

here); viziers (*wazirs*); governors of provinces; commanders in the holy war; leaders of wars of public utility; and judges.

In the chapter dealing with viziers, this post is divided into two basic types: viziers who exercise delegated authority and can make independent judgments; and viziers whose powers are limited to executing the decisions of the ruler. The former must have almost all of the requirements of the ruler himself (except lineage), and he must be a free male possessing wisdom. The latter, executive vizier, need not necessarily be a free male because he has no independent authority; he does not necessarily have to be wise because he merely transmits information to and from the ruler. The seven qualities required of the executive vizier are: (1) loyalty; (2) freedom in expressing his views; (3) freedom from influences; (4) lack of rancour toward those he deals with; (5) a good memory so he can transmit information to and from the ruler; (6) subtlety and wisdom; and (7) dispassion. If this kind of vizier participates in deliberations, he requires an eighth quality—worldly wisdom gained through experience.

At this point, Mawardi briefly addresses the question of whether a woman can hold this office. Why might one assume that a woman could be an executive vizier? Why does Mawardi reach the conclusion that women in fact should be barred from this post? Why may non-Muslims act as executive viziers while Muslim women may not?

The chapter on the judiciary opens with seven qualifications required of judges, the very first of which is maleness. The six other requirements are: intelligence, freedom (as opposed to slavery), belief in Islam, honour, good hearing and sight, and legal knowledge.

Did all the classical Muslim jurists bar women from being judges? Why might they permit a woman to serve as a judge? In what kinds of cases could she do so? Why does Mawardi conclude that women may not be judges?

Mawardi's Rules of Government

Chapter 2: On Appointment to the Post of Minister

A woman may not undertake this position, even though information she transmits is acceptable, because of the implication of the [sovereign] powers it involves which the Prophet (SAS) declared to be foreign to women, saying: 'A people who entrust their affairs to a woman will not prosper.' Moreover, the exercise of these powers requires independent reasoning and strength of determination for which women are too frail; and also appearing prominently

THEORY OF GOVERNMENT: MUST VIZIERS AND JUDGES BE MEN?

[Abu al-Hasan 'Ali ibn Muhammad al-Mawardi, *al-Ahkam al-sultaniyya*, pp. 26, 61-2.]

The early Islamic community was a simple, tribal society and neither the Quran nor the deeds and sayings of the Prophet contain a political theory or detailed rules of public administration appropriate to a large, complex state. According to Sunni Islamic tradition, the first four righteous caliphs (particularly Umar) developed principles and institutions of government in response to the needs of the growing Islamic empire. Modern Western historians have usually cited foreign, Graeco-Roman or Sassanian Persian, concepts and institutions as the sources of Islamic government. In the eighth century, the first books of advice to rulers appeared in Arabic, and at the same time, Muslim legal experts wrote treatises on some aspects of public law (such as taxation) at the request of their sovereigns. These apparently were the precursors of the first comprehensive work of Islamic political theory which appeared in the eleventh century.

As a scholar and judge who undertook various posts in government service, Mawardi (364-450/974-1058) was uniquely placed to compose a classic work of Islamic public law. His point of departure is the Islamic state, its leader, and institutions (in contrast to most religious, legal scholars who gave precedence to the Muslims' religious obligations and dealt with the political aspects of Islam secondarily if at all.) Nevertheless, Mawardi's approach is that of a Muslim scholar and his rules of public administration are derived from the Quran, the *hadith* and the opinions of legal experts; followed by precedents from the first four righteous caliphs, the Umayyad and the Abbasid rulers, in that order.

Two related issues concerning women are raised in the first six chapters of the book. These chapters deal with the head of the Islamic state (called *imam*

or in public to manage affairs [of state] which is forbidden or restricted for them.

The executive vizier may be one of the Protected People (*ahl al-dhimma*)²

Chapter 6: On Administering the Judiciary

Anyone appointed to the judiciary must perfectly fulfil conditions that make him suitable to be appointed and that make his decisions legally valid. There are seven conditions:

1. The person must be a man, which combines two properties – legal majority and maleness. As for majority, a minor is not responsible for his actions; a judgement against him may not depend on his statement, and more important, a judgement against someone else may not depend on his statement. As for women, although they are deficient for certain positions, judgements may depend on their statements. Abu Hanifa said: women are permitted to act as judges in matters in which their testimony is admissible but they are not permitted to act as judges in matters in which their testimony is not admissible. Ibn Jarir al-Tabari alone permits them to act as judges in all cases; but one should not learn from an opinion that is opposed by the Consensus³ and the word of Allah the Almighty: 'Men are in charge of women, because Allah hath made the one of them to excel the other ...' [4 (Women): 34], that is, in intelligence and independent reasoning. Thus, they may not be in charge of men.

Notes

1. In this version of the *hadith*, the verb *asna'u* is used which also means to base a tradition on someone as its first authority.
2. A free, non-Muslim subject living in a Muslim country, generally a Christian or a Jew.
3. *Al-ijma'*, one of the four foundations of Islamic law, has been interpreted as the consensus of the scholars of a certain region or period, or the consensus of all of the Muslims.

PART FOUR

WOMEN'S ROLES IN MEDIEVAL SOCIETY

Women's public roles in traditional Islamic societies were determined by an interplay of legal, theoretical rules and social reality. In principle, women were severely limited in the political arena, but could achieve prominence through spiritual endeavour, learning and by exploiting their relatively liberal property rights.

The strategies used and the limitations imposed in the interplay of theory and practice provide us with an insight into actual behaviour of some traditional women (as recorded by men). The scope of individual phenomena reflected in the following selections has been documented, in some cases, by quantitative studies.

Islamic views of male and female sexuality have been expressed far more frankly than those of the Christian West, leading to misunderstanding, fascination and disdain by non-Muslims. Perceived as a public as well as a private matter, sexual relations were discussed in various literary genres, providing primary sources on this subject.

One of the historian's most challenging tasks is to reconstruct the lives of the common people. Folk tales reflect popular attitudes on women and may even provide information on private, family life as well.