The Muslim WORLD
HARTFORD SEMINARY

Paradigm Shift in Twelver Shiʿi Legal Theory (*uṣūl al-fiqh*): Ayatullah Yusef Saanei

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There was no critical need or urgency felt by the Shiʿi Muslim community to formulate an Islamic legal theory and basic principles of jurisprudence so long as the infallible divine guide (*maʿṣūm imām*) was accessible to the religious community. The *imām* is viewed by the Shiʿis as an authoritative expositor of the Qurʾān and the teachings of Muḥammad and, as such, he was in some sense an extension of the apostolic authority but not a recipient of divine revelation.[1] The period of having access to the *imām* came to an end in 941 C.E. with the commencement of the complete occultation (al-ghaybah al-tāmmah) or concealment of the twelfth *imām*, viewed as the last *imām* who will re-emerge with Jesus Christ before the end of terrestrial life to restore peace and justice on the earth. The vacuum in *imamate* leadership was filled by the jurists, who arrogated to themselves the role of indirect deputies of the inerrant *imām* and, as a result, expanded their scope of power and authority. This was viewed by them as a necessity in order to protect the Shiʿi community from disintegration. New issues and contingencies forced the jurists to engage in fresh scholarly research and hermeneutics based on textual sources (*ijtihad*) in order to provide timely and relevant guidance to their followers. However, this vibrant and dynamic institution has not been able to keep pace with the modern exigencies and issues such as gender equity, minority rights, freedom of religion and conscience, religious pluralism, the legality of receiving or paying bank interest, biomedical ethics and environmental ethics. Four eminent jurists who have been at the forefront of

Published by Blackwell Publishing Ltd., 9600 Garsington Road, Oxford, OX4 2DQ, UK and 350 Main Street, Malden, MA 02148 USA.

tackling these issues are Ayatullah Sayyid Muḥammad Ḥusayn Faḍlullāh of Lebanon and Ayatullahs Muḥammad Ibrāhīm Jannātī, Muḥammad Ṣādiqī and Yusef Saanei of Iran.

The central and pivotal concept in Twelver Shiʿism is the *imamate*, i.e., the institution of divine guides who are appointed by divine decree and are exemplary human beings endowed with the attributes of inerrancy and profound knowledge. In the estimation of the Shiʿis, God had explicitly designated ʿAlī to be the successor after the death of Muḥammad, and this leadership was to continue in his lineage until the twelfth one, who will be empowered to inaugurate equity and justice upon the termination of his period of concealment. One of the major proofs advanced to support this claim is that the Prophet is reported to have said in his sermon during the farewell pilgrimage: "I leave behind you two valuable items: one is the Book of God and the other is my family (*ahl al-bayt*[2])." This coupling of the Qurʾān with the close family of the Prophet underscored the critical role of the *ahl al-bayt* in expounding the teachings of the Qurʾān and the Prophet.

Although the *imāms* played a dominant role in guiding the community as the authoritative interpreters of divine will, they at the same time encouraged their followers to sharpen their skills in deducing rulings based on the general principles. This could be on account of the fact that they were generally under close surveillance of the governments in both the Umayyad and Abbasid dynasties, persecuted, and imprisoned or placed under house arrest for extended periods of time. In addition, they had followers in distant parts of the Muslim world and it would not be practical or feasible for them to gain access to the *imām* to resolve new issues.

The *imāms* encouraged and commanded their companions, primarily for pragmatic reasons, to engage in independent reflection on the basis of textual sources with the conviction that it is possible to derive rulings on positive law based upon the universal principles laid out by them. *Imāms* Jaʿfar al-Ṣādiq (d. 765) and ʿAlī al-Riḍā (d. 818) are reported to have said: "It is for us to set out foundational principles (*uṣūl*) and it is for you to derive the legal rulings."* In another report, the sixth Shiʿi *imām* commanded one of his companions, Abān b. Taghlab, to sit in the mosque in Medina and issue legal opinions (*fatāwā*) for the Shiʿis.[3] Other reports support this general proclivity on the part of the *imāms* to train their followers on deducing new legal rulings. The eighth *imām* advises ʿAlī b. al-Musayyab to seek out Zakariyya b. Ādam in matters of religion and the world in response to his complaint that it was onerous and very difficult to reach the *imām* at all times.[4] On one occasion, Zurārahb, Aʿyun one of the sixth *imām's* eminent companions, questions him on the proof as to why a portion of the head and feet have to be wiped as opposed to being was hed when performing the ablution (*wuḍūʾ*). Instead of

just giving the ruling or an edict, the *imām* went through the process of explaining to his companion the manner in which he arrived at his judgment.[5] This, once again, substantiates the assertion that the *imāms* were eager to train their companions, for a variety of reasons, to be able to derive legal rulings pertaining to new situations.

A tradition on the authority of the sixth Shiʿi *imām* is put forward to praise the employment of reason in the articulation of the necessity for a divine guide or a *ḥujjah* at all times.[6] The *imāms* would invite their disciples to engage in debate and disputation with those who denied the necessity of the existence of a divine guide, and would inform them of their strong and weak points. Yūnus b. Yaʿqūb relates:

> I was in the presence of Abū ʿAbdillāh when a person from Syria came in to him and said: 'I am an expert in *kalām* (Islamic theology), *fiqh* (Islamic jurisprudence) and *farāʾiḍ* (the calculation of inheritance). I have come here to debate with your companions.' Abū ʿAbdillāh asked him: 'Is what you will say from the Messenger of Allāh or from yourself?' He replied: 'Both — from the Messenger of Allāh and from myself.' Abū ʿAbdillāh said: 'Then you are a partner with the Messenger of Allāh.' He said: 'No.' The *Imām* said: 'Have you received any revelation from Allāh, to Whom belong Might and Majesty, which has informed you?' He replied, 'No.' The *Imām* said: 'Is obedience due to you in the same way as it is due to the Messenger of Allāh? He replied, 'No.' Abū ʿAbdillāh turned towards me and said: 'O Yūnus ibn Yaʿqūb! This man has defeated himself (*khaṣama nafsa-hu*) before he has started to speak.' Then the *Imām* said: 'O Yūnus! If you had been a good debater (*tuḥsinu al-kalām*), you would have debated with him (*kallamta-hu*).' Yūnus said: 'How great was my misfortune.' I said: 'May I be made your ransom! I have heard you forbidding disputation (in religion) (*tanha ʿan al-kalām*) and you said: "Woe unto the experts in disputation who say, 'This is acceptable, this is not. This can be deduced (from that), this cannot be deduced (from that). This can be understood, that cannot.'" ' Abū ʿAbdillāh said: 'I have said: "Woe upon those who abandon what I (the *Imām*) have said (*taraktū mā aqūlu*) and follow their own likings . . ."'[7]

The divine guides encouraged their disciples and guided them in the employment of different forms of proofs and argumentation to prove the necessity for the presence of an infallible guide at all times. This is reflected in a *ḥadīth* report cited in *Kāfī* where Hishām b. al-Ḥakam in a debate with ʿAmr b. ʿUbayd sought recourse to rational proof (*burhān ʿaqlī*) to demonstrate the necessity for the presence of a proof of God on earth. The sixth Shiʿi *imām* was so pleased with his mode of argumentation that he asked him to repeat it in an assembly.[8] Another report is cited by Yūnus b. Yaʿqūb who observed the

following incident when he was in the company of the sixth *imām,* who had invited his disciples to engage in a debate with a visitor from Syria and thereafter gave them his feedback on their debating skills:

> . . . Then Abū ʿAbdillāh turned towards Ḥumrān and said: 'You debate on the authority of the traditions and you act correctly.' Then he (the *Imām*) turned towards Hishām b. Salīm and said: 'You intended (to debate) on the authority of the traditions but you do not know them.' Then he turned towards al-Aḥwal and said: 'You debate with agile and guileful analogy. You destroy what is incorrect with (another) incorrect (argument), but your incorrect (argument) is more triumphant.' Then he turned towards Qays al-Māṣir and said: 'You argue so that when you reach nearest to the (meaning of) traditions of the Messenger of Allāh you go furthest away from (the meaning of) them. You mix up what is correct with what is incorrect, but a little of what is correct suffices for a lot of what is incorrect. You and al-Aḥwal are very agile and skillful.' Yūnus said: 'By Allāh, I thought that he would speak to Hishām in more or less the same way as to the previous two. But he said: "O Hishām! You never fall to the ground; when you drop near the ground, you soar up (once more). It is a man such as you who should debate (*fa-al-yukallim*) with people. You must guard yourself against slips and errors. In the hereafter, there will be intercession (for you), if Allāh wills."'[9]

The biographical literature (*kutub al-rijāl*) also demonstrates that this mode of rational discussion was employed by many of the *imāms'* companions that led to intense theological dispute and controversy on the part of those who were inclined to rational arguments. They did not view the *imāms* as the repository of all knowledge and instead only revered and respected them as virtuous human beings (*ʿulamāʾ abrār*) without attributing to them any supernatural qualities such as infallibility and knowledge of the unseen. However, there was a second group, the traditionists (*ahl al-ḥadīth*), who were adamant that the *imāms* were chosen by divine decree, endowed with esoteric knowledge and protected from the commission of errors and sins. Accordingly, authoritative guidance must be sought from the traditions of the Prophet and the *imām*s only. They were apprehensive of the first group due to the presence of rational tendencies in their works.[10]

This proclivity towards the rational sciences and argumentation that was present in the first group left the door open for Shiʿi jurists to devise new strategies to revise legal opinions by recourse to innovative methodological tools and devices in order to confront fresh challenges facing the Muslim community. Ayatullah Saanei makes extensive use of this flexibility in his derivation of legal opinions on sensitive and controversial matters. The Shiʿi adoption of the Muʿtazili school of thought in its articulation of ethical values greatly contributed to expanding the role of reason in determining *ratio legis*

(*ʿillah* — efficient cause) of legal rulings. In other words, right and wrong were viewed as objective ethical categories with inherent virtues that can, in all probability, be discovered by recourse to reason, and even in the absence of revelation (ethical objectivism).[11] In contrast, the Ashʿari theology espoused a worldview in which morality can be defined only by the divine decree (ethical absolutism).[12] Prior to Revelation, the world remains amoral and the assessment of human acts cannot be done in the absence of Revelation.[13] That is, acts in and of themselves do not possess an innate characteristic to render them moral or immoral and, therefore, human reason cannot be employed in determining the inherent value of a particular act. This strict Ashʿari position has been hard to sustain because it negates any possibility of discovering the rationale, underlying reason or the wisdom (*ḥikmah*) for a particular legislation. New issues and contingencies cannot be dealt with except with recourse to explicit sacred texts that would address the same. This would not be tenable in our present-day context where challenging issues are cropping up on an ongoing basis and demand an Islamic legal position that cannot be resolved solely by excavating the sacred textual sources.[14]

A Brief Biography: Ayatullah Yusef Saanei

Saanei was born in 1937 into a clerical family in the town of Neekabad, Isfahan. Both his father and grandfather were prominent jurists, and the latter was a distinguished philosopher, as well. He commenced his preliminary studies at the religious seminaries in Isfahan at the age of nine, and moved to Qum in 1951 for further studies. He attained the credentials of *ijtihād* in 1959, i.e., capable of deducing fresh legal rulings from the foundational revelatory sources. Some of his distinguished mentors were Ayatullahs Husayn Borujerdi (d. 1962), Muḥammad ʿAli Arākī (d. 1994), Khumaynī (d. 1989), and Muḥaqqiq Dāmād. Saanei joined the circle of Khumayni's students in 1963 and continued his cordial relationship and close collaboration with him on religious and political fronts until the death of the latter in 1989. He has been offering classes at the highest level (*khārij*) of seminary studies in Qum since 1973. Shortly after the triumph of the Iranian revolution in 1979, Khuamynī had appointed Saanei as one of the six members of the Council of Guardians, and later in 1982 as General Prosecutor. He was very fond of Saanei, and on one occasion lavished praise on him: "I have brought up Shaykh Saanei like a son. He used to actively attend my seminary sessions for long years. He specifically used to personally exchange views with me from which I derived much pleasure on account of his vast knowledge. He is a prominent personality among the clerics and a man of learning."[15] It is interesting to observe that there is no mention in his official biography of the various political offices that he held during his tenure after the establishment of the Islamic Republic in 1979.

Method:

The pre-eminent characteristic of Ayatullah Saanei's approach along with Ayatullahs Ṣādiqī, Muḥammad I. Jannātī and Faḍlullāh is the positioning of the Qurʾān as the primary and the foundational textual source in formulating new legal opinions, empowering reason to uncover the rationale and the wisdom (*ʿillah*) behind a divine injunction and taking into account the context of time (*zamān*) and space (*makān*) associated with particular decrees that were legislated. According to them, there has been a tendency to neglect the ethos of the Qurʾān that is egalitarian, permeated with the ethical attribute of justice, and a proponent of bestowal of inherent human dignity by designating the humans as vicegerents of God, each one being infused with divine spirit. This is evident in the existing legal *corpu*s dealing with issues such as apostasy, the status of non-Muslims, and gender justice that contradict the Qurʾānic ethos but are given legal currency primarily on the basis of prophetic traditions (*ḥadīth*), consensus (*ijmāʿ*) and the science of jurisprudence (*uṣūl al-fiqh*).[16] It is no exaggeration to say that the latter has become the most important of the Islamic sciences and has replaced proficiency over the Qurʾān and the *ḥadīth* literature. In other words, the issuing of legal directives is conditioned by the rules of Islamic legal theory and precedents, and the outcome may be in conflict with the worldview that is espoused by the Qurʾān. At present, the rank of a jurist is measured by his mastery of the sources of Islamic jurisprudence, and Qurʾānic verses and *ḥadīth* literature that deal with law proper, and not proficiency in the Qurʾān and *ḥadīth* sciences in general. According to Ayatullah Saanei, this has stultified the onward progression of Islamic legal theory and Islamic law that ought to be harmonious and compatible with new contexts and circumstances.[17] Likewise, the sanctification of the consensus of previous jurists on certain issues is employed to muzzle any fresh deliberation on agreed upon issues in light of the new context, even in cases where it is evident that the consensus claimed never existed.[18] This applies to matters such as women's rights, the status of non-Muslims, and the laws of inheritance and testimony.

In my private sessions with Ayatullah Saanei in the summer of 2007, he underlined that he is governed by three general rules when deducing legal rulings from the textual sources. One is that religion should be easy to follow and not a cause of burden or entanglement with excessive precautions (*iḥtiyāṭ*) in the performance of one's religious duties. This is based on the Qurʾānic verse: ". . . God wants ease for you, not hardship . . ." (Q. 2:185). Second, the rulings must be in harmony with justice and, lastly, there must be provision for concessions and dispensations in cases where the implementation of a legal ruling would entail hardship that would be regarded as excessive in the estimation of an ordinary person.

He is of the opinion that there has been a tendency on the part of the jurists to take extreme positions that prevent them from employing the institution of *ijtihād* to resolve challenges confronting the Muslims living in the 21st century. On one extreme, there are jurists who have sanctified substantive law (*fiqh*) and its principles to such an extent that there is little room for creative re-interpretation. They are oblivious that the purpose of Islamic law is to provide ease and comfort to the people in every age along with spiritual guidance, and not to impose on them difficulty and hardship or rulings that are incompatible with the present age.[19] All that is in the heavens and the earth has been created for the purpose of serving humankind to attain felicity and success in this life and the hereafter. The other polarized position is adopted by those who are inattentive to the Islamic legal principles and are eager to satisfy all groups without evaluating whether the positions adopted by them are in harmony with the Islamic principles or not.[20] Instead, he proposes a middle ground that accords reverence and respect to the Islamic legal principles but at the same time is cognizant that the law must have relevance and be applicable in the present-day context with its special circumstances.[21] This position is akin to the one adopted by the eminent Iranian reformist scholar Dr. Abdolkarim Soroush in the articulation of his theory of expansion and contraction of religious knowledge.[22] He argues that a distinction needs to be made between any religion *per se* and our understanding of that religion. While the former is, in the view of its beholders, a set of sacred and unchanging truths, the latter is an ever changing set of personal experiences and publicly accessible ideas and theories which, at any given time, reflects the state of our knowledge. Religious knowledge is theory-laden, time-bound and context-bound. Our understanding of the ideal "Islam" is, by definition, something human and this-worldly and as such is being influenced by, among other things, our background knowledge, our place in history and our geographical location, our social, cultural and political environments, and the like. The more familiar a believer is with other fields of knowledge and the richer is her form of life, the more enhanced is her understanding of the tenets of religion.

In addition, it is critical to make a distinction between "*Sharīʿah*" and "*Fiqh*," and avoid using these terms interchangeably as if they are synonymous. *Sharīʿah* is the utopia, the immutable, the normative, and the ideal Islam. It comprises a set of sacred and unchanging truths. In contrast, *fiqh* or substantive law is the changing and the mutable domain of legislation because it is only an approximation of the *Sharīʿah* arrived at by the use of the human cognitive process. This is a human endeavor that is subject to error and inaccuracy. The *corpus* of Islamic law or substantive law is in reality *fiqh* and not the divine *Sharīʿah*. The means and process through which new legal

rulings are derived from the foundational sources of Islam is referred to as *ijtihād,* or fresh scholarly research in the face of new contingencies. This produces only a probable (*ẓann*) solution, just like medical judgments, and can never provide certainty (*yaqīn*). This distinction is critical and crucial to allow for a mechanism to review and revise juridical opinions in light of new and fresh information. In other words, *fiqh* is always in a state of flux and it is a state of juridical reflection reached by Muslim scholars at a certain time and in certain context in light of their study of the *Sharīʿah.* As such, *fiqh* has to be dynamic, in constant elaboration and evolving (*taṭawwur al-fiqh*).

The method and approach of Ayatullah Saanei is similar to Soroush in some respects and is best exhibited in his treatment of the following issues: compensation (*diyah*) for killing a person in error; laws of inheritance; and wife's guardianship of the child/ren upon the death of her husband.

I Blood money (*diyah*) for killing unintentionally

The sanctity of life is well-documented in the foundational textual sources of Islam, i.e., the Qurʾān and the *ḥadīth.* The Qurʾān equates the unjustified killing of another human being as equal in gravity to the annihilation of the entirety of humanity and the saving of an innocent life as tantamount to the rescuing of all humankind: "On account of [his deed], We decreed to the Children of Israel that if anyone kills a person — unless in retribution for murder or spreading corruption in the land — it is as if he kills all humankind, while if any saves a life it is as if he saves the lives of all humankind" (Q. 5:32). Accordingly, the implementation of capital punishment ought to be carried out only in cases where one is convicted of the premeditated killing of another human being, and the family of the deceased does not agree to accept blood-money as compensation.

In situations of homicide killing, the Qurʾān makes no distinction, based on gender, on the amount of blood money: "Never should a believer kill another believer, except by mistake. If anyone kills a believer by mistake he must free a believing slave and pay compensation to the victim's relatives, unless they charitably forgo it. If the victim belonged to a people at war with you but is a believer, then the compensation is only to free a believing slave; if he belonged to a people with whom you have a treaty, then compensation should be handed over to his relatives, and a believing slave set free. Anyone who lacks the means to do this must fast for two consecutive months by way of repentance to God: God is all knowing, all wise" (Q. 4:92). However, Islamic legal principles and the consensus (*ijmāʿ*) of the jurists have quantified the *diyah* for a woman to be half of that of a man and a reduced amount if the person killed is a non-Muslim.[23] The central thesis of Ayatullah Saanei is that the Islamic legal theory, principles, *ḥadīth* literature, precedents of

previous jurists, and consensus (*ijmāʿ*) are unjustifiably and improperly given greater weight than the Qurʾān, wherein the inequality of the *diyah* based upon gender or faith would contravene its overarching ethos of justice that includes the notion of inherent human dignity (*ikrām*) endowed to all, regardless of their gender or faith.[24] Human reason would also be averse to accepting the disparity in the *diyah* amount based on gender or faith. In addition, consensus (*ijmāʿ*) that is in flagrant violation of the Qurʾānic worldview should not be advanced as an independent proof to validate the claim that the *diyah* of a female is equivalent to half of a male. Such consensus was arrived at by relying upon *ḥadīṯ* reports that may have merit from the perspective of the science of *ḥadīth* criticism (*ʿilm al-ḥadīth*) but fail the litmus test of being in harmony with the core values articulated in the Qurʾān. In such a case, Saanei argues, the Qurʾān has priority and, accordingly, the *ḥadīths* and consensus must be dispensed with in favor of the Qurʾān and the faculty of reason.[25]

Analysis of ḥadīths

Muḥammad b. Ḥasan al-Ḥurr al-ʿĀmilī (d. 1692) has gathered fourteen *ḥadīths*[26] on the subject of *diyah*; most of them would pass the test of *ḥadīth* authentication, and there are two traditions where the usage of the expression is such that it can be confined to the male gender only and to believers. All the rest are general in nature without providing any specificity with regard to the faith or gender of the person who is the object of discussion in determining the *diyah*. The two expressions are: *diyat al-rajul*, employed in *ḥadīth* number twelve and *diyah* of a Muslim (*diyat al-Muslim*), that is found in *ḥadīth* number two. The former is related by Abū Baṣīr: "*Diyah* of a *rajul* is one-hundred camels; if this is not possible then its equivalent in cows; if this is also not possible then one-thousand ram. This is in the event of premeditated murder. As for homicide, the amount is set to be the same as an intentional murder, which is one-thousand ram."[27] It is crucial to observe that the term "*rajul*" is employed in many instances in the early works in a general sense that encompasses both male and female. Second, the chain of *ḥadīth* does not connect all the way to one of the divine guides, rather Abū Baṣīr is relating it on the authority of someone else. Thus, the stature of the *ḥadīth* is lowered. Third, the chain of transmission is weak and deficient because two of the interlocutors are not trusted in biographical literature. Fourth, the amount of *diyah* that is specified in this *ḥadīth* does not conform with many other *ḥadīths* and, accordingly, jurists have been reluctant to vouch for the veracity of this *ḥadīth*.[28]

The other *ḥadīth* on the authority of the sixth divine saint in Twelver Shiʿism that has been advanced to argue for a reduced amount of *diyah* for non-Muslims in relation to a Muslim is as follows: "I asked him [*Imām* Ṣādiq]

about *diyah*, and he replied: '*Diyah* of a Muslim is equal to 10,000 pieces of silver or 1,000 *mithqal* of gold or 1,000 sheep that are three years old or one-hundred camels or two-hundred cows.'"[29] Ayatullah Saanei attempts to discredit the claim that the label of "Muslim" is employed in an exclusionary sense because, according to him, mentioning only Muslims does not preclude the possibility that non-Muslims could also have been included if the questioner had posed the question inclusive of them. Further, there is no contextual evidence (*qarīnah*) and proof (*dalīl*) to guide the listener that the discussion is confined to only the *diyah* of the Muslims and that all non-Muslims are excluded from the application of this *ḥadīth*.[30] If it were so, this would diametrically oppose the *ḥadīths* that categorically state that the *diyah* of a protected minority citizen (*dhimmī*) and People of the Book (*ahl al-kitāb*) are equivalent to that of a Muslim.[31] Above and beyond these arguments, one can marshal Qurʾānic verses and *ḥadīth* reports that speak of the overarching universal principles in Islam (*qawāʾid-e kulli-ye Islāmī*) and primary principles (*qaẓāʾid-e awwaliyyeh*) that accord equal stature in worth, nobility and dignity to all humans. All are viewed as children of Adam and Eve with no distinction in the origin of their creation or capacity: "People, be mindful of your Lord, who created you from a single soul, and from it created its mate, and from the pair of them spread countless men and women far and wide" (Q. 4:1). In another verse the moral-ethical attribute of God-awareness and piety is advanced as a criterion of excellence: "People, We created you all from a single man and a single woman, and made you into nations and tribes so that you should get to know one another. In God's eyes, the most honored of you are the ones most aware of Him: God is all knowing, all aware" (Q. 49:13). He tries to further buttress his argument in favor of the equality of all human beings by enumerating a number of *ḥadīth* reports such as "O people, your Lord is One, your parents are one — all of them are from Adam, and Adam is from earth. However, the most honorable person is the sight of God is one who is the most God-conscious and socially responsible. The Arabs have no superiority over the non-Arabs except in terms of God-awareness (*taqwā*)."[32] In another *ḥadīth* report, Muḥammad is reported to have said that "all humans are equal just like the teeth of a comb."[33] The collective evidence cited above is sufficient for Ayatullah Saanei to assert that the *diyah* for all humans is the same regardless of gender or faith. He then turns to critically analyzing the opinions and proofs of other jurists who allocate a smaller share of *diyah* for an unintentional killing of a woman or a non-Muslim.

Juridical Precedents

The generally accepted legal ruling of most of the jurists is that the amount of *diyah* for a woman is equal to half of the amount for men, regardless of

whether the female is young or old, sane or insane, and handicapped or not. This is the consensus of the jurists, and there have been only two scholars from the schools of thought of Sunni Islam who have given a dissenting opinion to the effect that the *diyahs* for a male and a female are identical. However, the juridical ruling of the latter is marginalized and refuted on the basis that a consensus (*ijmāʿ*) of Muslim scholars has already been attained on the reduced *diyah* amount for a woman in relation to a man based upon textual evidence from revelatory sources and juristic preference (*istiḥsān*). The latter is invoked by arguing that men, in general, are the major source of bringing in income for the family and, consequently, their *diyah* amount is greater than that for women. However, this is strictly conjectural and a faulty argument because there is no mention in the *ḥadīth* sources that this is the reason for the disparity in the *diyah* amounts between male and female. Further, there is great variance, depending upon societies and cultures, in the extent of female participation in the labor force and their earning power compared to men.[34]

Ayatullah Saanei skillfully applies his scholastic skills and acumen in evaluating the *ḥadīth* reports. He demonstrates that *ḥadīths* that categorically reduce the *diyah* of a woman to half of that of a man all suffer from deficiencies in their chains of transmission and thus, cannot be invoked for deducing legal rulings. In addition, other *ḥadīths* that are appended with uninterrupted chain of transmitters of good character can not be relied upon because the content of those *ḥadīths* conflict with the ethos of the Qurʾān that accords spiritual, economic and social equality to women. Once again, it becomes evident that Ayatullah Saanei is gravitating towards giving greater prominence to the Qurʾānic ethos of justice[35] and recourse to the rational faculty instead of the *ḥadīth* reports, consensus (*ijmāʿ*) or juristic preference (*istiḥsān*). What constitutes a radical departure in Twelver Shiʿi legal theory is his insistence that the litmus test for the validity of the *ḥadīth* reports is the Qurʾānic core values and human reason (*ʿaql*). No *ḥadīth* citation, no matter how strong its chain of transmission, can be accepted as valid if it does not comport with the Qurʾān and the human faculty of reason.[36] This is very much in keeping with the articulation of a new paradigm and methodological tools that are advanced by scholars such as Fazlur Rahman, Khaled Abou El-Fadl, Amina Wadud, Asma Barlas, Fatima Mernissi, Leila Ahmed, Barabara Stowasser, Kecia Ali and Azizah al-Hibri in the area of gender justice. Moreover, according to Saanei, a God that categorically denounces and distances himself from injustice and assures His creatures that they should not fear an iota of injustice from Him cannot possibly decree that the *diyah* of a female be half of that of a male. This would contradict the divine attribute of justice and the inherent equality of men and women: "People be mindful of your Lord, who created you from a single soul, and from it created its mate,

and from the pair of them spread countless men and women far and wide" (Q. 4:1).[37] He uses a similar approach in refuting *ḥadīth* reports that quantify the *diyah* amount for a non-Muslim to be half of that of a Muslim. He is of the view that when there are *ḥadīth* reports of equal reliability in terms of the chain of transmission and text but contradictory to each other, greater weight must be given to those *ḥadīths* that are in conformity with Qurʾānic core values like justice, human equality and dignity.[38] An added complication when the *ḥadīth* reports are contradictory is in determining the context under which the statements were related because there are instances where the divine guides are reported to have deliberately issued conflicting statements under the rubric of dissimulation (*taqiyyah*) to safeguard themselves and their followers from state persecution and harassment.

Saanei possesses acumen in discovering contradictions within the *ḥadīth* texts that would shed doubt on its veracity and, as such, would be difficult to accept by recourse to reason. For example, in one of the *ḥadīths* dealing with the loss of bodily organs of a female in contrast to a male, Abān b. Taghlab, who is regarded as an eminent and trustworthy companion of the sixth Shiʿi divine guide, exhibits a lack of familiarity with the legal tool of analogy (*qiyās*). Ayatullah Saanei finds this incredulous for a person of Abān's caliber and thus believes that the *ḥadīth* is forged, even though its chain of transmission is sound.[39]

II Inheritance

Ayatullah Saanei's paradigm for the deduction of Islamic rulings is governed by the overarching Qurʾānic core values. *Ḥadīth* reports, analogical deductions and previous legal precedents that conflict with the Qurʾānic ethos are subject to scrutiny and discarded if found to be irreconcilable with the Qurʾān. In other words, the ethical attribute of justice should be employed to determine if a particular legal ruling or *ḥadīth* report is valid and not the reverse, as in cases where justice is assumed to be that which is contained in a sound *ḥadīth* report. He argues that the Qurʾānic term "*maʿrūf*" is an important ethical category where justice is the overarching attribute, and the enumeration of those acts that would follow under this category can be determined by recourse to the rational faculty. In contrast, "*munkar*" is its opposite. His argument is that the Qurʾān is not a book of prescription, rather it provides general universal principles that should be applied in particular contexts. Such an approach is very much akin to the Muʿtazili school, which asserted that there is inherent value in everything that God has prescribed and an inherent demerit in all that God has proscribed. The human faculty of reason ought to be able to make these judgments without a need of a textual proof. The jurist also must be mindful of the context and the time at which she

is issuing a legal opinion, that is, the concept of time (*zamān*) and place (*makān*). These two principles are crucial in order to prevent *fiqh* from becoming stagnant, fossilized and irrelevant. Part and parcel of the institution of *ijtihād* or fresh scholarly reflection and hermeneutics demands that the jurist be cognizant of the contexts and circumstances in which she is issuing a legal opinion.[40] Paying attention to these two principles, according to Saanei, would resolve many of the anomalies that come about in the application of some of the legal rulings in the realm of human interrelationships (*muʿāmalāt*).[41]

One such case is the law of inheritance wherein the husband inherits the whole of his wife's estate in the case where he is the only surviving beneficiary of the first category, whereas the wife would inherit only one-quarter of the husband's estate in an identical scenario. This conclusion is arrived at by selective retrieval of *ḥadīth* reports and the consensus (*ijmāʿ*) of previous scholars such as Shaykh Mufīd (d. 1022), Shaykh Ḥasan al-Ṭūsī (d. 1067), ʿAllāmah al-Muṭahhar al-Ḥillī (d. 1325), and Shaykh Murtaḍā Anṣārī (d. 1864).[42] Saanei is careful in emphasizing that rejecting the consensus of previous scholars that contradicts the Qurʾān in no way represents disrespect to them, and instead he calls for cultivating a culture of dissent within the parameters of ethical discourse. He rejects the claim by some that his rejection of past consensus constitutes a new school of thought that is discontinuous with the past jurisprudential theories that were established by Shaykh Murtaḍā Ansārī.[43] He is eager to introduce major reforms without making it seem to be a radical departure from the works and methodologies of previous jurists. As a result, he reiterates that what he is proposing can be accommodated under the rubric of the Islamic legal theory of the past eminent Shiʿi jurists such as ʿAllāmah Ḥillī and Shaykh Murtaḍā Ansārī. He is cognizant that contemporary traditional Shiʿi jurists may vehemently oppose his methods and findings if it is construed to be a major departure from the consensus of past jurists. To substantiate his apprehension, he makes reference to the response of Ayatullah Khumaynī to a woman who had asked him whether a woman was empowered to unilaterally divorce her husband if she had a just cause: "Caution demands that first, the husband be persuaded, or even compelled, to divorce; if he does not, [then] with the permission of the judge, divorce is effected; [but] there is a simpler way, [and] if I had the courage [I would have said it]."[44]

According to Saanei, the present-day law of inheritance, where the wife is the sole survivor of the first degree, contradicts the Qurʾānic ethos conveyed in chapter 4, verse 12: "You inherit half of what your wives leave, if they have no children; if they have children, you inherit a quarter. [In all cases, the distribution comes] after payment of any bequests or debts. If you have no children, your wives' share is a quarter; if you have children, your wives get an eighth . . ." (Q. 4:12). Here, no mention is made of the remaining portion

of the inheritance when the deceased is survived by only her spouse and no children. Just as the residual is handed over to the husband, not to the *imām* or the public treasury, in the event of his wife's death, the same rule should apply in the event that the husband predeceases his wife.[45] The argument that the residual, in the case of the death of the husband, should be handed over to the divine guide (*imām*) is refuted by the *ḥadīth* which says that the "*imām* is the inheritor in cases where there is no other potential inheritor." In the case of the survival of the wife, she would constitute a legitimate inheritor of the husband and thus, the remaining portion of the estate should revert to the wife.[46] Ayatullah Saanei concedes that there are numerous *ḥadīth* reports that bar the wife from receiving the residual but, according to him, the quantity should not distract one from the fact that they are all in conflict with the Qurʾānic ethos and thus must be rejected.[47]

III Guardianship (*wilāyah*) of the Mother

Present-day Islamic legal ruling mandates that upon the death of a woman's husband, the guardianship of their child would go to the husband's father and, in his absence, to the individual(s) that the father or grandfather of the child would assign in his last will and testament, but not to the mother. After the death of the grandfather or the assigned guardian, guardianship would be transferred to the jurist. In other words, the mother would never be empowered to be the guardian of the child/ren under any circumstances. This conclusion is arrived at by relying upon *ḥadīth* reports and based on consensus (*ijmāʿ*) of the jurists.[48]

According to Saanei, this aberration is the outcome of disconnecting the law (*fiqh*) from ethics (*akhlāq*), and being inattentive to the textual evidence from the Qurʾān and the *ḥadīth* literature. Efforts to discover the ethical imperative of a legal ruling would enable the jurist to modify the rulings depending upon the context and circumstances.[49]

Saanei makes a distinction between "*ḥidānah*" and "*wilāyah*." The former is confined to attending to the basic needs of the child, such as their general supervision and providing for clothes and meals. The latter applies to the discretionary authority (*taṣarruf*) in areas such as disposition of the child's property, making decisions on educational matters and choosing a spouse for her. This comprehensive authority, according to him, violates the principle agreed upon by the jurists that no one has authority over the life, property and body of another person. Accordingly, all would be barred from having the comprehensive authority over the child, including the father and the grandfather of the child. Instead, Saanei focuses on the two characteristics that are necessary for a person to have the competency to be the guardian of the child: trustworthiness (*amīn*) and sound intellect (*ahl-e tadbīr*). From this

perspective, the mother of the child is entitled to be the guardian of the child and should have priority over anyone else, according to Saanei.[50]

He advances three sets of proofs to buttress his claim that the mother is entitled to be the guardian of the child upon the death of her husband. One is Qurʾānic verses that implicitly bestow guardianship in general to anyone who is of moral character and performs good deeds. Second, Qurʾānic verses that pertain to disposing of the property of the orphans and lastly, examination of *ḥadīth* reports that deal with the authority of the father in choosing the marriage partner for his daughter.

The moral categories of "God-awareness (*taqwā*)," "righteousness (*birr*)," "benevolence (*iḥsān*)," "goodness (*khayr*)," and "known and approved (*maʿrūf*)" are applied to both genders in the Qurʾān. These traits are the necessary pre-requisites to be qualified to be the guardian: "Each community has its own direction to which it turns: race to do good deeds (*khayrāt*) . . ." (Q. 2:148); ". . . who believe in God and the Last Day, who order what is right (*maʿrūf*) and forbid what is wrong (*munkar)*, who are quick to do good deeds (*khayrāt*)" (Q. 3:114).[51] Thus, the mother would be eligible to be the trustworthy guardian of her child by virtue of her good character and competence in management of the affairs of the child. She is no less qualified than the grandfather in carrying out these functions, and the Qurʾān makes no reference to gender when enumerating the ethical attributes necessary to carry out the objectives.[52]

His second proof in favor of the guardianship of the mother is Qurʾānic verses on management of the affairs of the orphans. This again is not restricted to any particular gender. Rather, it is assigned to one who has the necessary qualifications: "Stay well away from the property of orphans, except with the best intentions, until they come of age; give full measure and weight, according to justice . . ." (Q. 6:152) and "Do not go near the orphan's property, except with the best intentions, until he reaches the age of maturity. Honor your pledges: you will be questioned about your pledges" (Q. 17:34).[53]

Interestingly, none of the *ḥadīth* reports that deal with the conditions necessary to be the executor of a person's last will make any reference to the gender of the person who is to undertake the task of dividing the estate of the deceased. Instead, what is emphasized is competency, probity (*thiqah*) and the ability of one to take care of the affairs. The jurists, when they derived the ruling that the mother is not eligible to be the guardian of her child, apparently extrapolated from other *ḥadīth* reports that give greater authority to the father in certain special areas such as marrying his daughter to a person of his choice, even if it be against her will, but this does not, according to Saanei, exclude women from possessing the same authority.[54] It just so happened that the

question was posed with the male as the referent in that patriarchal society but this does not entail exclusion of the female in a non-patriarchal system. Another device used to exclude women is by mistranslating the term "*rajul*" to be exclusive to man, whereas it is a common practice in *ḥadīth* reports and in customary usage (*ʿurf*) to employ this term to refer to both genders.

There are three *ḥadīths* that are cited under the section of "Inheritance" which are so derogatory and demeaning to women that Ayatullah Saanei rejects them outright, even thought they pass the test of *ḥadīth* criticism from the point of view of chains of transmission and text. These *ḥadīths* prohibit the people from appointing a woman as an executor of their last will and testament because, it is claimed, she along with those who consume intoxicants are the referents of the Qurʾānic phrase: "Do not entrust your property to the feeble-minded (*al-sufahāʾ*)" (Q. 4:5). These kinds of *ḥadīth* reports categorically contradict the Qurʾān, other *ḥadīth* reports and intellect. He asks: "How is it possible to consign all women as feeble-minded and to include them in the same category as those who consume intoxicants?"[55] He speculates that these kinds of traditions were fabricated in order to deny the right of ownership of the property of Fadak that was left behind by the Prophet for his daughter Fāṭima, according to the Shiʿis. He is equally forceful in rejecting some of statements attributed to *Imām* ʿAlī, the first Shiʿi divine guide, in *Nahj al-balāgha* that are denigrating towards women: "Women are deficient in faith (*imān*), deficient in shares (of inheritance) and deficient in intelligence (*ʿaql*). As regards the deficiency in their faith, it is their abstention from prayers and fasting during their menstrual period. As regards deficiency in their intelligence, it is because the evidence of two women is equal to that of one man. As for the deficiency of their shares that is because of their share in inheritance being half of men. So beware of the evils of women. Be on your guard even from those of them who are (reportedly) good. Do not obey them even in good things so that they may not attract you to evils."[56] The justification normally given for these harsh statements against women is that ʿAlī made these remarks in the heat of the moment at the battle of the camel (*jamal*) in 656 C.E., in which thousands of lives were lost, and Ayesha was the instigator of the war and present on the battlefield. According to Saanei, such justifications are nonsensical because how is it possible to stigmatize women to be deficient in faith when, in obedience to divine command, they do not offer ritual prayers or fast during their menstrual period. More importantly, these remarks are in clear violation of the Qurʾānic portrayal of women and, thus, they should be dismissed as having been concocted.[57]

After having established that the mother is eligible to be a potential guardian of her child, Saanei then moves to provide rational proofs and other

indicators (*qarīnah*) in the textual revelatory sources to substantiate his assertion that the mother has preference and priority over anyone else, including the father of her husband, in becoming the guardian of her child. The Qurʾānic verse: "And those who came to believe afterwards, and emigrated and struggled alongside you, they are part of you, but kindred (*ūlū al-arḥām*) still have prior claim (*awlā*) over one another in God's Scripture: God has knowledge of all things" (Q. 8:75) is explicit in pointing out that those closer in relation have a higher claim than those who are distant. Accordingly, it can be argued that the mother who is eligible to be the guardian of the child based on earlier proofs is the most worthy candidate to undertake the guardianship of her own child, and would have a greater claim than the grandfather of the child. In the estimation of Saanei, even though the occasion of revelation of this verse has to do with the laws of inheritance, the purport of the verse is general in nature, and can be extended to cover the issue of the guardianship of the child. This conclusion is further corroborated by the faculty of reason (*ʿaql*) that the mother, who is closer in kinship, emotionally attached to the child, possessing the qualities of benevolence and munificence, and has the child's best interest under consideration, should have preference over the grandfather of the child or anyone else. The Qurʾān and the *ḥadīth* literature make several references to the strong bond between parent and child, particularly the mother: "We have commanded humankind to be good to his parents: his mother struggled to carry him and struggled to give birth to him — his bearing and weaning took a full thirty months" (Q. 46:15).[58] There is a famous *ḥadīth* in which the Prophet is asked: "Who is the most worthy person deserving of his kindness and compassion?" The Prophet responded with the answer: "the mother" three times, and only when asked the same question for the fourth time did he say: "the father."[59] In addition, it is a generally accepted ruling among the jurists that one should not break either the obligatory or the recommended ritual prayers unless there is an exigency that would warrant such a response. If a father were to call out the name of his child while the latter is in the state of performance of a recommended ritual prayer, then the ruling is that she must not respond until the completion of the prayer. However, if it is the mother who is summoning the child, then the directive is that she should interrupt the recommended ritual prayer and respond to her mother.[60]

Ayatullah Saanei makes use of this new epistemology and hermeneutic strategies when dealing with other issues pertaining to present-day society as well, such as the legality or prohibition of interest (*ribā*) and use of gambling (*qumār*) instruments, minority rights, religious pluralism, bio-medical ethics, right of a wife to unilaterally divorce her husband, permissibility of women to occupy the position of judges or the highest religious post, and the age at

which a person would become religiously accountable (*mukallaf*) and able to transact a marriage.[61]

Conclusion

In the works of Ayatullah Saanei, one observes a major epistemological shift in the Twelver Shiʿi legal theory by privileging the Qurʾān, empowering reason as a legitimate source to discover the rationale or *ratio legis* of a legal directive and mindful that legal rulings were issued based on a particular context of time (*zamān*) and space (*makān*) and, as such, lack universal applicability for all times and places. At the same time, he discredits and dismisses *ḥadīth* reports and consensus (*ijmāʿ*) that are in conflict with the Qurʾānic core values, human reason, and ethical principles. The organic relationship between ethics and law along with distinguishing between verses that are of universal and particular import, and taking into account present-day context and circumstances are important hermeneutic devices that are employed by Saanei to revise legal rulings that could not be categorized under *maʿrūf* (known and approved to be morally and ethically sound). He is able to introduce these major changes because of his scholarly stature among his peers, his ability to demonstrate continuity and progression of the legal works of past eminent jurists in light of present-day contingencies, and his endorsement by the late Ayatullah Khumaynī as a bright and astute student and teacher. These credentials have allowed him to pursue his scholarship without being harassed or stigmatized as having a personal agenda or lacking in faith and resoluteness in the face of modern challenges or attempting to increase his following and gain fame or other ulterior motives which have been the ill fortune of scholars such as Ayatullahs Sayyid Muḥammad Ḥusayn Faḍlullāh, Muḥammad Ibrāhīm Jannātī, and Muḥammad Ṣādiqī.

Endnotes

1. This is not to suggest that there were no Shiʿi scholars engaged in composing legal and theological works. On the contrary, the divine guides used to encourage their followers to sharpen their skills of argumentation by resorting to reason and to debate with their opponents. A couple of examples will be cited shortly.

2. Comprises ʿAlī, Fāṭima and eleven children from their progeny. In Sunni collections of *hadith*, majority of them couple the Qurʾān with the traditions and practices (*sunnah*) of the Prophet and his companions, and not his select family (*ahl al-bayt*).

* Muḥammad Ibrāhīm Jannātī, *Taṭawwur ijtihād dar hawzah-ye istinbāt*, 2 vols. (Tehran: Amīr Kabīr, 2007), 151–2.

3. *Ibid.*, 152. In another report, the sixth *imām* praises one of his companions, Muʿādh b, Muslim, for having taken the initiative of issuing legal opinions (tuftī) at the central mosque [Abolqasem Gorji, Adwār-e uṣūl-c fiqh (Tehran: Mīzān, 2006), 27].

4. *Ibid.*
5. Gorji, 27–8.
6. Muḥammad b. Yaʿqūb b. Isḥāq al-Kulaynī, *al-Kāfī*, translated to English under the supervision of Muḥammd Riḍā al-Jaʿfarī. (Tehran: WOFIS, 1978–), Volume 1, Part Two, Book 4 (I), 7–10, ḥadīth no. 3 (*K. al-ḥujjah, Bāb al-iḍṭirār ilā al-ḥujjah*).
7. *Ibid*., 10–11, *ḥadīth* no. 4.
8. *Ibid.*, 7, *ḥadīth* no. 3.
9. *Kāfī*, translated by WOFIS, Volume 1, Part Two, Book 4 (I), 15–16, *ḥadīth* no. 4 (*K. al-ḥujjah, Bāb al-iḍṭirār ila al-ḥujjah*).
10. Hossein Modarressi Tabataba'i, *An Introduction to Shiʿi Law* (London: Ithaca Press, 1984), 25–27.
11. George Hourani, *Reason and Tradition in Islamic Ethics* (London: Cambridge University Press, 1985), 26–9.
12. *Ibid.* There is a movement in Sunni Islam towards ethical objectivism and a purposive approach in modern Sunni Islamic legal theory to deal with new issues, such as the matters of human rights and bio-medical ethics.
13. A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: SUNY, 1995), 7.
14. As a consequence, compromises are made in Sunni Islam by recourse to legal tools and devices that were categorized under *ʿadillah ʿaqliyyah* (rational evidences) such as *qiyās* (analogy), *istiṣlāḥ* (public benefit), *istiḥsān* (juristic preference) and customary usage (*ʿurf*). Further, an implicit admission was made that divine decrees are based on wisdom and not the outcome of His whims and caprices with the principle of *maqāsid al-sharīʿah* (discerning of the aims and goals of the Divine Law). However, matters dealing with acts of worship (*ʿibādāt*) and injunctions that have textual revelatory proofs from the Qur'ān and the *sunnah* would not be open to rational inquiry. See Muḥammad Muṣṭafā Shalabī, *Uṣūl al-fiqh al-Islāmī* (Cairo, Maktabat al-naṣr, 1991).
15. *The Biography of the Grand Ayatullah Haj Shaykh Yusef Saanei*, (Qum: Meitham Tammar Publication, 2006), 12–3.
16. Ayatullah Ḥusayn ʿAlī Muntaẓarī in Qum, Iran shares a similar view, and it is on this basis that he issued a legal opinion that the punishment of apostasy cannot be applied on a person who converts from Islam to another religion on the basis of knowledge and conviction because this would violate an explicit Qur'ānic verse on freedom of religion and conscience: "There is no compulsion in religion: true guidance has become distinct from error . . ." (Q. 2:256). Thus, the legal directive pertaining to apostasy, according to him, should be amended because it is *un-Qur'ānic*.
17. Yusef Saanei, *Berābari-ye diyah* (Qum: Mu'assasah-ye farhangi-ye fiqh-e thaqalayn, 2005), 9–12.
18. According to Sunni Islam, *ijmāʿ* is infallible based on a *ḥadīth* of the Prophet in which he is reported to have said that "my community will not unite upon an error." In Shiʿism, this inerrancy and protection from error and sin is accorded to the divine guide or the infallible *imām*. Yusef Saanei, *Qaymūmat-e māder*, (Qum: Mu'assasah-ye farhangi-ye fiqh-e thaqalayn, 2005), 57–62.
19. *Berābari-ye diyah*, 9–12.
20. Wael Hallaq delineates four trends in Sunni Islam that have emerged to respond to the challenges of modernity. One is the secularist that advocates the complete abandonment of Islam. Another trend is the one sponsored by the Wahhabi movement championing the efforts to return to the pure and pristine teachings of the Qur'ān and the Prophet. Third is "religious utilitarianism" which relies heavily on the concept of public interest (*maṣlaḥa*) and necessity to revise the previous juridical rulings or provide new ones

for fresh contingencies. Hallaq finds the principles of public interest and necessity to be highly subjective and arbitrary. The last trend is "religious liberalism" which is conscious that every text originates in a context and not in a vacuum. Thus, change of context would demand new rulings with the application of universal principles in a particular context. Of course, matters dealing with acts of worship (*ʿibādāt*) are not subject to change or alteration unlike inter-human exchanges or relationships (*muʿāmalāt).* Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 207–54.

21. *Berābari-ye diyah*, 12.

22. Abdokarim Soroush, *Qabz basṭ-e tiʾurīk-e sharīʿat: Nazariyyah-ye takāmul-e maʿrifat-e dīnī* (Tehran: Muʾassasah-ye farhangi-ye ṣirāṭ, 1996).

23. *Berābari-ye diyah*, 15.

24. *Ibid.*

25. *Ibid.*, 65–66.

26. Muḥammad b. Ḥasan al-Ḥurr al-ʿĀmilī, *Wasāʾil al-shīʿah ilā taḥṣīl masāʾil al-sharīʿah*, 20 vols. (Beirut: Dār iḥyā al-turāth al-ʿArabī, 1971), 29:193–99.

27. *Ibid.*, 29:197, *hadith* no. 12.

28. *Berābari-ye diyah*, 23–5.

29. *Wasāʾil*, 29:194, *ḥadīth* no. 2.

30. *Berābari-ye diyah*, 26.

31. *Ibid.*, 26–8. *Wāsāʾil*, 29:221, ch. 14, *ḥadīths* 1 and 2.

32. Ibn Shuʿbah al-Ḥarrānī, *Tuḥaf al-ʿuqūl ʿan āl al-rasūl*, ed. Ali Akbar Ghaffari, 2nd edition (Qum: Muʾassasat al-Islām li jamāʿat al-mudarrisīn, 1983), 34, (sermon of farewell pilgrimage); Muḥammad Bāqir al-Majlisī, *Biḥār al-anwār*, 2nd edition, 110 volumes (Beirut: Muʾassasat al-wafāʾ, 1983), 73:350, *ḥadīth* 13.

33. *Bihār*, 75:215, *ḥadīth* 108.

34. *Berābari-ye diyah*, 60–1.

35. Qurʾān, 6:57, 115; 41:46; 3:182; 8:51; 22:1; 50:29; 10:44; 4:40; 40:31; 3:14, 57.

36. This is in keeping with a number of *ḥadīths* that have been attributed to the Prophet and Jaʿfar al-Ṣādiq, the sixth Shiʿi divine guide, in which they exhorted their followers to assess the validity of a *ḥadīth* attributed to them by the standard of the Qurʾān. If it is harmonious with the latter, the *ḥadīth* can be accepted but if it conflicts with the Qurʾān, then the *ḥadīth* must be discarded without the slightest hesitation. The sixth Shiʿi *imām* who was very concerned about the many exaggerated (*ghuluww*) reports, both in favor and against him, by his admirers and detractors, is reported to have said to his followers on several occasions to test the validity of that which others attribute to him by the scale of the Qurʾān and the *sunnah* of the Prophet for the *imām's* statements cannot conflict these two fundamental sources. These kinds of *ḥadīths* are advanced by Shiʿi scholars to buttress their argument that the Shiʿis never believed in the distortion or the interpolation of the Qurʾān because, if this were the case, their *imāms* would not have made the Qurʾān an arbiter in resolving disputed *ḥadīths.* Al-Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah*, 70 vols. (Qum: Muʾassasah Āl al-bayt li ihya al-turāth, 1993), 22:69; Muḥammad Bāqir al-Majlisī, *Biḥār al-anwār*, 2:227; al-Muḥaqqiq al-Baḥrānī, *al-Ḥadāʾiq al-nāḍirah*, 75 vols. (n.p.: n.d.), 4:281.

37. *Berābari-ye diyah*, 60–4.

38. *Ibid.*, 87.

39. *Ibid.*, 52–4.

40. Yusef Saanei, *Irs-e zann az shawhar* (Qum Muʾassasah-ye farhangi-ye fiqh-e thaqalayn, 2005), 5.

41. *Ibid.*, 11–2.

42. *Ibid.*, 18–9.

43. *Ibid*.

44. Ziba Mir-Hosseini, Islam and Gender (Princeton: Princeton University Press, 1999), 165. The "simpler way," in my estimation, based on my sessions with Ayatullah Saanei, is the unequivocal right of the wife to unilaterally divorce her husband. Saanei allows a woman to unilaterally divorce her husband provided that she returns back or forgoes the marital gift (*mahr*) that was agreed upon at the time of marriage. At present, Iran is in the process of amending one of the articles in Family Law that would make it easier for men to engage in polygamous relationships without first obtaining the consent and the approval of his existing wife or reporting to the marriag registry when one contracts a temporary marriage (*mutʿah*). The conditions set in the article for the husband to prove financial ability to sustain more than one wife and maintaining of justice amongst the wives are vague and lack precision, making it easier for it to be abused and exploited by unscrupulous men. Further, Saanei is the only jurist amongst the Sunnis and the Shiʿis who allows a woman to lead mixed-gender ritual prayer service.

45. *Ibid*., 26.

46. *Ibid*., 27.

47. *Ibid*., 28.

48. Yusef Saanei, *Qaymūmat-e māder*, 40.

49. *Ibid*., 10.

50. *Ibid*., 17–22.

51. Other such verses are Q. 23:61; 16:9 and 4:2.

52. *Qaymūmat*, 21–22.

53. Other Qurʾānic verses are 2:22 and 4:6.

54. *Qaymūmat*, 42–3

55. *Ibid*., 55–6.

56. *Nahj al-Balāgha*, compiled by al-Sharīf al-Raḍī, tr. Sayed Ali Reza (Rome: European Islamic Cultural Center, 1984, 204.

57. *Qaymūmat*, 57.

58. A similar message is contained in other passages of the Qurʾān: 29:8; 31:14; 17:23; 4:36; and 2:83.

59. *Kāfī*, 2:159, *ḥadīth* no. 9.

60. *Al-Qawāʿid wa al-fawāʾid*, 2:48.

61. This can be found in his other works: *Ribā-ye towlīdī* (2004), *Qumār*, *musābeqāt wa sarghermī* (2006), *Berābari-ye qisas* (2004), *wujūb-e ṭalāq-e khulʿ bar mard* (2007), and *bulūgh-e dukhterān* (2006).