

Revivalism or Reformation: The Reinterpretation of Islamic Law in Modern Times

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Abstract

Since the events of 9/11, there has been much debate in Muslim circles regarding the question of reformation. More specifically, among questions that have been posed are: how can a religion believed to be immutable and constant regulate and serve the needs of a changing community? How can a legal system formulated in the eighth and ninth centuries respond to the requirements of twenty-first century Muslims? Is there a need for reformation in Islam? If so, where should it begin and in which direction should it proceed? These are some of the most challenging questions facing contemporary scholars of Islam.¹

Some scholars suggest that reformation should be interwoven with the reexamination of the authenticity and pivotal roles of the sunnah and the hadith,² while others want to revisit Islamic law as it was formulated in the classical period and reexamine the traditional exegetical literature. This implies that the proposed reformation should be based not only on changing institutions, but also on a reevaluation of traditional sources and hermeneutics.

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The recently published *Progressive Muslims* seeks to provide alternative interpretations of Islam and to refute the views of those who present a static and monolithic Islam.³ In order to examine the issue of reformation, it is essential, at the outset, to discuss Islamic law's development and evolution during the classical period (the seventh to tenth centuries). Thus, I begin with a brief overview of its classical exposition, the various factors that shaped its formulation, and then explore some of the possible venues in which reformation can take place.

Islamic Law in the Eighth and Ninth Centuries

With the establishment of the Umayyad dynasty in the seventh century, Muslims began to live under rulers whom many people did not regard as the proper authorities to create the Qur'anic ideal of a just social order. At this time, a definitive group of scholars interested in recording traditions took shape. Many of the Successors (Tabi'un), who are mentioned as having acumen in juridical matters, tried to define and expound Islamic legal doctrine especially on issues pertaining to rituals, inheritance, marriage, divorce, and so on. These early scholars formed the provenance of the *fuqaha'*, a scholarly elite who specialized in studying the Shari'ah.

Initially, these private individuals were determined to discern God's intent in order to pronounce a particular ruling. The goal of their endeavor was to comprehend God's law in precise terms. Guided by a corpus of precepts, laws, as well as their own independent reasoning, they attempted, especially in the 'Abbasid period, to construct a legal edifice by developing and elaborating a system of law binding upon all Muslims. They began to interpret and develop this law by invoking such hermeneutical principles as *maslahah* (deriving and applying a juridical ruling that is in the public interest), *qiyas* (analogy), *ijtihad* (independent reasoning), *istihsan* (preferring a ruling that a jurist deems the most appropriate under the circumstances), and other innovative interpretive principles in order to respond to the needs of the times and to go beyond the rulings stated in the Qur'an and the sunnah.

Increased legal activities by the *fuqaha'* led to the development of legal schools in different parts of the Islamic world. Initially, these schools did not imply a definite organization or a strict uniformity of teachings, for deriving these legal rulings (*ahkam*) was contingent upon local circumstances and the use of the various hermeneutical tools outlined above. However, this factor led to the emergence of differences between the centers regarding the law.

In Madinah, the sunnah was informed not only by transmitted reports from the Prophet, but also by the community's agreed-upon practices. Thus, the practices' local character was partially incorporated into the Madinese concept of prophetic sunnah, meaning that as a source of authority, prophetic sunnah was one among other forms of sunnah. As a matter of fact, preference was frequently given to local practice over reports of prophetic practice, since, as Madinah's scholars argued, contemporary practice could interpret or supplement earlier precedence. `Abd al-Salam ibn Sa`id Sahnun (d. 840), a prominent Madinan scholar, corroborated this view. Referring to the sunnah's textual transmission, he states: "Only what is corroborated by practice is followed and considered authoritative."⁴ The view that there were different conceptions of the sunnah is further substantiated by a letter written by Ibn al-Muqaffa' (d. 756), an administrator to Caliph al-Mansur (d. 775), in response to the prevailing diverse applications of Islamic law. According to him, some judges claim to follow the sunnah but, in reality, actually follow their own predilections in the name of the sunnah.⁵ Evidently, the sunnah was fluid in the early period and did not necessarily reflect prophetic practices.

Kufan jurists saw their interpretations based on reasoning (*ra'y*) as an equally authoritative factor in deciding a point of law. Abu Hanifah (d. 767) partially incorporated a scholar's *ra'y* as an important element in jurisprudence: "I refuse to follow the Followers (Tabi'un) because they were men who practiced *ijtihad*, and I am a man who practices *ijtihad*."⁶ These jurists also used *qiyas* (analogy) to extend the prophetic practice and often formulated the law on rational grounds, as opposed to ruling on the basis of a transmitted practice that purportedly reflected the prophetic practice.⁷

Thus, Abu Hanifah's authority was also constructed on how he determined, based on his reasoning, which precedents were the most consonant with what was known of the general outlines of prophetic practice and the circumstances surrounding its implementation.⁸ It was further predicated on his exercise of juristic reasoning to solve problems that were not explicitly treated in the revelatory texts.

The views of another prominent jurist, Muhammad ibn al-Idris al-Shafi'i (d. 820), differed considerably from those of the Madinan and Kufan jurists, for he contended that the jurist's personal opinion must arise within, rather than outside of, the prophetic sunnah's perimeters. Focusing on the famous Qur'anic verse "Obey God and His messenger," al-Shafi'i further circumscribed the sunnah's definition, restricting it to a textual and transmitted record of the prophetic practice. The Madinan and Kufan jurists would have to base their rulings on a universal standard, the sunnah as

reported in accredited traditions. By insisting on the Prophet's sunnah, al-Shafi'i nullified the concepts of local practice and arbitrary reasoning. Through his efforts, the four legal schools came to subscribe to a common theory of the sources of law (namely, the Qur'an, tradition, consensus, and analogy).

In contrast to the other schools, the main thesis of the Ahl al-Hadith (People of Tradition) was that traditions transmitted from the Prophet and his Companions superseded both local traditions and those legal injunctions derived independently of the revealed sources. They produced traditions to vindicate their views and based their legal system on the Qur'an and traditions purportedly transmitted from the Prophet. Even though many of these traditions were spurious, the Ahl al-Hadith spurned all forms of reasoning. Some jurists, among them Ahmad ibn Hanbal (d. 855), even claimed that weak traditions were better than human reasoning.

The circumstances that led to the rise of Sunni legal schools also precipitated a concurrent need for a Shi'i legal school.⁹ The Imams elaborated their understanding of the law and established paradigmatic precedents for the situations they encountered. Knowledge, interpretation, and articulation of the law meant that the Imams became the main source of religious authority. When the Imams were with them, the Shi'is accepted their pronouncements as the only valid source of law, after the Qur'an and the Prophet's sunnah. The Imam was believed to be the law's final enunciator, occupying the same position as the Prophet himself did. Since the Imam was also believed to have inherited the Prophet's comprehensive authority, his sunnah was seen as binding as that of the Prophet himself. As Shi'i theology posited the Imam to be divinely appointed (*nass*), endowed with divinely inspired knowledge (*'ilm*), and infallible (*ma'sum*), his authority superseded that of local practice or speculative reasoning. The emergence of a distinct Shi'i legal school should thus be viewed as the result of the Shi'is' self-understanding of the nature of religious leadership and their confinement of juristic authority to the Imams.

Usage of various hermeneutical devices, exposure to diverse cultural influences, a variegated understanding of the sources, and derivation from and the contents of the sunnah were important factors that precipitated differences between the schools and impacted their rulings. The jurists' function extended beyond textual interpretation and explication. By invoking such principles as *maslahah* (enacting the legal understanding that is most conducive to the community's welfare), analogy, reasoning, and other innovative interpretive devices, they were able to go beyond the texts that had empowered them. By the ninth century, through the efforts of such jurists as

al-Shafi'i, the view that the prophetic sunnah's authority overrode other forms of sunnah was firmly entrenched in the sources of Islamic law. And, due to the jurists' assiduous efforts, they were recognized as the law's authoritative interpreters.

The Formulations in the Juridical Literature

On many occasions, the classical jurists' formulations varied considerably from the Qur'anic pronouncement on the same issue. For example, the Qur'an allows the evidence of non-Muslims when no Muslim is available to witness the will of a Muslim who died on a journey (5:106). Abu Hanifah, however, rejected this allowance and Abu Yusuf (d. 798) declared the Qur'anic passage to have been abrogated by verse 65:2. The Madinan jurists went even further, rejecting the evidence of non-Muslims altogether, even against one another.¹⁰

The differences engendered by the classical formulation in Islamic law also manifested themselves with respect to the laws regarding women. Hanafi law, which emerged in Kufa's cosmopolitan and pluralistic milieu, put men and women on the same footing with regard to concluding important transactions, including marriage. In Kufa, a girl who had reached the age of puberty and could manage her own affairs was allowed to marry without her guardian's consent. Reflecting the patrilineal and more traditional outlook of Madinan society, in which the male members of a tribe decided on and concluded the marriages of women, Malik insisted that a guardian had to conduct such a marriage. The other Sunni schools also require the guardian's permission, unless the bride is not a virgin. This is a good example of how local circumstances engendered variations in the legal rulings.¹¹ In the Shi'i school, the guardian's consent is required only if the girl is a virgin; few Shi'i jurists, however, held that a never-married but intellectually mature girl could marry whomever she wished, even without her guardian's consent.¹²

Other differences between the schools occur in the laws pertaining to a woman's judicial right to seek divorce. Abu Hanifah refused a judicial divorce unless the husband was impotent or had other personal defects. Thus, factors such as the husband's failure to provide maintenance, intermittent absence, continuous physical abuse, or life imprisonment are not sufficient grounds for a judge to dissolve the marriage, because divorce is seen as the husband's prerogative. In this instance, Maliki law accords more rights to the woman, for she can seek divorce due to her husband's desertion, failure to maintain her, cruelty, sexual impotence, or chronic disease. Maliki law also

recognized judicial divorce on the grounds of a husband's injurious treatment of his wife. Maliki law went even further, stating that if the differences were irreconcilable, the court may finalize the divorce without the husband's consent. The other legal schools allow a woman to demand *talaq* (divorce) on certain grounds, such as the husband's non-provision of maintenance, physical abuse, or prolonged imprisonment leading to hardship for his wife.

Differences between the schools also arose over the question of a missing husband. Maliki law was more favorable to women in this instance, for the wife of a missing husband can seek a judicial separation after a four-year waiting period. If he does not reappear within this time, she observes the *'iddah* (waiting period) of a widow and is then free to remarry. On the other hand, the Hanafis, Shafi'is, and Hanbalis state that such a woman may not remarry as long as her husband may be considered alive, based on a person's average life span. The Hanafis fix this at 120 years, and the Shafi'is and Hanbalis at 90 years. Such laws reflect the patrilineal character and male dominance of eighth- and ninth-century Arabian society, when many of the juridical rulings were formulated.¹³

Such differences also existed among Shi'i jurists. The existence of disparate Shi'i traditions and the concomitant divergent rulings in Shi'i jurisprudence were acknowledged by Muhammad ibn al-Hasan Tusi (d. 1067):

I have found them [the righteous sect] differing in the legal rulings (*hkam*). One of them issues a fatwa, which his contemporary does not. These differences exist in all chapters of jurisprudence, from those concerning the laws on ritual purity (*al-taharah*) to the chapter on indemnity (*al-diyat*) and on the questions of worship...¹⁴

Tusi was complaining about the differences (*al-ikhtilaf*) in the religious practices of the righteous sect, which he identified as the Shi'is. According to him, the differences between the Shi'i jurists were greater than those among Abu Hanifah, al-Shafi'i, and Malik.¹⁵

It is important to note that the juridical manuals were composed in male-dominated centers that excluded female voices in Islamic legal discourse. Women had little say in relation to the laws on marriage, divorce, inheritance, female testimony, and other matters. Consequently, their issues have depended upon "representational discourse" conducted by male jurists, who interpreted and articulated the rulings related to women. Moreover, the patriarchal structures of Arab culture prevailing in the eighth and ninth centuries were often incorporated into the emerging juridical literature. These significant factors influenced how women were treated in the juridical discourse.

***Ijtihad* and the Reformation Movement**

As stated above, Islamic law developed in a particular milieu in which Muslim jurists devised various stratagems in order to respond to the juristic challenges of their times. Some contemporary Muslim scholars argue that there is a need to articulate a jurisprudence that addresses contemporary concerns and issues, for what is essential to a proper understanding of Islam is not the letter of the text, but rather the spirit of the Qur'an and the prophetic tradition. They maintain that there is no single valid interpretation of the Qur'an or the hadith.¹⁶ It is within the framework of Islamic jurisprudence that the discussion of reformation in Islam and the role of *ijtihad* in the reformation process are to be predicated.

Ijtihad is a rational process that attempts to extrapolate juridical injunctions from the revelatory sources. More specifically, it is seen as a jurist's exertion of his or her mental faculties to arrive at an absolute proof based on the interpretation and application of the authoritative sources of Islamic law: the Qur'an, the sunnah, and *ijma`* (consensus of the scholars). The purpose of the exercise is to arrive at a legal injunction that reflects God's will.

Many Muslim scholars have argued for a renewed *ijtihad*, keeping in mind the dictates of contemporary times. In his discourse on *ijtihad*, Ayatullah Khomeini urges the theological centers to promote *fiqh* (jurisprudence) in a better form. He states that the seminaries should bear in mind that domestic and foreign problems will not be resolved via impractical theories, generalities, and views. By stressing that the *fuqaha'* and religious scholars should pursue *ijtihad* in the theological centers, he hints at the deficiencies of the *ijtihad* prevalent in those institutions and its inability to meet the different and complex needs of contemporary human communities. He further holds that modern jurists should always hold the pulse of the community's future reflections and requirements with profound foresight and insight.¹⁷ As Ayatullah Mutahhari poignantly asks: "If a living *mujtahid* does not respond to modern problems, what is the difference between following a living and a dead [religious authority]?"¹⁸

Ayatullah Khomeini also states that it is important for contemporary juridical discourse to be engaged with such issues as ownership and its boundaries, land and its division into spoils and public wealth, farming and *mudaribah* (collaboration), renting and mortgage, penance and blood money, civil laws, cultural issues, and various arts (e.g., photography, painting, sculpture, music, theatre, movies, and calligraphy). Islamic jurisprudence should also be concerned with preserving the environment, expanding or nullifying some decrees at various times and places, legal and international issues and

their adaptation to Islamic precepts, the limits of individual and social liberties, the manner of observing religiously prescribed acts while travelling in space and moving against or along Earth's rotation, and other contemporary issues. If some issues were not discussed earlier or had no applicability, Khomeini states that the *fuqaha'* should now make provisions for them. Thus, he continues, "if, in the past, some issues were not set forth or were irrelevant, the *fuqaha'* should now speculate about them."¹⁹

Other Shi'i scholars argue that changes in the conditions of time and place require a reexamination of laws formulated in the eighth, ninth, and tenth centuries. Ayatullah Shabistari states that a new *ijtihad* is required, one that goes beyond *fiqh* and *usul* and that embraces such subjects as society, history, economics, politics, and psychology.²⁰ To derive these laws, he argues that Muslim thinkers need to construct a comprehensive theory of human nature and social change. Shabistari goes on to declare that even the questions we pose today have to change according to the realities of the time. According to him:

Today, an important part, or perhaps most, of the problems we must deal with are "novel matters" (*mustahdathat*). Whereas once the question to be answered was whether the pledge of allegiance (*bay'ah*) of "those who loose and bind" was a legitimate basis of authority, the novel matters we need to take into account today are popular elections and revolutions. Long ago, the crucial question was if it was permissible for a ruler to delegate power to governors and viziers; today the question is if any ruler can enjoy a monopoly of power. Whereas once the jurists concerned themselves with which person should rule and what his qualifications should be, today we must ask ourselves how those in power must rule. Instead of asking if it is permissible for the ruler to fix the value of currency, we should study how economic planning and free enterprise can be reconciled. Whereas once the jurist may have been called on to define the duties of the public inspector (*muhtasib*), the crucial question in our time is "Does the state have the right to maintain influence over every aspect of the life of its citizens?" In the past, jurists were concerned with defining the boundaries of the domain of Islam and the "domain of war" (*dar al-Islam, dar al-harb*), but today we must ask ourselves if it is permitted to violate the sovereignty of any people or nation. Rather than repeating old arguments about the duty to learn a profession, we should be examining the effect of an industrial economy on spiritual values. We must search the Qur'an and sunnah for solutions to contemporary problems such as these. This is what is meant by the universality of Islam. Otherwise, Islam belongs to the Hijaz.²¹

Jurists who argue for the reformulation of Islamic law also maintain that the interpretations of Islamic revelation were interwoven into the specificity of those times and places. Jurists can only pronounce general principles, not

rulings that are to be enforced at all times and places. They also argue that hermeneutical principles within *ijtihad* allow for a different understanding of the Islamic message. For the reform-minded jurists, it is essential that Muslims continue to review and revise the law in keeping with the dictates of their changing circumstances.

In Shi'i circles, important voices have been calling for a radical rethinking of the religious tradition. Many of these emerged after the Iranian revolution of 1979. Such formulations have come from religious intellectuals like 'Abdolkarim Soroush; others, importantly, emanate from within the religious seminaries themselves.²² Scholars like Ayatullah Sanei, Ayatullah Jannati, Ayatullah Mohagheg Damad, Hujjatul-Islam Muhsin Sa'idzadeh, and Mohsen Kadivar have called for a reevaluation of traditional juridical pronouncements on many issues. As a matter of fact, in my discussions with some *maraji*,²³ I detected a distinct silent revolution within Qum's seminaries. On many important issues, the views of the *maraji* are polarized. For example, Sa'idzadeh argues that laws pertaining to women and their apparent lack of equality with men are products of the Islamic hermeneutical tradition, which favors men. For Sa'idzadeh, such laws are amenable to change.²⁴

According to Ayatullah Mohagheg Damad, since civil rules are variable, Islamic law must change accordingly. Thus, in our own times Islamic legal rulings must be reinterpreted based on the principle of harm and benefit and other principles established in *usul al-fiqh* (the science of inferring juridical rulings from textual and rational sources). Stated differently, there is a need to enact laws that are conducive to the community's welfare, even though such laws are not found in earlier texts. Due to such principles, Islamic sacred sources have to be read in different ways. Thus, for example, based on the principle of *la darar wa la dirar* (there is neither harm nor injury [in Islam]), an Islamic government can override private ownership.²⁵

As an example of the law's possible reinterpretation, Mohagheg Damad states that in the Qur'an we encounter the following phrase addressed to men concerning their marital life: "Live with them in accordance with that which is recognized as good (*al-mar'uf*)" (4:19). The Qur'an indicates that cohabitation in what is perceived as "good" is the foundation of Islamic family law and of individual laws pertaining to the rights of married women. In the past, when social and economic lives were far different and women were confined at home without economic responsibility or the need to earn a living, this Qur'anic phrase had a particular meaning. Mohagheg Damad asks: "Does cohabitation in accordance with that which is recognized as good

have the same connotation today?" In the past, maintenance (*nafaqah*) that was payable to the wife if she was divorced was calculated by the jurists at a very low rate." This rate is contingent on the needs of the time.²⁶

He continues:

If, for instance, one of the Imams had been asked a thousand years ago about the maintenance due to a woman after divorce, he might have mentioned clothes, a dwelling, or food, basing that on the standard of living at that time. Maintenance consisted of something like the fixed payment mentioned above. Neither the education of women nor means of transportation was as important as it is today. Thus, maintenance is an external and not an objective standard. On the other hand, "marriage in accordance with that which is recognized as good" is a general legal rule (*hukm*) of the Shari'ah, and since times always change and social and economic conditions evolve, the Qur'an here lays down a standard whose criteria are subject to change."²⁷

Stated differently, a divorced woman's maintenance must now include not only food and shelter, but also back pay for the housework she has done and other benefits that she had to forgo in order to look after the children. In addition, due to the different roles of women today, the costs of transportation and education must also be taken into account.

Mohagheg Damad further argues that what were once private rights have now become of general or public relevance. Until recently, the concept of labor relations was unknown and the relationship between employer and employee was conducted entirely on the basis of a contract of hire. That is, a contract was concluded strictly on the basis of hire of labor for wages, with no government oversight. Now, however, the private rights of employer and employee have become public rights, for government intervention has resulted in labor laws limiting the freedom of both parties. The rationale is that if workers are allowed to enter into contracts as agents, they are liable to get themselves into a situation in which they eventually become disabled and, possibly, burdens on society. Thus the head of the society can intervene in the community's interest and limit the parties' freedom to conclude a contract. This is one example of a shift from private to public rights.²⁸

Reforms in Iran have also been suggested in the realm of the penal code. Ayatollah Dr. Seyed Mohammad Bojnourdi, a former member of the country's Supreme Judicial Council, believes that the current method of administering certain Islamic punishments weakens Islam and presents a distorted image of the religion to the world. He proposes that when carrying out Islamic punishments, it would be better to take advantage of the views of psychologists, sociologists, and other experts. Bojnourdi also believes that

when the Twelfth Imam (the Mahdi) reappears, he will guide human beings toward humanity and Islam through discourse, reasoning, and logic, instead of resorting to force.²⁹

In addition, he further states that according to the Islamic penal law, the criterion for punishment is based on the principle of “eliminating obscene deeds.” It is not mandatory, he argues, to punish if someone commits an offense, since the principle in Islam is based upon correcting and developing people: “The lifestyle of the Holy Prophet and Imam `Ali attest to the fact that at the time of punishment, they would first resort to admonition and guidance in order to lead the convict to repent. In many cases, punishment would be averted if the offender repented.”³⁰ Thus, in many criminal trials, if the convict repents prior to the court’s hearing of the case, the court’s responsibility to look into the offense would be dropped as well.

Moreover, he maintains that if the method of punishment actually denigrates Islam and causes the people, especially young people, to demean the religion, then the process should be revised so that no causes of such denigration would remain. If certain punishments, such as public whipping, create a negative impression of Islam, they should be abandoned, because preserving Islam’s dignity and prestige is the prime task and a duty that has priority over all other obligations.

Bojnourdi also states that in 1981-82, he told Khomeini that, under the current status quo, implementing the punishment of *rajm* (stoning to death) would weaken Islam and be seen by others as a tool that could be used to mock the religion. Not only had *rajm* lost its intended effects, it had also allowed people to ridicule Islam. Therefore, other options had to be sought. The Imam stated that since *rajm*, at that point in time, was destroying Islam’s image, courts had to be instructed not to call for it but to issue other options, such as the death penalty. Bojnourdi continues:

I even told the Imam that when applying the *rajm*, there is a possibility for the convict to come out of the pitch and escape. If the death penalty were to be enforced, escape would not be possible. I asked what had to be done in that case and the Imam stated that the convict should be guided towards expressing penitence so that he/she would be pardoned.³¹

Reform in Women’s Issues

Other jurists in Iran have come up with fresh interpretations of traditional laws. In 1999, a senior cleric by the name of Sanei asserted that nothing should stop a woman from becoming the supreme leader or president. He

also said it was wrong not to allow women to become judges or to accept them as full witnesses in courts. In recent years, women have been brought back into the judiciary in an advisory capacity.

According to him, “since the subject [women’s situation] has changed, the framework of civil laws must change too. Our current laws are in line with the traditional society of the past, whereas these civil laws should be in line with contemporary realities and relations in our own society.”³² Sanei states that even without a marriage contract, a woman can unilaterally annul a marriage if she feels she cannot live with a man. She can simply annul the marriage without the need for a formal divorce, although it is better for her if the *talaq* is recited. “Islam does not say that a woman must stay and put up with her marriage if it is causing her harm – never.” The problem, according to Sanei, is that the laws are still in the process of evolution.³³ According to him, in response to a question posed, Khomeini stated that a husband should be persuaded to grant a divorce if his wife seeks it. If he refuses that request, then the divorce can be affected with a judge’s permission.³⁴

Within the Qum seminary, Sanei is considered one of the most controversial jurists. His reform-minded views can be discerned from some of the questions I posed to him when I met him in 2004.³⁵

QUESTION: Do you consider non-Muslims impure? What is your edict about having a meal with them?

ANSWER: All humans are pure. No one is unclean unless they have found the truth in Islam and yet, nevertheless, express hostility toward it. Such a person is exceptionally rare and should be given the benefit of the doubt. Thus, all non-Muslims including Hindus, fire worshipers, Cao Daists, and so on are pure. “Impure” has only been associated with atheists in Qur’an. God commands atheists to stay away from the Holy Mosque. An atheist is a person whose soul has become impure. The soul’s impurity arises when somebody ascribes partners to God when he/she knows God is the absolute one. When ascribing partners to God through neglect, a man/woman is not an atheist, but is unenlightened. In the view of taking food, they are as respectable as Muslim meal companions. All people, Muslim or non-Muslim, should call upon God’s name when slaughtering animals for food; otherwise, the food is not clean.

QUESTION: Is an animal slaughtered by a non-Muslim clean?

ANSWER: It makes no difference; only God’s remembrance and mention is necessary, no matter what language or religion he/she has. If you are doubtful about God’s mention at the time of slaughter by a non-Muslim, the food is impure. At a Muslim market, it is clean.

QUESTION: Does this all include Jews too?

ANSWER: Certainly, yes. You can ask him/her to mention God's name at the time of slaughter, and the food will be clean.

QUESTION: What is your attitude in general toward non-Muslims? Are their good deeds acceptable by God?

ANSWER: I am of the opinion that the outcome of good deeds and eschewing evil according to one's understanding will be Paradise. Regardless of the religion they practice, owing to the fact that they are convinced by the righteousness of their ideology without the slightest doubt, they get what they deserve. God says: "Good deeds will be rewarded ten times as much as they deserve, and evildoers will be given punishment which fits the evil; you shall not be unfairly treated." ... In some Qur'anic verses, faith is a vital prerequisite for Paradise, which I interpret as sincere belief in the goodness of one's deeds, not belief in God. Strong belief is associated with mental serenity, and it contributes to spiritual development. However, someone with a sense of being under compulsion can never be consistent in doing good deeds and improve. Neither identification nor label, i.e., "Christian," "Muslim," or "Buddhist" is the requirement for Paradise, but good deeds certainly are. An agnostic involved in his/her skepticism cannot believe in God or a prophet. Neither do Christians put trust in Prophet Muhammad. It would be utterly inconceivable if God called for a particular identification on the Day of Judgment. Would it be unfair? The Qur'an says, reassuringly: "God shall not be unfair to any of His creatures." Similarly, doing evil deeds mortifies the human soul, which will result in Hell. It makes no difference which religion or belief you have, only which deeds you perform. If doubt is cast upon the authenticity of his/her ideology, one has to seek the truth; otherwise, he/she is guilty of laxity.

QUESTION: What is your view on women's rights?

ANSWER: Women have equality in all rights except inheritance, which is half as much as men. But I consider this fair and have given elaborate explanation on this issue.

QUESTION: Are they regarded as equals when giving testimony?

ANSWER: They have equality. In *Surat al-Baqarah*, the second chapter of the Qur'an, two women are found necessary to testify in a court of law, where one man suffices. The reason is so that one of them can serve as a reminder to help vivid remembrance. There, we come to understand that women are more likely to forget a past event in this special case. Now, this Qur'anic verse was revealed with relevance to commercial affairs. Having few social associations, women mostly did not know much about financial and commercial subjects. To guarantee a fair judgment, two women would testify. Similarly, to provide assurance, the testimony of

two men is essential when they are more likely to forget a past event than women are. The criterion is knowledge and awareness. Both men and women can be of equal number when they have equal knowledge.

QUESTION: What is your verdict on blood money for women?

ANSWER: I regard men and women as equals in the following cases: blood money, retaliatory punishment, appointment as judges, and even being experts on jurisprudence.

QUESTION: Can I follow a female expert on Muslim law?

ANSWER: It is like other fields of science; the foremost criterion is expertise.

QUESTION: What is your perspective upon stoning as a punishment?

ANSWER: Regardless of what is being enforced in Islamic countries presently, there are two jurisprudential answers to this question: (1) Some great experts believe that fixed Islamic penalties cannot be enforced during the Time of Occultation (when the Twelfth Imam [the Mahdi] is absent) and (2) In Islam, the legal procedure concerning punitive law is so constraining that we cannot prove such a wrongdoing as fornication. Legal sanctions cannot be executed until hard proof is submitted. As far as fornication is concerned, four just people should have witnessed the sexual intercourse vividly. This is impossible, unless the wrongdoers committed this action in public. We can also prove a suspect's guilt when he/she confesses to fornication four times, and also when his/her confession derives from the pangs of conscience, meaning the sinner wants to set himself/herself free from sin. The confession should not be extracted under pressure in prison.

When Imam Ali was ruling his Islamic state, a woman who had committed fornication came to him and asked him to impose the penalty of execution. She did this three times, and each time he told her to leave. When she came the fourth time, she was pregnant. Therefore, Imam Ali postponed the penalty until the child was born. Having given birth to her baby, she was told to leave until the child could distinguish good from bad. In fact, Imam Ali never wanted to enforce the law. It was his unique policy to stop corruption. Here, we come to the understanding that the judge cannot put the pieces together and state the fixed penalty of stoning against the suspect. In such cases, we can only enforce some discretionary punishments. In conclusion, there should be some corrections in the legal procedures.

In essence, Sanei maintains that women can be judges, their testimony is equal to that of men, the blood money to be paid for killing a woman is equal to that for killing a man, and salvation is not restricted to Muslims. Another *mujtahid*, Ayatullah Jannati, allows women to be not only *muj-*

tahidun, but also a source of reference (*marji` al-taqid*); in other words, women can issue juridical rulings that both men and women can follow. Other scholars have allowed women to be a *mujtahid*, but not a *marji`*.

Ideas like those expounded by Ayatullahs Sanei, Bojnourdi, Jannati, and Mohagheg Damad clearly represent a major break from the current understanding of divorce laws among many jurists. Sanei has gone further than most other scholars. In my discussions with him in Qum in 2004, he allowed women to lead men in prayers, even in a public setting. Most *maraji`* have insisted that only men can lead other men in prayers. Sanei admits that there are petrified, fossilized, and devout ignoramuses who prevent such reforms in the law from occurring.³⁶

Shi`i jurists in other countries have also engaged in their own reinterpretation of the law. The Lebanese scholar Ayatullah Fadlallah is popular with the young people because his religious edicts are more pragmatic and lenient. He allows one's beard to be shaved, arguing that the classical-era ruling regarding the requirement of keeping a beard has to be properly contextualized: this edict was predicated on the need to differentiate between Muslims and Jews. This, Fadlallah says, is restricted to cases in which Muslims are a minority and others are the majority. He further states: "It is understood from the hadith³⁷ that the prohibition of shaving the beard was contingent on a time-related issue at the beginning of the Islamic message."³⁸ Fadlallah also differs from many other jurists in that he allows playing chess.³⁹ His liberal views can be discerned from the fact that he even allows men and women to masturbate, provided that it does not lead to ejaculation.⁴⁰

Ayatullah Seestani was asked whether it was permissible to rely on DNA test results that indicate a child was born out of wedlock. Even though there is no authoritative precedence in the normative texts, he replied: "Whosoever shall attain certainty through other means, be it through blood test or any other means, should feel free to act upon it." Seestani cautions that such a test is not a legitimate means of determining adultery, however, and that the Islamic penal code will not be applied based solely on DNA results.⁴¹

Salvation and Religious Pluralism

Reformation has not been restricted to the juridical field. Some Muslim scholars have challenged previous interpretations on key issues in the Qur'an. For example, many contemporary jurists extend salvation to non-Muslims.

Coexistence in a pluralistic milieu is often militated against by an exclusionary vision that denies salvific space to those who do not share that particular religious tradition. Such claims have been regarded as necessary instruments for one group's self-identification against other claims of absolute truth. In their understanding of the Qur'an, classical exegetes posited an exclusionary vision of the other. We must consider these exegetes, because the Qur'an spoke through them to millions of Muslims both in the past and the present. In an attempt to demonstrate Islam's preponderance, Muslim exegetes deemphasized those ecumenical passages in the Qur'an that appeared to offer salvation to other monotheistic traditions.

The Qur'an's pluralistic outlook is expressed by 2:62 and 5:69, which provide salvation to "whoso believes in God and the Last Day among the Jews, the Christians, and the Sabeans." The exegetes sought to invalidate the claims of previous scriptures so as to circumscribe the ecumenical thrust of verses like 2:62 by resorting to various hermeneutical devices. For example, they appealed to *naskh* (abrogation). Other commentators limited the verse's application by assigning the reason for its revelation to a specific group of people. The third approach was to limit the verse to a strictly legalistic interpretation, and the fourth was to restrict its universality until the coming of Islam. Thereafter, it was applicable only to those who hold the faith of Islam.⁴²

In their desire to restrict salvation to Muslims, a number of Muslim commentators invoked 3:85: "Whoso desires another religion than Islam, it shall not be accepted of him. In the next world he shall be amongst the losers." The verse has been interpreted in both previous and modern commentaries as abrogating 2:62, which, as noted, offers salvation to the People of the Book.

It is plausible to maintain that the Qur'an, in verse 3:85, is using the word *islam* in a generic sense, namely, indicating the act of submitting to God, rather than referring to the seventh-century institutionalized religion. This view becomes even more plausible when we examine the two verses preceding it, both of which indicate that the generic rather than the historical understanding of *islam* is being used. Thus, verses 3:83-84 state:

Do you seek another religion apart from the religion of God while to Him submits (*aslama*), willingly or forcibly, whoever is in the heavens and on Earth and to Him they shall be returned? Say: 'We believe in God and what has been revealed to us; in what was revealed to Abraham, Isma'il, Isaac, Jacob, and the tribes; in what Moses, Jesus, and [other] prophets have been given from their Lord. We do not differentiate between any of them. We submit to Him (*nahnu lahu muslimun*).

In both verses, *islam* is used in the sense of submission to the one Lord, rather than to the religion brought by Muhammad.

Similarly other passages depict Noah, Abraham, Moses, and other prophets as exhorting their followers to become Muslims (e.g., 2:132, 10:72, and 10:84), to submit to the one Lord. The Prophet himself is asked to invite the People of the Book to this common belief, the worship of one God, and not to associate anyone with Him (3:64). Muslim exegetes, on the other hand, construed the same word (*islam*) in verse 3:85 as referring to the historical religion brought by Muhammad. Hence, Islam is assumed to have nullified previous revelations. This interpretation undermined the Qur'an's universal discourse, which defines a believer as responding to two main beliefs: belief in God and belief in the Last Day.

In fact, the classical exegetes disagreed on whether the Abrahamic religions had been superseded or not. Tabari (d. 923), for example, regards the abrogation and revoking of an earlier divine promise to the People of the Book as incompatible with the concept of divine justice.⁴³ Ibn Kathir (d. 1373), on the other hand, claims that based on 3:85, nothing other than Islam is acceptable to God after Muhammad's mission. Salvation for followers of the previous scriptures could only be guaranteed before Islam came. Verse 2:62 is construed as promising salvation to Jews, Christians, and Sabeans before the coming of Muhammad.⁴⁴ In his commentary on 2:62 and 3:85, the twentieth-century exegete al-Tabataba'i neither invokes the principle of supersession nor claims that the promise of salvation offered in 2:62 was limited to those pre-Islamic communities. Rather, he provides an inclusivist interpretation on the issue of salvation to people of other faiths. Scholars like Sanei⁴⁵ and Mohagheg Damad⁴⁶ have agreed with him and extended salvific space to non-Muslims.

In the classical exegetical literature, the principle of God's message revealed through a series of prophets gave theologians the tool of abrogation, which they used to claim that Islam was the culmination of divine revelation and that, because of it, adherents of other monotheistic traditions could not be saved. Such an exclusivist theology cannot foster a peaceful global human community based on the principles of peace, justice, and equity.

The foregoing suggests that the Qur'an seems to accord far more room for the individual to negotiate his/her own spiritual space. Those interpreting the text have been less tolerant when it comes to validating rival claims to the truth. There is a clear tension between the Qur'an's tolerance and the interpretation of later exegetes who, in all probability, were responding to the polemical disputations in which they had to assert Islam's supremacy over

previous revelations. They adopted exclusivist theological and juridical positions, thereby imposing, in the process, their own interpretations on the Qur'an.

For the exclusivists, soteriology lies in the recognition and acceptance of the saved authority. Without this recognition of the "saved authority" and detachment from all rival contenders for the truth, a community cannot possibly be saved.⁴⁷ Legitimation for this claim is often sought by extrapolating or interpolating scriptures in order to vindicate the position adopted. The process leads to a greater tendency to marginalize the other and to choose a theology of exclusivity.

Conclusion

"Islam is valid for all times" is a familiar slogan among Muslims. However, the concept of its universality encourages, rather than restricts, its capacity to encompass different societal orders. Had this not been the case, Islam could not have spread so far and survived the vicissitudes of different milieus. Hence, it is imperative that Muslims review and revise the law in keeping with the dictates of their changing circumstances.

Reforms such as those suggested above are possible only if Muslims are able to speak their minds and discuss things openly. The challenge for Muslims in contemporary times is to recover the Qur'an's ecumenical message, rather than the juridical and exegetical understandings that were formulated to assert the subjugation of the "other" in a particular historical context. As they reexamine traditional exegesis, their point of departure has to be the Qur'an itself, rather than the multi-faceted and multi-layered scholarly discourse that has accumulated since the eighth century.

In addition, Muslims need to differentiate more clearly between the sacred scripture and the later exegesis that is embedded in many sacred texts. Scholars need to explain to the Muslim community that since much of the exegetical literature was formulated in a particular context, the traditional exegesis has to be reformulated or reinterpreted. This exercise is contingent upon recognizing that Muslims are not bound to erstwhile juridical or exegetical hermeneutics. Hence, Muslims need to separate the voice of God from the voice of human beings and to differentiate between the Qur'anic vision and the sociopolitical context in which that vision was interpreted and articulated by classical exegetes.

Furthermore, Muslims must articulate a comprehensive legal system that will incorporate notions of dignity, freedom of conscience, minority rights,

and gender equality based on the idea of universal moral values. A major impediment to this approach is that many Muslims reject the argument that the juridical decisions were interwoven with the political, cultural, or historical circumstances existing in the eighth century. They refuse to acknowledge that while the Qur'an is a fixed text, the interpretive applications of its revelation can vary with the changing realities of history. Traditionalists maintain that Islamic law, as formulated by the jurists of the first three centuries of Islamic history, was in strict conformity with the divine will expressed in the Qur'an and the tradition. Thus, normative textual sources are treated as timeless and sacred, rather than anchored to a specific historical context. This contention is challenged by the fact that the classical jurists themselves disputed over what constituted the divine will and proffered a wide range of views on the issues confronting them.

Endnotes

1. In this paper, the term reformation refers to the re-examination and reinterpretation of both traditional Islamic law and classical exegesis.
2. See Daniel Brown, *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press, 1999).
3. See also Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990).
4. Brannon Wheeler, *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Hanafi Scholarship* (Albany: State University of New York Press, 1996), 31.
5. See 'Abd Allah b. al-Muqaffa', "Risala fi al-Sahaba," in *Rasa'il al-Bulagha* (Cairo: 1946), 3d ed., 126-27.
6. Wael Hallaq, *Authority, Continuity and Change* (Cambridge: Cambridge University Press, 2001), 7. The Followers (Tabi'un) were members of the generation of Muslims that followed the Companions. The term also refers to Muslims who knew one or more of the Companions but not the Prophet.
7. See Liyakat Takim, *The Heirs of the Prophet: Charisma and Religious Authority in Shi'i Islam* (Albany: State University of New York Press, 2006), chap. 1.
8. Wheeler, *Applying the Canon*, 40-41.
9. In this paper, the term *Shi'is* refers exclusively to the Twelver Shi'is. Thus, it will not include a discussion on the Zaydi, Isma'ili, or other Shi'i groups.
10. See Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Oxford University Press, 1950), 211-12.
11. See Muhammad Maghniyya, *The Five Schools of Law* (Qum: 1995). Liyakat Takim, "Women, Gender, and Islamic Law," in *Encyclopedia of Women and Islamic Cultures* (Koninklijke: Brill N.V., 2004).

12. Muhammad ibn Jamal al-Din Makki al-'Amili (al-Shahid al-Thani), *Al-Lum`a al-Dimishqiyah*, ed. Muhammad al-Kalantar, 10 vols. (Beirut: Dar Ihya' al-Turath al-'Arabi, 1983), 5:116.
13. Ibid.
14. Muhammad ibn al-Hasan Tusi, *Uddat al-Usul* (Tehran: 1983), 354.
15. Ibid., 358.
16. Mehran Kamrava, "Introduction: Reformist Islam in Comparative Perspective," in *The New Voices of Islam: Rethinking Politics and Modernity*, ed. Mehran Kamrava (Berkeley and Los Angeles: University of California Press, 2006), 15.
17. The discussion is based on an email received. The lectures of Imam Khomeini were translated by al-Sayyid Muhammad al-Hijazi.
18. Hamid Dabashi, *Theology of Discontent: The Ideological Foundation of the Islamic Revolution in Iran* (London: New York Press, 1993), 164.
19. The discussion is based on an email I received.
20. Ayatullah Muhammad Mujtahid Shabistari, "Religion, Reason, and the New Theology," in *Shi'ite Heritage: Essays on Classical and Modern Traditions*, ed. Lynda Clarke (Binghamton: Global, 2001), 249.
21. Ibid., 256.
22. Muhammad Qasim Zaman, *The 'Ulama' in Contemporary Islam: Custodians of Change* (Princeton: Princeton University Press, 2002), 186.
23. The term *maraji`* refers to the most learned juridical authority in the Shi'i community whose rulings on Islamic law are followed by those who acknowledge him as their source of reference or *marji`*.
24. Zaman, *The 'Ulama' in Contemporary Islam*, 186.
25. Ayatullah Muhaghegh-Damad, "The Role of Time and Social Welfare in the Modification of Legal Rulings," in *Shi'ite Heritage*, 218.
26. Ibid.
27. Ibid., 219.
28. Ibid.
29. Based on an email I received.
30. Ibid.
31. Ibid.
32. Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Modern Iran* (Princeton: Princeton University Press, 1999), 160.
33. Ibid., 162.
34. Ibid., 165.
35. Not all of the points that I discussed with Sanei have been documented at this site. Some of the questions I posed have been rephrased. The following are excerpts from our conversation. Details can be found at: www.saanei.org/page.php?pg=showmeeting&id=22&lang=en.
36. Mir-Hosseini, *Islam and Gender*, 160.

37. In the Shi'i context, the term *hadith* refers to the sayings of the Prophet and the Imams.
38. Ayatullah al-'Uzma al-Sayyid Muhammad Husayn Fadlullah, *World of Our Youth*, tr. Khaleel Mohammed (Montreal: Organization for the Advancement of Islamic Learning and Humanitarian Services, 1998), 226.
39. *Ibid.*, 225. Most jurists prohibit playing chess, as it was used as a gambling tool.
40. *Ibid.*, 257.
41. *Current Legal Issues According to the Edicts of Ayatullah al-Sayyid 'Ali al-Seestani* (London: Imam 'Ali Foundation, 1997), 48.
42. See Mahmoud Ayoub, *The Qur'an and Its Interpreters* (Albany: State University of New York Press, 1984), 1:110.
43. Muhammad ibn Jarir al-Tabari, *Jami' al-Bayan fi Tafsir al-Qur'an* (Beirut: Dar al-Ma'rifah, 1992), 2:155-56.
44. Ibn Kathir Isma'il, *Tafsir* (Beirut: Dar al-Mufid, n.d.), 1:104-05.
45. See my interview with him, cited above.
46. This was relayed to me in a personal conversation.
47. For a discussion on this see, John Wansborough, *The Sectarian Milieu: Content and Composition of Islamic Salvation History* (Oxford: Oxford University Press, 1978), 85 and 124.