to the case that the woman does not expose her face with the intent that it be seen, or that she does not know that anyone will see it; if she does expose her face with the intent that it be seen, this is forbidden for her because she intended to cause others to fall into sin. Similarly, if she knows that a non-related man will see her face, it is incumbent on her to cover it; otherwise, she is abetting that person in committing a sin.

al-Haytami addresses his second point through a hypothetical questioner who asks how it could be obligatory to prevent women from visiting the mosque of Mecca if they engage in the behaviors described, even if they are intending to circumambulate the Ka’ba, which cannot be performed anywhere else and is in some cases obligatory for them. al-Haytami replies that this is because, in the *shari’ah*, averting harm takes precedence over acquisition of benefits. Furthermore, it is possible for women to visit the mosque of Mecca in shabby garments (*thiyab raththa*, presumably meaning drab and unattractive clothes), so that there is no fear of their having a seductive effect on other people. If a woman is religiously obligated to perform the *tawaf*, she must either be old or young. If she is old, she can perform the *tawaf* (alone) if she is in shabby clothes; the same applies to other acts of worship in mosques, because there is no fear of *fitna* in that case. If she is young, she must be either single or married. If she is single, she can wait until the area around the Ka’ba is empty in the heat of noonday, and perform the *tawaf* then. If she is married and her husband instructs her to perform the *tawaf*, and she fears *fitna* even if she wears shabby clothes, she is not obligated to go by herself. Rather, she may say to him, “Either you come with me so that I can perform [the *tawaf*] and the *sa’y* (the “hastening” back and forth between the hills of Safa and Marwa), or you must not order me to do so.” Thus, al-Haytami concludes, there is no difference between the conditions under which a woman may appear in public to perform the *tawaf* and the general conditions under which she may appear in public.

al-Haytami then turns to the *hadith* texts that seem unambiguously to grant women the right to visit mosques. He begins by citing the Shafi’i scholar al-Nawawi’s (d. 676 A.H. / 1277 C.E.) commentary on the *Sahih* of Muslim, one of the two most authoritative Sunni *hadith* collections. al-Nawawi comments on the Prophet Muhammad’s statement,

Do not exclude God’s maidservants from God’s places of worship (mosques): [T]he surface meaning (*zahir*) of this and similar *hadiths* on the subject is that a woman should not be excluded from the mosque; however, this is subject to conditions that have been mentioned by the ‘ulama’ that are drawn from [other] *hadiths*.
These are that she not be perfumed or adorned, wearing ankle bracelets whose sound is audible or fancy clothes, that she not mix with men, that she not be a young woman or any similar [kind of woman] who has a seductive effect, that there not be anything on the way [to the mosque] that threatens any corruption/harm, etc.\textsuperscript{16}

al-Nawawi concludes that the prohibition on excluding women from the mosques is to be interpreted as repugnance (i.e., not an absolute prohibition) in the case of married women or slave women with masters. Presumably, the husband or master has the prerogative of prohibiting her from visiting the mosque, but this is not recommended; if she has no husband or master, it is \textit{haram} (forbidden) to prohibit her from visiting the mosque as long as she fulfills the above-mentioned conditions.\textsuperscript{17}

al-Haytami points out that al-Nawawi’s comments imply that a woman must be forbidden from attending the mosque if she fails to fulfill even one of the mentioned conditions. He also points out that the conditions include the absence of any mixing with men and the absence of any perils on the way to the mosque, two conditions which even the most modest of women might be considered incapable of fulfilling. Forbidding them to attend might be either permitted or obligatory, an issue which al-Nawawi did not resolve; other scholars, in contrast, have explicitly stated that it is obligatory on the authorities to exclude women from the mosques if there is any fear of \textit{fitna}.

In support of his preference for excluding most women from mosques, al-Haytami then cites a \textit{hadith} transmitted from the Prophet Muhammad’s youngest wife, ‘A’isha, who survived several decades after the Prophet’s death. She is supposed to have stated, “If the Messenger of God had seen the customs that women have innovated since his death (\textit{ma ahdatha al-nisa’ ba’da hu}), he would have prohibited them from visiting the mosques just as the women of the Israelites were prohibited.”\textsuperscript{18} al-Haytami acknowledges that this statement could be interpreted merely as allowing women to be prohibited from visiting mosques, or as making such a prohibition obligatory (the stronger position that he clearly prefers). He argues that an actual obligation to prohibit women from mosques is supported by the systematic legal principle (\textit{qa’ida}) giving precedence to the prevention of harm. In this connection he cites a statement attributed to the early legal authority Malik (d. 179 A.H. / 796 C.E., the eponymous

\textsuperscript{16} Id. at 1:284; see \textsc{al-Nawawi}, \textit{Sharh Sahih Muslim} 4:405 (Dar al-Qalam, 1407 A.H. / 1987 C.E.).

\textsuperscript{17} See \textsc{al-Nawawi}, \textit{supra} note 16, at 4:406.

\textsuperscript{18} See \textsc{Muhammad ibn Isma’il al-Bukhari, Sahih al-Bukhari} 1:236 (Dar al-Fikr 1411 A.H. / 1991 C.E.); \textsc{Nawawi, supra} note 16, at 4:408 (main text); \textsc{Malik, Muwatta’} 1:198 (al-Maktaba al-Thaqafiya 1408 A.H. / 1988 C.E.); \textsc{Abu Dawud, Sunan} 1:420 (Dar al-Qibla li’l-Thaqafa al-Islamiya 1419 A.H. / 1998 C.E.).
founder of the Maliki school of law), asserting that “people receive new legal rulings in proportion to the new forms of immorality that they invent” (yahduth li’l-nas fatawa bi-qadr ma ahdathu min al-fujur). This statement, al-Haytami remarks, is attributed to Malik only because he was the first to say it; it has been affirmed by authorities of other legal schools after him, as is clear from the positions of their schools. al-Haytami is eager to clarify that this is not an instance of al-masalih al-mursala, a predominantly Maliki legal principle according to which legal rulings may be generated without a concrete textual foundation on the basis of the general objectives which are believed to be pursued by the shari’a as a whole. al-Haytami rejects this legal principle but argues that Malik’s statement does not allude to it. Rather, the statement indicates that when new situations arise, application of the (textual) sources of the shari’a (usul al-shari’a) may result in a different ruling than before the new situation arose.

al-Haytami cites an anonymous authority as observing that ‘A’isha’s pronouncement is not merely a statement by a Companion of the Prophet, whose legal status would be subject to dispute, but a statement about the attitude of the Prophet from one who was in a position to know how he would feel. The anonymous authority supports this position by citing another hadith, in which the Prophet sees a woman enter the mosque strutting in fine garments; he exclaims, “O people, forbid your women to wear fine clothes (libs al-zina) and sashay in the mosque; the Children of Israel were not cursed until their women donned fine clothes and sashayed in the mosques.” al-Haytami cites an anonymous jurist’s opinion that the cursing of the Children of Israel for their failure to prohibit such behavior indicates that it is strictly forbidden; thus, if a woman will go to the mosque only in this fashion, she should be forbidden from doing so at all.

Returning to the apparently countervailing hadith in which men are enjoined not to prevent women from attending mosques, al-Haytami then cites a passage from the Ihya’ ‘ulum al-din of the prominent sufı, theologian and Shafi’i jurist al-Ghazali (d. 505 A.H. / 1111 C.E.). al-Ghazali reports an incident in which the Companion of the Prophet ‘Abd Allah ibn ‘Umar cited the hadith, “Do not exclude God’s maidservants from God’s places of worship (mosques).” One of his

19 This maxim is generally attributed to the Umayyad caliph ‘Umar ibn ‘Abd al-‘Aziz (reigned 99-101 A.H. / 717-720 C.E.); it was endorsed by Malik. See AHMAD IBN IDRIS AL-QARAFI, KITAB AL-FURUQ: ANWAR AL-BURUQ FI ANWA’ AL-FURUQ 4:134 (Dar al-Salam 2001); MUHAMMAD ‘ARAFAH AL-DASUQI, HASHIYAT AL-DASUQI ‘ALA AL-SHARH AL-KABIR 4:174 (‘Isa al-Babi al-Halabi wa-Shuraka’uhu n.d.) (Sharh, printed in margin).


21 See AL-NAWAWI, supra note 16, at 4:406 (main text); ABU DAWUD, supra note 18, at 1:420.
sons retorted, “By God, we will exclude them!”22 His father hit him in the chest and became angry. Although this report would seem to imply that this prominent early Muslim indignantly rejected the idea of prohibiting women from mosques, believing it to be in conflict with a direct prophetic command, al-Ghazali is at pains to dispel this impression. Justifying the son’s position, al-Ghazali infers, “He dared to contradict [the *hadith*] only because of his knowledge of the changing of the times (li-‘ilmih bi-taghayyur al-zaman).”23 His father, according to al-Ghazali, became angry only because the son’s retort was framed in categorical terms, thus appearing to reject the *hadith*, rather than mentioning the conditions under which women could be excluded from mosques.24 al-Haytami points out that al-Ghazali’s opinion is based on ‘A’isha’s remark that the Prophet would have excluded women from mosques had he known about their behavior after his death.25

al-Haytami then turns to the opinion of the prominent *hadith* scholar Ibn Hajar al-‘Asqalani (d. 852 A.H. / 1449 C.E.), whose comments on ‘A’isha’s dictum seem to oppose his argument that women are generally to be excluded from mosques. Ibn Hajar states that ‘A’isha’s statement does not entail a change in the legal ruling, because she made it dependent on a condition contrary to fact based on an inference that she made. Thus, she said, “If [the Prophet] had seen . . . he would have prohibited.” In response to this, it can be said that he did not see, and he did not prohibit; thus, the legal ruling remains as it was. ‘A’isha did not even explicitly state that [women’s attendance at the mosque] was prohibited, even if her statement implies that she approved of prohibiting it. In addition, [God] Most High knew about the new behaviors women would engage in [after the lifetime of the Prophet], and He did not send a revelation to His Prophet prohibiting them [from visiting mosques]. If the new behaviors women engaged in required that they be excluded from mosques, *a fortiori* they should be excluded from other [public] places. Furthermore, the new behaviors were performed only by some women, not by all of them; if prohibition is required, then it should apply [only] to those who did. The more appropriate thing is to see what threatens *fitna* and avoid it, since [the Prophet] alluded to that by prohibiting perfume and adornment [to women visiting mosques] . . . .26

al-Haytami argues that Ibn Hajar al-‘Asqalani’s comments are not

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24 *Id.*
in contradiction with the apparently more restrictive opinion of al-Ghazali, who seems to imply that the law has indeed become more stringent since the time of the Prophet. Rather, al-Haytami contends, al-'Asqalani’s arguments are intended only to refute the opinions of those who interpret ‘A’isha’s statement categorically to prohibit women from visiting mosques. In other words, al-Haytami interprets al-'Asqalani’s comments, not as a vindication of a general women’s right to visit the mosque, but as a refutation of scholars who would exclude women as a category rather than simply excluding most women because of the threat of *fitna*. al-Haytami agrees that an absolute prohibition on women’s presence in the mosque is untenable since it is contradicted by *hadith* texts; in any case, it is meaningless, for instance, to exclude an aged woman wearing worn-out clothes.

al-Haytami then cites another authority, the *hadith* specialist Ibn Khuzayma (d. 311 A.H. / 924 C.E.), who makes a clever argument about women’s motives for attending mosques. A *hadith* of the Prophet, Ibn Khuzayma points out, states that it is better (i.e., more religiously meritorious) for a woman to pray in her home than in the Prophet’s mosque, even though (for a man) prayer in the Prophet’s mosque is a thousand times more meritorious than prayers elsewhere. If it is more meritorious for a woman to pray at home, however, she can be motivated to pray in the mosque only by hypocrisy and the desire for reputation (motives that are religiously forbidden), or by other factors such as an idle desire to get out of the house (which would detract from the sincerity of her prayers). al-Haytami has reservations about this reasoning, which he does not state in full; nevertheless, the citation of this passage contributes to his accumulation of authoritative legal opinion.27

al-Haytami seeks further support for his contention that most women are to be excluded from mosques from the distinguished Shafi’i jurist ‘Izz al-Din Ibn Jama’a (d. 767 A.H. / 1366 C.E.), who writes in his manual on the pilgrimage ritual:

One of the most objectionable things is what ignorant commoners do when circumambulating [the Ka’ba], the men jostling their wives, who have their faces uncovered; sometimes that is at night, and they carry lighted candles in their hands. Another objectionable thing is what the women of Mecca and others do when they want to circumambulate the Ka’ba and when they enter the mosque, including adorning themselves and using strong-smelling perfume, so that it can be smelled from a distance and confuses people, and by this means they attract people to look at them, in addition to other corruptions (mafasid). We ask God to inspire (yulhima) the ruler

27 AL-HAYTAMI, supra note 15, at 1:286.
al-Haytami remarks that Ibn Jama’a explicitly declares it obligatory for the authorities to prevent women, even from performing the *tawaf*, when they commit actions that incite *fitna*. He then cites several hadith texts emphasizing the sinfulness of women’s wearing perfume in public settings.

al-Haytami then turns to the opinions of an unnamed latter-day scholar ("ba’d al-muta’akhkhirin"). This anonymous source writes of the custom of women sleeping in the mosque during the fasting month of Ramadan. “That is *haram,*” he remarks,

and no one would consent (*yarda*) to have the women of the Muslims behave in this way but someone of little honor (*qalil al-nakhwa*). So how is it permissible for anyone to consent to have his wife behave in this way, and how could it not be obligatory for him to prevent her?29

After citing several *hadith* texts objecting to women’s jostling men in public places in the strongest of terms, the unnamed author continues,

If you were to say, “Do you hold that [it is obligatory] to forbid women from going out to mosques, to religious festivals (al-*mawa’id*), and to visit graves other than the grave of the Prophet?!" I say, “How could I not hold this, when it has become the object of [juristic] agreement, because the condition under which [women’s] going out in [the Prophet’s] time no longer exists, which is piety and chastity?!” Among earlier authorities, this has been mentioned by the two leading, ascetic and pious scholars al-Shaykh Taqi al-Din al-Hisni30 and our *shaykh* ‘Ala’ al-Din Muhammad ibn Muhammad ibn Muhammad al-Najjari, may God cover both of them with His mercy; what they have mentioned is sufficient for those who abstain from following their whims. Some people fancy that holding [women’s visiting the mosque] to be *haram* and claiming [juristic] agreement on its prohibition are in conflict with the doctrine of the school (*mukhalif li’l-madhhab*), but that is not the case . . . .31.

One of the things that the two of them [al-Hisni and al-Najjari] mentioned is that the doctrine for legal rulings in this time (*fi hadha al-zaman*) is to forbid [women] to go out [to the mosque],

and no one would hesitate to agree with this except a stupid person who pursues his whims, because legal rulings change with the changing of the people of the time. This is true according to the schools of the early and late scholars. An example of that is what

28 Id. at 1:286; see ‘ABD AL-’AZIZ IBN MUHAMMAD, IBN JAMA’A, HIDAYAT AL-SALIK ILA AL-MADHIAHIB AL-ARBA’A FI’L-MANASIK 2:868 (Dar al-Basha’ir al-Islamiya, 1414 A.H. / 1994 C.E.).
29 AL-HAYTAMI, supra note 15, at 1:287.
30 Shafi’i jurist, d. 829 A.H. / 1426 C.E.
31 AL-HAYTAMI, supra note 15, at 1:287.
al-Nawawi] cites in *Sharh Muslim* from al-Qadi ʿIyad: “The early Muslims (al-salaf) differed over [women’s] going out to [attend the prayers for] the two festivals; one group considered that to be their obligation (haqq ʿalayhinna) . . .; there were also those who prohibited them from doing that . . .” 33 al-Tahawi34 said, “The command that [women] go out [to the festival prayers] was at the beginning of Islam, so that the Muslims would appear numerous in the eyes of the enemy.” And in the commentary of Ibn Daqiq al-ʿId [it is stated]: “At that time the people of Islam were few in number, and it was necessary to go to great lengths in bringing out adolescent girls (al-ʿawatiq, literally girls who have reached puberty but not yet been married) and secluded women.” And in the *Musannaf* of Ibn al-ʿAttar it is stated: “A woman should not leave her house, but should stay within it (talzim qaʿrahu); all of her is pudendal (ʿawra), and pudenda must be covered. As for going out to the mosque in the darkness of night (al-ghals) when there is safety from harm and fitna, this was permitted in the time of the Prophet and the time of some of his Companions, then it was prohibited because of the new behaviors that women engaged in, including seductive conduct, showy clothing, perfuming themselves, and tempting men.” Then he cited ʿAʾisha’s statement about prohibiting them [from visiting mosques] . . .35

al-Haytami’s anonymous source then cites al-Ghazali’s statement that “the Prophet permitted women to go to the mosque; the correct thing now is that all but old women be prohibited from doing so; indeed, that was considered correct [even] in the time of the Companions.”36 The author concludes that “these are the statements of the ʿulama’ about the legal ruling of [women’s visiting the mosque] differing with the change of the times (ikhtilaf al-hukm fiha bi-taghayyur al-zaman).”37 He emphasizes the prominence and authority of the scholars who have asserted the changeability of the law with changing social circumstances, and thus the exclusion of most women from mosques. Any scholars who seem to contradict this logic by stating that women are permitted to visit mosques are referring to the case that there is no possibility of fitna.

After his lengthy summary of this anonymous source, al-Haytami remarks, “[H]ow excellent [this opinion is], and how worthy of [being judged] correct!”38 He sums up with a final citation of Taqi al-Din al-Hisni,

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32 Maliki, d. 544 A.H. / 1149 C.E.
34 Hanafi jurist and muhaddith, d. 321 A.H. / 933 C.E.
35 AL-HAYTAMI, *supra* note 15, at 1:287
37 Id.
In our time one should conclude with certainty that it is forbidden for young and well-dressed women to go out, because corruption is rampant. The factor that made it permissible [for them] to go out existed in the best of generations [i.e., that of the Prophet], and it has passed away. [At that time, women] did not use to display their charms; they used to avert their eyes, as did men. [In contrast], the dire effects of their going out now are established . . . No one would hesitate in forbidding them [from going out] except a stupid and ignorant person who has little knowledge of the secrets of the *shari'a* . . . .

Such a person, says al-Hisni, grasps the external meaning of a legal proof (in this case, presumably, the *hadith* texts indicating women’s right to attend the mosque) without understanding its true meaning, as well as failing to understand the meaning of ‘A’isha’s statement and neglecting the Qur’anic verses prohibiting the display of (female) charms. “The correct position,” he concludes, “[i]s to definitively forbid [women’s going out to visit the mosque] and issue legal opinions to this effect.”

al-Haytami concludes that this is the position of the school, and warns against believing scholars who claim otherwise.

**CONCLUSION**

al-Haytami’s discussion demonstrates a deep, if sometimes biased, commitment to his authoritative texts. Although his preconceived notions of propriety and social welfare (which disproportionately stigmatize women as instigators of sexual chaos) are frequently on display, his *fatwa* provides meticulous and multifaceted interpretations of the relevant *hadith*. At the same time, he displays significant deference to juristic tradition. He is at pains to cite distinguished authorities in support of his interpretations, and when (as in the case of Ibn Hajar al-'Asqalani) a prominent scholar appears to disagree with him, he is concerned to reconcile the latter’s opinions with his own. Ultimately, however, the *fatwa* is dominated by systematic principles: the need to prevent perceived social harms, and the axiom that the law must respond to changing social conditions. al-Haytami’s assumption that his contemporaries differ from the generation of the Prophet, and that they must thus adopt different behavioral norms to achieve the same moral and religious objectives, in many ways anticipates the arguments of many Muslim modernists and feminists. However, while modern thinkers sometimes posit that practice must change in deference

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to rising standards of social equity and justice (including the growing reality of women’s equal participation in society), al-Haytami envisions a strictly downward trajectory. His dark view of contemporary society dictates increasing strictures on women’s mobility and visibility.