

## How “Islamic” is “Sharī‘a” law in relation to women?: Three cases in which the Qur’ān was overruled by Sunna, Ijmā’ or Qiyās

The Women’s Islamic Initiative for Spirituality and Equity (WISE) conference in New York is perhaps the first global convention of its kind, bringing together one hundred women leaders “from academia, civil society, art, politics, and religion to network, strategize, and share best practices around the joint mission of advancing the rights of Muslim women” (Khan, Invitation). In this context, the purpose of this paper is to share three examples on how “Islamic” law (sharī‘a), in particular the three principles of Sunna (Prophetic tradition), Ijmā’ (Consensus) and Qiyās (reasoning by analogy), were used to rescind some of the basic rights God gave women in the Qur’ān. Moreover, the actual use of Sunna or Consensus as a source of “divine” law compromises the basic, principle of monotheism as it is outlined in the Qur’an and as it is integral to our faith as Muslims. It is the Qur’ān and its distinctive monotheism which gives hope for the betterment of Muslim women and Muslim societies, as I hope to show below. Since I am intending to eventually write further on some of this paper’s topics, it should be considered “work in progress.”

### I-Example for Sunna overruling the Qurān: the prohibition against women assuming major leadership positions, leading congregational prayers or acting as judges:

Today, the preeminence of Sunna is expressed in various forms, the clearest is the principle “**the Sunna is a judge over the Qur’ān and abrogates it**” (*al-sunna qāḍiyah ‘alā al-Qur’ān wa nāsikhah lah*) (Qaradāwī 9, 51-2).<sup>1</sup> Other expressions include “the book (Qur’ān) is more needy of the Sunna, than the Sunna of the book,” the Sunna is “independent” of the Qur’ān or that it “explains” it (Qaradāwī 9, 51-2). This principle was used not only to deny women the right of functioning as Muftias, but even to demote their judgment should any reach that position.

The **legal basis** for the prohibition against women in major leadership positions, including leading prayers and acting as judges is Abū Bakrah’s ḥadīth: “**A people who give the government of their affairs to a woman will never prosper.**” (Bukharī, *fitan*, 92:7099). Harf’s *Encyclopedia of Islamic Jurisprudence* version 3.0 CD ROM(Cairo: Nasr City, 2000) lists several references from the various schools of jurisprudence, which rely on this *ḥadīth* to prohibit women from leading congregational prayers, acting as judges or assuming major leadership positions. Perhaps the most comprehensive of these sources is the encyclopaedia of Islamic jurisprudence, issued by the Kuwaiti ministry of Islamic affairs. Noteworthy is also the opinion of Muslim jurists, that there is no need to apply the judgment of a woman judge, since she should not have been acting as a judge in the first place. The popular Ibn Hajar al-‘Asqalani’s commentary on this ḥadīth is not as comprehensive, but it does mention its use against women jurists in *Fath al-Bari bi Sharh Sahih al-Bukhari* (al-Qahira: Dar al-Rayyan, 1988) vol.13, p.6. Interestingly, the concept of the undesirability of following the advice of women that we see in this *ḥadīth*, was even active in marriage situations, since the famous Abū Ḥāmid al-Ghazālī (d.1111) in his *Alchemy of Happiness*, says on the treatment of wives: “Wise men have said, “Consult women, and act contrary to what they advise.” In truth there is something perverse in women, and if they are allowed even a little licence, they get out of control altogether, and it is difficult to reduce them to order again.”

#### Abū Bakrah’s ḥadīth is unacceptable for two reasons:

1-The **content** of the ḥadīth runs contrary to the Qur’ānic story of the Queen of Sheba, who is presented as a role model of positive leadership (al-Naml 27: 23-44). For example, when she received Solomon’s letter, she did not hide it from her people, but consulted them, which indicates transparency, one of the qualities of good leaders. Her people succeeded through her leadership, not only in worldly matters, but also in religious matters, since she led them to Islam. Compare her to Pharaoh, a man and the Qur’ānic model for negative leadership, who did not consult with his people on important matters, but considered himself their master and subsequently led them to disaster and drowning. Therefore, the Qur’ān affirms the suitability of women in leadership positions and contradicts Abū Bakrah’s statement. Otherwise God would not have made the Qur’ānic role model of leadership a woman.

2- The **transmitter**’s testimony is not acceptable, because he slandered a man and a woman of adultery, and the Qur’ān prohibits accepting the testimony of a slanderer (al-Nūr 24:4). Abū Bakrah’s slander is well

known and also the fact that he never repented. His story is recorded in our sources such as ‘Izz al-Din Ibn al-Athir, *Asad (Usd) al-Ghāba fī Ma‘rifat al-Ṣaḥāba*, (al-Qahira: al-Maktabah al-Ta‘awuniya, 1964) p.39 and Taqī al-Din Ibn Taymiyya, *Tafsīr Sūrat al-Nūr* (Bayrut: Dar al-Kutub al-‘Ilmiya, 1983) p.73.

We should not be accepting the hadith of a man whom God has exposed, basing discriminatory legal rules on it, just because our ancestors did, because that would be ancestor or scholar veneration as opposed to monotheism. In my opinion, any legal ruling based on this particular *ḥadīth* should be discarded, no matter how popular the ruling.

### **The Qur’ān on Sunna preeminence:**

In my view, the strongest statement in the Qur’ān against the use of contradictory *ḥadīth* is in Āli ‘Imrān (3:80) **“He does not command you to take up the angels and prophets as “Rabbis,” would he command you with infidelity after you have become Muslims?”** “Infidelity/*kufr*” is a very strong word, so we should pay close attention to what God is warning us against. The Arabic word *arbāb*, which I have translated as “Rabbis,” is the plural of *rabb*, the cognate of the Hebrew *rabb*, which is the basis for the English word “Rabbi.” A Rabbi is a highly trained expert in Jewish law, who outlines what is allowed and what is prohibited to the Jewish people. The term is also used among Aramaic-speaking Christians, whose language is very close to Arabic and Hebrew, and belongs to the same group of languages: the Semitic languages. In the Qur’ān, the term is often used in conjunction with Jews and Christians, which further indicates that the *arbāb* are the Jewish Rabbis or people of a similar function. For example, in Surat al-Tawbah (9:30), God criticizes Jews and Christians for taking up their monks, scribes, and Jesus (pbuh) as *arbāb* other than God, whereas they were commanded to worship only one God. In his commentary on this verse, the popular Ibn Kathīr reports an incidence in which ‘Adī ibn Ḥātim al-Ṭā‘ī, a Christian in pre-Islamic times, came upon the prophet as he was reciting this verse and the Christian responded that they did not worship them. The prophet is reported to have answered that they let them prohibit what was divinely allowed (*ḥalāl*) and allow what was divinely prohibited (*ḥarām*) and that they followed them in this and that was their worship of them.

In light of the above, we should not be basing legal rulings on *ḥadīth* that are unsupported by the Qur’ān and that are in direct contradiction to it, for if we do, we would be making a Rabbi of our prophet, assuming he did indeed utter those *hadīth*. A good example to follow is the prophet and he taught that we have only one *rabb*: God. Other verses that support the above statements include (18:110; 33:21; 10:36)

### **The apologetics of discrimination against women: the *fitnah* argument**

In order to explain the discrimination against women, Traditionists like to use the *fitnah* argument: women are a temptation to men, will arouse unseemly feelings of attraction and so distract men from concentrating on their prayers or otherwise. To bolster their argument, they like to quote a tradition attributed to the prophet, that “I have not left behind me a *fitnah* (trial/testing) more harmful to men than women.” (Bukhārī 4706) In spite of its popularity and its numerous chains of transmission in the various books, this tradition is not a strong one, whether in content or transmission, because it runs contrary to the Qur’ān and all the chains of transmission run through a single individual, Sulaymān al-Taymī (d.143/760) (Juynboll). Not much is known about this individual, and I have had trouble finding him in biographical sources other than ‘Asqalānī’s, *tahdhīb*, 4:201-2. Sulaymān’s *ḥadīth* is invariably taken to have sexual connotations, so that women are portrayed as being temptresses leading men into fornication, therefore necessitating segregation and oppression in order to protect men from harmful contact.

In order to compare the *ḥadīth*’s content with the Qur’ān, we need to look at the numerous occurrences of the word *fitnah*, which interestingly, never occur in connection with women. The term appears as a kind of test of faith, which believers need to undergo, to attain salvation. It can be some form of hardship or oppression. On the other hand, the concept of women as sexual temptresses was quite prevalent in the environment in which Islam arose, which makes the absence of the concept quite distinctive of Qur’ānic discourse. If one should apply the Qur’ānic meaning of *fitnah* to women, then the test of women is not in their sexual attractiveness to men, but in their victimization by men. The meaning of the *ḥadīth* would be, that the prophet does not leave behind a test of faith more harmful to men than the oppression of women.

The wisdom of God in not affirming the view of women as sexual temptresses can be noted in the **destructive consequences** this concept has had on women, boys and Muslim society in general, in particular during the ‘Abbāsīd age. The negative view of women went hand in hand with segregation,

seclusion and the spread of homoerotic sentiment, especially towards boys. For example, in his in *Mufakharāt al-Jawārī wa al-ghilmān* the famous writer al-Jāhīz (d.868 or 9) presents a dialogue between a sodomite and a fornicator: the first arguing for boys and the latter arguing for women. In this dialogue, the sodomite quotes the above-mentioned *ḥadīth*: “I have not left behind me a *fitnah* more harmful to men than women” in defense of his preference of boys (al-Jāhīz, 20-25). Al-Jāhīz does not tell us the identity of the sodomite, but he does quote some homoerotic poetry by some of the leading poets of his time, one of whom is al-Nazzām, his own teacher and a leading Mu’tazilite theologian.

Homoerotic sentiment was not confined to poets. For example, when Zubayda, wife of the caliph Hārūn al-Rashīd and mother of the future caliph, al-Amīn, wanted to wean her son off his love for boys, she presented him with masculine-looking slave girls, dressed up as boys. Masculine-looking girls, *ghulāmiyyāt*, became the fashion and the epitome of beauty, so that exceptionally beautiful slave girls were described as *ghulāmiyya*.

Homoerotic sentiment is also evident in religious writings, such as in the works of Ibn al-Jawzī (d.1200), one of the most prolific writers and a leading Ḥanbalite preacher prior to the Mongol invasion in 1258. This eminent scholar presents the Ḥanbalite view: Any man who denies homoerotic sentiment is either a liar or is an uncouth animal (Ibn al-Jawzī, *Dhamm*, 192-3). Interestingly, none of his Hanbalite colleagues refuted Ibn al-Jawzī’s statement. Hardly surprising, if they thought that merely looking at a woman would land a man in hell (*Dhamm* 192-3). On the other hand, on the authority of Abū Hurayrah, a Sodomite would only go to hell if he did not repent (*Dhamm*, 28). It is the writings of this age and people like Ibn al-Jawzī that inform much of contemporary religious discourse on gender relations. For example, Ibn al-Jawzī’s books, especially *Aḥkām al-Nisā’* (Legal Rules of Women), are still published and widely read today. Faṭimah Mernissī has noted his *Aḥkām*’s proliferation and that “with Ibn al-Jawzī, the imprisoning dimension of *hijāb* goes beyond all bounds” (Mernissī, 98). We need to ask ourselves, whether we would not do better to consult the Qur’ān for a more Islamic view on gender relations as opposed to Ibn al-Jawzī. We should be concerned not to repeat the mistakes of our ancestors and conditions prior to the Mongol invasion in 1258, since God “does not change the situation of a people unless they change what is in themselves.” (Qur’ān 8:53; 13:11)

### **My view on Sunna:**

In my view the prophet is a good role model, and the best record of his example is the Qur’ān. For example in Sūrat al-Mujādalah, the prophet listened to and discussed with the woman who was arguing with him. God heard her words and supported her. The woman’s efforts resulted in the undoing of an injustice that women had been suffering from for ages. Argument was the tool for women to regain their rights and the prophetic example was to discuss. Unfortunately many of today’s imams and other leaders brook no argument with their opinions, which goes against the prophetic example and allows injustices to continue, recalling pharaoh’s stance of “I am the big Rabbi” (Qur’an 79:24).

As for the prophetic traditions, any *ḥadīth* that agree with the Qur’ān are acceptable and can be used for educational purposes, such as reinforcing Qur’ānic teachings. However, any *ḥadīth* that run contrary to the Qur’ān should be rejected, in addition to any legal rulings that derive from them, such as the prohibition against female leadership.

Also, if we note contradictions between two groups of *ḥadīth*, then we should resort to the Qur’ān to resolve the dispute, since the prophet would not knowingly have said anything contrary to the Qur’ān. For example, in the case of women praying in front of men, there are two groups of contradictory *ḥadīth* (Reda,86-93). In my view the *ḥadīth* group that run contrary to the Qur’ān should be rejected and we should not be making attempts to harmonize between them and the *ḥadīth* that they oppose, so that we may retain these oppressive *ḥadīth* and the legal rulings derived from them. For example, scholars attempted to harmonize between the *ḥadīth* that affirmed the legality of women praying in front of men and the *ḥadīth* that claimed otherwise, by assigning the former to the additional *taṭawwu’* prayers only (‘Asqalānī, 1:104).

## Should the Qur'ān overrule the Sunna or should the Sunna overrule the Qur'ān?: Ancient roots of a modern debate

Historically, during the reign of 'Umar ibn al-Khaṭṭāb, the caliph considered gathering the sayings of the prophet and recording them, but decided against it, due to his concern that people may neglect the Qur'ān. He was known to discipline and even imprison persons who reported what they heard from the prophet. On the other hand, the Umayyads had no such compunctions and towards the end of their empire, *ḥadīth* had become a discipline in its own right, competing with the discipline of jurisprudence (*fiqh*) for authority over legal and theological matters.

The earliest **major controversy** between Traditionists and Jurists was over the definition of belief, whether it included deeds or whether belief was simply affirmation. This definition had enormous legal repercussions: If deeds were part of belief, then a grave sinner such as an adulterer could be declared an infidel, in which case his life, family and possessions were forfeit. Abū Ḥanīfa (d.767), the leading jurist of his time, argued that belief consisted only of affirmation, and relied heavily on the Qur'ān for his arguments, thereby protecting the rights of major sinners. His opponents relied on the ḥadīth "An adulterer is not a believer while he is committing adultery ..." using chains of transmission going all the way back to the prophet to bolster their authority (Abū Ḥanīfa, 33, 39, 43, 99-102). Abū Ḥanīfa refuted this tradition in spite of its chains of transmission (*isnād*), arguing that it conflicted with the Qur'ān (4:16) and using Qur'ān (69: 44 ff.) to argue that the prophet would never have said anything contrary to the Qur'ān. Abū Ḥanīfa's definition of belief is to be found in all the Hanafī creeds, such as *al-Fiqh al-Akbar*. In contrast, the traditionist definition of belief is to be found in the Ḥanbalite creed recorded in *Ṭabaqāt al-Ḥanābilah*, indicating that Abū Ḥanīfa's opponents were proto-Ḥanbalites. The "adulterer" tradition is well known: It was reported by Abū Hurayra via several chains of transmission and is to be found in all the major books of tradition which arose in Ḥanbalite circles: Bukharī, Muslim, Drāmī, Abū Dāwūd, Tirmidhī, Ibn Mājah, Nasā'ī, and Musnad Aḥmad ibn Ḥanbal, but is not to be found in the only book that did not arise in these circles: the Muwaṭa' of Anas ibn Malik.

Interestingly, Traditionists responded to Abū Ḥanīfa's Qur'ānic challenge by coming up with further *ḥadīth* that undermined the use of Qur'ān to refute their *ḥadīth*: "Whosoever interprets the Qur'ān using their own opinion (*ra'y*) can take their seat in the fires of hell." Abū Ḥanīfa's group were known as *ahl al-ra'y*, i.e. people who used their opinion. In the long run, Traditionists prevailed, since they received the support of the 'Abbasid caliphs starting with al-Mutawakkil. Many of their ideas on Qur'ān and Sunna were adopted by subsequent generations of *ahl al-ra'y*, although receiving occasional challenges.

The controversy between Traditionists (*ahl al-ḥadīth*) and Jurists (*ahl al-ra'y*) resurfaced in **modern times**, with the Egyptian Muhammad al-Ghazālī's book *al-sunna al-nabawiyya bayna ahl al-fiqh wa ahl al-ḥadīth*, in which he criticized Traditionists' lack of adequate criticism of *ḥadīth* contents (*matn*), in favour of transmission *isnād*. He pointed out that disagreements among Muslims were all centered on *ḥadīth* that had single chains of transmission, and argued for using *matn* criticism to refute them.

In response, the International Institute of Islamic Thought in Herndon, Virginia, commissioned Qaradāwī, to respond to Ghazālī: Qaradāwī defended the Sunna, however proposed interpreting the Sunna in light of the Qur'ān. But when it came to Muslim women reclaiming their rights to lead congregational prayers, Qaradāwī failed miserably: He used the "*fitnah*" argument in the sexual sense and otherwise, to prohibit women from leading congregational prayers, stating that "it does not befit a woman, whose structure of physique naturally arouses instincts in men, to lead men in Prayer and stand in front of them, for this may divert the men's attention from concentrating in the Prayer and the spiritual atmosphere required. ....

Hence, it is to avoid the stirring the instincts of men that the Shari'ah dictates that only men can call for Prayer and lead people in the Prayer, and that women's rows in Prayer be behind the men."

(<http://www.islamonline.net/fatwaapplication/english/display.asp?hFatwaID=122751>). He would have done better to interpret women's "*fitnah*" in light of the Qur'ān, which does not include sexual connotations, but includes oppression. In this particular *fatwā* (legal opinion), he relies on another prophetic tradition and again fails to interpret it in light of the Qur'ān. He translates: "The women's best rows (in Prayer) are the last ones, and the worst of theirs are the first ones, while the men's best rows (in Prayer) are the first ones and the worst of theirs are the last ones," inserting "(in prayer)" into the text. The original Arabic does not contain "in prayer" and there is no indication in the Arabic text of the *ḥadīth*, that the rows in question have anything to do with prayers. In fact, it is more likely that the *ḥadīth* is talking

about battle rows, since interpreting it to mean prayer rows is in conflict with the Qur’ān (9: 71; 3:43), which indicate togetherness in prayer for men and women (Reda, 82ff). Moreover, in the Qur’ān “row” (*ṣaff*) appears in connection with battle rows and never with prayer rows (al-ṣaff 61: 4).

### **On methodology and the debate over women Imams:**

Recently in North America I wrote a paper arguing for women Imāms, which resulted in responses to the contrary, some of which were very well written. In my view the efforts to discuss contentious issues in a civilized and intelligent manner should be encouraged. The most widely circulated of the responses are the papers of Hina Azam and Zaid Shākir, both of whom argued for the traditional position. Abū Bakrah’s *ḥadīth*, the legal basis in traditional methodology, seems to be absent in their papers. I wonder if they are unaware of the basis of traditional opinion, or just too embarrassed to defend it. There are several other points that were unclear in their papers:

- 1- On what kind of evidence do they base their prohibition of women Imāms? Is it merely on the intellectual produce of past and present human beings, or can they back up their position with the Qur’ān?
- 2- On what primary evidence do they base their position? They have not managed to present any primary evidence to support the prohibition and have not even reiterated the primary evidence of medieval scholars: Abū Bakrah’s *ḥadīth*. By primary evidence, I mean evidence from the four primary sources of Islamic law: Qur’ān, Sunna, Ijmā’ and Qiyās.
- 3- Why do they consider Abū Bakrah’s *ḥadīth* authoritative, if indeed they do so?
- 4- Why do they think it is acceptable to give *Sunna*, *Ijmā’* or *Qiyās* the authority to overrule the Qur’ān, as has traditionally occurred, if indeed they think this acceptable?
- 5- Why do they consider it preferable for men to develop desires towards other men than towards women, if indeed they think this preferable? Human beings, especially in their adolescence years, are beset by hormones and develop desires. In the absence of women, young men’s desires could become oriented towards other men. Do they think this a suitable situation for a mosque environment? Whereas the prophetic tradition has ways of dealing with desires towards women, such as marriage or fasting, the orientation of desire towards men is much harder to deal with. Desire towards women results in positive consequences for the individual and the community, since marriage or fasting are both positive, but whether desire towards other men can result in religiously positive consequences is unclear.
- 6- Why do they consider the prophet’s directions of marriage or fasting, ineffective to deal with desire towards women, if indeed they think them ineffective? The tradition can be found in ‘Asqalānī’s *Fath al-Bārī* vol.9, 67- *kitab al-nikāḥ*, no.5060 and in *ṣaḥīḥ Muslim*, 16-*kitāb al-nikāḥ* no.10.

### **II-Example for the consensus of a male scholarly elite overruling the Qur’ān: The removal of the primary condition of polygamy**

The Qur’ān stipulates several conditions for polygamy, of which the primary condition is: “If you fear that you may not deal justly with the *yatāma* ....” (al-Nisa’ 4:3). There is no disagreement among medieval male scholars that this condition exists in the Qur’ān, yet they drop it, citing their own consensus, since they all agreed to the drop. The term used was *sāqit bi-al-ijmā’*, which means “**dropped by consensus**.” (Ibn al-‘Arabī, 1:310).

In my view, this condition is a limitation placed on polygamy, and dropping this limitation is in violation of the Qur’ānic injunction of transgressing his limits such as in “... these are the limits placed by God, so do not transgress them, and whosoever transgresses them, these are the unjust ones.” Al-Baqarah (2:229)

The commentaries on this verse indicate three additional methods at play for revoking the Qur’ānic ruling:

- 1- **The substitution of a juridical (*fiqhī*) meaning for the original meaning of the word.**  
The best method to research the original meaning of a Qur’ānic term is to look at other occurrences in the Qur’ān and in texts that are contemporaneous or close in time to the Qur’ān, such as pre-Islamic or even Umayyad poetry. The use of poetry to investigate the meaning of Qur’ānic words is well known; some of the earliest interpreters used that method, such as Ibn ‘Abbās, and the poetry is often referred to as witnesses (*shawāhid*).

For the word *yatāma*, scholars declared the juridical meaning “fatherless children,” whereas there is evidence from both the Qur’ān (4: 127) and poetry, that *yatāma* includes the widows of the deceased men. The poetry can be found in Jaṣṣāṣ’ commentary on verse 2:220 in *Aḥkām al-Qur’ān*: The graves have marital relations with the single ones: the women: the widows: the *yatāma*. Interestingly, for this particular verse (al-Nisā’ 4:3), scholars changed the meaning of *yatāma* even more: they excluded the fatherless little boys and considered it to refer to the little girls alone.

- 2- **Writing off the Qur’ānic wording as ambiguous or unintelligible.** For example, Qurtubī considers the primary condition to be unintelligible (*laysa lahu maḥmūm*), arguing on the basis of consensus, that a Muslim who does not fear committing an injustice against *yatāma* also has the right to marry up to four women (Qurtubī, 5:13). In my view, the Qur’ānic verse is quite clear; the ambiguity arises when attempting to impose meanings that just don’t fit the text.
- 3- **The use of the exception-general argument (*khāṣ-‘ām*).** For example Qurtubī considers the verse to have been revealed in connection with a man who fears injustice to fatherless children, but that its’ ruling is more “general”. In this instant the “general” qualification serves to remove one of the limits God has placed on polygamy. I have been unable to find any Qur’anic support for the exception-general qualification; on the contrary, the Qur’an describes its verses as well crafted or perfected (11:1). The exception-general terminology does not qualify the Qur’anic verses themselves, but seems to describe a particular method scholars used to counter evidence contrary to rulings they wished to impose. The Umm Waraqa tradition, which portrayed the prophet commanding a woman to lead congregational prayers, was dealt with in a similar fashion: Imams declared it an “exception,” and continued to claim that the prophet “never” allowed women to lead men in prayers.

### **The Qur’ān on Consensus:**

The use of the consensus of a male scholarly elite to overrule the Qur’ān runs contrary to the Qur’ān for the following reasons:

1-There are only four occurrences of “consensus” in the Qur’ān and they all portray it negatively and contrast it with the lone individual who is on the right path and whom the consensus is attempting to “bully.” Consensus/*Ijmā’* is the infinitive of the fourth form of the root *j-m-’*. Two of the four occurrences of this form are in connection with Joseph’s brothers, who came to a consensus among themselves to throw him into the well (12:15, 102). The third occurrence is in connection with Pharaoh’s magicians, who are contrasted with Moses (20:64). The fourth occurrence is with Noah’s people, who opposed Noah (10:71). In these examples, it doesn’t matter whether the persons coming to a consensus were Muslim or non-Muslim: the Qur’ān not only portrays Joseph’s brothers as Muslims (2:133), but even as the immediate offspring of prophets.

2-The distinctive Islamic monotheism does not include the taking up of a Rabbinic-like religious elite. For example, Sūrat al-An‘ām (3:64) defines Muslims as those who do not take up “Rabbis” other than God: “O people of the book, let us come to a common word between us and you, that we do not worship other than God, that we do not ascribe partners to him, and that we do not take up from among ourselves Rabbis (*arbāb*) other than God; if they turn away, then say: Bear witness that we are Muslim.”

This distinctive concept of monotheism is also affirmed by verse 9:30 and others (See above).

### **III-Example for *Qiyās* (Reasoning by Analogy) overruling the Qur’ān: the *hudūd* laws**

In the Qur’an, 24:4, the punishment of those accusing women of adultery without bringing four witnesses is decreed. Noteworthy is the use of the grammatical female plural, which does not include men, meaning that the issue at stake is the protection of women, not men. However, by means of analogy, men applied this protection to themselves as well: anybody accusing men of adultery without bringing four witnesses is to be similarly punished.

The wisdom of God in singling out women alone can be noted in how its application to men affected women’s rights in rape cases and even served to revoke the original ruling protecting women. In Pakistan’s *hudūd* laws, women accusing men of rape and who cannot come up with four witnesses to the actual act, can be thrown in prison while the men go free. To the best of my knowledge, in Iran women could even be

stoned. The women are considered to be confessing to adultery and receive the punishment of adulteresses, even though they are claiming rape and not adultery. This goes against the original Qur'ānic verse, which protects those women and punishes their accusers. In this case the ruling derived by analogy overruled the original verse: as opposed to punishing the women's judges for claiming they committed adultery without four witnesses, the women are punished and their judges go free.

We really need to ask ourselves, whether by promoting this so-called "Sharī'a" law under the appellation "Divine" or "Islamic," as has occurred in the Canadian context and elsewhere, we are not actually doing our faith a disservice? In Canada, some Muslims recognized the problems associated with this law and were successful in preventing its legalization under the arbitration act of the province of Ontario. On the other hand, promoters of this law retaliated with accusations of "kufr" and other forms of verbal abuse, resulting in a polarization of the Muslim community of Toronto. I don't think that promoters of this law were ignorant, since many of them were highly educated and dedicated Muslims, but rather, what was missing in the Canadian experience was internal dialogue, such as panel discussions in our mosques. Unfortunately, accusations of "kufr" and a rigid stance make internal dialogue very difficult. In the aftermath of faith-based arbitration, the Canadian Council of Muslim Women agreed to a web-discussion forum, in an attempt to further internal dialogue, however, the bulk of faith-based arbitration supporters refrained from participating in it.

### **Conclusion:**

In light of the above, there are serious flaws in the foundational principles of surviving "Islamic" law, in particular in the relationship of the three non-Qur'ānic sources to the Qur'ān, since there exist cases in which the three principles serve to revoke Qur'ānic injunctions. In the first of the above cases, the injunction of rejecting a slanderer's testimony was revoked (24:4), since Abū Bakrah's testimony was accepted and formed the base for subsequent legal rulings. In the second case the primary condition for polygamy was removed (4:3), thereby opening the door for unions that do not comply with the Qur'ānic guidelines. In the third case the punishment for slandering women was rescinded, since those sentencing rape victims as if they were adulteresses went unpunished (24:4). In my view, this discrepancy warrants a re-evaluation and a comparison of our inherited laws with the Qur'ān, retaining laws that are consistent with the Qur'ān and rejecting laws opposing it. A constant comparison of accepted practices and the Qur'ānic guidelines is the responsibility of each and every Muslim, since our distinctive monotheism does not include setting up a religious authoritative elite to do our thinking for us. This monotheism has benefited us, as well as others, in the past, and is our hope for the future. The Qur'ān describes it as a process of enlivenment, whereby individuals learn to use their own powers of perception: seeing, hearing and thinking, as opposed to boxing themselves into a humanly produced, cultic framework. Faith is at the heart and mind of an individual and when the heart and mind come alive, it can reflect on every aspect of our lives, whether socially, economically, technologically or otherwise. In my view, this enlivenment was a primary factor for the appearance of Islamicate civilization with its enormous accomplishment in almost every field of human endeavour.

Interestingly, the impact of the Qur'an and Islamic monotheism was not limited to the Islamic world, but may have contributed quite substantially to the appearance of Western civilization: The German Martin Luther initiated the Protestant movement, which was instrumental in getting Europe out of the Middle Ages and the domination of the Church. He revitalized Christianity paralleling Islamic monotheistic ideas, a resemblance that did not go unnoticed by his Catholic opponents. The act of going back to the original Biblical text, reflecting on it and giving it authority over and above that of the Church Fathers and Catholic priests, whereby individuals are conditioned to think as opposed to shutting out their own thinking processes, parallels Islamic monotheism as it is described in the Qur'ān. Luther's movement also reflected on the Catholic Church, which then underwent a counter reformation. Judaism was similarly enriched through contact with the Qur'ān and Islamic monotheistic ideas. This can be noted in the medieval Karaite movement and in the work of the influential, nineteenth century Rabbi, Abraham Geiger, who pioneered the new historically oriented study of the Jewish religion and people.

Noteworthy, the Qur'ān refers to the testing of this monotheistic, Islamic belief is referred to as *fitnah*. Unfortunately, some Muslims have confused the Islamic belief with the oppression of women, denouncing women's struggle for the right of prayer leadership as *fitnah*, in an attempt to silence women from claiming

their rights. These Traditionists are in contrast to the prophet, who discussed with the woman arguing with him and did not attempt to silence her by accusing her of *fitnah*. The real test is in whether we will learn to put God's guidance first, as opposed to the pronouncements of our scholars and our inherited traditions.

Nevin Reda

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<sup>i</sup> This expression is also to be found in John Burton’s *The Collection of the Qur‘ān*. (Cambridge: Cambridge University Press, 1977), 18. Burton cites Abū Bakr Muḥammad ibn Musa ibn ‘Uthmān ibn Ḥāzīm al-Hamḍānī, *Kitab al-i‘tibār fi al-nāsikh wa al-mansūkh min al-āthār*. (Haidarabad, 1319), 25. Qaradāwī cites Shawkani’s *Irshād al-fuḥūl*, (Muṣṭafā al-Ḥalabī).<sup>33</sup> and Ibn ‘Abd al-Barr’s *Jāmi‘* (Bayrūt, copied from the Munīriyya) (2:192).