

Khaled Abou El Fadl's Understanding of Sharia in Theory and in Practice. A Critical Analysis

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Abstract

This article elaborates on the famous US-Egyptian jurist Khaled Abou El Fadl's interpretation of Sharia, and his attempt to find ways to enable a contemporary reading. Having observed that Muslims in the modern age have been cut off from their cultural and intellectual heritage, he aims in his interpretative work to connect with the pre-modern intellectual tradition and to build on it in a contemporary way. As this article demonstrates, his understanding is based on the premise that Sharia is characterised by noble values and particular ethics. After elaborating on his theoretical perception of Sharia with beauty as one of its main characteristics, this article explores how the jurist, based on his understanding of Sharia, deals in practice with sources that seem to clash with his understanding of beauty and modern ethics. This analysis is conducted using the example of a gender-related prophetic report (*ḥadīth*) which Abou El Fadl himself discusses in his books and for which he finds no solution other than to reject it – despite its authenticity – because it seems to contradict his understanding of Islam and contemporary ethics. This article critically analyses Abou El Fadl's argumentation and suggests an alternative approach to dealing with certain singular problematic traditions.

Keywords

Khaled Abou El Fadl, Sharia, contemporary interpretations, modernity, ethics, prophetic traditions.

1 Introduction

Questions on the meaning of Sharia law and its interpretation in the modern era have been addressed in numerous publications.¹ The jurist and scholar Khaled Abou El Fadl is one of the scholars seeking to achieve a contemporary interpretation of Sharia. A fundamental aspect of his contributions is his endeavour to

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1 See, for example, Wael Hallaq, "Can the Shari'a be Restored?", in: Yvonne Yazbeck Haddad/Barbara Freyer Stowasser (eds.), *Islamic Law and the Challenges of Modernity*, Walnut Creek, CA 2004, pp. 21–53; Rumees Ahmed, *Sharia Compliant. A User's Guide to Hacking Islamic Law*, Stanford, CA 2019.

elaborate an understanding of Sharia and Islam that is linked to the intellectual Islamic heritage of pre-modern scholars, and to attempt to interpret that heritage in the modern era.² He regards it as a major problem of modernity that Muslims are cut off from their heritage due to colonialism³ and, as a consequence, that interpretations of Sharia now circulate among Muslims that Abou El Fadl describes as either extremist⁴ or apologetic and intellectually weak.⁵ The jurist therefore sees a strong need for action, and considers it the responsibility of contemporary scholars to elaborate on and convey an adequate interpretation.

According to his own reading, one of the central and most essential features of Sharia are those of the most noble ethical values.⁶ Furthermore, since the jurist especially emphasises beauty as the central characteristic of Sharia, the author of this article is curious to see how the scholar deals with sources that, from today's perspective, are regarded as not exactly beautiful. More specifically, the article will explore how the jurist deals with prophetic reports (sg. *ḥadīth*, pl. *ahādīth*) that seem to contradict the contemporary notion of ethics and, in particular, gender justice – a topic that is central to the work of Abou El Fadl.⁷

For the discussion, a *ḥadīth* has been chosen that, today, is viewed as problematic by a number of Muslim scholars: it is the *ḥadīth* that addresses a woman's prostration to her husband.⁸ Using the example of this *ḥadīth*, which Abou El Fadl discusses in his book *Speaking in God's Name* (2001), will enable the author to demonstrate how the jurist works with his understanding of beauty when dealing with problematic reports. The practical implementation of his interpretation of Sharia when working with the "prostration *ḥadīth*" shows that the existence of traditions such as this one represents a dilemma for the jurist, which he tries to resolve in several ways. One of his suggestions involves several options to invalidate the *ḥadīth*, and despite seeming to be uncomfortable with his own suggestion,

2 Cf. Khaled Abou El Fadl, *Reasoning with God. Reclaiming Shari'ah in the Modern Age*, Lanham, MD 2014, p. 176.

3 Cf. Khaled Abou El Fadl, "What Type of Law is Islamic Law?", in: Khaled Abou El Fadl/Ahmad Atif Ahmad/Said Fares Hassan (eds.), *Routledge Handbook of Islamic Law*, New York 2019, p. 12.

4 Cf. Abou El Fadl, *Reasoning with God*, p. 176.

5 Cf. Khaled Abou El Fadl, "What Type of Law is Islamic Law?", p. 12.

6 Cf. Khaled Abou El Fadl, *The Search for Beauty in Islam. A Conference of the Books*, Lanham, MD 2006, p. 71.

7 Of course, Abou El Fadl is not the only scholar who aims to establish a gender-just interpretation of the sources. Examples of other scholars seeking the same goals include Fatima Mernissi, *Women and Islam. An Historical and Theological Enquiry*, Oxford 1991; Asma Barlas, *Believing Women in Islam. Unreading Patriarchal Interpretations of the Qur'an*, Austin, TX 2002; Adis Duderija, "Maqāṣid al-Sharī'a, Gender Non-Patriarchal Qur'an-Sunna Hermeneutics, and the Reformation of Muslim Family Law", in: Adis Duderija (ed.), *Maqāṣid al-Sharī'a and Contemporary Reformist Muslim Thought*, New York 2014; Nasr Abu-Zayd, "The Status of Women Between the Qur'an and Fiqh", in: Ziba Mir-Hosseini et al. (eds.), *Gender and Equality in Muslim Family Law. Justice and Ethics in the Islamic Legal Tradition*, New York 2013.

8 See, for example, Ayesha S. Chaudhry, *Domestic Violence and the Islamic Tradition*, Oxford 2015, pp. 41f.

he ultimately sees no alternative other than to reject the *ḥadīth* as the final option, even though the source is authentic. He opts for this conclusion because the tradition seems irreconcilable with a contemporary understanding of ethics.⁹

The author of this article stresses that the jurist's efforts to establish a contemporary understanding of Sharia are without doubt an important contribution to the current debate. However, there are several debatable points that are raised, particularly in his argumentation when dealing with problematic *aḥadīth*. When Abou El Fadl criticises the fact that there is currently a gap in the understanding of Islam between pre-modern scholars and today's Muslim scholars, and claims that he aspires to build on the heritage of pre-modern contributions, then one would expect him to look for and apply theological methods – with the same creativity employed by pre-modern theologians – to make the unintelligible intelligible and to try to provide explanations for the contents of Islamic sources. Regarding the *ḥadīth* he chose for his discussion, therefore, one would expect him to undertake a systematic-theological, comprehensive analysis, but unfortunately none is offered. By contrast, he seems determined from the beginning to reject this “unpleasant” *ḥadīth*: “I very much want to believe that the Prophet did not say this”,¹⁰ “my conscience is satisfied only if I affirmatively believe the tradition is not authentic.”¹¹ Unfortunately, this approach he takes from the outset seems to be a hindrance to the analysis of the tradition in depth and to the consideration of its context in the bid to find new ways of interpretation.

Besides providing a critical analysis, this article aims to build on Abou El Fadl's suggestions and reflections, raising further considerations and thoughts, and culminating in a cautious proposal for a different approach in looking and judging the *ḥadīth*. The approach taken by this article is characterised by arguing for the need for a holistic study that considers all available sources when analysing singular traditions. In this way, it hopes not only to spare the rejection of sources, but also to pave the way for a different and new reading of texts that are currently seen as problematic.

2 Background notes on Khaled Abou El Fadl

The US-Egyptian jurist Khaled Abou El Fadl (b. 1963) was born in Kuwait. He studied law and political science at Yale University in New Haven, Connecticut and obtained his doctorate in Islamic Studies at Princeton University, New Jersey in 1999. He is currently professor of law at the University of California, Los Angeles (UCLA) School of Law, where he is also the Chair of the Islamic Studies Program. He is an active imam at the Islamic Center of Southern California; he also

9 Cf. Khaled Abou El Fadl, *Speaking in God's Name. Islamic Law, Authority and Women*, Oxford 2001, pp. 442f.

10 *Ibid.*, p. 443.

11 *Ibid.*

gives lectures and regularly publishes essays on his homepage, entitled “Search for Beauty”.¹² As a powerful and critical voice against puritan and Wahhabi Islam, especially after 9/11, he has regularly appeared on national and international television and radio, including CNN, PBS, NBC, and NPR.¹³ Regarding his primary research interests, he is especially engaged with contemporary phenomena of the political violence of certain Muslim groups, the history of Islamic jurisprudence, its methods and systematisation, legal philosophy, and a gender-sensitive interpretation of Islamic sources toward women.

In 2017, he established the Usuli Institute, which is concerned with the search for beauty, reasonableness, and Godliness. Striving for the latter means that one strives for the most beautiful path and thus contributes to humanity.¹⁴ These aims are supposed to be realised by engaging with pressing topics that are raised and debated in present-day society. Moreover, the institute supports its vision by organising public symposia and offering research fellowships.¹⁵

3 Khaled Abou El Fadl’s evaluation of the status quo regarding Muslims’ understanding of Sharia

Abou El Fadl evaluates the current intellectual condition of Muslims in dealing with their juristic-cultural heritage as lamentable.¹⁶ The jurist argues that in order for Muslims to improve the current situation, they must devote their efforts to connecting with their heritage and interpreting it in a contemporary way, because the true challenge for Muslims today is the question of how to reconstruct their living tradition.¹⁷ While in the past, he argues, Muslim scholars have always interpreted Sharia innovatively and created a sophisticated system, the question facing Muslims today is how this can be achieved in present-day society, and how Sharia can be approached in a manner that adequately meets current needs.¹⁸

3.1 Linguistic, ethical, and legal aspects of Sharia

The jurist understands Sharia as *nomos*, or a certain way to live,¹⁹ and says that the linguistic practice of Muslim scholars understood it in the broad meaning of the way to goodness, the source of nourishment, and the natural way defined and given from God.²⁰ According to Abou El Fadl, Sharia is divine because it is a utopian

12 See URL: <https://www.searchforbeauty.org> (accessed on 6 April 2020).

13 See Abou El Fadl, *The Search for Beauty in Islam*, p. 407.

14 See URL: <https://www.usuli.org/about-us/our-values/> (accessed on 6 April 2020).

15 See URL: <https://www.usuli.org/about-us/projects/> (accessed on 6 April 2020).

16 His frustration about this becomes evident in his bitter ironic remarks in his book, *The Search for Beauty in Islam*, p. 100.

17 Cf. Abou El Fadl, “*Violence, Personal Commitment and Democracy*”, p. 265.

18 Cf. Abou El Fadl, *Reasoning with God*, pp. xixf.

19 Cf. Abou El Fadl, “*What Type of Law is Islamic Law?*”, p. 14.

20 Cf. Abou El Fadl, *Reasoning with God*, p. xxxii.

reality and the most perfect ideal that only exists in the divine realm. For humans, it is not possible to reach this ideal, although they should strive to understand it and to act according to their understanding in the best way possible.²¹

From a legal perspective, Abou El Fadl mentions that Sharia is God's immutable, eternal law, reflecting the way of truth, virtue, and justice. Essentially, Sharia is the ideal law in the divine "imagination". In this sense, the term "Sharia" is sometimes used to refer to universal laws of the good. Unlike the ideal Sharia, Islamic law (*fiqh*) is the fallible attempt of humans throughout centuries to understand, interpret, and implement divine norms, understand right and wrong from the sources, and elaborate the best from these findings for their practical behaviour and action.²² The rules (*ahkām*) formulated by scholars therefore merely represent attempts to understand the divine will, although they certainly do not – on account of humans' limitations – represent God's beauty.²³ For jurists, this means that even if they are aware that God's perfection cannot be fully perceived by humans, they are obliged to use Sharia as the founding principles and as a basis for judicial reasoning.²⁴

The desired result of scholars' efforts during their work of judicial reasoning is expressed by Abou El Fadl as follows:

God's law (Shari'a) is about a process, methodology and morality. At the core of this morality is the value of Beauty [...] I believe that the core and kernel of Islam is the search for beauty—the search for God's inexhaustible beauty and the beauty of God's creation. The search for God's law must attempt to pursue, express, promote, and re-create God's beauty.²⁵

The final aim of Abou El Fadl's endeavours is to reach the goals of Sharia, which again are to bring this world closer to godliness for its own sake. For the realisation of this aim, he proposes three steps:

1. The scholar must understand the epistemological paradigms of God's commandments at the time of revelation;

21 Cf. Khaled Abou El Fadl, "*Qur'anic Ethics and Islamic Law*", in: *Journal of Islamic Ethics* 1 (2017), p. 19, available online: URL: <https://doi.org/10.1163/24685542-12340002> (accessed on 16 January 2020).

22 Cf. Abou El Fadl, *Reasoning with God*, p. xxxii. Examples of scholars whom he thinks succeeded in their use of traditional methods of classical Islam and implemented them originally and creatively include: Shāh Waliyyallāh (d. 1176/1762), Muḥammad al-Ghazālī (d. 1088/1095), Muḥammad Zakariyyā al-Kāndahlawī (d. 1968), Rashīd Riḍā (d. 1935) and Maḥmūd Shaltūt (d. 1384/1963), cf. Abou El Fadl, *Speaking in God's Name*, p. 48.

23 Cf. Abou El Fadl, *The Search for Beauty in Islam*, p. xix.

24 Cf. Abou El Fadl, *The Islamic Legal Tradition*, pp. 301f.

25 Khaled Abou El Fadl, "*What is Shar'iah*", available online: URL: <https://www.searchforbeauty.org/what-is-shari-ah/> (accessed on 6 April 2020). Abou El Fadl is not the only scholar who addresses beauty in the context of Sharia or Islamic primary sources. Examples of other contributions include Navid Kermani, *God is Beautiful. The Aesthetic Experience of the Quran*, Cambridge 2015; Ahmad Milad Karimi, *Die Blumen des Koran oder: Gottes Poesie: Ein Lesebuch*, Freiburg 2015.

2. The jurist must undertake every effort to understand the epistemological positioning of certain issues and must consider the current circumstances and today's context; and
3. The scholar must try to understand the ethical and moral goals in the divine commandments.²⁶

As already described, Abou El Fadl emphasises beauty as being the core characteristic of Sharia. When scholars address Sharia, therefore, they should strive as best they can to discern its beauty. In addition, he considers it necessary to approach and interpret Islamic law in a critical-rational way. What this means for his dealing with prophetic traditions that address gender-related issues is shown below.

4 About El Fadl's understanding of Sharia when put into practice: his approach to dealing with prophetic traditions on gender relations

Abou El Fadl's understanding of Sharia, with its centrality of beauty, values, and the need for rationality in the course of contemporary interpretation, can be seen, for example, in his strong championing of a gender-sensitive reading of Islamic sources.²⁷ In this context, it is essential for Abou El Fadl to stress, when describing the relationship between husband and wife, that the Quran itself says: "From God's signs is that God created mates for you among yourselves so that you may find repose and tranquility with them, and God has created love and compassion between you"²⁸ and spouses are described as garments for each other.²⁹ Furthermore, he mentions that the relationship of spouses is characterised in the Quran as one of "affection and mercy" (*mawadda wa-rahma*)³⁰, rather than one of superiority, inferiority, and mandatory obedience.³¹ It seems to be fundamental for Abou El Fadl to emphasise this point, because he stresses that the Quran is very vigilant when it comes to the absolute obedience of humans to God; when it comes to humans, however, there is no discussion that absolute equality must be the rule. According to Abou El Fadl, therefore, every tradition that connects God's contentment with the contentment and status of humans is dubious. Generally speaking, it makes sense to him that, if a tradition appears to have grave theological, social, and moral consequences, then he needs strong evidence before relying on and working with it.³²

When confronted with certain prophetic reports with contents that happen to irritate the contemporary Muslim ethical conscience, Muslims, according to Abou El Fadl, are theologically obliged to take a "conscientious pause" and to reflect on these reports critically.³³ For example – and here, Abou El Fadl suggests a new

26 Abou El Fadl, *Reasoning with God*, p. 373.

27 Cf. Abou El Fadl, *Speaking in God's Name*, p. 427.

28 Quran 30/21.

29 Quran 2/187.

30 See Quran 30/21.

31 Cf. Abou El Fadl, *Speaking in God's Name*, p. 429.

32 Cf. *ibid.*

33 Cf. Abou El Fadl, *Speaking in God's Name*, p. 433.

approach for the assessment of the authenticity of the *aḥadīth* – he believes that their social and theological ramifications must also be considered. The jurist states that, until now, in the process of assessing the *aḥadīth* and their authenticity, both classical and modern scholars have neglected this aspect.³⁴ The next section shows the approaches he chooses to take when discussing certain *aḥadīth* that, from today’s perspective, are viewed as ethically problematic.

4.1 Abou El Fadl’s reflections on the “prostration *ḥadīth*”

As a concrete example of how Abou El Fadl deals with gender-related *aḥadīth* that he regards as problematic, he discusses the prophetic tradition that addresses a wife’s prostration to her husband. This tradition can be found in different forms and has been transmitted in many collections such as those of Abū Dāwūd, al-Nasā’ī, al-Tirmidhī, Aḥmad b. Ḥanbal in his “*Musnad*”, Ibn Mājah and Ibn Ḥibbān, according to whom the Prophet Muhammad said:

It is not lawful for anyone to prostrate to anyone. But if I would have ordered any person to prostrate to another, I would have commanded wives to prostrate to their husbands because of the enormity of the rights of husbands over their wives.³⁵

According to the estimation of *ḥadīth* scholars, the authenticity of this report lies between weak (*ḍa‘īf*) and good (*ḥasan gharīb*). In other collections, however, it is also estimated as sound (*ṣaḥīḥ*) and *ṣaḥīḥ* because of corroborating evidence (*ṣaḥīḥ li-ghayrih*), the latter being the case in Aḥmad b. Ḥanbal’s “*Musnad*”.³⁶ For the jurist, it is evident that, in the case of submission and prostration traditions, it is not possible to build arguments on them because they contradict the theological understanding of the undivided sovereignty of God.³⁷ What is also striking for the jurist is the symbolic junction made between the divine (prostration to the Creator) and husbands.³⁸ Moreover, he states that they also contradict the Quranic idea of marriage. He adds that, in addition, these reports are not in accord with the Prophet’s dealings with his own family because, in various traditions, it can be found that the Prophet never beat or insulted them and that his comportment was playful and gentle; the Prophet would ask them for their opinion and consulted them in different affairs.³⁹

34 Cf. *ibid.*, p. 442.

35 Abou El Fadl, *Speaking in God’s Name*, p. 429. Abou El Fadl mentions various traditions that carry this meaning but, due to limitations of space, only this version is mentioned. The Arabic wording goes: *Lā yaṣluḥu li-basharin an yasjuda li-basharin, wa-law ṣalaḥa li-basharin an yasjuda li-basharin la-amartu al-mar’ata an tasjuda li-zawjihā min ‘izami haqqihī ‘alayhā.*

36 Aḥmad b. Ḥanbal, *Musnad Aḥmad b. Ḥanbal*, edited by Shaykh Shu‘ayb al-ʿArna’ūṭ, Vol. 20, Beirut 2008, p. 64.

37 Cf. Abou El Fadl, *Speaking in God’s Name*, p. 436.

38 Cf. *ibid.*, p. 435.

39 Cf. *ibid.*, p. 436.

The jurist argues that what makes the narration in the “prostration *ḥadīth*” additionally dubious is that the remark of the Prophet is expressed without context and in a casual way, although, in the narration, it seems that no one requested this information. In Abou El Fadl’s understanding, the information is given exclusively to a man or to a group of men, although the tradition has grave consequences for women, gender relations, and therefore for the whole of society.⁴⁰

What makes Abou El Fadl further doubt the prostration tradition is that, as he says, some commentators have remarked that the report is highly exaggerated (*fīhi ghāyat al-mubālaghah*), which is why he asks whether it could be that the part regarding prostration was added later on?⁴¹ He also reflects on the extent to which the circumstances of the narrator of a report should be studied and considered, namely, whether this person was overall trustworthy, for how long he/she had been the Companion of the Prophet, and so on.⁴² The jurist makes it clear that he does not aim to discredit certain narrators, but he stresses that it is important to consider the whole context and all the circumstances when reports can have such grave implications and consequences.⁴³

He concludes that if, after having considered and studied everything that concerns this report, his conscience is still unsettled, then, for him, it will only be settled when it has been proven that the tradition is not authentic, “because as a believer, I cannot believe that the Prophet said such things”.⁴⁴ If, after all attempts to prove the report to be unauthentic, it turns out that the tradition is authentic, Abou El Fadl suggests the following: “I take the stand of a faith-based objector, and refuse to accept the authenticity of the traditions.”⁴⁵

5 Critical reflections on Abou El Fadl’s approach

The discussion starts with an approval of Abou El Fadl’s opinion that if certain texts are disturbing to the current Muslim sentiment and conscience, “the least a Muslim can do is to pause to reflect about the place and implications of these traditions.”⁴⁶

Among one of his points of criticism is his remark that both classical and modern scholars have “not attempted to correlate the authenticity of a tradition with its theological and social ramifications. The scholars of *ḥadīth* did not demand a higher standard of authenticity for a tradition that could have sweeping theological and social consequences.”⁴⁷ At this point, it needs to be mentioned that, over the

40 Cf. *ibid.*, pp. 433f.

41 Cf. *ibid.*, p. 437.

42 Cf. *ibid.*, p. 437.

43 Cf. *ibid.*, pp. 440f.

44 Cf. *ibid.*, p. 443.

45 *Ibid.*, pp. 442f.

46 *Ibid.*, p. 433.

47 *Ibid.*, p. 442.

course of human history, ethical notions and perceptions have kept changing and differ from one cultural context to another. When it comes to the very specific topic of gender justice, which is quite a “young” idea in human experience that started in a particular geographic part of the world, even in this cultural context, various and numerous views and interpretations of what gender justice actually means still exist.⁴⁸ After analysing Abou El Fadl’s argumentation, it must therefore be asked: if scholars, with their changing ethical understandings over the centuries, had rejected certain sources in response to their particular context, what would remain of them today? If the compilers of sources had used the category of “social ramifications” when deciding on their acceptance or rejection, what would have been left of these sources?⁴⁹ A similar question arises – namely, what would have been left of the primary texts? – when considering Abou El Fadl’s remarks that, when he is sceptical of a particular tradition, he takes “the stand of a faith-based objector, and refuse[s] to accept the authenticity of the traditions”.⁵⁰ This suggested solution makes one wonder what would have remained of the sources if at all times over the more than 1,400 years of Islamic history, Muslim scholars would have argued that way?

In the course of his argumentation, certain questions suggest themselves, but remain unanswered. For example, when Abou El Fadl suggests that sources should be rejected, he does not mention who actually has the authority to do so. Furthermore, he does not mention which measures should be used when rejecting a report on the basis of its social or theological ramifications: Whether that measure should be the sentiment of one individual scholar? Or whether it should be that of a group of scholars? Unfortunately, Abou El Fadl does not discuss his suggestion further, and leaves open a number of questions, significantly that of who exactly should determine whether a tradition is regarded as contradictory to a certain *zeitgeist* and to the current time- and place-dependent sentiment, so that a *ḥadīth* should be accepted or rejected.

One central point in Abou El Fadl’s argumentation is the emphasis he places on the importance of considering the whole context of the *ḥadīth* when analysing and evaluating the source.⁵¹ He suggests certain considerations in order to look at the *ḥadīth* in its entirety. However, he does not conduct a comprehensive study nor does he build further on his thoughts. This is demonstrated by three examples:

48 See Anver E. Emon, “*The Paradox of Equality and the Politics of Difference. Gender Equality, Islamic Law and the Modern Muslim State*”, in: Ziba Mir-Hosseini et al. (eds.), *Gender and Equality in Muslim Family Law. Justice and Ethics in the Islamic Legal Tradition*, New York 2013, p. 240.

49 For example, the topic of gender roles and gender justice underwent enormous changes in recent centuries. See, for example, Chaudhry, *Domestic Violence and the Islamic Tradition*, pp. 196–221.

50 Cf. Abou El Fadl, *Speaking in God’s Name*, pp. 442f.

51 Cf. *ibid.*, pp. 440f.

1. One of the considerations he emphasises is that the Quran is strict when it comes to the absolute obedience of humans to God. The jurist concludes that every tradition that connects God's contentment, the status of the Prophet and the contentment and status of humans is dubious. In the prostration (*sujūd*) tradition, Abou El Fadl interprets an equalisation between God's contentment and that of husbands.⁵² At this point, it would have been desirable and necessary to have a theological discussion of the *ḥadīth*, which – at first glance and without considering the sources, circumstances, etc. – one can understand as meaning that the husband deserves his wife's prostration, enabling one to conclude that men seem to possess a position between God and women. But, as is known in Islamic theology, a clear difference is made between the prostration of worship (*sujūd 'ibāda*) and the prostration of greeting and respect (*sujūd taḥiyya wa-ḥtirām*), as has been mentioned by several scholars in Islamic history, including Ibn Ḥazm (d. 456/1064). The Andalusian scholar provides the example of the angels who were ordered by God to prostrate to Adam. This, the scholar states, clearly was not a *sujūd 'ibāda*, but a *sujūd taḥiyya wa-ḥtirām*.⁵³ It seems important to raise this point for the analysis of the prostration *ḥadīth* because in the report, the Prophet does not clarify which *sujūd* is meant. However, the Prophet, who called on people to only worship the one and only God, would undoubtedly not have urged people to worship one another. Thus, the *sujūd 'ibāda* can be excluded, and only one option remains: the *sujūd taḥiyya wa-ḥtirām*. But as the *ḥadīth* states: the Prophet does not even instruct women to perform this kind of *sujūd* to their husbands, and, what is more, it excluded the possibility to do so. When Abou El Fadl concludes that “the wife owes her husband respect and even servitude”, then his interpretation of the *ḥadīth* does not therefore withstand theological analysis. Regarding the jurist's argument that the report “disparages women in their dignity”: the *ḥadīth* even excludes the possibility of a woman prostrating to her husband even out of respect. The *ḥadīth* therefore cannot be taken as an argumentative basis that the report deems women.
2. Another point that Abou El Fadl raises, which seems to be important for the study of this *ḥadīth*, is that the Prophet exclusively – depending on the tradition – addressed either one man or a group of men, and not women – those who would actually be directly affected by this *ḥadīth*. These circumstances astonish the jurist, but he does not attempt to elaborate a different interpretation of the *ḥadīth* that would be built on this consideration. Consequently, the author of this article remarks: as this *ḥadīth* concerns men and women, and therefore the whole of society, it is surprising, to say the least, that women are not instructed directly about their position towards men or told directly how

52 This opinion is also shared by Chaudhry, *Domestic Violence and the Islamic Tradition*, pp. 42f.

53 Cf. 'Alī b. Ḥazm al-Zāhirī al-Andalusī, *al-Fiṣal fi-l-mīlāl wa-l-ahwā' wa-l-niḥāl*, edited by Aḥmad Shams al-Dīn, Vol. 2, Beirut 2014, p. 6.

they should honour their husbands (or, following the *ḥadīth*: how they are *not* expected to offer their respect toward their husbands).

3. At another point, the jurist rightly remarks that this report directly contradicts the Prophet's own dealings with his family. Unfortunately, Abou El Fadl does not explore this obvious contradiction any further, although sufficient material demonstrates the egalitarian relationships in the household of the Prophet to a degree that, for example, even shocked the closest Companions of the Prophet.⁵⁴ If this egalitarianism in dealing with each other within the Prophet's household had contradicted the Islamic vision of marriage, surely the wives of the Prophet would have been the first to know about it.

After this analysis, which could have been expanded much further if it would not have exceeded the primary intention of this article, the question is raised of whether a different approach to understanding the prostration *ḥadīth* exists that would help avoid the rejection of the sources?

5.1 A suggestion for how to interpret the *ḥadīth*

When dealing with historical sources in general, there seems to be only two options: either one rejects them, or one tries to find new ways of interpretation. As for the first option: although Abou El Fadl puts forward certain thoughts and discerns certain contradictions, he unfortunately does not follow these up with a fuller discussion of them. Thus, without considering their broader context, he ultimately decides to reject the report simply because it clashes with his understanding of Islam and current ethics.

The second option is to find new ways of interpretation that save theologians from the dilemma of having to reject certain sources. The following points, which could be expanded intensively, can serve as premises for a new perspective on the prostration *ḥadīth*.

1. The only option for the interpretation of the Prophet's command for prostration can be the *sujūd iḥtirām* to husbands, but even that possibility he himself excluded. This is why it can be argued that the *ḥadīth* de facto had no consequence on the relationship between men and women and, therefore, on the whole of society.
2. The addressees were exclusively male – in some traditions it was one man, in others there were several men. At best, therefore, women could only have been indirectly informed about what they were *not* ordered to do (i. e. prostrate to their husbands).
3. The Prophet himself did not act according to such a mindset that Abou El Fadl and other authors read from the *ḥadīth* and, as Abou El Fadl states himself, the

54 See, for example, the tradition of 'Umar b. al-Khaṭṭāb in Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Damascus²1999, p. 873.

Prophet “was not a dictator within his family”,⁵⁵ or beyond his household. On the contrary, he was the primary reason for the steady inclusion of women in all domains of the life of the young Muslim community, with the result that no space was left that excluded women and no space remained exclusively for men.

By looking at these three arguments, the question suggests itself of whether perhaps the prostration *ḥadīth* was supposed to serve a completely different purpose? In that new context in which men relentlessly had to assign power and control to women, who steadily gained presence and influence because of new Islamic commandments that gradually replaced Arabic patriarchal ideas, perhaps this *ḥadīth* served educational purposes? Perhaps it was intended to calm men who had no choice but to accept this new situation in which they were continuously losing essential parts of their former privileges to women?

This suggestion is far from claiming to be the ultimate answer or the only interpretation of this report. Rather, its aim is to call for sensitivity when working, interpreting, and perhaps even rejecting sources.

6 Conclusion

The aim of this article was to study Khaled Abou El Fadl’s understanding of Sharia. We conclude that the jurist regards beauty as one of the most essential characteristics of Sharia. Since the primary sources of Islam – the Quran and the Prophetic tradition – constitute the basis of Sharia, this article aimed to examine how Abou El Fadl deals with sources that are not necessarily and immediately associated with “beauty.” For that purpose, a *ḥadīth* was chosen that addresses gender relations. As the study has shown, Abou El Fadl tries to continue his understanding of beauty also when discussing the “prostration” *ḥadīth*, but it is obvious that he faces difficulties in doing so. Without trying to theologially analyse the *ḥadīth*, and after a few attempts to qualify this authentic *ḥadīth* as unauthentic, he sees no other option than to reject the *ḥadīth* based on the argument that it is irreconcilable with his understanding of Islam and his ethics.

This article underlines the importance of the efforts and contributions of Abou El Fadl in his endeavour to elaborate a contemporary understanding of Sharia that is based on the intellectual heritage produced by pre-modern scholars, and to build on it. His emphasis on beauty and the ethical values of Sharia are an important contribution to the discourse. However, when it comes to his dealing with *aḥadīth* that he does not feel comfortable with, it would have been necessary to conduct a theological analysis to first understand the content and then pursue further discussions. Consideration of the context of the *ḥadīth* would be part of such an analysis, which Abou El Fadl does to some extent. Unfortunately, however, he does not

55 Cf. Abou El Fadl, *Speaking in God’s Name*, p. 436.

provide a holistic study. The article touched on some of Abou El Fadl's thoughts and expanded on them. It aims to provide an incentive for deep, comprehensive studies and the consideration of the broad context of the texts and – in the style of earlier scholars – to approach sources with a creative spirit and bravery when trying to derive answers for an unprecedented situation. This approach might offer new solutions and unexpected results, which would enrich and expand contemporary scholarly theological work.