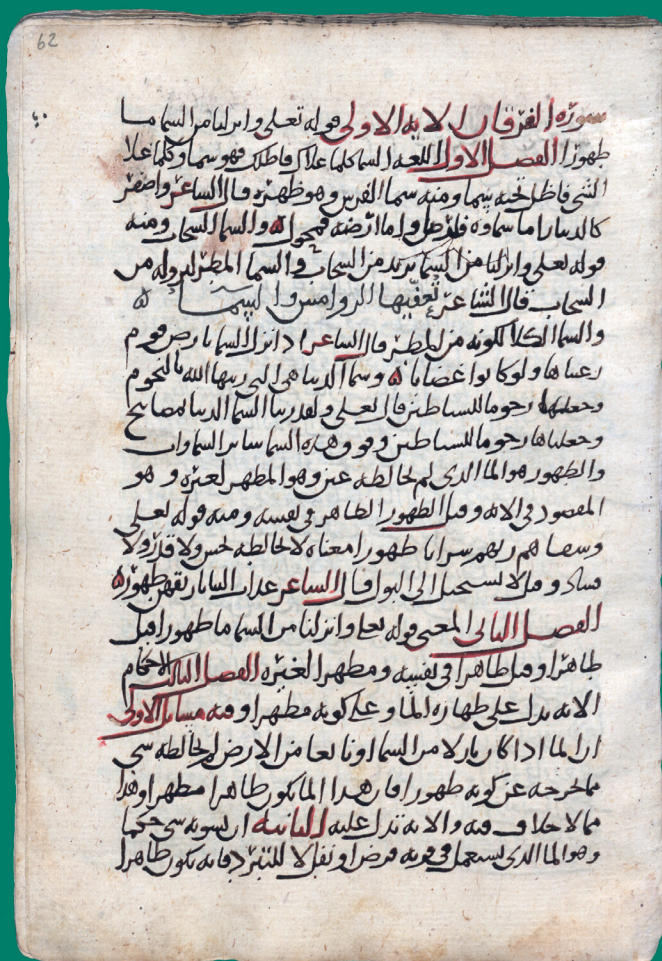


The Form and Function of Legal Qur'ān Commentaries

INSIGHTS FROM A YEMENI ZAYDĪ TAFSĪR



SCOTT C. LUCAS

BRILL

The Form and Function of Legal Qurʾān Commentaries

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Insights from a Yemeni Zaydī Tafsīr

By

Scott C. Lucas



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Cover illustration: ms Milan, Biblioteca Ambrosiana, Nuovo Fondo, ar. A6, fol. 62^r. Muḥammad b. al-Hādī, *al-Rawḍa wa l-ghadīr* (The Garden and the Pool), in the author's handwriting, opening commentary on Sūrat al-Furqān (25), verse 48.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

For Ali and Salma



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- 3 MS Milan, Biblioteca Ambrosiana, Nuovo Fondo, ar. A6, fol. 89^r. © Veneranda Biblioteca Ambrosiana 128
- 4 MS Milan, Biblioteca Ambrosiana, Nuovo Fondo, ar. A6, fol. 88^v. © Veneranda Biblioteca Ambrosiana 129

Abbreviations

<i>al-Rawḍa</i> , Maktabat Ahl al-Bayt	Muḥammad b. al-Hādī, <i>al-Mukhtār min Kitāb al-Rawḍa wa-l-ghadīr fī bayān mā taḥtājuhu l-āyāt al-sharʿiyya min al-tafsīr</i> (Saʿda 2024). Available online at: https://ziydia.com/Book/755
<i>al-Rawḍa</i> , YMDI	Muḥammad b. al-Hādī, <i>al-Rawḍa wa-l-ghadīr</i> , MS YMDI_03_76, available online at: https://catalog.princeton.edu/catalog/9978494053506421
EI	<i>Encyclopaedia of Islam</i> , Brill Online References
al-Shahārī, <i>Ṭabaqāt</i>	Ibrāhīm b. al-Qāsim al-Shahārī, <i>Ṭabaqāt al-Zaydiyya al-kubrā: al-qism al-thālith</i> , 3 vols. (2001)
<i>Sharḥ al-Qāḍī Zayd</i>	al-Qāḍī Zayd b. Muḥammad al-Kalārī, <i>al-Jāmiʿ fī l-sharḥ</i> , an unpublished commentary on Abū Ṭālib al-Hārūnī's <i>al-Taḥrīr</i>
<i>Shifāʾ al-uwām</i>	al-Ḥusayn b. Muḥammad Badr al-Dīn, <i>Shifāʾ al-uwām</i> , 3 vols. (2022), available online at: https://ziydia.com/Book/523
SMIIT	Hassan Ansari and Sabine Schmidtke. <i>Studies of Medieval Islamic Intellectual Traditions</i> (2017)
<i>al-Tahdhīb</i>	al-Ḥākim al-Jishumī, <i>al-Tahdhīb fī l-tafsīr</i> , ed. ʿAbd al-Raḥmān al-Sālimī 10 vols. (2019)
<i>al-Thamarāt</i>	Yūsuf b. Aḥmad al-Faqīh, <i>Tafsīr al-Thamarāt al-yāniʿa</i> , 5 vols. (2002)
<i>The Commentary on 500 Verses</i>	ʿAbd Allāh b. Muḥammad al-Najrī, <i>Shāfiʿ al-ʿatīl fī sharḥ al-khamsamīʿat āya min al-tanzīl</i> , ed. Aḥmad al-Shāmī, 2 vols. (1986)
<i>The Garden and the Pool</i>	Muḥammad b. al-Hādī, <i>al-Rawḍa wa-l-ghadīr</i>
<i>The Ripe Fruits</i>	Yūsuf b. Aḥmad al-Faqīh, <i>Tafsīr al-Thamarāt al-yāniʿa</i>
al-Wajīh, <i>Aʿlām</i>	ʿAbd al-Salām al-Wajīh, <i>Aʿlām al-muʿallifīn al-Zaydiyya</i> , Second edition, 2 vols. (2018)

Introduction

Islam was to bring the true and uncorrupted divine guidance to all mankind, creating a world-wide society in which the true revelation would be the everyday norm of all nations.

MARSHALL HODGSON, *The Venture of Islam*, vol. 1, p. 317

• • •

Fiqh, as we shall see, was never a finished business.

BERNARD WEISS, *The Spirit of Islamic Law*, p. xii

• •

Islam, like most world religions, commands its adherents to donate alms to needy people. This simple imperative raises multiple questions. Who has to give alms? How much do they have to give? Are alms due on livestock or just gold and silver? Are they due on earnings or accumulated wealth? Who is eligible to receive alms?

The most accessible literary sources for answers to all these questions are the concise textbooks that lie at the heart of the curriculum of every school (*madhhab*) of Islamic law. These textbooks record hundreds and even thousands of legal opinions in carefully arranged chapters, beginning with ritual purity and prayer, and ending with a range of social transactions. In order to keep these books to a manageable and memorizable length, their authors generally eschewed providing scriptural evidence in support of the numerous rulings they detail. The reader of these works is confronted with the solutions to thousands of cases, written in terse Arabic prose, yet seemingly disconnected from the divinely revealed sources of the Qurʾān and the Prophet Muḥammad's teachings, called the Sunna.

By contrast, the most difficult source for answers to these questions is the Qurʾān. Even with the help of a concordance or online search engine, the questioner is going to be frustrated in her attempts to answer nearly all the questions regarding alms I just enumerated. In fact, the only question for which she will find concrete answers in the Qurʾān is the final one, regarding who is eligible to receive alms. In Sūra 9, verse 60, the Qurʾān says:

The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be won over, and to free the slaves and the debtors, and for the cause of God, and the wayfarer. This is an ordinance of God. God is All-Knowing, All-Wise.

This Qur'ānic verse appears to identify eight categories of eligible recipients of alms. However, its language raises a whole new set of questions. For example, the Arabic word for alms in this verse is *ṣadaqāt*, which is the term typically used for voluntary alms, but the verse also has the word *farīḍa* ("an ordinance"), which implies obligation. Does this verse apply to voluntary alms, obligatory alms, or both? What is the difference between "the poor" (*fuqarā'*) and "the needy" (*masākīn*)? Who are "those whose hearts are to be reconciled?" What exactly qualifies as being "for the cause of God?" Do wayfarers have to be poor or needy to receive alms? And finally, this entire statement is declarative rather than imperative, so must these categories be scrupulously observed, or are they merely suggestions?

Our intrepid questioner has three types of textual sources for answering this second set of questions. She may turn to the legal textbooks, which will shed light on most, if not all, of these topics. A second option is for her to consult the large library of general Qur'ān commentaries for insight into debates over the meanings and implications of these words. Or, she may turn to a very small genre of Qur'ān commentaries that focus exclusively upon the legal passages of the Qur'ān. These works, typically called *aḥkām al-Qur'ān* in Arabic, are highly useful for both identifying and elucidating the legal passages of the Qur'ān, which are termed *āyāt al-aḥkām*. Their authors also tend to record the disagreements among famous Muslim jurists and their schools over the legal implications of these verses, along with debates between linguists and exegetes over the meanings of specific words, such as "poor" and "needy," as well as the occasions for the revelation of these verses.

The genre of legal Qur'ān commentaries is relatively small and almost entirely neglected in the Western discipline of Islamic Studies.¹ Ignaz Goldziher (1850–1921) did not identify legal commentaries as a genre of Qur'ānic exegesis in his influential 1920 book, *Die Richtungen der islamischen Koranauslegung*.²

1 The most extensive published list of titles of legal Qur'ān commentaries I have found in English is Ahmad Al-Saiid Hemeidah's short entry on "Exegesis" in the *Oxford Encyclopedia of the Islamic World: Digital Collection*, edited by John Esposito (2022). Hemeidah lists twenty-one published works in this genre in chronological order from all schools of Islamic law, save the Ismā'īlīs.

2 This oversight is noted explicitly by the Arabic translator of Goldziher's book in his introduc-

The recently published *Oxford Handbook of Qur'ānic Studies* did not devote a single one of its 57 chapters to the topic of legal Qur'ān commentaries, and one of its contributors even wrote that “there is no real overlap between the genres of [Qur'ān commentary] and law.”³ This situation is surprising, given that multiple premodern Sunnī, Twelver Shī'ī, and Zaydī scholars composed legal Qur'ān commentaries, along with several modern Muslim thinkers, like Muḥammad Ṣiddīq Ḥasan (1832–1890), the Nawwāb of Bhopal, and a contemporary professor, Ilyās Dardūr, at Zaytūna University in Tunis.⁴ Even if we restrict the genre of legal Qur'ān commentaries to books that limit their exegesis to legal passages of the Qur'ān,⁵ there are famous works that long have been in print, such as the Ḥanafī jurist Abū Bakr al-Jaṣṣāṣ' (d. 370/981) *Aḥkām al-Qur'ān* (Laws of the Qur'ān) and the Mālikī jurist from Seville, Abū Bakr Ibn al-'Arabī's (d. 543/1148) work with the identical title.⁶ Twelver Shī'ī jurists Quṭb al-Dīn Sa'īd b. Hibat Allāh al-Rāwandī (d. 573/1177) and al-Miqdād al-Suyūrī (d. 826/1423) also composed legal Qur'ānic commentaries that have been published, although unlike the books of Sunnī exegetes, which follow the sequence of the sūras of the

tion; see 'Abd al-Ḥalīm al-Najjār, *Madhāhib al-tafsīr al-Islāmī li-l-'ālim al-mustashriq Ignaz Goldziher* (Beirut: Dār Iqra', 1983), ٣. Goldziher's influential book was translated into English by Wolfgang Behn as *Schools of Koranic Commentators* (Wiesbaden: Harrassowitz Verlag, 2006). The “schools of *tafsīr*” that he identified were grammatical, doctrinal, mystical, sectarian, and modern; Ignaz Goldziher, *Die Richtungen der islamischen Koranauslegung* (Leiden: Brill, 1920). For a brief critique of these “modes” of exegesis, see Walid Saleh, *The Formation of the Classical Tafsīr Tradition* (Boston: Brill, 2004), 17.

- 3 Johanna Pink, “Classical Qur'ānic Hermeneutics,” in *The Oxford Handbook of Qur'ānic Studies*, ed. Mustafa Shah and M.A.S. Abdel Haleem (Oxford: Oxford University Press, 2020), 820. Pink claims that there are “detailed cases studies” that support her assertion, but she only cites one, on Q 49:9, which is a verse I will discuss below in chapter 7.
- 4 Muḥammad Ṣiddīq Ḥasan, *Nayl al-marām min tafsīr āyāt al-aḥkām* (Cairo: Maktabat al-Tijāriyya, 1963 [1929]). Dr. Dardūr extracted 129 legal topics from Ibn 'Āshūr's (1879–1973) famous encyclopedic commentary, *Tafsīr al-Taḥrīr wa al-tanwīr*, during the 2020–2021 COVID pandemic and published them under the title *Rawā'ī' al-bayān fī tafsīr al-'allāma Muḥammad al-Tāhīr Ibn 'Āshūr li-āyāt al-aḥkām* (Beirut: Dār Ibn Ḥazm, 2021).
- 5 This criterion would exclude arguably the most famous book bearing the title *Aḥkām al-Qur'ān*, Abū 'Abd Allāh Muḥammad b. Aḥmad al-Qurṭubī's (d. 671/1272–1273) massive *al-Jāmi' li-aḥkām al-Qur'ān*, because it is an encyclopedic commentary that offers exegesis of nearly every verse of the Qur'ān, not only its passages of interest for Muslim jurists. According to Samuel Ross, al-Qurṭubī's commentary is the tenth most popular Qur'ān commentary in Islamic history, in terms of extant manuscript copies; see Samuel J. Ross, “What Were the Most Popular *tafsīrs* in Islamic History? Part 1: An Assessment of the Manuscript Record and the state of *tafsīr* Studies,” *Journal of Qur'anic Studies* 25.3 (2023), 21.
- 6 al-Jaṣṣāṣ's *Aḥkām al-Qur'ān* has received a thorough analysis in Arabic; see Ṣafwat Muṣṭafā Khalilūfīsh, *al-Imām Abū Bakr al-Rāzī al-Jaṣṣāṣ wa-manhajuhu fī l-tafsīr* (Cairo: Dār al-Salām, 2001).

Qurʾān, their books were arranged topically according to the standard arrangement of law (*fiqh*) books. However, to the best of my knowledge, none of these books has elicited sustained attention by Islamicists writing in European languages.

Nearly all the books I mentioned in the previous paragraph are included in Muḥammad Ḥusayn al-Dhahabī's (1915–1977) standard survey of Qurʾān commentaries, *al-Taḥfīṣ wa-l-mufasssīrūn* (Qurʾānic Commentary and the Commentators). Walid Saleh described al-Dhahabī's book as "the earliest and most influential survey of *taḥfīṣ* in the twentieth century" and noted that it originated as the author's 1946 dissertation for al-Azhar University in Cairo.⁷ Part Seven of al-Dhahabī's book is devoted to "the commentaries of the jurists," and in it he mentions a total of thirteen titles by adherents to the Ḥanafī, Shāfiʿī, Mālikī, Zaydī, and Twelver Shīʿī schools.⁸ He highlights six legal Qurʾān commentaries⁹ and is generally critical of what he describes as their "school fanaticism (*taʿaṣṣub*)" and inclusion of more jurisprudence than proper exegesis. Given the relatively small number of these books and their placement near the end of *al-Taḥfīṣ wa-l-mufasssīrūn*, alongside genres of *taḥfīṣ* affiliated with schools and movements al-Dhahabī finds distasteful, if not heretical,¹⁰ the reader is left with the impression that legal Qurʾān commentaries are an interesting but insignificant genre of Qurʾān commentary.

One region of the Muslim world that witnessed an unparalleled interest in the composition of legal Qurʾān commentaries was premodern Yemen. Most of these works were composed by adherents of the Zaydī school of law and theology, a small tradition of Shīʿism that flourished in the northern highlands of Yemen starting in the late third/ninth century. The initial work of this genre was composed by Sayyid Muḥammad b. al-Hādī b. Tāj al-Dīn (d. 720/1320), a

7 Walid Saleh, "Preliminary Remarks on the Historiography of *taḥfīṣ* in Arabic," *Journal of Qurʾānic Studies* 12 (2010): 6–40. Despite the importance of *al-Taḥfīṣ wa-l-mufasssīrūn*, Saleh provides a rather devastating critique of its shortcomings (p. 10). Muḥammad Ḥusayn al-Dhahabī served as the Minister of Religious Endowments in Egypt under President Anwar Sadat until he was kidnapped and murdered by the extremist movement al-Takfīr wa-l-Hijra.

8 Muḥammad al-Dhahabī, *al-Taḥfīṣ wa-l-mufasssīrūn*, 2 vols. (Cairo: Dār al-Kutub al-Ḥadītha, 1976): 2:432–473.

9 The six works he cites are al-Jaṣṣāṣ's *Aḥkām al-Qurʾān*, Abū Bakr Ibn al-ʿArabī's *Aḥkām al-Qurʾān*, Ilkiyā al-Harrāsī's *Aḥkām al-Qurʾān*, al-Qurṭubī's *al-Jāmiʿ li-ahkām al-Qurʾān*, al-Suyūṭī's *Kanz al-ʿirfān*, and the Zaydī Yūsuf b. Aḥmad's *al-Thamarāt al-yāniʿa*, a book we will be encountering in various places throughout my book.

10 al-Dhahabī wedges legal Qurʾān commentaries between sections on commentaries of the philosophers and premodern works that seek to derive all types of knowledge from the Qurʾān, like Abū Ḥāmid al-Ghazālī's *Jawāhir al-Qurʾān*.

thirteenth-generation descendant of the inaugural Zaydī Imam in Yemen and descendant of the Prophet Muḥammad, who titled his work *al-Rawḍa wa-l-ghadīr* (The Garden and the Pool) and restricted his commentary to 199 legal passages of the Qurʾān. This book in turn inspired Yūsuf b. Aḥmad “the Jurist” of Thulā (d. 832/1428) to compose a far longer commentary on hundreds of legal passages in the Qurʾān, titled *al-Thamarāt al-yāniʿa* (The Ripe Fruits). While Yūsuf the Jurist was composing his commentary in the northern highlands of Yemen, a Sunnī Shāfiʿī scholar named Muḥammad b. ʿAlī al-Mawziʿī (d. 825/1422) was composing his own work in this genre in the Yemeni lowlands, in his homeland of Mawzaʿ, under the thriving kingdom of the Rasūlids (r. 626–858/1229–1454).¹¹ Two additional major Zaydī scholars of this same time period, who were intellectual rivals, also produced lists (without commentary) of the legal passages of the Qurʾān that a master jurist (*mujtahid*) must know: Imam al-Mahdī, Aḥmad b. Yaḥyā, known as Ibn al-Murtaḍā (d. 840/1437), and Muḥammad b. Ibrāhīm, known as Ibn al-Wazīr (d. 840/1437).¹² Later during the ninth/fifteenth century, the Zaydī scholar ʿAbd Allāh b. Muḥammad al-Najrī (d. 877/1472) abridged Yūsuf the Jurist’s *The Ripe Fruits* into a single volume, which popularly became known as *The Commentary on 500 Verses*. Finally, in the eleventh/seventeenth century, a grandson of the powerful Zaydī Imam al-Manṣūr bi-llāh al-Qāsim b. Muḥammad (r. 1006–1029/1597–1620), named Muḥammad b. al-Ḥusayn (d. 1067/1656–1657), composed a commentary on Ibn al-Wazīr’s list of 239 legal Qurʾānic passages, titled *Muntahā al-marām fī sharḥ āyāt al-aḥkām* (The Utmost Desire for the Explanation of the Legal Verses).¹³

Why did Yemeni scholars produce such a disproportionate number of legal Qurʾān commentaries? While it would be premature to answer this question prior to a thorough analysis of the social and intellectual context of Rasūlid and post-Rasūlid Yemen, there can be little doubt that Zaydī scholars valued

11 Jamāl al-Dīn Ibn Nūr al-Dīn al-Mawziʿī, *Taysīr al-bayān fī aḥkām al-Qurʾān*, ed. ʿAbd al-Raḥmān al-Muʿallimī, 2 vols. (Beirut: Dār Ibn Ḥazm, 2021).

12 For Ibn al-Wazīr’s unpublished treatise, see Damaris Wilmers, *Beyond Schools* (Boston: Brill, 2018), 74–76. Digital images of it are available at <https://catalog.princeton.edu/catalog/9978495863506421#view> (pp. 264–273). Ibn al-Murtaḍā’s treatise, titled *al-Intiqād li-l-āyāt al-muʿtabara li-l-ijtihād* is found at the end of the *Muqaddima* to his legal encyclopedia, *Kitāb al-Baḥr al-zakḥkhār*, that has been published multiple times; Ibn al-Murtaḍā, *Muqaddimat Kitāb al-Baḥr al-zakḥkhār*, ed. al-Qāḍī ʿAbd Allāh al-Jarāfi (Sanaa: Dār al-Ḥikma al-Yamāniyya, 1988 [1947]), 238–308.

13 To his credit, al-Dhahabī mentions the legal commentaries of Yūsuf the Jurist, al-Najrī, and Muḥammad b. al-Ḥusayn b. al-Qāsim; *al-Tafsīr wa-l-mufasssīrūn*, 2:437. In his short section on Zaydī *tafsīr*, he only mentions Yūsuf the Jurist’s *al-Thamarāt al-yāniʿa* and al-Shawkānī’s *Fath al-qadīr*, the latter of which is almost entirely disconnected from the Zaydī *tafsīr* tradition; *ibid.*, 280–299.

this genre of writing. The fact that each of the six Yemeni scholars selected their own sets of legal passages of the Qurʾān, ranging from Muḥammad b. al-Hādī's 199 passages to Yūsuf the Jurist's 500-plus verses, indicates a wide degree of freedom and creativity in selecting which of the Qurʾān's approximately 6,200 verses should be engaged in a legal commentary.¹⁴ Two of these Yemeni Muslim scholars, Yūsuf the Jurist and al-Mawziʿī, included short surveys of legal theory in the introductions to their books, hinting at a close relationship between legal theory and legal Qurʾān commentaries, one which will become clearer in subsequent chapters of this book. Finally, the fact that three of these commentaries—*The Ripe Fruits*, *The Commentary on 500 Verses*, and *The Utmost Desire*—were the core Qurʾān commentaries in Imam Yaḥyā Ḥamīd al-Dīn's (r. 1918–1948) modern religious seminary, al-Madrasa al-ʿIlmiyya, in Sanaa, demonstrates that Zaydis' appreciation for legal Qurʾān commentaries endured for centuries after their composition in premodern Yemen.¹⁵

The goal of this book is to analyze the utility and value of legal Qurʾān commentaries for their jurist-authors, as well as uncover what they reveal about the relationship between the Qurʾān and the vast tradition of normative pluralism (*ikhṭilāf*) in Islamic law. Baber Johansen has argued that “normative pluralism within and between the schools of Islamic law” is directly connected to the fundamental Islamic principle that “human reasoning is a fallible but necessary tool for the implementation of the Islamic normativeness (*sharīʿa*).”¹⁶ The significance of normative pluralism in Islamic law was advanced in 1967 by Chafik Chehata and Jean-Paul Charnay, the latter of whom claimed that “*L'ikhṭilāf*

14 This range of legal passages in the Qurʾān can be contrasted to the Rabbinic Jewish tradition, whose scholars fixed the number of legal passages in the Torah to 613, 248 of which are positive commandments and 365 of which are negative commandments; see Maimonides, *The Commandments: Sefer Ha-Mitzvot of Maimonides*, trans. Charles B. Chavel, 2 vols. (New York: The Soncino Press, 1967), 1: viii–x. Chavel dates the idea of 613 commandments to Rabbi Simlai of fourth-century Palestine, although the first effort to fix them did not occur until ʿAbbāsīd/Gaonic period. Note that Maimonides (1138–1204) wrote this book in 1170 in Arabic with the title *Kitāb al-Farāʿid*, and that it was translated into Hebrew with the title *Sefer Ha-Mitzvot* three times during his lifetime (p. xv).

15 The information about the curriculum of al-Madrasa al-ʿIlmiyya is found in Ismāʿīl b. ʿAlī al-Akwaʿ, *al-Madāris al-Islāmiyya fi l-Yaman* (Sanaa: Manshūrāt Jāmiʿa Ṣanʿā, 1980), 288–289. I am grateful to Paul Dresch for donating this and many other valuable books on Yemen to the University of Arizona library at the end of his brief residency in Tucson.

16 Baber Johansen, *Contingency in a Sacred Law* (Leiden: Brill, 1999), 38–39. I adopt the expression “legal normative pluralism” for *ikhṭilāf* from Johansen, although he also glosses *ikhṭilāf* as “dissent” (p. 38). He also identifies the famous legal maxim *kullu mujtahid muṣīb* (Every *mujtahid* hits the mark) as a formula that supports the Muslim acceptance of the validity of opposing positions on numerous legal topics.

a joué un rôle de premier plan dans le développement de la pensée musulmane.¹⁷ Its centrality to al-Shāfiʿī's (d. 204/820) arguments in his famous *al-Risāla* was insightfully elucidated by Norman Calder in 1983, who linked *ikhtilāf* to the specialist knowledge of the jurists, all of whose decisions that were based on *ijtihād* (legal reasoning) were equally valid according to al-Shāfiʿī.¹⁸ Calder further argued that legal normative pluralism "established a kind of flexibility and tolerance" in the Muslim legal system, in contrast to the non-negotiable positions on which there was consensus, and that it "guaranteed the practical infallibility (*ʿisma*) of the community."¹⁹ Finally, I argued in a 2009 article that the analysis of normative legal pluralism was the primary occupation of the independent jurist (*mujtahid*) Abū Bakr Ibn al-Mundhir (d. 318/930), and confirmed that his rigorous analysis of juristic *ikhtilāf* was incorporated in several of the most famous Sunnī commentaries on the Qurʾān, canonical *ḥadīth* collections, and law books.²⁰

Through the careful reading of one Zaydī legal Qurʾān commentary, I will show how this genre of Islamic writing provides a medium for showcasing the author's mastery of legal reasoning (*ijtihād*). Given that legal reasoning can only be applied to novel cases or cases over which earlier jurists have disagreed, legal Qurʾān commentaries offer a productive site where a master jurist can identify numerous secondary issues of a legal topic introduced by the Qurʾān that are eligible for *ijtihād* and others that are sealed by juristic consensus. Once this distinction is made, the jurist-exegete can demonstrate his knowledge of which positions earlier jurists adopted before advocating for one of them with legal indicators of his own choosing. These *ijtihād*-eligible cases even allow the jurist-exegete space to challenge the prevailing position of his legal school, especially if the jurists of his school are divided over the topic. As I will show throughout the following chapters, prominent jurists of the Zaydī legal school, like the jurists of the much larger Sunnī legal schools, frequently disagreed over the detailed cases of Islamic law (*furūʿ*), leaving ample room for an ambitious

17 Jean-Paul Charnay, *L'Ambivalence dans la Culture Arabe* (Paris: Éditions Anthropos Paris, 1967), 222. Chehata affirmed the significance of legal *ikhtilāf* in his contribution to this volume, writing "On voit que l'*ikhtilāf* est un fait dominant dans la science du droit musulman," and that "le système juridique musulman lui-même est né sous le signe de l'*ikhtilāf*;" "*L'Ikhtilāf* et la conception musulmane du droit," 260.

18 Norman Calder, "Ikhtilāf and Ijmāʿ in Shāfiʿī's *Risāla*," *Studia Islamica* 58 (1983): 55–81, at 64.

19 Calder, "Ikhtilāf and Ijmāʿ," 69–72. Note that Calder generally refrained from translating *ikhtilāf* in his article, although he glossed it as "abdication of certainty" on page 73.

20 Scott Lucas, "Abu Bakr Ibn al-Mundhir, Amputation, and the Art of *Ijtihad*," *International Journal of Middle East Studies*, 39.3 (2007): 351–368.

jurist to add his opinions to the debate. I will argue that legal Qur'ān commentaries served as an excellent platform for jurists who sought to demonstrate their mastery of the sources and to deploy centuries of legal disagreement to their advantage.

It is also important to recognize the pedagogical value of legal Qur'ān commentaries. Every Muslim is taught that the Qur'ān is God's speech that the Prophet Muḥammad received from the angel Gabriel, which Muslims have transmitted faithfully from generation to generation. They are also aware that Islamic law, usually experienced through one of the established legal schools, is the comprehensive framework through which a Muslim can worship and engage in social transactions in a manner pleasing to God. But what often is missing is a clear connection between the Qur'ān and the vast library of Islamic law. Legal Qur'ān commentaries not only provide the valuable service of identifying the legal passages for inquisitive Muslims, but they also link these divinely revealed passages to webs of cases found in the countless tomes of Islamic jurisprudence. They also demonstrate how jurists interpret Qur'ānic commands as obligatory or recommended acts, depending on other indicators, such as prophetic *ḥadīths*, consensus, or linguistic considerations. Thus, these books can increase the appreciation and awareness students of Islamic law have for the Qur'ānic foundations of Islamic Shari'a, foundations which can easily be buried beneath the thousands of legal cases a jurist must learn in order to be proficient in his discipline.

One unintentional outcome of legal Qur'ān commentaries is that they also reveal the limited role of the Qur'ān in the articulation of Islamic law. Whether the jurist-exegete comments on 200 verses or 500 verses, the reader will come across a multitude of topics of Islamic law for which few, if any, Qur'ānic verses provide guidance. Even with respect to the topics for which multiple verses provide indicators, such as prayer, warfare, and divorce, the number of actionable rules that one can derive directly from the Qur'ān is very modest, as my study will show. Furthermore, some legal passages are general exhortations and others are highly subtle, such that it is not immediately obvious why a jurist-exegete has selected them. Finally, there is the risk that a sensitive reader will be disturbed by the way earlier jurists have restricted or disregarded the apparent meaning of Qur'ānic injunctions by means of the tools of legal theory, which could lead them to question the entire edifice of Islamic jurisprudence that has been constructed for more than a millennium by men rather than by God.

A useful entryway to the genre of legal Qur'ān commentaries is Sayyid Muḥammad b. al-Hādī's book, *The Garden and the Pool*. Muḥammad b. al-Hādī (651–720/1253–1320) wrote the first Zaydī legal Qur'ān commentary and was

both a talented jurist and a potential candidate for the Zaydī Imamate.²¹ His book is a meticulously organized commentary, deriving its structure and much of its content from al-Ḥākim al-Jishumī's (d. 494/1101) masterful encyclopedic Qur'ān commentary, *al-Tahdhīb fī l-tafsīr* (The Refinement of Qur'ānic Commentary), which recently has been published in ten large volumes.²² Muḥammad b. al-Hādī only identified 199 legal passages in the Qur'ān, rather than 500, the number frequently mentioned in Sunnī books on legal theory and approximately the number of verses commented upon by Yūsuf the Jurist in his *Ripe Fruits* and al-Najrī in his *Commentary on 500 Verses*. This fortuitous decision allowed Muḥammad b. al-Hādī to explore many legal issues in greater detail than what one finds in the latter two books, as he provides a rich array of legal disagreement for most of the legal passages he explains in his commentary. He writes as a confident *mujtahid*, or master jurist, as he frequently selects one of the multiple opinions on a legal topic while providing evidence for his decision. His book, like most Zaydī legal Qur'ān commentaries, reveals the proximity between Zaydī and Sunnī legal opinions, as the variety of opinions among leading Zaydī jurists almost always aligns with that of the conflicting opinions of the major Sunnī *mujtahids* and early authorities among the Companions and Successors. This constant engagement with the Sunnī legal tradition stands in

21 For the life and scholarship of Muḥammad b. al-Hādī, see Ibrāhīm b. al-Qāsim al-Shahārī, *Ṭabaqāt al-Zaydiyya al-kubrā: al-qism al-thālith*, ed. 'Abd al-Salām al-Wajih, 3 vols. (Amman: Mu'assasat al-Imām Zayd b. 'Alī al-Thaqāfiyya, 2001), 2:1085–1091; Ibn Abī l-Rijāl, *Maṭla' al-budūr wa-majma' al-buḥūr fī tarājim al-rijāl al-Zaydiyya*, ed. 'Abd al-Raqīb Ḥajar and Majd al-Dīn al-Mu'ayyadī, 4 vols. (Ṣa'da: Markaz Ahl al-Bayt, 2004), 4:377–387; 'Abd al-Salām al-Wajih, *A'lām al-mu'allifin al-Zaydiyya*, Second edition, 2 vols. (Sanaa: Mu'assasat al-Imām Zayd b. 'Alī al-Thaqāfiyya, 2018), 2:347. None of these sources suggest that Muḥammad b. al-Hādī sought the Imamate, but two of his proximate ancestors were Imams.

22 I am aware that the vocalization of "Jishumī" is unacceptable according to the rules of Arabic morphology, which dictates that his name should be "Jushamī." Prior to 2000, his name typically was vocalized as al-Jushamī; an exception to this rule is Hossein Modarressi, who vocalized his name as al-Jishumī; see al-Ḥākim al-Jishumī, *Risālat Iblīs li-ikhwānih al-manāḥis* (Beirut: Dār al-Muntakhab al-'Arabī, 1995), 9. However, in their recent scholarship, Sabine Schmidtke, Hassan Ansari, Suleiman Mourad, and Bruce Fudge all vocalize the name as al-Jishumī because it is the *nisba* derived from the Persian town of Jishum, located near Bayhaq in Khurāsān, and not from the Arab tribe Jusham; see Madelung, "al-Ḥākim al-Djushamī," 112. (Madelung prefers the vocalization as al-Jushamī, which is how this town would have been pronounced in Arabic.) The editor of the published edition of *al-Tahdhīb fī l-tafsīr*, 'Abd al-Raḥmān al-Sālimī, offers both vocalizations in the introduction to his edition, listing al-Jushamī first, followed by al-Jishumī; al-Ḥākim al-Jishumī, *al-Tahdhīb fī l-tafsīr*, ed. 'Abd al-Raḥmān al-Sālimī, 10 vols. (Beirut & Cairo: Dār al-Kitāb al-Lubnānī & Dār al-Kitāb al-Miṣrī, 2019), 1:41. Al-Sālimī vocalizes al-Ḥākim's grandfather's name as Kurrāma, while Modarressi, Ansari and Schmidtke vocalize it as Karāma.

sharp contrast to the infrequent references to Twelver Shīʿī legal authorities and no references at all to Ismāʿīlī Shīʿa, the latter of whom had a significant presence in northern Yemen during Muḥammad b. al-Hādī's lifetime. Finally, Yūsuf the Jurist explicitly identifies Muḥammad b. al-Hādī's *The Garden and the Pool* as the inspiration for the composition of his more expansive commentary, *The Ripe Fruits*, in its introduction,²³ which in turn was the primary source for the even more popular *Commentary on 500 Verses* by al-Najrī.

My selection of *The Garden and the Pool* as the entryway to the study of legal Qurʾān commentaries comes with some challenges. Its author, Muḥammad b. al-Hādī is entirely unknown in the field of Islamic Studies and the Muslim world more broadly, as is the Zaydī legal tradition to which he belonged.²⁴ Further complicating matters is the fact that *The Garden and the Pool* was not published until 2024, unlike the other Yemeni legal Qurʾān commentaries I have mentioned.²⁵ Thanks to the Yemeni Manuscript Digitization Initiative (YMDI), hosted by Princeton University Library,²⁶ a complete manuscript of *The Garden and the Pool* has been available online for more than a decade.²⁷ This manu-

23 Yūsuf b. Aḥmad, *Tafsīr al-Thamarāt al-yāniʿa wa al-aḥkām al-wāḍiḥa al-qāṭiʿa*, 5 vols. (Ṣaʿda: Maktabat al-Turāth al-Islāmī, 2002), 1:31–33.

24 The only Western academic writing I have come across that devotes any attention to Muḥammad b. al-Hādī is Arianna D'Ottone, "The Pearl and the Ruby: Scribal Dicta and other Metatextual Note in Yemeni Medieval Manuscripts," in *The Yemeni Manuscript Tradition*, ed. David Hollenberg et. al. (Boston: Brill, 2015), 82–100. On pages 95–97 of her chapter, D'Ottone transliterates, translates, and discusses the colophon on the holograph copy of Muḥammad b. al-Hādī's *The Garden and the Pool* in the Biblioteca Ambrosiana (A6), without touching upon the contents of the book itself. I discuss Muḥammad b. al-Hādī briefly in my forthcoming chapter, "Qurʾānic Hermeneutics in the Zaydi Tradition," for the *Handbook of Qurʾānic Hermeneutics* edited by Georges Tamer.

25 Only three manuscripts of *The Garden and the Pool* are mentioned in the comprehensive *al-Fihris al-shāmil li-l-turāth al-ʿarabī al-Islāmī al-makḥṭūṭ, ʿulūm al-Qurʾān: al-tafsīr wa-ʿulūmuḥu*, 2 vols. (Amman: Muʿassasat Āl al-Bayt, 1989), 361. One of these is in the Gharbiyya library of the Great Mosque of Sanaa; a second is in the Topkapi Palace Library in Istanbul; and a third is a fragment in the Biblioteca Ambrosiana in Milan that is not identified as a holograph copy. I have not had access to these first two manuscripts, both of which date to the twelfth/eighteenth century. I gained access to the published edition of *The Garden and the Pool* by Maktabat Ahl al-Bayt after the initial draft of my book was sent to reviewers, courtesy of the website al-Maktaba al-Zaydiyya. It is available at: <https://ziydia.com/Book/755>

26 This initiative was led by David Hollenberg of the University of Oregon starting in 2010 and digitized 236 Yemeni manuscripts from three private libraries in Sanaa, Yemen; see <https://dpul.princeton.edu/islamicmss/feature/yemeni-manuscripts-digitization-initiative>

27 ms Princeton University Library, ymdi_03_76. Available at: <https://catalog.princeton.edu/catalog/9978494053506421>

script, which was copied in Shawwāl 1088/December 1677, is clearly written for the most part, its images are high resolution, and it is paginated. A second nearly complete manuscript of *The Garden and the Pool*, copied Jumādā 11054/July 1644, is available online courtesy of the Imam Zayd Ibn ‘Alī Cultural Foundation and the Ministry of Endowments and Religious Affairs of Oman (shelf mark ZA 676–01), although the resolution of its images and functionality of its digital platform are limited.²⁸ Finally, the Biblioteca Ambrosiana in Milan has a holograph copy of the final third of *The Garden and the Pool* written by Muḥammad b. al-Hādī himself in Jumādā 11714/November 1314, which has enabled me to make a critical edition of Muḥammad b. al-Hādī’s commentary on the Sūra of Light (Q 24) that is found in Appendix A of this book.²⁹

This book consists of seven chapters and two appendices. Chapter 1 locates Muḥammad b. al-Hādī and his illustrious family in the vibrant Zaydī intellectual tradition of northern Yemen. It suggests reasons why Muḥammad b. al-Hādī chose to compose a legal Qur’ān commentary and a book on legal theory (*uṣūl al-fiqh*). Chapter 2 elucidates Muḥammad b. al-Hādī’s hermeneutics, which he divulges in the introduction to *The Garden and the Pool*, and identifies the two primary sources he used in composing his legal commentary. Chapter 3 analyzes the 199 passages upon which Muḥammad b. al-Hādī comments thematically and stylistically. It reveals that the topics for which there are the largest number of legal passages in the Qur’ān are prayer, warfare, and divorce, and that Muḥammad b. al-Hādī includes at least one passage each on twenty-five distinct legal topics. I also propose an original taxonomy for classifying legal passages on the basis of their stylistic features, which distinguishes between rules, open commands, legal statements, and subtle passages. This taxonomy also clarifies why I refer to Qur’ānic *aḥkām* (singular, *ḥukm*) as “legal passages”

28 The online images appear to be of a photocopy of the original manuscript. See: <https://elibrary.mara.gov.om/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/ktab/?id=14666#book/648>

29 Oscar Löfgren and Renato Traini, *Catalogue of the Arabic Manuscripts in the Biblioteca Ambrosiana*, 3 vols. (Vicenza: Neri Pozza Editore, 1975–1995), 2:5–6. The shelf mark of this manuscript is Nuovo Fondo, ar. A6. I am profoundly grateful for Dr. Julia Schneider and the Medieval Institute at the University of Notre Dame for providing me access to a microfilm of this valuable manuscript, along with many other microfilms of Yemeni manuscripts from the Biblioteca Ambrosiana’s holdings. In March 2025, the Biblioteca Ambrosiana made digital images of this manuscript, along with all of the manuscripts in Series A and B of the Nuovo Fondo accessible online at https://ambrosiana.nainuwa.com/index.php/apps/scego_search/app. It plans to make images of the other approximately 1,500 manuscripts available over the coming decade.

rather than laws, rules, commandments, injunctions, or any of the other words Western scholars have used to describe them that fail to convey the full range of their stylistic diversity.

Chapters 4–7 analyze Muḥammad b. al-Hādī's commentary on a selection of these legal passages of the Qur'ān. Chapter 4 explores his interpretation of many of the seventeen legal passages in the Sūra of Light (Q 24), the Arabic text of which I provide in a critical edition in Appendix A of this book. Chapter 5 examines the legal passages concerning prayer, which consist of rules, open commands, legal statements, and subtle passages. By contrast, in chapter 6 I show that nearly all the legal passages about divorce are rules, which play a major role in shaping the legal debates on this topic. Finally, chapter 7 addresses passages on warfare, which not only reinforce Muḥammad b. al-Hādī's skill as a master jurist, but also shed valuable light on how he would have conducted his affairs had he made a summons and been accepted as a Zaydī Imam during his lifetime.

My primary method in approaching Muḥammad b. al-Hādī's legal Qur'ān commentary is to read it closely and contextually prior to analyzing it in a manner that illuminates both its author's sophisticated legal reasoning and the utility of the genre of legal Qur'ān commentaries more broadly. I am committed to the method the late Josef van Ess (1934–2021) described as the way a good philologist works: “you read a text and having understood it in a preliminary way you return to it again and again in order to make it your own.”³⁰ I am also deliberately giving Muḥammad b. al-Hādī the authority to declare which verses in the Qur'ān are legal. Western scholars are free to select whichever verses of the Qur'ān they think are “legal” without investigating which verses Muslim scholars have considered relevant for Islamic law. However, this practice would inevitably lead them to miss many passages, especially the subtle ones, that Muslim jurists long have considered connected to Islamic law. It also risks overlooking the rich diversity among Muslim jurists over the identity of the legal passages of the Qur'ān. By contrast, my book is devoted to analyzing

30 This is his pithy summary of Wilhelm Dilthey's “hermeneutic circle;” Josef van Ess, “Text and Context: A Few Casual Remarks on the Topic,” in *Text & Context in Islamic Societies*, ed. Irene Bierman (Reading: Ithaca Press, 2004), 7. In this essay, Van Ess also urges historians to sharpen their language skills, read critically and empathetically, and cautions against following the latest academic theories and fads. His warning against following the latest fads is amplified by Devin Stewart in his review essay, “A Modest Proposal for Islamic Studies,” in *Identity, Politics, and the Study of Islam*, ed. Matt Sheedy (Bristol, CT 2018), 157–200, in Proposals XIV and XVI. Stewart also emphasizes the importance of studying Arabic, by making it his first proposal (pp. 188–189).

one master-jurist's selection and interpretation of the legal passages he selected from the Qur'ān, without passing any judgment whether these passages are "really legal" or not.

My close reading of *The Garden and the Pool* and other legal Qur'ānic commentaries allows readers to appreciate the centrality of normative pluralism and *ḥadīths* in Islamic law more broadly. Muḥammad b. al-Hādī frequently cites the opinions of Zaydī Imams, master jurists of three of the four Sunnī law schools,³¹ as well as early legal authorities among the Companions and Successors. His commentary demonstrates the intimate relationship between Zaydī and Sunnī jurisprudence, and that despite their small numbers, Zaydī scholars generated a surprising amount of legal disagreement among their own scholars. Muḥammad b. al-Hādī also cites hundreds of *ḥadīths* throughout *The Garden and the Pool*, which shows their importance for both Zaydī and Sunnī jurisprudence. I also assess his deployment of universal consensus (*ijmā'*) and the special "consensus of the Family of the Prophet," a unique type of consensus accepted exclusively by Zaydī jurists. Rather than simply tell his readers what Islamic law or the Zaydī school says about a given topic, Muḥammad b. al-Hādī guides them through the debates and evidence surrounding it, while regularly advancing his personal opinions in the process.

My analysis of *The Garden and the Pool* yields ample evidence in support of the two primary arguments I make in this book. First, legal Qur'ān commentaries are valuable pedagogical tools for illuminating the relationship between the Qur'ān and the immense library of Islamic law. They answer the question of which verses of the Qur'ān are "legal" more effectively than any other genre of Islamic writing and demand attention from academics in the field of Islamic Studies. Secondly, I argue that legal Qur'ān commentaries can serve as a medium by which a master jurist demonstrates his credentials by sharing his legal reasoning (*ijtihād*) with his readers. Not only does the author of a legal Qur'ān commentary have the platform to demonstrate his knowledge of centuries of legal pluralism, he can promote his own opinions regarding which of the proposed positions are superior, and why they are the preferable opinion. Given the absence of formal academic degrees in the Muslim world until recently, the composition of a legal Qur'ān commentary could serve as compelling evidence that a scholar had reached such a level of advanced proficiency that his legal opinions must be taken seriously and, in the special case of the Zaydī school, that he could potentially serve as the leader of the Muslim community.

31 Muḥammad b. al-Hādī rarely includes the legal opinions of Ibn Ḥanbal (d. 241/855), the eponym of the smallest of the four surviving Sunni law schools.

Muḥammad b. al-Hādī and His Place in the Zaydī Intellectual Tradition

Faith is Yemeni, and wisdom is Yemeni

THE PROPHET MUḤAMMAD



Sayyid Muḥammad b. al-Hādī lived during an intellectually exciting time in Yemen. While his adult life overlapped with the reigns of two Zaydī Imams, al-Mutawakkil ‘alā Allāh al-Muṭahhar b. Yaḥyā (r. 672–697/1273–1297 or 8) and his son, al-Mahdī Muḥammad b. al-Muṭahhar (r. 701–728/1301 or 2–1328), the primary political power of his day was the Sunnī Rasūlid kingdom. The Rasūlids came to power in 626/1229, when the last Ayyūbid ruler of Yemen died in Mecca, leaving Nūr al-Dīn ‘Umar as his deputy in Yemen. Rasūlid power rose dramatically under the long-lived king al-Muẓaffar Yūsuf (r. 647–694/1249–1295), whose dominions included the northern Yemeni cities of Sanaa and even Sa‘da for a brief period of time. Several studies have shown that the Rasūlids capitalized on their strategic geographic location, at the mouth of the Red Sea, to become highly prosperous through transregional trade between India and Mamlūk Egypt and beyond.¹ With this economic prosperity came unprecedented investment in science, literature, Sunnī religious scholarship, and Sufi orders. In addition to the capital city of Ta‘izz, Zabīd, located in the coastal Tihāma region, became a prominent city for scholars and Sufis, attracting luminaries such as the Shāfi‘ī jurist Ismā‘īl b. Muḥammad al-Ḥaḍramī (d. 696/1297)

¹ The few scholars who study Rasūlid history seem to focus primarily on economic and court history, in part due to valuable primary sources and chronicles from this period; see, for example, Daniel Varisco, “*Nūr al-Ma‘ārif*: The Late 13th -Century Rasūlid Court Administrative Archive of al-Malik al-Muẓaffar Yūsuf,” in *Yemeni Manuscript Cultures in Peril*, ed. Hassan Ansari and Sabine Schmidtke (Piscataway: Gorgias Press, 2022), 213–233; and Nayef al-Shamrookh, *The Commerce and Trade of the Rasulids in the Yemen, 630–858/1231–1454* (State of Kuwait, 1996). A useful online resource curated by Daniel Varisco is <https://ahjur.org/rasulid/rasulid.html>.

and the widely traveled Arabic lexicographer from Shīrāz, Muḥammad b. Ya‘qūb al-Fayrūzabādī (d. 817/1415).²

While several chronicles focus on the rise and internal conflicts of the Rasūlids, only one published chronicle covers the period of Muḥammad b. al-Hādī’s life from a Zaydī perspective. This work, *Ghāyat al-amānī fī akhbār quṭr al-Yamānī* (The Utmost Limit of Desires concerning the History of the Yemeni Region) by Yahyā b. al-Ḥusayn (d. 1100/1689), a grandson of Imam al-Qāsim b. Muḥammad al-Manṣūr, records a dizzying array of battles and treaties between multiple political actors in northern Yemen on an annual basis.³ More often than not, the primary Zaydī leaders during the sixth/thirteenth and seventh/fourteenth centuries were not the Imams but other Sayyids who constantly engaged in conflicts and made and broke alliances with the Rasūlid kings and other tribes, such as the powerful Hamdānid tribe near Sanaa. After the betrayal and martyrdom of Imam al-Mahdī Aḥmad b. al-Ḥusayn in 656/1258, Zaydī Imams rarely grace the pages of *Ghāyat al-amānī* for the following seventy-five years, save when one of them died or a new one made a claim to the Imamate or, in one case, was captured by the Rasūlids and later died in captivity.⁴ In fact, it was only after the death of Muḥammad b. al-Hādī that the Zaydī Imam who had been his student, al-Mahdī Muḥammad b. al-Muṭahhar, was able to conquer and hold the important northern city of Sanaa for a period of time, an accomplishment that may have been due more to the weakness of the Rasūlids than to the strength of the Imam.

Despite this constant political instability and warfare, Zaydī scholarship during Muḥammad b. al-Hādī’s lifetime was experiencing one of its most vibrant periods. The cause for this vibrancy was the massive transfer of scholarly and literary books from Persia and Iraq during the period 550–625/1155–1228. In addition to transmitting this corpus of legal, theological, and *ḥadīth* books to

2 A. El-Shami and R.B. Sargeant, “Regional Literature: the Yemen,” in *The Cambridge History of Arabic Literature: Abbāsīd Belle-Lettres*, ed. Julia Ashtiani et. al. (Cambridge: Cambridge University Press, 1990), 442–468; and H. Fleish, “al-Fīrūzābādī,” *EI2 Online*. For insights into the growth of Sufism in Yemen under the Rasūlids, see Alexander Knysh, *Ibn ‘Arabi in the Later Islamic Tradition* (Albany: SUNY Press, 1999), 225–269; and Muhammad Aziz, *Religion and Mysticism in Early Islam* (New York: I.B. Tauris, 2011).

3 Yahyā b. al-Ḥusayn, *Ghāyat al-amānī fī akhbār quṭr al-Yamānī*, ed. Sa‘īd ‘Āshūr and Muḥammad Ziyāda, 2 vols. (Cairo: Dār al-Kitāb al-‘Arabī, 1968).

4 This unfortunate Imam, Ibrāhīm b. Tāj al-Dīn, was an uncle of Muḥammad b. al-Hādī, the jurist exegete whose legal Qur’ān commentary my book analyzes, and will be mentioned in greater detail below. It was upon his death in captivity that the Imamate of al-Muṭahhar b. Yahyā began.

subsequent generations, several Zaydī scholars, like Muḥammad b. al-Hādī, decided to build upon these new resources by composing original books. This era of creative composition began in the sixth/twelfth century and continued uninterrupted into the ninth/fifteenth century.

The transfer of books from Persia and Iraq to Yemen has received modest Western scholarly attention. Wilferd Madelung discussed it briefly in his survey of the Zaydī tradition,⁵ and more recently Hassan Ansari and Sabine Schmidtke have written a series of detailed studies documenting this transfer, many of which are updated and republished in their *Studies of Medieval Islamic Intellectual Traditions* (SMIIT).⁶ Through their critical editions and careful analyses of a biography of the ill-fated Imam Aḥmad b. al-Ḥusayn al-Shahīd (r. 646–656/1248–1258) and the *ijāza* ‘Abd Allāh b. Zayd al-‘Ansī (d. 667/1268) received from his teacher Shu‘la (d. after 644/1246), the impact of these books upon the Yemeni Zaydī intellectual traditions is profoundly visible. Ansari and Schmidtke also trace the transmission of the Twelver Shī‘ī book, Ibn Bitrīq’s (d. 600 or 601/1203–1205) *al-‘Umda*, to Yemen, as well as the transfer of Abū l-Ḥusayn al-Baṣrī’s (d. 436/1044) legal theory, which appears later than one may have expected, given the generally warm reception Yemeni Zaydīs had for Mu‘tazilī theology and *ḥadīth* collections. Their forthcoming book on Iranian Zaydism will enhance our understanding of this process even further, as they include a chapter devoted to the actual manuscript copies of books that were brought to Yemen in the sixth and seventh centuries that remain extant in Yemeni and European libraries.

Muḥammad b. al-Hādī’s interest in this vast, newly available literature was highly conservative. He does not appear to have engaged substantially with the “new” sophisticated theology that was fashionable among his peers, and he restricted his Qur’ān commentary to the legal passages.⁷ Nonetheless, his compositions were dependent upon the books that arrived during the great transfer

5 Wilferd Madelung, *Der Imam al-Qāsim b. Ibrāhīm und die Glaubenslehre der Zaiditen* (Berlin: Walter De Gruyter, 1965), 212–218.

6 Hassan Ansari and Sabine Schmidtke, *Studies of Medieval Islamic Intellectual Traditions* (Atlanta: Lockwood Press, 2017). See in particular chapters 3 and 7–10. Chapter 7 provides a helpful overview of the entire process, as well as suggestions for future research.

7 A poem on theology mentioned in his entry in *A‘lām al-mu‘allifin al-Zaydiyya*, titled *al-Lu‘lu’ al-manẓūm fī ma‘rifat al-ḥayy al-qayyūm* (The Threaded Pearl of Knowledge of the Living, the Sustainer), is no longer extant; ‘Abd al-Salām al-Wajīh, *A‘lām al-mu‘allifin al-Zaydiyya*, 347. Fortuitously, Muḥammad b. al-Hādī refers to this poem twice in *The Garden and the Pool* in his commentary on Q 4:176 and Q 8:66; see Muḥammad b. al-Hādī, *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:447 and 2:104.

between 550–625/1155–1228 and new books that were written by Yemeni Zaydīs in their wake. It is inconceivable that Muḥammad b. al-Hādī could have written sophisticated texts like *The Garden and the Pool* and *al-Mūḍī‘ al-musri‘* had his father and other teachers not been transmitters of the freshly consolidated Zaydī canon of legal and *ḥadīth* books. Therefore, it is to the formation of this canon of books that I shall now turn.

1 The Consolidation of the Zaydī Canon of Law and *Ḥadīth*

Between the years 525/1131 and 543/1148–1149, an obscure Zaydī scholar in the cosmopolitan Iranian city of Rayy named Aḥmad b. Abī l-Ḥasan al-Kanī (d. ca. 565/1169–1170) collected a valuable library of Zaydī and Mu‘tazilī books.⁸ These books consisted primarily of legal works and *ḥadīth* collections and were distinguished by accurate chains of transmission between al-Kanī and their authors. Some of these books came from the renowned Khurāsānī Zaydī scholar, Zayd b. al-Ḥasan al-Bayhaqī (d. ca. 545/1150), who passed through Rayy in 540/1145–1146 on his way to Mecca for the pilgrimage. After his pilgrimage, Zayd al-Bayhaqī proceeded south to Yemen, where he taught the Mu‘tazilī-inspired theology current among Iranian Zaydīs and narrated *ḥadīths* on Thursdays and Fridays in Sa‘da for two and a half years, “without repeating a single *ḥadīth*.”⁹ According to the author of *Ṭabaqāt al-Zaydiyya al-kubrā* (The Major Generations of Zaydīs), al-Kanī collected the following *ḥadīth* books with sound chains of transmission back to their authors:¹⁰

- 1) *Majmū‘ Zayd b. ‘Alī* (The Compilation of Zayd b. ‘Alī), compiled by the Kufan Abū Khālid al-Wāsiṭī (d. 2nd/8th century) and organized into chapters by the Baghdadi Zaydī scholar ‘Abd al-‘Azīz b. Ishāq al-Baqqāl (d. 363/974);¹¹
- 2) *Amālī Abī Ṭālib* (The Dictations of Abū Ṭālib), a collection of *ḥadīths*, poetry, and anecdotes by the Caspian Imam al-Nāṭiq bi-l-Ḥaqq Abū Ṭālib Yaḥyā b. al-Ḥusayn al-Hārūnī (d. 424/1033);

8 Hassan Ansari describes him as the “leader of the Zaydi community in Rayy,” although little is known about him; Hassan Ansari, “The Shī‘ī Reception of Mu‘tazilism (1): Zaydīs,” in *The Oxford Handbook of Islamic Theology*, ed. Sabine Schmidtke (Oxford: Oxford University Press, 2016) 189. See also the entry on al-Kanī in al-Shahārī, *Ṭabaqāt al-Zaydiyya al-kubrā*, 1105–108.

9 al-Shahārī, *Ṭabaqāt*, 447.

10 al-Shahārī, *Ṭabaqāt*, 1106–107.

11 This work was first published as *Musnad al-Imām Zayd b. ‘Alī*, and more recently as *al-Majmū‘ al-ḥadīthī wa-l-fiqhī*.

- 3) *Amālī al-Mu'ayyad bi-llāh* (The Dictations of al-Mu'ayyad bi-llāh), *ḥadīth* from the Caspian Imam Aḥmad b. al-Ḥusayn al-Hārūnī (d. 411/1020), the elder brother of the previously mentioned Abū Ṭālib;
- 4) *al-Amālī al-Khamīsīyya* (The Thursday Dictations) by the Caspian Imam al-Murshad bi-llāh Yaḥyā b. al-Ḥusayn (d. 479/1086–1087);
- 5) *al-Amālī al-Ithnayniyya* (The Monday Dictations), also by al-Murshad bi-llāh;
- 6) *Amālī* (Dictations) of the Mu'tazilī scholar Ismā'īl b. 'Alī, known as al-Sammān (d. 445/1053);
- 7) *Amālī* (Dictations) of al-Sayyid Ṣafar b. Dā'ī al-Astarābādī (fl. 5th/11th century);¹²
- 8) *Niẓām al-fawā'id* (The Arrangement of Benefits), which are the dictations of the Mu'tazilī theologian al-Qāḍī 'Abd al-Jabbār b. Aḥmad (d. 415/1025);
- 9) *Amālī* (Dictations) of al-Qāḍī 'Abd al-Malik al-Balkhī (Unknown);
- 10) *al-Aḥādīth al-muntaqāh* (Selected Ḥadīths) by Ibn Ṣā'id (d. 482/1089);
- 11) *al-Aḥādīth al-Zamakhshariyya* (The Zamakhsharian Ḥadīths), an unknown collection of *ḥadīths* from the famous Sunnī Mu'tazilī exegete and philologist, Maḥmūd b. 'Umar al-Zamakhsharī (d. 538/1144).

Al-Kanī is also associated with the transmission of the core legal books of the Zaydī tradition, which include Imam al-Hādī ilā l-Ḥaqq Yaḥyā b. al-Ḥusayn's (d. 298/911) *Kitāb al-aḥkām* (Book of Laws) and *al-Muntakhab* (The Selection); Imam al-Mu'ayyad bi-llāh's *Kitāb al-Tajrīd* (The Abstract) and its voluminous autocommentary, *Sharḥ al-Tajrīd* (Commentary on *The Abstract*); and Imam Abū Ṭālib al-Hārūnī's *Kitāb al-Taḥrīr* (The Accurate Book) and the commentary on it by Qāḍī Zayd b. Muḥammad al-Kalārī (d. fifth/eleventh century).¹³ He is not, to my knowledge, associated with the transmission of the jurisprudence of Imam al-Nāṣir al-Ḥasan b. 'Alī al-Uṭrūsh (d. 304/917) of Āmul, Iran, although Imam al-Nāṣir's opinions are recorded in Zaydī legal works composed after the Hārūnī brothers, such as *Sharḥ al-Ibāna* (Commentary on *The Clarifier*) by Abū Ja'far Muḥammad b. Ya'qūb al-Hawsamī (d. 455/1063).

Yemeni scholars prior to the mid-sixth/twelfth century seem to have had limited access to this rich library of religious books that were available in Persia and possibly Iraq. Two Yemeni scholars who acquired a few of these books were al-Ḥasan b. Muḥammad al-'Alawī (fl. 6th/12th century) and 'Abd Allāh b.

12 This short work has been published and is available online at: <https://ziydia.com/Book/163>

13 The proper title for this book is *al-Jāmi' fī l-sharḥ* (The Comprehensive Commentary), but in prosopographical and legal works it is called *Sharḥ al-Qāḍī Zayd*, which is how I will refer to it in this book.

‘Alī al-‘Ansī (d. 560s/1165–1175). Al-Ḥasan al-‘Alawī was a descendant of Imam al-Hādī ilā l-Ḥaqq who copied both al-Mu‘ayyad bi-llāh’s *Sharḥ al-Tajrīd* and *Sharḥ al-Qāḍī Zayd* (Qāḍī Zayd’s Commentary).¹⁴ This is known because Imam al-Mutawakkil ‘alā Allāh Aḥmad b. Sulaymān (r. 532–566/1137–1170) reports that he had access to copies of these two books in the handwriting of al-Ḥasan al-‘Alawī, and Aḥmad b. Sulaymān’s influential book of legal *ḥadīth*, *Uṣūl al-aḥkām* (Foundations of the Laws), is essentially an abridgement of *Sharḥ al-Tajrīd*.¹⁵ Al-Ḥasan al-‘Alawī also had political ambitions, as he made an unsuccessful bid for the Imamate in the valley of Amlaḥ, east of Sa‘da, at an unknown date, where he later passed away after disseminating his religious learning to additional scholars and the future Imam Aḥmad b. Sulaymān.

While the precise process by which al-Ḥasan al-‘Alawī acquired the two core Iranian-Zaydī legal books is obscure, the second Yemeni scholar who traveled to Gilan seems to have been more careful about documenting his *ijāza*. ‘Abd Allāh b. ‘Alī al-‘Ansī, who was not among the descendants of the Prophet, claimed that he read *Sharḥ al-Tajrīd* by Imam al-Mu‘ayyad in the city of Lāhijān in Gilan in the month of Rabī‘ 1, 500/November 1106 with the Zaydī scholar Zayd b. ‘Alī al-Hawsamī, along with Imam Abū Ṭālib’s *Sharḥ al-Taḥrīr*, a voluminous work that served as the basis of Qāḍī Zayd al-Kalārī’s commentary.¹⁶ During his time with Zayd b. ‘Alī al-Hawsamī in Gilan, ‘Abd Allāh al-‘Ansī also obtained copies of Imam al-Hādī ilā l-Ḥaqq’s *Kitāb al-Aḥkām*, Qāḍī ‘Abd al-Jabbār’s *Amālī*, and *al-Majmū‘* of Zayd b. ‘Alī (d. 122/740), all of which he received with his teacher’s *ijāza* in Sha‘bān 501/April 1108.¹⁷ In an interesting anecdote, ‘Abd Allāh al-‘Ansī claims that he did not actually read *Sharḥ al-Tajrīd* to ‘Alī b. Muḥammad, whose son narrated it to Imam Aḥmad b. Sulaymān. Rather, al-‘Ansī claims that ‘Alī b. Muḥammad heard this book, but also gave him permission to transmit his own narration of it, which he had received without *ijāza* or copying, from “books of commentary that came [to Yemen] from Daylam,” and that he claimed to have heard them from anonymous sound transmitters.¹⁸ Clearly, there was confu-

14 al-Shahārī, *Ṭabaqāt*, 1:331–332.

15 This observation was made by al-Murtaḍā b. Zayd al-Maḥaṭṭwarī in his edition of *Uṣūl al-aḥkām*; Aḥmad b. Sulaymān, *Uṣūl al-aḥkām*, ed. al-Murtaḍā al-Maḥaṭṭwarī, 2 vols. (Sanaa 2004), 1:18 (editor’s introduction).

16 al-Shahārī, *Ṭabaqāt*, 616–618.

17 The printed text of the *Ṭabaqāt* (p. 617) says 551AH, which presents a problem, because it is highly unlikely ‘Abd Allāh al-‘Ansī spent fifty years in Iran. Given that the editors describe Zayd b. ‘Alī al-Hawsamī as a fifth-century scholar, I assume that the correct dates for the *ijāzas* are 500 and 501.

18 al-Shahārī, *Ṭabaqāt*, 617. The anecdote is found at the end of Aḥmad b. Sulaymān, *Uṣūl al-aḥkām*, 2:532–533.

sion among the chains of transmission of the core Zaydī books during the time of Imam Aḥmad b. Sulaymān.

The scholar who deserves the lion's share of credit for establishing what I am calling the "Zaydī canon" of law and *ḥadīth* books is al-Qāḍī Shams al-Dīn Ja'far b. Aḥmad al-Buhlūlī (d. 573/1177–1178).¹⁹ Qāḍī Ja'far came from a prominent Ismā'īlī family, converted initially to the Muṭarrifī orientation of Zaydism,²⁰ and then, through the intervention of Zayd b. al-Ḥasan al-Bayhaqī, adopted the Mu'tazilī-aligned Zaydism of Iran that Imam Aḥmad b. Sulaymān was actively promulgating. Shortly after his final conversion, Qāḍī Ja'far set out in 544/1149 or 545/1150 for Persia and Iraq with Zayd al-Bayhaqī to acquire as many Zaydī and Mu'tazilī books as possible with clear chains of transmission. Despite al-Bayhaqī's death while they were still in Yemen, Qāḍī Ja'far continued on, presumably with a retinue of scribes, and, by 552/1157, was in Rayy, where he copied the library of Zaydī texts that Aḥmad al-Kanī had so carefully collected. In addition to the books mentioned above, Qāḍī Ja'far also collected several large books composed by the Sunnī Mu'tazilī scholar, Abū Sa'd al-Muḥassin b. Muḥammad b. Karāma, better known as al-Ḥākim al-Jishumī (d. 494/1101),²¹ from a student of al-Jishumī's son, and a copy of al-Zamakhsharī's famous Qur'ān commentary, *al-Kashshāf*. The full list of books that Qāḍī Ja'far brought back to Yemen remains to be determined; the author of *Ṭabaqāt al-Zaydiyya* was primarily interested in the legal and *ḥadīth* books in the Zaydī tradition, which means theological or literary works that Qāḍī Ja'far may have collected are unmentioned.²²

The corpus of legal and *ḥadīth* books that Qāḍī Ja'far successfully imported to northern Yemen served as the foundation for a dynamic age of Zaydī scholarship. These books were transmitted carefully by a range of students, such as the master theologian al-Ḥasan b. Muḥammad al-Raṣṣāṣ (d. 584/1188) and the brothers Shams al-Dīn and Badr al-Dīn b. Aḥmad, descendants of Imam al-

19 Ibn Abī l-Rijāl, *Maṭla' al-budūr*, 1:617–624; al-Shaharī, *Ṭabaqāt*, 1:273–278; al-Wajīh, *A'lām*, 1:280–283. In addition to the references cited in Scott Lucas, "Qāḍī Ġa'far in the Biblioteca Ambrosiana: An Overview," *Chroniques du manuscrit au Yémen* 7 (July 2018), 105–140, see Jan Thiele, "Ja'far b. Abī Yaḥyā," *EI THREE*.

20 For a recent study about the Muṭarrifiyya movement within the Zaydī community of Yemen, see Johann Heiss and Eirik Hovden, "Zaydī Theology Popularised: A Hailstorm Hitting the Heterodox," in *Cultures of Eschatology*, ed. Veronika Wieser et. al., 2 vols. (Oldenbourg: De Gruyter, 2020), 1:415–440.

21 According to the Zaydī tradition and Wilferd Madelung, al-Jishumī became a Zaydī near the end of his life; Madelung, "al-Ḥākim al-Djushamī," *EI2*.

22 For a list of books that Qāḍī Ja'far brought back to Yemen that are mentioned in *al-Ṭabaqāt*, see Lucas, "Qāḍī Ġa'far in the Biblioteca Ambrosiana," 108–110.

Hādī ilā l-Ḥaqq and, in the case of Badr al-Dīn, the great-grandfather of the jurist-exegete whose commentary I examine here, Muḥammad b. al-Hādī.²³ The most significant student of Qāḍī Jaʿfar was Muḥyī l-Dīn Muḥammad b. Aḥmad b. al-Walīd al-Qurashī (d. 623/1226).²⁴ Muḥyī al-Dīn spent a significant part of his life in the Yemeni town of Ḥūth and at Imam al-Manṣūr ʿAbd Allāh b. Ḥamza's library in Ṣafār copying and collating the manuscripts Qāḍī Jaʿfar brought back from his travels and teaching them to students.²⁵ For example, the Vatican library preserves a volume of al-Ḥākim al-Jishumī's Qurʾān commentary, *al-Taḥdhīb fī l-tafsīr*, copied in 566/1170 in Muḥyī l-Dīn's own handwriting, while the Biblioteca Ambrosiana in Milan has a nearly complete copy of al-Jishumī's massive *al-Safīna fī anwāʿ al-ʿulūm* (The Oblong Book containing Diverse Types of Knowledge)²⁶ that Muḥyī al-Dīn copied 43 Hijrī years later, in 609/1212.²⁷ In addition to reorganizing and supplementing the contents of al-Murshad's *al-Amālī al-khamīsīyya*, Muḥyī l-Dīn is reported to have composed twenty-seven books, including valuable editorial work on *Sharḥ al-ibāna* by Abū Jaʿfar Muḥammad al-Hawsamī, which reports the jurisprudence of the Caspian Imām al-Nāṣir al-Uṭrūsh, in which later super-commentaries had become conflated with the original text.²⁸ One volume of his 8-volume abridgement of al-Ḥākim al-Jishumī's just-mentioned Qurʾān commentary, *al-Taḥdhīb*, which he titled *al-Īmān fī maʿrifat jumal fawāʿid al-Qurʾān* (The Book of Faith concerning Knowledge of all the Benefits of the Qurʾān), has also been preserved in an early manuscript held by the Leiden University Library, images of which are available online.²⁹

While Muḥyī l-Dīn's students included the powerful Imam al-Manṣūr ʿAbd Allāh b. Ḥamza (r. 593–614/1197–1217) and his own son, ʿAlī (d. 635/1237–1238),³⁰

23 For al-Raṣṣās, see Jan Thiele, "Propagating Muʿtazilism in the viith/xiith-century Zaydiyya," *Arabica* 57 (2010): 536–558. For more on the brothers Shams al-Dīn and Badr al-Dīn b. Aḥmad, see below.

24 al-Wajīh, *Aʿlām*, 201–202.

25 Ansari and Schmidtke, *SMIT*, 147, note 25.

26 While the Arabic word *safīna* usually means "ship," it can also mean "oblong book," which is the meaning here; see J. G. Hava, *Arabic-English Dictionary* (New Delhi: Goodword Books, 2001), 324–325.

27 The two manuscripts are MS Vatican Ar. 1023 (*al-Taḥdhīb*) and Milan, MS Milan, Ambrosiana F190 (*al-Safīna*).

28 The title of this book is listed as *Taḥrīr zawāʿid al-Ibāna*; al-Shahārī, *Ṭabaqāt*, 914.

29 The shelf mark for this rare manuscript is MS Leiden, Or. 2852 and images of it are available at: https://digitalcollections.universiteitleiden.nl/view/item/3667565?solr_nav%5Bid%5D=95b9129efe618f5d7155&solr_nav%5Bpage%5D=0&solr_nav%5Boffset%5D=1#page/1/mode/1up

30 Muḥyī l-Dīn's son ʿAlī is the author of the popular collection of hagiographic and eth-

the most conspicuous name among them is Aḥmad b. Muḥammad al-Akwa', who was known as Shu'la. Shu'la not only collected the manuscripts owned by Muḥyī l-Dīn al-Qurashī but also made copies of the manuscripts narrated by Imam al-Manṣūr 'Abd Allāh b. Ḥamza. Even more importantly, Shu'la reported a general *ijāza* that his teacher Muḥyī al-Dīn received for the books brought to Yemen by the Iranian scholar Tāj al-Dīn Zayd (or Aḥmad) al-Bayhaqī in 610/1213–1214, and a second general *ijāza* from the Iranian al-Sayyid al-Murtaḍā b. Sarāhang(k) al-Mar'ashī (fl. 7th/13th century), who arrived in Yemen in 624/1227. Hassan Ansari and Sabine Schmidtke have edited and analyzed the extensive general *ijāza* Shu'la gave to his student, 'Abd Allāh b. Zayd al-'Ansī, and they declare that it "provides a comprehensive picture of the religious-literary heritage that was available to the Zaydī scholars of Yemen" in the mid seventh/thirteenth century.³¹

Unlike the narrow focus of *Ṭabaqāt al-Zaydiyya*, Shu'la's *ijāza* contains a breathtaking range of books. As Ansari and Schmidtke have noted, it contains representative books in the three major categories of Zaydī law, namely (1) the jurisprudence of Imam al-Hādī, as expounded by Imam Abū Ṭālib in his *al-Taḥrīr* and Qāḍī Zayd in his *Sharḥ*; (2) the jurisprudence of al-Nāṣir al-Uṭrūsh, as represented by Abū Ja'far al-Hawsamī's *al-Ibāna* and its commentary; and (3) the jurisprudence of Imam al-Mu'ayyad bi-llāh, as contained in his *al-Ifāda*, *Ziyādāt*, and later commentaries.³² The *ijāza* also includes works of Sunnī jurisprudence, legal theory, and Qur'ān commentary, including *al-Kashf wa-l-bayān* (The Unveiling and the Clarification) by Abū Ishāq al-Tha'labī (d. 427/1035), *Zād al-masīr* (Provisions for the Journey) by the Ḥanbalī Ibn al-Jawzī (d. 597/1201), al-Ḥākim al-Jishumī's *al-Tahdhīb fī l-tafsīr*, and the hitherto unpublished *al-Bulgha* (The Subsistence) by Abū l-'Abbās Muḥammad b. Muḥammad al-Ṭūsī.³³ Also mentioned are a few Twelver Shī'ī books, such as *Nahj al-balāgha* (Path of Eloquence) and Ibn Bīṭrīq's *al-'Umda* (The Foundation), the contents of which are actually derived from Sunnī *ḥadīth* collections. The most diverse part of Shu'la's *ijāza* is found in Tāj al-Dīn al-Bayhaqī's *ijāza* to Muḥyī al-Dīn, which ranges from the literary masterpiece, *al-Maqāmāt* (The

ical *ḥadīths* titled *Musnad Shams al-akhbār*, which has been published. However, the author of this book is always called 'Alī b. Ḥumayd, while Muḥyī l-Dīn's name was Muḥammad, which has led to the suggestion that Muḥyī al-Dīn was called both Muḥammad and Ḥumayd; al-Wajih, *A'lām*, 202.

31 See *SMIT*, chapter 9; their edition of the *ijāza* is on pp. 199–203.

32 Ansari and Schmidtke, *SMIT*, 198.

33 For more on this obscure *tafsīr*, which survives in manuscript in Iran, see *SMIT*, 217 (no. 124).

Stations) of al-Qāsim b. ‘Alī al-Ḥarīrī (d. 516/1122), to Abū Ḥāmid al-Ghazālī’s (d. 505/1111) Sufi magnum opus *Iḥyā’ ‘ulūm al-dīn* (The Revival of the Religious Sciences), to Zaydī books of jurisprudence, al-Ḥākim al-Jishumī’s *al-Tahdhīb*, and even al-Ṭabarī’s (d. 310/923) famous history, *Tārīkh al-rusul wa-l-mulūk* (The History of Messengers and Kings).

The rich contents of Shu‘la’s library in Ḥūth attracted numerous students. Among the more prominent were the Imam Aḥmad b. al-Ḥusayn (known as “the martyr”), Ibrāhīm b. ‘Alī al-Akwa’ (Shu‘la’s nephew), ‘Abd Allāh b. Zayd al-‘Ansī, and al-Hādī b. Tāj al-Dīn (fl. 7th/13th century), the father of the author of *The Garden and the Pool*. Muḥammad b. al-Hādī reports that his father “granted me permission to narrate all that Shu‘la granted him permission to narrate, all of which is in his handwriting,” and that Shu‘la narrated *Sharḥ al-Qāḍī Zayd* and other books by copying them from Muḥyī al-Dīn’s personal manuscripts of these books.³⁴ How much of the extensive *ijāza* that Shu‘la gave to ‘Abd Allāh al-‘Ansī did he also give to Muḥammad b. al-Hādī’s father? Unfortunately, that question cannot be answered at this time, and there is little evidence of citations from most of the works mentioned in it in *The Garden and the Pool*.

The period between 550–625/1155–1228 witnessed an unprecedented transfer of religious, theological, and literary scholarship from Persia and Iraq to northern Yemen. In the course of this process, a canon of Zaydī legal and *ḥadīth* texts emerged, which later scholars, such as the eighteenth-century author of *Ṭabaqāt al-Zaydiyya*, would call “the books of our Imams and their partisans (*kutub al-a’imma wa-shi’atihim*).” From the perspective of jurisprudence, the key books that made up this canon were Imam al-Hādī ilā l-Ḥaqq’s *al-Aḥkām* and *al-Muntakhab*; al-Mu’ayyad bi-llāh’s *Tajrīd*, *Sharḥ al-Tajrīd*, *al-Ifāda*, and *al-Ziyādāt* (The Supplements); Imam Abū Ṭālib’s *al-Taḥrīr*; and finally al-Qāḍī Zayd al-Kalārī’s commentary on *al-Taḥrīr*, which is referred to as *Sharḥ al-Qāḍī Zayd*. This corpus, so much of which passed from Aḥmad al-Kanī in Rayy, to Qāḍī Ja‘far, to Muḥyī l-Dīn al-Qurashī in Ḥūth, to Shu‘la, was augmented at each step of its journey with additional earlier works and original compositions by later Zaydī scholars themselves. It is also very well preserved in manuscripts that were copied between the fifth/eleventh century until the twentieth century that are preserved in Yemeni and European libraries.³⁵ Muḥammad b. al-Hādī’s commentary on the legal verses of the Qur’ān, *The Garden and the*

34 Al-Shahārī, *Ṭabaqāt*, 1087. This is part of Muḥammad b. al-Hādī’s important *ijāza* to Imam Muḥammad b. al-Muṭahhar that I will discuss in chapter 2.

35 For example, the Biblioteca Ambrosiana has a copy of the first half of Imam al-Hādī’s *Kitāb al-aḥkām* that was copied in 418/1027 (H 138) and a copy of al-Mu’ayyad bi-llāh’s *Kitāb al-Tajrīd* copied 477/1089 (G 7), both of which predate Qāḍī Ja‘far’s journey to Persia and Iraq;

Pool, is one of many literary fruits of the vibrant intellectual culture that was made possible by this great migration of Islamic books.

2 Muḥammad b. al-Hādī's Family and Teachers

Muḥammad b. al-Hādī's family played a significant role in the political and scholarly developments of the seventh/thirteenth century in northern Yemen. He was a direct descendant of the inaugural Zaydī Imam of Yemen, Imam al-Hādī ilā l-Ḥaqq Yaḥyā b. al-Ḥusayn (d. 298/911), and his immediate ancestors were champions of Imam al-Manṣūr 'Abd Allāh b. Ḥamza and were involved in the messy politics that followed his demise. They also played a prominent role in transmitting the canon of Zaydī legal and *ḥadīth* books, the consolidation of which I discussed in the previous section. Finally, a few of Muḥammad b. al-Hādī's close relatives made their own significant contributions to the Zaydī canon, which probably inspired him to write his original books on legal theory and Qur'ānic exegesis.

The primary sources for Muḥammad b. al-Hādī's life are the published biographical dictionaries *Maṭla' al-budūr* (The Rising Place of the Full Moons) by Aḥmad b. Ṣāliḥ Ibn Abī l-Rijāl (d. 1092/1690) and *Ṭabaqāt al-Zaydiyya* by Ibrāhīm b. al-Qāsim al-Shahārī (d. 1152/1739).³⁶ Although these sources were composed several centuries after Muḥammad b. al-Hādī's life, they provide valuable insight into the accomplishments of his family members. The *Ṭabaqāt* even preserves a detailed *ijāza* that Muḥammad b. al-Hādī gave to his student, Imam al-Mahdī Muḥammad b. Muṭahhar (d. 728/1328), which identifies the primary sources he used in the composition of *The Garden and the Pool*, along with the methods by which he acquired them. As I show in chapter 2, more often than not, Muḥammad b. al-Hādī copied good manuscripts of books that he sought, rather than listening to endless lectures by his teachers. The reader also learns that he focused almost exclusively on acquiring Zaydī texts, in contrast to the broader curriculum of his junior contemporaries, like Imam al-Mahdī Muḥammad b. Muṭahhar and the extraordinarily prolific Imam al-Mu'ayyad bi-llāh Yaḥyā b. Ḥamza (d. 747/1346–1347), which included many Sunnī works and the popular collection of Imam 'Alī's sermons, speeches, letters, and aphorisms, *Nahj al-balāgha*, compiled by al-Sharīf al-Raḍī (d. 406/1015) in Baghdad.

Renato Traini, *Catalogue of the Arabic Manuscripts in the Biblioteca Ambrosiana*, vol. 4 (Milan: Silvana Editoriale, 2011), 4:294 (no. 1760) and 4:198 (no. 1615).

36 Ibn Abī l-Rijāl, *Maṭla' al-budūr*, 4:377–387; al-Shahārī, *Ṭabaqāt*, 2:1085–1091.

3 Muḥammad b. al-Hādī's Ancestors

Sayyid Muḥammad b. al-Hādī's great-grandfather was Badr al-Dīn Muḥammad b. Aḥmad b. Yaḥyā b. Yaḥyā (540–614/1145 or 6–1217 or 18).³⁷ Badr al-Dīn was a direct student of Qāḍī Ja'far and Muḥyī l-Dīn al-Qurashī, two of the primary conduits of the Zaydī canon of Iranian and Iraqi Zaydī-Mu'tazilī texts. A native of Sa'da, the northern Yemeni city where his ancestor Imam al-Hādī ilā l-Ḥaqq was buried, Badr al-Dīn, together with his older brother, Shams al-Dīn Yaḥyā b. Aḥmad (527–606/1133–1209 or 10),³⁸ initially studied with Zayd b. al-Ḥasan al-Bayhaqī in 567/1171–1172, before acquiring copies of the books transmitted by Qāḍī Ja'far. Both brothers supported Imam al-Manṣūr 'Abd Allāh b. Ḥamza, who was their junior, and they are not recorded to have made any important original compositions of their own.

Badr al-Dīn's primary legacies are transmitting the Zaydī canon to a distinguished set of students and being the father of five sons with his wife Ḥasana bint Yaḥyā, most of whom were active in the political and intellectual life of northern Yemen during the seventh/thirteenth century. He was a direct teacher of his son, Amīr al-Ḥusayn, who became an influential scholar, the Imam al-Manṣūr 'Abd Allāh b. Ḥamza, who studied with him in Ramaḍān 597/June–July 1201, and possibly al-Amīr 'Alī b. al-Ḥusayn (d. seventh/thirteenth century), the author of an extremely important book of Zaydī jurisprudence, *Kitāb al-Luma'* (The Book of Luminance), that remains unpublished.³⁹ Badr al-Dīn's son Majd al-Dīn Yaḥyā was killed near Sa'da in 607/1210–1211 while leading an army of Imam al-Manṣūr, at the young age of 27, which led to one of Badr al-Dīn's other sons, Tāj al-Dīn Aḥmad (581–644/1185 or 6–1246 or 7), assuming the governorship of Sa'da for the following 37 years.⁴⁰ Badr al-Dīn's son al-Ḥasan claimed the Imamate in Shawwāl 657/September–October 1259, in the wake of the death of Imam Aḥmad b. al-Ḥusayn, but he seems to have been unable to achieve much political authority, perhaps because of a peace treaty he made with the

37 al-Shahārī, *Ṭabaqāt*, 2:909–912; Ibn Abī l-Rijāl, *Maṭla'*, 4:174–175.

38 al-Shahārī, *Ṭabaqāt*, 3:1201–1203. Interestingly, Shams al-Dīn is not described as transmitting the Zaydī canon to any of his children.

39 Al-Amīr 'Alī b. al-Ḥusayn (fl. 7th/13th century) was also a descendant of Imam al-Hādī ilā l-Ḥaqq. Zaydī scholars were unsure whether he heard books directly from Shams al-Dīn and Badr al-Dīn or from their student 'Aṭīyya b. Muḥammad al-Najrānī; al-Shahārī, *Ṭabaqāt*, 725–728. His *Kitāb al-Luma'* is a well-organized four-volume book based on Abū Ṭālib al-Hārūnī's *al-Taḥrīr* and in conversation with the legal writings of al-Mu'ayyad bi-l-lāh. Numerous copies of it survive in manuscript in European libraries and in Yemen.

40 Ibn Abī Rijāl, *Maṭla'*, 4:511 (Majd al-Dīn); 1:408 (Tāj al-Dīn). Tāj al-Dīn was Muḥammad b. al-Hādī's grandfather.

Rasūlids, until his death in 670/1271–1272.⁴¹ He did manage to write a controversial commentary on his poem about the merits of Imam ‘Alī titled *Anwār al-yaqīn sharḥ faḍā’il Amīr al-mu’minīn* (The Lights of Certainty: A Commentary on the Excellences of the Commander of the Faithful) that has been self-published in two volumes in Iran.⁴² Badr al-Dīn’s son al-Mukhtār lacks entries in both *Maṭla‘ al-budūr* and *Ṭabaqāt al-Zaydiyya*, so nothing is known about him.⁴³ Finally, Badr al-Dīn’s most illustrious son was Amīr al-Ḥusayn (599–663/1202 or 3–1264 or 5), the author of the famed Zaydī *ḥadīth* collection *Shifā’ al-uwām* and transmitter of the canonical Zaydī books.⁴⁴

The two sons of Badr al-Dīn of most interest for this study are Tāj al-Dīn Aḥmad and Amīr al-Ḥusayn. These brothers provide an illuminating contrast between the roles played in northern Yemen by the descendants of Imam al-Hādī ilā l-Ḥaqq. Tāj al-Dīn Aḥmad served as governor of Sa‘da long after the death of Imam al-Manṣūr and does not appear among the lists of scholars who transmitted the Zaydī canon. In fact, he does not have an entry in *Ṭabaqāt al-Zaydiyya*, and the Zaydī sources are vague about the theological treatises he is alleged to have written.⁴⁵ Fortunately, a fragment of one of his short treatises is preserved in manuscript in the Biblioteca Ambrosiana, and it appears to be an introductory writing on Mu‘tazilī-aligned Zaydī theology.⁴⁶ One of Tāj

41 al-Shahārī, *Ṭabaqāt*, 1:327–329. The truce with the Rasūlids is indicated in a document he wrote in defense of this act in 668 AH; see ‘Abd Allāh al-Ḥibshī, *Maṣādir al-fikr al-Islāmī fī l-Yaman* (Beirut: al-Maktaba al-‘Aṣriyya, 1988), 605. Ḥasan b. Badr al-Dīn took the honorific, al-Manṣūr bi-llāh and he appears only twice in *Ghāyat al-amānī*, in the year he claimed the Imamate (657 AH), and in the year he died (670); *Ghāyat al-amānī*, 1:448, 456. The author of this chronology reports a general truce between the descendants of the Prophet (*al-ashraf*) and the Rasūlid king al-Muẓaffar in 668 but does not mention al-Ḥasan b. Badr al-Dīn in connection with it; 1:456.

42 The author of *Ṭabaqāt al-Zaydiyya al-kubrā* claims that *Anwār al-yaqīn* contains reports that align more with Twelver Shī‘ī views of the Imāmate than Zaydī ones; al-Shahārī, *Ṭabaqāt*, 1:328. This observation may explain why the book was self-published in Qom, Iran, rather than in Yemen; al-Ḥasan b. Badr al-Dīn, *Anwār al-yaqīn fī imāmat Amīr al-Mu’minīn*, ed. Ḥusayn al-Ḥasanī al-Birjundī, 2 vols. (Qom, 1429 [2008]). It is available online: <https://ziydia.com/Book/607>

43 His name is mentioned, along with the names of his full brothers, in Majd al-Dīn Yaḥyā b. Badr al-Dīn’s entry in Ibn Abī l-Rijāl, *Maṭla‘*, 4:511.

44 al-Shahārī, *Ṭabaqāt*, 1:383–388. Amīr al-Ḥusayn is also sometimes called by his honorific in the source, al-Nāṣir li-Dīn Allāh.

45 See, for example, al-Wajīh, *A‘lām*, 170, which merely has *mu‘allaqāt fī uṣūl al-dīn* (“theological compositions”) rather than a title.

46 See Ms Milan, Ambrosiana, ar. D 533, fols. 1–9; Löfgren and Traini, *Catalogue*, 2:395 (no. 789). The title of this treatise is *Kifāyat al-mukallafīn fī ma‘rifat rabb al-‘ālamīn* (Sufficient Knowledge of the Lord of the Worlds for People who are Obligated to Know).

al-Dīn's sons, Ibrāhīm, made the call to serve as Imam after the death of Tāj al-Dīn's brother, al-Ḥasan b. Badr al-Dīn, but was captured by the Rasūlids in Jumādā 1, 674/October–November 1275, and taken to Ta'izz, where he ultimately died in Ṣafar 683/April–May 1284.⁴⁷ By contrast, Tāj al-Dīn's son al-Ḥādī, the father of the author of *The Garden and the Pool*, devoted himself to transmitting the Zaydī canon and studied with the renowned transmitter Shu'la, who was described in the previous section, and Tāj al-Dīn's brother, Amīr al-Ḥusayn.

Amīr al-Ḥusayn is distinguished as the sole influential scholar among the sons of Badr al-Dīn Muḥammad. Some later Zaydī jurists looked back upon him as a key link in the chain of the Zaydī school of law, which traced back from him, through al-Amīr 'Alī b. al-Ḥusayn, through Amīr al-Ḥusayn's father Badr al-Dīn, to Qāḍī Ja'far, to al-Kanī in Rayy. Other Zaydī scholars considered Amīr al-Ḥusayn to have received the Zaydī canon directly from his father, who died when al-Ḥusayn was about fifteen years old. There are also indications that al-Ḥusayn was familiar with Sunnī *ḥadīth* works, such as al-Bukhārī's *Ṣaḥīḥ* and Mālik's *Muwatta'*, along with the popular Shī'ī book, *Nahj al-balāgha*. His prominent students include his son Jibrīl, his great-nephew Ṣalāḥ b. Ibrāhīm (d. ca. 710/1310), his relative al-Amīr al-Mu'ayyad b. Aḥmad (d. ca. 703/1303),⁴⁸ and Imam al-Muṭahhar b. Yaḥyā (d. 697/1297 or 8).

Amīr al-Ḥusayn b. Badr al-Dīn composed several influential scholarly books. His substantial book on theology, *Yanābī' al-naṣiḥa fī l-'aḳā'id al-ṣaḥīḥa* (Well-springs of Advice concerning the Sound Creeds) has been published many times since 1990, as has his shorter treatise, *al-'Iqd al-thamīn fī ma'rīfat rabb al-'ālamīn* (The Precious Necklace concerning Knowledge of the Lord of the Worlds).⁴⁹ In the field of law, Amīr al-Ḥusayn wrote an extensive commentary on Imam Abū Ṭālib's *al-Taḥrīr* titled *Kitāb al-Taqrīr* (The Book of Determination), which remains in manuscript. This work is meticulously organized and more user-friendly than the earlier commentary by the Iranian Zaydī, al-Qāḍī Zayd al-Kalārī, which may have been its primary source.⁵⁰ The most famous of

47 al-Shahārī, *Ṭabaqāt*, 1:61–62. For a translation of some verses from a poem inspired by his capture, see El-Shami and Sargeant, "Regional Literature: the Yemen," *Abbāsīd Belle-Lettres*, 464.

48 Al-Amir al-Mu'ayyad was a great-grandson of Shams al-Dīn, the uncle of al-Ḥusayn b. Badr al-Dīn.

49 I acquired a locally published copy of this short work, edited by Muḥammad Sālim 'Azzān, when I was a student in Sanaa in 1996. It is the first of three books on theology in the curriculum of Imām Yaḥyā Ḥamīd al-Dīn's twentieth-century al-Madrassa al-'Ilmiyya; al-Akwa', *Madāris al-Islāmiyya*, 288.

50 Fragments of this work are available at the Biblioteca Ambrosiana and the Vatican Library. A clear manuscript of the final volume of the *Taqrīr* is MS Vatican Library ar. 1009; Gior-

Amīr al-Ḥusayn's books remains his collection of legal *ḥadīths*, *Shifā' al-uwām fī aḥādīth al-aḥkām* (The Healing for those Dying of Thirst concerning Legal Hadīths). This book is arranged according to the chapters of Imam Abū Ṭālib's *al-Taḥrīr* and most likely was an abridgement of *Kitāb al-Taqrīr* and the canonical *Sharḥ al-Qāḍī Zayd*.⁵¹ According to his great-nephew, Ṣalāḥ b. Ibrāhīm b. Tāj al-Dīn, Amīr al-Ḥusayn b. Badr al-Dīn initially composed the second half of *Shifā' al-uwām*, from the Book of Sales until the end, and then proceeded from the beginning with the Book on Purification until he died after completing the chapters on the invalidators of marriage in the Book on Marriage. Ṣalāḥ b. Ibrāhīm indicates precisely where he began his supplement (*tatimma*) in *Shifā' al-uwām* and where it ends, approximately one hundred pages/folios later, at the end of *Kitāb al-naḥaqāt* (Book of Maintenance).⁵² He also reveals in the introduction to his supplement that he modeled the legal topics of his supplement on Amīr al-Ḥusayn's *Kitāb al-Taqrīr*. In the words of at least one later Zaydī jurist, *Shifā' al-uwām* was analogous for the Zaydī school to Abū Bakr al-Bayhaqī's (d. 458/1066) *al-Sunan al-kubrā* for the Shāfi'ī school,⁵³ and it is unsurprising that it was the first of Amīr al-Ḥusayn's books to be published in the unified Republic of Yemen.⁵⁴

Here is a summary of the highlights among Muḥammad b. al-Hādī's immediate relatives. His great-grandfather, Badr al-Dīn Muḥammad, was a core transmitter of the Zaydī legal and *ḥadīth* canon. His grandfather, Tāj al-Dīn Aḥmad, was a political authority in Sa'da from approximately 607–644/1210–1246. His grandfather's brother, Amīr al-Ḥusayn b. Badr al-Dīn, was a major scholar and compiler of the revered *ḥadīth* book, *Shifā' al-uwām*, along with other important books, like *al-Taqrīr*. His uncle, Ibrāhīm b. Tāj al-Dīn, claimed the Imamate but was captured by the Rasūlids and died in prison. His father, al-Hādī b. Tāj al-Dīn, was an important transmitter of the Zaydī canon from the famous scholar Aḥmad al-Akwa', known as Shu'la. And finally, his cousin, Ṣalāḥ b. Ibrāhīm,

gia Levi Della Vida, *Elenco dei Manoscritti Arabi Islamici della Biblioteca Vaticana* (Vatican City: Biblioteca Apostolica Vaticana, 1935), 115.

51 See Scott Lucas, "Two Core Zaydī Compilations of Legal Hadīth," forthcoming.

52 See al-Ḥusayn b. Badr al-Dīn, *Shifā' al-uwām*, 3 vols. (Sa'da: Maktabat Ahl al-Bayt, 2022), 2:366. Ṣalāḥ's supplement covers pages 366–572 of this edition. The second supplement is by Ṣalāḥ b. Jalāl (d. 805/1402–1403) and merely covers *Kitāb al-Raḍā'* (Book of Breastfeeding), 2:573–598.

53 al-Shahārī, *Ṭabaqāt*, 1:887.

54 It was published in three volumes in 1996. Some Zaydī scholars were unhappy that the edition was published with al-Shawkānī's critical commentary; a new edition (2022) without this commentary is available online at: <https://ziydia.com/Book/523>. Subsequent references to *Shifā' al-uwām* will be to the 2022 edition due to its accessibility.

wrote the supplement to *Shifā' al-uwām* covering the legal *ḥadīths* on marriage, divorce, and maintenance. In short, Muḥammad b. al-Hādī was extremely well-positioned to make a contribution to Zaydī scholarship, as well as a potential candidate for the Imamate thanks to his descent from the Prophet Muḥammad.

4 Muḥammad b. al-Hādī's Life and Teachers

We know very little about Muḥammad b. al-Hādī's life. He was born in 651/1253, more than a decade after his illustrious grandfather, Tāj al-Dīn passed away. We do not know where his father lived, although the sources identify his final resting place as the northern Yemeni town of Ḥaydān.⁵⁵ The biographical dictionaries are silent concerning his siblings, if there were any, and only his son, Aḥmad, who predeceased him, is mentioned. A manuscript containing numerous detailed family trees identifies three sons of Muḥammad b. al-Hādī who did not have any children that attained maturity, along with two who did have offspring.⁵⁶ He may have served Imam al-Muṭahhar b. Yaḥyā, who belonged to a different branch of the descendants of Imam al-Hādī ilā l-Ḥaqq than the descendants of Badr al-Dīn Muḥammad. However, he may also have been at odds with this Imam, because Muḥammad b. al-Hādī's cousin, Ṣalāḥ b. Ibrāhīm wrote a reply to a critical letter that he had sent to Imam al-Muṭahhar regarding the profligacy he witnessed in Sa'da after a truce had been signed with the Rasūlids.⁵⁷ Further evidence of Muḥammad b. al-Hādī's having fallen from favor is a long, flowery letter, filled with praise poetry, in which he begs the "sayyid judges among the Āl Abi l-Najm" either to loan him a copy of al-Ḥākim al-Jishumī's Qur'ān commentary, *al-Tahdhīb*, or to provide copyists for him who

55 According to Google Maps, Ḥaydān is 67 kilometers southwest of Ṣa'da.

56 MS Milan, Ambrosiana, Nuovo Fondo, ar. B7, fol. 34v. The text is *Rawḍat al-albāb wa-tuḥfat al-aḥbāb wa-bukhyat al-ṭullāb wa-nukhabāt al-aḥsāb li-ma'rīfat al-ansāb*, by Muḥammad b. 'Abd Allāh b. 'Alī (d. 1031/1622); Löfgren and Traini, *Catalogue of the Arabic Manuscripts*, 2:68. This text reports that Muḥammad b. al-Hādī's son Yaḥyā had four sons, while his son al-Hādī had a son named Muḥammad and a grandson known as al-Amīr Ṣalāḥ. The sons who did not have children were named al-Ḥusayn, Mahdī, and Aḥmad, the last of whom is mentioned in the Zaydī biographical dictionaries.

57 Remarkably, a manuscript of Ṣalāḥ's rebuttal to Muḥammad b. al-Hādī's complaint survives in manuscript and is accessible via the Yemeni Manuscript Digitization Project; [*Jawāb 'alā risālat al-amīr Badr al-Dīn Muḥammad b. al-Hādī b. Tāj al-Dīn allatī 'arraḍa fī awwaliḥā 'alā l-Imām al-Mutawakkil 'alā llāh al-Muṭahhar b. Yaḥyā al-muẓallal bi-l-ghamām*], Princeton University Library, ymdi_03_125, pp. 111–128. Available online at: <https://catalog.princeton.edu/catalog/9978495353506421>



FIGURE 1 Muḥammad b. ‘Abd Allāh b. ‘Alī, *Rawḍat al-albāb wa-tuḥfat al-aḥbāb wa-bughyat al-ṭullāb wa-nukhabat al-aḥsāb li-ma’rifat al-ansāb*, copied 1086/1675. A partial genealogical tree of Muḥammad b. al-Hādī, author of *The Garden and the Pool*, whose name appears in red near the center of the page, perpendicular to it and angled slightly to the left.

MS MILAN, BIBLIOTECA AMBROSIANA, NUOVO FONDO, AR. B7, FOL. 34^v

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can prepare a manuscript of it because he has been unable to obtain a copy.⁵⁸ This letter, which covers seven pages of the second entry⁵⁹ for him in the print edition of *Maṭlaʿ al-budūr*, is remarkable, given the popularity of *al-Tahdhīb* among the scholars of northern Yemen. However, it does align with the fact that Muḥammad b. al-Hādī died in the town of Afq, near the central Yemeni city of Dhamār, which traditionally has been the southern limit of Zaydī influence in Yemen. If he spent a prolonged period of time in this region and was unable to bring his family's library with him, then his desperate request for *al-Tahdhīb* seems less strange, especially since we know Muḥammad b. al-Hādī had received a copy of this book from his father.

Intellectual historians are fortunate that the *Ṭabaqāt al-Zaydiyya* records Muḥammad b. al-Hādī's *ijāza* to Imam Muḥammad b. al-Muṭahhar because this text gives us a window into many of the books that Muḥammad b. al-Hādī studied and the modes by which he received them. Excluding the books concerning the Arabic language, Muḥammad b. al-Hādī identifies six immediate teachers in his *ijāza*.⁶⁰ He also indicates that he obtained the majority of books either through a general *ijāza* or by borrowing his teacher's book and copying or acquiring it, called *munāwala* (transference) in Arabic.⁶¹ Given that the purpose of this *ijāza* was to record the pathways by which Muḥammad b. al-Hādī received the books that were the sources for his legal Qurʾān commentary, *The Garden and the Pool*, it will be discussed in greater detail in the following chapter.

By the time Muḥammad b. al-Hādī was contemplating which type of original works to compose, Yemeni scholars had already made substantial contributions to the growing canon of Zaydī legal and theological books. A century prior to Muḥammad b. al-Hādī, Qāḍī Jaʿfar composed books on jurispru-

58 Ibn Abī l-Rijāl, *Maṭlaʿ*, 4:380–387.

59 Curiously, Muḥammad b. al-Hādī receives two adjacent entries in *Maṭlaʿ al-budūr*. In the first entry, he is identified as the author of *The Garden and the Pool*, while in the second his book on legal theory, *al-Mūḍīʿ al-musriʿ* is mentioned, prior to his long letter seeking help obtaining al-Jishumī's *al-Tahdhīb*.

60 This *ijāza* is found in al-Shahārī, *Ṭabaqāt*, 2:1086–1090. It was transmitted by Ṣalāḥ b. Jalāl in 757/1356, and then again, much later, by the Imam al-Muʾayyad bi-llāh Muḥammad b. al-Qāsim (d. 1054/1644), which is where the author of *Ṭabaqāt al-Zaydiyya* found it; *Ṭabaqāt*, 2:1090.

61 For more on *munāwala*, see Ibn Ṣalāḥ al-Shahrazūrī, *Kitāb Maʿrifat anwāʿ ʿulūm al-ḥadīth*, trans. Erik Dickinson (Reading: Garnet, 2005), 118–122. Dickinson translates *munāwala* as “transference.” Ibn Ṣalāḥ describes it as the fourth and weakest type of *ijāza* and states that if *munāwala* is done without an *ijāza* from the owner of the manuscript, he cannot teach it. Muḥammad b. al-Hādī discusses it briefly in his work on legal theory; see Muḥammad b. al-Hādī, *al-Mūḍīʿ al-musriʿ*, ms London, British Library, Or. 3721, fol. 55r.

dence, legal theory, and even inaugurated a tradition of Muʿtazilī-infused theological writings in thirty topics.⁶² Amīr ʿAlī b. al-Ḥusayn (fl. 7th/13th century) thoroughly revised the jurisprudence of the Hārūnī brothers, Imams al-Muʿayyad bi-llāh and Abū Ṭālib, in his seminal four-volume *Kitāb al-Lumaʿ*. ʿAlī b. Ḥumayd, the son of Muḥyī al-Dīn al-Qurashī, arranged the large Zaydī-Muʿtazilī *ḥadīth* legacy Qāḍī Jaʿfar imported to Yemen into his 200-chapter book *Musnad Shams al-akhbār*. Closer to home, Muḥammad b. al-Hādī's great-uncle, Amīr al-Ḥusayn b. Badr al-Dīn, composed the large commentary, *al-Taqrīr*, on Abū Ṭālib's *al-Tahrīr*, and then composed (most of) *Shifāʾ al-uwām*, a seminal book of legal *ḥadīth* that Muḥammad b. al-Hādī's cousin Salāḥ b. Ibrāhīm nearly completed. What kind of book would earn Muḥammad b. al-Hādī a place in the Zaydī canon? How might he demonstrate his mastery of the Islamic legal tradition?

The first of the two books that Muḥammad b. al-Hādī composed was a contribution to legal theory (*uṣūl al-fiqh*). Interestingly, he chose to write the second half of an ambitious work on legal theory that was incomplete, called *al-Muqniʿ fī uṣūl al-fiqh* (The Sufficient Book of Legal Theory).⁶³ The author of this book was a descendant of Imam al-Hādī ilā l-Ḥaqq outside of the descendants of Badr al-Dīn Muḥammad named Yaḥyā b. al-Muḥassin (d. 636/1238–1239).⁶⁴ A contemporary of Muḥammad b. al-Hādī's grandfather, Tāj al-Dīn, Yaḥyā b. al-Muḥassin was an ambitious scholar, poet, and politician, who claimed that his work, *al-Muqniʿ* transcended all previous works on legal theory. He also made a bid for the Imamate in the region of Saʿda after the death of Imam al-Manṣūr ʿAbd Allāh b. Ḥamza in Ṣafar 614/May–June 1217. Despite acquiring the honorifics al-Dāʾī and al-Muʿtaḍid bi-llāh, Yaḥyā b. al-Muḥassin did not attract followers in Ṣaʿda and retreated to Shahāra and ultimately Khawlān al-Shām in northern Yemen.

Muḥammad b. al-Hādī fittingly titled his book on legal theory *al-Muḍīʿ al-musriʿ ilā tamām al-Muqniʿ*, which may be translated as “The Book that rapidly hastens the completion of *al-Muqniʿ*.” The five chapters that he composed cover

62 For an overview of the manuscripts of works in the thirty-topics tradition held by the Biblioteca Ambrosiana, see Scott Lucas, “Islamic Theology in Thirty Topics: A Yemeni Zaydi Tradition Preserved in the Biblioteca Ambrosiana,” *Shii Studies Review* 4 (2020): 135–175.

63 An early manuscript of this work is available online, courtesy of the Muʿassasat al-Imām Zayd b. ʿAlī al-Thaqāfiyya, shelf mark ZA 224–04: <https://elibrary.mara.gov.om/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/ktab/?id=11366>

64 His genealogy is Yaḥyā b. al-Muḥassin b. al-Maḥfūz b. Muḥammad b. Yaḥyā b. Yaḥyā b. al-Ḥasan, which means his grandfather al-Maḥfūz would have been a cousin of Badr al-Dīn Muḥammad; *Ṭabaqāt*, 3:1249–1252; *Aʿlām*, 2:470.

the topics of consensus, reports, analogy, status of things unmentioned in the Qurʾān and Sunna (*al-ḥaṣr wa-l-ibāḥa*), and the requirements for a *muftī*. Fortunately, a unicum manuscript of this book survives and is held by the British Library, shelf mark Or. 3721.⁶⁵ It consists of 138 folios and was copied in Dhū l-Qaʿda 1089/December 1678. The paucity of surviving copies of *al-Mūdiʿ al-musriʿ* is not surprising, given the crowded field of Zaydī legal theory, which continued to develop for centuries after Muḥammad b. al-Hādī, and became standardized in books like Ibn al-Murtaḍā's *Minhāj al-wuṣūl* (The Way that Arrives [at knowledge of legal theory]), Šārim al-Dīn Ibrāhīm Ibn al-Wazīr's (d. 914/1508–1509) *al-Fuṣūl al-lu'lu'yya* (The Pearly Chapters), and Ibn Luqmān's (d. 1039/1629–1630) *al-Kāshif li-dhawī al-ʿuqūl* (The Book that Unveils [knowledge of legal theory] for Intelligent People).⁶⁶ Muḥammad b. al-Hādī's legal theory is sophisticated and can permit us to observe how he applies his theoretical opinions with his actual practice of jurisprudence, which is on full display in *The Garden and the Pool*.

Given that a central argument of my book is that Muḥammad b. al-Hādī deployed the genre of legal Qurʾān commentaries to demonstrate his qualification as a master jurist, it is necessary to examine in some detail his description of the intellectual disciplines a student must acquire to achieve this status. In his comprehensive study of Islamic law in modern Yemen, *Shariʿa Scripts*, Brinkley Messick identified five sciences an aspiring master jurist must acquire: Arabic language; the “rule-bearing subset” of the Qurʾān; the Sunna; the Consensus cases; and legal theory (*uṣūl al-fiqh*).⁶⁷ Proficiency in these five sciences is what distinguishes a master jurist (*mujtahid*) from a lay person (*muqallid*). In *al-Mūdiʿ al-musriʿ*, Muḥammad b. al-Hādī agrees with this list of five sciences (or disciplines) but adds two additional ones: theology and legal cases (*furūʿ al-fiqh*).⁶⁸ His discussion of the knowledge of the Qurʾān that an aspiring master jurist must acquire is worth quoting in full:

The Qurʾān: Most of what is needed from it is obtained through the mastery of legal theory. The necessary amount to know are the passages con-

65 Charles Rieu, *Supplement of the Catalogue of the Arabic Manuscripts in the British Museum* (London: Longmans & Co., 1894), 174–175.

66 For a thorough list of Zaydī books on legal theory, see al-Murtaḍā al-Maḥaṭṭawī, *al-Zaydiyya* (Sanaa: Maktabat Badr, 2014), 80–82. For an insightful discussion of Zaydī legal theory, see Kumail Rajani and Robert Gleave (eds.), *Shiʿite Legal Theory* (Edinburgh: Edinburgh University Press, 2023), 7–15.

67 Brinkley Messick, *Shariʿa Scripts* (New York: Columbia University Press, 2018), 108–117.

68 Muḥammad b. al-Hādī, *al-Mūdiʿ al-musriʿ*, MS London, British Library, Or. 3721, fols. 130^b–131^a.

nected to legal rulings (*aḥkām al-sharʿ*), obligations (or inheritance), and [legal] topics (*masāʾil*), the size of which is 500 verses. All the other verses in the Book of God are not part of the stipulation for *ijtihād*.⁶⁹

Like most authors of books on legal theory, including Sunnīs, Muḥammad b. al-Hādī declares that an aspiring master jurist need not be expert in the exegesis of every passage of the Qurʾān, but that he must grasp approximately five hundred verses. This number of 500 verses has deep roots in Islamic thought, as it is appended to a work ascribed to al-Muqātil b. Sulaymān (d. 150/767) that most likely was extracted from his general Qurʾān commentary by a later redactor,⁷⁰ and it is the number of legal verses articulated by al-Ghazālī in his influential book on legal theory, *al-Mustasfā*.⁷¹ However, between the time Muḥammad b. al-Hādī completed his book on legal theory and composed *The Garden and the Pool*, he must have arrived at the conclusion that there were closer to 200 legal verses in the Qurʾān that a *mujtahid* must know, a number that aligns more closely with the number of legal passages identified and commented upon by later Yemeni scholars, like al-Mawziʿī, Ibn al-Wazīr, and Muḥammad b. al-Ḥusayn b. Imām al-Qāsim.

Muḥammad b. al-Hādī's most successful composition was *The Garden and the Pool*, which I will discuss in great detail over the remaining chapters of this book. In his introduction to this work, he informs his readers that he noticed that the Zaydī community lacked a book that focused exclusively upon the interpretation of the legal verses of the Qurʾān, and that his book was intended to fill this void. Although he does not name titles of books in this genre in the Sunnī or Twelver Shīʿī traditions, he may have been aware of the Iraqi Ḥanafī scholar, Abū Bakr al-Jaṣṣāṣ's *Aḥkām al-Qurʾān*, or the Andalusī Mālikī scholar, Abū Bakr Ibn al-ʿArabī's book with the same title. At the very least, Muḥammad b. al-Hādī must have been cognizant of the small number of *tafsīr* works in the Zaydī tradition. It appears that Zaydī scholars' exegetical needs were almost entirely met by the Sunnī-Muʿtazili commentaries *al-Tahdhīb fī l-tafsīr* by al-

69 Ibn al-Hādī, *al-Muḍīʿ al-musriʿ*, fol. 130^b.

70 This is Isaiah Goldfeld's suggestion, in the English introduction to his Arabic edition of Muqātil b. Sulaymān, *Kitāb Tafsīr al-khams miʾat āya min al-Qurʾān*, ed. Isaiah Goldfeld (Shfaram: Al-Mashriq Press, 1980), 3–8. He writes, "Our MS shows complete dependence on [Muqātil's] full Tafsīr, even to identical peculiarities of spelling" (p. 7), and proposes that this work was compiled around the year 900 CE. Note that this legal Qurʾān commentary is arranged according to legal topics, like Twelver Shīʿī legal commentaries, rather than the Sunnī/Zaydī format that follows the sequence of the sūras of the Qurʾān.

71 Abū Ḥāmid al-Ghazālī, *al-Mustasfā fī ʿilm al-uṣūl*, 2 vols. (Beirut: al-Makaba al-ʿAṣriyya, 2008), 2:294.

Hākīm al-Jishumī and *al-Kashshāf* by al-Zamakhsharī, both of which reached northern Yemen during the great transfer of books discussed earlier in this chapter. There is no indication that Muḥammad b. al-Hādī was aware of the *Tafsīr gharīb al-Qurʾān* (Commentary on Rare Words in the Qurʾān) ascribed to Zayd b. ʿAlī, and I have come across only one citation from *Tafsīr al-Burhān fī ʿulūm al-Qurʾān* (The Proof concerning the Sciences of the Qurʾān) by the Iranian sayyid scholar Abū l-Faṭḥ al-Nāṣir al-Daylamī, who came to Yemen seeking the Imamate in 437/1036–1037 and died fighting the Ismāʿīlī Ṣulayhids in 444/1052–1053.

The Garden and the Pool remained unpublished until 2024 and survives in a handful of manuscripts. Digital images of an attractive manuscript of the entire work, copied in Shawwāl 1088/December 1677, are available online, courtesy of the Yemeni Manuscript Digitization Initiative (YMDI), hosted by Princeton University Library, while the original copy is in the private library of Muḥammad al-Kibṣī in Yemen. A second complete copy dated Jumādā I 1054/July 1644 of *The Garden and the Pool* is currently available in the online collection of the Maktabat Muʿassasat al-Imam Zayd b. ʿAlī al-Thaqāfiyya, hosted by the Ministry of Endowments and Religious Affairs in Oman, with the shelf mark ZA 676–01.⁷² Other manuscripts of *The Garden and Pool* are held in Yemen in the Western Library of the Great Mosque of Sanaa, the Topkapi Palace Library in Istanbul, and a few private libraries.⁷³

Despite the fact that nearly all extant manuscripts of *The Garden and the Pool* are in Yemeni libraries, an extraordinary fragment of the book has been held by the Biblioteca Ambrosiana in Milan, Italy, since the early twentieth century.⁷⁴ According to its colophon, this codex, Ms Milan, Ambrosiana, Nuovo Fondo ar. A6, was written by the hand of Muḥammad b. al-Hādī himself in Jumādā II 714/ November 1314, six years prior to his death.⁷⁵ Regrettably, this manuscript

72 The website claims that this manuscript was copied in Rajab 771/February 1370 but the colophon for Part I of the *Garden and the Pool* is dated Jumādā I 1054 (p. 342). Part II of the manuscript is incomplete, ending at Q 59, and lacks a colophon. Both parts were written by the same hand. The images appear to be of a photocopy of the original manuscript, rather than the manuscript itself. See: <https://elibrary.mara.gov.om/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/ktab/?id=14666#book/648>

73 Al-Wajīh mentions complete manuscript copies held in the Gharbiyya library in Sanaa and Maktabat Āl al-Hāshimī, along with photocopies of manuscripts in two additional private libraries; *Aʿlām*, 2:347. See also *al-Fihris al-shāmī li-l-turāth al-ʿarabī al-Islāmī al-makḥṭūṭ, ʿulūm al-Qurʾān: al-tafsīr wa-ʿulūmuhu*, 361.

74 Löfgren and Traini, *Catalogue of the Arabic Manuscripts*, 2:5–6.

75 As mentioned in the introduction, Muḥammad b. al-Hādī's colophon is translated and discussed in Arianna D'Ottone, "The Pearl and the Ruby," 95–97.

only covers legal passages 122–199 that he analyzes in *The Garden and the Pool*, starting with Q 12:55, which is equivalent to pages 234–340 of the YMDI online manuscript. Like many Yemeni manuscripts from this period, MS Ambrosiana A6 is written in a large, undotted, slanted script.⁷⁶ Fortunately, the Biblioteca Ambrosiana made digital images of this precious manuscript publicly available in March 2025.⁷⁷ Even though MS Ambrosiana A6 is an incomplete manuscript, Islamicists are extremely fortunate to have 109 folios of *The Garden and the Pool* in Muḥammad b. al-Hādī's own handwriting.

5 The Impact of *The Garden and the Pool* on Zaydī Thought

How do we know that *The Garden and the Pool* was a significant contribution to the Zaydī intellectual tradition? The first indication comes from the title page of Muḥammad al-Kibṣī's manuscript of *The Garden and the Pool* in the YMDI collection hosted online by the Princeton University Library.⁷⁸ No fewer than seven dated ownership notes are present on this page, indicating that a continuous array of scholars and book collectors preserved this manuscript from the time of its collation by Muḥammad b. 'Alī b. Muḥammad al-Hādawī in 1089/1678–1679 until its acquisition by Muḥammad b. Muḥammad al-Kibṣī in 1375/1955–1956.⁷⁹ One of the owners of this manuscript was the Zaydī Imam al-Manṣūr bi-llāh 'Alī b. al-'Abbās (r. 1189–1224/1775–1809), who added it to his royal library in 1211/1796–1797.⁸⁰ There is also an audition note, probably copied from the manuscript from which this manuscript was made, that refers to an anonymous auditor hearing the first half of *The Garden and the Pool* from Imam

⁷⁶ Löfgren and Traini call it “bad *nashī*.”

⁷⁷ Images of this manuscript, along with all of the Arabic manuscripts in Series A and B of the Nuovo Fondo, are available at: https://ambrosiana.nainuwa.com/index.php/apps/scego_search/app. The Biblioteca Ambrosiana plans to add digital images of the approximately 1,500 remaining Arabic manuscripts over the next decade. Microfilms of nearly all of the Arabic Nuovo Fondo manuscripts are available in the United States at the Medieval Institute at the University of Notre Dame.

⁷⁸ Muḥammad b. al-Hādī, *al-Rawḍa*, YMDI, 5.

⁷⁹ His full name appears on the title page as Muḥammad b. 'Alī b. Muḥammad b. 'Abd Allāh b. al-Khālīd (*sic*) al-Hādawī, which suggests he is a descendant of Imam al-Hādī ilā l-Ḥaqq. He appears as the collator at the end of part 1 of *The Garden and the Pool* (p. 207) with the name Muḥammad b. 'Alī b. Khālīd. I have not been able to locate him in the Zaydī biographical literature.

⁸⁰ This is the Zaydī Imam who appointed the controversial scholar, Muḥammad al-Shawkānī (d. 1250/1834) as chief judge in 1209/1795; see Bernard Haykel, *Revival and Reform in Islam* (Cambridge: Cambridge University Press, 2003), 56.

al-Mahdī Muḥammad b. Muṭahhar, who was Muḥammad b. al-Hādī's direct student, and that Imam al-Mahdī's copy was collated with a manuscript in the author's handwriting in 727/1327. Finally, there is a note that the glosses in this manuscript were not in the original text but added by the owner (and collator) Muḥammad b. 'Alī b. Muḥammad al-Hādawī. Most of these glosses highlight novel legal opinions or choices (*ikhtiyār*) of Muḥammad b. al-Hādī in *The Garden and the Pool*, suggesting that at least eighty of his legal positions merited special consideration. Thus, readers of this manuscript of *The Garden and the Pool* are notified in the margins of Muḥammad b. al-Hādī's significant opinions, many of which went against the majority positions of the Zaydī legal school.

In addition to being one of the few Qur'ān commentaries written by Yemeni Zaydī scholars, *The Garden and the Pool* inspired at least one additional work in the genre of legal commentaries in the ninth/fifteenth century. In the introduction to his commentary, *The Ripe Fruits*, Yūsuf "the Jurist" b. Aḥmad of the northern Yemeni town of Thulā describes how he had come across Muḥammad b. al-Hādī's *The Garden and the Pool* when he was planning on writing his own legal Qur'ān commentary and agreed with its author's claim that it was an unprecedented book in the Zaydī tradition.⁸¹ He includes a detailed breakdown of the number of legal verses Muḥammad b. al-Hādī discussed in each sūra of the Qur'ān, before arguing that it is necessary to comment upon far more than just this modest set of verses.⁸² Despite this acknowledgement of the value of the *Garden and the Pool*, Yūsuf the Jurist rarely cites it in *The Ripe Fruits*. For example, he quotes Muḥammad b. al-Hādī a mere four times in his commentary on the Sūra of Women (Q 4), in which he comments on 80 legal passages containing a total of 93 verses.⁸³ Muḥammad b. al-Hādī commented on 29 of these 80 legal passages in the *Garden and the Pool*, yet Yūsuf the Jurist entirely ignored his commentary on 25 of them and included only short citations from four of them.

If Yūsuf the Jurist did not rely on the content of *The Garden and the Pool* for his legal commentary, which books did he use instead? It is clear from his commentary on the Sūra of Women in *The Ripe Fruits* that his two primary sources were al-Ḥākim al-Jishumī's *al-Tahdhib* and al-Zamakhsharī's Qur'ān

81 Yūsuf b. Aḥmad, *al-Thamarāt al-yāni'ia*, 1:32.

82 Yūsuf the Jurist only enumerates 194 verses in his account of *The Garden and the Pool*; *al-Thamarāt*, 1:32–33.

83 Yūsuf b. Aḥmad, *al-Thamarāt*, 2:245–532. Yūsuf the Jurist quotes Muḥammad b. al-Hādī in his commentary on Q 4:4, Q 4:22, Q 4:103, and Q 4:128–129; see *al-Thamarāt*, 2:256, 317, 490, 508. Each citation is short, rarely more than a line or two of text.

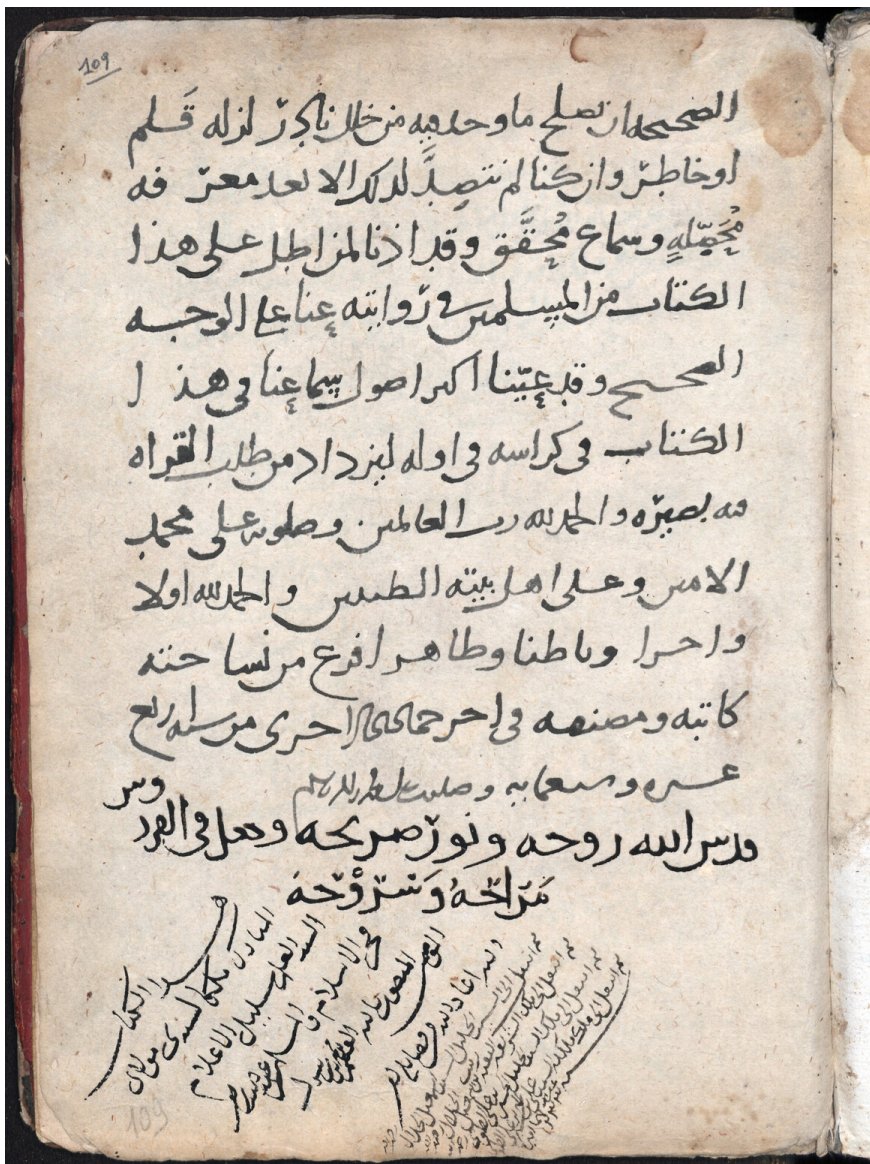


FIGURE 2 Second colophon of Muḥammad b. al-Hādī, *al-Rawḍa wa l-ghadīr* (The Garden and the Pool), in the author's handwriting (*muṣannifuhu*) dated the end of Jumādā II, 714/October 1314, with ownership notes

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commentary, *al-Kashshāf*. These two Sunnī-Muʿtazilī Qurʾān commentaries were the most popular books of *tafsīr* in pre-modern Yemen, and they or their authors are cited explicitly in nearly every passage in the commentary on the Sūra of Women in *The Ripe Fruits*.⁸⁴ They furnish Yūsuf the Jurist with occasions for revelation for most passages he discusses, as well as considerable normative pluralism over the meanings and intentions of their words. Both source books contain diverse legal and philological opinions among Companions, Successors, Sunnī and Muʿtazilī jurists concerning each passage, and Yūsuf the Jurist appears to be more interested in these debates than the internal legal debates within the Zaydī school. He even makes numerous references to a book titled *al-Nihāya*, which in fact is the Cordovan Ibn Rushd's (d. 595/1198) *Bidāyat al-mujtahid* (The Distinguished Jurist's Primer), for additional legal disagreements among Sunnī authorities, a book which does not appear in *The Garden and the Pool*.⁸⁵ When he does discuss Zaydī legal disagreement, Yūsuf the Jurist's primary sources are *Sharḥ al-Ibāna*, which probably is Abū Jaʿfar Muḥammad al-Hawsamī's unpublished commentary on al-Nāṣir al-Uṭrūsh's legal work, *al-Ibāna* and an encyclopedic legal work that was composed when Muḥammad b. al-Hādī was an old man or after his death, titled *al-Intiṣār ʿalā ʿulamāʾ al-amṣār* (The Conqueror over the Scholars of the Garrison Cities), by the brilliant Zaydī Imam Yaḥyā b. Ḥamza. This latter book may have contributed to the reduction in interest in the older *Sharḥ al-Qāḍī Zayd*, which Yūsuf the Jurist cites only occasionally. One also witnesses the increasing citation of Sunnī books in Yūsuf the Jurist's legal commentary, including the Qurʾān commentary of al-Thaʿlabī, al-Nawawī's (d. 676/1277) commentary on *Ṣaḥīḥ Muslim* and his *Kitāb al-Adhkār* (Book of Invocations), and the Sunnī canonical *ḥadīth* books, in addition to the previously mentioned books by al-Zamakhsharī and Ibn Rushd. This increased engagement among Zaydī scholars with Sunnī sources in the century after Muḥammad b. al-Hādī's life is corroborated by my recent study on Ibn Abī l-Qāsim's (d. 837/1433–1434) popular Zaydī Qurʾān commentary, *Tajrīd al-Kashshāf*, which was completed in 795/1393, and drew openly on the Sunnī Qurʾān commentaries of

84 In the next chapter, I will show that al-Jishumī's *al-Tahdhīb* was a primary source for Muḥammad b. al-Hādī's *The Garden and the Pool*. Perhaps Yūsuf the Jurist did not quote Muḥammad b. al-Hādī's book more frequently because he made abundant use of this shared source?

85 The full title of Ibn Rushd's famous book on legal disagreement is *Bidāyat al-mujtahid wa-nihāyat al-muqtaṣid*. Somewhere between Cordoba and Yemen, this book became known by the second half of its title (*al-nihāya*, or the ending), which has the opposite meaning of *al-bidāya* (the beginning).

al-Zamakhsharī, al-Wāḥidī (d. 468/1076), and even Ibn al-Jawzī.⁸⁶ Presumably, copies of these books became increasingly available due to the prosperity of the powerful Sunnī Rasūlid kingdom that dominated Yemen during these authors' lifetimes.

Yūsuf the Jurist's *The Ripe Fruits* became popular throughout northern Yemen and was published in five volumes by the Ministry of Justice of the Republic of Yemen in 2002.⁸⁷ It was abridged a few decades after Yūsuf the Jurist's death by the Zaydī scholar Fakhr al-Dīn 'Abd Allāh b. Muḥammad al-Najrī, in a text formally titled *Shāfi' al-'alīl* (Healer of the Ill), but more typically called *Tafsīr* (or *Sharḥ*) *al-khamsamī'at āya* (Commentary on the 500 Verses). Al-Najrī was born in 825/1442 in the intellectually vibrant city of Ḥūth in northern Yemen, where he initially studied with his father and brother.⁸⁸ After his pilgrimage to Mecca, which probably took place in 848/1445, he traveled to Mamlūk Egypt, where he studied for five years. His studies included religious sciences, Arabic linguistics, and even engineering, in the cosmopolitan city of Cairo. Posing as a Sunnī Ḥanafī scholar, rather than a Zaydī Shī'ī, he even attracted the attention of the famous historian at the time, Muḥammad b. 'Abd al-Raḥmān al-Sakhāwī (d. 902/1497), who included an entry for him in his massive biographical dictionary, *al-Ḍaw' al-lāmi'*.⁸⁹ Al-Najrī returned to Yemen in 853/1449–1450, where he composed several books, including what became a popular commentary on Ibn al-Murtaḍā's theological texts found in the introduction to his encyclopedic *al-Baḥr al-zakḥkhār* (The Raging Sea).⁹⁰

According to the editor of the incomplete critical edition of this book, Aḥmad 'Alī al-Shāmī, al-Najrī abridged his work from Yūsuf the Jurist's *The Ripe Fruits* without explicitly acknowledging his source.⁹¹ In fact, al-Najrī did not

86 See Scott Lucas, "A Zaydī Qur'ān Commentary from Yemen," *Journal of Qur'ānic Studies* 23.3 (2021): 36–69.

87 Recall that it was also the only real Zaydī Qur'ān commentary to which the modern Egyptian scholar, Muḥammad al-Dhahabī, had access in his survey *al-Tafsīr wa-l-mufasssīrūn*.

88 The biographical information in this paragraph comes from Aḥmad al-Shāmī's introduction to his edition of *Shāfi' al-'alīl*; see al-Najrī, *Shāfi' al-'alīl fi sharḥ al-khamsamī'at āya min al-tanzīl*, ed. Aḥmad al-Shāmī, 2 vols. (Beirut: Mu'assasat al-Kutub al-Thaqāfiyya, 1986), 1:33–44.

89 Muḥammad b. 'Abd al-Raḥmān al-Sakhāwī, *al-Ḍaw' al-lāmi' li-ahl al-qarn al-tāsī'*, 12 vols. (Beirut: Dār al-Jīl, 1992), 5:62.

90 Gregor Schwarb, "Ms Munich, Bavarian State Library, Cod. arab. 1294: A Guide to *Kalām*-Studies during the Ṭāhirid and Early Qāsimite Periods (Mid-15th to early 17th centuries)," in *The Yemeni Manuscript Tradition*, ed. Hollenberg et. al., 156–202.

91 al-Najrī, *Shāfi' al-'alīl*, 1:49–50. Al-Shāmī acknowledges that both Ibn Abī l-Rijāl and al-Shawkānī claimed that al-Najrī abridged his book from *The Ripe Fruits*, but he also checked al-Najrī's book against *The Ripe Fruits* while he was editing it. He includes in the footnotes

even include an introduction to his *Commentary on 500 Verses* and follows the customary *basmalah* with his commentary on the first legal verse, Q 2:6. Unlike Yūsuf the Jurist, al-Najrī does not mention the complete Qurʾānic verses upon which he is commenting, preferring instead to mention only a phrase or a few words of them, which assumes that the reader has memorized the Qurʾān and recognizes the passage in question. He also rarely mentions occasions of revelation, something which Yūsuf the Jurist records extensively throughout *The Ripe Fruits*. Aḥmad al-Shāmī also made the important observation that al-Najrī did not base his commentary on Ibn al-Murtaḍā's list of 500 legal passages found in the final section of his introduction to *al-Baḥr al-zakḥkhār*. Given al-Najrī's intimate familiarity with this latter book, one might have expected him to use the list of 500 passages Ibn al-Murtaḍā provides for his aspiring master jurist students in this book. Instead, al-Najrī appears to have selected slightly over 500 passages from Yūsuf the Jurist's *The Ripe Fruits*, upon which he commented in a highly abbreviated manner, with symbols in place of jurists' names, presumably to reduce this information to a single volume manuscript that could be memorized and copied efficiently.

Al-Najrī's *Commentary on 500 Verses* became very popular in the Zaydī manuscript tradition, as Aḥmad al-Shāmī mentions the existence of about one hundred manuscripts of it in Yemeni and European libraries.⁹² A complete copy of the work copied a mere sixteen years after al-Najrī's death is available online, courtesy of the Staatsbibliothek zu Berlin, while a twentieth-century manuscript of it is available courtesy of the YMDI at Princeton University.⁹³ The Biblioteca Ambrosiana in Milan holds ten manuscripts of it, nearly all of which are dated between the years 1600 and 1750.⁹⁴ According to Ismāʿīl al-Akwaʿ, al-Najrī's *Commentary on 500 Verses* was the first of four Qurʾān commentaries taught in Imam Yaḥyā Ḥamid al-Dīn's al-Madrasa al-ʿIlmiyya in Sanaa, indicat-

to his edition numerous passages from the Yūsuf the Jurist's commentary, which was only available in manuscript when al-Shāmī prepared his edition of *Commentary on 500 Verses*. Note that al-Shāmī died while preparing his critical edition, which is why it only covers al-Najrī's commentary on the first four sūras of the Qurʾān. A dissertation edition of the entire text was prepared by Muḥammad b. Šāliḥ al-ʿUtayq at Umm al-Qurā University in 1406/1985–1986.

92 Al-Najrī, *al-Shāfiʿi al-ʿalīl*, 1:50.

93 MS Berlin, Staatsbibliothek zu Berlin, Glaser 238 (copied Rajab 893/June–July 1488): https://digital.staatsbibliothek-berlin.de/werkansicht?PPN=PPN735425523&PHYSID=PHYS_0017&DMDID=DMDLOG_0002; a twentieth century manuscript ymdi_02_17: <https://catalog.princeton.edu/catalog/9978490563506421#view>

94 These manuscripts are Ambrosiana, Nuovo Fondo ar. D458, D557, E244, E304, E305, E306, E307, F112, F128, and H117.

ing that this book remained significant into the early twentieth century.⁹⁵ Yūsuf the Jurist's *The Ripe Fruits* was the third Qur'ān commentary in this curriculum, which concluded with al-Zamakhsharī's *al-Kashshāf*, a book that was a major source for Yūsuf the Jurist's legal Qur'ān commentary.⁹⁶

Despite *The Garden and the Pool*'s role as a catalyst for two of the most influential Qur'ānic commentaries composed by subsequent Zaydī scholars, regrettably little of its actual content was incorporated into either *The Ripe Fruits* or *The Commentary on 500 Verses*. This is unfortunate, in my opinion, because Muḥammad b. al-Hādī's book is superior in its organization to these latter two books and includes numerous examples of his personal, evidence-based legal reasoning. By contrast, Yūsuf the Jurist and al-Najrī appear to have been more inclined to teach the legal normative pluralism and occasions of revelation (in the case of the former) surrounding each verse, rather than in providing arguments in favor for one position over another. There is also a more pronounced focus on Sunnī legal opinions than the internal debates among earlier Zaydī Imams and jurists in the two later commentaries than what is found in *The Garden and the Pool*. In short, Muḥammad b. al-Hādī chose to use the legal-commentary genre to advance his personal legal opinions, derived from his free exercise of *ijtihād*, to a greater extent than Yūsuf the Jurist or al-Najrī, who chose instead to use this genre of Qur'ān commentary primarily for pedagogical purposes. This choice makes the more obscure *Garden and the Pool* a valuable source for the purpose of assessing the capacity for legal Qur'ān commentaries to serve both as platforms for a scholar's legal expertise and teaching resources for aspiring jurists.

95 Al-Akwa', *al-Madāris al-Islāmiyya*, 288.

96 Al-Akwa', *al-Madāris al-Islāmiyya*, 288. The second Qur'ān commentary in the curriculum was Muḥammad b. al-Ḥusayn b. Imam al-Qāsim's commentary on the 239 legal passages enumerated by Ibn al-Wazīr titled *Muntahā al-marām*, which has been published. Note that all three of the Zaydī-authored *tafsīr* books in this school's curriculum were legal Qur'ān commentaries.

Muḥammad b. al-Hādī's Legal Qur'ān Commentary: Method and Sources

Thus it was cast into my heart—all praise belongs to God—that I would compose a book, the likes of which never has been made by our scholars ... solely dedicated to explaining the [Qur'ānic] verses connected to legal rulings, abstracted from everything else in it.

MUḤAMMAD B. AL-HĀDĪ, *The Garden and the Pool*



Sayyid Muḥammad b. al-Hādī poured the heart of his scholarly effort into two works, both of which are concerned with Islamic law. The first of these, *al-Mūḍī' al-musri'*, was the completion of Imam al-Mu'taḍid's unfinished work on legal theory, *al-Muqni'*, and elaborated the topics of consensus, reports, analogy, legal status of unnamed objects in scripture, and legal reasoning (*ijtihād*). This work survives only in a single manuscript and does not appear to have had a major impact on the discipline of Zaydī legal theory. By contrast, Muḥammad b. al-Hādī's Qur'ān commentary, *The Garden and the Pool*, was esteemed by subsequent Zaydī scholars and stimulated a modest tradition of Yemeni writings devoted to the legal passages of the Qur'ān. Even though this text was not published until 2024, images of three manuscripts of it are accessible to researchers, including a valuable partial copy in the author's own handwriting held by the Biblioteca Ambrosiana in Milan.

Islamicists are fortunate that Muḥammad b. al-Hādī wrote an introduction to *The Garden and the Pool* in which he laid out his methodology and that an *ijāza* identifying the sources he used for it has been preserved in the biographical dictionary *Ṭabaqāt al-Zaydiyya al-kubrā*. Despite the availability of an impressive library of texts in northern Yemen during Muḥammad b. al-Hādī's lifetime, he appears to have relied overwhelmingly on two books for the composition of *The Garden and the Pool*. The first of these is the seminal Qur'ān commentary by al-Ḥākim al-Jishumī, *al-Tahdhīb*, that was published in ten large volumes under the leadership of 'Abd al-Raḥmān al-Sālimī. Yemeni Zaydis long have held this work in high esteem, so Muḥammad b. al-Hādī's reliance

upon it is unsurprising. The second most significant work was the massive legal commentary by al-Qāḍī Zayd al-Kalārī, officially titled *al-Jāmiʿ fī l-sharḥ*, but popularly known as *Sharḥ al-Qāḍī Zayd*. Qāḍī Zayd's work is based upon Imam al-Nāṭiq bi-l-Ḥaqq Abū Ṭālib al-Hārūnī's commentary on his own substantial work of jurisprudence, *al-Taḥrīr*. This large work, which remains unpublished, typically was copied in ten volumes and several European libraries hold copies of its various volumes in manuscript.

1 Muḥammad b. al-Hādī's Method: The Introduction to *The Garden and the Pool*

Muḥammad b. al-Hādī's short introduction to *The Garden and the Pool* lays out the justification for the composition of this book and clearly delineates its author's methodology.¹ After presenting a long list of disciplines and arts (*funūn*) found in the Qurʾān, he states that the most important content of the Qurʾān consists of its passages identifying what is lawful and what is unlawful. This information is necessary not just for legally responsible people (*mukalla-fūn*) but also for *muftīs*—qualified Muslim jurists who give non-binding answers to specific legal questions. Not only is knowledge of the legal passages of the Qurʾān a stipulation for becoming a qualified master jurist (*mujtahid*), but it is also among the foundations upon which the entire legal edifice of Islamic law is built. Muḥammad b. al-Hādī writes that he has observed that Muslim scholars have written many exegetical works on the Qurʾān, some of which are long, others of which are short, striving for myriad objectives, but that despite this scholarly activity, it remains very difficult to identify the legal passages of the Qurʾān² because these passages are dispersed throughout the Qurʾān in a highly random way.

In light of the sheer effort that is required to find the legal passages of the Qurʾān, Muḥammad b. al-Hādī resolved to compose a *tafsīr*, “the likes of which had not been seen previously,” exclusively dedicated to its legal rulings, the *aḥkām al-sharʿ*. He states that he will do this while following the order of the sūras of the Qurʾān and refraining from repeating commentary on identical legal topics as much as possible:

1 Muḥammad b. al-Hādī, *al-Mukhtār min al-Rawḍa wa-l-ghadīr*, 2 vols. (Saʿda: Maktabat Ahl al-Bayt, 2024), 1:29–34. Henceforth, this book will be cited as *al-Rawḍa*, Maktabat Ahl al-Bayt, to distinguish it from the manuscript copies of it.

2 Muḥammad b. al-Hādī refers to these as *al-āyāt al-mukhtaṣṣa bi-l-ḥalāl wa-l-ḥarām*, “verses specifying what is lawful and unlawful,” *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:30.

If there are two verses that indicate a legal point (*ḥukm sharʿī*), and the second of them is a clearer and more transparent indicator than the first one, I will refrain from explaining the first verse and postpone the explanation to the later verse.³

This critical decision is likely what led Muḥammad b. al-Hādī to discuss a mere 199 legal passages in *The Garden and the Pool*, rather than the five hundred one would have expected based on the discipline of legal theory.

The next section of Muḥammad b. al-Hādī's introduction to *The Garden and the Pool* reveals the deep influence of al-Ḥākim al-Jishumī's *al-Tahdhīb fī l-tafsīr*. He states that there are eight Qur'ānic disciplines and that, in the interest of concision, he will only address four of them in his commentary.⁴ The four disciplines he chose to discard are the variant readings (*qirā'a*), syntactic analysis (*irāb*), textual cohesion (*naẓm*), and stories (*akhbār/qiṣāṣ*). He acknowledges that there are some famous cases, such as the verse concerning ablutions (Q 5:6), regarding which the variant readings and syntax affect the legal assessment of the verse, so he will address those Qur'ānic disciplines in these special cases. However, the only four disciplines that occur on a regular basis throughout the *Garden and the Pool* are lexicon (*luḡha*), occasion for revelation (*nuzūl*), meaning (*ma'nā*) and legal rulings (*aḥkām*) because they are indispensable for comprehending the implications of the legal passages of the Qur'ān.⁵

Anyone who has had the pleasure of reading al-Jishumī's Qur'ān commentary would immediately recognize these eight Qur'ānic disciplines as the eight categories that run throughout his *al-Tahdhīb fī l-tafsīr*. Al-Jishumī discusses these eight categories briefly in the short introduction to his *tafsīr*, and he remains remarkably consistent in organizing his vast exegetical material accordingly from Sūrat al-Fātiḥa (1) to Sūrat al-Nās (114).⁶ Some of these categories, such as cohesion and stories, occur infrequently, but the other six categories form a reliable structural feature throughout the 7,600-page text. Later in this chapter I will provide evidence that Muḥammad b. al-Hādī borrowed both the structure and a substantial amount of the content of al-Jishumī's *al-Tahdhīb*

3 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:30.

4 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:31.

5 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:32–33.

6 al-Jishumī, *al-Tahdhīb*, 1:193–194. This important passage was edited and discussed by Suleiman Mourad in his chapter, "Towards a Reconstruction of the Mu'tazilī Tradition of Qur'ānic Exegesis," in Karen Bauer (ed.), *Aims, Methods and Contexts of Qur'ānic Exegesis* (Oxford: Oxford University Press, 2013), 101–137.

in *The Garden and the Pool*, even though he does not explicitly acknowledge this debt in his introduction.

Muḥammad b. al-Hādī next proceeds to justify his inclusion of these four Qurʾānic disciplines.⁷ Lexicon is necessary because the Qurʾān came down in “a clear Arabic language” (Q 26:195) and the meaning of some words in legal passages is confusing. The occasions of revelation are important because some verses are associated with specific historical events and individuals, while others are not. It is necessary to mention these occasions of revelation because they are the sources of much disagreement among scholars, especially concerning whether the legal implications of a verse are specific or general, a theoretical topic that Muḥammad b. al-Hādī declares is best discussed in books of legal theory. The significance of knowing the meaning of each passage is self-evident, but what is even more important is being aware of when exegetes agreed that a passage has a singular meaning or whether it has multiple meanings. As anyone who has worked with *tafsīr* would recognize, Muslim exegetes from the time of the Companions and Successors frequently disagreed over the meaning of Arabic expressions beyond the lexicographical implications of individual words. Muḥammad b. al-Hādī writes that it is acceptable for a passage to have multiple meanings so long as the legal indicators from them are not contradictory, which essentially prepares the reader for a book full of diverse exegetical opinions. However, he also offers the caveat that if a word has both a conventional meaning and a technical legal meaning, the legal meaning has precedence, according to the parameters laid out in the books on legal theory.

The final and in Muḥammad b. al-Hādī’s view most important category of exegesis is that of legal rulings (*aḥkām*). The Arabic word *aḥkām* (singular *ḥukm*) is difficult to render into English because it seems to mean many different things. In al-Jishumī’s *al-Taḥdhīb*, for example, much, if not most, of the material he includes under the category of *aḥkām* is theological,⁸ such that the word *aḥkām* seems to mean “lessons” rather than “laws” or “rulings.”⁹ However, in *The Garden and the Pool*, Muḥammad b. al-Hādī consistently uses the expression *al-aḥkām al-sharʿiyya*, presumably to drive home the point that he is dealing only with legal *aḥkām* to the exclusion of other varieties. Here is how he describes what he is doing in this section:

7 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:32–33.

8 This point was made by Bruce Fudge, who described this section in al-Jishumī’s *al-Taḥdhīb* as its “most distinctive feature;” Bruce Fudge, *Qurʾānic Hermeneutics: Al-Ṭabrisī and the craft of commentary* (New York: Routledge, 2011), 128.

9 Mourad renders *aḥkām* as “decrees” in his chapter, which strikes me as too restrictive; Mourad, “Towards a Reconstruction,” 104.

We will mention who holds a legal position concerning these legal opinions held by the legal scholars along with their points of disagreement and agreement, concerning what each verse means and indicates, concerning abrogation, unspecified (*mujmal*) and clarified (*mubayyan*), clarity (*muhkam*) and ambiguity (*mutashābih*), specified or general, or the date when it came down, because the rulings in Islamic law are based on all we have mentioned, and from them spring disagreement and agreement.¹⁰

Muḥammad b. al-Hādī also indicates that he will discuss some of the legal issues related to the legal verses under discussion and that he will relate prophetic *ḥadīths* to clarify preponderant opinions in cases of disagreement. He also acknowledges that at times he will present the *ḥadīth* evidence for positions in opposition to his own, which, to his credit, he does do in several passages throughout *The Garden and the Pool*. Muḥammad b. al-Hādī justifies the inclusion of many *ḥadīths* in his commentary on the basis of the famous prophetic *ḥadīth*, “Whoever among my community memorizes forty *ḥadīths* concerning its religion, God will raise them as if they were a scholar or jurist (on Resurrection Day)” and remarks that if this is the case for just forty *ḥadīths*, imagine the reward for knowing thousands of *ḥadīths*!¹¹

Muḥammad b. al-Hādī concludes his introduction by declaring that this commentary is a “gift (*hadiyya*)” from him to “all my Muslim brethren, among the purified family of the Prophet (*ahl al-bayt*) and their noble partisans.”¹² This statement indicates that the intended audience for *The Garden and the Pool* is the Zaydī community, given that Zaydīs typically refer to themselves as the school of the Family of the Prophet (*madhhab ahl al-bayt*). Muḥammad b. al-Hādī declares that his personal opinions in certain cases of disagreement are based on evidence and that he addresses issues of disagreement and agreement to facilitate the investigation of these topics. He concludes by giving his book two titles, the first of which is *Kitāb al-Rawḍa wa-l-ghadīr fī bayān mā taḥtā-juhu al-āyāt al-sharʿiyya min al-tafsīr*, while the second one is *Kitāb al-Anwār al-muḍiyya fī tafsīr al-āyāt al-sharʿiyya*.¹³ The first of these titles can be rendered as *The Book of the Garden and the Pool concerning the clarification of those legal verses that are in need of commentary*, while the second title is *The Book of the*

10 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:33.

11 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:33.

12 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:34.

13 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:34.

Shining Lights concerning commentary on the legal verses.¹⁴ The key expression in both titles is “legal verses” (*al-āyāt al-sharʿiyya*), which unambiguously identifies his book as a legal Qurʾān commentary and emphasizes Muḥammad b. al-Hādī’s focus on the legal content of the Qurʾān, material which all Muslims, and especially all qualified jurists, must grasp.

The concise introduction to *The Garden and the Pool* allows the reader to understand why Muḥammad b. al-Hādī wrote this book and how he structured it. It may not be immediately obvious why someone should read (or write) a Qurʾān commentary that ignores the vast majority of the contents of the Qurʾān. Therefore, Muḥammad b. al-Hādī used this space to justify the need for a book of this nature by reminding the reader of the immense significance of the legal passages of the Qurʾān, along with the practical challenge of identifying them from among its over 6,200 verses. Knowledge of these passages is essential for the aspiring master jurist (*mujtahid*), and Muḥammad b. al-Hādī prepares his reader for his presentation of the webs of legal normative pluralism that he will be negotiating skillfully throughout his commentary. This genre of *tafsīr* allows Muḥammad b. al-Hādī not only to demonstrate his impressive mastery of the Zaydī and Sunnī traditions of jurisprudence but also to teach aspiring *mujtahids* how to deploy Qurʾānic and *ḥadīth* evidence in assessing real cases of Islamic law. He subtly reveals his debt to al-Ḥākim al-Jishumī through his acceptance of his eight categories of Qurʾānic disciplines before proceeding to explain why he will only be engaging four of them throughout *The Garden and the Pool*. Finally, Muḥammad b. al-Hādī justifies his inclusion of numerous *ḥadīths* in his book and somewhat curiously provides two titles for it. Given that subsequent scholars refer almost exclusively to this book as *al-Rawḍa wa-l-ghadīr* and that it is the first of the two titles Muḥammad b. al-Hādī assigns it, I feel justified in referring to it as *The Garden and the Pool* in this book.

2 Muḥammad b. al-Hādī’s Sources (1): The *Ijāza*

What sources did Muḥammad b. al-Hādī draw upon in his legal Qurʾān commentary? He does not list any of them in the introduction to *The Garden and the Pool*, although he hints at the importance of al-Ḥākim al-Jishumī’s *al-*

14 This latter title is similar to the title of the major commentary by Imam Yaḥyā b. Ḥamza on the forty *ḥadīth* collection known as *al-Saylaqīyya*, which explains why the online metadata for the YMDI surrogate of *The Garden and the Pool* describes it as a commentary on the *Saylaqīyya*, rather than a commentary on the legal verses of the Qurʾān (last accessed May 28, 2025).

Tahdhīb without naming it. Fortunately, in his biographical dictionary, Ibrāhīm al-Shahārī preserves a detailed *ijāza* that Muḥammad b. al-Hādī gave Imam Muḥammad b. al-Muṭahhar for the content he narrated in *The Garden and the Pool*.¹⁵ This *ijāza* was copied by Ṣalāḥ b. Jalāl in 757/1356 and then copied much later by Imam al-Muʿayyad bi-llāh Muḥammad b. al-Qāsim (r. 1029–1054/1620–1644), whose book was the source for al-Shahārī.¹⁶ It is clear that the purpose of this *ijāza* is to identify the pathways by which Muḥammad b. al-Hādī acquired permission to use and transmit the major works that provided the content of his Qur'ān commentary, which means that it provides unparalleled insight into the sources of *The Garden and the Pool*.

According to his *ijāza*, Muḥammad b. al-Hādī's most important teacher was his father, al-Hādī b. Tāj al-Dīn. Al-Hādī was a student of Shu'la, which suggests that he spent some time studying in the northern Yemeni city of Huth, where Shu'la was based. As mentioned in the previous chapter, Hassan Ansari and Sabine Schmidtke have published an Arabic edition and detailed analysis of Shu'la's extensive *ijāza* for his student 'Abd Allāh b. Zayd al-'Ansī that includes both the Zaydī canon and a wide variety of other books. Al-Hādī received an *ijāza* from Shu'la to narrate the Zaydī canon ("the books of the Imams and their partisans"), and *Ṭabaqāt al-Zaydiyya* provides a sample of ten of these books, before noting that al-Hādī granted a general *ijāza* of his Shu'la corpus to his son, Muḥammad, his nephew, Ṣalāḥ b. Ibrāhīm b. Tāj al-Dīn, and another student.¹⁷ Muḥammad b. al-Hādī identified the following five books that he received from his father's general *ijāza* for Shu'la's *ijāza* "in his father's handwriting" that he used as sources in *The Garden and the Pool*:

- 1) *Sharḥ al-Qāḍī Zayd* (on Imam Abū Ṭālib's *al-Taḥrīr*)
- 2) al-Ḥākim al-Jishumī's *al-Tahdhīb fī l-tafsīr*
- 3) *Tafsīr al-Ṭūsī*, called *al-Bulgha*, by the obscure Abū l-'Abbās al-Ṭūsī¹⁸
- 4) Imam Aḥmad b. Sulaymān's *Uṣūl al-aḥkām* (He also copied a manuscript of this book in the possession of the judge 'Imād al-Dīn Yahyā b. al-Ḥasan al-A'raj.)¹⁹
- 5) 'Alī b. Ḥumayd's *Shams al-akhbār*

15 al-Shahārī, *Ṭabaqāt*, 2:1086–1090.

16 al-Shahārī, *Ṭabaqāt*, 2:1090.

17 al-Shahārī, *Ṭabaqāt*, 2:1187. These ten books are: *Sharḥ al-Qāḍī Zayd*; *Tafsīr al-Jishumī*; *Tafsīr* [Abū l-'Abbās] *al-Ṭūsī* (= *al-Bulgha*); *Uṣūl al-aḥkām*, *Shifā' al-uwām*; *Ulūm Al Muḥammad* (= *Amālī Aḥmad b. 'Īsā*); *Majmū' Zayd b. 'Alī*; *Shams al-akhbār*; *al-Fā'iq*. He also claims to have received Imam Abū Ṭālib's autocommentary on *al-Taḥrīr*.

18 This book has not been published, although there are manuscripts of it in Iran; see Ansari and Schmidtke, *SMIT*, 217 (#124).

19 Next to nothing is known about 'Imād al-Dīn al-A'raj; see al-Shahārī, *Ṭabaqāt*, 3:216.

From his father's illustrious uncle, Amīr al-Ḥusayn b. Badr al-Dīn, Muḥammad b. al-Hādī claimed to have received three parts of *Sharḥ al-Qāḍī Zayd*. Given that Muḥammad b. al-Hādī was only twelve years old when Amīr al-Ḥusayn passed away, he would have been young if this encounter took place. Muḥammad b. al-Hādī also claimed that Amīr al-Ḥusayn's son, Jibrīl, loaned him the second part of *Shifā' al-uwām* that was in Amīr al-Ḥusayn's handwriting, so that he could copy this holograph manuscript. He also acquired the first part of *Shifā' al-uwām* from his more distant relative al-Mu'ayyad b. Aḥmad,²⁰ although he admits some uncertainty regarding its transmission. Curiously, he does not mention that he received the supplement to *Shifā' al-uwām* from his cousin, Ṣalāḥ b. Ibrāhīm, although he did receive *Kitāb al-fā'iḳ* from him. If Muḥammad b. al-Hādī did spend extensive time in the central Dhamār region of Yemen, where he ultimately died, then it is possible that distance prevented him from receiving the supplement from Ṣalāḥ directly.²¹

The most interesting manuscript that Muḥammad b. al-Hādī described in his *ijāza* for Muḥammad b. al-Muṭahhar came from his teacher 'Alī b. Aḥmad Ibn Ṭumays (fl. 8th/14th century). Ibn Ṭumays claimed to be a descendant of the Caspian Imam al-Nāṣir al-Ḥasan b. 'Alī al-Uṭrūsh and was a close student of al-Mu'ayyad b. Aḥmad, whom I mentioned in the previous paragraph.²² According to Muḥammad b. al-Hādī, he had copies of the canonical *Majmū'* of Zayd b. 'Alī and the *Kitāb 'Ulūm Āl Muḥammad* (= *Amālī Aḥmad b. 'Īsā*) that he obtained from the Zaydī Imam al-Muṭahhar b. Yaḥyā. Muḥammad b. al-Hādī reports that Ibn Ṭumays's manuscript of these books had marginal notes written in the handwriting of the master teachers al-Ḥasan al-Raṣṣās, Sulaymān al-Khurāshī,²³ al-Ḥusayn b. Badr al-Dīn, his father al-Hādī b. Tāj al-Dīn, Yaḥyā b. Jābir, and even Muḥammad b. al-Hādī's son, Aḥmad, who predeceased him.²⁴

20 He was a great-grandson of Shams al-Dīn b. Aḥmad, just like Muḥammad b. al-Hādī was a great-grandson of Badr al-Dīn b. Aḥmad; al-Shahārī, *Ṭabaqāt*, 1159–1161. Al-Mu'ayyad is described in the *Ṭabaqāt* as a firm supporter of Imam Muḥammad b. al-Muṭahhar, despite his advanced age.

21 It is also interesting that Ṣalāḥ received Amīr al-Ḥusayn b. Badr al-Dīn's *Kitāb al-Taqrīr* from Muḥammad b. al-Hādī's father (*Ṭabaqāt*, 504), but Muḥammad b. al-Hādī does not mention this. Presumably this book would have been included in al-Hādī's general *ijāza* to his son, and, in fact, Muḥammad b. al-Hādī cites it in his commentary on *Sūrat al-Nūr*, edited in Appendix B.

22 Al-Shahārī, *Ṭabaqāt*, 694–695.

23 Little is known about this scholar; see Jan Thiele, "Theological Compendia in late 6th/12th and early 7th/13th century Zaydism," in Lukas Muehlethaler and Gregor Schwarb (eds.), *Theological Rationalism in Medieval Islam* (Leuven 2018), 37–41.

24 al-Shahārī, *Ṭabaqāt*, 1089.

This description, along with the *ijāza* in general, indicates that Muḥammad b. al-Hādī valued annotated, and carefully copied manuscripts more than the oral instruction that typically accompanied them, and it is clear that he profited from having access to these works.

Muḥammad b. al-Hādī also mentions a rare Arabic dictionary in his *ijāza*.²⁵ In fact, he twice acknowledges that he has lost the original written copy of this *ijāza* and endeavors to reconstruct it from memory. The book in question, *Ḍiyyā' al-ḥulūm* (Illuminations of the Minds), is Muḥammad b. Nashwān al-Ḥimyarī's (d. 614/1217–1218) abridgement of his father's famous Arabic dictionary, *Shams al-'ulūm wa-dawā' kalām al-'arab min al-kulūm* (The Sun of the Sciences and Cure for the Wounds in the Speech of the Arabs). While *Shams al-'ulūm* has been published, relatively few manuscripts of *Ḍiyyā' al-ḥulūm* are extant, according to al-Wajīh.²⁶ Fortunately, the Biblioteca Ambrosiana in Milan preserves a manuscript of a small fragment of *Ḍiyyā' al-ḥulūm*, covering words beginning with the letters *jīm* + *nūn* and ending with words whose initial letters are *khā'* + *shīn*.²⁷ True to form, Muḥammad b. al-Hādī reports that he borrowed and copied from special manuscripts of this book, which was written in three volumes (*ajzā'*), including a manuscript that had notes in the author's own handwriting from 'Alī b. Aḥmad Ṭumays, the same teacher who narrated precious copies of *al-Majmū' al-fiqhī* of Imam Zayd and Muḥammad b. Maṣṣūr al-Murādī's (d. c. 290/903) *Kitāb al-'Ulūm*. Muḥammad b. al-Hādī claims that Ibn Ṭumays was also his source for Nashwān al-Ḥimyarī's (d. 573/1177–1178) *Shams al-'ulūm*, so it is likely that much of the linguistic information in *The Garden and the Pool* that is not found in al-Jishumī's *al-Tahdhīb* comes from these two Yemeni dictionaries.

Which of these books were the most important sources for *The Garden and the Pool*? Fortunately, Muḥammad b. al-Hādī wrote in his *ijāza* that, "concerning the reports (*akhbār*) my book contains, most of them come from *Sharḥ al-Qāḍī Zayd*, which is derived from the *Sharḥ* of the Imam Abū Ṭālib."²⁸ Any-

25 al-Shahārī, *Ṭabaqāt*, 1089–1090.

26 al-Wajīh, *A'lām al-mu'allifīn al-Zaydiyya* (2), 346 (no. 1273). Anne Regourd reports only two complete copies of this text in Yemen, along with a third one in Tehran; Anne Regourd, "Yemeni Cultural Patrimony in Manuscript Form," in *Yemeni Manuscript Cultures in Peril*, 208.

27 Traini, *Catalogue*, 4:174 (no. 1599). This manuscript, shelf mark Nuovo Fondo ar. F 306, is undated and consists of 76 folios.

28 Arabic: *wa-ammā tariq al-akhbār allatī ḍammantuhā kitābī fa-akhtharuhā min Sharḥ al-Qāḍī Zayd al-muntazī min Sharḥ al-Imām Abī Ṭālib*; al-Shahārī, *Ṭabaqāt*, 2:1088. Recall that *Sharḥ al-Imām Abī Ṭālib* is Imam Abū Ṭālib al-Hārūnī's commentary on his own detailed

thing not found in *Sharḥ al-Qāḍī Zayd* comes from one of the other six *ḥadīth* books he names, although it should be noted that one of these books, *Shifā' al-uwām* by Amīr al-Ḥusayn b. Badr al-Dīn, draws liberally from *Sharḥ al-Qāḍī Zayd* as well. As for the other books, I have yet to come across a place in *The Garden and the Pool* where Muḥammad b. al-Hādī identifies them as the source for a *ḥadīth*, although his general practice is not to name his sources for *ḥadīth*, which makes it difficult to know from where they derive. However, his *ijāza* indicates that the initial place to look for *ḥadīths*, ascriptions of legal opinions to early master jurists, or even legal arguments is the encyclopedic *Sharḥ al-Qāḍī Zayd*, before looking for it in other sources.

3 Muḥammad b. al-Hādī's Sources (2): Case Studies

On the basis of the introduction to *The Garden and the Pool* and an *ijāza* preserved in al-Shahārī's *Ṭabaqāt al-Zaydiyya al-kubrā*, it appears that the two most important sources for Muḥammad b. al-Hādī's legal Qur'ān commentary were al-Jishumī's *al-Tahdhīb* and al-Kalārī's *Sharḥ al-Qāḍī Zayd*. In general, Muḥammad b. al-Hādī does not name his sources in *The Garden and the Pool*, which is why it was necessary to rely on the introduction to his *tafsīr* and his *ijāza* to determine them. In this section, I will examine a few cases studies to confirm whether *al-Tahdhīb* and *Sharḥ al-Qāḍī Zayd* were in fact his primary sources.

The first case study concerns the topic of intermarriage.²⁹ Three Qur'ānic verses address the issue of Muslims marrying non-Muslims, although Muḥammad b. al-Hādī's discussion of this legal topic is limited to two of them.³⁰ The first of these is a categorical prohibition against Muslims marrying men or women who associate partners with God (*mushrikūn/mushrikāt*):

legal book, *al-Taḥrīr*, that is an elaboration of the jurisprudence of Imams al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq. 'Abd al-Salām al-Wajīh lists only one manuscript of Abū Ṭālib's commentary on his *Taḥrīr*; *A'lām*, 2:447.

29 For an insightful article on the topic of intermarriage from the perspectives of Twelver, Zaydī, and Ismā'īlī Shī'ī jurists, see Nayel Badareen, "Shī'ī Marriage Law in the Pre-Modern Period," *Islamic Law and Society* 23 (2016): 368–391.

30 The third verse is Q 60:10, which Muḥammad b. al-Hādī cites in his presentation of the impact upon a marriage of conversion to Islam by either spouse; Muḥammad b. al-Hādī, *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:320–326; YMDI, 317–320. This verse states explicitly that disbelieving men are unlawful for believing women; the immediate reference is to the polytheists of Mecca.

Wed not women who associate partners with God till they believe; for a believing slave woman is better than someone who associates partners with God, though she please you. And give not your daughters in marriage to men who associate partners with God till they believe, for a believing slave is better than someone who associates partners with God, though he please you. These invite to the Fire, while God invites to the Garden, and to forgiveness by His grace, and expounds His signs to humanity that perhaps they may remember. (Q 2:221)

The second verse addresses the issue more specifically of the licit nature of the food and women of the People of the Book:

This day are all good things made lawful for you. The food of those who have received the Book is lawful for you, and your food is lawful for them. And so are the chaste women of the believers and the chaste women of those who received the Book before you (lawful for you), when you give them their marriage portions and live with them in honor, not in fornication, nor taking them as secret mistresses. Whoever denies the faith, his work is vain and he will be among the losers in the Hereafter. (Q 5:5)

In the case of the first of these verses, Q 2:221, Muḥammad b. al-Hādī provides content for all four categories of lexicon, occasion of revelation, meaning, and legal rulings.³¹ In the section on lexicon, he focuses on the meaning of the word *nikāḥ*, which can mean “(marriage) contract” or “intercourse.” He reworks al-Jishumī’s concise explanation of the debate over the original meaning of this word:

The linguists disagree. Some of them say: the original meaning (of *nikāḥ*) is “contract (*‘aqd*),” while others say the original meaning is “intercourse (*waṭʾ*).” Then, it was used so frequently to the point that one would use *nikāḥ* to mean “contract.” That is the clearest explanation, and God knows best.³²

Here is what al-Jishumī wrote:

31 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:182–184; YMDI, 68–69.

32 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:182; YMDI, 68.

They disagree over its original meaning. It has been alleged that its original meaning is “contract” and it has been alleged that its original meaning is “intercourse.” Then it was used frequently to the point that one would use *nikāḥ* to mean “contract,” just like war is called “deception (*ghudra*),” which is a noun that captures its meaning.³³

Interestingly, Muḥammad b. al-Hādī also relates a verse of lewd poetry in support of “intercourse” being the original meaning of *nikāḥ* that al-Jishumī does not relate, at least not in his commentary on Q 2:221.³⁴

Turning to the topic of occasions for revelation, Muḥammad b. al-Hādī narrates the same three stories found in al-Jishumī’s *al-Tahdhīb*.³⁵ In fact, the wording is nearly identical in all three cases, with the exception of Muḥammad b. al-Hādī’s identification of the slave girl in the third report as black, rather than in the second report, which is how al-Jishumī records it. It appears, here and elsewhere throughout *The Garden and the Pool*, that Muḥammad b. al-Hādī copied the material in the section “occasions of revelation” directly from al-Jishumī’s *al-Tahdhīb* as carefully as he could, presumably because these were narrated reports rather than philological explanations, as was the case of the original meaning of the word *nikāḥ*.

Turning to the section on meaning, Muḥammad b. al-Hādī follows al-Jishumī closely in his commentary on Q 2:221, although he excises some of its details. Here is a translation of the relevant passage in *The Garden and the Pool*,³⁶ with al-Jishumī’s text from *al-Tahdhīb* in the footnotes:

Section Three: Meaning

His (Exalted is He) statement (*Wed not women who associate partners with God till they believe*): Its meaning is “Do not marry (*lā tatazawwajū*) them until they sincerely believe (*yuṣaddiqna*).” It has been alleged: Intercourse and the (marriage) contract are both forbidden with women who associate partners with God; (*for a believing slave woman*): a sincerely believing female Muslim (*is better than a woman who associates part-*

33 al-Jishumī, *al-Tahdhīb*, 1:888.

34 The verse is invective by al-Najāshī al-Ḥārithī and reads: *al-tārīkīn ‘alā ṭuhrin nisā’ahumu/ wa-l-nākiḥīn bi-shaṭṭay Dīlat al-baqarā*; see <https://www.aldiwan.net/poem91368.html>. It may be translated as “Those who leave their wives pure/ While having intercourse with heifers on the banks of the Tigris.”

35 Compare al-Jishumī, *al-Tahdhīb*, 1:889 with *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:182–183; YMDI, 68.

36 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:183–184.

ners with God, though she please you) on account of wealth, beauty, and virtue.³⁷

His statement (*and give not your daughters in marriage to men who associate partners with God*): Its meaning is "Do not marry off a female Muslim to someone who associates partners with God" (till) he believes and becomes a Muslim (*for a believing slave*) who obeys God (*is better than a man who associates partners with God, though he please you*) on account wealth, beauty, and virtue.³⁸

His statement (*These invite to the Fire*): Its meaning is that those who associate partners with God invite to disobedient acts which cause one to enter the Fire.³⁹

His statement (*while God invites to the Garden, and to forgiveness*): Its meaning is "He invites to obedience, which will cause one to enter the Garden."⁴⁰

His statement (*by His grace*): It is alleged to mean "by His command" or "by His announcement."⁴¹

His statement (*He expounds His signs*): It is alleged to mean "His proofs" or "He expounds His commands and prohibitions, and all that is forbidden and all that is permissible."⁴²

His statement (*that perhaps they may remember*): So that they remember and take it as a lesson.⁴³

37 al-Jishumī: God said: (*Wed not*) Do not marry—It has been alleged: intercourse and contracts were made forbidden—(*women who associate partners with God*), meaning polytheist women (*until they believe*); until they sincerely believe in God and His messenger. (*For a believing slave woman*): a sincerely believing female Muslim (*is better than a*) free (*woman who associates partners with God, though she please you*) on account of her wealth, her beauty, and her virtue; *al-Tahdhīb*, 1:889.

38 The only distinction here is that al-Jishumī inserts the word "free" in the clause (*is better than a*) free (*man who associates partners with God, though he please you*) and adds the singular masculine pronoun to "wealth, beauty, virtue;" *al-Tahdhīb*, 1:889–890.

39 al-Jishumī: (*These*), meaning those who associate partners with God (*invite to the Fire*), meaning to disbelief and disobedient acts that are the cause (*sabab*) for their entry into the Fire; *al-Tahdhīb*, 1:890.

40 al-Jishumī: (*And God invites to the Garden*): to faith and obedience, which are what necessitate (entry) to the Garden.

41 al-Jishumī keeps together the Qur'ānic words (*and forgiveness by His grace*) and adds, "by what He commands and permits, from among the Laws (*sharā'i*) and rulings (*aḥkām*), according to al-Ḥasan [al-Baṣrī] and Abū 'Alī [al-Jubbā'ī]. It has been alleged: by His announcement;" *al-Tahdhīb*, 1:890.

42 This is taken directly from al-Jishumī, who adds its ascription to Abū Muslim.

43 This sentence is identical to what is found in *al-Tahdhīb*, 1:890.

What is perhaps most interesting about this passage is that Muḥammad b. al-Hādī copies the meaning section for the entire verse and not merely the clauses that have a clear legal force. The clause beginning with “These invite to the Fire” until the end of the verse has little obvious connection to Islamic law, yet Muḥammad b. al-Hādī felt obliged both to cite and explain the entire verse, rather than just the legal parts of it. The fact that he follows al-Jishumī’s division of the verse into sub-clauses (with only one exception), along with their explanations, indicates the profound respect Muḥammad b. al-Hādī had for *al-Tahdhīb*.

In general, I have found that Muḥammad b. al-Hādī does not copy al-Jishumī in the fourth section of his *tafsīr*, which is devoted to legal rulings. The reason for this probably stems from the fact that al-Jishumī only became a Zaydī near the end of his life, almost certainly after he wrote *al-Tahdhīb*, and therefore very little legal disagreement within the Zaydī school of law is found within it.⁴⁴ However, in the case of Q 2:221, Muḥammad b. al-Hādī found al-Jishumī’s legal comments on the verse valuable enough to include in *The Garden and the Pool*, although he reworded them for the sake of clarity, as can be seen here:

The verse indicates the prohibition of marrying those who associate partners with God (*mushrikīn*). They disagree over (the identity of) those who associate partners with God.

Among them are those who say: What is intended here are dualists and Magians, to the exclusion of the People of the Book. They say: This is because, when *shirk* is used unconditionally, it does not apply to People of the Book, as His statement clarifies: *Those who disbelieve from among the People of the Book and those who associate partners with God do not like* (Q 2:105) and His statement: *Those who disbelieve among the People of the Book and those who associate partners with God* (Q 98:1). [God] distinguishes between [People of the Book] and [those who associate partners with God] and annexes one of them to the other. Also, His statement (Exalted is He): *and the chaste women of those who received the Book before you* (Q 5:5) begins to clarify that it is permissible to marry them, and there is neither abrogation nor specification in this verse.

44 One wonders whether the occasional references to Imams al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq in *al-Tahdhīb* were in the original edition or added by Zaydī scribes who copied it for several centuries. Given how relatively few references there are to these foundational legal authorities in the Zaydī school, it is possible that al-Ḥākim al-Jishumī did in fact insert them in his commentary near the end of his life.

Among them are those who say: This verse (Q 2:221) embraces every disbeliever because *shirk*, from the perspective of the Law, is unconditional and applies to all of them. Then the advocates of this position divided into three groups regarding whether the unconditional expression applied to all disbelievers:

Among them are those who say that this verse (Q 2:221) is abrogated regarding female People of the Book (*kitābiyyāt*) by the verse in Sūrat al-Mā'ida in which it is mentioned *And so are the chaste women of the believers and the chaste women of those who received the Book before you are lawful for you*. This is the opinion of Ibn 'Abbās (d. 67/686–687), al-Ḥasan [al-Baṣrī] (d. 110/728), Mujāhid [b. Jabr] (d. 102/720), and al-Rabī' [b. Anas] (d. 139/756–757).

Among them are those who say: The verse in Sūrat al-Mā'ida specifies this verse. This is the opinion of Sa'īd b. Jubayr (d. 95/714) and Qatāda (d. 117/735).

Among them are those who say: This verse must be taken according to its literal meaning concerning the prohibition of marriage to every female disbeliever, female Person of the Book, and female who associates partners with God. This has been narrated on the authority of Muḥammad b. 'Alī⁴⁵ and Ibn 'Umar (d. 73/693). It is also the opinion of the school of al-Qāsim [b. Ibrāhīm] (d. 246/860) and al-Hādī and many among the family of the Prophet (upon them peace).

There are several legal issues related to this:

- 1) Marriage to anyone outside of the People of the Book is forbidden; there is no disagreement regarding this among the scholars.
- 2) It is impermissible to marry a disbeliever to a female Muslim, in all situations (*'alā l-'umūm*), and there is no disagreement concerning this.
- 3) There is disagreement over the marriage of (Muslim men) to female People of the Book, and the elucidation of this will come in the (commentary) on Sūrat al-Mā'ida (Q 5).⁴⁶

Muḥammad b. al-Hādī displays a talent in this passage for restating the content in al-Jishumī's *al-Taḥdhīb* in a clear manner. He represents accurately the four positions on the meaning of *shirk* and whether it encompasses female Jews

45 This may be the fifth Imam of the Twelver Shī'a, Muḥammad al-Bāqir.

46 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:184–185; YMDI, 68–69; compare with al-Jishumī, *al-Taḥdhīb*, 1:890–891.

and Christians (People of the Book) in this context. These positions are associated with distinct religious authorities from the first two generations of Islam, which is evidence that Zaydīs valued the opinions the Companions and Successors, in contrast to most Shiʿites. Muḥammad b. al-Hādī refrains from giving a final opinion here, choosing instead to identify two positions upon which consensus rests among Muslim jurists, and to refer his readers to his commentary on Q 5:5, where he promises to elucidate the complicated case of Muslim men marrying non-Muslim women. He also refrains from discussing the other topics al-Jishumī introduces in his “rulings” section in *al-Tahdhīb* on Q 2:221, such as whether Muslim men can marry female Christian or Jewish slaves and the deeper meaning of the Qurʾānic declaration that a believing slave is better than a free person who associates partners with God.

This initial case study on Q 2:221 has shown that Muḥammad b. al-Hādī closely copies al-Jishumī’s *al-Tahdhīb* in the sections on occasions for revelation and meaning, and liberally draws from it in his sections on lexicon and legal rulings. Now I will examine his exegesis on Q 5:5 to see whether this pattern continues and to conclude his analysis of the legality of intermarriage between Muslim men and non-Muslim women.

Unlike Q 2:221, the fifth verse in Sūrat al-Māʾida addresses two very different legal topics: food and marriage. This verse declares explicitly that the food of Muslims is lawful for People of the Book and that their food is lawful for Muslims. It also declares that women from among the People of the Book are lawful for Muslims to marry, so long as Muslim men provide them their dowers. However, this command is complicated by the presence of the qualifier *muḥ-ṣanāt*, a word that has multiple meanings that in turn can lead to diverse legal implications. In the lexical section of his commentary, Muḥammad b. al-Hādī accepts the meaning of *ḥiṣān* with reference to a woman to mean both chaste and Muslim, which contrasts with al-Jishumī, who limits the original meaning of the word to chaste.⁴⁷ Muḥammad b. al-Hādī copies the same short occasion of revelation found in *al-Tahdhīb* before presenting a long section on the meaning of this verse.

As seen in his commentary on Q 2:221, Muḥammad b. al-Hādī hews closely to al-Jishumī’s analysis of the meaning of Q 5:5.⁴⁸ He agrees with him that the People of the Book are Jews and Christians but reframes the exegetical debate over what type of food is intended by the divine declaration that “The food

47 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:13; YMDI, 178; al-Jishumī, *al-Tahdhīb*, 3:1878.

48 Compare *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:13–15; YMDI, 178 with al-Jishumī, *al-Tahdhīb*, 3:1880.

of those who have received the Scripture is lawful for you.” The first position Muḥammad b. al-Hādī offers is the one he declares to be correct: this verse applies only to grains and food that is not in need of being slaughtered. In other words, Muslims can enjoy cereals prepared by Jews and Christians, but not meat of animals that they have killed. Both he and al-Jishumī ascribe this position to the Zaydī Imams al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq,⁴⁹ along with the Sunnī Mu'tazilī Abū 'Alī al-Jubbā'ī (d. 303/915–916). The second position, which Muḥammad b. al-Hādī acknowledges as the majority opinion, is that this verse includes animals slaughtered and prepared by Jews and Christians. We see the exact same list of early authorities who support this position in both *The Garden and the Pool* and al-Jishumī's *al-Tahdhīb*.⁵⁰ The third opinion is that this verse does not apply to Christians because they allegedly slaughter their animals in the name of the Messiah and Mary, a position which Muḥammad b. al-Hādī acknowledges is “not far-fetched, because they have abandoned the worship of the singular Creator.” He also records a debate concerning the legality of eating meat of animals slaughtered by Arab Christians in general, and the Banū Taghlib in particular, that is found in al-Jishumī's *al-Tahdhīb*.⁵¹ Note that all of these legal disagreements are discussed in the sections devoted to “meaning” in both books, a fact that requires researchers to read more than merely their respective sections devoted to legal rulings (*aḥkām*).

But what about intermarriage? This topic is discussed both in the section on meaning and in the section on legal rulings. In the section on meaning, Muḥammad b. al-Hādī continues to follow al-Ḥākim al-Jishumī regarding the two meanings of the word *muḥṣanāt*.⁵² He initially reports the minority opinion of Ibn 'Umar, Imam al-Qāsim b. Ibrāhīm, and Imam al-Hādī, that the Qur'ānic expression *muḥṣanāt* among those who have received the Scripture refers exclusively to Jewish and Christian women who have become Muslims, while acknowledging the majority opinion that this verse literally means that Jewish and Christian women are lawful for Muslim men to marry. The larger debate is over whether Muslim men can marry Jewish or Christian slaves or only free Jews and Christians. Ultimately, the answer to this question boils down to whether one takes the word *muḥṣanāt* to mean “free” or “chaste.” If

49 Jishumī refers to Imam al-Hādī as Yaḥyā, which is his proper name; *al-Tahdhīb*, 3:1880.

50 This list includes al-Ḥasan al-Baṣrī, al-Zuhrī, al-Sha'bī, 'Aṭā', Qatāda, and one of the opinions ascribed to Abū 'Alī (al-Jubbā'ī); *al-Tahdhīb*, 3:1880.

51 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:14; YMDI, 178–179.

52 Compare *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:14; YMDI, 179 with al-Jishumī, *al-Tahdhīb*, 3:1880–1881.

one takes it to mean chaste, then female Jewish and Christian slaves can be married; if one takes it to mean “free,” then obviously they cannot.

After Muḥammad b. al-Hādī dutifully explains the meaning of the remaining phrases in Q 5:5, he finally reveals his personal opinions on intermarriage in the section on legal rulings. In the third topic in the section on legal rulings, he categorically states that marriage to female People of the Book and eating animals slaughtered by People of the Book are lawful to Muslims “according to me, and one of the narrations from Zayd b. ‘Alī, [Muḥammad] al-Bāqir (d. 114/732), [Ja’far] al-Šādiq (d. 148/765), and Aḥmad b. ‘Īsā (d. 247/861), along with the overwhelming majority (*jumhūr*) of exegetes and jurists.”⁵³ However, he acknowledges that all the other descendants of the Prophet, other than the four he mentioned (and himself), hold that both marrying Jewish and Christian women and eating animals they slaughtered is forbidden.⁵⁴ Therefore, this jurist-exegete makes a spirited argument for his adoption of this position that nearly all his fellow Zaydīs rejected:

The indicator in support of our position is the explicit meaning of this verse (Q 5:5). Meat is food, unambiguously, and the general meaning of this verse includes it. Likewise, the “virtuous women (*muḥṣanāt*)” in this verse cannot refer to Jewish and Christian women who became Muslims because there is established consensus that marriage to female Muslim converts—whether from Judaism and Christianity or who previously associated partners with God and lacked a scripture—is unproblematic and it is obvious from the Law, once [their conversion] has been established. How can this become complicated in the presence of an explicit text and consensus? The revelation of Sūrat al-Mā’ida was among the final revelations, so this is clear. God is the Guide!⁵⁵

53 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:16.

54 This preponderant Zaydī position is championed by his great-uncle, Amīr al-Ḥusayn, in his influential book of legal *ḥadīths*, *Shifā’ al-uwām*, 2:349–352. Amīr al-Ḥusayn acknowledges that Zayd b. ‘Alī, Muḥammad al-Bāqir, Ja’far al-Šādiq, and Aḥmad b. ‘Īsā allowed male Muslims to marry female Jews and Christians, which is further evidence that he, like Muḥammad b. al-Hādī, based his book on *Sharḥ al-Qāḍī Zayd*. Given the challenge of accessing manuscripts of *Sharḥ al-Qāḍī Zayd*, most of my references to Zaydī *ḥadīths* will be to *Shifā’ al-uwām*, the 2022 edition of which is available online at: <https://ziydia.com/Book/523>

55 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:16–17; YMDI, 179. والدليل على قولنا ما في الآية من التصريح بذلك. فإنّ اللحم طعام بلا إشكال فعموم الآية يشمل ذلك فإنّ المحصنات في الآية ليس المراد بها المسلمات من الكافيات لأنّ الإجماع منعقد على نكاح المسلمات من أهل الكتاب ومن أهل الشرك الذين

It is clear from this small sample of case studies that Muḥammad b. al-Hādī relied heavily on al-Ḥākim al-Jishumī's encyclopedic *tafsīr*, *al-Tahdhīb*. Most (and sometimes all) of the content in the sections on occasions for revelation and meaning derives from *al-Tahdhīb*, often verbatim. The section on lexicon includes poetry and other sources that are external to *al-Tahdhīb*, some of which probably comes from Muḥammad b. Nashwān al-Ḥimyarī's currently inaccessible dictionary, *Ḍiyyā' al-ḥulūm*. However, Muḥammad b. al-Hādī's section on legal rulings appears not to derive from al-Ḥākim's *al-Tahdhīb* in most cases. This last finding is unsurprising given the wide scope al-Jishumī assigns to the concept of *aḥkāṃ*, which arguably is better rendered as "lessons" than as "legal rulings" in his Qur'ān commentary. If al-Jishumī's *tafsīr* is not a primary source for Muḥammad b. al-Hādī's section on legal rulings, then the final task in this chapter is to investigate from where he acquired the valuable legal content he included in *The Garden and the Pool*.

Fortunately, the *ijāza* that al-Shahārī preserved in *Ṭabaqāt al-Zaydiyya al-kubrā* declares explicitly that al-Qāḍī Zayd al-Kalārī's encyclopedic revision of Imam Abū Ṭālib al-Hārūnī's autocommentary on *al-Taḥrīr* is Muḥammad b. al-Hādī's major source for the *ḥadīths* and legal content of *The Garden and the Pool*. Unfortunately, this large work remains in manuscript, which makes it more difficult to identify how Muḥammad b. al-Hādī adapted its contents for his Qur'ān commentary. In keeping with this chapter's theme of marriage law, the next several pages will shed light on how this jurist-exegete drew upon *Sharḥ al-Qāḍī Zayd* for the topics of the bride's guardian, witnesses to the marriage contract, and the minimum dower for a valid marriage.

The topic of the bride's guardian, *walī* in Arabic, is discussed in many passages in *The Garden and the Pool*. Its necessity for a valid marriage contract to take place is addressed in Muḥammad b. al-Hādī's long commentary on Q 4:3, a verse which does not actually make any explicit reference to the bride's guardian but does contain the rule that a man may have no more than four wives simultaneously if he can treat them fairly.⁵⁶ Muḥammad b. al-Hādī addresses fourteen discrete legal topics in his commentary on this verse, the second of which is the necessity for the bride to have a guardian. He writes:

لا تكتب لهم وذلك مما لا شبهة فيه وهو معلوم من الشرع بعد ثبوته. فكيف يقع فيه الإشكال مع النص والإجماع؟ ونزول المائدة آخر ما نزل وهذا ظاهر والله الهادي.

56 The verse reads: "And if you fear that you will not deal fairly with the orphans, marry of the women, who seem good to you, two or three or four. If you fear that you cannot be fair to them, then one, or those whom your right hands possess. Thus, it will be more likely that you will not do injustice."

As for (the necessity of) the guardian, we are in agreement with the jurists (Sufyān) al-Thawrī (d. 161/778), al-Shāfiʿī, Ibn Abī Laylā (d. 148/765), (Ḥasan) b. Ḥayy (d. 165/784), and Zufar (d. 158/775).

Abū Ḥanīfa (d. 150/767) holds that she can marry off herself, while his two companions⁵⁷ hold that she can marry herself off if her guardian approves of her marriage. If the guardian does not approve of it but the husband is of the same social status as the bride, then the ruler/judge (*ḥākim*) can approve it. If the husband is not of the same social status as the bride, then the marriage is annulled if the guardian does not approve of it.

Mālik (d. 179/795) holds that if the bride is unattractive or base, she is not in need of a guardian. However, if she is beautiful and wealthy, then she is in need of a guardian.

Dāwūd [al-Ẓāhirī] (d. 272/883–884) holds that the guardian is a necessary condition for a virgin bride but not for a previously-married woman (who wishes to remarry).

Abū Thawr [Ibrāhīm b. Khālid] (d. 240/854) holds that a bride can contract her marriage on her own with her guardian's permission.⁵⁸

In this short passage of *The Garden and the Pool*, Muḥammad b. al-Hādī quotes an impressive array of eleven famous jurists, all of whom, save Ḥasan b. Ḥayy, were Sunnīs. The reader's initial assumption might be that Muḥammad b. al-Hādī used a Sunnī source for the legal disagreement recorded here, such as Abū Bakr Ibn al-Mundhir's (d. 318/930) *al-Ishrāf ʿalā madhāhib al-ʿulamāʾ*, a book which scholars like al-Nawawī and al-Qurṭubī (d. 671/1272), who preceded Muḥammad b. al-Hādī by a generation or two, used in their respective commentaries.⁵⁹ However, when the reader turns to *Sharḥ al-Qāḍī Zayd*, she finds the following passage:⁶⁰

As for the (necessity) of the guardian ... it is the opinion of al-Nāṣir (al-Uṭrūsh), al-Thawrī, Ibn Abī Laylā, Ibn Ḥayy, Zufar, and al-Shāfiʿī. Abū Ḥanīfa says that a legally-responsible mature⁶¹ (woman) can marry off herself.

57 In other words, al-Qāḍī Abū Yūsuf and Muḥammad al-Shaybānī.

58 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:320; YMDI, 122.

59 For more on Ibn al-Mundhir's profound influence on Sunnī commentary literature, see Lucas, "Abu Bakr Ibn al-Mundhir," 353.

60 MS Milan, Ambrosiana, Nuovo Fondo ar. E 406, Bāb mā yaṣīḥḥ min al-nikāḥ wa-mā yafṣud, fol. 10^{r-v}

61 These key words, *bāliḡha rashīda*, are absent from this excerpt as found in *The Garden and the Pool*.

His two companions hold that if she marries off herself and her guardian approves of it, it is valid. If he does not approve it, it is annulled. If [fol. 10v] the husband is of the same social status, the ruler/judge can validate it.

According to Mālik, if she is wealthy and beautiful, [her marriage] is in need of [a guardian]. If she is unattractive and base, then she can marry herself off.

Dāwūd said: The guardian is a necessary condition for the marriage of a virgin bride but not a previously-married woman.

Abū Thawr said: It is permissible for her to contract her own marriage with her guardian's permission.

This passage clearly is the source for Muḥammad b. al-Hādī's commentary, as all eleven jurists he cited, along with the Zaydī Imam al-Nāṣir al-Uṭrūsh, are mentioned in it in a strikingly similar sequence and with nearly identical language. The reader finds a similar situation with regard to the fourth legal topic that Muḥammad b. al-Hādī discusses in his commentary on Q 4:3, which is the validity of a marriage contract that is witnessed by one Muslim man and two Muslim women. After quoting the famous early Kufan collection of Zaydī jurisprudence, *al-Kāfi*,⁶² he then explicitly quotes al-Qāḍī Zayd, who affirms that this legal position regarding female testimony in marriage is upheld by the Zaydī Imam al-Mu'ayyad bi-llāh al-Hārūnī "and all of our associates."⁶³ Muḥammad b. al-Hādī's distinction between Abū Ḥanīfa and his companions, who also uphold the validity of a female-witnessed marriage contract, and al-Shāfi'ī, who only accepted the validity of a marriage contract witnessed by two men also follows closely its presentation in *Sharḥ al-Qāḍī Zayd*. Muḥammad b. al-Hādī even reproduces Qāḍī Zayd al-Kalārī's legal argument in defense of the Zaydī/Ḥanafī position found in his *Sharḥ*:⁶⁴

The prophetic statement, "There is no marriage without a guardian and witnesses (*shuhūd*)," also supports our position. The smallest number (of things) for the plural form is three and it is obvious that three men is

62 This large work, assembled by Abū 'Abd Allāh al-'Alawī (d. 445/1053), has been published and is available online at: <https://ziydia.com/Book/536>. Muḥammad b. al-Hādī cites it occasionally in *The Garden in the Pool*, even though it is not mentioned in his *ijāza* for Imam Muḥammad b. al-Muṭahhar. The book appears to contain primarily legal opinions of early authorities among the Prophet's descendants, rather than prophetic *ḥadīths*.

63 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:322; YMDI, 123; *Sharḥ al-Qāḍī Zayd*, MS Milan, Ambrosiana, Nuovo Fondo ar. E 406, fol. 34r. ("Bāb mā yan'aqid bihi al-nikāḥ").

64 The original argument: *Sharḥ al-Qāḍī Zayd*, MS Ambrosiana, E 406, fol. 34v.

not a stipulation (for a marriage contract) and that a marriage contract cannot take place with (only) three female witnesses, on account of the consensus (of the jurists). However, one man and two women would be admissible (for the plural word *shuhūd*) without any problem.⁶⁵

While the most common form of the *ḥadīth* under discussion here is “There is no marriage without a guardian and two witnesses,” the variation that has witnesses in the plural form (*shuhūd*) is cleverly shown to support the legal position that a marriage witnessed by a Muslim man and two Muslim women is valid. Linguistically, the word *shuhūd* cannot mean “two men,” because Arabic has a dual form to convey this meaning, which is *shahīdān*. Therefore, the word *shuhūd* linguistically must mean “three or more witnesses,” which aligns with the legal position that a marriage witnessed by one man and two women is valid. Interestingly, Muḥammad b. al-Hādī even goes a step further and argues linguistically that the *ḥadīth* “There is no marriage without a guardian and two witnesses” could mean one male and one female witness, but he recoils from this potential outcome for gender equality by stating that consensus of the jurists precludes this possibility.⁶⁶

In the previous two cases, it has been shown that Muḥammad b. al-Hādī used *Sharḥ al-Qāḍī Zayd* as a source for the opinions of Sunnī master jurists and even for a linguistically based legal argument. What about prophetic *ḥadīths*? When the reader turns to the topic of the minimum dower that is necessary for a valid marriage to take place, which is discussed in his commentary on Q 4:4,⁶⁷ she finds that Muḥammad b. al-Hādī narrates the following three *ḥadīths*:

The Prophet said: Do not marry women save that they are your social equals. Only their guardians can marry them off and no dower (*mahr*) less than ten dirhams (is acceptable).

65 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:322; YMDI, 124: ويدلّ عليه أيضاً قول النبي صلى الله عليه وآله: لا نكاح إلا بولي وشهود. وأقلّ الجمع الحقيقي ثلاث ومعلوم أنّ ثلاثة ذكور غير شرط وثلاث نسوة لا ينعقد بهن النكاح بالإجماع وكان الرجل والمرأتان داخلين تحت هذا النصّ بلا محالة.

66 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:323; YMDI, 124: ولفظ الشاهدين إذا أطلق تناول الرجل والمرأة كما يتناول الرجلين لأنّ الذكر والأنثى إذا اجتمعا عبّر عنهما أهل اللغة بلفظ التذكير تغليباً له فاقتضى ظاهر الخبر جواز النكاح بحضور رجل وامرأة إلا أنّ الإجماع منع عن هذا الظاهر فرجعنا إلى عرف الشرع وهو الشاهدان. فإنّ عدم أحدهما فيمرأتان تقومان مقامه.

67 This verse reads: “And give to the women (whom you marry) free gift of their dowers; but if they of their own accord remit to you a part thereof, then you are welcome to accept it, with wholesome appetite.”

The Prophet said: No dower less than ten dirhams (is acceptable). The marriage to a lawful (spouse) is not like the fee (*mahr*) of a prostitute.

Imam 'Alī (d. 40/661) said: There is no marriage without a guardian and two witnesses. It is not with a dirham, or two dirhams, or (for) one day or two days, like fornication (*al-sifāḥ*),⁶⁸ and there should be no stipulations in a marriage (contract).⁶⁹

These three *ḥadīths*, with nearly identical wordings, and in the same order, form the evidence in *Sharḥ al-Qāḍī Zayd* in defense of the opinion that the minimum dower for a valid marriage is ten dirhams.⁷⁰ Earlier in this passage of *Sharḥ al-Qāḍī Zayd*, nearly the same list of Zaydī Imams as those found in *The Garden and the Pool* are listed who support this position: Zayd b. 'Alī, al-Qāsim b. Ibrāhīm, al-Hādī ilā l-Ḥaqq, and al-Mu'ayyad bi-llāh al-Hārūnī, with the addition of Imam al-Manṣūr 'Abd Allāh b. Ḥamza, who lived more than a century after al-Qāḍī Zayd al-Kalārī. Muḥammad b. al-Hādī also follows al-Qāḍī Zayd's deployment of the Qur'ānic verse Q 28:27 to argue against the Ḥanafī position that a promise of labor cannot serve as a dower in a valid marriage.⁷¹

It is clear from this small sample of case studies on the topic of marriage law that Muḥammad b. al-Hādī relied heavily upon two sources for the vast majority of the content of *The Garden and the Pool*. The first of these is al-Ḥākim al-Jishumī's *al-Tahdhīb*, a Qur'ān commentary that remained almost entirely unknown outside of northern Yemen and which was only preserved due to the efforts of Zaydī scholars and scribes.⁷² Not only did Muḥammad b. al-Hādī appropriate four of *al-Tahdhīb*'s eight categories of exegesis as the structure throughout *The Garden and the Pool*, he copied, sometimes literally, from its sections on lexicon, occasions of revelation, meaning, and, far more

68 This appears to be a refutation of the popular Twelver Shī'ī practice of temporary marriage, which Twelver jurists consider lawful, but Zaydīs reject; see Wilferd Madelung, "Shī'ī Attitudes toward Women as Reflected in *fiqh*," in *Religious Schools and Sects in Medieval Islam*, ed. Wilferd Madelung (London: Variorum Reprints, 1985), 69–79.

69 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:334; YMDI, 128–129.

70 *Sharḥ al-Qāḍī Zayd*, Ms Milan, Ambrosiana E 406, fol. 39r ("Bāb al-Muhūr wa-aḥkāmihā").

71 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:335. Note that Muḥammad b. al-Hādī does not discuss anything related to marriage in his commentary on this verse in the *Garden and the Pool*, which I will discuss briefly in chapter 3.

72 Bruce Fudge makes the important observation that Abū 'Alī al-Faḍl b. al-Ḥasan al-Ṭabrisī (d. 548/1154), a famous Twelver Shī'ī exegete, relied heavily on al-Jishumī's *al-Tahdhīb* in his own *tafsīr*, *Majma' al-bayān* (The Confluence of the Elucidation of the Sciences of the Qur'ān); see Fudge, *Qur'ānic Hermeneutics*, 128–139. Note that al-Ṭabrisī lived in northeastern Iran, not far from where al-Jishumī lived for most of his life.

rarely, legal rulings. Muḥammad b. al-Hādī's primary source for Sunnī and Zaydī jurisprudence and *ḥadīths* appears to be *Sharḥ al-Qāḍī Zayd*, another work that survived exclusively in Yemen and regrettably has not yet been published. However, manuscripts of this large text allow us to confirm its value for Muḥammad b. al-Hādī, which he had declared in his *ījāza* to Imam al-Mahdī Muḥammad b. al-Muṭahhar preserved in *Ṭabaqāt al-Zaydiyya al-kubrā*.

4 Conclusion

This initial encounter with *The Garden and the Pool* reveals much about both its author and the utility of the genre of legal Qur'ān commentaries. In his short introduction, Muḥammad b. al-Hādī lucidly states his purpose for writing this novel type of work for the Zaydī law school and stresses the importance of understanding the legal passages of the Qur'ān for both jurists and lay Muslims alike. He explains why he will only be discussing four of the eight disciplines associated with Qur'ānic exegesis and in doing so subtly indicates his indebtedness to al-Ḥākim al-Jishumī's Qur'ān commentary, *al-Tahdhīb*. Muḥammad b. al-Hādī also justifies his inclusion of numerous *ḥadīths* in his book, for both pedagogical and salvational reasons. Finally, he warns the reader that he will be avoiding repetition of legal topics in the Qur'ān, rather than inflating the number of legal passages with verses that do not add any additional qualifications to previously discussed legal topics.

The majority of content of *The Garden and the Pool* derives from two encyclopedic texts, both of which were studied and preserved exclusively among scholars in the Zaydī community in northern Yemen. Al-Ḥākim al-Jishumī's *al-Tahdhīb* is a magnificent Qur'ān commentary, beautifully arranged, and rich in exegetical content. It appears to draw heavily from al-Tha'labī's significant early Qur'ān commentary, *al-Kashf wa-l-bayān*, along with various Mu'tazilī sources.⁷³ Thanks to the recent publication of this work under the leadership of 'Abd al-Raḥmān al-Sālimī, it is easy to document Muḥammad b. al-Hādī's indebtedness to it, especially in the sections devoted to occasions for revelation and meaning. Qāḍī Zayd al-Kalārī's massive *Sharḥ*, which remains unpublished, is a reworking and expansion of the famous Zaydī Imam Abū Ṭālib al-Hārūnī's autocommentary on *al-Taḥrīr*, an important legal work that expands upon the teachings of Imams al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq in a comprehen-

73 For more about the seminal impact al-Tha'labī's commentary on *tafsīr* literature, see Walid Saleh, *The Formation of the Classical Tafsīr Tradition*.

sive matter. In addition to recording legal disagreement among Zaydī Imams and Sunnī schools of law, it also contains a significant number of *ḥadīths*, regrettably without chains of transmission. Nonetheless, it is possible to verify that Muḥammad b. al-Hādī drew extensively on *Sharḥ al-Qāḍī Zayd* for his section on *aḥkām* in *The Garden and the Pool*, which is what he claimed to have done in his *ijāza* to Imam Muḥammad b. al-Muṭahhar.

The case studies regarding marriage discussed in this chapter illustrate that Muḥammad b. al-Hādī used the genre of legal Qur'ān commentaries to demonstrate his legal acumen and assert his juristic authority. He openly challenged his legal school's preponderant aversion to intermarriage between Muslim men and Jewish or Christian women, relying in large part on the literal meaning of Q 5:5. He demonstrated his familiarity with a range of Sunnī jurists' positions regarding the necessity for a previously unmarried woman to have a male guardian for her first marriage, a topic which he explores at greater length in his commentary on Q 2:232. Muḥammad b. al-Hādī applied his extensive knowledge of *ḥadīths*, derived from *Sharḥ al-Qāḍī Zayd*, to argue for the validity of female witnesses in marriage contracts, in opposition to the Shāfi'ī school's rejection of them in this context. Finally, he combined his knowledge of *ḥadīths* with his deep familiarity with the Zaydī legal tradition to argue that the minimum dower for the wife must be ten dirhams (equal to one dīnār), which is higher than the quarter dīnār prescribed by the Shāfi'ī school. In all of these cases, Muḥammad b. al-Hādī displays his mastery of Qur'ānic exegesis and Islamic law on specific topics about which the Qur'ān is silent, showing how legal indicators relate to Zaydī and Sunnī positions, and creating confidence in them that he is a master jurist who has the authority to challenge entrenched school positions on account of the knowledge he is conveying in his legal Qur'ān commentary.

Muḥammad b. al-Hādī's 199 Legal Passages in the Qur'ān: A Framework for Analysis

And to every [community] We gave a law and a path
Qur'ān 5:48



In his legal Qur'ān commentary *The Garden and the Pool*, Sayyid Muḥammad b. al-Hādī limits his exegesis to 199 passages of the Qur'ān. He repeatedly describes these passages in its introduction as “legal verses” (*āyāt shar'īyya*) of the Qur'ān. The Arabic qualifier *shar'īyya* can only mean “legal,” as it is the adjectival form of the *Sharī'a*, the word Muslims long have employed for God's law.¹ As was seen in the previous chapter, Muḥammad b. al-Hādī informs his reader in the introduction to his commentary that if a ruling occurs in multiple verses, he will only discuss it in one of the verses, and not necessarily the initial one, according to the sūra order of the Qur'ān. This hermeneutical decision necessarily reduces the number of Qur'ānic verses subject to discussion, which explains why his selection of legal verses is on the lower end of the spectrum. The advantage of a smaller pool of verses is that Muḥammad b. al-Hādī is able to delve into greater depth in discussing the legal implications and subtopics related to them, which also serves to demonstrate his advanced legal acumen. As stated above in chapter 1, anyone who wishes to read the interpretation of additional verses can consult Yūsuf the Jurist's longer commentary, *The Ripe Fruits*, which was written explicitly for the purpose of commenting on both the verses Muḥammad b. al-Hādī had discussed and hundreds of additional ones he had not.

1 There are a few Muslim scholars who used the term *sharī'a* for theological writings, such as Abū Bakr al-Ājurī's (d. 360/971) *al-Sharī'a*, but overwhelmingly the word “the *sharī'a*” is associated with law in Muslim epistemology.

1 Thematic Analysis

Western Islamicists have devoted surprisingly little systematic attention to the legal content of the Qurʾān. The first monograph on this topic I have come across is Robert Roberts German thesis at the University of Leipzig, which he translated into English in 1925 with the title *The Social Laws of the Qurʾān*. Roberts divides the “social laws” into seven categories: marital relations, slaves, inheritance, charity, murder and theft, commercial matters, and food and other matters.² The title of his book indicates that he is excluding ritual law—prayer, fasting, and pilgrimage—from consideration, even though these topics are found in every standard Muslim law book. By contrast, the only other monograph by a Western scholar on Qurʾānic laws I have seen is Josef Rivlin’s German book, *Gesetz im Koran: Kultus und ritus* (Law in the Qurʾān: Cult and Rite), which was published in Mandate Palestine in 1934. Rivlin’s primary objective was to examine all Qurʾānic commands and prohibitions relevant to this topic “chronologically and objectively” in order to shed light on the “personality (*Persönlichkeit*) of the Prophet” and the history of the development of Islam.³ He arranged his short book according to fourteen topics, such as fasting, Ḥajj, dietary laws, vows, and prayer, and endeavored to show how these rites developed from the early Meccan period through the Medinan period of Muḥammad’s prophetic mission. There is not a single citation of a Muslim legal book or even Qurʾān commentary in this monograph. Rather, Rivlin’s study is focused exclusively on the Qurʾān in a manner completely severed from the Islamic legal and exegetical traditions it inspired, while speculating on potential Jewish and Christian sources for these rites.⁴

In his entry “Law and the Qurʾān” for the *Encyclopaedia of the Qurʾān*, Wael Hallaq writes that “the Qurʾān provides a relatively minor body of legal subject matter” before identifying twelve subjects, one of which is ritual, on which it provides some legislation.⁵ He mentions the Islamic tradition of there being

2 Robert Roberts, *The Social Laws of the Qurʾān* (London: Curzon Press, 1977), ix–x.

3 Josef Rivlin, *Gesetz im Koran: Kultus und Ritus* (Jerusalem: Bamberger und Wahrmann Verlag, 1934), Vorwort (unpaginated). I am grateful for one of the anonymous reviewers for bringing this book to my attention and for the University of Arizona Library’s Interlibrary Loan office for securing a copy of it for me.

4 A good example of this is Rivlin’s suggestion that since the earliest Qurʾānic commands to any prophet to pray were addressed to Zechariah and Jesus (Q 19:11, 31), “dass M. in erster Linie von Christen beten gelernt hat” (that Muḥammad learned to pray primarily from Christians); Rivlin, *Gesetz*, 95. This strikes me as thin evidence for this claim, especially since the exact chronological sequence of the Qurʾān’s revelation is unknown.

5 These topics are ritual, alms tax, property and treatment of orphans, inheritance, usury, alcohol, marriage/separation/ divorce, sexual intercourse, adultery, theft, and homicide.

500 verses with “explicitly legal content” and cites S.D. Goitein’s claim that the legal matter in the Qur’ān is no less than the legal content in the Torah.⁶ In his more recent reading of the Qur’ān, Hallaq claims that its “juridico-moral subject matter shares with the *fiqh* works about thirty topics (out of fifty-seven legal chapters).”⁷ While the number fifty-seven is arbitrary, because it is based on the chapters of a single book of jurisprudence,⁸ Hallaq is to be applauded for aligning the legal passages of the Qur’ān with the topics typically found in books of Islamic law. Finally, in his recent contribution to the *Oxford Handbook of Qur’ānic Studies*, Joseph Lowry proposes dividing the legal content of the Qur’ān into the categories of (1) ritual, (2) rules “that are not necessarily ritual related but that affect the contours of the community in other ways,” and (3) rules “governing matters that correspond more or less to secular legislation in modern legal systems.”⁹ This second category includes topics such as alms, family law, slavery, war, and torts, whereas the third category is limited to commercial law and legal procedure.

How should one analyze Muḥammad b. al-Hādī’s selection of 199 legal passages in the Qur’ān? I have adopted the approach favored by Wael Hallaq and endeavored to align these legal passages with topics typically found in books

6 Wael Hallaq, “Law and the Qur’ān,” *Encyclopaedia of the Qur’ān*, ed. Jane McAulliffe (Boston: Brill, 2003), 3:150. Goitein’s claim is found in his article, “Birth Hour of Islamic Law,” *The Muslim World* 50.1 (1960), 23–29. Interestingly, Goitein obtained the number of 500 legal verses not from a book of Islamic legal theory but rather from Count Léon Ostrorog’s short 1927 book, *The Angora Reform*.

7 Wael Hallaq, “Groundwork of the Moral Law,” *Islamic Law and Society* 16 (2009), 271. Hallaq provides a footnote here to pages 553–555 of his book, *Shari’a* (Cambridge: Cambridge University Press, 2009), which is where he provides a list of fifty-seven legal topics found in ‘Abd al-Wahhāb al-Sha’rānī’s (d. 973/1565) *al-Mizān al-kubrā*, along with the relative size of each topic.

8 For reasons that are not obvious, Hallaq derives his number fifty-seven from ‘Abd al-Wahhāb al-Sha’rānī’s *al-Mizān al-kubrā*. *Fiqh* books vary widely in the number of topical chapters they contain, from 60 in al-Qudūrī’s famous *Mukhtaṣar*, to 82 in al-Ghazālī’s *al-Wasīṭ* and 72 in al-Nawawī’s *Minhāj al-ṭālibīn*. The influential Zaydī *fiqh* book by Imam Abū Ṭālib al-Hārūnī, titled *al-Taḥrīr*, with which Muḥammad b. al-Hādī would have been intimately familiar, has 44 topical chapters. Muḥammad b. al-Hādī’s great-uncle, Amīr al-Ḥusayn, arranged his influential book of legal hadiths, *Shifā’ al-uwām*, according to these same 44 topics.

9 Joseph Lowry, “Law and the Qur’ān,” *Oxford Handbook of Qur’ānic Studies*, 446. Lowry lists very little secondary literature at the end of his entry, which supports my contention that Western Islamicists have yet to study systematically the legal passages of the Qur’ān. For two of his own contributions, see Joseph Lowry, “When Less is More: Law and Commandment in *Sūrat al-An’ām*,” *Journal of Qur’ānic Studies* 9 (2007): 22–42; and “A Guide to the Legal Material in *Sūrat al-Nisā’* (Q 4),” in *Unlocking the Medinan Qur’ān*, ed. Nicolai Sinai (Leiden: Brill, 2022), 422–479.

of Islamic law. However, I have found it expedient to devise a few legal topics that are not generally found in law books, like emigration (*hijra*), and to combine multiple legal topics under single headings, such as criminal law, slaves, and commercial law. For example, what I am calling “criminal law” consists of Hallaq’s four topics of torts, blood-money, “Qur’ānically regulated infractions (*ḥudūd*),” and discretionary punishments.¹⁰ Thus, while the selection of verses I present here is the product of an eighth/fourteenth-century Yemeni jurist, I freely acknowledge that the thematic categories are those of a twenty-first century American professor, inspired by the standard repertoire of topics found in Islamic legal textbooks, such as the Zaydī Imam Abū Ṭālib al-Hārūnī’s *al-Taḥrīr*.

Muḥammad b. al-Hādī’s choice of 199 Qur’ānic passages is useful both for its workable size and the fact that the vast majority of its passages correspond to a single legal topic. Only eleven passages are clearly relevant for two distinct legal topics and only two, Q 4:25 and Q 65:6–7, address three.¹¹ This means that a total of 214 broad legal topics are touched upon in these 199 passages. I have been able to place 193 of these passages in the twenty-five legal topics that I have identified for the purpose of a thematic analysis of Qur’ānic laws (Table 3.1). I have added one additional category, “general legal principles,” for those verses that address either a broad legal concept, such as the permission of deploying legal stratagems (*ḥiyal*) in certain contexts (Q 12:70), or which do not fit neatly into any of the legal topics with which I am familiar, such as the permissibility

10 Hallaq, *Sharīʿa*, 554. Note that Muḥammad b. al-Hādī does not explicate any Qur’ānic passages that relate to discretionary punishments in *The Garden and the Pool*. Furthermore, topics 8–28 of Hallaq’s list could be considered under my rubric of commercial law, although Muḥammad b. al-Hādī does not identify Qur’ānic verses relevant to all of these topics.

11 The following passages discussed in *The Garden and the Pool* address two distinct legal topics: Q 2:43 (prayer and alms tax); Q 2:233 (nursing and maintenance); Q 2:282 (commerce and courts); Q 4:43 (prayer and ritual purity); Q 5:5 (food and marriage); Q 9:122 (warfare and general principles); Q 24:27 (permission and greetings); Q 24:32 (marriage and slavery); Q 24:61 (permission and greetings); Q 60:8 (warfare and general principles); Q 60:10–11 (marriage and emigration). Verse 4:25 is relevant for the topics of criminal law, marriage, and slavery; it reads: “And whoever is not able to afford to marry free, believing women, let them marry from the believing maidens whom your right hands possess. God knows best your faith; the one of you is as the other. So wed them by permission of their people, and give their dowers to them in kindness, they being legal wives, not lovers, nor mistresses. And if, when they are legally married, they commit lewdness, they shall incur half of the prescribed punishment for free women. This is for him among you who fears committing sins. But to have patience would be better for you. God is All-Forgiving, All-Merciful.” Passage Q 65:6–7 touches upon divorce, nursing, and maintenance.

TABLE 3.1 Thematic overview of Muḥammad b. al-Hādī's 199 legal passages in the Qur'ān

	Legal topic	Number of passages	Percentage ¹²
1	Prayer	30	15 %
2	Warfare	28	14 %
3	Divorce	21	10.6 %
4	Marriage	18	9 %
5	Pilgrimage	13	6.5 %
6	Criminal Law	11	5.5 %
7	Commerce	10	5 %
8	General Principles	8	4 %
9	Courts	8	4 %
10	Food	7	3.5 %
11	Fasting	6	3 %
12	Guardians	6	3 %
13	Inheritance	5	2.5 %
14	Oaths & Vows	5	2.5 %
15	Ritual Purity	5	2.5 %
16	Alms (<i>zakāt</i>)	4	2 %
17	Bequests	4	2 %
18	Permission (<i>istīdhān</i>)	4	2 %
19	Slavery	4	2 %
20	Greetings	4	2 %
21	Clothing	3	1.5 %
22	Emigration (<i>hijra</i>)	3	1.5 %
23	Maintenance (<i>nafaqa</i>)	2	1 %
24	Menstruation/Pregnancy	2	1 %
25	Nursing	2	1 %
26	Racing	1	0.5 %

of weeping for one's sins or out of grief (Q 12:84). Eight of Muḥammad b. al-Hādī's 199 verses fall under the category of general legal principles, although two of them also clearly address additional topics.¹³

¹² The total percentage is greater than 100 % because there are 214 topics but only 199 passages.

¹³ These are the general principles passages Muḥammad b. al-Hādī selected: Q 9:122 (dis-

As anyone who has read the Qurʾān might have expected, the number of passages addressing each legal topic varies significantly. The two most frequently addressed topics are prayer and warfare, with 30 and 28 of Muḥammad b. al-Hādī's passages respectively. These topics are followed by divorce (21) and marriage (18), then pilgrimage (13), criminal law (11), and commercial law (10). None of the remaining legal topics has more than eight passages relevant to it, and the topic of racing is hinted at in a single verse (Q 12:17). The remaining legal topics include courts, guardians, inheritance, oaths, and ritual purity, to name a few.

What does this thematic analysis reveal about Qurʾānic laws? Despite the fact that Muḥammad b. al-Hādī selected a mere 199 Qurʾānic passages to comment upon in *The Garden and the Pool*, the range of twenty-five legal topics is impressive. With the exception of the chapters devoted to commercial law, Muḥammad b. al-Hādī identified multiple Qurʾānic passages connected to most of the chapter topics (*kutub*) in Abū Ṭālib al-Hārūnī's legal textbook, *al-Taḥrīr*. A sizable percentage of them (29%) relate to acts of worship (*ʿibādāt*), topics of great significance for Muslim jurists, though typically classified by modern Western Islamicists as being religious rather than legal. Nearly one-fifth of the passages are concerned with marriage and divorce, topics which also, like acts of worship, remain significant today for Muslims around the globe. By contrast, laws regarding commerce and slavery are relatively few, despite the significant space premodern jurists devoted to them in their law books. Most of the legal topics are represented by a handful of passages, indicating that the Qurʾān provides minimal guidance on most topics about which jurists cared.

2 Framework for Analysis

An examination of these passages makes apparent that they exhibit significant variation. Some of them provide specific, detailed instructions, while others are unspecified commands or statements. Contrast, for example, Q 25:48, which reads, "And We send down purifying water from the sky," which appears to have

tinction between communal obligations and individual obligations; also warfare); Q 12:8 (parental favoritism of one child over others); Q 12:70 (permissibility of legal stratagem in certain situations); Q 12:84 (permissibility of moderate weeping); Q 12:100 (permissibility of men to sit on silk-covered cushions); Q 57:27 (general non-obligation to complete voluntary acts of piety that are interrupted); Q 60:8 (permissibility of kindness to non-Muslim neighbors; also warfare); Q 107:7 (prohibition of miserliness).

some connection with ritual purity, with Q 4:11–12, which provides a detailed list of inheritance shares that has generated an entire genre of legal writing, the *farā'id* manual.¹⁴ Likewise, contrast the general command regarding fidelity to oaths, “Fulfill the covenant of God when you make covenants, and break not your oaths after the affirmation of them” (Q 16:91), with the detailed rules for how to expiate a broken oath, which read in part:

The expiation thereof is the feeding of ten of the needy with the average of that which you feed your own family, or the clothing of them, or the manumission of a slave. Whoever finds not the means, then a three days' fast. This is the expiation of your oaths when you have sworn. Honor your oaths. Thus God expounds to you His signs in order that you may give thanks. (Q 5:89)

These examples, along with many more, are grounds for making an initial distinction between legal passages that are **rules** and those which are not. By rules, I am adopting Rosalind Ward Gwynne's suggestion that we translate *ahkām al-Qur'ān* in these cases as “Qur'ānic rules,” in the sense that a rule has the formula “In circumstance X, Y is required/permitted.”¹⁵ Gwynne identifies four

14 God charges you concerning your children: to the male the equivalent of the portion of two females, and if there be more than two females, then theirs is two-thirds of the inheritance. If there be one female, then the half. And to each of his parents one-sixth of the inheritance, if he has a son. If he has no son and his parents are his heirs, then his mother receives one-third. If he has brothers, then his mother receives one-sixth, after any bequest he may have bequeathed, or debt (has been paid). Your parents and your children: You know not which of them is nearer to you in benefit. It is an apportionment from God and God is Knowing, Wise. To you belongs a half of what your wives leave, if they have no children; but if they have children then to you one-fourth of what they leave, after any bequest they may have bequeathed, or debt (has been paid). And to them belongs one-fourth of what you leave if you have no children, but if you have children then, one-eighth of what you leave, after any bequest you may have bequeathed, or debt (has been paid). And if a man or a woman have a distant heir, and they have a brother or a sister, then to each of them twain (the brother and the sister) one-sixth, and if they be more than two, then they shall be sharers in the third, after any bequest that may have been bequeathed or debt, not injuring—an apportionment from God, and God is All-Knowing, Clement (Q 4:11–12). This is the longest and most detailed legal passage in the Qur'ān; a classic study of it remains David Powers, *Studies in Qur'ān and Hadith* (Berkeley: University of California Press, 1986).

15 Rosalind Ward Gwynne, *Logic, Rhetoric, and Legal Reasoning in the Qur'ān* (New York: Routledge, 2004), 63. Gwynne acknowledges that this formula comes from the analytic philosopher Gidon Gottlieb's 1968 book, *The Logic of Choice: An Investigation of the Concepts of Rule and Rationality*.

characteristics of a rule, ranging from indicating the circumstances in which it is applicable, to whether something “ought, or may, or must be or not be, concluded or decided.”¹⁶ Rules also indicate whether something is permitted, required or prohibited, and they must be expressed in a manner “designed to function as a rule or inference-warrant.”¹⁷ Gwynne notes that many Qur’ānic rules are commands, although they do not all occur in the imperative mood. She also acknowledges that jurists had to determine to whom Qur’ānic commands applied and whether they were absolute or qualified by consulting “historical glosses,” such as occasions of revelation and *ḥadīths*, materials we find throughout Muḥammad b. al-Hādī’s *The Garden and the Pool* and most Qur’ān commentaries in general.¹⁸

According to my count, 130 (65%) of Muḥammad b. al-Hādī’s 199 legal passages are rules. A good example of a rule is Q 2:234, which sets a widow’s waiting period at precisely four months and ten days, during which time she cannot remarry.¹⁹ Another clear example of a rule is the final verse the Sūra of Women (Q 4:176), which contains additional quantitative stipulations regarding inheritance that are absent from the earlier passage on this subject (Q 4:11–12):

They ask you for a verdict. Say: God has pronounced for you concerning a deceased person without heirs. If a man die childless and he has a sister, her share is half of what he leaves, and he would have inherited from her had she died childless. And if there be two sisters, then theirs are two-thirds of what he leaves. If they be siblings, male and female, to the male is the equivalent of the share of two females. God expounds to you, so that you err not. God is Knower of all things.

Some verses contain multiple rules on the same legal topic, such as the third verse of the Sūra of the Table Spread (Q 5):

Forbidden to you are carrion and blood and swine-flesh, and that which has been consecrated to other than God, and the strangled animal, and the animal killed through beating, and the animal which fell from a

16 Gwynne, *Logic, Rhetoric, and Legal Reasoning*, 63–64.

17 Gwynne, *Logic, Rhetoric, and Legal Reasoning*, 64. These four characteristics also appear to derive from Gidon Gottlieb’s book, *The Logic of Choice*.

18 Gwynne, *Logic, Rhetoric, and Legal Reasoning*, 77.

19 According to my classification, this verse falls under the topic of divorce because it concerns a waiting period (*‘idda*), and the topic of waiting period, when it is not an independent chapter of its own, falls under the topic of divorce in legal manuals. The topic of the divorce waiting period is discussed at length below in chapter six.

height, and that which has been killed by the goring of horns, and the animal mangled by wild beasts—save that which you sacrifice—and that which has been sacrificed to idols. (Q 5:3)

Following Gwynne's paradigm for a rule mentioned above, this verse can be restated as teaching that in the event you are offered to eat carrion/blood/pig/an animal consecrated to a deity/a strangled animal/an animal beaten to death/an animal which fell off a cliff/an animal which was gored/an animal which was eaten by another animal (unless it was properly slaughtered prior to its death)/an animal sacrificed to idols, you must not eat it. The verse which immediately follows this one adds an additional rule, concerning meat which was procured by means of trained dogs:

They ask you what is made lawful for them. Say: all good things are made lawful for you. And those beasts and birds of prey you have trained, as hounds are trained, you teach them what God has taught you. So eat of that which they catch for you and mention God's name upon it, and fear God. God is swift to take account. (Q 5:4)

As Marion Katz has observed, these two verses are embedded in the dense opening passage of the Sūra of the Table Spread (Q 5) that is laden with legal verses which deal explicitly with what is licit and illicit for Muslims, which in turn highlights the boundaries between Islam and the religions which preceded it.²⁰

What about Muḥammad b. al-Hādī's passages that do not contain rules? These passages can be bifurcated into those which have a clear connection to a legal topic and those which do not. The former category can be further divided into what I am calling (1) open commands and (2) legal statements. A good example of an **open command** is the second legal passage discussed in *The Garden and the Pool*: "Establish prayer, pay the alms tax, and bow your heads with those who bow" (Q 2:43). This short verse consists of three imperative commands, two of which are conventional legal topics in Muslim jurisprudence, but none of which follows Gwynne's rule paradigm of "In circumstance X, Y is required/permitted." Rather, these commands merely alert or remind the reader of the Qur'ān that they are obligated to pray and give alms in a manner that is prescribed elsewhere.

20 Marion Katz, *Body of Text: The Emergence of the Sunnī Law of Ritual Purity* (Albany: SUNY Press, 2002), 32–58.

I classify only sixteen of Muḥammad b. al-Hādī's 199 legal passages as open commands. Many of them address the major acts of worship in Islam, such as prayer, pilgrimage and fasting. For example, Q 74:3 reads "Your Lord, magnify," and the following verse commands "Your garments, purify" (Q 74:4). Both verses contain imperative verbs, each of which is associated with a legal topic. The verb "to magnify (*kabbara*)" also means "to say *Allāhu akbar* (God is great-est)," which is the expression a Muslim must utter to initiate each of her daily prayers. Likewise, the verb "to purify (*ṭahhara*)," shares the same trilateral root as the Arabic word for ritual purity, *ṭahāra*, which typically is the first chapter of every book of Islamic law. It is interesting that in Q 74 the command to purify follows the command to magnify God, given that a Muslim must perform ablutions (or be ritually pure) prior to initiating their prayer with the utterance of *Allāhu akbar*. Despite this unanticipated sequence, the presence of words intimately affiliated with the legal topics of prayer and ritual purity justify their inclusion in Muḥammad b. al-Hādī's corpus of legal passages, even if they do not convey any rules.

In a few cases, an open command is expressed by means of a declarative statement, rather than a verb in the imperative mood. For example, Q 2:183 declares, "O you who believe! Fasting is ordained for you, just as it was ordained for those before you, that perhaps you may be God-fearing," while Q 2:216 opens with the statement "Fighting is ordained for you, though it is hateful to you." The language of these verses leaves no doubt in the listener's mind that they are associated with the legal topics of fasting and warfare, but they do not introduce any specific rules for either topic. Both verses deploy the eloquent passive expression "X is ordained/written for you (*kutiba 'alaykum*)," which, coming from God, has the force of a command in Arabic. While one might be able to reformulate Q 2:216 as the rule "If you hate to fight, you still must fight," this verse strikes me as a general exhortation to fight, because "it may happen that you hate a thing which is good for you, and it may happen that you love a thing which is bad for you. God knows, while you know not" (Q 2:216).

One of the clearest cases of the distinction I have made between open commands and rules concerns the greater pilgrimage, the Ḥajj, which now attracts more than 1.5 million Muslim pilgrims annually. In an atypical move, Muḥammad b. al-Hādī divided the longest verse about pilgrimage, Q 2:196, into five discrete legal passages, an idea he may have derived from al-Ḥākim al-Jishumī's *al-Tahdhīb*.²¹ The first of these five passages is an open command and simply

21 Muḥammad b. al-Hādī, *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:128–162; YMDI, 46–60. al-Jishumī divided his commentary on Q 2:196 into the identical five fragments; see *al-Tahdhīb*, 1:801–814.

states, “Complete the pilgrimage and the visit (to Mecca) for God.” The remainder of this long verse is then fragmented into four rules regarding pilgrimage, in a bullet-point format:

- And if you are prevented, then make an offering as can be obtained with ease, and shave not your heads until the offerings have reached their destination.
- And whoever among you is sick or has an ailment of the head must pay a ransom of fasting or almsgiving or sacrifice.
- And if you are in safety, then whosoever contents himself with the visit for the pilgrimage shall give such offering as can be had with ease. Whoever has nothing to offer, then a fast of three days while on the pilgrimage, and of seven when you have returned; that is, ten in all.
- That is for him whose family is not present at the Sacred Mosque.

Each of these four points yields a discrete rule. In the first one, head-shaving during the pilgrimage is linked to the sacrificial animals (*hady*), while in the second one, a substitution for head-shaving is allowed for either an ill pilgrim or one who has a head ailment. This substitution is quantified in the third passage, with an exact number of days of fasting in two different locations, and then the fourth passage provides a clarification that this substitution is only valid if the pilgrim’s family does not live in Mecca.

I am aware that my distinction between rules and open commands resembles some of the categories debated by Muslim experts in legal theory (*uṣūl al-fiqh*). These master jurists developed and debated the meanings of a range of concepts to describe the textual indicators of Islamic law. Examples of these terms include general (*‘āmm*) versus specific (*khāṣṣ*); unrestricted (*muṭlaq*) versus restricted (*muqayyad*); and indeterminate (*mujmal*) versus specified (*mubayyan*, *mufassar*). These concepts, and the debates over them, provide a variety of hermeneutical strategies for interpreting all types of texts, not merely the Qur’ān, and they arose in large part because of the casuistic nature of Islamic law. In other words, jurists habitually had to determine to which categories of human beings each textual indicator applied: adult and/or minor; male and/or female;²² free and/or slave; sane and/or insane; and Muslim and/or non-Muslim. My objective here is far more modest than that of Muslim legal theorists. I am merely introducing and analyzing Muḥammad b. al-Hādī’s selection of 199 legal passages of the Qur’ān to explore how the Qur’ān relates to

22 Muslim jurists also addressed the topic of the person of indeterminate sex, *al-mukhan-nath*, (neither obviously male nor female) a concept alluded to in a few *ḥadīth*, but absent from the Qur’ān.

the vast body of Muslim jurisprudence that is called *fiqh* and to argue for the utility of the genre of legal Qur'ān commentary for an aspiring master jurist. Therefore, to summarize, I am classifying a passage as a rule if it aligns with the paradigm, "In circumstance X, Y is required/permitted," while an open command contains an explicit reference to an Islamic legal topic but lacks a specific circumstance in which it applies.

The other type of legal passages that are neither rules nor subtle verses are what I am calling **legal statements**. These passages are distinguished from open commands by the absence of an imperative verb or its equivalence and from subtle verses by the inclusion of an explicit legal reference. I count fifteen legal statements among Muḥammad b. al-Hādī's 199 legal passages in *The Garden and the Pool*. A good example of a legal statement is Q 2:220, which addresses the guardians of orphans: "And they question you concerning orphans. Say: To improve their lot is best. And if you mingle your affairs with theirs, then they are your brothers. God knows the dishonest from the honest. Had God willed He could have overburdened you." This legal statement initially appears to issue a rule with the clause, "And if you mingle your affairs with theirs," but instead of stating the consequence of this action, offers the highly ambiguous expression: "then they are your brothers." The reader easily grasps that this verse is about the legal concept of guardianship because only guardians have the authority to intervene in the affairs of orphans, even though the legal expression "guardian" is absent from this verse.

Several additional legal statements appear to begin as rules but lack clear consequences for the behavior they mention. There can be little doubt that Q 25:64, "And who spend the night before their Lord prostrate and standing," refers to the legal topic of prayer, which involves standing and prostrating before God, but what rule does the Qur'ānic text communicate here? Likewise, the partial verse, "O you who believe! Whoever among you turns from his religion" (Q 5:54) unambiguously relates to the topic of apostasy, because the verb "turns away (*yartadda*)" derives from the same Arabic root as "apostasy (*ridda*)" and is the verb jurists use for the act of apostasizing. However, Muḥammad b. al-Hādī does not even cite the second half of this verse, presumably because it does not divulge the legal consequences for apostasy.²³ The same can be said for

23 al-*Rawḍa*, Maktabat Ahl al-Bayt, 2:51; YMDI, 195. The remainder of the verse reads, "let him know that God will bring forth a people whom He loves and who love Him, humble toward believers, stern toward disbelievers, striving in the way of God, and fearing not the blame of any blamer. Such is the grace of God which He gives to whom He will. God is All-Embracing, All-Knowing."

the first verse to address wine-drinking and games of chance: “They question you about wine and games of chance. Say: In both is great sin, and (some) benefit for people; but the sin of them is greater than their benefit” (Q 2:219). This verse sets up what one would expect to be a clear ruling on wine-drinking and gambling, but instead delivers the mixed message that these acts are both sinful and beneficial. Muḥammad’s Companions must have been relieved when the unambiguous verse Q 5:90 came down with the rule that Muslims were to avoid these harmful things altogether.

Finally, several of the Qur’ānic passages I have labeled “legal statements” merely include a word that evokes a subject commonly found in Islamic legal textbooks. The verse, “And We send down purifying water (*mā’an ṭahūran*) from the sky” (Q 25:48), hints at the legal topic of ritual purity (*ṭahāra*), but how? Another verse, Q 59:6, begins with the clause, “And that which God gave as spoils to His Messenger from them” clearly alludes to war booty, which is adumbrated in chapters on warfare in law books, but the remainder of the verse does little more than affirm the authority of the Prophet Muḥammad.²⁴ And in a unique case, which clearly relates to the topic of slavery, the legal statement appears as a parable: “God coins a similitude: a chattel slave, who has control of nothing, and a person on whom We have bestowed a fair provision from Us, and who spends thereof secretly and openly. Are these two equal” (Q 16:75)? While this passage may be read in support of the legal position that slaves cannot own property, it hardly qualifies as a rule or a command and calls out for elucidation by a jurist-exegete like Muḥammad b. al-Hādī.

The common denominator of Qur’ānic passages that are rules, open commands, and legal statements is language that binds the passage to a conventional Islamic legal topic. The majority of these verses are rules which take or can be rendered into the form of “In circumstance X, Y is required/permitted.” A much smaller body of legal passages consists of open commands that are easily linked to the standard legal topics in *fiqh*. A second, similarly small, group of legal passages contains a keyword or two that immediately connects them to a legal topic, even if the passage itself is devoid of clear legal ramifications. Altogether, rules, open commands, and legal statements comprise about 81% of Muḥammad b. al-Hādī’s corpus of legal passages commented upon in *The Garden and the Pool*. What, then, are the remaining legal passages in the Qur’ān and how do they relate to Islamic law?

24 The verse reads, in full: “And that which God gave as spoils to His Messenger from them, you urged not any horse or riding-camel for the sake thereof, but God gives His Messenger mastery over whom He will. God has power over all things.”

3 Subtle Legal Passages

Many of the 199 passages that Muḥammad b. al-Hādī selected for inclusion in *The Garden and the Pool* do not have any obvious connection to Islamic law. What is the legal value of the verse, “And that man has only that for which he makes effort” (Q 53:39)? How about, “And horses, mules and donkeys, that you may ride them, and for ornament” (Q 16:8)? In cases like these, which I am calling **subtle legal passages**, one generally has to rely on Muḥammad b. al-Hādī's commentary to divulge the mysterious relation between the verse in question and a topic of Islamic law. In the two initial cases cited here, *The Garden and the Pool* teaches that the former verse applies to the legal topic of fulfilling the bequest of a deceased person, while the latter alludes to the debate over the lawfulness of eating horse meat.²⁵ In my taxonomy, subtle passages differ from rules, open commands, and legal statements because their legal topics are either unmentioned or they are part of a Qur'ānic account of earlier prophets, such that their applicability for the law of the Prophet Muḥammad's community is ambiguous.

Muḥammad b. al-Hādī's identification of thirty-eight subtle legal passages is one of the most creative aspects of *The Garden and the Pool*. One example that elucidates this concept is Q 22:19, which reads in part, “These two (the believers and the disbelievers) are two opponents who disputed about their Lord.” What legal topic is at stake in this verse? Isn't this more of a description of the inevitable arguments that arise between adherents to different religions than a prescription for a certain type of conduct? Had Muḥammad b. al-Hādī merely composed a list of legal passages, as Ibn al-Murtaḍā and Ibn al-Wazīr did a century after him, one would be hard-pressed to explain how Q 22:19 relates to Islamic law.²⁶ However, *The Garden and the Pool* is a real Qur'ān commentary, and so from it the reader learns that this verse refers to inheritance.²⁷ In

25 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:296, 166; YMDI, 306, 247.

26 Note that neither Ibn al-Murtaḍā nor Ibn al-Wazīr included Q 22:19 in their lists of legal passages.

27 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:194–196; YMDI, 259–260. Muḥammad b. al-Hādī initiates his legal discussion with the question of whether all disbelievers form a single religious group (*milla*) or multiple ones, which is a topic al-Ḥākim al-Jishumī introduces in *al-Tahdhīb* (8:4939) at this juncture, because he argues that this Qur'ānic verse supports Abū Ḥanīfa's position that there are only two religious groups, believers and disbelievers. However, al-Jishumī says nothing about inheritance here, which shows that Muḥammad b. al-Hādī frequently goes beyond the content of *al-Tahdhīb* in his book, *The Garden and the Pool*.

fact, it refers to question of interconfessional inheritance. In other words, can a Muslim inherit from a Christian family member? Can a Christian inherit from a Jewish family member? What about a Muslim apostate who dies and leaves behind property? In the case of a Muslim inheriting from non-Muslim family members, Muḥammad b. al-Hādī agrees with most Sunnī and Zaydī jurists that this is forbidden, on the basis of a well-known *ḥadīth*,²⁸ but he acknowledges that the Zaydī Imam al-Nāṣir al-Uṭrūsh and the Twelver Shī'a allow it on the basis of a different *ḥadīth*, which reads "Islam increases and does not decrease: we inherit from them, but they do not inherit from us."²⁹ What a long way the reader has come from the original Qur'ānic passage, "These two are two opponents who contend concerning their Lord!"

One reason for the substantial number of subtle legal passages in *The Garden and the Pool* is the fact that fifteen of them occur in the context of narratives about pre-Islamic prophets. Two subtle passages concerning prayer are found in narratives about the Prophets Noah and Moses, and one of the five passages about oaths and vows comes from the story of the wife of 'Amrān, mother of Mary.³⁰ Muḥammad b. al-Hādī extracts subtle passages concerning commerce and criminal law from the story of Moses and his father-in-law, and from the story of Lot's people.³¹ But the primary story of a prophet that he turns to is Joseph in the sūra that bears his name (Q 12). Unlike the later Yemeni master jurists, Ibn al-Murtaḍā and Ibn al-Wazīr, who did not consider *any* verses in Sūrat Yūsuf to be of relevance to an aspiring *mujtahid*, Muḥammad b. al-Hādī links ten passages in it to legal topics.³² Four of these are what I call "general principles," such as the permissibility of using legal stratagem (*hiyal*) in certain cases, on the basis of Q 12:70, and the exceptional situations in which it is permissible for a parent to favor one child over another (Q 12:8).³³ In his commen-

28 This *ḥadīth* is "The Muslim does not inherit from the non-Muslim and the non-Muslim does not inherit from the Muslim," which is found in the *Ṣaḥīḥs* of al-Bukhārī and Muslim, along with the *Sunan* of Abū Dāwūd and al-Tirmidhī.

29 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:196; YMDI, 260.

30 The two subtle passages regarding prayer, Q 20:14 and Q 71:10–11, are discussed below in chapter 5 of this book. The subtle passage touching upon oaths and vows is Q 3:35, which is the only verse in the entire long third sūra of the Qur'an that Muḥammad b. al-Hādī includes in *The Garden and the Pool* and the only verse that concerns a vow rather than an oath; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:308; YMDI, 117.

31 These passages, Q 28:27 and Q 27:55, will be mentioned shortly in this chapter.

32 Note that Yūsuf the Jurist comments on 36 passages of Sūrat Yūsuf in *The Ripe Fruits*, while al-Najrī comments on 25 in his *Commentary on 500 Verses*.

33 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:148; YMDI, 240 (*hiyal*); Maktabat Ahl al-Bayt, 2:138; YMDI 235–236 (favoritism).

tary on the verse, "So fill for us the measure and be charitable towards us, for God will reward the charitable" (Q 12:88), Muḥammad b. al-Hādī weighs into the legal debate over whether the recipient's act of taking possession (*qabḍ*) of the charity or gift is a requirement for it to count, or whether the donor receives credit as soon as he makes the gift. His list of legal authorities in support of each position is impressive:

Taking possession [of the gift or charity] is not a stipulation for a valid act of charity or gift according to us, along with [Imams] al-Qāsim [b. Ibrāhīm] and al-Hādī [ilā l-Ḥaqq]. It is one of the opinions ascribed to [Imam] al-Manṣūr bi-llāh and other descendants of the Prophet (*sādat*), as well as Ibn Mas'ūd (d. 32/652–653), Shurayḥ (d. 78/697–698), Mālik, Abū Thawr, and Ibn Abi Laylā (in the case of charity).

However, according to [Imams] Zayd b. 'Alī, al-Nāṣir [al-Uṭrūsh], al-Mu'ayyad bi-llāh, and one opinion ascribed to al-Manṣūr bi-llāh, taking possession of it is a stipulation for a valid gift or act of charity. This is also the opinion of al-Shāfi'ī, Abū Ḥanīfa and his associates, [Sufyān] al-Thawrī, Abū Bakr (d. 13/634), 'Umar (d. 23/644), and Anas (d. between 91–93/709–712).³⁴

He also provides additional textual evidence for both positions:

Our position is based on the *ḥadīth*, "It is unlawful for a gift-giver to take back his gift, except for the father who has given his child something." The Prophet did not stipulate that the gift had to be possessed by the recipient here The Commander of the Faithful (Imam 'Alī) said, "Both are permissible so long as they are known entities, even if they are not in possession of their intended recipients."

It is possible that the advocates of the second position rely upon the story of the Prophet's gift to the Abyssinian king who had died when it arrived, and was returned to the Prophet, who divided it up. According to our interpretation of this event, the gift was returned not because it was never possessed by the recipient but rather because it required an offer and acceptance (*qabūl*), and the acceptance did not occur. They may also rely on the report from the Commander of the Faithful, "Gifts and acts of charity are not permissible except when they consist of known entities and are taken into possession (by their intended recipients)."³⁵

34 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:157–158; YMDI, 243.

35 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:158; YMDI, 243.

Additional legal topics based on subtle passages in Sūrat Yūsuf in *The Garden and the Pool* relate to guardians, commerce, court, and racing, and can be consulted in Appendix B of this book.³⁶ While most of the ten legal passages in Muḥammad b. al-Hādī's commentary on Sūrat Yūsuf (Q 12) have a connection to an observation al-Ḥākim al-Jishumī made in the *aḥkām* section of his Qur'ān commentary, he delves far deeper into these topics by introducing cases and authorities' opinions that are absent from *al-Tahdhīb*. For example, al-Jishumī wrote that Q 12:17 indicates that racing (*al-istibāq*) is permissible, but unlike Muḥammad b. al-Hādī, he did not assess the permissibility of horse racing, foot racing, archery, and wrestling, and whether competitors in these tournaments can lawfully receive a monetary prize.³⁷

4 Applying the Taxonomy

What happens when I apply my taxonomy of rules, open commands, legal statements, and subtle legal passages to my earlier thematic analysis? The 199 passages in *The Garden and the Pool* divide in the following manner: 130 passages are rules; 16 are open commands; 15 are legal statements, and 38 are subtle passages. This means that approximately two-thirds of Muḥammad b. al-Hādī's corpus of legal Qur'ān passages are specific rules that can translate directly into a book of Islamic law. The remaining third is split nearly evenly between passages that have a clear connection to Islamic law and subtle verses, which do not.

I will now examine three legal topics to assess the results of my proposed taxonomy of legal passages. The topics of commerce, courts, and criminal law all have similar numbers of legal passages associated with them in *The Garden and the Pool*. However, the applicability of the Qur'ān's legal content varies between them. According to my analysis, four of the ten verses concerning commercial law are rules, two are legal statements, and the remaining four are subtle passages. The rules, which occur in close proximity to each other in the Sūra of the Cow, include the prohibition of usury (Q 2:275), the postponement of the payment of a debt (Q 2:280), a long verse about recording debts in writing (Q 2:282), and the use of a pledge in the absence of scribes to record a debt (Q 2:283).³⁸

36 They are legal passages 118–127 of *The Garden and the Pool*; see Appendix B.

37 al-Jishumī, *al-Tahdhīb*, 5:3614; Muḥammad b. al-Hādī, *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:140–142; YMDI, 236–237.

38 These latter two passages are analyzed in great detail by Brinkley Messick; see *Sharī'a Scripts*, 135–142.

The two legal statements occur adjacent to each other in the Sura of the Bees (Q 16) and merely indicate that people are free to use animals in their possession as they see fit.³⁹

As for the subtle verses concerning commerce, Muḥammad b. al-Hādī derives two of them from the story of Joseph in Q 12, one from the story of Moses and his marriage to one of the unnamed elderly Midianite's daughters in Q 28:27, and a final one regarding the permissibility of leasing apartments in Mecca or selling stones from dilapidated building in Mecca, on the basis of the verse, "The Sacred Mosque, which We have appointed for humanity together, the dweller therein and the nomad" (Q 22:25).⁴⁰ The verses from the story of Joseph provide the occasions for Muḥammad b. al-Hādī to address the interesting issue of the permissibility of working for an unjust or non-Muslim ruler (Q 12:55) and the legal implications of being a guarantor, on the basis of the verse, "And he who brings it shall have a camel-load, and that I guarantee" (Q 12:72).⁴¹ The story of Moses' marriage to the Midianite girl initially appears to be about marriage, but Muḥammad b. al-Hādī uses this occasion to elaborate exclusively upon the topic of hire (*ijāra*), presumably because the terms for hire that her father offered Moses in the Qur'ān are vague and unsatisfactory from a Muslim jurist's perspective.⁴²

The topic of courts displays a similar profile of Qur'ānic verses to that of commerce. There are four rules, one legal statement, and three subtle passages. One of the rules is shared with commerce, namely Q 2:282, because it authorizes female court testimony in the case of debts, albeit at the ratio of two women in lieu of one male witness.⁴³ A second rule in the Sūra of the Cow forbids the

39 The two passages are Q 16:5 and Q 16:6–7. This latter passage reads: "And wherein is beauty for you, when you rest them, and when you take them out to pasture. And they bear your loads for you to a land you could not reach, save with great hardship to yourselves."

40 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:197; YMDI, 261 (Q 22:25).

41 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:144, 151; YMDI, 238, 240–241.

42 The verse regarding hire reads: "He said: I wish to marry you to one of these two daughters of mine, on condition that you hire yourself to me for eight years. Then if you complete ten, it will be of your own accord, for I do not wish to overburden you. God willing, you will find me among the righteous." Notice how this contract lacks specificity both regarding what Moses is to do and how long he is to do it. (It also fails to name which daughter he is marrying.) However, this verse does indicate that a contract of hire is lawful, or at least that it was lawful during the time of Moses, before he received the Torah; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:276; YMDI, 298.

43 The relevant part of the verse reads: "And call to witness, from among your men, two witnesses. And if two men are not at hand, then a man and two women, of such as you approve as witnesses, so that if one woman forgets, the other will remind her." The legal implications of this passage have inspired much Western scholarship; see for example

use of wealth to bribe judges (Q 2:188). A third rule concerns questionable witnesses: “O you who believe! If an evil-doer brings you news, verify it, lest you harm some people in ignorance and afterward regret what you did” (Q 49:6). The fourth rule is similar to an open command because it merely orders the listener to restore deposits to their rightful owners and to judge fairly between people (Q 4:58). However, I consider it to be a rule because it is an actionable command, albeit one in need of additional juristic clarification. Finally, the sole legal statement regarding courts addresses the issue of testimony under duress, which reads “Whoever disbelieves in God after his belief—save him who is forced thereto and whose heart is still at peace with the faith” (Q 16:106).

Muḥammad b. al-Hādī discerns three subtle legal passages on the topic of courts. He takes the very first verse he discusses in *The Garden and the Pool*, “And sell not My revelations for a trifling price, and fear Me” (Q 2:41), as a prohibition against bribing judges and *muftīs* for a favorable ruling.⁴⁴ He argues that the descriptive passage in the Sūra of Light, “If they are summoned to God and His Messenger to judge between them—a faction of them will suddenly refuse” (Q 24:48), is evidence that Muslims must report to court when summoned to do so. The final subtle passage hails from the story of Joseph, immediately following his seduction by ‘Azīz/Potipher’s wife. When they encounter her husband outside the door, and ‘Azīz’s wife falsely blames him for assaulting her, an attendant says, “If his shirt is torn from the front, then she speaks truthfully and he is among the liars; and if his shirt is torn from behind, then she has lied and he is among the truthful” (Q 12:26–27). This verse affords Muḥammad b. al-Hādī the opportunity to address the question of whether circumstantial evidence (*amārāt/alāmāt*) is admissible in court, which involves a brief and unexpected detour to the topic of unclaimed property found in a public space (*luqṭa*).⁴⁵

Unlike the topics of commerce and courts, the topic of criminal law consists primarily of detailed Qur’ānic rules. Some of these passages are widely known,

Mohammad Fadel, “Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought,” *IJMES* 29.2 (1997): 185–204; Scott Lucas, “Justifying Gender Inequality in the Shāfi‘ī Law School,” *Journal of the American Oriental Society* 129.2 (2009): 237–258; Karen Bauer, *Gender Hierarchy in the Qur’ān* (Cambridge: Cambridge University Press, 2015), 31–97.

44 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:35; YMDI, 8.

45 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:143; YMDI, 237. This detour can be attributed to al-Jishumī, who relates that the Mālikī judge Ismā‘īl b. Ishāq (d. 282/895) used this verse to indicate that circumstantial evidence could be used in court, and also claimed that Mālik allowed it in the case of unclaimed lost property; *al-Tahdhib*, 5:5632.

such as the punishment of one hundred lashes for the convicted fornicator (Q 24:2), the amputation of the hand of a thief (Q 5:38), and the prohibition of wine and gambling (Q 2:219, 5:90). The punishments for serious, though perhaps less familiar crimes, such as the uncorroborated accusation of fornication (*qadhf*) and brigandage (*hirāba*), are laid out in detail in Q 24:4 and Q 5:33–34, respectively, even if the definitions of the crimes themselves are left vague and open to debate. The Qurʾān also articulates rules prohibiting intentional homicide (Q 4:93)⁴⁶ and, in greater detail, unintentional homicide:

It is not for a believer to kill a believer save in error. He who has killed a believer in error must set free a believing slave, and pay the blood-money to the family of the slain, unless they remit it as a charity. If he be of a people hostile to you, and he is a believer, then set free a believing slave. If he comes of a people between whom and you there is a covenant, then the blood-money must be paid to his people and a believing slave must be set free. And whoever has not the wherewithal must fast two consecutive months. A penance from God. God is All-Knowing, All-Wise. (Q 4:92)

The process of retaliation is also spelled out in a rule verse, which authorizes the victim (or their family) to forgive the criminal:

O you who believe! Retaliation is ordained for you for the slain: the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven by his brother, then gracious pardon must be offered, and payment to him in kindness. This is an alleviation and a mercy from your Lord. He who transgresses after this will have a painful torment. (Q 2:178)

In sum, nine of the eleven passages concerning criminal law are rules, one is a legal statement (Q 2:219), while only one, concerning the prohibition of same-sex intercourse (Q 27:55), merits being classified as subtle.⁴⁷ This is in sharp

46 This verse reads: "Whoever slays a believer of set purpose, his recompense is Hell for ever. God is furious with him and He has cursed him and prepared for him an awful doom."

47 This verse reads: "[Must you] lust after men instead of women? Nay, but you are people who are ignorant." The prohibition is not explicitly articulated in this passage and it appears in the story of the Prophet Lot, rather than the Prophet Muḥammad. However, this is the place in *The Garden and the Pool* where Muḥammad b. al-Hādī discusses in detail the prohibition of male-male intercourse; see *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:174; YMDI, 297.

contrast to the verses regarding commerce and courts, in which fewer than half of the respective passages conveyed specific rules or legislation.

5 Conclusion

My original taxonomy of Muḥammad b. al-Hādī's 199 legal passages into rules, open commands, legal statements, and subtle passages is a helpful distinction to make for several reasons. First, it acknowledges the fact that not all legal passages of the Qur'ān selected by Muslim jurists are rules or commandments. Muslim jurists had a holistic view of the Qur'ān's *aḥkām*, which I am rendering as "legal passages," rather than restricting them to rules. Secondly, this taxonomy distinguishes between three types of legal passages that cannot be classified as rules based on the relative transparency of their connection to Islamic law. Open commands have the most transparent connection to Islamic law because they contain both imperatives (or verbs implying obligation) and legal concepts, such as prayer or pilgrimage. Legal statements lack the force of an imperative verb but contain a word or two that is associated with standard topics covered in Islamic law books, such as "orphan" or "slave." Finally, subtle verses are those that lack a legal keyword or are part of a narration about a prophet who lived prior to Muḥammad, such as Moses or Joseph, such that it is unclear whether the legal passage remains applicable for the Muslim community. Finally, this four-category taxonomy helps elucidate why Muslim scholars historically promoted widely divergent numbers of legal passages in the Qur'ān, between approximately 200 and 600 passages, because it reveals the subjective nature by which verses were connected to the vast discourse of Islamic law.

Muḥammad b. al-Hādī's two primary objectives in writing *The Garden and the Pool* were to teach students the relationship between the Qur'ān and Islamic law and to demonstrate his credentials as a master jurist (*mujtahid*). An important decision he made for the purpose of achieving the first objective was to limit his commentary to a mere 199 Qur'ānic passages that have legal implications, thus identifying a small portion of scripture that, in his opinion, is relevant for jurists. As it will become clear from the subsequent four chapters of this book, Muḥammad b. al-Hādī achieves his first objective by engaging numerous legal cases that extend far beyond the content of the legal passages in the Qur'ān yet remain tethered to them. He achieves his second objective by deploying a limited set of legal tools to persuade his audience that the legal opinions he supports are the most compelling ones. These legal tools include Qur'ānic verses, Prophetic teachings (*ḥadīths*), Imam 'Alī's teachings, general

consensus, consensus of the family of the Prophet (*al-ʿitra* or *ahl al-bayt*), analogy, and public interest. Muḥammad b. al-Hādī's *The Garden and the Pool* is an ideal text for this project precisely because its author identifies the most important legal passages of the Qurʾān, candidly reports the legal debates among Muslim jurists over topics affiliated with them, and then divulges the evidence behind each of his personal legal opinions. In short, readers are privileged to observe a master jurist at work on nearly every page of *The Garden and the Pool*.

Legal Passages in the Sūra of Light

Say: Obey God and obey the Messenger. But if you turn away, then only upon him rests what he has been charged, and upon you rests what you have been charged. If you obey him, you will be guided. But the Messenger has no other charge than to convey the clear message.

Qurʾān 24:54



So far, I have used Sayyid Muḥammad b. al-Hādī's Qurʾān commentary, *The Garden and the Pool*, primarily for the purpose of identifying a set of 199 legal passages in the Qurʾān. This initial step was necessary because there is no agreed upon number of Qurʾānic legal passages among Muslim scholars, which has led to considerable variation among the selections of legal verses proposed over the past millennium. Rather than merely choosing my own list of Qurʾānic passages, I opted to analyze the selection this eighth/fourteenth century Zaydī master jurist made in *The Garden and the Pool*. Now that I have analyzed the Qurʾānic passages themselves in the previous chapter and developed a taxonomy for categorizing them, it is possible to explore how Muḥammad b. al-Hādī deploys his commentary on them to illuminate their relationship to the vast webs of Islamic legal discourse and to assess the value of this legal Qurʾān commentary for demonstrating its compiler's legal acumen.

This chapter is distinguished from the three chapters which follow it because it focuses on the legal passages of a single sūra, rather than the passages on a single legal topic, such as prayer or divorce. My reasons for analyzing Muḥammad b. al-Hādī's commentary on a single sūra from the Qurʾān are the following. First, *The Garden and the Pool* is arranged according to the order of sūras in the Qurʾān, in contrast to Twelver Shīʿī commentaries on legal passages, which are arranged according to legal topics.¹ It is clear that Muḥammad b. al-Hādī con-

1 Two exceptions to this distinction between Sunnī and Twelver Shīʿī commentaries are Abū Jaʿfar al-Ṭaḥāwī's (d. 321/933) *Aḥkām al-Qurʾān* and Abū Bakr al-Bayhaqī's reconstruction of al-Shāfiʿī's *Aḥkām al-Qurʾān*, which he chose to arrange according to legal topics; see al-Ṭaḥāwī, *Aḥkām al-Qurʾān*, ed. Sadettin Ünal, 2 vols. (Istanbul: ISAM, 1995); and al-Shāfiʿī, *Aḥkām al-*

sidered the sūra as his unit of analysis because he states the number of legal passages each sūra contains at the opening of his commentary on that sūra. Second, the sūra I have chosen, the Sūra of Light (Q 24), contains a fascinating variety of fourteen legal topics within it, ranging from criminal law, to women's dress, to the manumission contract for slaves, none of which is sufficiently long enough to discuss in a strictly thematic chapter. Third, eleven of these fourteen passages are rules, according to the taxonomy I introduced in Chapter 3, which means their relevance to Islamic law should be easily discernable. Finally, I have prepared a critical edition of *The Garden and the Pool's* commentary on the Sūra of Light on the basis of the precious manuscript in Muḥammad b. al-Hādī's own handwriting that is preserved in the Biblioteca Ambrosiana in Milan and the complete manuscript of it hosted online by Princeton University Library that can be consulted in Appendix A of this book.²

1 Legal Topics in the Sūra of Light

Muḥammad b. al-Hādī discusses seventeen verses, four of which he explicitly groups together as a single passage, of the Sūra of Light in *The Garden and the Pool*. This number of fourteen passages is similar to what we find in Yūsuf the Jurist's commentary, *The Ripe Fruits*, written a century after *The Garden and the Pool*, although far fewer than the number of verses commented upon in the earlier Sunnī legal commentaries by al-Jaṣṣāṣ and Ibn al-ʿArabī.³ These fourteen passages address eight different legal categories, according to my classification, in a sūra that is only sixty-four verses long. Even more remarkable is my finding that eleven of these fourteen passages are rules, meaning verses that translate easily into Islamic law, two of them are open commands, and only one of them is subtle.⁴ Furthermore, all fourteen of Ibn al-Hādī's legal passages clearly align with one of the standard chapters of Muslim legal manuals.

Qurʾān, arranged by Abū Bakr al-Bayhaqī, ed. Muḥammad al-Kawtharī, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1980).

2 I prepared this critical edition prior to the publication of the 2024 Maktabat Ahl al-Bayt edition of the complete *al-Rawḍa wa-l-ghadīr*. I am grateful for Mohamed Moustafa's proof-reading of an earlier draft of my edition.

3 al-Jaṣṣāṣ discusses 28 verses from the Sūra of Light, while Ibn al-ʿArabī comments on 29; al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 3 vols. (Beirut, Dār al-Kutub al-ʿIlmiyya, no date), 3:333–436; Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, ed. ʿAlī al-Bijārī, 4 vols. ([Beirut]: Dār al-Fikr al-ʿArabī, no date), 3:1324–1413.

4 The two open commands are Q 24:30 and Q 24:32, and the sole subtle verse is Q 24:48. The other eleven passages are all rules, according to my classification.

It is helpful to review Muḥammad b. al-Hādī's hermeneutics and the structure of *The Garden and the Pool* prior to investigating it systematically. As I remarked in the second chapter of this book, this master jurist-exegete adopted four of al-Ḥākim al-Jishumī's eight categories of exegesis, namely those concerning lexicon (*luḡha*), occasion for revelation (*nuzūl*), meaning (*ma'nā*), and rulings (*aḥkām*). In the introduction to *The Garden and the Pool*, he informs his readers that there are not always occasions for each verse's revelation, so this category of exegesis is not consistently present. In the case of the Sūra of Light, six of the fourteen legal passages lack an occasion for its revelation, which means that Muslims did not record or preserve an account of the context—real or imagined—for the revelation of these passages.⁵ The categories of lexicon, meaning, and rulings are present for each of the fourteen passages, and, in the case of the former two categories, Muḥammad b. al-Hādī copied much of the content from al-Jishumī's magnificent *al-Tahdhīb fī l-tafsīr*. The final category, rulings, is where he addresses a range of legal topics connected to the Qur'ānic passage upon which he is commenting, numbering from one to as many as sixteen topics. He identifies whether there is consensus among the jurists or disagreement over each of these related legal topics and regularly provides evidence for what he considers the correct position in cases of disagreement. While much of the content of this section of *The Garden and the Pool* appears to come from *Sharḥ al-Qāḍī Zayd*, Muḥammad b. al-Hādī is highly selective in what he brings over from Qāḍī Zayd al-Kalārī's unwieldy commentary and presents it in an admirably clear manner.

2 Uncorroborated Accusation of Fornication (*qadhf*)

This investigation begins with a close look at Muḥammad b. al-Hādī's explanation of Q 24:4, which addresses the penalty for the crime of uncorroborated accusations of fornication (*qadhf*).⁶ This verse reads, "And those who accuse

5 I say "real or imagined" because many reports of occasions of revelation lack sound chains of transmission, from a traditional Muslim perspective, and most of them are viewed with suspicion by Western scholars.

6 Muḥammad b. al-Hādī, *al-Rawḍa wa-l-ghadīr*, Maktabat Ahl al-Bayt, 2:212–214. I am using the word "fornication" rather than adultery because Muslim jurists traditionally authorized sexual intercourse between a male slave owner and his female slaves even if they were unmarried. In fact, a man could only marry someone else's slave; if he wished to marry his own, he was supposed to free her. For more on this topic, see Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010), 164–172.

honorable women but bring not four witnesses, flog them eighty lashes and never thereafter accept their testimony. They indeed are evil-doers.” It is one of only four verses in the entire Qur’ān that prescribes a precise punishment for a crime.⁷ Despite its specificity, the verse raises many questions. What is the nature of these accusations? Does the punishment apply when an honorable man is accused? Is there any way for the flogged accuser to revalidate his testimony? Fortunately, Muḥammad b. al-Hādī answers these and several additional questions in *The Garden and the Pool*.

Muḥammad b. al-Hādī’s first intervention regarding Q 24:4 is to clarify the meanings of two Arabic words.⁸ The first of these words is *ramy*, which he acknowledges originally meant “to shoot” an arrow or “to throw” stones, then later came to mean “to hurl” insults, which Pickthall, in his English translation, rendered as “accuse.”⁹ Notice that the Qur’ān does not explicitly say what this accusation consists of here, although it hints that it is sexual in nature because only the crime of fornication requires four witnesses. Furthermore, the second word Muḥammad b. al-Hādī explains has, among its meanings, chastity. This word, *muḥṣanāt*, occurs in the feminine form in this verse and can mean “Muslim” or “chaste” or “free.” He clarifies that the intended meaning here is “married,” with the assumption that a married woman is also chaste, and he quotes a famous verse of poetry praising ‘Ā’isha (d. 58/678), in which she is described by a cognate of this Arabic word. This verse is absent from al-Jishumī’s *al-Tahdhīb*, but it is found in Muḥammad b. Nashwān al-Ḥimyarī’s dictionary, *Ḍiyā’ al-ḥulūm*, which may have been Muḥammad b. al-Hādī’s source for it.¹⁰ It is a doubly fitting citation because he next mentions that the occasion for the revelation of this verse may have been the scandal ‘Ā’isha faced, known as “the affair of the lie (*al-īfk*),” which nearly all exegetes consider to be the topic of verses 11–20 in the Sūra of Light, and which serve to exonerate her.¹¹ Having completed the first two categories of exegesis, Muḥammad b. al-Hādī next turns to address the legal questions it raises in the section on meaning.

7 The other three verses are Q 24:2 (fornication); Q 5:33–34 (brigandage); and Q 5:38 (theft).

8 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:212.

9 Mohammed Marmaduke Pickthall, *The Meaning of the Glorious Quran* (Hyderabad: Government Central Press, 1938), available at: <http://sacred-texts.com/isl/pick/>

10 The fragment of Muḥammad b. Nashwān al-Ḥimyarī’s *Ḍiyā’ al-ḥulūm* preserved in the Biblioteca Ambrosiana contains the word “*muḥṣan/iḥṣān*” under *Bāb al-ḥā’ wa-l-ṣād*; MS Milan, Biblioteca Ambrosiana, F 306, fols. 37^r–38^v. The verse in praise of ‘Ā’isha is found on fol. 37^r.

11 He also reports that this verse may have been sent down on behalf of all Muslim women, not just ‘Ā’isha.

Throughout *The Garden and the Pool*, Muḥammad b. al-Hādī often addresses legal issues in the section on meaning, in addition to the obvious section on rulings (*aḥkām*). A case in point is Q 24:4. Here he fills in the ellipsis following the word “accuse” with “of fornication,” thus affirming the reader’s hunch that this verse was about something much more severe than accusing honorable women of being unattractive or dull.¹² His next task is to justify how this verse can apply to men who are accused of fornication, since the word *muḥṣanāt* is unambiguously a feminine noun. Drawing again on al-Jishumī’s *al-Tahdhīb*, Muḥammad b. al-Hādī shares two ways jurists can argue that this verse applies to men. The first is to take *muḥṣanāt* to be a reference to genitals (*furūj*) rather than honorable women. In other words, the crime announced in this verse consists of directing the accusation of fornication at men’s and women’s genitals, rather than at honorable women. Muḥammad b. al-Hādī states explicitly that the superior explanation is simply to use analogical reasoning (*qiyās*), such that if the (uncorroborated) accusation of honorable women is criminal, so too must be the accusation of honorable (or chaste married) men. He also rounds out this section on “meaning” by clarifying that the “four witnesses” refers to the witnesses of fornication involving the accused person, and not the witnesses to the uncorroborated accusation of fornication, and briefly states that the flogged accuser can have his testimony reinstated following his repentance for his crime. (This latter topic is considered in detail in the following section on rulings.)

In the section on rulings, Muḥammad b. al-Hādī covers nine legal topics directly related to the special Qur’ānic punishment of eighty lashes assigned to the uncorroborated accuser of fornication. He claims explicitly that there is no disagreement among Muslim jurists regarding the following four topics:¹³

- 1) The accuser must be sane and have attained maturity to be subject to the punishment.
- 2) The person slandered must be adult, Muslim, sane, and chaste (*‘afīf*).
- 3) The eighty lashes do not apply if the slandered person is a male or female slave, a *mudabbār* slave, a slave who gave birth to her master’s child (*umm walad*), a male or female child, or an insane person. However, the ruler (*imām*) can subject the accuser to a discretionary punishment (*ta’zīr*) if he sees fit to do so.

¹² *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:213.

¹³ *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:214.

- 4) The eighty lashes do not apply if the slandered person is a protected non-Muslim in a Muslim community (*dhimmī*).

A fifth ruling, for which Muḥammad b. al-Hādī claims a near consensus, is that if the accuser is free, the punishment is eighty lashes, whereas if they are a slave, it is forty lashes,¹⁴ and if the accuser is a slave who has contracted his manumission (*mukātab*), then the number of lashes is prorated according to how many installments remain on his contract.¹⁵ Notice how, with the exception of the eighty-lash punishment for the free accuser, none of these rulings is even hinted at in Q 24:4 and all of them derive their authority from the consensus of the Muslim scholarly community.

The remaining four legal topics pertaining to *qadhf* that Muḥammad b. al-Hādī investigates all are subject to some disagreement among the jurists, even though he does not record any dissent over them among Zaydis. First, most jurists, with the exception of Qāḍī Abū Yūsuf (d. 182/798), hold that if the person who is unfairly accused of fornication forgives his or her accuser before the case is brought to a judge or ruler, the forgiveness is accepted and the punishment is waived. However, in the next topic, Muḥammad b. al-Hādī reports that if the forgiveness is extended *after* the judge or ruler gets wind of the case, then it is not accepted, according to everyone save the Kufan Successor al-Shaʿbī (d. after 100/718) and one of the two opinions ascribed to al-Shāfiʿī. He curtails discussion regarding which Arabic expressions constitute *qadhf* by indicating that these expressions can be explicit, figurative, or implicit and providing an example for each type of slander, before directing the reader to consult the standard *fiqh* books and commentaries for more examples and the disagreements over them. He also deals cursorily with the question of whether the testimony of a flogged accuser is restored if he repents after his punishment. While the Ḥanafī law school forbids the convicted accuser's testimony in perpetuity, regardless of his repentance, Muḥammad b. al-Hādī, along with most other jurists, takes the Qurʾānic verse that immediately follows the *qadhf* verse—"except for those who repent and reform their ways" (Q 24:5)—to restore the validity of the punished accuser's testimony after he repents.¹⁶ Ultimately the

14 Muḥammad b. al-Hādī reports that the defunct Zāhirī school insisted that a male slave who accused an honorable woman of fornication without three additional witnesses would be subject to the full eighty lashes. The reason for this reduction on account of slavery derives from Q 4:25.

15 The sole Qurʾānic passage that authorizes manumission by contract is in the Sūra of Light and will be discussed later in this chapter.

16 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:215.

restoration of the repentant flogged accuser's testimony hangs by the thread of Arabic grammar concerning the rules of exception clauses, as can be seen in al-Jaṣṣāṣ's extensive defense of the Ḥanafī position that Q 24:5 does not in fact restore this special criminal's testimony even after he has repented from his sin.¹⁷

This foray into *The Garden and the Pool* gives one a taste of what to expect when one examines legal passages of the Qur'ān thematically and the jurisprudence that is tied to them. First, despite being a rule, the legal verse Q 24:4 is somewhat ambiguous because it does not explicitly identify the unlawful accusation as the accusation of fornication, and it only mentions chaste women as the potential victims of this crime. Secondly, it does not indicate that it applies to some categories of people and not others, but remarkably there is general consensus among Muslim jurists concerning who is a potential accuser and who is a potential victim. Thirdly, in most of the cases where there is disagreement, the vast majority of jurists are in agreement against a very small number of dissenters. Finally, in this case of *qadhf*, the scholars of Muḥammad b. al-Ḥādī's school, the Zaydiyya, are in agreement, although the reader shall frequently find that this jurist-exegete is able to demonstrate his legal expertise by picking sides among debating jurists and Imams within his school.

3 Fornication

Like the uncorroborated accusation of fornication (*qadhf*), fornication proper belongs to the small set of crimes for which there are specific punishments (*ḥudūd*). To make matters confusing, both the crimes *and* the specific punishments for them are called *ḥudūd* in Muslim legal literature, which is why they are sometimes called *ḥadd* crimes or *ḥadd* punishments in English. This set of crimes includes fornication (*zinā*), the uncorroborated accusation of fornication (Q 24:4) that was just discussed, brigandage (Q 5:33–34), theft (Q 5:38), and the consumption of intoxicants (Q 2:219, Q 5:90). These crimes differ from all other crimes, including murder and involuntary homicide, because they can only be enforced by the ruler and cannot be executed by individuals.¹⁸ They are

¹⁷ al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3:353–364.

¹⁸ There is some debate over whether a slave master can inflict the *ḥadd* punishment on his slave, or even if a husband can inflict it upon his wife, but most jurists restrict their execution to the ruling authorities. This topic will be addressed later in this chapter.

also among the only crimes for which jurists assigned specific punishments; the punishment for every other crime is at the discretion of the judge and is called *ta'zīr*.¹⁹

The sole verse that Muḥammad b. al-Hādī comments upon regarding the punishment for fornication is Q 24:2, which reads:²⁰

The fornicator, male and female, flog each one of them a hundred lashes. And let not pity for them withhold you from obedience to God, if you believe in God and the Last Day. And let a party of believers witness their punishment.

This rule is free of exotic words and clearly commands its listeners to flog the fornicator one hundred lashes in front of a group of people. Even though the language is clear, several of its words require elucidation. Muḥammad b. al-Hādī defines fornication (*zinā*) as “intercourse (*waṭy*) and penetration of the vulva [of someone with whom] there is no marriage contract, nothing resembling a marriage contract, or not mistakenly (*ghalaṭ*).”²¹ Despite the verb “to flog” being in the plural, only the Imam (ruler) is authorized to execute the *ḥadd* penalty.²² As for the expression, “And let not pity for them withhold you,” Muḥammad b. al-Hādī quotes a range of early Muslim exegetical authorities in support of the two possible interpretations of this verse: 1) Do not let pity prevent you from executing the *ḥadd* punishments; or 2) Do not let pity prevent you from delivering the fornicator a hard flogging, as opposed to a soft flogging, which is reserved for the convicted intoxicated wine-drinker. He wraps up his explanation of the meaning of this verse with four different opinions regarding the minimal number of witnesses to the flogging, ranging from one to at least four, in addition to the four witnesses.²³

As Western Islamicists long have observed, this verse does not say anything about stoning the fornicator, which is the more notorious form of punishment

19 There is a sound *ḥadīth* in which the Prophet states that no punishment should be more than ten lashes, but most jurists ignored this in their debates over the maximum punishment for discretionary cases; see Ibn Ḥazm, *al-Muḥallā bi-l-āthār*, ed. ‘Abd al-Ghaffār al-Bundārī, 12 vols. (Beirut: Dār al-Fikr, no date), 12:421–425 (topic 2309).

20 There are two verses in the Sūra of Women that appear to refer to fornication that Muḥammad b. al-Hādī does not discuss. They are Q 4:15–16.

21 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:207.

22 When Muḥammad b. al-Hādī uses the word Imam, sometimes he means ruler and other times he means the Zaydī Imam, who has special requirements. Since on this occasion he claims consensus on this point, it must refer to the ruler in general.

23 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:208.

found in Islamic legal books, though rarely executed in Muslim societies.²⁴ The jurists' solution to this silence on stoning is quoted by Muḥammad b. al-Hādī in the first of his eleven legal topics annexed to this verse in *The Garden and the Pool*, namely that this verse only applies to fornicators who have never been married, called *bikr* in Arabic.²⁵ On what grounds does he restrict the application of this verse to never-married fornicators? Consensus of the jurists is the answer, which is also the justification for limiting this verse's efficacy to those never-married fornicators who are sane and free (not slaves). Nearly all jurists, save the Zāhirīs, reduce the punishment for slave fornicators to fifty lashes, on the basis both of Q 4:25 and, in the case of the Zaydīs at least, a quote from Imam 'Alī that "the *ḥadd* punishment of a slave is half the *ḥadd* punishment of the free person."²⁶

Another punishment for the fornicator about which Q 24:2 is silent is a year of banishment, which obviously only applies to the flogged fornicator. This punishment is supported by a *ḥadīth* found in the most authoritative Sunnī *ḥadīth* collections, and which al-Shāfi'ī, Sufyān al-Thawrī, Ibn Abī Laylā, and even the early Kufan Zaydī, Ḥasan b. Ḥayy, adopt in their legal opinions.²⁷ The early Syrian jurist, al-Awzā'ī (d. 157/774) only applies this *ḥadīth* to male flogged fornicators, while Mālik limits it to free male flogged fornicators, exempting slaves from its purview. Muḥammad b. al-Hādī, along with the Ḥanafīs, declares

24 The literature on the stoning punishment is vast; a good place to start is R. Peters, "Zinā," *E12 Online*. My detailed investigation of the Sunnī *ḥadīths* related to the punishment for fornication can be found in Scott Lucas, "Perhaps you only kissed her? A Contrapuntal Reading of the Penalties for Illicit Sex in the Sunnī *Hadīth* Literature," *Journal of Religious Ethics* 39:3 (2011): 399–415. Note that in Jewish law, Moses Maimonides identified more than twenty crimes that, when committed willfully, merit the stoning punishment. These include worshipping idols (no. 6), sorcery (nos. 7, 8, 34), blasphemy of the Great Name (no. 60), cursing parents (no. 318), working on the Sabbath (no. 320), incest (nos. 330–333), adultery (no. 347), and male-male intercourse (nos. 350–352); Maimonides, *The Commandments*, 2:6–8, 9–11, 34, 56, 293, 295, 295–309, 312 (adultery), 315–319.

25 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:208.

26 *Shifā' al-uwām*, 3:341. Amīr al-Ḥusayn's source for this report is Imam Zayd b. 'Alī's *al-Majmū'*.

27 The *ḥadīth* is on the authority of 'Ubāda b. al-Ṣāmit and is found, among other sources in Muslim b. al-Ḥajjāj, *Ṣaḥīḥ Muslim*, Kitāb al-Ḥudūd: 3 Bāb Ḥadd al-zinā and Abū Dāwūd al-Sijistānī, *Sunan Abī Dāwūd*, Kitāb al-Ḥudūd: 23 Bāb fī l-rajm. Muḥammad b. al-Hādī merely alludes to the second half of this *ḥadīth*, writing "one hundred lashes and exile (*taghrīb*)," rather than the complete *ḥadīth*, which reads: *khudhū 'annī khudhū 'annī, qad ja'ala Allāhu lahunna sabīlan: al-bikru bi-l-bikr jaldū mī'a wa-nafyu sana; wa-l-thayyibu bi-l-thayyib jaldū mī'a wa-l-rajm*. Note that the second half of this report supports the Zaydī position that the convicted previously-married fornicator is both flogged and stoned, mentioned below.

that the year-long banishment is not obligatory, and he ascribes this position to the Zaydī Imams who preceded him.²⁸ As for the *ḥadīth* that Shāfiʿīs and Mālikīs cite to justify this rule, Muḥammad b. al-Hādī explains that it is merely advisory (*taʿdīb*), rather than obligatory, and he quotes a report from Imam ʿAlī confirming this. This is a good example of a *ḥadīth* being only conditionally accepted by Muḥammad b. al-Hādī, rather than being wholeheartedly adopted as an additional obligatory ruling.

Only with the sixth legal topic connected to Q 24:2 does Muḥammad b. al-Hādī explain the punishment for the free, sane, married (or previously married) fornicator. In this case the convicted fornicator is flogged on the basis of the Qurʾān and stoned on the basis of the Prophet Muḥammad's *sunna*, according to the Zaydīs, Mālik, and the Zāhirīs. Muḥammad b. al-Hādī acknowledges that Abū Ḥanīfa and his companions, along with al-Shāfiʿī, dropped the flogging penalty and only stoned this type of convicted fornicator, but he seeks to undermine their position by quoting *ḥadīths* and a report that Imam ʿAlī both flogged and stoned a fornicator named Sharāḥa al-Hamdāniyya.²⁹ He reminds his reader that there is no disagreement among jurists that a slave is never to be stoned, including the *umm walad*, even if they were previously married. However, later in this section he reports the disagreement, even between Zaydī Imams, over whether a slave owner can apply the Qurʾān sanctioned *ḥadd* punishments on their slaves. While Muḥammad b. al-Hādī argues in favor of not allowing the slave owner to flog his own slaves for *ḥadd* crimes, he has to appeal to a variety of sources in order to challenge the opinions of Imams al-Hādī ilā l-Ḥaqq and al-Manṣūr ʿAbd Allāh b. Ḥamza, two Imams whose opinions hold great weight in the Zaydī school, as well as *ḥadīths* in which slave owners appear to be authorized to flog their slaves.³⁰

Is there any way for a fornicator to avoid the severe *ḥadd* punishments? For Zaydīs, the answer appears to be yes. Muḥammad b. al-Hādī states categorically that none of the *ḥadd* punishments can be executed in the absence of the Imam, while reporting that Abū Ḥanīfa allowed commanders of the garrison cities (like Kufa and Homs) to apply them and Mālik stated that unspecified other people can enforce them.³¹ The fact that Muḥammad b. al-Hādī bases his opinion exclusively on the “consensus of the Prophet's descendants (*ijmāʿ al-ʿitra*)” indicates that the Imam to whom he is referring is a ruler who meets the minimum requirements of a Zaydī Imam in terms of knowledge, piety, manage-

28 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:209.

29 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:210 (topic 6).

30 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:210 (topic 8).

31 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:210 (topic 7).

rial skills, martial ability, and who has made a public claim to the position. This is the first case I have provided in which Muḥammad b. al-Hādī marshals the alleged consensus of the Prophet's descendants, a category of consensus that only Zaydīs accept, and which he justifies in his book on legal theory, *al-Mūḍī' al-musri'*, at the beginning of his chapter on consensus.³² Given that many periods of history lacked a Zaydī Imam, and that even when there was a Zaydī Imam, his authority extended over a very modest amount of territory, it appears that Zaydī Muslims who follow Muḥammad b. al-Hādī's teaching are extremely unlikely to receive the *ḥadd* punishments unless they live in close proximity to the Imam.

The final three legal topics of Muḥammad b. al-Hādī's commentary on Q 24:2 address issues related to the *ḥadd* crime of fornication. The first and second of these topics are that witnesses need to testify that the accused fornicators have been previously married (*muḥṣin*) and that two male or one male with two female witnesses can testify to prove this status. Muḥammad b. al-Hādī reports that al-Shāfi'ī rejects the testimony of women in this case, even though the verse that authorizes female testimony (Q 2:282) is general and does not explicitly restrict it.³³ In this case, Zaydīs and Ḥanafīs are in agreement that female testimony can apply beyond the sphere of commercial law. The final topic, which Muḥammad b. al-Hādī addresses only cursorily, extends beyond the issue of fornication to all Muslims who confess their crimes to a judge:

Whenever someone confesses to fornication or theft or wine-drinking and then recants his confession, the recantation is accepted [by the judge/ruler] and he does not receive the *ḥadd* punishment. He is liable for the stolen property [in the case of theft because] his recantation only invalidates the *ḥadd* punishment; it does not invalidate the [liability for the stolen] property.³⁴

Given that most of the cases involving fornication found in the *ḥadīth* literature are proven by the confession of the guilty fornicator, this ruling allows the

32 Muḥammad b. al-Hādī, *al-Mūḍī' al-musri'*, MS London, British Library, Or. 3721, fols. 2^r–3^v.

33 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:211. For an analysis of the ways and justifications by which the Shāfi'ī school curtailed the admissibility of female testimony in courts, see Scott Lucas, "Justifying Gender Inequality." This topic is discussed in greater detail in chapter 6, below.

34 Arabic: *annahu idhā aqarra bi-l-zinā aw bi-l-sariqa aw bi-shurb al-khamr thumma raja'a, qubila rujū'uhu wa-lam yuḥadda wa-tuḍummina l-mālu l-masrūq wa-lā yubṭil rujū'uhu l-māl wa-innamā yubṭilu l-ḥadd*; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:211 (topic 11); YMDI, 267.

confessor of any *ḥadd* crime to reconsider his or her decision to confess in the first place and, if the judge is a Zaydī, his recantation of his confession could save him a flogging or stoning in the temporal world.

4 Manumission Contract (*kitāba*)

Slavery, among most Americans who are familiar with a little history, is usually equated with the vicious trans-Atlantic slave trade and chattel slavery in the antebellum United States, in contrast to the varieties of slavery that have existed in different societies around the world.³⁵ While it is a hermeneutical stretch to claim that the Qurʾān or the Prophet Muḥammad intended to ban slavery, on multiple occasions the Qurʾān calls for manumitting (freeing) individual slaves, and here, in the Sūra of Light, introduces a legal process called *kitāba* by which a slave can purchase his or her freedom from their owner. The language of this verse, Q 24:33, is vague and thus in need of commentary. It reads, in part:

And any of your slaves who seek a contract of manumission, contract it with them if you are aware of any of good in them, and bestow upon them of the wealth that God has bestowed upon you.³⁶

This sentence raises a host of questions. What is this “contract” about? Is it obligatory or recommended for the slave owner to write this document? Is it obligatory if the slave is “good?” What is the “good” that is noteworthy in a slave? Who is supposed to “bestow upon them of the wealth” that came from God?

Muḥammad b. al-Hādī addresses all these questions and more in *The Garden and the Pool*. He quotes al-Jishumī’s definition of the *kitāba* contract as being “the slave’s owner writes a contract (*yukātib*) for his slave for [the amount] of

35 A helpful guide to the challenges of addressing slavery in Islam is Jonathan Brown, *Slavery in Islam* (Oxford: Oneworld, 2019).

36 The complete verse reads: “[And let those who find not the means to marry have recourse to chastity until God enriches them from His bounty.] And any of your slaves who seek a contract of manumission, contract it with them if you are aware of any of good in them, and bestow upon them of the wealth that God has bestowed upon you. Force not your slave-girls to prostitution, that you may seek advantage from the life of the world, if they desire chastity. And if forced, then after their compulsion, God will be All-Forgiving, All-Merciful.” Muḥammad b. al-Hādī says very little about the command not to force one’s slave-girls into prostitution in his commentary on this verse.

money that he has to pay in order for him to be manumitted.”³⁷ Even though the verb “to contract” is in the imperative mood, Muḥammad b. al-Hādī reports that only three early Muslim authorities considered it to be an obligatory command, whereas most jurists assess it to be a mere recommendation.³⁸ Later in the rulings section, he offers the technical justification for this position on the basis of it being a commutative contract (*ʿaqd muʿāwada*), like sales and gifts, and hence is by definition non-obligatory.³⁹ The meaning of “good (*khayr*)” in this verse is more complex. Muḥammad b. al-Hādī appears to have copied the following six interpretations from al-Jishumī’s *al-Tahdhīb*:

- 1) Property (*māl*): Ibn ʿAbbās, al-Ḍaḥḥāk (d. between 102–106/720–725), ʿAṭāʾ (d. 114 or 115/732–34);⁴⁰
- 2) Islam and fidelity (*wafāʾ*): al-Ḥasan al-Baṣrī;
- 3) Sincerity, trust: Ibrāhīm al-Nakhaʿī (d. 95/714), ʿAbīda,⁴¹ Abū Ṣāliḥ,⁴² Ibn Zayd (d. 182/798);
- 4) Property and trust: Ṭāwūs (d. 106/725), ʿAmr b. Dīnār (d. 126/744);
- 5) Righteous religiosity and virtuous conduct: anonymous;
- 6) Mental maturity, as there is no *kitāba* contract for the child or insane slave.⁴³

Muḥammad b. al-Hādī revisits this question in the section of his commentary devoted to rulings and adopts the position that religiosity, righteousness, and fidelity are what “good” means in this context because it is what comes initially to people’s minds (*al-sābiq ilā l-afḥām*) of it.⁴⁴ As for who should be bestowing God’s wealth on the slaves, Muḥammad b. al-Hādī initially offers the possibilities as being the slave owner, the [Muslim] believers, or people who give alms,

37 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:238; compare with al-Jishumī, *al-Tahdhīb*, 7:5187.

38 The three authorities who consider Q 24:33 to be an obligatory command are ʿAṭāʾ b. Rabāḥ, ʿAmr b. Dīnār, and Dāwūd al-Ẓāhirī; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:239.

39 Muḥammad b. al-Hādī quotes a prophetic *ḥadīth* that “A Muslim man’s property is not lawful [for sale] except with him being at peace [with it],” and argues that since slaves are part of a man’s property, no one can compel him to free them; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:240–241.

40 Muslim jurists were divided over whether slaves could own property; see Jonathan Brown, *Slavery and Islam*, 96–97.

41 This is almost certainly ʿAbīda b. ʿAmr (or Qays) al-Salmānī, a Kufan Successor, who was a student of Ibn Masʿūd and a major teacher of Muḥammad b. Sirīn and others; see Shams al-Dīn al-Dhahabī, *Siyar aʿlām al-nubalāʾ* ed. Shuʿayb Arnaʿūṭ et. al., 28 vols. (Beirut: Muʾassasat al-Risāla, 2001), 4:40–44. Al-Dhahabī (d. 748/1347) acknowledges that there are conflicting reports of ʿAbīda’s death date and notes his preference of 72/691–692.

42 It is unclear which Abū Ṣāliḥ this is.

43 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:239–240; al-Jishumī, *al-Tahdhīb*, 7:5189.

44 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:241 (topic 2).

before clarifying that it refers to voluntary and obligatory alms in the section on rulings.

Most of the topics in the section on rulings are concerned with the “nuts and bolts” of the manumission contract that is mentioned in Q 24:33. There appears to be general agreement among jurists that the compensation for manumission must be of a known and lawful quantity, although Muḥammad b. al-Hādī states that the slave is still manumitted if he pays with an unlawful good, like wine, because the *kitāba* contract automatically transforms into a contract for conditional manumission, so the slave is free as soon as the condition for freedom has been met.⁴⁵ Muḥammad b. al-Hādī also weighs into the debate over whether the manumission contract can be paid off in a single installment (*ḥāla*), and he sides with the opinion derived from the legal opinions of the Zaydī Imam al-Muʿayyad bi-llāh al-Hārūnī that this is valid, in opposition to the opinion based on Imam al-Hādī ilā l-Ḥaqq’s reasoning, promoted by Imam Abū Ṭālib al-Hārūnī.⁴⁶ Interestingly, Muḥammad b. al-Hādī’s reasoning in support of his opinion is that verse Q 24:33 is silent on the issue of whether the installments must be multiple, and so, by analogy with sales, manumission by contract is valid with one payment or multiple payments. He also reports the argument against the single installment, which is the premise that acceptable risk is a necessary element of the *kitāba* contract, so if this risk is removed, then the contract becomes invalid.

What happens if the slave does not make all of his installments needed to become free? If it is the slave’s choice to void the contract, there is no juristic disagreement allowing him to return to being 100% slave. If he or she simply cannot make all the payments, Muḥammad b. al-Hādī quotes a range of legal authorities, including his fellow Zaydī scholars, of the opinion that the slave remains a slave even if he or she paid off the majority of their installments.⁴⁷ Only Ibn ʿAbbās is cited as declaring that the contracted slave becomes free and owes the balance of his contract as a debt. If the slave and his owner disagree over the amount that the slave owes for his manumission, Muḥammad b. al-Hādī, Mālik, and al-Awzāʿī grant preference to the slave’s opinion (accompa-

45 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:241 (topic 5).

46 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:242. Muḥammad b. al-Hādī reports that Sunnī jurists split on this topic between Abū Ḥanīfa and Mālik who allowed the single installment, and al-Shāfiʿī, who opposed it. Recall too that al-Muʿayyad bi-llāh al-Hārūnī, Abū Ṭālib’s older brother, also wrote his own books on Zaydī law based on the earlier teachings of Imams al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq. The source for this discussion appears to be *Sharḥ al-Qāḍī Zayd*; see ms Berlin, Staatsbibliothek zu Berlin, or. oct. 3778, fol. 255v.

47 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:242 (topic 8).

nied by an oath) over that of his master, while the other leading Sunnī jurists demand that they both take oaths, and if they still differ, the amount reverts to the market value of the slave. Once again, Muḥammad b. al-Hādī draws an explicit analogy between sales and the manumission contract, in which the claim of the buyer regarding the agreed-upon price takes precedence over the claim of the seller.⁴⁸ The slave is analogous to the buyer, presumably because he is literally buying his own freedom, and so his say has precedence, despite the fact that free men generally have greater rights than slaves in Islamic law. Finally, Muḥammad b. al-Hādī reports that most jurists allow the slave owner to forgive the payment of some of the installments of the manumission contract, so long as the slave has paid at least some of them, should the owner decide to grant him emancipation without the full agreed-upon payment.⁴⁹

The cases of fornication and the manumission contract shed valuable light on the relationship between the Qurʾān and Islamic law. Even though Muḥammad b. al-Hādī only discusses a small fraction of the legal issues that each of these topics generate in large books of jurisprudence, he demonstrates how meticulously Muslim jurists refined and expanded the rules regarding them. Sometimes the adjustments are tremendous, such as the case of the punishment for fornication, which went from one hundred lashes in Q 24:2 to one hundred lashes and banishment (for some jurists), stoning, or one hundred lashes followed by stoning, or absolutely nothing, depending on various criteria regarding the guilty fornicator. In the case of manumission by contract, the divine command to “write it for them if you are aware of any good in them,” was diluted to a mere recommendation by the jurists, many of whom owned slaves. Despite these significant modifications, the jurists Muḥammad b. al-Hādī quoted were careful to base their opinions for all the subsidiary matters about which the Qurʾān was silent on evidence. This evidence ranged from prophetic *ḥadīths*, statements of ‘Alī, juristic consensus (which more often than not is an absence of recorded dissent), analogy, and, in one case, the alleged consensus of the descendants of the Prophet. While the punishments for fornication are harsh, the jurists’ willingness to allow the recantation of the fornicator’s confession to absolve him of the *ḥadd* punishment or the restriction of the execution of *ḥadd* punishments to a fully qualified Zaydī Imam severely

48 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:243 (topic 9). Muḥammad b. al-Hādī’s discussion of this topic appears to derive from *Sharḥ al-Qāḍī Zayd*; see MS Berlin, Staatsbibliothek zu Berlin, or. oct. 3778, fol. 257r.

49 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:243 (topic 10).

reduces the likelihood of these punishments taking place. Likewise, the acceptance of jurists like Muḥammad b. al-Hādī to permit a slave to pay off his manumission contract in a single installment or to grant precedence to his claim in a contract dispute or allow his owner to pay off the unpaid balance of the contract reveals a more compassionate side of Islamic law that can be overshadowed by the presence of whips and slaves among some of its rulings. Now it is time to explore further how Muḥammad b. al-Hādī elucidates the Qur'ānic passages in the Sūra of Light that deal with another two contentious topics: women's dress and privacy.

5 Veils and Permission to Enter

Few Islamic topics have generated more debate in the modern period than the head scarf (*ḥijāb*), frequently called a veil. Is it liberating for women or oppressive? Is it antithetical to secular culture? Is it revolutionary or a sign of being an Islamist? These questions lie beyond the realm of this book, and certainly beyond the realm of *The Garden and the Pool*. Only three verses in the entire Qur'ān make explicit reference to women's dress,⁵⁰ and Muḥammad b. al-Hādī only comments upon the two relevant verses that are found in the Sūra of Light.⁵¹ Given that the topic of women's dress relates to questions of privacy, and that most of the verses pertaining to the legal topic of seeking permission to enter a home (*isti'dhān*) are found in the Sūra of Light, both of these topics are discussed in this section.

In his commentary on the open command regarding male dress (Q 24:30), Muḥammad b. al-Hādī simply refers his readers to his commentary on the fol-

50 A fourth verse that is relevant to the question of the seclusion of women is Q 33:53. The fact that it uses the word *ḥijāb* in its original sense as a screen between the Prophet's wives and unrelated men may suggest that it refers to women's dress, because the modern usage of *ḥijāb* means head scarf. However, a close examination of the verse reveals that it does not say anything about what a woman should wear.

51 It is regrettable that Muḥammad b. al-Hādī did not comment on Q 33:59, which reads: "O Prophet, tell your wives, your daughters, and female believers to wrap their outer garments (*jalābīb*) closely, so that they are more likely to be recognized and not be harassed; God is All-Forgiving, All-Compassionate." This verse is used by some contemporary conservative Muslim jurists to justify the total seclusion of women or the minority opinion that they must cover their face and hands or wear a burqa in public; for a good example, consider the prominent Pakistani scholar, Justice Mufti Muhammad Taqi Usmani, *Islam in Today's World* (Karachi: Darul Ishaat, 2009), 73, 194. He says, "*Jalabeeb* is the plural of *Jilbab*, which means a sheet of cloth meant to cover the whole body of a woman from head to toe."

lowing verse, which decrees the complex Qur'ānic rules for women's dress.⁵² This latter verse, Q 24:31, reads in full:

And tell the believing women to lower their gaze and to safeguard their private parts, and to display of their adornment only that which is visible, and to draw their shawls over their chests, and not to reveal their adornment save to their own husbands or fathers-in-law, or their sons or their husbands' sons, or their brothers, or their brothers' sons, or sisters' sons, or their womenfolk, or their slaves, or male attendants who lack vigor, or children with no intimate knowledge of women's private parts. And let them not stamp their feet to reveal what they hide of their adornment. And turn to God together, O believers, in order that you may succeed.

This verse introduces a host of words and concepts that beg for elucidation, and Muḥammad b. al-Hādī does not disappoint with his commentary on it. Let us start with the garment in question, which occurs in the plural, *khumur*. Muḥammad b. al-Hādī explains:

The word *khumur* is the plural of *khimār*, which is a type of head covering (*libās al-ra's*), which is called *khimār* because it covers the head and is a barrier over it (*satarahu*). This is like wine (*khamr*), because [wine] covers the mind.⁵³

The other word that requires a definition is *irba*, which occurs in the phrase, "male attendants who lack *irba*." Muḥammad b. al-Hādī claims that it simply means "need" (*ḥāja*), and he later identifies seven opinions regarding who these men are in the "meaning" section of *The Garden and the Pool*. These opinions range from men who are impotent, to those who are just seeking food and basic necessities, to those who are insane.⁵⁴

Despite the clarity of most of the vocabulary in Q 24:31, there exists considerable ambiguity concerning the meanings of several expressions. The first of these is "adornment (*zīna*)," a word that occurs nineteen times in the Qur'ān and three times just in this verse. Muḥammad b. al-Hādī offers three interpretations: it can mean the objects of adornment, such as necklaces and bracelets; it can be decorative clothing; or it can mean the neck.⁵⁵ The expression "that

52 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:227–228.

53 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:228; compare with al-Jishumī, *al-Tahdhīb*, 7:5173–5174.

54 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:228.

55 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:229.

which is visible,” which refers to a woman’s adornments that can be displayed without deleterious consequences, adds another layer of complexity to the meaning of this verse. Muḥammad b. al-Hādī records the following five positions regarding what *mā ẓahara minhu* could mean:

1. Objects of adornments, such as kohl in the eye, bracelets, and rings;
2. The face and two hands;
3. The face and fingers;
4. Anything that is visible due to negligence and forgetfulness;
5. Clothing.⁵⁶

This is the place where the commentary shifts to the question of what constitutes the *ʿawra* of a woman, meaning the parts of her body that are considered shameful and that should remain concealed from the categories of men not mentioned in Q 24:31. Until very recently, this juridical debate has been extremely narrow, with the minority opinion that a woman is obligated to cover her entire body in public, and the majority one that she should cover everything save her face and hands, with some disagreement over the top of her feet. Muḥammad b. al-Hādī clarifies that the command to “draw their shawls over their chests” means that they should use them to cover their hair, neck, and chest, even though the verse merely mentions their chests.⁵⁷ He also stipulates that a Muslim woman should never be undressed in front of a non-Muslim woman, unless the latter is her slave, thus restricting the Qur’ānic allowance of “their womenfolk” to “their Muslim womenfolk.”⁵⁸ Later, in his section on rulings, he states that the man’s *ʿawra*, which must be covered in public, is the area between the navel and the knee, a position upon which Muslim jurists agreed from an early date.

Muḥammad b. al-Hādī discusses only six additional legal matters regarding this long passage.⁵⁹ He takes the general command to “lower your gaze,” which is also addressed to men in Q 24:30, to mean desirous looks between the sexes are forbidden unless they are married, or between female slaves and their male owners. He affirms that it is permissible for a man to look at the private parts of his wife or female slave, an opinion which nearly all jurists accept. However, he insists that male slaves are not to look at their female owners’ private parts, nor female slave owners at their male slaves’ genitals, even if they are castrated, save in cases of necessity, something upon which most jurists agree. He

56 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:229. These positions are also identified in al-Jishumī, *al-Tahdhīb*, 7:5175–5176.

57 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:229.

58 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:230.

59 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:231–232.

stresses that the categories of men listed in the verse are not at fault if they see the hair of their related women, and there is no harm if they see their upper chests or below their knees, so long as they lack sexual desire. The term he uses to describe these male relations is *maḥram*, a word that does not appear in the Qurʾān but is found in many *ḥadīths* that forbid a Muslim woman to travel without a *maḥram*. Muḥammad b. al-Hādī rounds out his commentary on this verse with an intra-Zaydī debate over whether a woman should cover in front of her pre-pubescent son as soon as he is aware of the sexual organs and begins to distinguish between attractive and unattractive women, in which case Imam al-Qāsim b. Ibrāhīm argued that the mother should cover in front of him.⁶⁰

The second verse in the Sūra of Light regarding women's dress is also a rule and generated minimal debate among Muslim jurists. This verse reads:

As for women past the age of child-bearing (*qawāʿid*), who do not seek marriage, there is no blame for them if they discard their cloaks in such a way as not to show adornment. But to refrain is better for them. God is All-Hearing, All-Knowing. (Q 24:60)

Muḥammad b. al-Hādī reports that the women described as *qawāʿid* are menopausal and no longer interested in marriage on account of their age.⁶¹ What is less clear is the article of clothing these women are no longer required to wear. According to the Companion Ibn Masʿūd, this is the *jilbāb*, which is worn over the head covering (*khimār*), whereas other scholars consider it to be the head covering and shawl (*ridāʾ*) or just a shawl.⁶² Muḥammad b. al-Hādī is uninterested in resolving this ambiguity, and the sole legal ruling he derives from this verse is its apparent meaning that it is permissible for older women to reduce their layers of clothing, so long as they do not display their *ʿawra*, which he clarified in his commentary on Q 24:31 consists of her entire body, save her face, hands, and the top of her feet.

All four Qurʾānic passages related to the legal topic of permission to enter a structure are found in the Sūra of Light. The first of them, Q 24:27, lays down the rule that it is forbidden to enter any house other than one's own without permission.⁶³ This rule is expanded by a well-known prophetic *ḥadīth*, that one

60 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:232.

61 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:252.

62 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:252. These opinions are also found in al-Jishumī, *al-Tahdhīb*, 7:5245.

63 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:223.

is to seek permission three times and, if one is not invited to enter, one must leave and try again at a later time. The second Qur'ānic passages identifies the three times during the day when family members, servants, or slaves need to seek permission prior to entering a room:

O you who believe! Let your slaves, and those of you who have not come to puberty, ask permission of you at three times: Before the dawn prayer, and when you lay aside your garments for the heat of noon, and after the prayer of night. Three times of nakedness for you. There is no blame for them or for you at other times, when some of you go to and fro, each to each. Thus God makes clear the signs for you. God is All-Knowing, All-Wise. (Q 24:58)

Muḥammad b. al-Hādī restricts the meaning of slaves in this verse to “female slaves,” because in his opinion, and that of Zaydī and Ḥanafī scholars, adult male slaves are proscribed from entering the bedroom at all times of day, not merely the three times mentioned here.⁶⁴ He also specifies these times as being prior to the daybreak (*ḥajr*) prayer, which he reveals is a time when men often have sexual intercourse with their wives before washing for prayer; midday, when they frequently take naps; and after the nighttime (*‘ishā’*) prayer, when people are done with their prayers and work. He also acknowledges that the rules regarding permission to enter vary according to custom, and that there may be times when it is obligatory to seek permission, rather than merely recommended.

The third passage regarding privacy and permission, Q 24:59, makes reference to a legal concept whose importance extends into multiple spheres of law. This concept is *bulūgh*, which marks the end of childhood and the beginning of adulthood.⁶⁵ Any female or male Muslim who attains *bulūgh* becomes legally responsible (*mukallaḥ*) and gains legal rights they did not have as a minor. Muḥammad b. al-Hādī lists four of these obligations and rights in his commentary on this Qur'ānic rule:

- 1) Those who attain *bulūgh* must seek permission to enter private rooms at all times and can no longer gaze at unrelated members of the opposite sex.

64 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:246.

65 This verse reads, “And when your children reach puberty then let them ask permission, even as those before them used to ask it. Thus God makes clear His revelations for you. God is All-Knowing, All-Wise.”

- 2) If they are sane, the guardianship of their guardians is invalidated.
- 3) A girl who attains *bulūgh* can choose to end her marriage if her father or grandfather has already married her off to a man.
- 4) Prior to *bulūgh*, the child's status as a Muslim or non-Muslim was the same as that of their parents; upon attaining *bulūgh*, their religious affiliation is theirs to choose.⁶⁶

So how does one attain *bulūgh*? To answer this question, Muḥammad b. al-Hādī refers his reader to his commentary on an earlier open command in the *Sūra* of Light that addresses the topic of marriage. This verse, Q 24:32, which reads in part, “And marry the unwed among you and the pious of your slaves, male and female,” is where Muḥammad b. al-Hādī discusses the topic of the marriage guardian (*walī*). However, in the middle of his exegesis on this verse, he describes the ways in which a child can attain maturity.⁶⁷ For jurists, the agreed upon signs of *bulūgh* are menstruation for girls and nocturnal emissions for boys. Most jurists, save Abū Ḥanīfa, consider the emergence of pubic hair as another sign of maturity, on the basis of a prophetic *ḥadīth*. But what if the child does not have any of these physical signs? In this case, the jurists divided over what was the age of maturity in lunar years. Zaydī, al-Shāfi‘ī, Abū Yūsuf, and Muḥammad al-Shaybānī (d. 189/805) considered 15-year-olds to have attained *bulūgh*, even if they had not experienced menstruation or a nocturnal emission, while Abū Ḥanīfa distinguished between 17 for girls and 19 for boys.⁶⁸ (In another narration, he advocates for 18 years old for both, as does his junior colleague Zufar.) Interestingly, the evidence Muḥammad b. al-Hādī uses for this age is the well-known Sunnī *ḥadīth* that the Prophet Muḥammad prohibited Ibn ‘Umar from fighting in the battle of Uhūd because he was only fourteen, but allowed him to fight the following year at the Battle of the Trench.⁶⁹ Once again, one can see how closely intertwined Zaydī jurisprudence is with that of the far larger Sunnī traditions.

66 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:251.

67 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:236 (topics 8–10).

68 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:236 (topic 10). According to al-Qudūrī, Abū Ḥanīfa assigned *bulūgh* for boys at age 18 and girls at age 17 if they had not manifested the physical signs of majurity; see Abū Bakr b. ‘Alī al-Ḥaddād al-Zabīdī, *al-Jawhara al-nayyira sharḥ Mukhtaṣar al-Qudūrī*, ed. Ilyās Balbān, 2 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2006), 1:548.

69 This *ḥadīth* is found in numerous Sunnī collections, such as al-Bukhārī, *al-Jāmi‘ al-Ṣaḥīḥ*, Kitāb al-Shahādāt: 18 Bāb Bulūgh al-ṣibyān wa-shahādātihim; and *Sunan Abī Dāwūd*, Kitāb al-Kharāj wa-l-imāra wa-l-fay’: 16 Bāb matā yufraḍ li-l-rajl fi l-muqātala.

6 Denial of Paternity

The final topic of the Sūra of Light that shall be examined here is arguably the most complex and generated a noteworthy amount of legal disagreement. The Qur'anic passage in question lays out a process by which a husband can accuse his wife of infidelity without having additional witnesses and not be subjected to the eighty lashes that was prescribed in Q 24:4 for the uncorroborated accusation of fornication. Unlike most of the legal passages in the Sūra of Light, this passage consists of multiple verses and has two lengthy occasions for revelation attached to it. The process it outlines is called *li'ān* and can be translated as "mutual imprecation." The Qur'ān lays down this process with the following rules:

As for those who accuse their wives but have no witnesses except themselves, let the testimony of one of them be four testimonies, by God, that he is of those who speak the truth. And then a fifth time, invoking the curse of God on him if he is of those who lie. And it shall avert the punishment from her if she bears witness, before God, four times that the thing he said is indeed false, and a fifth time that the wrath of God be upon her if he speaks truthfully. (Q 24:6–9)

The process is clear, and it is replicated in the colorful *ḥadīths* that record the occasion for its revelation, along with the added detail that once both spouses had made their oaths, the Prophet Muḥammad separated them by annulling their marriage. So how did Muslim jurists make it complicated?

The legal casuistry that Muslim jurists injected into the mutual imprecation process stems from multiple factors. First, can slave or non-Muslim spouses engage in this process? According to Muḥammad b. al-Hādī, religious authorities such as Imam Zayd b. 'Alī, Ja'far al-Ṣādiq, Abū Ḥanīfa, and possibly Imam al-Nāṣir al-Uṭrūsh, held that if either spouse was a slave, mutual imprecation was invalid.⁷⁰ Some Zaydīs only invalidated this process if the wife was a slave, while Muḥammad b. al-Hādī prefers the opinion that both spouses must be free in order to execute a *li'ān*. In opposition to al-Shāfi'ī, Muḥammad b. al-Hādī, along with the Ḥanafīs, rejects the validity of mutual imprecation between two non-Muslim spouses, a position he bolsters by quoting a *ḥadīth* in which the Prophet allegedly said, "There is no *li'ān* between Jew and Christian and two

⁷⁰ *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:219.

married slaves and a free [woman] married to a slave.”⁷¹ Al-Shāfi‘ī’s position is based on both the absence of any restrictions in Q 24:6–9 and his legal principle that anyone who can lawfully cause divorce can execute a mutual imprecation.

Additional casuistry arises regarding the role of the judge. According to Muḥammad b. al-Hādī, Abū Ḥanīfa and al-Shāfi‘ī forbade the husband from initiating the *li‘ān* unless his accusation against his wife reached a judge, in which case he would be liable for the eighty-lash penalty if he did not execute it.⁷² Muḥammad b. al-Hādī, along with his Zaydī colleagues and some Shāfi‘īs, only allow the husband to initiate *li‘ān* if he is seeking to deny the paternity of his wife’s child; otherwise, if there is no child present, he can only initiate it if his wife brings his accusations to a judge. Additionally, there are four positions regarding what happens to the marriage bond during and after the *li‘ān* process.⁷³ Muḥammad b. al-Hādī reports that some Zaydīs and the Ḥanafīs require the judge to annul the marriage after both spouses have sworn their five oaths. Other jurists, including Muḥammad al-Bāqir, Ja‘far al-Šādiq, al-Layth b. Sa‘d (d. 175/791), and Dāwūd al-Zāhirī declare that the annulment occurs immediately following the *li‘ān*, without the intervention of the judge. Al-Shāfi‘ī goes even further and claims that the annulment occurs as soon as the husband swears his five oaths, terminating the marriage bond before his wife even begins her five oaths. Finally, the early Basran jurist ‘Uthmān al-Battī (fl. 2nd/8th century) is recorded as claiming that the *li‘ān* process does not end the marriage, but only serves to deny paternity (of the wife’s new child) and alleviate the eighty-lash *ḥadd* penalty for *qadhf* to which the husband would have otherwise been subject. As is frequently the case, Muḥammad b. al-Hādī references one of the long *ḥadīths* he cited in the section on occasions for revelation describing

71 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:220 (topic 7). I have been unable to locate this *ḥadīth* in *Shifā’ al-uwām* or *Uṣūl al-aḥkām*. There is a nearly identical *ḥadīth* in Muḥammad b. al-Murādi’s *Kitāb al-‘Ulūm/Amālī Aḥmad b. ‘Īsā*; see ‘Alī b. Ismā‘īl al-Šan‘ānī, *Kitāb Ra‘b al-ṣad*, 3 vols. (Beirut: Dār al-Maḥajja al-Bayḍā’, 2007), 2:1231–1232 (no. 2141). The Arabic is:

أربع من النساء لا ملاعنة بينهن وبين أزواجهن: الحرّة تحت العبد والمملوكة تحت الحرّ واليهودية تحت المسلم والنصرانية تحت المسلم.

Interestingly, this *ḥadīth* is narrated on the authority of ‘Abd Allāh b. ‘Amr b. al-‘Āṣ and the author of *Ra‘b al-ṣad*, al-Sayyid ‘Alī al-Šan‘ānī, identifies similar *ḥadīths* on his authority in the *Tamhīd* of Ibn ‘Abd al-Barr and the *Sunan* of al-Dāraquṭnī. For example, see al-Dāraquṭnī, *Sunan al-Dāraquṭnī*, ed. Majdī b. Maṣṣūr, 4 vols. in 2 (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 3:115.

72 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:220 (topic 9).

73 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:222.

the *liʿān* process of Hilāl b. Umayya, in which the Prophet very clearly executes the annulment after the spouses have sworn their oaths.⁷⁴

Two final ancillary cases related to mutual imprecation merit mention. Muḥammad b. al-Hādī reports two opinions ascribed to the highly influential Zaydī Imam, al-Hādī ilā l-Ḥaqq, regarding whether a couple that goes through the traumatic *liʿān* process can ever remarry. The overwhelming majority of jurists endorse the opinion that they never could remarry, and that is the opinion of Imam al-Hādī in his legal book, *Kitāb al-Aḥkām*.⁷⁵ However, there is a second book of Imam al-Hādī's jurisprudence called *al-Muntakhab*, and in this book,⁷⁶ Muḥammad b. al-Hādī reports that he allows the husband to remarry his imprecated wife if he repents, receives the *ḥadd* penalty for uncorroborated accusation of fornication, and agrees to a new marriage contract.⁷⁷ This latter opinion is also ascribed to Abū Ḥanīfa and his associate Muḥammad al-Shaybānī.

The final topic over which there is juristic disagreement relates to the question of testimony. What if the husband brings three male Muslim witnesses to the judge to corroborate his accusation of his wife's adultery? Is that sufficient for her to receive the stoning *ḥadd* punishment? Muḥammad b. al-Hādī, the Zaydī Imams, and Abū Ḥanīfa all affirm that the husband's testimony is valid, so the minimal number of four witnesses in cases of fornication has been achieved.⁷⁸ However, Mālik and al-Shāfiʿī reject the husband's testimony in this case and demand that he bring four witnesses in addition to himself to the court. If he does not, he can escape a flogging by executing the *liʿān* process, but the three witnesses he brought to support him are all liable for the eighty-lash penalty for uncorroborated accusations of fornication! Muḥammad b. al-Hādī claims that there is no evidence to invalidate the husband's testimony in this case, and so the three corroborating witnesses should not be flogged. This case demonstrates that the opinions between Islamic legal schools can be significant, given that a witness would be subjected to eighty lashes if the husband went to a Mālikī judge rather than a Zaydī one.

74 This *ḥadīth* is found in *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:216–217.

75 This is confirmed in *Kitāb al-Aḥkām*, as Imam al-Hādī says, *fa-idhā talāʿanā farraqa l-ḥākimu baynahumā wa-lam yajtamīʿā baʿda dhālika abadan*; al-Hādī ilā l-Ḥaqq, *Kitāb al-Aḥkām*, ed. Murtaḍā al-Maḥaṭṭarī, 2 vols. (Sanaa: Maktabat Badr, 2014) 1:416.

76 For an illuminating study on *al-Muntakhab* and its compiler, see Najam Haider, "A Kūfan Jurist in Yemen: Contextualizing Muḥammad b. Sulaymān al-Kūfī's *Kitāb al-Muntaḥab*," *Arabica* 59.3–4 (2012): 200–217.

77 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:222–223.

78 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:223 (topic 16).

7 Conclusion

This initial examination of a substantial section of *The Garden and the Pool* sheds light on the relationship between Zaydī and Sunnī schools of law, the nature of Qurʾānic legal passages, and the utility of legal Qurʾān commentaries for demonstrating one's legal expertise. All the legal positions Muḥammad b. al-Hādī identified in his commentary on the Sūra of Light fall within the boundaries of Sunnī normative pluralism. Whether the topic is the punishment for fornication, the process by which a slave can purchase his freedom by contract, or the parts of the body men and women are obligated to cover in public, Zaydī legal positions align with those of at least one of the major Sunnī schools of law. Significantly, Zaydī positions do not always agree with those of a single Sunnī law school. For example, according to Muḥammad b. al-Hādī, Zaydīs agree with the Ḥanafī school concerning the validity of female testimony regarding whether a woman accused of fornication is previously married (*muḥṣin*) and of the husband's testimony in a *liʾān* case, but they disagree with them concerning the restoration of an uncorroborated slanderer's testimony after he undergoes the *ḥadd* penalty and repents. He also reports very few disagreements among Zaydī Imams and jurists over the array of legal topics found in the Sūra of Light, which suggests that the Zaydī legal school was relatively cohesive, despite the fact it developed in multiple regional centers during its early centuries.

Muḥammad b. al-Hādī's commentary on the fourteen legal passages he selected in the Sūra of Light unintentionally reveals the limited applicability of Qurʾānic verses to Islamic law. Passages such as the verses about the uncorroborated accusation of fornication (*qadhf*) and manumission by contract serve as divinely-inspired catalysts for the human articulation of Islamic law. Furthermore, the work of the jurists habitually transforms the literal meaning of the Qurʾānic text. The *qadhf* verse clearly refers to "chaste women" who are accused of fornication, yet the jurists extend this verse to include "chaste men." The punishment for fornication is explicitly one hundred lashes, yet jurists restrict this punishment to previously unmarried fornicators who are not slaves and add additional punishments, such as banishment and stoning in certain cases. The Book of God directly commands Muslims to prepare a contract of manumission for their slaves if they are "aware of any good in them," yet the jurists say it is merely optional for slaveowners to do so. The *liʾān* procedure in the Qurʾān does not refer at all to the question of paternity, yet Zaydīs and some Shāfiʿīs only allow the husband to initiate it if he desires to deny paternity of his wife's child or if his wife brings his uncorroborated accusation of her infidelity to a judge.

Most importantly, this section of *The Garden and the Pool* reveals Muḥammad b. al-Hādī's legal reasoning. For example, four of the nine legal issues concerning the uncorroborated accusation of fornication are grounded in universal consensus, while a fifth one is a case of near consensus, in which only the marginal Zāhirīs disagree. Furthermore, Muḥammad b. al-Hādī argues that analogy (*qiyās*) is the best reason why the punishment for uncorroborated accusations of fornication applies if the victim is male, rather than the far-fetched argument that Q 24:4 refers to male and female genitals instead of to women. Muḥammad b. al-Hādī also uses analogy in support of his preferred opinion that a slave can execute his manumission contract with a single payment, because single payments are valid in sales and manumission by contract is analogous to a sale. He even extends this analogy in support of the slave's word over the master's word should there be a dispute over the contract price, because the slave is analogous to the buyer in a dispute over the sale price of an item, and the buyer's statement takes precedence over the seller's claim, so long as both claims are accompanied by oaths. Muḥammad b. al-Hādī also invokes the unique Zaydī evidence of "consensus of the descendants of the Prophet" in support of the position that the presence of a (Zaydī) Imam is necessary for the execution of the *ḥadd* penalties. Finally, he cites a significant number of prophetic *ḥadīths*, many of which are found in Sunnī collections, in the course of his legal reasoning, along with opinions of the Companions and Successors, especially concerning the meaning of ambiguous Qur'ānic expressions.

In addition to making explicit his legal reasoning, Muḥammad b. al-Hādī also wades into a few legal debates within his school of law. He reports that some Zaydī Imams, such as al-Hādī ilā l-Ḥaqq and al-Manṣūr bi-llāh ('Abd Allāh b. Ḥamza), awarded the slave master the right to inflict *ḥadd* penalties upon his slaves, a position which Muḥammad b. al-Hādī rejected. He also promotes Imam al-Mu'ayyad bi-llāh's position that a slave can pay off his manumission contract in a single installment against Imam Abū Ṭālib's claim that multiple payments are required. Finally, in the case of mutual imprecation (*li'ān*), Muḥammad b. al-Hādī declares that both spouses must be free in order for this procedure to be valid and rejects the position that only the wife must be free for its validity. Even though these are three random cases, the legal Qur'ān commentary format provides Muḥammad b. al-Hādī the platform to exercise his independent legal authority in order to influence the preponderant opinions of his legal school.

Muḥammad b. al-Hādī's commentary on the Sūra of Light provides the opportunity for his readers to examine how a master Zaydī jurist engaged a variety of legal topics associated with small sets of Qur'ānic passages. In some cases, such as fornication, he guided the reader through multiple legal topics,

whereas for others, such as the dress code relaxation for menopausal women, he had little to say. What happens when he examines a legal topic that is found in twenty or more Qur'ānic verses? The next chapter examines the legal passages on prayer, thirty of which Muḥammad b. al-Hādī discusses in *The Garden and the Pool*, to gain further insight into the relationship between the Qur'ān and Islamic law, and the utility of legal Qur'ān commentaries for their compilers.

Prayer

Two units of prayer in the middle of the night are better than the world and all that is in it.

THE PROPHET MUḤAMMAD



According to nearly every jurist, a Muslim man is not obligated to marry, attend school, or serve in the military. By contrast, he must pray five times a day, seven days a week, from the time he reaches puberty until his last breath. Whether a Muslim is ill, on a business trip, in the heat of battle, or oversleeps, jurists have described in painstaking detail how he or she should pray or make up his missed prayers. The only occasions on which a Muslim is not obligated to pray or make up their prayers are experienced exclusively by women: menstruation and postpartum bleeding. In the absence of these two conditions, all mature, sane Muslims are obligated to pray the formal prayer called *ṣalāt* during its prescribed times every day of their lives.¹

The significance of prayer is amplified in Islamic legal literature by its presence at the beginning of nearly every *fiqh* book. Each one typically opens with a chapter on ritual purity (*ṭahāra*), which is a prerequisite for a valid prayer, and follows it with chapters on numerous types of formal prayers. The terminology by which prayer is described is highly consistent across legal schools and time periods. Formal prayer is always called *ṣalāt* in Arabic; group prayer is *ṣalāt al-jamāʿa*; the bowing in formal prayer is called *rukūʿ*; prostration is called *sujūd*; and the invocation one says to oneself during the seated part of the prayer is called *tashahhud*. The call to prayer is called *adhān*, Friday prayer is called *jumuʿa* (or *jumʿa*), and the prostration one makes after reciting a small set of

¹ For an insightful study of Islamic prayer, see Marion Katz, *Prayer in Islamic Thought and Practice* (Cambridge: Cambridge University Press, 2013). She writes, “Even a tradesman preoccupied by worldly cares, a mother distracted by her baby, or an adolescent beset by sexual fantasies could fulfill his or her obligation to God by performing formally correct prayer that would count in this life and the next, providing this-worldly membership in the Muslim *umma* and freedom from punishment in the afterlife,” Katz, *Prayer*, 73.

Qur'ānic verses is called *sujūd al-tilāwa*. Some of this consistency is probably due to the Qur'ān's usage of words, such as *ṣalāt* and *sujūd*, but most of it comes from the earliest Muslim religious authorities and jurists.

1 Prayer in the Qur'ān

What exactly does the Qur'ān say about prayer? The noun *ṣalāt* occurs more than eighty times throughout the revealed book, although not every mention of it refers to Islamic prayers. For example, Jesus the son of Mary says, “[God] has exhorted me to pray and give alms” (Q 19:31), and, in a famous verse, Q 33:56, God calls upon the angels and believers to call down blessings upon the Prophet Muḥammad, using the same verb as the verb “to pray.” In *The Garden and the Pool*, Sayyid Muḥammad b. al-Hādī identifies thirty passages dispersed through fourteen sūras of the Qur'ān that relate to the legal topic of prayer. Sixteen of these passages are rules, five are open commands, two are legal statements, and seven are subtle passages. These legal passages can be grouped into three main themes: the nature of obligatory prayers, prayer times, and special occasion prayers.

The Qur'ān offers several vague guidelines concerning the characteristics of prayer. There is a legal statement referring to a call to prayer (Q 5:58)² and a clear command to face “the Sacred Mosque,” understood to be Mecca, when praying (Q 2:144), even though the Qur'ān also says that “wherever you turn, there is God’s countenance” (Q 2:115). Muslims are commanded to “be not loud-voiced in your prayer nor yet silent therein, but follow a way between” (Q 17:110), although no guidance is provided for how this command is to be applied in practice. Muḥammad b. al-Hādī considers the open command Q 7:31 to be a reference to covering parts of the body during prayer³ and two additional verses to indicate what a Muslim should say at the opening of her prayer.⁴ The only other indication the Qur'ān provides for how the prayer is to be performed is a

2 “And when you call (*nādaytum*) to prayer they take it for a jest and sport. That is because they are a people who understand not.” Note that the word *adhān* is not found in the Qur'ān in the sense of “call to prayer.”

3 “O Children of Adam! Look to your adornment at every place of prayer, and eat and drink, but be not excessive. He loves not the excessive.”

4 These verses are: “When you recite the Qur'ān, seek refuge in God from Satan, the outcast” (Q 16:98); and, “And say: All praise belongs to God, Who has not taken for Himself a child, and Who has no partner in His dominion, nor has He any protector against humiliation. And magnify Him most magnificently” (Q 17:111).

reference to bowing in the open command “Establish prayer, pay the alms tax, and bow your heads with those who bow” (Q 2:43).

The Qur’ān also indicates that prayer should be observed at certain times of the day. The rule “Prayer at fixed times has been prescribed for the believers” (Q 4:103) states this explicitly, although it is silent regarding the number of fixed times and when they occur. Muḥammad b. al-Hādī comments on several verses that indicate that prayers should be performed during daytime and the night, such as the rule “And glorify the praise of your Lord at the rising of the sun and the going down thereof; and glorify Him some hours of the night, and at the two ends of the day, that you may find acceptance” (Q 20:130).⁵ The Qur’ān tells Muslims to uphold their “midmost prayer” (Q 2:238), although it is evident from *The Garden and the Pool* that Muslim exegetes were in serious disagreement over which of the five obligatory prayers was the middle one.⁶ Finally, a good example of a subtle passage is Muḥammad b. al-Hādī’s assertion that the Qur’ānic clause, “So worship Me and establish prayer for My remembrance” (Q 20:14), indicates that a Muslim should make up his missed prayer as soon as he remembers that he missed it, an interpretation that is hardly obvious from the passage in question.

Through his careful reading of the Qur’ān combined with his deep knowledge of Islamic law, Muḥammad b. al-Hādī was able to find connections between most of the special prayers described in detail in the law manuals and the Qur’ān. The most explicit modification to regular formal prayer in the Qur’ān concerns prayer in a state of danger or fear. The two verses describing the rules of this prayer indicate that, when Muslims are campaigning against disbelievers, they can pray in two separate groups, so that one group of them is armed while the other prays (Q 4:101–102). This passage implies that Muslims ordinarily would all pray in one group, which would leave them vulnerable to attack while praying in enemy territory and provides a neat solution to this potential predicament.

A second clear case of a Qur’ān-sanctioned special prayer is the Friday prayer. The sixty-second sūra of the Qur’ān is called “The Sūra of Friday [Prayer],” and it contains a verse that says, “O you who believe! When the call is made for the prayer of the day of congregation, hasten to the remembrance of God and leave your trading. That is better for you, if you did but know” (Q 62:9). While this rule-bearing verse indicates that there should be an audible call for

5 Other verses to this effect are Q 11:114 and Q 17:78.

6 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:267–270; YMDI, 101–102. Nearly all of this content is found in al-Jishumī, *al-Tahdhīb*, 2:958–960.

this prayer and that one should forsake business for the duration of this prayer, it makes no mention of sermons or any of the details of the Friday prayer found in Islamic law manuals. Given that this is the only explicit reference to Friday prayer in the entire Qurʾān, and that it commands Muslims to “hasten” to it, jurists had to turn to other sources to determine how it was to be performed.

Other special prayers are much less obvious from the Qurʾān and in many cases attest to Muḥammad b. al-Hādī’s talent for finding subtle verses to tease out legal implications. The obligation for a special funeral prayer (*janāza*) can be inferred from the negative open command, “And never pray over any of them who dies, nor stand by his grave, for they disbelieved in God and His messenger, and they died while they were evil-doers” (Q 9:84), although its characteristics are unmentioned. Supererogatory prayers are hinted at in the legal statement, “And who spend the night before their Lord, prostrate and standing” (Q 25:64). A night vigil of sorts seems to be prescribed in Q 73:2–4, although Muḥammad b. al-Hādī informs his readers that it was abrogated after eight months.⁷ Muḥammad b. al-Hādī takes the verse “So pray to your Lord, and sacrifice (Q 108:2)” to be a subtle reference to the Festival prayer (*ṣalāt al-ʿīd*), in large part because one of the two Muslim festivals is the “Festival of Sacrifice,” and it is the only time of year Muslims are obligated to sacrifice an animal in order to feed needy people. He also takes the verses in which Noah is quoted as saying to his skeptical people, “And I have said: Seek forgiveness from your Lord. Truly, He was All-Forgiving. He will let loose the sky for you in plenteous rain” (Q 71:10–11), as subtle evidence for the rain-seeking prayer (*ṣalāt al-istisqāʾ*), even though the word “prayer” is absent from this passage. And, in a delicate act of exegesis, Muḥammad b. al-Hādī claims that the verse “But they glorify Him and prostrate to Him” (Q 7:206), supports the recitation prostration, presumably because it is the first case of a recitation prostration in the Qurʾān according to the order of its sūras.⁸

Even though Muḥammad b. al-Hādī uncovered thirty passages in the Qurʾān that relate to the legal topic of prayer, they leave the reader with little sense of how to pray. Why is this the case? I believe that the four-category taxonomy of legal passages I introduced in Chapter 3 can help answer this question. Only sixteen of these thirty legal passages are **rules** that transfer easily into standard

7 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:362–363; YMDI, 335. The authority who reports this information is ʿĀʾisha, who was born after this verse was revealed and abrogated, but could have asked the Prophet Muḥammad about it after he married her. She is also the narrator of this information in al-Jishumī, *al-Tahdhīb*, 10:7135.

8 Al-Ḥākim al-Jishumī also discusses the “recitation prostration” briefly in his commentary on this verse; *al-Tahdhīb*, 4:2836–2837.

Islamic law books, and it will become apparent that many of these rules are imprecise, especially when compared to the detailed rules that were reviewed in the *Sūra of Light* in the previous chapter and the rules concerning divorce I will examine in the following one. Five of them are **open commands**, which means that they call upon the listener to do something but provide no guidance as to how to do it, such as the verse “Your Lord, magnify” (Q 74:3). Two of these passages are **legal statements**, which means they contain a word that is intimately connected to the laws of prayer but do not indicate a rule or command associated with it. Finally, and most significantly, seven of these thirty passages on prayer are **subtle passages**, which means their connection to Islamic law is largely invisible to all but the most perceptive jurist-exegete. Now it is time to examine how Muḥammad b. al-Hādī links several of these Qur’ānic passages to the webs of legal disagreement in *The Garden and the Pool*, and in the process demonstrates his mastery of the Islamic legal tradition.

2 Prayer in *The Garden and the Pool*

One of the longest discussions of prayer in *The Garden and the Pool* occurs in Muḥammad b. al-Hādī’s commentary on the open command, “Establish prayer, pay the alms tax, and bow with those who bow (Q 2:43).” This jurist-exegete identifies ten obligatory elements of prayer, five of which—the intention to pray, the opening utterance of “God is greatest,” the standing, the bow, and the prostration—are obligatory on the basis of consensus (*ijmāʿ*).⁹ Two of them—raising the head after the bow and sitting between the two prostrations—are obligatory on the basis of the consensus of everyone with the exception of Abū Ḥanīfa, as well as *ḥadīths* that he cites. Muḥammad b. al-Hādī argues for the obligatory status of the remaining three elements with a mix of the legal tools at his disposal. He argues that the recitation of the Qur’ān is obligatory by citing the Qur’ānic clause, “So recite what is easy for you,” (Q 73:20), quoting two *ḥadīths*,¹⁰ and claiming that this is the opinion of the family of the Prophet (*ahl al-bayt*) and most jurists, save three early ones, whose opinions never coalesced into doctrinal schools.¹¹ The final two obligatory elements

9 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:37–46.

10 These *ḥadīths* are “Prayer in which the Opening of the Book and [some] Qur’ān is not recited is not rewarded,” and “There is no prayer save with the Opening of the Book; otherwise it is defective,” *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:42; YMDI, 11. These *ḥadīths* are also found in *Shifā’ al-uwām*, 1:310.

11 The three jurists who allegedly did not consider recitation of the Qur’ān to be an essen-

of prayer, according to Muḥammad b. al-Hādī, are the *tashahhud* invocation and the closing utterances of “Peace be upon you.” After acknowledging that the Zaydī Imam al-Nāṣir al-Uṭrūsh, Abū Ḥanīfa, Abū Yūsuf, and Muḥammad al-Shaybānī considered both of these elements to be recommended, rather than obligatory, Muḥammad b. al-Hādī quotes *ḥadīths* in which the Prophet allegedly said “There is no prayer save with the *tashahhud* invocation,” and “The sanctification of [prayer] is the utterance ‘God is greatest,’ and its conclusion is the utterance ‘Peace be upon you.’”¹² In a typical display of integrity, Muḥammad b. al-Hādī acknowledges that the advocates of the opposing opinion also have a *ḥadīth* in their support, in which Muḥammad taught a Bedouin how to pray and mentioned neither the *tashahhud* invocation nor the final utterance of “Peace be upon you.” Despite this contrary evidence, he remains firm in his opinion that all ten elements of prayer must be performed in order for the prayer to be valid, and that if they are neglected, the prayer must be repeated.

A good example of legal disagreement arising from a legal passage in the Qur’ān is the discussion of the funeral prayer in *The Garden and the Pool*. The only verse related to this topic in the Qur’ān is the negative open command that the Prophet must never pray over deceased disbelievers (Q 9:84), which does not say explicitly over whom one should observe the funeral prayer. This verse immediately raises the question: Are there any other deceased people over whom the Prophet, and Muslims in general, are not to pray?

In his exegesis, Muḥammad b. al-Hādī assesses five controversial cases of funeral prayers. In all five cases, he disagrees with al-Shāfi’ī’s opinion and offers evidence in support of his own position.¹³ In his opinion, one must pray the funeral prayer over the martyr, but one may not observe it for someone who is not physically present with the congregation, over his or her grave, or for whom the funeral prayer has already been performed. In both the first and third cases, Muḥammad b. al-Hādī cites *ḥadīths* found in Zayd b. ‘Alī’s *al-Majmū’*, in which the Prophet prayed for the martyrs of the Battle of Uḥud and, in a different *ḥadīth*, explicitly forbade someone from praying over a grave and instead exhorted him to supplicate on behalf of the deceased.¹⁴ The argument for the

tial part of prayer were the Kufan Zaydī al-Ḥasan b. Šālīḥ [b. Ḥayy] and the Mu’tazilī Ibn ‘Ulayya and al-Aṣamm; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:42; YMDI, 11.

12 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:46–47; YMDI, 12. These *ḥadīths* are also found in *Shifā’ al-uwām*, 1:318 (*lā ṣalāt illā bi-l-tashahhud*) and 1:321 (*taḥrimuhā al-takbīr wa-taḥlīluhā al-taslīm*).

13 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:126–129; YMDI, 230–232.

14 Zayd b. ‘Alī, *al-Majmū’ al-ḥadīthī wa-l-fiqhī* (Sanaa: Mu’assasat al-Imām Zayd b. ‘Alī al-Thaqāfiyya, 2002), 120 (funeral prayer for martyrs at Uḥud); 125 (praying over/at a grave).

second opinion is a negative consensus, for Muḥammad b. al-Hādī reports that no Companions or scholars of the garrison cities are reported to have performed the funeral prayer in the absence of the deceased, and he strives to undermine the well-known report that the Prophet prayed over the Abyssinian king when he died, far from Medina, by claiming the verb “to pray” in this report means “to supplicate on someone’s behalf,” rather than formal prayer.¹⁵ His argument against praying a second funeral prayer over the deceased is simply that the funeral prayer is a communal obligation for the community, and that once it has been done, the obligation is fulfilled. This strikes me as one of his weaker arguments, given that jurists generally consider additional prayers beyond those which are obligatory as something recommended or good, but presumably Muḥammad b. al-Hādī did not see any added benefit to the deceased or the community in the event the funeral prayer was repeated.

The most complicated case concerning the funeral prayer is that of the deceased Muslim who is labeled a *fāsiq*. The Arabic word *fāsiq* (grave sinner) generally applies to someone who has not repented from a major sin he or she committed. The legal testimony of a *fāsiq* is invalid and, in the theology of Zaydis and the Mu‘tazila, a Muslim who is an unrepentant *fāsiq* will be condemned to Hellfire in perpetuity in the Hereafter.¹⁶ Despite his Zaydī loyalties, Muḥammad b. al-Hādī restricts his discussion of the *fāsiq* to the legal question regarding whether the funeral prayer is to be said over him. While he proscribes this honor on the *fāsiq*, he acknowledges that Imam Zayd b. ‘Alī and his grandson Aḥmad b. ‘Isā, along with al-Shāfi‘ī, Abū Ḥanīfa, Abū Yūsuf, and al-Shaybānī held the opposite opinion, unless the *fāsiq* had revolted against the political authority, engaged in brigandage, or killed someone. Muḥammad b. al-Hādī’s evidence in support of his position comes in the form of prophetic *ḥadīths* and Imam ‘Alī’s reported refusal to pray over the deceased Khārījites after the Battle of Nahrawan.¹⁷ He acknowledges that there is a report in al-Ṭabarī’s famous *History* that Imam ‘Alī prayed the funeral prayer for the casualties on both sides

15 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:128–129; YMDI, 231.

16 For a sophisticated investigation of the moral and theological implications of this position, see Sophia Vasalou, *Moral Agents and their Deserts* (Princeton: Princeton University Press, 2008).

17 The *ḥadīths* include a report that the Prophet did not pray the funeral prayer over a Muslim who killed himself, but that he did pray it over a woman who repented from her act of fornication and accepted the penalty of stoning for it; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:127–128; YMDI, 231. These *ḥadīths* are found in *Shifā’ al-uwām*, 1:582. ‘Alī’s criticism of Muslims who prayed over the slain Khārījites after the Battle of Nahrawan is mentioned in al-Ṭabarī, *The History of al-Ṭabarī, Vol. xvii: The First Civil War*, trans. Gerald Hawting (Albany: SUNY Press, 1996), 134.

of the Battle of the Camel, and he endeavors to explain it away by claiming that 'Alī was aware that some of these men had repented from waging war against him.¹⁸ Muḥammad b. al-Hādī even concedes that the Prophet's alleged command, "Pray over anyone who has said 'There is no god but God,'" supports the opinion of the jurists who insist upon the funeral prayer for the *fāsiq*, but immediately states that "we take this to mean [only] those who have not committed major sins."¹⁹ Ultimately, personal preference, rather than scripture or proof texts, is the only recourse a jurist has in this case.

Even though *The Garden and the Pool* is focused exclusively on legal passages of the Qur'ān, there are occasions when Muḥammad b. al-Hādī explains the meanings of ambiguous Arabic words or expressions in the manner most Muslim exegetes follow. Sometimes he merely lays out the possible meanings, without adjudicating which one is correct. A good example of this is the expression *dulūk al-shams* in the verse, "Establish prayer at the *dulūk* of the sun until the dark of night, and the Qur'ān at dawn. The Qur'ān at dawn is ever witnessed" (Q 17:78). According to Muḥammad b. al-Hādī, the word *dulūk* means "to decline" (*mayl*), and scholars disagree over whether this expression refers to sunset (*maghrib*) or the decline of the sun from its zenith, "because anyone who looks at it during this time, their eyes must decline away from it (*tadluku 'aynuhu*), on account of the intensity of its rays."²⁰ He also cites brief poetic passages in support of each meaning. If one adopts the former meaning, the intended prayer is the sunset prayer, whereas if one adopts the latter meaning, the prayer is the midday prayer. Muḥammad b. al-Hādī lists impressive arrays of early religious authorities in favor of each interpretation of *dulūk al-shams* in his section on "meaning"²¹ yet refrains from identifying which position he favors, perhaps because both sunset and midday prayers are obligatory on all Muslims, so both interpretations are equally valid.

By contrast, Muḥammad b. al-Hādī offers his opinion regarding which of multiple interpretations is correct in the case of Q 11:114. This rule also alludes to the times for the obligatory prayers and reads, "Establish prayer at the two

18 This report is found in al-Ṭabarī, although it is on the authority of Sayf b. 'Umar, whom many scholars considered highly unreliable; al-Ṭabarī, *The History of al-Ṭabarī, Vol. xvi: The Community Divided*, trans. Adrian Brockett (Albany: SUNY Press, 1997), 163.

19 Amīr al-Ḥusayn makes a similar argument regarding the meaning of this *ḥadīth*; *Shifā' al-uwām*, 1:580–581.

20 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:182; YMDI, 255. The complete commentary on this verse is on this page of the manuscript.

21 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:182–183. The same lists of authorities are found in al-Jishumī, *al-Tahdhīb*, 6:4279–4280.

ends of the day and in some watches of the night. Truly, good deeds annul ill-deeds. This is a reminder for the mindful.” Before explaining which prayers are intended “at the two ends (*ṭarafay*) of the day and in some watches of the night,” Muḥammad b. al-Hādī shares three potential meanings of the Arabic word *ṭaraf*. The first of these is the extremity of something (*muntahā al-shayʿ*), and he supports it with a verse of poetry found in Nashwān al-Ḥimyarī’s commentary on his own famous poem, *Kitāb Mulūk Ḥimyar*, ascribed to a descendant of the Tubbaʿ kings, that reads, “Dhū l-Qarnayn was my grandfather; he came/ from the most remote lands (*ṭaraf al-bilād*), from the furthest place.”²² The second meaning is “district or region” (*nāḥiya*), which Muḥammad b. al-Hādī supports with another verse of poetry: “The earth lives so long as the scholar lives/If the scholar dies, so dies a *ṭaraf* from it.”²³ He also cites the initial clause in Q 13:41 and mentions that some exegetes claim the word *aṭraf* in it refers to scholars, one of many interpretations found in al-Jishumī’s *al-Tahdhīb* for this verse.²⁴

In his section on “meaning,” Muḥammad b. al-Hādī relates five opinions concerning the “two ends of the day (*ṭarafay l-nahār*),” dutifully listing the early authorities who supported each one.²⁵ The most popular interpretation is daybreak and sunset prayers, but Muḥammad b. al-Hādī instead endorses a less popular explanation that this expression refers to the daybreak, midday, and afternoon prayers, saying, “this is the interpretation, according to us.”²⁶ Likewise, he adopts the minority opinion that the prayer “in some periods of the night (*zulfā l-layl*)” refers to the sunset and nighttime prayer, which means all five obligatory prayers are alluded to in this verse. Even though Muḥammad b. al-Hādī acquires nearly all his exegetical content for this passage from al-

22 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:134; YMDI, 233. Arabic: *qad kāna dhū l-qarnayn jaddī qad atā/ ṭaraf al-bilādī min al-makān al-abʿadī*. Nashwān al-Ḥimyarī ascribes this verse to Asʿad b. Malik Karb b. Tubbaʿ al-Akbar b. Tubbaʿ al-Aqran; Nashwān al-Ḥimyarī, *Mulūk Ḥimyar wa-aqyāl al-Yaman wa-sharḥuhā*, ed. ʿAlī al-Muʾayyad and Ismāʿīl al-Jarāfi (Cairo: al-Maṭbaʿa al-Salafiyya, 1395), 102–103. Nashwān notes that Ibn Ishāq narrates this verse with *jaddī* (my grandfather), while he narrates it with *khālī* (my maternal uncle).

23 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:134; YMDI, 233. Arabic: *taḥyā l-arḍu idhā mā ʿāsha ʿālimū/ wa-in yamut ʿālimun minhā yamut ṭarafū*.

24 The cited part of this verse reads “Do they not see how we descend upon their land, reducing it of its furthest parts (*aṭrafahā*)?” For its interpretation, see al-Jishumī, *al-Tahdhīb*, 5:3818–3820.

25 Compare *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:135; YMDI, 234 with al-Jishumī, *al-Tahdhīb*, 5:3578.

26 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:135; YMDI, 234. The more popular interpretation is supported by Ibn ʿAbbās, Ḥasan al-Baṣrī, Ibn Zayd, and Abū ʿAlī al-Jubbāʿī.

Jishumī's *al-Tahdhīb*, he distinguished himself from his source by identifying his preferred opinions, while al-Jishumī refrains here from indicating which opinions are superior. In both this case and the preceding one, Muḥammad b. al-Hādī engages exegetical questions that are not legal issues and even promotes his own favored interpretations on occasion.

3 Friday Prayer Explained

One of Muḥammad b. al-Hādī's most detailed treatments of prayer is found in his commentary on the Friday prayer verse, "O you who believe! When the call is made for the prayer of the day of congregation, hasten to the remembrance of God and leave your trading. That is better for you, if you did but know" (Q 62:9). Even though he allocates space to address fourteen topics related to Friday prayer, he acknowledges at the end of his commentary on this verse that "the time of Friday prayer, its components, its sermon, and its recommended qualities" are elaborated in legal manuals, so he will not address them in *The Garden and the Pool*.²⁷ The topics he does address are worth examining in some detail because they illuminate how a single Qur'ānic rule is connected to a complex web of Islamic jurisprudence. These topics include the question of who is obligated to pray the Friday prayer, whether a just ruler is a condition for the validity of Friday prayer, the minimum number of congregants for Friday prayer to take place, whether two Friday prayers can be held in the same town, and how late one can join the Friday prayer and still have it count.

The literal meaning of the sole Qur'ānic verse in which Friday prayer is mentioned explicitly is clear: all Muslims should hasten to the prayer when the call to it is made. The verse is addressed to "You (plural) who believe," which indicates that non-Muslims are not obligated to attend Friday prayer. The operative verb, *sa'ā* (hasten),²⁸ is in the masculine second-person plural imperative mood, which in Arabic encompasses men and women. There are no exceptions to this command found in this verse. And yet Muḥammad b. al-Hādī, like most Muslim jurists, reduces the scope of this Qur'ānic command to free, legally responsible, male Muslims who are neither travelling nor have an excuse. How does he do this?

27 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:335; YMDI, 324.

28 This verb can also mean "to do;" *al-Rawḍa*, YMDI, 320; MS Milan, Biblioteca Ambrosiana, A6, fol. 88^a.

Muḥammad b. al-Hādī identifies seven groups of Muslims who do not need to attend Friday prayer: slaves, children, women, the seriously ill, the blind, travelers, and those who live out of earshot from the call to prayer. He is able to rescind the obligation for four of these groups by means of *ḥadīths*, one of which states, “Friday prayer is an obligatory duty on every Muslim in a community, save for four: a slave, a woman, a child, and an ill person.”²⁹ No reason is given in this *ḥadīth* and ones similar to it as to why these classes of Muslims are exempt from Friday prayer, although the case of children is obvious because they are exempt from all legal obligations. While the Zāhirīs and possibly Mālik require male slaves to perform Friday prayer, Muḥammad b. al-Hādī does not report any dissent concerning the exemptions of women and ill Muslims. He deploys the Qur’ānic clause, “There is no blame upon the blind” (Q 24:61) to argue, in agreement with Abū Ḥanīfa, that blind men are not obligated to attend Friday prayer, even if they have a guide, in opposition to Abū Yūsuf and al-Shaybānī, who claim that the presence of a guide reinstates this obligation on the blind male Muslim. The case of the traveler is more contentious, for Muḥammad b. al-Hādī reveals that Zaydī scholars were divided on this issue. Imams Zayd b. ‘Alī and al-Mu’ayyad bi-llāh al-Hārūnī, along with Sunnī authorities al-Shāfi‘ī, Abū Ḥanīfa, Abū Yūsuf, and al-Shaybānī, claimed that he was exempt from Friday prayer, while the Imams al-Hādī ilā l-Ḥaqq and al-Nāṣir al-Uṭrūsh, along with the Sunnī Dāwūd al-Zāhirī, insisted on this obligation.³⁰ In this case, the split arises over the meaning of “traveler (*musāfir*),” because this term can mean someone who is actually on the road or at sea, or someone who is in a town or a city at some distance from his home. Muḥammad b. al-Hādī explains that al-Hādī ilā l-Ḥaqq, al-Nāṣir al-Uṭrūsh, and Dāwūd al-Zāhirī only exempt the traveler who literally is traveling, on the road or sea away from towns and cities in which Friday prayer is being held, and not the person who is lodging in a town some distance from his home.

The final category of exemption from the Friday prayer generated a surprising amount of controversy. The Friday prayer verse in the Qur’ān begins with the clause, “When the call is made for the prayer of the day of congregation,” which, in the interpretation of al-Shāfi‘ī, meant that only (free healthy adult male) Muslims who heard the call to prayer were obligated to attend it. By contrast, the Ḥanafī school only required residents of a garrison city (*miṣr*) to attend the Friday prayer, exempting villagers from this obligation. Median jurists based their exemptions on a Muslim’s distance from the mosque in

29 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:329; YMDI, 321; *Shifā’ al-uwām*, 1:456.

30 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:329; YMDI, 321.

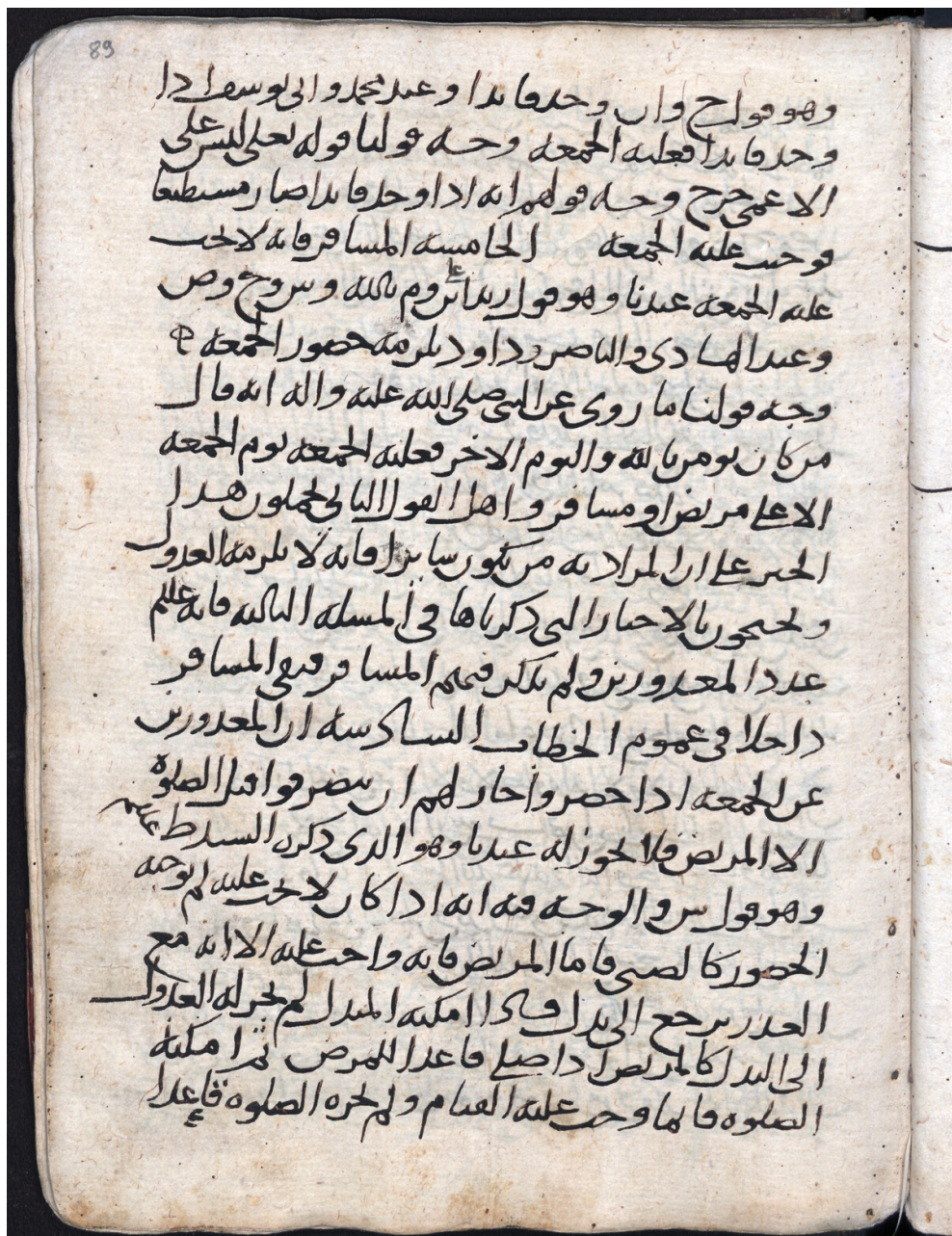


FIGURE 3 Muḥammad b. al-Hādī, *al-Rawḍa wa l-ghadīr* (The Garden and the Pool), in the author's handwriting, fourth part of the commentary on Sūrat al-Jumu'a (62), verse 9

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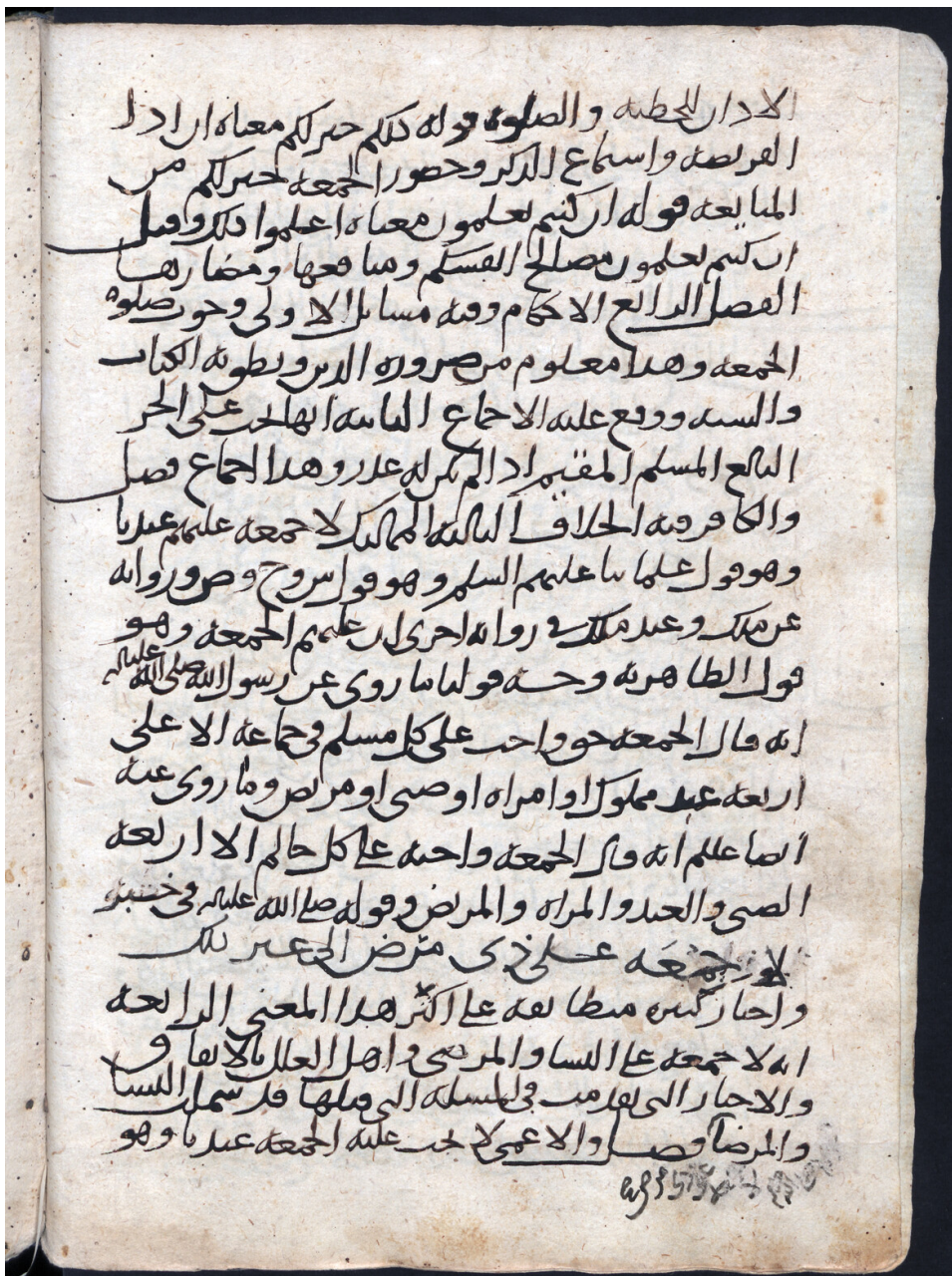


FIGURE 4 Muḥammad b. al-Hādī, *al-Rawḍa wa l-ghaḍīr* (The Garden and the Pool), in the author's handwriting, fourth part of the commentary on Sūrat al-Jumu'a (62), verse 9 MS MILAN, BIBLIOTECA AMBROSIANA, NUOVO FONDO, AR. A6, FOL. 88^v
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which the Friday prayer was being held, although they disagreed over the exact number of miles (*mīl*) of this distance.³¹ Interestingly, Muḥammad b. al-Hādī bases his argument on both distance and al-Shāfiʿī's principle that only those who hear the call to prayer must attend Friday prayer. He declares, without citing any other jurists, that Friday prayer is obligatory exclusively for Muslims who are within a mile of a garrison city, which he justifies by arguing that it generally is impossible to hear the call to prayer more than a mile away from its location, and by quoting a *ḥadīth* in which the Prophet allegedly said, "Friday prayer is incumbent upon whoever hears the call."³²

Muḥammad b. al-Hādī's opinion on the necessity of a just ruler for Friday prayer to be valid is consistent with his adherence to the Zaydī school of law and theology, even though Q 62:9 is silent on this issue. While Muslims generally prefer a just ruler to an unjust one, Zaydīs long have required a higher standard for their rulers than their Sunnī co-religionists. Muḥammad b. al-Hādī mentions that Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī stipulate the necessity of a ruler (*sultān*) for the validity of Friday prayer, while neither al-Shāfiʿī nor Mālik adopt this requirement. In order to persuade his readers that the Zaydī position is correct, Muḥammad b. al-Hādī marshals a variety of evidence. First, he states that the stipulation of a just ruler is agreed upon by the family of the Prophet. Secondly, he deploys the terminology of legal theory, by stating that:

Friday prayer is obligatory on account of the clear text (*naṣṣ*) of the Qurʾān in this verse. However, the word 'prayer' is unclear (*mujmal*) and in need of clarification, and it is obligatory to clarify any obligatory command. It has been established that, during the time of the Messenger of God (ṣ) [Friday prayer] was never upheld save with him [as the Imam] or with a representative whom he appointed. We are unaware of him ever appointing someone to lead prayer whose public demeanor (*ẓāhiruhu*) was not religious.³³

31 Muḥammad b. al-Hādī reports Mālik setting the distance at 3 miles; al-Zuhri at 6 miles; and Ibn ʿUmar and Abū Hurayra at 10 miles; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:332; YMDI, 323. He also mentions that the Iraqis Anas b. Mālik and al-Rabīʿa based the exemption on miles.

32 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:338; YMDI, 323. The *ḥadīth* is *al-jumuʿa ʿalā man samiʿa l-nidāʾ*, and it is found in *Shifāʾ al-uwām*, 1:458. Interestingly, Amīr al-Ḥusayn narrates it on the authority of ʿUmar. A nearly identical *ḥadīth* on the authority of ʿAbd Allāh b. ʿAmr is found in *Sunan Abī Dāwūd*, Kitāb al-Ṣalāt, Bāb 214: Man tajibu ʿalayhi l-jumuʿa.

33 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:330; YMDI, 321–322. A similar argument is found in *Shifāʾ al-uwām*, 1:459.

After this appeal to general prophetic practice, Muḥammad b. al-Hādī goes on to quote two *ḥadīths*, the longer of which threatens anyone who forsakes Friday prayer “in the presence of a just or an unjust ruler,” with the loss of the rewards for all his other acts of worship in the Hereafter. He declares that this *ḥadīth* establishes the necessity for a just ruler, and he explains away the fact that the *ḥadīth* mentions an unjust ruler (and by extension, supports the Ḥanafī position), by claiming that the scholars among the descendants of the Prophet interpret “unjust” to mean “secretly unjust” (*jā’ir fi-l-bā’in*), rather than publicly unjust.³⁴ Even though Muḥammad b. al-Hādī couches his argument in the shared vocabulary of Islamic legal theory, it is clear from this passage of *The Garden and the Pool* that neither the Qur’ān nor the *ḥadīths* provide him with sufficient evidence in support of the Zaydī claim that the presence of a just (or perhaps, legitimate) ruler is necessary for Friday prayer to be valid.

How many local free healthy adult male Muslims must be present in the mosque for Friday prayer to be valid? This question elicited a fascinating variety of responses, ranging from the *imām* (prayer leader) by himself, the *imām* plus one man, the *imām* plus two men, the *imām* plus three men, twelve men, thirty men, and, finally at the outer limit, the Shāfi’ī school’s opinion of forty men.³⁵ Muḥammad b. al-Hādī adopts the position held by the Ḥanafis and Sufyān al-Thawrī that the minimum number is three congregants, plus the *imām*. In this case he is able to argue on the basis of the literal meaning of the Friday prayer verse in the Qur’ān. The imperative verb in this verse is “hasten,” and, in the classical Arabic language, which has a dual form, the second person plural must refer to at least three people. The reason Muḥammad b. al-Hādī supports the opinion of three men plus the *imām* rather than two men plus the *imām* (which would fulfill the minimal three men stipulation) is his assumption that the *imām* is already present at the mosque when the call to prayer is made, such that the verb “hasten” applies only to congregants who are not already there.³⁶ In opposition to the opinions of jurists who demanded 12, 30, or 40 congregants, Muḥammad b. al-Hādī states that “the apparent meaning of the verse is the obligation to hasten [to Friday prayer], in small numbers or

34 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:330–331; YMDI, 322. The identical argument is found in his great-uncle’s *Shifā’ al-uwām*, 1:460.

35 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:331–332; YMDI, 322.

36 Assuming the man who made the call to prayer is not the prayer leader (*imām*), it would seem like a minimum of four congregants would be present on the basis of this argument: three men “hastening” to prayer, plus one man already in the mosque making the call to prayer. Muḥammad b. al-Hādī does not appear to include the *mu’adhdhin* in his calculation here.

large ones, unless an indicator specifies [a specific number].”³⁷ Fortuitously for Muḥammad b. al-Hādī, this Qur’ānic verse, along with the absence of specifying *ḥadīths*,³⁸ provides him with sufficient evidence for a specific legal position over which Muslim jurists offered a wide range of positions.

Two final topics concerning Friday prayer that Muḥammad b. al-Hādī addresses in his commentary on Q 62:9 highlight the practical side of Islamic law and lack any overt connection to the Qur’ān. Some Muslim jurists were uncompromising in their view that only one Friday prayer could be valid in a single locale. In *The Garden and the Pool*, Muḥammad b. al-Hādī reports that Abū Yūsuf and al-Shaybānī allowed Friday prayer in two mosques in a city, but not three. His own opinion, seconded by the Imam al-Manṣūr bi-llāh ‘Abd Allāh b. Ḥamza, is that it is permissible to have two or even three Friday prayers in a large city, so long as they are a mile apart.³⁹ The evidence for this position is a report on the authority of Imam ‘Alī, who ordered a second Friday prayer, in addition to one he led, when he arrived in Kufa during the first civil war.

The second practical question, still relevant today, is how much of Friday prayer a congregant can miss and not have to pray the midday prayer instead? The strictest opinion is ascribed to the early Zaydī Imams al-Qāsim b. Ibrāhīm, and al-Hādī ilā l-Ḥaqq, and some of their sons, along with the Successors ‘Aṭā’, Ṭāwūs, Mujāhid, and Makḥūl al-Shāmī (d. c. 113/731). This group of scholars demanded that any congregant who arrived at the mosque after the *imām* had completed his sermons had to pray the four units of the midday prayer instead of the two units of Friday prayer.⁴⁰ Other jurists were more forgiving of tardiness, and allowed the latecomer to join the Friday pray so long as he prayed at least one of the two units of prayer with the group. This latter group included the Imams Zayd b. ‘Alī, al-Mu’ayyad bi-llāh, and al-Manṣūr bi-llāh, along with al-Shāfi‘ī, and al-Shaybānī. Uncharacteristically, Muḥammad b. al-Hādī does not choose a side in this case and merely cites one piece of evidence in support of each position. Perhaps he was undecided or perhaps he simply was ready to move on to the next legal verse after having discussed fourteen topics related to Q 62:9.

37 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:332; YMDI, 322. Arabic: *fā-wajaba bi-zāhir al-āya wujūbu l-sa’y ‘alā qalīl al-‘adad wa-kathīrihi illā mā khaṣṣahu l-dalīl*.

38 Amīr al-Ḥusayn skillfully refutes the evidentiary value of a *ḥadīth* that reports, “The Prophet held Jumu’a prayer in Medina when there were forty people,” by claiming it is descriptive rather than prescriptive and does not indicate that a smaller Friday prayer would be invalid; see *Shifā’ al-uwām*, 1:464.

39 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:333 He also mentions that Imam al-Manṣūr waived the requirement that they be a mile apart if there was a valid excuse.

40 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:335; YMDI, 324.

While Muḥammad b. al-Hādī's commentary on Q 62:9 provides insights into the relationship between a Qur'ānic rule and the detailed prescriptions of Islamic law, his commentary on Q 7:204 sheds light on how he resolves internal legal debates in the Zaydī tradition. According to *The Garden and the Pool*, the verse "And when the Qur'an is recited, give ear to it and remain silent; perhaps you will receive mercy" (Q 7:204) refers, among other things, to the obligation to listen to the sermons during Friday prayer and to be silent during prayer in general.⁴¹ As anyone who has attended the Friday prayer is aware, Muslims are forbidden from speaking during the two sermons and must listen to the prayer leader's orations. And yet, several questions arise concerning this blanket prohibition. Can one return the Islamic greeting of "peace be upon you," if a fellow congregant says this during the sermons? Can one pray the recommended two units of prayer upon entry of the mosque if one arrives while the prayer leader is delivering the sermon? Is it permissible to say, "God have mercy on you," if the person sitting next to you sneezes? All three of these actions are recommended during normal circumstances by the Prophet Muḥammad's practice and recorded in *ḥadīths*, but are they permissible during the special time of Friday prayer?

Muḥammad b. al-Hādī identifies advocates of two opposing positions on the topic of uttering any words during the Friday prayer sermon. The first position, which he embraces, is that it is permissible to speak, "so long as it does not distract from listening to the sermon," in order to return greetings or pray two short units of prayer. This position is advocated by the Zaydī Imam al-Qāsim b. Ibrāhīm, his son Muḥammad b. al-Qāsim (d. 279/892–893), and the Imam al-Murtaḍā (d. 310/922), the son of Imam al-Hādī ilā l-Ḥaqq.⁴² The opposing opinion, that it is impermissible to say anything during the sermon, including the reply to "peace be upon you" and saying "God have mercy" on the congregant who sneezes, is ascribed to the Imams Zayd b. 'Alī, al-Hādī ilā l-Ḥaqq, and al-Nāṣir al-Uṭrūsh, along with the Sunnī master jurists Mālik, al-Shāfi'ī, Abū Ḥanīfa, Abū Yūsuf, and al-Shaybānī.⁴³ In order to defend what appears to be

41 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:82–84; YMDI, 210. Muḥammad b. al-Hādī claims that this verse refers to both the Friday prayer and prayers in general in his discussion of its occasion for revelation. He also reports that the verb *anṣitū* (pay heed) in this verse means "be quiet" (*uskutū*).

42 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:84.

43 Amīr al-Ḥusayn reports these positions, but he only mentions the Zaydī authorities who held them; *Shifā' al-uwām*, 1:478–479. He also relates that Q 7:204 supports the position that total silence is obligatory, an interpretation that Muḥammad b. al-Hādī challenges in *The Garden and the Pool*.

a minority opinion, Muḥammad b. al-Hādī acknowledges that Muslims were quiet whenever the Prophet gave a sermon, but argues that the command to be quiet in the verse in question, Q 7:204, is a general command, which allows for exceptions in the case of returning greetings and similar utterances, because these utterances do not prevent anyone from listening to the sermon. He even allows the attendee to quietly indicate to a fellow congregant where to sit or stand for the Friday prayer during the sermon, for this is no more distracting than the uncontrollable inner thoughts (*khawāṭir*) all people experience.⁴⁴ In short, Muḥammad b. al-Hādī urges his readers to accept the basic principle that minor additions to the basic elements of prayer do not invalidate the prayer, and thus a simple reply to a greeting by saying “and upon you peace” does not interfere with the obligation to listen to the sermon.

4 Legal Statements and Subtle Passages on Prayer

This chapter has shown that Muḥammad b. al-Hādī engages with the Muslim legal disagreements surrounding Qur’ānic rules and open commands in *The Garden and the Pool*. The rules to “hasten to the remembrance of God” on the “day of congregation” (Q 62:9) and to “give ear” and “remain silent” (Q 7:204) provide entry points for him to explain many legal aspects of the special Friday congregational prayer and weigh in on intra-Zaydī debates on a few topics. The open commands to “Establish prayer” (Q 2:43) and to “never pray over any of them who dies, nor stand by his grave” (Q 9:84) beg for the elucidation of the constituent elements of formal prayer and the funeral prayer. Now I shall examine the remaining categories of legal passages in the Qur’ān, legal statements and subtle verses, to examine Muḥammad b. al-Hādī’s treatment of them and to appreciate his skill at finding allusions to legal topics in the Qur’ān that are easily missed by the average reader.

The first of the two legal statements regarding prayer in *The Garden and the Pool* is Q 5:58, which reads, “And when you call to prayer, they take it for a jest and sport. That is because they are a people who understand not.” The Arabic verb in this verse is *nādā*, which Muḥammad b. al-Hādī informs his readers means “to call out in a loud voice.” He makes it clear that this is a reference to the “call to prayer,” which usually is called *adhān*.⁴⁵ Following al-Jishumī, he identifies the “people who understand not” as either a group of Jews, a Christian, or

44 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:84; YMDI, 211.

45 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:54; YMDI, 196.

the disbelievers who questioned why Muḥammad made the call to prayer when no previous prophet had done anything like it.⁴⁶ After a brief discussion of the meaning of the verse, Muḥammad b. al-Hādī proceeds to discuss five legal topics concerning the call to prayer. He initially challenges the widespread *ḥadīths*, some of which he acknowledges are narrated by Zaydī Imams, that the call to prayer originated as a vision by the Helper ‘Abd Allāh b. Zayd (d. 32/652–653)⁴⁷ and claims instead that the Prophet was taught the words of the call to prayer during his Ascension directly by the Angel Gabriel. Here he bases his argument in part on al-Ḥākim al-Jishumī’s assertion that a vision or dream is not a valid source for Islamic law, so the standard reports concerning the origin of the call to prayer must be erroneous.⁴⁸

Even more remarkably, Muḥammad b. al-Hādī follows his rejection of the standard Sunnī–Zaydī narrative of the origins of the *adhān* by plunging into the intra-Zaydī debate over the number of times “God is Greatest” should be said in the call to prayer. Here one can witness his profound knowledge of legal disagreements among Zaydīs and Sunnīs:

The Call to Prayer and the Iqāma are two by two, as is the opening utterance of God is greatest, according to us, ‘Abd Allāh b. al-Ḥasan, [Ja‘far] al-Šādiq, one narration of Abū l-‘Abbās, [Imams] al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq; his son Muḥammad; Imams Abū Ṭālib [al-Hārūnī], al-Mutawakkil ‘alā Allāh, and al-Manṣūr bi-llāh; Mālik and Abū Yūsuf.

Zayd b. ‘Alī, al-Nafs al-Zakiyya (d. 145/762), [Muḥammad] al-Bāqir and [Ja‘far] al-Šādiq, according to the author of *al-Kāfi*; Aḥmad b. ‘Īsā, al-Nāšir [al-Uṭrūsh], Abū ‘Alī al-Dā‘ī, and al-Mu‘ayyad bi-llāh hold that “God is Greatest” should be said four times initially. This is also the opinion of al-Šāfi‘ī, Abū Ḥanīfa, and Muḥammad [al-Shaybānī].⁴⁹

After enumerating this impressive list of Zaydī and Sunnī authorities from the second/eighth through the seventh/ thirteenth centuries, Muḥammad b. al-Hādī proceeds to present the evidence in support of his position. His evidence

46 al-Jishumī, *al-Tahdhīb*, 3:2008.

47 His full name is ‘Abd Allāh b. Zayd b. ‘Abd al-Rabbih b. Tha‘laba al-Khazraji, and he fought at the Battle of Badr; see al-Dhahabī, *Sīyar a‘lām al-nubalā’*, 2:375–377.

48 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:55; YMDI, 196–197; al-Jishumī, *al-Tahdhīb*, 3:2010. This is an example of Muḥammad b. al-Hādī copying from the “rulings” section of *al-Tahdhīb*.

49 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:55–56; YMDI, 197. Most (but not all) of these authorities are cited in *Sharḥ al-Qāḍi Zayd*; see Zayd b. Muḥammad al-Kalārī, *al-Ta‘līq ‘alā sharḥ al-Tahrīr*, Ms Vienna, Österreichische Nationalbibliothek, Cod. Gl. 125, fol. 97v. Available online at: http://qalamos.net/receive/ATOeNBBook_manuscript_00000227

consists of two prophetic *ḥadīths* and a statement by Imam ‘Alī, all of which state that the call to prayer consists of doubly repeated statements and are silent on any statement being uttered four times. Muḥammad b. al-Hādī claims that one of these *ḥadīths* is found in the *Sunan* of Abū Dāwūd, which is a relatively rare occurrence of an explicit mention of a Sunnī *ḥadīth* book in *The Garden and the Pool*, although the same reference to this book is found in *Sharḥ al-Qāḍī Zayd*.⁵⁰

In his commentary on Q 5:58, Muḥammad b. al-Hādī defends two additional aspects of the call to prayer, one of which distinguishes Zaydis from Sunnīs, and the other of which distinguishes Zaydis and Sunnīs from Twelver Shī‘a. In the case of the former, he argues that the Shī‘ī phrase, “Come to the best of deeds” (*ḥayya ‘alā khayr al-‘amal*), is an integral part of the call to prayer, while the Sunnī statement made at the daybreak call to prayer, “Prayer is better than sleep,” is an unauthorized addition to it.⁵¹ His evidence is the consensus of the descendants of the Prophet (*al-‘itra*), all of whom held that “Come to the best of deeds” was part of Prophet Muḥammad’s call to prayer, which he taught to his Companion Bilāl. He also reports that Imam Zayd’s father, ‘Alī b. al-Ḥusayn Zayn al-‘Ābidīn (d. 95/713), included “Come to the best of deeds” in his call to prayer, and that there are many narrations of this account.⁵² Finally, Muḥammad b. al-Hādī states that the consensus of the descendants of the Prophet is sufficient evidence in this and any other legal case, and he refers his reader to his book on legal theory, *al-Muḍī‘ al-musri‘*, for evidence in support of the authority of this type of consensus.⁵³

50 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:56; YMDI, 197. Abū Dāwūd’s *al-Sunan*, Kitāb al-Ṣalāt, Bāb 28: Kayfa l-adhān, reports multiple narrations of the *adhān*, several of which report only two utterances of “God is greatest.” In fact, Abū Dāwūd records narrations from both primary Companions who narrate the *adhān ḥadīths*, ‘Abd Allāh b. Zayd and Abū Maḥdhūra, that report two utterances of “God is Greatest” and four utterances of “God is Greatest;” see Abū Dāwūd, *Sunan Abī Dāwūd*, ed. ‘Izzat ‘Ubayd al-Da‘ās and ‘Ādil al-Sayyid, 5 vols. (Beirut: Dār Ibn Ḥazm, 1997), 1:241–248. These *ḥadīths*, including the reference to *Sunan Abī Dāwūd* are also found in *Shifā’ al-uwām*, 1:294 and in the earlier *Sharḥ al-Qāḍī Zayd*, MS Vienna, Österreichische Nationalbibliothek, Cod. Gl. 125, fols. 97^v–98^r. This manuscript proves that the Iranian Zaydī Qāḍī Zayd al-Kalārī selected these *ḥadīths* from *Sunan Abī Dāwūd*, rather than the later Yemeni scholars Amīr al-Ḥusayn and Muḥammad b. al-Hādī, who may not have had access to or *ijāzas* for this canonical Sunnī *ḥadīth* collection.

51 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:56–57; These topics are discussed in detail in *Shifā’ al-uwām*, 1:297–301.

52 This evidence and more in defense of the line “Come to the best of deeds” can be found in *Sharḥ al-Qāḍī Zayd*; see MS Vienna, Österreichische Nationalbibliothek, Cod. Gl. 125, fol. 98^v.

53 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:57; YMDI, 197. This is a rare passage in *The Garden and*

Immediately following his defense of the Shīʿī inclusion of “Come to the best of deeds” in the call to prayer, Muḥammad b. al-Hādī rejects the Twelver Shīʿī practice of concluding the call to prayer by repeating “There is no god but God” twice. This is one of relatively few cases in which this jurist-exegete directly attacks a point of Twelver jurisprudence. He acknowledges that the fifth through eighth Imams of the Twelvers adhered to the position that the final utterance of the call to prayer should be doubled, as do the Twelver Shīʿa at large.⁵⁴ However, he also gives us a clue as to why he has uncharacteristically refuted a Twelver Shīʿī legal position: this was also the opinion of the Zaydī Imam al-Nāṣir al-Uṭrūsh, who appears to have been the sole Zaydī authority to have upheld this opinion. Thus, what initially appears to be an anomalous case of rejecting a Twelver Shīʿī position actually falls within the purview of intra-Zaydī legal disagreement.

Muḥammad b. al-Hādī uses a second legal statement in *The Garden and the Pool* concerning prayer to anchor his discussion of supererogatory prayers. As was shown earlier, the legal statement on which he grounds his discussion of these praiseworthy prayers merely describes the believers as those people “who spend the night before their Lord, prostrate and standing (Q 25:64).” The Qurʾān’s use of the verb “to spend the night (*yubītūn*),” gives Muḥammad b. al-Hādī the opportunity to comment upon the voluntary nighttime prayers that a pious Muslim should observe.⁵⁵ These prayers include two units of prayer after the sunset prayer and the *witr* prayer, which Abū Ḥanīfa, along with at least two Iranian Zaydī authorities, considered to be obligatory, even though all of the other scholars who are descendants of Muḥammad held it to be recommended (*sunna*).⁵⁶ Muḥammad b. al-Hādī also takes advantage of this verse to

the Pool in which Muḥammad b. al-Hādī refers readers to his book on legal theory. Given that this reference occurs midway through *The Garden and the Pool*, I assume that he completed *al-Mūḍīʿ al-musriʿ* prior to his Qurʾān commentary. For the reference to the authority of this type of consensus, see Muḥammad b. al-Hādī, *al-Mūḍīʿ al-musriʿ*, ms London, British Library, Or. 3721, fols. 2^r–3^v.

54 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:57; YMDI, 198. This material is found in *Shifāʾ al-uwām* (1:301), whose compiler quotes al-Qāḍī Zayd al-Kalārī as saying all the reports agree that the final *tahlīl* should be said only once.

55 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:265–268; YMDI, 293–294.

56 Muḥammad b. al-Hādī does not describe the *witr* prayer in *The Garden and the Pool*, although he deploys Q 2:238 to argue that it cannot be obligatory, *pace* the Ḥanafīs, because this verse states that there is a “middlemost” prayer, and there cannot be a middle prayer if there is an even number of prayers; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:269; YMDI, 102. (This argument is also found in *Shifāʾ al-uwām*, 1:538). Most jurists consider it to be recommended and to consist of three units of prayer. They are divided over whether these three units are to be prayed as 2+1 or all 3 together with only a single *taslīm* at the end,

cite an extraordinary report from Zayd b. ‘Alī’s *al-Majmū’*, according to which his father, ‘Alī Zayn al-‘Abidīn, prayed fifty units of prayer daily, only seventeen of which were the five obligatory prayers.⁵⁷ This intensive regime of prayer, while not derived from the Qur’ān, sheds valuable light on the spiritual dimension of Zaydism, a tradition better known for its rationalist theology than its devotional practices.

While the preceding legal passages provided a forum for Muḥammad b. al-Hādī to demonstrate his legal erudition, the seven cases of subtle legal passages he identifies in the Qur’ān testify to his careful reading of Islam’s most sacred scripture. In general, these passages do not inspire Muḥammad b. al-Hādī to engage in extensive analyses of legal debates and instead allow him to make a few legal points on verses that are not transparently related to the Sharī‘a. For example, the verse “To God belongs the East and the West, and wherever you turn, there is God’s Countenance” (Q 2:115) hardly suggests that the prayer direction (*qibla*) is Mecca and actually implies that Muslims can pray in any direction and have their prayers accepted. Likewise, the subtle passage Q 2:203 is not an obvious reference to the practice of saying “God is Greatest” after prayers during the days following the Feast of Sacrifice.⁵⁸ Muḥammad b. al-Hādī uses the verse, “But they glorify Him and prostrate to Him” (Q 7:206), which is the first verse in the Qur’ān at which Muslims are expected to perform the “recitation prostration,” to argue that this prostration is merely recommended rather than obligatory.⁵⁹ While the verse does include the verb “to prostrate,” there is no indication in it that one is encouraged or obliged to prostrate after reading a small number of Qur’ānic verses spread throughout the book. In the case of the subtle verse Q 17:111, which concerns the statements a Muslim should make

and there are *ḥadīths* supporting both positions. For details of the *witr* prayer, see *Shifā’ al-uwām*, 1:535–541.

57 Here is Muḥammad b. al-Hādī’s breakdown of the fifty units of prayer: 28 units during daytime, consisting of 10 in the obligatory prayers (Fajr, Ḥuḥr, ‘Aṣr), 8 prior to Ḥuḥr prayer, 4 after Ḥuḥr, 2 more “after that,” 4 prior to ‘Aṣr prayer, and 2 prior to Fajr; plus 22 units at night, consisting of 7 in the obligatory prayers (Maghrib, ‘Ishā’), 2 after Maghrib, 2 after ‘Ishā’, 3 for Witr, and 8 late at night; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:267–268; YMDI, 294. The original *ḥadīth* is found in Zayd b. ‘Alī, *al-Majmū’ al-ḥadīthi wa-l-fiqhī*, Kitāb al-Ṣalāt: Bāb Ṣalāt al-khamsīn, 101.

58 The complete text of this verse is: “[Remember God through the appointed days]. Then whoever hastens on in two days, it is no sin for him, and anyone who delays, it is no sin for him, if he be God-fearing. Fear God, and know that to Him you will be gathered.” Note that Muḥammad b. al-Hādī does not include the initial command in the verse, which at least hints at the Days of Tashrīq, even though “the appointed days” is vague.

59 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:85–86; YMDI, 211–212.

prior to beginning their prayer (*al-iftitāh*) with the opening statement of “God is greatest,” Muḥammad b. al-Hādī refers his reader to an earlier passage in which he elaborated upon the rule expressed in Q 16:98, “And when you recite the Qur’ān, seek refuge in God from Satan, the outcast.”⁶⁰

The remaining three subtle legal passages in *The Garden and the Pool* concerning prayer illuminate the care with which Muḥammad b. al-Hādī read the entire Qur’ān, even though he only commented upon 199 of its passages. Given that 116 of these passages are found in the first nine sūras of the Qur’ān, one might assume that the later sūras of the Qur’ān were bereft of legal passages. However, Muḥammad b. al-Hādī connects the verse, “I, even I, am God, there is no God save Me. So worship Me and establish prayer for My remembrance” (Q 20:14), found near the beginning of an extended narrative of the life of Moses, with the obligation a Muslim has to make up a missed daily prayer as soon as they remember that they missed it. While the *ḥadīth* Muḥammad b. al-Hādī cites in support of this rule is unambiguous,⁶¹ this verse in Sūra Ṭaha seems to apply to Jewish, rather than Islamic prayer, because it reports God’s famous address to Moses at the Burning Bush.⁶² He even goes a step further and addresses the question of a person who converts to Islam while living in the “Abode of War” (a country or region ruled by non-Muslims) and only becomes aware of the obligation of the five daily prayers at a later date—Is he obligated to make up the prayers he missed? Here Muḥammad b. al-Hādī supports the opinion of his great uncle, Amīr al-Ḥusayn, along with several other early Zaydī authorities, that a person in this unlikely situation would not have to make up their prayers, in opposition to the Zaydī Imams al-Mu’ayyad bi-llāh and al-Manṣūr bi-llāh, who insist that he would be obligated to do so.⁶³ How far Muḥammad b. al-Hādī has journeyed from the dialogue between God and Moses on Mount Sinai in *The Garden and the Pool*!

Muḥammad b. al-Hādī turns to a different pre-Islamic prophet’s story in order to address the topic of the rain-seeking prayer (*al-istisqā’*). This time the Sūra of Noah (Q 71) provides the opportunity. In this short sūra, Noah says,

60 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:186–188; YMDI, 257. His commentary on Q 16:98 is found at 2:173 in the Maktabat Ahl al-Bayt edition of *The Garden and the Pool*.

61 The *ḥadīth* he cites is, “Whoever forgets a prayer or sleeps through it, let him pray it as soon as he remembers it,” *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:190; YMDI, 258. It is also found in *Shifā’ al-uwām*, 1:446.

62 This passage opens with a reference to Moses seeing a fire (*nāran*; Q 20:10), which Muhammad Asad identifies as the “burning bush” mentioned in the Bible (Exodus 3:2); Muhammad Asad, *The Meaning of the Qur’ān* (Gibraltar: Dar al-Andalus Limited, 1980), 471.

63 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:190; *Shifā’ al-uwām*, 1:444.

“Seek forgiveness from your Lord. Truly, He is All-Forgiving. He will let loose the sky for you in plenteous rain” (Q 71:10–11). This subtle passage mentions rain and supplications, but it does not address the issue of whether the rain-seeking prayer is a formal prayer or a mere supplication, the latter of which is the opinion of Abū Ḥanīfa and al-Ḥākim al-Jishumī.⁶⁴ It does afford Muḥammad b. al-Hādī yet another opportunity to display his knowledge of intra-Zaydī legal disagreements regarding whether the rain-seeking prayer consisted of two units of prayer or four and to make a case for it being two units.⁶⁵ Even the *ḥadīths* and reports of the practice of Imam ‘Alī and ‘Umar that Muḥammad b. al-Hādī musters are divided over whether the rain-seeking prayer is a formal prayer or just the act of seeking divine forgiveness (*istighfār*) and fail to resolve this disagreement. Ultimately, Muḥammad b. al-Hādī marshals multiple *ḥadīths* in support of his position that it is a formal prayer, consisting of two units of prayer, while acknowledging that there is evidence in support of the contrary positions as well.

The final subtle legal passage concerning prayer is also the final passage commented upon in *The Garden and the Pool*. Muḥammad b. al-Hādī considers the short verse, “So pray to your Lord, and sacrifice” (Q 108:2), to be a reference to the Festival Prayer, even though he acknowledges that earlier exegetes have understood it in a variety of other ways. Some of them took the verse to mean “pray out of gratitude for all you have in the temporal world,” while others saw it as a reference to prayer at the place called Jam‘ during the Ḥajj pilgrimage. The Zaydī exegete and Imam, al-Nāṣir Abū l-Faṭḥ al-Daylamī, claimed that the verse meant “Pray the obligatory prayers, and fulfill the rituals during the Ḥajj and ‘Umra pilgrimages.”⁶⁶ Muḥammad b. al-Hādī skillfully wields this juristic ambiguity to support his position that the Festival prayer is merely recommended (*masnūn*), rather than obligatory at the communal or individual level.⁶⁷ Despite this being the conclusion of his Qur’ān commentary, Muḥammad b. al-Hādī advances an important legal principle in defense of his position:

64 al-Jishumī, *al-Tahdhīb*, 10:7097. Al-Jishumī says it is permissible to perform prayer with the rain supplication, but it is not the sunna of this practice.

65 In this case, it appears that Imams al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq were the primary voices in favor of the rain-seeking prayer being four units of prayer, while Imams Zayd b. ‘Alī, al-Mu‘ayyad bi-llāh, and al-Manṣūr bi-llāh all held it to be two units of prayer; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:361; YMDI, 334. Imam al-Hādī’s position of four units of prayer is confirmed in his *Kitāb al-aḥkām*, 1:122–123. Muḥammad b. al-Hādī reports that nearly all Sunnī master jurists also took the position that the rain prayer was two units of prayer.

66 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:372–373; YMDI, 339.

67 He remarks that this is also the opinion of Zayd b. ‘Alī, al-Nāṣir al-Uṭrūsh, and many Shāfi‘īs

We do not affirm the obligatory status of any prayer beyond the five daily prayers unless there is a certain indicator (*dalāla maqtūʿ*) in support of this, like the Friday congregational prayer, which is explicitly made obligatory in the [Qurʾān], the Sunna, and by consensus. Nothing of this caliber of indicators has been transmitted regarding the solar eclipse prayer, the lunar eclipse prayer, or the rain-seeking prayer, so they are recommended. Therefore, the Festival prayer is recommended, like these other recommended prayers because no obvious indicator has reached us (indicating that) it is obligatory. Were it to be affirmed [as obligatory] without an indicator, that would be an affirmation of a law (*sharʿ*) without an indicator, and this is totally impermissible.⁶⁸

Muḥammad b. al-Hādī acknowledges that jurists who consider the Festival prayer to be individually obligatory upon all adult Muslims rely upon this Qurʾānic verse because it is in the imperative mood and refers to slaughtering a sacrificial animal, which for them is a clear reference to the Festival of Sacrifice, when one of the two Festival prayers takes place. His rebuttal to this is a repetition of his legal principle: Were the Festival prayer obligatory, Muslims would have received the same quality of indicators as those they received concerning the five daily prayers and the Friday congregational prayer.

5 Conclusion

A close reading of Muḥammad b. al-Hādī's commentary on Qurʾānic verses concerning prayer sheds light on both the nature of the Qurʾān's legal content and the utility of legal Qurʾān commentaries for master jurists. Only sixteen of his thirty legal passages on prayer are rules, and many of these rules are vague. Indeed, one could argue that the verse, "Prayer at fixed times has been prescribed for the believers" (Q 4:103), is an open command rather than a rule, given the lack of specificity concerning which "fixed times" are oblig-

and Ḥanafis; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:373; YMDI, 339. Note that the folios are out of order in MS Milan Ambrosiana A6 for this legal passage.

68 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:373–374; YMDI, 339; MS Ambrosiana A6, fol. 109v. Arabic: لا تثبت وجوب شيء من الصلوات المشروعة مما عدا الخمس إلا بدلالة مقطوع بها كصلاة الجمعة للنص على وجوبها من الكتاب والسنة والإجماع. ولم ينقل في صلاة الكسوف والخسوف والاستسقاء شيء من هذه الأدلة فكانت مسنونة. فيجب في صلاة العيد أن تكون مسنونة مثل هذه الصلوات المسنونة لأنه لم يرد على وجوبها دلالة معلومة فإثباتها بغير دلالة إثبات شرع بغير دلالة وهذا لا يجوز.

atory prayer times. Other rules, such as those found in Q 11:14 and Q 17:78, identify times when Muslims are obligated to pray, but their use of eloquent ambiguous language led to irresolvable debates over which of the daily prayers they indicated. The most detailed rule for prayer that may easily be transposed to a law book is restricted to the topic of modifying prayer while on a military campaign (Q 4:102), and hence inapplicable to most Muslims' daily lives. Finally, the legal verses concerning the night vigil (Q 73:2–4) are widely considered abrogated, although Muḥammad b. al-Hādī justifies their inclusion on account of the night vigil remaining a recommended rather than obligatory practice.

Even though the rules Muḥammad b. al-Hādī identifies concerning prayer generally lack specificity, they are more precise than the verses I have classified as open commands and legal statements. The open command, “And never pray over any of them who dies, nor stand by his grave, for they disbelieved in God and His messenger, and they died while they were evil-doers” (Q 9:84), addresses the Prophet Muḥammad directly and only implies that there is some sort of funeral prayer for Muslims. In fact, the verse could merely be a prohibition against seeking divine forgiveness for a non-Muslim, like Q 9:113, rather than an indication of a special type of funeral prayer.⁶⁹ Likewise, the legal statement, “And when you call to prayer, they take it for a jest and sport. That is because they are a people who understand not” (Q 5:58), mentions a call to prayer without commanding it or indicating how to make it. Given these significant stylistic variations among legal passages concerning prayer, I believe that the four-category taxonomy I introduced in chapter three of this book captures this diversity better than labeling them all as “rules” or “commandments.”

Muḥammad b. al-Hādī demonstrates his juristic and exegetical acumen in *The Garden and the Pool* on the topic of prayer in three ways. First, he identifies seven subtle passages whose connections to Islamic law are not immediately obvious. These passages range from aspects of the Festival Prayer (Q 2:203, 108:2), the recitation prostration (Q 7:206), and the rain-seeking prayer (Q 71:10–11). Muḥammad b. al-Hādī creatively uses Moses' intimate discourse with God on Mount Sinai (Q 20:14) to explore the topic of making up one's missed obligatory prayers and the final verse of the Sūra of the Night Journey (Q 17) to review what one should say just prior to the opening of the formal prayer. Given that it is extremely unlikely that a contemporary reader would

69 Note that neither the Arabic word for funeral prayer, *janāza*, nor any derivative of its triliteral root (*j-n-z*) is found in the Qurʾān.

identify any of these verses as being “legal,” these passages show how important it is for researchers to consult Muslim master jurists’ selections of legal passages, rather than relying exclusively on their own preconceived notions of what counts as “legal” in the Qur’ān.

The second way in which Muḥammad b. al-Hādī demonstrates his legal expertise is by linking most of these thirty Qur’ānic passages to webs of normative legal pluralism. He regularly cites Zaydī and Sunnī religious authorities and occasionally mentions the legal positions of Twelver Shī‘ī Imams. Over the course of his discussion of the ten mandatory constituent elements of prayer in his commentary on the open command to “establish prayer” (Q 2:43), Muḥammad b. al-Hādī identifies five elements over which there is universal consensus, two regarding which only Abū Ḥanīfa disagrees, one over which the Family of the Prophet agree, and two regarding which only the Zaydī Imam al-Nāṣir al-Uṭrūsh disagrees. His deep knowledge of Zaydī legal disagreement is on full display in his commentary on Q 7:204, regarding the permissibility of making short, polite statements during the Friday prayer sermon, and Q 5:58, regarding whether the prayer-caller initially says “God is Greatest” twice or four times. Finally, he rigorously analyzes the legal disagreements over fourteen topics concerning the Friday Prayer, which suggests the importance of this prayer to Zaydīs who, like Muḥammad b. al-Hādī, were living during the time of a qualified Zaydī Imam.

The final and most important way Muḥammad b. al-Hādī deploys his legal Qur’ān commentary is to present and defend his own opinions on topics over which Zaydī authorities disagreed. For example, he reports disagreement among Zaydī Imams over whether the male Muslim traveler is exempt from performing the Friday Prayer and gently resolves it by arguing that the Imams who exempted the traveler only intended a person who literally was on the road or a ship during Friday Prayer, not someone who was away from his home on business in a city with a congregational mosque. He declares that multiple Friday Prayers can be held in the same city, so long as they are one mile apart, and that Muslim men who live more than a mile from a communal mosque and cannot hear the call to prayer are not obligated to pray it. He provides textual evidence in support of saying “God is Greatest” twice at the beginning of the call to prayer, rather than four times, and he defends the less strict opinion that one can say “God have mercy upon you” to someone who sneezes during the sermon of the Friday prayer. Finally, in a particularly bold move, Muḥammad b. al-Hādī argues that the rain-seeking prayer is only two units of prayer, rather than the four units advocated by the foundational Zaydī Imams al-Qāsim b. Ibrāhīm and al-Hādī ilā l-Ḥaqq. Even though Muḥammad b. al-Hādī’s choice is supported by multiple Zaydī Imams, his willingness to challenge openly the

opinions of Imams al-Qāsim and Imām al-Hādī demonstrates his confidence in his juristic abilities, which he chose to memorialize in *The Garden and the Pool*.

My analysis of Muḥammad b. al-Hādī's commentary on Qur'ānic passages linked to prayer has shown the method by which a talented jurist-exegete effectively used the form of the legal Qur'ān commentary to demonstrate his mastery of Islamic law. Part of this mastery involved finding thirty passages of legal significance for prayer in the Qur'ān, seven of which were subtle passages. Will this legal mastery still be on display in the case of a topic which consists almost exclusively of specific rules that are easy to detect in the Qur'ān? Will Muḥammad b. al-Hādī continue to present his choices in cases of Zaydī legal disagreement on topics that have graver worldly repercussions than the number of units of prayer that one should pray in the supererogatory rain-seeking prayer? In order to address these questions and more, the following chapter analyzes Muḥammad b. al-Hādī's interpretation of twenty-one legal passages on divorce in *The Garden and the Pool*.

Divorce

And treat [your wives] kindly and fairly.

Qur'ān 4:19



Divorce is complicated. Much of this complexity derives directly from a modest corpus of Qur'ānic rules. All Muslim jurists have understood the Qur'ān to authorize the free husband up to three divorces of his wife, while distinguishing radically different consequences between the second and third times he divorces her. They have also understood it to require a divorced woman to observe a waiting period (*'idda*), during which time she may not marry anyone else, and, during which time, if the divorce is revocable, the husband can take her back (*raj'a*) as his wife without paying a new dower. Jurists also combined an ambiguous Qur'ānic clause with an unambiguous prophetic *ḥadīth* to justify the wife's limited ability to terminate her marriage by returning part or all of her dower to her husband, which is called *khul'*. The Qur'ān also mentions three procedures—*ilā'*, *ḡihār*, and *li'ān*—that can lead to the dissolution of a marriage and probably were local to Western Arabia, prior to spreading globally with the expansion of Islamic civilization.

Muslim jurists also had to assess rulings for a host of topics concerning divorce upon which the Qur'ān is silent. Which Arabic expressions make a divorce take effect? Are witnesses necessary? If a man says, “You are divorced if you enter the house,” does a divorce take place when she enters her house? Can a man divorce his wife triply on a single occasion? Is a divorce uttered by an intoxicated man valid? How does a man take back his wife during her waiting period? Is a *khul'* separation a divorce, and if so, is it revocable or irrevocable? Who gets custody of the children in a divorce?¹

¹ A helpful introduction to the casuistry surrounding divorce in Islamic law is Susan A. Spectorsky, *Chapters on Marriage and Divorce* (Austin: University of Texas Press, 1993), 27–59.

1 Divorce in the Qur'ān

The Qur'ān provides more rules regarding the ways to terminate a marriage than it does on the topic of marriage itself. In fact, 19 of the 21 legal passages on divorce explained by Sayyid Muḥammad b. al-Hādī are rules, while none are open commands or legal statements. The word the Qur'ān uses most frequently for divorce is *ṭalāq*, which is sometimes translated as “repudiation.” The *ḡihār* oath and *li'ān* process are two additional Qur'ān-sanctioned ways for a marriage to be dissolved. Another oath mentioned in the Qur'ān, called *ilā'*, can lead to a divorce if the husband who utters it does not return to having sexual relations with his wife after four months. The Qur'ān also articulates distinct waiting periods for divorced women, depending upon their age and whether they are pregnant. Many of the verses on the topic of divorce are long and occur in clusters, which make them easy to find. I will discuss the legal passages on divorce upon which Muḥammad b. al-Hādī comments in *The Garden and the Pool* in the following order: verses on the *ṭalāq* divorce; verses on other ways of dissolving a marriage; and verses concerning the waiting period.

The Qur'ān declares that, “Divorce (*al-ṭalāq*) may be pronounced twice, and then (a woman) must be retained in honor or released in kindness” (Q 2:229). The same verse proceeds to prohibit the husband from taking back anything he has given his wife, unless they both “fear that they cannot observe the limits of God.” Should this fear be present, the Qur'ān allows the wife to “ransom herself” to end the marriage. This verse indicates that the husband has the opportunity to return to his wife after the first or second time he divorces her, a point that is amplified in Q 2:228, in which the text says, “And their husbands have a better claim to take them back if they desire reconciliation.” Another verse, Q 65:2, urges witnesses to observe whether the husband takes his wife back or leaves her divorced. Finally, Q 2:229 serves as the only Qur'ānic evidence for the permissibility of divorce initiated by the wife (*khul'*), because it provides a limited opportunity for a wife to pay something to her husband to terminate her marriage.

The following verse, Q 2:230, is understood by all Muslim jurists to refer to the third time a husband issues a divorce to his wife, even though the text merely says, “And if he has divorced her.” The reason for this unanimity derives from the fact that Q 2:230 declares that, after this divorce, the man's ex-wife “is not lawful to him thereafter until she has wedded another husband” and that he can only remarry her if the second husband divorces her and they both are confident “that they are able to observe the limits of God.” In other words, the consequence of this divorce is much more serious than what the Qur'ān

stipulated in the previous verse, regarding the first two divorces, in which the husband has the option to take his divorced wife back during her waiting period or to let her remain divorced. Here, in Q 2:230, the husband has no hope of returning to her unless she marries another man, this man divorces her, and then they remarry. Rather than seeing a contradiction or abrogation between these two verses, Muslim scholars unanimously interpreted the latter verse, with its far severer consequences, to be applicable only to the third, irrevocable divorce.

What happens to the dower if the divorce takes place prior to it being fixed or the marriage being consummated? The Qurʾān makes it unambiguous that the husband is forbidden from taking back anything he has given his wife when he issues the divorce under normal circumstances,² but what about in special cases, when the marriage is aborted after the oral agreement but prior to consummation? In a pair of verses, the Qurʾān alleviated the need for jurists to determine the correct answers to these questions:

It is no sin for you if you divorce women while you have not yet touched them, nor designated them a dower. Provide for them, the rich according to his means, and the needy according to his means, a fair provision—an obligation for those who do good. (Q 2:236)

If you divorce them before you have touched them and you have designated them a dower, then half of what you designated, unless they (the women) agree to forgo it, or he in whose hand is the marriage tie agrees to forgo it. To forgo is nearer to piety. And forget not kindness among yourselves. God is Seer of what you do. (Q 2:237)

In the event the husband divorces his wife prior to even specifying the dower and having intercourse with her, he must provide some form of gift to her, according to his financial means. On the other hand, if the dower was specified prior to the divorce, and the divorce was prior to consummation, then the wife receives half of the dower, unless either she or the man “in whose hand is the marriage tie” chooses to forgo it. Even though there is ambiguity as to the identity of the person “in whose hand is the marriage tie,” the Qurʾān establishes the rule that the divorced woman is entitled to receive half of her dower as soon as the husband accepts her guardian’s marriage offer, even if the married couple never engaged in lawful sexual relations.

² Examples include Q 2:229 and Q 4:20–21.

In addition to these specific guidelines, the Qurʾān also lays down some broad principles regarding divorce. For example, Q 2:241 states, “For divorced women a provision in kindness—an obligation for those who are God-fearing.” Is this a gift that all husbands have to make when they divorce their wives? Is it identical to the unpaid balance of the dower they owe their wives, which they must pay in full, when they divorce them? Could it be interpreted as a reference to alimony? An even more ambiguous and contentious Qurʾānic clause declares that “And women have claims similar to those of men over them in kindness, and men are a degree above them” (Q 2:228). What exactly are these “claims,” and what is the “degree (*daraja*)” that men hold above them?

Finally, the Qurʾān mentions three additional ways by which a marriage bond can be severed. One of these is the *ḡihār* oath, in which the husband says to his wife “You are like my mother’s back,” a pre-Islamic expression that was current during the Prophet Muḥammad’s lifetime. There are two references to this oath, the more detailed of which adumbrates the rules of expiation for the man who uttered it and then wishes to resume having sexual relations with his wife.³ The verses do not actually say what happens if the husband does not wish to return to having marital relations with his wife, and so jurists had to determine this in their legal manuals. This ambiguity contrasts with a second oath the Qurʾān mentions, called the *ilāʾ*, which occurs when a man forswears sexual relations with his wife for up to four months (Q 2:226–227). In this case, the Qurʾān helpfully indicates that husbands can either return to their wives or divorce them, although its language is vague enough to ensure disagreement over its precise details, such as whether a divorce happens automatically after four months, or whether the husband is required to issue a divorce statement at that time for it to take effect.

The final process for terminating a marriage that the Qurʾān introduces is called *liʾān*, or mutual imprecation, which I discussed above in chapter four. After declaring in the Sūra of Light (Q 24) that the penalty for the uncorroborated accusation of fornication is eighty lashes, the Qurʾān clarifies what a husband should do if he is by himself when he discovers his wife having intercourse with another man or suspects that she has committed adultery. The passage in which *liʾān* is adumbrated consists of the following four adjacent verses:

3 These means of expiation are: 1) freeing a slave; 2) fasting two successive months; and 3) feeding sixty needy people; see Q 58:3–4.

As for those who accuse their wives but have no witnesses except themselves, let the testimony of one of them be four testimonies, by God, that he is of those who speak the truth. And then a fifth time, invoking the curse of God on him if he is of those who lie. It shall avert the punishment from her if she bears witness, before God, four times that the thing he said is indeed false, and a fifth time that the wrath of God be upon her if he speaks truthfully. (Q 24:6–9)

While the Qurʾān provides some legislation concerning *ḡihār*, *ilāʾ*, and *liʾān*, it leaves substantial areas uncovered. Do these processes result in a revocable or irrevocable divorce? Do they count as one of the husband's three divorces? How long is the waiting period for the ex-wife? These questions and many more led most jurists to devote separate chapters to each of these methods of terminating a marriage in their legal manuals, which they generally placed in close proximity to their chapters on divorce.

In several passages, the Qurʾān stresses the necessity of the wife to observe a waiting period (*ʿidda*) immediately following the husband's declaration of divorce. The opening verse of the Sūra of Divorce (Q 65:1) decrees, "O Prophet! When you divorce women, divorce them for their waiting periods, calculate the period, and fear God, your Lord," and commands him not to expel them from their houses during this period "unless they commit open indecency." The purpose for this waiting period is hinted at in Q 2:228, which, after specifying its length as three menstrual cycles, states that "it is not lawful for them to conceal that which God has created in their wombs if they are believers in God and the Last Day." The same verse admonishes husbands to take their wives back during the waiting period, which indicates that the purpose for this period is both to establish paternity of any children the wife may be carrying and to allow a certain amount of time for the couple to reunite after the husband's first or second issuance of divorce. The Qurʾān tailors the length of the waiting period to the circumstances of the divorced woman: if she menstruates, her waiting period is three menstrual cycles (Q 2:228); if she does not menstruate because she is menopausal or too young,⁴ her waiting period is three months

4 Jurists generally require a woman to be legally responsible (*bāligha*) prior to her husband having sexual intercourse with her. One of the key signs for women of having attained this age is menstruation. However, the way exegetes and jurists have understood the expression "along with those who do not menstruate" in Q 65:4 is that these divorced women are too young to menstruate, and yet they must have had sexual intercourse because a woman who has not consummated her marriage is not required to observe a waiting period. (This clause

(Q 65:4); and if she is pregnant, her waiting period lasts until she delivers her child, which could be as short as a day and as long as four years, according to some premodern Muslim jurists.⁵ Finally, Q 33:49 decrees that women who are divorced prior to consummation are not to observe a waiting period, which means, among other things, that they can marry another man without waiting three menstrual cycles or months.⁶

The Qur'ān makes it clear that the waiting period is a liminal time between marriage and divorce. It is liminal because the husband still has certain obligations toward his former wife and she is confined to her home throughout this time on account of the fact her husband divorced her. Two verses in the Sūra of Divorce (Q 65) spell out the obligations a man owes his ex-wife from the moment he divorces her until the end of her waiting period:

Lodge them where you dwell, according to your wealth, and do not harass them so as to constrict their lives. And if they are with child, then pay for them till they bring forth their child. Then, if they nurse the child for you, give them their due payment and consult together in kindness. But if you make difficulties for one another, then let some other woman nurse the child for him. Let him who has abundance spend of his abundance, and he whose provision is measured, let him spend of that which God has given him. (Q 65:6–7)

cannot refer to women who are too old to menstruate because the previous clause, “such of your women who despair of menstruation,” refers to women who have ceased menstruating.)

- 5 Ibn al-Mundhir reports a range of two to seven years of pregnancy among early jurists' opinions in his chapter “the maximum time a fetus (*ḥaml*) can be present inside a woman.” Most jurists settled on two to four years, although Abū 'Ubayd allegedly said there was no maximum time for pregnancy; Ibn al-Mundhir, *al-Ishrāf 'alā madhāhib al-'ulamā'*, ed. Abū Ḥammād al-Anṣārī, 10 vols. (Ra's al-Khayma: Maktaba Makka al-Thaqāfiyya, 2005), 5:347. Despite their scientific inaccuracy, this extended potential time for pregnancy meant in practice that a woman could assign paternity to her ex-husband for a child that was born a year or two after their divorce or his death, which could be advantageous to the child and his mother in certain circumstances.
- 6 This verse is not discussed by Muḥammad b. al-Hādī in *The Garden and the Pool*. In fact, he does not discuss any verses in Sūra 33, which leads me to believe that he did not have access to the volume of al-Ḥākim al-Jishumī's *al-Tahdhīb* that covered this sūra because, as I demonstrated in chapter two, *al-Tahdhīb* was the foundation upon which he erected *The Garden and the Pool*. Remarkably, Muḥammad b. al-Hādī does not discuss *any* verses between Q 28:27 and Q 47:4, which is approximately one-sixth of the entire Qur'ān, and which supports my assertion that he did not have one or possibly two volumes of *al-Tahdhīb* at his disposal when he was writing *The Garden and the Pool*.

A reader cannot help but notice that the Qur'ān offers more rules and guidelines for divorce than it does for any other legal topic. It distinguishes between the first two divorces and the third one; encourages husbands to take their wives back during their waiting periods after the first two divorces; and requires husbands to pay maintenance, provide lodging, and compensate their ex-wives for breastfeeding their children. It hints at the permissibility of a female-initiated divorce and explicitly authorizes three additional methods of ending a marriage—*ṣihār*, *ilā'*, and *li'ān*. Despite all of its rulings, the Qur'ān is silent on many significant legal issues surrounding divorce. Nowhere does it specify how a man actually divorces his wife or whether he can attach conditions to his divorce utterance. Which expressions cause a divorce to take place unequivocally and which ones are equivocal? Can a man divorce his wife multiple times in a single session? Are witnesses necessary? Are the obligations the same for the husband during his wife's waiting period after a revocable divorce and an irrevocable divorce? I turn now to Muḥammad b. al-Hādī's *The Garden and the Pool* to see how he navigates centuries of jurists' debates over these legal verses and the techniques he uses to derive a coherent articulation of the laws of divorce according to his interpretation of the Zaydī school of law.

2 Divorce in *The Garden and the Pool*

The previous section has demonstrated that the Qur'ān has much to say about divorce and that verses in which divorce is mentioned frequently discuss distinct aspects of it. For example, Q 2:228 contains rulings concerning the wife's waiting period and the husband's authority to take her back during this period. One of the challenges Muḥammad b. al-Hādī faced when writing *The Garden and the Pool* was deciding where in his commentary to discuss the numerous legal topics related to divorce. In the following pages, I will restrict my analysis to his elaboration of the laws concerning revocable divorce, the third divorce, the female-initiated divorce (*khul'*), divorce prior to consummation, the waiting period, and the special case of a man who says, "My wife is forbidden to me."

3 Revocable Divorce

Muḥammad b. al-Hādī's discussion of the revocable divorce occurs primarily in his commentary on Q 2:228 and Q 2:231. In the first of these verses, he

declares that the vast majority of divorces are revocable, and that the only three types of irrevocable divorces are the cases of divorce prior to consummation, divorce in exchange for the recalcitrant wife compensating her husband,⁷ and the husband's issuing the third divorce after he has taken his wife back twice previously.⁸ Muḥammad b. al-Hādī's primary concern in these verses is to address the question of how a man takes back his wife (*raj'a*) during her waiting period after a revocable divorce. He informs the reader that all Muslim scholars accept a verbal act of taking back on the part of the husband to be effective, and that many considered his act of sexual intercourse with her an effective return as well. Passionate kissing and touching during the waiting period cause a husband to take back his wife, according to Muḥammad b. al-Hādī, the Zaydī Imam al-Nāṣir al-Uṭrūsh, and the Ḥanafis, although Mālik rejects this method, and al-Shāfi'ī only accepts a verbal statement from the husband as an effective way for him to take her back.⁹ If he merely looks at her, the divorce is not revoked, although Muḥammad b. al-Hādī claims that Abū Ḥanīfa held the opinion that if the husband looks at his ex-wife's genitals during this period, they are reunited.¹⁰ Finally, and strictly on the basis of an alleged consensus, Muḥammad b. al-Hādī declares that neither the ex-wife's consent, nor that of her guardian, is necessary if her former husband decides to take her back during the waiting period, with the caveat that he is not allowed to do this for the purpose of harming her.¹¹ It is only after the waiting period, when all revocable divorces become irrevocable, that the husband loses this prerogative.

Given that the husband enjoys a monopoly on taking back his ex-wife during her waiting period, it is imperative for Muḥammad b. al-Hādī to clarify when this special authority ends. His own preference is that it ends as soon as the ex-wife takes her ritual bath that purifies her after her third menstrual cycle or the prayer time arrives after her third menstrual cycle. This opinion is narrated from Imam 'Alī and thirteen additional Companions, although Muḥammad b.

7 This is essentially a *khul'*, although here Ibn al-Hādī calls it *al-ṭalāq 'alā 'iwaḍ ma'a l-nushūz*; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:211; YMDI, 79.

8 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:211; YMDI, 79.

9 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:212; YMDI, 80.

10 Abū Ḥanīfa's opinion is confirmed by al-Qudūrī; Ibn al-Ḥaddād, *al-Jawhara al-nayyira*, 2:198.

11 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:212; YMDI, 80. Arabic: *anna li-l-zawj al-murāja'a fi l-'idda min ghayr riḍā l-mar'a wa-lā riḍā walīyyihā wa-lā khilāf fihi*. The prohibition against harm is stated explicitly in Muḥammad b. al-Hādī's commentary on Q 2:231: *annahu lā taḥillu li-l-zawj al-raj'a li-l-muḍārra*; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:233; YMDI, 88. He repeats it again at Q 65:2–3; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:346; YMDI, 328.

al-Hādī remarks that “‘Alī’s opinion alone would have been sufficient for us.”¹² His stipulation “or until prayer time arrives,” potentially shortens the time the husband has the authority to take her back, should his ex-wife be delayed in taking her ritual post-menstrual bath. He even affirms that if the ex-wife can only perform the substitute sand ablution, called *tayammum*, for prayer, this is effective in terminating the husband’s right to take her back.

What if the husband claims to have taken back his ex-wife while she claims that her waiting period has ended? Muḥammad b. al-Hādī proposes the following remedy to this highly plausible situation in the following case-sensitive manner:¹³

- 1) If she was pregnant during her waiting period, she needs one upright woman to testify that she gave birth.
- 2) If her waiting period was calculated according to months, then the wife needs to bring forth evidence, and the husband swears an oath that he took her back.
- 3) If her waiting period was calculated according to menstrual periods and
 - a) her claim is within a feasible time period—like three months—her claim is accepted with an oath;
 - b) her claim is within an impossibly short time that is abnormal—like 20 days—she is not to be believed;
 - c) her claim is within a possible time that is abnormal—like 29 days—and she brings an upright woman to testify on her behalf, her claim is accepted.

One final topic related to the revocable divorce illustrates how Muslim jurists like Muḥammad b. al-Hādī could occasionally avoid explicit rules in the Qur’ān. Verse 65:2 states in part, “Then, when they have reached their term, take them back in kindness or part from them in kindness, and call to witness two just men among you.” The apparent meaning of this verse is that two male witnesses are necessary for the husband’s act of taking back his divorced wife to be valid, especially since the verb “call to witness” is in the imperative mood. And yet Muḥammad b. al-Hādī, along with most jurists, surprisingly states that witnesses are unnecessary, either for the case of taking back one’s wife or issuing a divorce. The only jurists who took literally this Qur’ānic command were the Twelver Shī’a and this is one of two opinions ascribed to al-Shāfi’ī and the

12 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:233; YMDI, 89. Imam ‘Alī said: *huwa aḥaqqu bi-mra’tihi mā lam taghtasil min al-ḥayḍa al-thālitha*. Concerning Imam ‘Alī’s authority, Muḥammad b. al-Hādī says: *wa-qawl ‘Alī ‘alayhi l-salām ‘alā infirādihi hujja ‘indanā*. A slightly different quote from Imam ‘Alī is in Zayd b. ‘Alī, *al-Majmū’*, 220.

13 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:234; YMDI, 89.

Zaydī Imam al-Nāṣir al-Uṭrūsh.¹⁴ Muḥammad b. al-Hādī's defense of his position is very telling: God does not explicitly mention the need for witnesses in Q 2:228, where the topic of taking back one's wife is mentioned, and the Prophet did not stipulate them when he ordered Ibn 'Umar to take back the wife he divorced while she was menstruating.¹⁵ Likewise, divorce is discussed in numerous verses of the Qur'ān, but in none of them are witnesses stipulated as a requirement for its validity. While the case against requiring witnesses for divorce has some merit, Muḥammad b. al-Hādī's argument concerning *raj'a* reveals his subjective approach of favoring a verse that does not contradict his school's opinion over heeding the literal meaning of a Qur'ānic verse that explicitly challenges it.

4 The Third Divorce

While the revocable divorce is relatively straight forward, the same cannot be said of the third and final divorce. The earliest sources of Muslim jurisprudence record heated debates over whether a husband's statement "I divorce you triply" or "You are divorced, you are divorced, you are divorced," resulted in the third, final, irrevocable divorce or merely a single divorce.¹⁶ Muḥammad b. al-Hādī cites an impressive list of religious authorities who held the opinion that a singular expression of a triple divorce results in only a single divorce, although he acknowledges that a few Zaydis broke ranks and agreed with the general Sunnī position that this single utterance brings about three divorces immediately.¹⁷ His justification for this position is even more interesting: "[The

14 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:346; YMDI, 328.

15 For more on Ibn 'Umar's infamous ill-timed divorce, which is widely reported in *ḥadīth* literature, see Scott Lucas, "Divorce *Ḥadīth*-scholar Style: From al-Dārimī to al-Tirmidhī," *Journal of Islamic Studies* 19.3 (2008): 330–332. For a large number of variants of it, see al-Nawawī, *Ṣaḥīḥ Muslim bi-sharḥ al-Nawawī*, 18 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2000), 10:52–60 (Kitāb al-Ṭalāq, Bāb 1: Tahrim ṭalāq al-ḥa'id bi-ghayr riḍāhā). It is also the first *ḥadīth* in Kitāb al-Ṭalāq in Amīr al-Ḥusayn, *Shifā' al-uwām*, 2:488.

16 See, for example, 'Abd al-Razzāq al-Ṣan'ānī (d. 211/827), *al-Muṣannaḥ*, ed. Ayman al-Azhari, 12 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2000), 6:304–308 (Kitāb al-Ṭalāq: Bāb al-Muṭallaq thalāthan).

17 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:217; YMDI, 82. The authorities he lists in support of his position are Imams Zayd b. 'Alī, Muḥammad al-Bāqir, Ja'far al-Šādiq and his sons; Imams al-Qāsim b. Ibrāhīm, al-Hādī, and their sons; Aḥmad b. 'Isā, al-Nāṣir al-Uṭrūsh, al-Manšūr; Ibn 'Abbās, 'Aṭā', Ṭāwūs, and Jābir b. Zayd. He acknowledges that Imam Zayd b. 'Alī in the *Majmū'* narrated by Abū Khālīd al-Wāsiṭī considers these expressions to effect three divorces, along with al-Mu'ayyad bi-llāh, one of the narrations from al-Nāṣir al-Uṭrūsh,

verse Q 2:229] literally says ‘divorce is twice (*al-ṭalāq marratān*)’ and whoever issues a triple divorce with a single utterance has not divorced twice.” He then proceeds to give a linguistic explanation:

There is no problem caused [by the premise] that if the execution of an act is connected to a certain number of times, it is necessary for each one of the times [the act is executed] to take place at a different time from the other ones. If someone said, “I entered the house one time (*marra*),” then the word *marra* would mean “one time.” If he were to say, “I entered two times (*marratayn*),” the word *marratayn* would mean two distinct times. Likewise, if one were to say, “I entered three times (*marrāt*),” the word *marrāt* would mean three distinct times, without any confusion. The same thing applies to the ruling for all statements and actions that are qualified by a number.¹⁸

Perhaps sensing that these arguments were insufficient, given the large number of jurists who considered the triple divorce utterance valid, Muḥammad b. al-Hādī relates three prophetic *ḥadīths* narrated by Ibn ‘Abbās, along with a quote from Imam ‘Alī, that support his position.¹⁹

Muḥammad b. al-Hādī also devotes attention to refuting the widely accepted position that a man who says, “You are divorced, you are divorced, you are divorced,” has effectively divorced his wife three times. His reasoning here is logical: a divorce cannot follow a divorce (*al-ṭalāq lā yatba‘u l-ṭalāq*). In other words, after a man says, “You are divorced,” his wife is no longer his wife, and so he cannot divorce her when she is already divorced from him. This argument was rejected by al-Shāfi‘ī, Abū Ḥanīfa, and the Zaydī Imam al-Mu‘ayyad bi-llāh

and the major Sunnī master jurists al-Shāfi‘ī, Mālik, and Abū Ḥanīfa. Contrast the detail Muḥammad b. al-Hādī provides with the simpler discussion of this topic in Yūsuf b. Aḥmad, *al-Thamarāt al-yāni‘a*, 2:33–35.

18 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:218; YMDI, 82. Arabic: أَنَّهُ لَا إِشْكَالَ أَنْ يُقَاعَ الْفَعْلُ إِذَا عَلَّقَ بِالْعَدَدِ وَحَدًّا مِنْ الْعَدَدِ وَقْتًا غَيْرَ وَقْتِ الثَّانِي. فَإِذَا قَالَ: دَخَلْتُ الدَّارَ مَرَّةً أَفَادَتْ الْمَرَّةَ وَقْتًا وَاحِدًا. وَإِذَا قَالَ: دَخَلْتُ مَرَّتَيْنِ أَفَادَ الْمَرَّتَيْنِ وَقَتَيْنِ غَيْرَيْنِ. وَكَذَلِكَ إِذَا قَالَ: دَخَلْتُ ثَلَاثَ مَرَّاتٍ أَفَادَ ثَلَاثَةَ أَوْقَاتٍ مُتَغَايِرَةً بِلَا إِشْكَالٍ وَكَذَلِكَ الْحُكْمُ فِي سَائِرِ الْأَقْوَالِ وَالْأَفْعَالِ إِذَا عَلَّقَتْ بِالْعَدَدِ.

19 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:218; YMDI, 82–83. Ibn ‘Abbās’s first and second *ḥadīths* are found in *Ṣaḥīḥ Muslim* (Kitāb al-Ṭalāq, Bāb 2: Ṭalāq al-thalāth) and reports that during the lifetime of Prophet Muḥammad, the caliphate of Abū Bakr, and the first two years of ‘Umar’s caliphate, a triple divorce statement counted as a single divorce, but that ‘Umar changed it to effect three divorces. This is a fascinating case of ‘Umar changing the *sunna* of the Prophet Muḥammad according to a canonical Sunnī *ḥadīth* collection.

al-Hārūnī did not find it persuasive.²⁰ Muḥammad b. al-Hādī also argues, again on the basis of the apparent meaning of Q 2:229, that the Qurʾān gives the husband only two options after the second divorce: retain her kindly or release her in kindness. Given that the retention referred to here is “taking back one’s wife (*rajʿa*)” and given that this is forbidden after the third divorce, Muḥammad b. al-Hādī is arguing that a man who goes immediately to the third divorce will be violating God’s command to retain his wife kindly or release her. He rounds out his relatively long defense of this principle with a final question for those jurists who defend the efficacy of the triple divorce:

If divorce unbinds/unties the marriage contract/knot, such that it becomes an unbound/untied contract/knot, then how can a second divorce validly unbind the contract that has already been rendered unbound by the first divorce?²¹

The strict Qurʾānic requirement (Q 2:230) that a triply divorced wife must marry a second husband, then be divorced by him, before remarrying her original husband, coupled with the Prophet’s requirement that this second marriage be consummated, resulted in an unusual new category of man: the *muḥallil*. The *muḥallil* was a man who married a woman for the sole purpose of allowing her to return to her original husband who had triply divorced her. Social historians of the Middle East have shown that this type of person actually existed and was not merely a figure of juristic fantasy.²² In his commentary on Q 2:230, Muḥammad b. al-Hādī clarifies that the man whom she marries in order for her to remarry her original husband can be either free, slave, or even castrated, so long as he is capable of having sexual intercourse.²³ If the second husband consummates the marriage while the woman is in a state of purity for the Ḥajj pilgrimage or fasting during Ramaḍān, and then he divorces her, she can lawfully remarry her original husband. She is not allowed to remarry the man

20 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:219; YMDI, 83.

21 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:220; YMDI, 83. أَنَّ الطَّلَاقَ حَلٌّ لِعَقْدِ النِّكَاحِ فَإِذَا صَارَ الْعَقْدُ
مَحْلُولًا فَكَيْفَ يَصِحُّ بِالطَّلَاقِ الثَّانِي حَلٌّ عَقْدٍ قَدْ صَارَ مَحْلُولًا بِالطَّلَاقِ الْأَوَّلِ؟

22 Barbara Stowasser and Zeinab Abul-Magd, “*Tahli* Marriage in Shariʿa, Legal Codes and the Contemporary Fatwa Literature,” in *Islamic Law and the Challenges of Modernity*, ed. Yvonne Haddad and Barbara Stowasser (Walnut Creek, CA: Altamira Press, 2004), 161–181; and Yossef Rapoport, *Marriage, Money, and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2007), 90–110. The former study demonstrates that this practice still exists today.

23 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:227; YMDI, 86–87.

who divorced her triply if her new husband only has anal intercourse with her, to the exclusion of vaginal intercourse, or if she chooses to apostasize from Islam. What may be most remarkable is that Muḥammad b. al-Hādī, unlike most Sunnī jurists, permits a stipulation in the marriage contract that the marriage is for the explicit purpose of making the triply divorced woman lawful to remarry her previous husband. This position may have been supported by many Zaydis, but Muḥammad b. al-Hādī acknowledges that major jurists, such as Mālik, Sufyān al-Thawrī, al-Awzā'ī, and al-Shāfi'ī all considered this type of clause to invalidate a marriage contract.²⁴ His defense is that if a man stipulates in his marriage contract that he will divorce his wife, the contract is valid, and that the prophetic *ḥadīth* that calls the curse of God upon the *muḥallil* and the woman who is made lawful through their marriage²⁵ only refers to the case of a man having intercourse with a triply divorced woman without a marriage contract or with an invalid contract that states the marriage is for a fixed amount of time.²⁶

5 The *Khul'* Divorce

On the basis of reading the Qur'ān by itself, it would be easy to come to the conclusion that only men can initiate divorce. The subject of the verb *ṭallaqa*, “to divorce,” is always the husband and its object is always the wife or wives in the plural. Wives are referred to as “divorced women” (*muṭallaqāt*) in Q 2:228, and the feminine plural pronoun *hunna* (them) is always used in the cases of the husband “taking *them* back” after a revocable divorce. Surprisingly, nearly all jurists took a single clause in the middle of a long verse about divorce to authorize a process by which a wife could extract herself from her own marriage. This process was unambiguously supported by the Prophet Muḥammad's practice, as multiple *ḥadīths* report his command to the wife of the Companion Thābit b. Qays to return her dower in exchange for his divorcing her or the dissolution of

24 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:229–230; YMDI, 87.

25 This *ḥadīth* is found in *Sunan Abī Dāwūd*, Kitāb al-Nikāḥ, Bāb 16: al-Taḥlīl, *Sunan Ibn Māja*, Kitāb al-Nikāḥ, Bāb 33: al-Muḥallil wa-l-muḥallal lahu, and other Sunnī *ḥadīth* books. Muḥammad b. al-Hādī's narration is: *a-lā ukhbirukum bi-l-tays al-musta'ār? huwa l-muḥallil—la'ana llāhu al-muḥallil wa-l-muḥallal lahu*, which is found in Ibn Māja, *Sunan Ibn Māja*, 4 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1998), 2:461 (no. 1936). Most narrations have the Messenger of God cursing these two categories of people, rather than God cursing them.

26 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:230; YMDI, 87–88.

their marriage.²⁷ What is even more striking is that the Arabic word associated with this process, *khul'*, is not found in Q 2:229 or the primary *ḥadīths* which support it, although its universal usage suggests that the earliest generations of Muslims adopted it as the term for this type of divorce.²⁸ Given the limited Qur'ānic guidance on the topic of female-initiated divorce, Muḥammad b. al-Hādī devotes a significant amount of space in *The Garden and the Pool* to sorting out centuries of Muslim jurisprudence on this topic.²⁹

In his discussion of the *khul'* divorce in his commentary on Q 2:229, Muḥammad b. al-Hādī's primary objectives are to determine the line between a valid *khul'* and an invalid *khul'* and to clarify whether a *khul'* is in fact a divorce.³⁰ Echoing Q 2:229, he declares that a *khul'* is valid only if both spouses fear they will not be able to uphold what God has made obligatory for them, among the claims a husband has on his wife and a wife on her husband. Deploying the Qur'ānic expression *nushūz* (recalcitrance), Muḥammad b. al-Hādī states that a *khul'* can only take place if the *nushūz* is coming from the wife or from both the husband and wife simultaneously. It is strictly forbidden for the husband to use the *khul'* for the purpose of harming his wife, by essentially having her pay for their divorce instead of him.³¹ If a *khul'* takes place, and if it is discovered that the *nushūz* exclusively came from the husband, the money or property she has paid to release herself from the marriage is returned to her, and a revocable divorce takes place, according to Muḥammad b. al-Hādī, the jurists among the family of the Prophet (except for al-Mu'ayyad bi-llāh), Mālik, Abū Thawr, Ibn Rāhawayh (d. 238/853), the Ṣāḥirīs, and several Successors.³² He acknowledges that this stipulation is not recognized by Abū Ḥanīfā, al-Shāfi'ī, or the Zaydī

27 For an analysis of these *ḥadīths* in five important Sunnī *ḥadīth* collections, see Lucas, "Divorce *Ḥadīth*-Scholar Style," 348–349. They are found in al-Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, Kitāb al-Ṭalāq, Bāb 12: al-Khul' wa-kayfa l-ṭalāq fih. For Zaydī narrations, see *Shifā' al-uwām*, 2:495.

28 The root *kh-l-* occurs a single time as a verb in the Qur'ān in its original meaning, "to cast off," and is used to describe Moses casting off his sandals before God at the burning bush (Q 20:12).

29 For an insightful analysis of the *khul'* process, see Kecia Ali, *Marriage and Slavery in Early Islam*, 146–154. Ali identifies parallels between *khul'* and the manumission by contract (*kitāba*) that I discussed above in chapter 4, which include the consent of the husband or slave master and the payment of a sum of money for the wife's or slave's release.

30 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:220–224.

31 In a regular, husband-initiated divorce, the husband is forbidden from taking back any part of the dower he gave his wife and is obligated to pay immediately any unpaid balance of the dower. Therefore, he has a financial incentive for his wife to initiate a *khul'* divorce.

32 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:221; YMDI, 84.

Imam al-Mu'ayyad bi-llāh, all of whom say that it is reprehensible for the husband to be the sole source of *nushūz* in a *khul'* divorce, but that this does not invalidate it. Muḥammad b. al-Hādī's evidence for this stipulation is the actual Qur'ānic verse (Q 2:229) in which the *khul'* process is authorized: "It is not lawful for you to take back from women anything you have given them except when both fear that they cannot observe within the limits of God."

Another outstanding question regarding the *khul'* divorce is the appropriate compensation the wife has to give to her husband for it to take place. It is easy to discern a split between Muḥammad b. al-Hādī, most Zaydis, Mālik, Ibn Rāh-awayh, and the Zāhirīs, who limit the maximum compensation that a husband can demand to the wife's dower, maintenance, and child support during her waiting period, and Abū Ḥanīfa, al-Shāfi'ī, and Imam al-Mu'ayyad bi-llāh, who set no upper limit on the compensation, so long as both spouses agree to it.³³ Muḥammad b. al-Hādī's evidence is the famous *ḥadīth* of the wife of Thābit b. Qays (d. 12/633), whom he identifies as Jamīla bint Salūl, who was told by the Prophet to return her garden to Thābit, and, in this narration, explicitly forbade him from taking anything additional from her.³⁴ Despite this clear statement, Muḥammad b. al-Hādī reveals an internal Zaydī debate over whether the wife can voluntarily offer her husband more compensation than he can demand of her. In one interpretation of Imam al-Hādī ilā l-Ḥaqq's opinion and in the opinion of Imam al-Manṣūr, anything beyond the dower, maintenance, and child support is forbidden, even if it is a gift from the wife. In his defense, Muḥammad b. al-Hādī narrates two reports, the latter of which is Imam 'Alī's statement, "The compensation of the woman doing a *khul'*, whether small or large, less than the dower or greater than it, it is fine."³⁵ He also immediately informs his reader that the proper way to reconcile these reports with the correct legal position is to understand them as references to the wife's voluntary supplemental compensation for her release, even though it is difficult to see how this is implied in either report.

One final epistemological question is whether the *khul'* process is in fact a divorce. The earliest books in the Shāfi'ī school, such as al-Shāfi'ī's *al-Umm*

33 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:222; YMDI, 84.

34 This is the second of two *khul'* *ḥadīths* in *Shifā' al-uwām*, 2:495. The addition forbidding the husband from taking more than his wife's dower as compensation is absent from the narrations in al-Bukhārī's *Ṣaḥīḥ*, but it is found in *Sunan Ibn Māja*, Kitāb al-Ṭalāq, Bāb 22: al-Mukhtalī'a ta'khudhu mā a'tāhā.

35 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:223; YMDI, 84–85; Arabic: ما افتدت به المختلعة من قليل أو كثير أقل من الصداق أو أكثر فلا بأس به.

Imam 'Alī's statement is also found in *Shifā' al-uwām*, 2:498.

and the *Mukhtaṣar* of al-Muzanī (d. 264/878), put their chapter on *khulʿ* at the end of their book on marriage and prior to their book on divorce, which suggests that jurists affiliated with this law school considered the *khulʿ* to be distinct from *ṭalāq*-divorce. Jurists were faced with a question: Is *khulʿ* a divorce or an annulment (*faskh*)? In *The Garden and the Pool*, Muḥammad b. al-Hādī answers that *khulʿ* is a single divorce that is irrevocable, an opinion in which he is joined by nearly all major Sunnī jurists and early Muslim religious authorities.³⁶ Just for good measure, he cites a *ḥadīth* in which the Prophet stated, “He made the *khulʿ* a divorce,” and a quote from Imam ‘Alī, narrated by Zayd b. ‘Alī, that when a man takes compensation from his wife, it is an irrevocable divorce.³⁷ He also affirms that after a *khulʿ* divorce takes effect, the ex-husband cannot divorce her in any way or inherit from her, according to the leading Zaydī Imams and al-Shāfi‘ī.

6 Divorce Prior to Consummation

I have shown that the Qur’ān supplies rules regarding the dower in two potential cases of divorce in which the husband divorces his wife prior to having sexual intercourse with her. Verse 2:236 stipulates that the wife is to receive a gift from her husband in the event the dower has not been set between them, while Q 2:237 allocates a minimum of half the dower to the woman who is divorced prior to consummation when the dower has been agreed upon by her guardian and her suitor. Despite the clarity of the apparent meaning of these verses, Muḥammad b. al-Hādī dedicates space in *The Garden and the Pool* to elaborate upon the nature of the gift the husband is ordered to give his unconsummated divorced wife and to expand the meaning of Q 2:237 to include divorce prior to sexual intercourse and seclusion in which intercourse could have taken place between the married couple.

Verse Q 2:236 states, in reference to women whose husbands divorce them prior to fixing the dower and consummation, “Provide for them, the rich according to his means, and the needy according to his means, a fair provision.” What is a “fair provision?” After he informs us that this provision is “not quanti-

36 Muḥammad b. al-Hādī mentions that only the Twelver Imams Muḥammad al-Bāqir and Ja‘far al-Šādiq, the Zaydī Imam al-Nāṣir, and one of the two opinions of al-Shāfi‘ī, consider a *khulʿ* to be an annulment rather than a divorce; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:221; YMDI, 84.

37 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:221; YMDI, 84. For Imam ‘Alī’s statement, see Zayd b. ‘Alī, *al-Majmū‘*, 224, and *Shifā’ al-uwām*, 2:498.

fied" (*ghayr muqaddara*), Muḥammad b. al-Hādī reports a rich array of earlier opinions, which can be summarized as follows:³⁸

al-Shāfiʿī: The maximum is a servant; the middle is a garment; and the minimum is a ring.

Abū Ḥanīfa: The minimum is a coarse shirt, waist wrapper (*milḥafa*), and head covering (*khimār*).

Ibn ʿAbbās and al-Shaʿbī: A servant, a cloak, or a slave.

Saʿīd b. al-Musayyab (d. 94/713), ʿAṭāʾ and al-Ḥasan: The best is a servant, and the least is a garment.

al-Shaʿbī (2): A shirt, head covering, waist wrapper, and outer garment (*jilbāb*).

Ibn ʿUmar: 30 dirhams.

Anonymous: Half of her equivalent dower.

Shurayḥ: 500 dirhams.

Muḥammad b. al-Hādī defends his position that the "fair provision" is totally unspecified by making the rather obvious point that, had it been specified, there would not have been all this disagreement over what it should be. He also draws upon another Qurʾānic verse, Q 2:241, to argue that this "fair provision" is obligatory upon the husband, in opposition to Mālik, al-Layth b. Saʿd, and Ibn Abī Laylā, who claimed that it was only a recommended practice.³⁹

In his commentary on Q 4:20–21, Muḥammad b. al-Hādī displays his concern with defining the legal concept of "alone time (*khalwa*)," during which intercourse could plausibly occur.⁴⁰ He bases his argument upon the ambiguity of the Qurʾānic expression, "one of you has gone into the other,"⁴¹ which he claims can mean sexual intercourse or secluded time together. Likewise, in Q 2:237, the figurative expression for intercourse is "before you have touched them," which Muḥammad b. al-Hādī claims can mean sexual intercourse or "alone time." Why

38 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:262; YMDI, 100. The opinions starting with Ibn ʿAbbās and al-Shaʿbī through Shurayḥ can be found in al-Jishumī, *al-Tahdhīb*, 2:953–954.

39 Verse 2:241 reads: "For divorced women a provision in kindness—an obligation for those who are God-fearing." Muḥammad b. al-Hādī reports six different opinions concerning the meaning of "a provision" in this verse, one of which is that it refers exclusively to women who are divorced prior to the fixing of their dowers and compensation. In the next section, I show how Muḥammad b. al-Hādī equates the provision mentioned in this verse to the maintenance a husband owes his wife during her waiting period; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:270; YMDI, 103.

40 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:364–366; YMDI, 139–141.

41 Arabic: *wa-qad afdā baʿḍukum ilā baʿḍ*. The word *khalwa* is not found in this verse.

is he so concerned about whether the verb “to touch” includes “alone time?” As Q 2:237 makes clear, if “alone time” is included in the semantic field of “touching,” then this verse supports the Zaydī legal school’s position that a divorced woman receives her full, complete dower if she can prove that she and her husband spent time alone together during a time when intercourse was possible, and not just after the couple has had intercourse.⁴² Muḥammad b. al-Hādī’s argument, that the Qur’ānic expression “to touch” implies proximity and being very near to someone, as well as intercourse in some contexts, is embraced by the scholars among the family of the Prophet, most Iraqi scholars (the Ḥanafīs and others), and several Companions of the Prophet.⁴³ His argument also illustrates how Muslim jurists could take advantage of the Qur’ān’s use of figurative speech, such as “touching” and “entering” instead of “having intercourse,” to benefit a woman who, in this case, was divorced prior to the consummation of her marriage, by awarding her the full fixed dowery, rather than merely half of it.

7 The Waiting Period

The waiting period (*‘idda*) is a central feature of the divorce process in both the Qur’ān and Islamic law more broadly. It is a liminal phase, when the wife is restricted to her home and cannot remarry, and during which, in most cases, the husband is obligated to provide some form of support. Despite the substantial Qur’ānic legislation on the topic of the waiting period, jurists had to resolve several ambiguities. These ambiguities included the meaning of the word *qur’* in Q 2:228; the waiting period of a slave woman; the waiting period of a pregnant woman who gives birth shortly after her husband divorces her; and whether the ex-husband’s financial obligations to his ex-wife during her waiting period are the same after the third divorce as they are after the first two divorces.

The Qur’ān states that the waiting period for a woman is three *qurū’* in Q 2:228. Unfortunately, the word *qur’* belongs to a class of Arabic words that can mean one thing and its opposite (*al-aḍḍād*). According to the Companions ‘Alī, Ibn ‘Abbās, ‘Umar, Ibn Mas‘ūd, and Abū Mūsā al-Ash‘arī (d. 52/672), *qur’* means “periods of menstruation,” whereas for the Companions ‘Ā’isha, Zayd b.

42 Yūsuf the Jurist reports consensus of the Family of the Prophet that the wife is due her full dower if “alone time” took place and sexual activity other than intercourse took place between them, prior to cohabitation; *al-Thamarāt al-yāni’a*, 2:342.

43 He acknowledges that al-Shāfi‘ī restricts the meaning of “to touch” in this verse to sexual intercourse.

Thābit (d. 45/665), and Ibn ‘Umar, it means “periods free from menstruation.”⁴⁴ Muḥammad b. al-Hādī adopts the first opinion, which he claims is supported by the verse in the Sūra of Divorce, in which three months are substituted for three *qurū*. Presumably, the fact that there are only two menstrual periods during three periods free from menstruation, the one-to-one correspondence of *qurū* to months would not work save if *qur* meant “period of menstruation.” This position is also shared with the family of the Prophet (except for the Twelver Imams al-Bāqir and al-Ṣādiq), Abū Ḥanīfa, al-Awzā‘ī, al-Thawrī, and ‘Umar, but it is opposed by al-Shāfi‘ī, ‘Ā‘isha, Zayd b. Thābit and Ibn ‘Umar. Muḥammad b. al-Hādī’s second piece of evidence is that Imam ‘Alī considered *qur* to mean “menstrual period” and, as he reminds his readers throughout *The Garden and the Pool*, “[‘Alī’s] opinion is a proof for us.”⁴⁵

Jurists frequently reduced the legal requirements on slaves, probably on the basis of analogy from their reduced punishment that the Qurʾān mentions in Q 4:25. Muḥammad b. al-Hādī reports that only the Zaydī Imams, like al-Qāsim b. Ibrāhīm, al-Hādī ilā l-Ḥaqq, and Abū Ṭālib al-Hārūnī, believed that the waiting period for slave women who were divorced or whose husbands had died was the same as the waiting period of free women.⁴⁶ He acknowledges that the eponym of the Zaydis, Zayd b. ‘Alī, along with his half-brother Muḥammad al-Bāqir and nephew, Ja‘far al-Ṣādiq, all shared the general Sunnī position that the waiting period for a divorced slave woman is only two menstrual cycles instead of three. His defense of the former position is quite literalist: the Qurʾān does not specify any distinction between free and slave women who observe waiting periods, and so the literal meaning of Q 2:228 applies in this case, and Q 2:234 applies in the case of the widowed slave.⁴⁷

The waiting period of the pregnant divorced woman caused Muslim jurists some consternation. If the divorce occurred early in a woman’s pregnancy, then her waiting period would be longer—probably significantly longer—than three menstrual cycles or three months. But what if a man divorced his wife late in her third trimester or the day before she delivered her child? Would her waiting period still be conditional upon her delivery of the child, or did it have to be at least three months? Remarkably, most jurists held the position that the

44 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:209; YMDI, 79; al-Jishumī, *al-Tahdhīb*, 1:909. The *Tahdhīb* has ‘Amr instead of ‘Umar for the first position, which appears to be a misprint, as the name is ‘Umar in al-Jishumī’s likely source, al-Tha‘labī, *al-Kashf wa-l-bayān*, 6 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2004), 1:358.

45 Arabic: *wa-qawluhu ‘indana ḥujja*; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:212–213; YMDI, 80.

46 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:213; YMDI, 80.

47 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:213.

waiting period for the pregnant woman could be as short as a few days if she delivered her child shortly after her husband divorced her. This position was supported by a widespread *ḥadīth* in which a woman named Subay'a gave birth shortly after husband died and the Prophet decreed that her waiting period ended with childbirth.⁴⁸ By contrast, Muḥammad b. al-Hādī, along with the scholars among the family of the Prophet, advances the position that the pregnant woman's waiting period, whether on account of divorce or her husband's demise, is always the longer of the two waiting periods. His justification for this minority position is that the Qur'ān fixes the waiting period in the case of a widow at four months and ten days (Q 2:234), which means that every widow must observe this many days, regardless of whether they are pregnant or not. This opinion is also narrated from Imam 'Alī, and he claims that the case of Subay'a does not apply as a general rule.⁴⁹

The Qur'ān states unambiguously in Q 65:6 that men must provide lodging for the wives whom they divorce and pay for their needs if they are pregnant. It also instructs that divorced women are owed "a provision in kindness" (Q 2:241), which a few exegetes took to mean maintenance (*nafaqa*) during the waiting period. However, many jurists also assigned differing obligations to the husband for his ex-wife during her waiting period according to the type of divorce he issued. In *The Garden and the Pool*, Muḥammad b. al-Hādī reports that there is consensus that a woman who is divorced is entitled to lodging and maintenance at the expense of her ex-husband, so long as she is not guilty of recalcitrance (*nushūz*), in the opinion of some jurists, including himself.⁵⁰ The case of the irrevocable divorce of a woman who is not pregnant is more divisive, especially within the small Zaydī school of law, and it is unclear which position Muḥammad b. al-Hādī takes.⁵¹ Zayd b. 'Alī and al-Nāṣir al-Uṭrūsh awarded

48 For a discussion of this *ḥadīth* in six Sunnī collections, see Lucas, "Divorce *Ḥadīth*-Scholar Style," 337–338. It is found in *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Ṭalāq, Bāb 39: Wa ulāt al-aḥmāl ajaluhunna an yaḍa'na hamlahunna; *Ṣaḥīḥ Muslim*, Kitāb al-Ṭalāq, Bāb 8, Inqida' 'iddat al-mutawaffā 'anhā zawjuhā wa-ghayrihā bi-waḍ' al-ḥaml, and *Sunan Abī Dāwūd*, Kitāb al-Ṭalāq, Bāb 47: Fi 'iddat al-ḥāmil, among other Sunnī collections. The *ḥadīth* of Subay'a is critiqued in *Shifā' al-uwām*, 2:524–525.

49 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:250–251; YMDI, 95.

50 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:353; YMDI, 331. Muḥammad b. al-Hādī discusses maintenance during the waiting period in his commentary here on Q 65:6 and in greater detail on in his commentary on Q 2:241, which he references in his remarks on Q 65:6.

51 In his commentary on Q 2:241, Muḥammad b. al-Hādī writes, "the irrevocably divorced woman receives neither maintenance nor lodging," (*al-muṭallaqa al-mabtūta lā nafaqa lahā wa-lā suknā*) and then cites Imam al-Qāsim, Mālik, Ibn 'Abbās, and even the Twelver Shī'a, implying that this is his preferred opinion; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:271;

the irrevocably divorced woman lodging and maintenance during her waiting period; al-Qāsim b. Ibrāhīm assigned her neither; and al-Hādī ilā l-Ḥaqq, along with most jurists, awarded her maintenance but no lodging. A fourth opinion is associated with al-Shāfiʿī, who allocated lodging but no maintenance for her.⁵²

Why is there so much confusion over the obligations upon the husband during the waiting period that follows an irrevocable divorce? The simple answer is the existence of a well-known *ḥadīth* concerning the divorce of a woman named Fāṭima bint Qays. In nearly all versions of this *ḥadīth*, the Prophet Muḥammad assigned neither lodging nor maintenance to Fāṭima after her husband divorced her irrevocably (and possibly triply).⁵³ Many jurists, including Mālik, al-Awzāʿī, and the Zaydī Imam al-Qāsim b. Ibrāhīm, took Fāṭima's case to be applicable to all cases of irrevocably divorced women, in effect specifying or abrogating the Qurʾānic verse and scholarly consensus, which were understood to award all divorced women lodging and maintenance during their waiting periods.⁵⁴ By contrast, Zayd b. ʿAlī and al-Nāṣir did not assign this *ḥadīth* any weight, while al-Hādī ilā l-Ḥaqq, al-Muʾayyad bi-llāh and Ibn Ḥanbal considered the deprivation of maintenance to be forbidden on the basis of the Qurʾānic prohibition against harming one's ex-wife (Q 2:231).⁵⁵ Al-Shāfiʿī's opinion was an effort to reconcile the rulings found in both the Qurʾān and the *ḥadīth* of Fāṭima bint Qays: he awarded this divorced woman lodging on the basis of the Qurʾān, and deprived her of maintenance on the basis of the Prophet Muḥammad's conduct toward Fāṭima bint Qays.⁵⁶ However, all jurists awarded the irrevocably divorced pregnant woman maintenance, presumably on the basis of Q 65:6 and the fact that Fāṭima bint Qays is never reported to have been pregnant when she was divorced.

YMDI, 103. However, in his commentary on Q 65:6, the first position he lists is that of Imams Zayd and al-Nāṣir (maintenance and lodging) and he provides evidence in support of all three positions. The fact that he refers readers back to his commentary on Q 2:241 suggests that his choice was Imam al-Qāsim's position.

52 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:271–272; YMDI, 103.

53 For a discussion of the *ḥadīth* of Fāṭima bint Qays and its variants, see Lucas, "Divorce, *Ḥadīth*-Scholar Style," 333–337.

54 Recall that lodging is explicitly awarded to the divorced woman in Q 65:6, while maintenance is not the generally accepted meaning "fair provision" (*matāʿ*) in Q 2:241. Rather, maintenance seems to have been awarded on the basis of scholarly consensus.

55 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:271; YMDI, 103.

56 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:271–272; YMDI, 103.

8 The Husband Who Declares His Wife Forbidden to Himself

The Qur'ān provides some guidance regarding statements uttered by a husband that could be interpreted as divorce statements. The clearest case is the *ḡihār* oath, in which a husband says to his wife "You are like my mother's back," which requires an expiation if the husband wishes to remain married to her. However, the Qur'ān is silent on most cases of implicit divorce statements, which resulted in jurists developing techniques for assessing them, typically by means of ascertaining the husband's intention. One special case involves a husband saying, "My wife is forbidden (*ḡarām*) to me." Even though this is not technically an oath, the word *ḡarām* is one of the most powerful words in the Arabo-Islamic lexicon, and jurists were unsure what to do if a man made this statement.

In his commentary on verse Q 66:1, Muḡammad b. al-Hādī address this specific case of implied divorce. The verse itself, which is one of only two subtle verses concerning divorce according to my taxonomy, reprimands the Prophet Muḡammad for declaring something unlawful in order to curry favor with some of his wives, and forbids him from declaring anything unlawful that God has made lawful.⁵⁷ Muḡammad b. al-Hādī is most interested in the legal disagreement that surrounds the problem of a husband declaring his wife unlawful to himself in this context, and he enumerates the following *eleven* different legal opinions on this matter:⁵⁸

- 1) Muḡammad b. al-Hādī, Imam 'Alī, Imam Abū Ṭālib al-Hārūnī, 'Umar: It is a single revocable divorce.
- 2) Imam al-Qāsim b. Ibrāhīm: If he intended divorce, it is divorce; if he intended *ḡihār*, it is *ḡihār*; if he did not intend anything, he must expiate the oath.
- 3) Imam Zayd b. 'Alī, Aḡmad b. 'Īsā (his grandson): If he intended divorce, it is divorce; otherwise it is *ilā'*.
- 4) Imam al-Nāṣir, Abū Salama b. 'Abd al-Raḡmān (d. 94/713), Masrūq (d. 63/683): It is nothing, since it is a false statement.

57 I have categorized this verse as subtle rather than as a legal statement because it is very ambiguous as to what it refers and appears to be a rebuke of something the Prophet Muḡammad did. Therefore, even though the verse contains the general legal concept of "making something illicit (*taḡrīm*)," it is far from obvious that this is a reference to a man declaring his wife to be forbidden to him.

58 *al-Rawḡa*, Maktabat Ahl al-Bayt, 2:357–359; YMDI, 333; MS Milan, Ambrosiana A6, fol. 100r–100v.

- 5) Abū Bakr, ʿĀ'isha, ʿUmar, Ibn ʿUmar, Zayd b. Thābit, Ibn Masʿūd: It is an oath that must be expiated.
- 6) al-Awzāʿī: It is an oath to be expiated if there was no intention for divorce.
- 7) Mālik, Ibn Abī Laylā: It is a triple divorce.⁵⁹
- 8) al-Shāfiʿī: Divorce if he intended divorce; *ḡihār* if he intended *ḡihār*; expiation if he had no intention or the intention was to make her unlawful.
- 9) Abū Ḥanīfa: If he intended *ḡihār*, it is *ḡihār*; if he intended *ilāʾ*, it is *ilāʾ*; if he intended a divorce, it is irrevocable; if he intended two divorces, it is one irrevocable divorce; if he intended three divorces, it is three; if he did not intend anything, it requires expiation.
- 10) Ibn Ḥanbal (d. 241/855), ʿUthmān (d. 36/656): It is *ḡihār*.
- 11) Ḥammād b. Abī Sulaymān (d. 120/738): It is an irrevocable divorce.

How does Muḥammad b. al-Hādī resolve this wide range of opinions? After providing evidence for a few of the positions, he calmly offers the following justification for his choice opinion that the husband's statement "You are forbidden to me" to his wife is a revocable divorce:

The defense for our position, which is if [the husband] intends a divorce, it is a single revocable divorce, according to the apparent [position] of the Commander of the Faithful⁶⁰ (upon him peace) that a divorce takes place by means of this expression. When this is established, we say that this unties the marriage knot and so long as there is no recalcitrance from the wife, then it is not irrevocable (*bāʿina*) because the irrevocable divorce has conditions mentioned in the Book and the Sunna. The expression "forbidden" (*ḡarām*) is not more forceful than an explicit statement of divorce and the most it can mean is its equivalence. We have already provided the evidence for our position concerning divorce prior to this passage at the divorce verse in the Sūra of the Cow.⁶¹

59 Muḥammad b. al-Hādī acknowledges that there is a narration from Imam ʿAlī to this effect, but that it is not sound in his opinion, since he assigns the first opinion to ʿAlī, on the basis of Imam al-Hādī's *Kitāb al-Aḥkām*; *al-Rawḍa*, YMDI, 333. Imam al-Hādī does in fact declare that narrations of Imam ʿAlī assigning this expression and other figurative expressions that could mean divorce are inauthentic; al-Hādī ilā l-Ḥaqq, *Kitāb al-Aḥkām*, 1:373.

60 In other words, Imam ʿAlī.

61 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:359; MS Milan, Ambrosiana A6, fol. 100v; *al-Rawḍa*, YMDI, 333–334. Arabic:

This wide array of views, ten of which Muḥammad b. al-Hādī almost certainly obtained from Qāḍī Zayd al-Kalārī's *Sharḥ al-Qāḍī Zayd*,⁶² highlights that many jurists endeavored to refer an extra-scriptural statement to a scriptural one, like *ḡihār*, *ilā'*, or divorce, and that, in the absence of a clear Qur'ānic or Sunnaic text, tremendous diversity of opinions could occur. The case of a man declaring his wife to be forbidden to him contrasts with the vast majority of legal cases that Muslim jurists engaged, since their disagreements generally were reducible to two or three positions. Had eleven or more positions been the norm, it is unlikely that Islamic law would have achieved the degree of consistency across schools that it did.

9 Conclusion

It is clear from Muḥammad b. al-Hādī's twenty-one legal passages on divorce that the Qur'ān provides a far more detailed framework for the laws of divorce than it does for prayer. It would be impossible to derive the essential elements of formal prayer based solely on the Qur'ān, whereas the constituent elements of divorce are both identified and, in the case of the waiting period, adumbrated. The distinction between revocable and irrevocable divorce is manifest in Q 2:228–229, and Q 2:230 indicates more severe consequences for what Muslim scholars unanimously understood to be the third divorce. The length of the waiting period is specified in Q 2:228 and Q 65:4–5, and the husband's obligation to provide maintenance and lodging is mentioned in Q 65:6. Finally, the Qur'ān provides some instruction for three acts or processes beyond the *ṭalāq*-divorce that can terminate a marriage, namely *ilā'*, *ḡihār*, and *li'ān*.

Despite the relative abundance of legal content on divorce that is easily transferable from the Qur'ān to legal manuals, Muslim jurists like Muḥammad b. al-Hādī had to draw on additional sources and reasoning to address a wide

وجه قولنا أنه إن نوى الطلاق كانت تطليقة رجعية ما ظهر عن أمير المؤمنين عليه السلام من وقوع الطلاق بهذا اللفظ فإذا ثبت ذلك قلنا: هذا أحل لعقد النكاح فإذا لم يكن ثم نشوز من الزوجة لم يكن بائناً لأن للبائن شروطاً مذكورة من الكتاب والسنة ولفظ الحرام ليس بأقوى من صريح لفظ الطلاق؛ وأكثر ما يكون مثله. وقد بينا الدلالة على المذهب في الطلاق فيما تقدم من الآيات في الطلاق في سورة البقرة.

62 All of the opinions, save that of Zayd b. 'Alī and Aḥmad b. 'Īsā, are found in Kitāb al-Ṭalāq, Bāb Alfāz al-ṭalāq wa-aḥkāmihā in al-Qāḍī Zayd al-Kalārī, *al-Jāmi' fī l-Sharḥ*, ms Milan, Biblioteca Ambrosiana, Nuovo Fondo, ar. E 406, fol. 106r.

range of topics. In this chapter, his linkage of legal passages on six major aspects of divorce to the webs of Sunnī and Zaydī legal disagreement was analyzed. In the case of revocable divorce, Muḥammad b. al-Hādī identified multiple ways of resolving disputes between the spouses over when the wife's waiting period ended, as this can directly affect whether the husband has taken back his wife or whether his divorce has become irrevocable. He also argued that witnesses are merely optional for divorce or taking back one's wife, despite the literal language of Q 65:2, which says "and call to witness two just men among you." In contrast to most Sunnī schools of law, Muḥammad b. al-Hādī (and most Zaydis) consider the utterance of a triple divorce in a single setting to be equivalent to merely a single divorce, in part on the basis of the commonsense argument that one's wife is divorced following the initial utterance of "You are divorced" and it is impossible to divorce someone who is not one's wife. Like nearly all jurists, Muḥammad b. al-Hādī affirms the right of a woman to initiate a *khul'* divorce, and he defended his school's position that it is a divorce rather than an annulment.

One of Muḥammad b. al-Hādī's more surprising opinions in *The Garden and the Pool* relates to the not uncommon situation in which a marriage is broken off during the time between the contract and cohabitation. On the basis of his interpretation of Q 4:21, especially the clause "after one of you has gone into the other," Muḥammad b. al-Hādī argues that a woman is entitled to her full dower if she and her prospective husband were alone together in a private place and could have had sexual intercourse. Even though Q 2:237 explicitly says that a woman in this situation is entitled to only half of her dower, Muḥammad b. al-Hādī raises it to the full dower even if there is no proof that the couple in fact had intercourse but that they did spend time alone when intercourse could have taken place.

Muḥammad b. al-Hādī's discussion of divorce passages of the Qur'ān also reveals one of the most extraordinary cases of legal disagreement. Muslim jurists offered a bewildering range of interpretations of the consequences of a man who declares his wife to be unlawful (*ḥarām*) to him, and Muḥammad b. al-Hādī decided to incorporate this content into his commentary on Q 66:1. Each of the four Sunnī Imams—Abū Ḥanīfa, Mālik, al-Shāfiʿī, and Ibn Ḥanbal—had a unique opinion, and Zaydī authorities were split between four additional positions. Muḥammad b. al-Hādī, drawing in large part from *Sharḥ al-Qāḍī Zayd*, relates an additional three positions, leaving the reader with eleven possibilities from which to choose. However, he argues forcefully only for his position, which he shared with Imam ʿAlī, Imam Abū Ṭālib al-Hārūnī and the caliph ʿUmar, that if the husband intended a divorce, it is a single, revocable divorce, and nothing more.

This chapter furnishes additional evidence that Muḥammad b. al-Hādī uses the legal Qur’ān commentary format for both pedagogical and self-promotional purposes in his discussion of divorce verses. He provides the reader with copious details surrounding the core elements of divorce, carefully citing earlier authorities and evidence for most cases. His presentation of legal disagreement is elegant and, in the case of the debate over the rights of the irrevocably divorced woman who is not pregnant, he guides his reader through the arguments for each of the advocated positions, without advocating too strongly for any of them. By contrast, Muḥammad b. al-Hādī provides robust arguments in support of the invalidity of a triple divorce, the status of a *khul’* divorce as an irrevocable divorce, the equivalence between the waiting period of a free divorced woman and a divorced slave woman, and the awarding of the full dower to a contractually married couple who, after enjoying some “alone time,” divorced prior to cohabitation. In these cases, along with many others we have seen, Muḥammad b. al-Hādī adroitly uses the legal Qur’ān commentary format to promote his own opinions in his effort to influence future generations of Zaydī scholars.

Warfare

Fighting is ordained for you, though it is hateful to you. It may happen that you hate a thing which is good for you, and it may happen that you love a thing which is bad for you. God knows, while you know not.

Qurʾān 2:216



My analysis of three major legal topics present in the Qurʾān concludes with the topic of warfare. While the Arabic word *jihād* has become synonymous with Muslim militancy and Islamic extremism in the Western media, none of the legal passages Sayyid Muḥammad b. al-Hādī discusses regarding warfare uses this word or its derivatives. Instead, the primary word the Qurʾān deploys for combat is the verb *qātala*, which simply means “to fight.” Unlike *jihād* (and its verb, *jāhada*), which legally can only be directed toward non-Muslims, *qitāl* is a generic term for fighting, and the Qurʾān uses it for fighting polytheists, People of the Book, and Muslim rebels, whom jurists call *bughāt* (singular, *bāghī*). *Jihād* also means much more than fighting, as its root meaning is “exertion,” and early in their history Muslims divided it into a lesser *jihād*, which was identified with combat, and a greater *jihād*, which was the personal effort to tame one’s soul by controlling one’s passions.

Most of the contemporary secondary literature on *jihād*, such as the books by David Cook and Asma Afsaruddin, focuses on Islamic scriptural sources, and devotes limited attention to the jurisprudence behind the laws of war.¹ Reuven

1 David Cook, *Understanding Jihad*, second edition (Berkeley, University of California Press, 2015); Asma Afsaruddin, *Striving in the path of God* (Oxford: Oxford University Press, 2013). Chapters 2 and 3 of Afsaruddin’s book provide summaries of a rich array of Qurʾān commentaries on many of the legal verses concerning warfare; see p. 11 in her book for a list of the Qurʾānic verses she discusses. Three books that examine aspects of the Islamic legal literature concerning warfare are Rudolph Peters, *Jihad in Classical and Modern Islam* (Princeton: Markus Wiener, 1996); Khaled Abou El Fadl, *Violence and Rebellion in Islam* (Cambridge: Cambridge University Press, 2001); and Alfred Morabia, *Le Ġihād dans L’Islam Médiéval* (Paris: Albin Michel, 1993).

Firestone's valuable book *Jihad* offers both a helpful overview of the types of fighting verses in the Qur'ān and artfully interprets the presence of the noteworthy number of passages on this topic as an indicator that many Muslims were unenthusiastic about participating in the Prophet Muḥammad's military campaigns.² Other books that discuss the Qur'ān more broadly, such as Fazlur Rahman's *Major Themes of the Qur'ān* and Angelika Neuwirth's *The Qur'ān and Late Antiquity*, generally refrain from addressing the substantial number of verses urging Muslims to fight.³

How do Muslim jurists approach the Qur'ānic passages regarding warfare? Most of them discuss the laws of war in chapters titled *ṣiyar*, an Arabic word that means "conduct" and in this context refers to the lawful conduct of war.⁴ In the Zaydī tradition, the 'Alid rebel against the 'Abbāsid Caliph al-Manṣūr, Muḥammad b. 'Abd Allāh (d. 145/762), known as al-Nafs al-Zakiyya, wrote a work titled *ṣiyar* that is quoted in later Zaydī books such as Abū Ṭālib al-Hārūnī's *al-Taḥrīr*, even though it no longer is extant as an independent work. The Shāfi'ī master jurist, Abū Ḥāmid al-Ghazālī, titled his chapter on warfare *Kitāb al-Ṣiyar* in his *fiqh* book *al-Wasīṭ*, as does al-Nawawī. By contrast, both the Mālikī Ibn Abī Zayd al-Qayrawānī (d. 386/996) and the Twelver Shī'ī jurist al-Muḥaqqiq al-Ḥillī (d. 676/1277) titled their chapters on warfare with the word *jihād*, which shows that Muslim jurists were divided over what to call the section of their legal works devoted to warfare.⁵

The legal topic of warfare has special significance in the case of the Zaydī tradition. It is in this chapter that the necessity for an Imam is defended and

2 Reuven Firestone, *Jihad* (Oxford: Oxford University Press, 1999), 77–84.

3 Fazlur Rahman discusses *jihād* briefly at the end of his chapter on "Man in Society," where he defines it as "a total endeavor ... to make God's cause succeed;" Fazlur Rahman, *Major Themes of the Qur'ān* (Minneapolis: Bibliotheca Islamica, 1994), 63. Only in his first appendix does he state that during the Prophet's Medinan period, *jihād* was "often equivalent to *qitāl* or to active war;" p. 160. Angelika Neuwirth, in her comprehensive work *The Qur'ān and Late Antiquity*, only refers to three verses in Sūra 8 and a single verse in Sūra 9, where many of the warfare verses are found. In her discussion of martyrdom, she surprisingly refrains from mentioning any Qur'ānic verses related to fighting; Angelika Neuwirth, *The Qur'ān and Late Antiquity* (Oxford: Oxford University Press, 2019), 337–339.

4 The word *ṣiyar* is the plural of *sīra*, which can also mean "biography," such as Ibn Hishām's famous biography of the Prophet Muḥammad, *al-Sīra al-nabawiyya*.

5 See Ibn Abī Zayd al-Qayrawānī, *al-Risāla fī fiqh al-Imām Mālik* (Beirut, Dār al-Kutub al-'Ilmiyya, 1998), 61; and al-Muḥaqqiq al-Ḥillī Ja'far b. al-Ḥasan, *Sharā'i' al-Islām* 2 vols. (Tehran: Intishārāt Istiqlāl, 1983), 1:232. The Mālikī preference for *jihād* over *ṣiyar* may be due in part to Mālik's choice of *jihād* for his chapter on warfare in *al-Muwaṭṭa'*. Note that Sunnī *ḥadīth* scholars, in contrast to the jurists, almost universally chose to call their chapters on warfare *Kitāb al-jihād*.

the qualities an Imam must possess are articulated. These criteria had real-life implications for the Zaydīs of Yemen, for there always have been potential Imams present among the descendants of the Prophet Muḥammad living there since the third/ninth century, including today. Unlike the hereditary Sunnī caliph, who had not led a battle in centuries and was eliminated in its ancient capital of Baghdad by Hulegu's army in 656/1258, or the Twelfth Imam of the Twelver Shī'a, who has been unreachable in greater occultation according to their theology since 329/941, the Zaydī Imam is a dynamic political scholar who must summon armies to support his cause. Recall that Muḥammad b. al-Hādī was himself a potential Imam, as he was a descendant of the inaugural Zaydī Imam in Yemen, al-Hādī ilā l-Ḥaqq, and thus a descendant of the Prophet Muḥammad through his grandson, al-Ḥasan b. 'Alī. The brother of Muḥammad b. al-Hādī's grandfather, al-Ḥasan b. Badr al-Dīn Muḥammad, was described as an Imam in Zaydī historical writings, as was his paternal uncle, Ibrāhīm b. Tāj al-Dīn, who suffered the unfortunate fate of being captured by the Rasūlids and dying in captivity. It is possible that Muḥammad b. al-Hādī composed his book on legal theory and *The Garden and the Pool* in part to demonstrate to the northern Yemeni communities that he had the scholarly credentials to serve as Zaydī Imam, and so his explanation of the legal passages regarding warfare in the Qur'ān provides insight into how he would have ruled, had he ever been in the position to serve in this leadership role.

1 Warfare in the Qur'ān

Muḥammad b. al-Hādī identifies twenty-eight passages in the Qur'ān related to warfare and fighting, which is the second largest number of legal passages after the topic of prayer. According to my taxonomy introduced in the third chapter of this book, nineteen of these passages are rules, three are open commands, three are legal statements, and three are subtle passages. This profile is similar to what was observed regarding the legal passages on prayer in chapter five, and contrasts sharply with those associated with divorce, nearly all of which were rules. Even though there are far more than twenty-eight passages that refer to warfare in the Qur'ān,⁶ Muḥammad b. al-Hādī's explicit method, laid out in his introduction to *The Garden and the Pool*, is to avoid repetition, which explains why he does not comment on a larger number of verses.

6 For example, Imam Ibn al-Murtaḍā, in his list of 500 legal passages, includes 61 related to fighting, but only 42 related to prayer, according to my preliminary analysis; see Ibn al-Murtaḍā, *al-Intiqād*, in the *Muqaddima* of *al-Baḥr al-zakḥkhār*, 238–308.

The Qur'ānic rules regarding warfare are distributed across the major issues discussed by Muslim jurists in their chapters on *siyar*. For example, the rule passage Q 9:91–92 provides a list of legitimate reasons for a Muslim not to join a military campaign:

Not upon the weak nor upon the sick nor upon those who can find nothing to spend is any fault (though they stay at home) if they are true to God and His Messenger. Not upon the good is there any blame. God is All-Forgiving, All-Merciful. Nor upon those whom, when they came to you to provide a mount for them, you said: I cannot find anything for you to mount.

Muslims soldiers who are campaigning must engage the enemy “unless maneuvering for battle or intent to join a company” (Q 8:15–16) and the Qur'ān urges military commanders to grant permission to those who request not to fight for personal matters (Q 24:62). It demands that a party of Muslims not go out to fight, so they can “gain sound knowledge in religion, and that they may warn their people when they return to them” (Q 9:122), a verse that justifies the legal concept of communal obligation (*farḍ kifāya*), of which military service is an excellent example. Muslims are authorized to take a payment, called *jizya*, from People of the Book, for the purpose of ending hostilities with them (Q 9:29), and they are explicitly given the option to free prisoners with or without a ransom (Q 47:4). The Qur'ān provides some detailed rules concerning the distribution of spoils in three passages,⁷ and, if two parties of Muslims are fighting each other, it authorizes Muslims to intervene on the side of the party that has been wronged, with the ultimate goal of establishing peace between them (Q 49:9).

Additional Qur'ānic rules order Muslims not to initiate hostilities but to fight those who have already attacked them (Q 2:190) and to continue fighting until there is no more *fitna* (Q 2:193), a polyvalent word whose meaning generated debate among Muslim exegetes. If Muslims' adversaries “incline to peace,” then they are commanded to “incline also to it, and trust in God” (Q 8:61), although the Qur'ān also urges them to continue fighting and to refrain from proposing a peace treaty when they have the upper hand in battle (Q 47:35).

7 These are Q 8:1, 8:41, 59:7. I have classified the fourth verse on the topic of spoils, Q 59:6, as a legal statement, rather than a rule, due to its ambiguity: “And that which God gave as spoils to His Messenger from them, you urged not any horse or riding-camel for the sake thereof, but God gives His Messenger mastery over whom He will. God has power over all things.”

The open commands and legal statements in the Qur'ān regarding warfare also cover a range of topics. The general obligation for military service is articulated as an open command, which reads:

Fighting is ordained for you, though it is hateful to you. It may happen that you hate a thing which is good for you, and it may happen that you love a thing which is bad for you. God knows, while you know not. (Q 2:216)

The Qur'ān also commands all Muslims to donate money in support of military campaigns (Q 2:195) and to fight harshly the disbelievers (*kuffār*) who are nearest to them (Q 9:123). It is entirely ambiguous regarding what to do with the apostate, as can be seen from the legal statement touching upon this topic commented upon by Muḥammad b. al-Hādī:

O you who believe! Whoever among you turns from his religion (*yartadda*),⁸ let him know that God will bring forth a people whom He loves and who love Him, humble towards the believers but mighty against the disbelievers, who exert themselves in the way of God, and fear no blame from any blamer. This is a grace from God, which He bestows on anyone He wills. God is All-Encompassing, All-Knowing. (Q 5:54)

This verse qualifies as a legal statement, rather than a subtle passage, because the key verb it contains, *irtadda*, is the verb “to apostasize” in legal discourse. Therefore, even though this verse offers no concrete guidance regarding how a ruler or judge should treat an apostate, the kernel of the idea of apostasy is present within it, which led a master jurist-exegete like Muḥammad b. al-Hādī to expound upon it at this place in the Qur'ān.

Muḥammad b. al-Hādī identifies three subtle passages concerning warfare. The first of these passages reads:

Now God has lightened your burden, for He knows that there is weakness in you. So if there be of you a steadfast hundred they shall overcome two hundred, and if there be of you a thousand they shall overcome two thousand, by permission of God. God is with the steadfast. (Q 8:66)

The apparent meaning of this verse is not hard to grasp: God encourages Muslims to fight even if they are severely outnumbered. But what is the legal impli-

⁸ Tarif Khalidi translates this as “apostasize from his religion;” *The Qur'an*, 90.

cation of this passage? Muḥammad b. al-Hādī explains that this verse sets the minimum troop level for the Muslims at half of that of their adversaries and as such abrogates the previous verse, which reads:

O Prophet, urge the believers to fight. If there are twenty steadfast among you they will overcome two hundred; if there are a hundred of you they will overcome a thousand disbelievers, for they are a people who lack understanding.⁹ (Q 8:65)

The purpose of Q 8:66 is now clear: A 1:10 ratio of Muslim soldiers to non-Muslim adversaries may have worked during the Prophet's lifetime, but even during that time, God "lightened your burden," such that there was no expectation to fight unless the Muslim side was at least half as large as that of their adversaries. Muḥammad b. al-Hādī also stresses here and in his commentary on the "verse of fleeing battle" (Q 8:15–16), that Muslims should only engage in combat if they are confident that they will win, and so the 2:1 ratio of being outnumbered by the enemy only applies if the Muslim forces are well-trained and supplied, and highly likely to prevail.¹⁰ In short, the troop numbers specified in Q 8:66 serve to indicate the minimum troop ratio in cases when Muslims are outnumbered, with the caveat that God does not require Muslim armies to engage their enemies as soon as they have mustered 50% of the fighting men that their adversary is fielding.

The second subtle verse on the topic of warfare is found at the end of a long passage extolling the virtuous practices of Muslim believers. This passage is found at the end of the Sūra of the Criterion (al-Furqān) and begins with the verse, "The believing servants of the Beneficent are they who walk upon the earth modestly, and when the foolish ones address them answer: Peace" (Q 25:63). Muḥammad b. al-Hādī comments on three verses in this passage: "And who spend the night before their Lord, prostrate and standing" (25:64); "And those who, when they spend, are neither excessive nor grudging; but something reasonable between the two" (25:67); and the supplication, "[O God, Grant us comfort of our wives and offspring,] and make us a guide (*imām*) for those who are God-fearing" (25:74). I discussed the first of these verses in chapter five, as it relates to prayer, while the second one concerns almsgiving. The

9 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:104; YMDI, 221. Note that Q 8:65 is not among Muḥammad b. al-Hādī's 199 legal passages, presumably because he considered it abrogated and hence no longer effective for Islamic law.

10 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:105, 91; YMDI, 220, 214.

final one, according to Muḥammad b. al-Hādī, alludes to warfare even though it is a supplication one might utter in a prayer. How does he link this passage to warfare?

Presumably, the word “imām” in the middle of this prayer caught this Zaydī jurist-exegete’s attention, and so he chose to address the topic of whether it is lawful for an individual actively to seek the Imamate or a judgeship, or whether one should wait until one is invited to apply for it.¹¹ Unsurprisingly, Muḥammad b. al-Hādī argues that it is praiseworthy to seek the Imamate or a judgeship so long as one is qualified for it and fears that harm will befall his community should he not seek the position. If there are qualified men already in these roles, then there is no need to make this claim, and Muḥammad b. al-Hādī cites the examples of his great-grandfather, Muḥammad Badr al-Dīn b. Aḥmad, and his great-grandfather’s brother, Yaḥyā Shams al-Dīn b. Aḥmad, along with his own grandfather, Tāj al-Dīn b. Muḥammad.¹² All three of these descendants of the Prophet were highly qualified for leadership of the Zaydī community but deferred to Imam al-Manṣūr bi-llāh, ‘Abd Allāh b. Ḥamza (r. 593–614/1197–1217) and refrained from challenging him. Perhaps by citing these examples, Muḥammad b. al-Hādī was conveying to the Zaydī Imam at this time, Muḥammad b. al-Muṭahhar, who had been his student, that he did not need to worry about a challenge to his authority or his post, just as his ancestors had not challenged Imam al-Manṣūr bi-llāh, despite their seniority and qualifications for this leadership role.

The final subtle verse concerning warfare is found in the Sūra of Victory and consists of a declarative statement: “And if it had not been for the presence of believing men and believing women, whom you know not—lest you should tread them under foot and thus incur guilt for them unknowingly” (Q 48:25). This is a fragment of a longer verse, the context of which is the Sacred Mosque of Mecca and the events leading up to the Prophet Muḥammad’s peace treaty with the Meccan polytheists, known as the Treaty of Ḥudaybiyya in 6/628. The verse that immediately precedes this one states, “It is they who blasphemed, and they who kept you away from the Sacred Mosque, while sacrificial animals were prevented from reaching their rightful place” (Q 48:24). While this context is helpful, it is still not immediately obvious what the legal implications of

11 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:271; YMDI, 296. In the “rulings” section, al-Ḥākim al-Jishumī mentions that this verse “indicates it is permissible to seek leadership (*rʾāsa*) in religion, which is completed by (righteous) acts and knowledge;” *al-Tahdhīb*, 7:5335. He does not say anything explicit about political leadership (*imāma* or *khilāfa*).

12 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:272–273; YMDI, 297.

Q 48:25 are. Fortunately, Muḥammad b. al-Hādī informs his readers that this verse prohibits Muslims from attacking a town if there are Muslim inhabitants in it and they certainly would be killed if an assault on it were to take place.¹³ Even though Muslims throughout history have ignored this prohibition, it is important to acknowledge that Muslim jurists advocated for it and some of them, like Muḥammad b. al-Hādī, even found support for it in the Qurʾān.

2 Warfare in *The Garden and the Pool*

Muslim jurists elaborated upon five major subjects regarding warfare that are grounded in the Qurʾān. First, they needed to identify which Muslims were obligated to serve in Muslim armies and against whom they were supposed to fight. Second, they had to elaborate the lawful means by how warfare with an external power could be ended or paused. Third, jurists had to specify which types of people were eligible to pay the *jizya* tax, referred to only in Q 9:29, in exchange for peace, along with determining the rate of this special tax on individual non-Muslims. Fourth, in the event Muslim armies were victorious, Muslim jurists had to elucidate the division of the spoils among the participants in the battle and the fifth (*khums*) that the Qurʾān demanded to be distributed among certain classes of people by the leader of the Muslim community. Finally, they had to explain the options military commanders had regarding their treatment of captives, many of whom we would now call prisoners of war.

Muḥammad b. al-Hādī addresses the jurisprudence related to the obligation of warfare in his commentary on two verses in the Sūra of the Cow. If one reads the Qurʾān in the order of its sūras, the first verse that addresses warfare is the rule Q 2:190, which reads, “Fight in the way of God those who fight you, but aggress not. Truly, God loves not the aggressors.” Despite some minor debate over whether this verse was abrogated by Q 9:5, Muḥammad b. al-Hādī proceeds to define its rulings.¹⁴ First, he declares that there is near consensus among jurists that warfare is obligatory (*wājib*), although he mentions that the early Kufan jurist, Ibn Shubruma (d. 144/761), along with some unnamed Twelver Shīʿī jurists, declared that it was voluntary. Muḥammad b. al-Hādī says that the correct position is that warfare is a communal obligation (*ʿalā l-kifāya*), although the famous Medinan Successor Saʿīd b. al-Musayyab is reported to

13 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:286; YMDI, 302.

14 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:116–117; YMDI, 41–42.

have described it as an individual obligation (*‘alā l-a’yān*). In defense of his opinion that warfare is in fact a communal obligation, Muḥammad b. al-Hādī quotes Q 4:95, the first part of which reads, “Among the believers, those who stay behind, unless disabled, are not equal to those who exert themselves in the path of God.”¹⁵ How does this verse support his position? Muḥammad b. al-Hādī makes an interesting argument: God refers to those Muslims who stay at home as “believers,” which is a term of praise, and were fighting an individual obligation, God would not have praised those Muslims who chose not to fight. In other words, God would not have called them “believers” had they neglected their individual obligation to fight, so therefore fighting cannot be an individual obligation.

The next two legal topics stemming from the rule Q 2:190 concern the prohibition of killing certain classes of non-combatants. Muḥammad b. al-Hādī cites a prophetic *ḥadīth* in which Muḥammad said, “Do not kill a child, woman, or old man (*shaykh kabīr*), unless he is capable of fighting you.”¹⁶ He further reports that any old men, paralyzed men, blind men, and monks who are incapable of fighting should not be killed in warfare either, which is the opinion of the school of the Family of the Prophet, Abū Ḥanīfa and his associates, and one of two opinions ascribed to al-Shāfi‘ī. Muḥammad b. al-Hādī brings forth another *ḥadīth*, in which the Prophet Muḥammad allegedly said, “Do not kill the residents of monasteries” and ordered the famous military commander Khālīd b. al-Walīd (d. 21/642) not to kill a woman or a laborer (*‘asīf*).¹⁷

However, in the final ruling regarding Q 2:190, Muḥammad b. al-Hādī identifies a class of non-combatants who may be lawfully killed in war. This group is identified as the *ahl al-ra’y* and can include old men, paralyzed men, or blind men.¹⁸ Although he does not define precisely what makes a person among the ranks of *ahl al-ra’y*, if we take the Arabic word *ra’y* to mean “good judgement” or “sound opinion,” then it appears that Muḥammad b. al-Hādī is referring to male advisors of the military commanders who are not physically present at the battlefield or engaged in combat. This is also how he interprets an open-ended *ḥadīth* he cites, in which the Prophet allegedly said, “Kill the old men among the polytheists,” since this refers to specific elderly polytheists who were involved in warfare a safe distance from the battlefield.¹⁹

15 This verse, Q 4:95, is not among Muḥammad b. al-Hādī’s 199 legal passages.

16 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:117; YMDI, 41. This command is embedded in a longer *ḥadīth*; see *Shifā’ al-uwām*, Bāb mā yūṣī bihi l-imām sarāyāhu, 3:565–566; 579.

17 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:117; YMDI, 42.

18 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:117; YMDI, 42.

19 This *ḥadīth* is found in *Shifā’ al-uwām*, 3:580.

In addition to Q 2:190, Muḥammad b. al-Hādī considers Q 2:193 and Q 2:216 as affirming that warfare is a legal obligation upon the overall Muslim community. His only comment regarding the open command Q 2:216 is that it is a very clear statement that military service is obligatory, despite the natural aversion many people have to fighting.²⁰ However, in the case of the rule Q 2:193, which says “And fight them until there is no more *fitna*, and religion is for God. But if they desist, then let there be no hostility except against evil-doers,” Muḥammad b. al-Hādī offers some important comments. Despite the ambiguity surrounding the meaning of “*fitna*,” he claims that most exegetes of Q 2:193 restrict it to “disbelief (*kufṛ*)” or “the association of partners with God (*shirk*),” even though the early Muʿtazilī exegete Abū Muslim interpreted *fitna* to mean “war” here.²¹ This interpretation of *fitna* is strikingly different from how most contemporary translators of the Qurʾān render this word in English, although their word choices vary significantly: “discord,”²² “persecution” (Pickthall) “oppression” (Asad), and even “forced apostasy” (Khalidi). While one could plausibly understand this verse to mean that Muslims must fight until all humanity converts to Islam, Muḥammad b. al-Hādī takes a far narrower legal view in *The Garden and Pool* and restricts its efficacy to providing evidence that the *jizya* tax cannot be taken from Arab polytheists. As will become clear shortly, Muḥammad b. al-Hādī accepts the *jizya* tax from all non-Arab polytheists, which means Muslims are not obligated to engage in endless warfare with anyone save Arab polytheists, despite the ambiguous and open-ended declaration in Q 2:193.

In the previous section of this chapter, Muḥammad b. al-Hādī cited a number of verses which provide Muslims with valid excuses for not campaigning or engaging the enemy. The verses indicate that the weak, sick, destitute, and those who lack a mount are excused from campaigning in Q 9:91–92, while those soldiers who are already campaigning and engaging the enemy can only turn away if they are seeking to obtain a better position or join a stronger group

20 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:172; YMDI, 64. Recall that Q 2:216 reads, “Warfare is ordained for you, though it is hateful to you; but it may happen that you hate a thing which is good for you, and it may happen that you love a thing which is bad for you. God knows, while you know not.” Notice how it ends with a general exhortation that is more spiritual than legal.

21 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:121–122; YMDI, 43. These opinions—disbelief, association of partners with God, and war—are cited by al-Jishumī in his Qurʾān commentary on this verse, although he states that disbelief (*kufṛ*) is the correct meaning here “because it leads to perdition (*halāk*), just like *fitna* leads to it, according to Abū ‘Alī (al-Jubbā’i);” *al-Tahdhīb*, 1:793.

22 Afsaruddin, *Striving in the Path of God*, 43.

(Q 8:15–16). Muḥammad b. al-Hādī takes the rule Q 24:62, which reads, “So, if they ask your permission to attend to some affair of theirs, grant permission to whom you will of them, and seek God’s forgiveness for them. Truly, God is All-Forgiving, All-Merciful,” as evidence that a military commander should grant permission to Muslims who seek to avoid military service temporarily for personal reasons. In none of these cases does Muḥammad b. al-Hādī report serious disagreement among jurists of the different schools of law, perhaps because the rules found in these verses are clear in their meaning and intent.²³

Whom are Muslims obligated to fight? While Q 2:190 implies that Muslims must fight polytheists who have initiated hostilities, the verse that immediately follows it begins with the command, “And slay them wherever you find them, and expel them from where they expelled you.” The *jizya* verse (Q 9:29), about which I will have more to say shortly, clearly authorizes fighting against People of the Book, and Q 9:123 orders believers to “fight those of the disbelievers who are near to you, and let them find harshness in you, and know that God is with those who fear Him.” While all these passages authorize fighting non-Muslims, only Q 49:9 explicitly allows Muslims to fight other Muslims who have transgressed and whom most jurists call *bughāt* (rebels).²⁴ This verse is worth citing in full because it generated far more legal debate than any of the other verses concerning whom Muslims are obligated to fight:

And if two parties (*tāʾifatān*) of believers fall to fighting, then make peace between them. And if one party of them wrongs (*baghat*) the other, fight the one which does wrong, till it returns to the command of God. Then, if it returns, make peace between them justly, and act equitably. Truly God loves the equitable.

Muḥammad b. al-Hādī discusses seven topics concerning the laws of fighting rebels and pays exceptionally close attention to disputes among Zaydī Imams in his commentary on Q 49:9.²⁵ His heightened attention to this topic may be

23 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:130 (Q 9:91–92); 2:90 (Q 8:15–16), 2:259 (Q 24:62).

24 Khaled Abou El Fadl identifies this Qurʾānic verse as one of the key foundations for the entire legal discourse on rebellion; Abou El Fadl, *Rebellion and Violence*, 37–47. He offers a detailed overview of this legal discourse among Sunni jurists in chapters 4–6 and a brief summary of the Zaydī positions on pp. 302–306.

25 Rebecca Sauer analyzed six Sunnī commentaries on Q 49:9 through her framework of “pre-juristic exegesis” and “juristic exegesis” in an effort to distinguish “differing intentions of exegetes.” Among a host of topics, she sought to determine whether jurists are interested in “ethics, narratives, or meaning” and whether “there is an independent tradition of jurisprudence within *tafsīr* literature;” Rebecca Sauer, “*Tafsīr* between Law and

the result of his geographical location. There were no threatening non-Muslim armies anywhere near the northern Yemeni highlands where Muḥammad b. al-Hādī lived, yet there was constant fighting between Muslim tribes and regular fighting between the powerful Sunni Rasūlid armies, based in Ta'izz, and the Zaydī claimants to the Imamate in the northern highlands. It was also common for multiple Zaydī claimants to the Imamate to engage in armed conflicts with each other. It may also be the case that Zaydī Imams disputed more vigorously over this topic because the very process of becoming a Zaydī Imam required the candidate to fight either Muslim rebels or existing unjust Muslim rulers. In short, it is not surprising that Muḥammad b. al-Hādī is far more interested in the legal issues surrounding civil strife between Muslims than those regarding hostilities with non-Muslims.

The commentary on Q 49:9 in *The Garden and the Pool* also reveals what a potential Imamate of Muḥammad b. al-Hādī would look like. In the first of the seven legal topics he addresses, this jurist-exegete defends the unpopular position within the Zaydī school that it is permissible to fight rebels regardless whether an Imam is present or absent. In other words, it is lawful for any Muslim commander to suppress rebels, regardless of whether he has been sanctioned to do so by the Zaydī Imam. What is Muḥammad b. al-Hādī's evidence? On this occasion it is the literal text of the Qur'ān, verse 49:9, which makes no reference to an Imam and merely commands Believers (Muslims) to fight the rebels.²⁶ Muḥammad b. al-Hādī acknowledges that "most of our Imams" insist upon the leadership of an Imam to fight rebels, but he claims that al-Nafs al-Zakiyya, al-Mutawakkil 'alā llāh Aḥmad b. Sulaymān, and even al-Ḥākim al-

Exegesis: The Case of Q 49:9," in *Tafsīr and Islamic Intellectual History*, ed. Andreas Görke and Johanna Pink (Oxford: Oxford University Press and The Institute of Ismaili Studies, 2014), 223–250, at p. 226. While Sauer is to be commended for being one of very few Western Islamicists to examine the legal content of the Qur'ān, the framework she proposes and books she examines in this chapter strike me as too ambitious and inappropriate for approaching this vast topic. Furthermore, most of the exegetes with whom she engages in this chapter were also jurists, a fact that she acknowledges (p. 244), yet she does not consult their most important legal writings, such as al-Māwardī's *al-Ḥāwī*, al-Baghawī's *al-Tahdhīb*, or al-Rāzī's *al-Maḥṣūl*. This undermines her argument that "the [jurists] were the scholars who assigned the verse its legal implication, not the [exegetes]" (p. 244), since the exegetes she cites were also jurists. Of course, Q 49:9 was "assigned" its "legal implication" long before any of the exegete-jurists she cites in her chapter was born, so that is another weakness in her approach. I agree with her that there is "no independent legal tradition within *tafsīr* regarding the interpretation of Q 49:9" (p. 244), but I am unaware of anyone who has proposed that such a legal tradition existed in the first place.

26 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:292; YMDI, 305.

Jishumī support his position,²⁷ in addition to the literal meaning of this legal passage in the Qurʾān.

The second topic is even more insightful into what this jurist-exegete's Imamate would entail. Muḥammad b. al-Hādī uses his legal reasoning to challenge another widely held position of the Family of the Prophet by arguing that fighting Muslim rebels and oppressors is a higher priority (*awlā*) than fighting non-Muslim adversaries. He lists an unusually long list of Imams and Zaydī authorities who agree with him, including one of the sons of Imam al-Hādī ilā l-Ḥaqq, Imam al-Muʾayyad bi-llāh al-Hārūnī, Imam al-Manṣūr bi-llāh ʿAbd Allāh b. Ḥamza, and even his own illustrious ancestors, Imam al-Ḥasan b. Badr al-Dīn Muḥammad and Amīr al-Ḥusayn b. Badr al-Dīn.²⁸ However, Muḥammad b. al-Hādī's primary legal strategy to defend his position is the resort to analogical reasoning (*qiyās*). The legal passage Q 9:123 commands Muslims to fight the disbelievers who harm them and are closest to them geographically, so given that in northern Yemen various unnamed rebels who harm Muslims are closest to his community, the priority, at least for Zaydī Imams in Yemen, must be to fight any and all Muslim groups who, in their view, are harming their interests.²⁹ In short, Muḥammad b. al-Hādī sees Q 49:9 as a license for Zaydī Imams to fight Muslim challengers to their authority, whom they would label "rebels" (*bughāt*), rather than reserving their martial capacity to fight non-Muslims, the nearest of whom would have been located on the opposite shore of the Red Sea in what is today Ethiopia and Eritrea.

The remaining five legal topics concerning Q 49:9 all revolve around the issue of the lawfulness of distributing or seizing the property of Muslim rebels after the Zaydī Imam (or Imam-less army) is victorious. Muḥammad b. al-Hādī reports how his predecessors in the Zaydī scholarly community disagreed over whether rebel Muslims' property could be seized and divided among soldiers in a manner akin to the spoils of non-Muslim property, which are discussed in some detail in the Qurʾān and elsewhere in *The Garden and the Pool*.³⁰ Most Sunnī jurists rejected the division of Muslims' properties in cases of civil

27 Support for this position is implied by al-Jishumī's comment, "[This verse] indicates that it is necessary to command right (*al-amr bi-l-ma'rūf*), even if there is no Imam;" see *al-Tahdhīb*, 9:6532. Yūsuf the Jurist also quotes this list of authorities in *The Ripe Fruits; al-Thamarāt al-yānī'a*, 5:250.

28 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:292; YMDI, 305. Yūsuf the Jurist cites this list from *The Garden and the Pool* in *The Ripe Fruits; al-Thamarāt al-yānī'a*, 5:249.

29 Yūsuf the Jurist credits Amīr al-Ḥusayn with this argument, which may have been Muḥammad b. al-Hādī's source; *al-Thamarāt al-yānī'a*, 5:250.

30 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:293–294; YMDI, 305–306.

war, and they usually cited the example of Imam 'Alī, who did not seize and distribute the property of the Muslims his army defeated at the Battle of the Camel early in his reign.³¹ Muḥammad b. al-Hādī claims that Imam 'Alī did seize the property of the Khārijites, who were Muslims, after the Battle of Nahrawān (37/658),³² which supports his opinion that defeated rebel Muslims' property can be seized after the battle and distributed by the Imam or even if there is no Imam present.³³ The latter position is perhaps the most surprising, since major Zaydī Imams like al-Qāsim b. Ibrāhīm and al-Mu'ayyad bi-llāh held that there could be no spoils in the absence of an Imam. However, it highlights Muḥammad b. al-Hādī's strong view that the most serious threat to his community in northern Yemen came not from non-Muslims but rather from Muslim rebels and that the Zaydī Imam or other Zaydī leader should make every effort to deprive these rebels of their power.

The chronicles of medieval Yemen report endless battles between tribes, sultans, Imams, and others, illustrating the constant state of warfare in the Abode of Islam. But they also note peace treaties and periods of calm between these same belligerent parties. Are peace treaties sanctioned by the Qur'ān and Islamic law? And if so, what are the stipulations regarding them?

Muḥammad b. al-Hādī analyzes the critical topic of how to pause or end warfare between Muslims and their adversaries in his commentary on four legal passages in *The Garden and the Pool*. The Qur'ān provides what could be interpreted as contradictory rules: In Q 8:61, God orders Muḥammad³⁴ to "incline to peace" if his adversaries have "inclined to peace," while in Q 47:35, the Qur'ān says, "So do not falter and cry out for peace when you have the upper hand." Muḥammad b. al-Hādī's position on this topic is simple and straightforward. If the Imam sees benefit (*maṣlaḥa*) or protection from harm by making a peace treaty, then it is lawful for him to do so. However, if Muslims are strong, they should fight till victory, in accordance with the clear text of Q 47:35. When

31 For a description of 'Alī's conduct after the Battle of the Camel, see al-Ṭabarī, *The History of al-Ṭabarī*, Vol. xvi: *The Community Divided*, 163–164. Ṭabarī only cites one report from the notoriously unreliable Sayf b. 'Umar on this topic. Abou El Fadl affirms the importance of 'Alī's conduct after the Battle of the Camel for the Sunnī laws of rebellion; Abou El Fadl, *Rebellion and Violence*, 34–37.

32 Al-Ṭabarī, citing Abū Mikhnāf, reports that 'Alī commanded his soldiers to seize the possessions of the rebels and that he distributed their weapons and mounts; al-Ṭabarī, *The History of al-Ṭabarī*, Vol. xvii: *The First Civil War*, 134.

33 al-Rawḍa, Maktabat Ahl al-Bayt, 2:294; YMDI, 306.

34 The text does not explicitly indicate that Muḥammad is the addressee, but the relevant verb is in the second-person singular, which in the Qur'ān usually indicates a direct communication with the Prophet Muḥammad.

Muslims are weak, Muḥammad b. al-Hādī claims that their leader can initiate a truce (*ṣulḥ*), and he cites the example of Prophet Muḥammad at the Battle of the Trench in his commentaries on both these verses.³⁵ Here Muḥammad b. al-Hādī shifts from legal theory to history, as he cites the biographical accounts that the Prophet Muḥammad proposed to pay a tribute to the polytheist Arab tribe of Ghaṭafān in exchange for them abandoning their siege of Medina during the Battle of the Trench (5/627).³⁶ In his commentary on Q 8:61, he quotes liberally from the *Sīra* of Ibn Hishām (without acknowledgement) about the exchange the Prophet had with the Anṣārī leader Sa'd b. Mu'adh, who inquired whether this potential truce was a direct command from God or something the Prophet was proposing. The Prophet Muḥammad assured him that this was his own idea, for the purpose of relieving the suffering the Muslims in Medina were experiencing from the joint Ghaṭafān-Quraysh siege that had persisted for nearly a month. Ultimately, Sa'd persuaded the Prophet Muḥammad not to sign the written truce proposal, which never took effect. However, Muḥammad b. al-Hādī derived from this historical episode his position that it must be permissible to propose a truce with any adversary in which either party pays tribute because the Prophet proposed it, even if he did not in fact execute it at the Battle of the Trench.³⁷ His one uncompromising position is that a peace treaty or truce (*muhādana*) cannot be permanent and must be for a fixed time, because that is what Prophet Muḥammad, Imam 'Alī, and "all the Imams" have done.³⁸

The Qur'ān introduces a second procedure for ending hostilities between Muslims and People of the Book: the *jizya* tax. Even though the *jizya* verse does not appear until the ninth sūra, Muḥammad b. al-Hādī refers to it in two legal passages regarding warfare in the second sūra, the Sūra of the Cow. The first of these is Q 2:191, a long verse that Muḥammad b. al-Hādī restricts to the question of how to resolve warfare between Muslims and Arab polytheists, while the sec-

35 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:102–103 (Q 8:61); 2:284 (47:35).

36 This episode is discussed in Ibn Hishām, *al-Sīra al-nabawīyya*, 6 vols. in 3 (Beirut: Dār al-Jīl, no date), 4:180–181; A. Guillaume (trans.), *The Life of Muḥammad* (Karachi: Oxford University Press, 2001 [1955]), 454.

37 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:103; YMDI, 219–220. Interestingly, Muḥammad b. al-Hādī also draws an analogy with the permissibility of giving non-Muslims money from the alms tax to encourage them to embrace Islam, mentioned in Q 9:60: *هذا يدل على جواز ذلك فلو لا جوازه لما فعله رسول الله عليه السلام ولما هم به ولا استشار فيه. وهذا جائز لدفع الضرر عن المسلمين قياساً على عطاء المؤلف.*

38 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:103; YMDI, 220. Arabic: *أنه لا يجوز مهادة المخالفين أبداً ولا يجوز إلا إلى مدة وهذا مما لا خلاف فيه*

and one is the ambiguous command to “fight them until there is no more *fitna*, and religion is for God” (Q 2:293).³⁹ He declares that the Qur’ān requires Muslims to slay only polytheist Arabs if they do not convert to Islam, while every other category of person has the option to pay the *jizya* tax should they surrender to Muslim authority and choose to retain their religion. His argument is that verses Q 2:191 and 2:193, along with verse Q 9:5,⁴⁰ which often is called “the sword verse,” apply exclusively to polytheist Arabs because the covenant was between them and the Prophet Muḥammad, to the exclusion of the non-Arabs (*al-‘ajam*).⁴¹ He states that any non-Arab polytheist can pay the *jizya* tax if they prefer not to convert to Islam, a position which most jurists, save al-Shāfi‘ī, accept, and that there is consensus that People of the Book are entitled to the *jizya* option.⁴²

But who are the People of the Book? When did the *jizya* tax come into effect and for what is it compensation? How much does the *jizya* tax cost? And is it owed to the Muslim ruler in perpetuity? Since the Qur’ān is silent on these issues, Muḥammad b. al-Hādī addresses these, along with additional topics, in his commentary on the *jizya* verse in *The Garden and the Pool*.

Before he addresses the legal questions regarding the *jizya* tax, Muḥammad b. al-Hādī, following al-Ḥākim al-Jishumī’s *al-Tahdhīb*, relates a variety of occasions for the revelation of Q 9:29, ranging from the Medinan Jewish tribes of Banū Qurayza and Banū l-Naḍir, the Jews of Arabia more broadly, or even the Byzantines, on account of the Muslim campaign to Tabūk near the end of the Prophet Muḥammad’s life.⁴³ Ultimately, Muḥammad b. al-Hādī argues that this

39 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:118–122; YMDI, 42–43. These verses are adjacent to each other in *The Garden and the Pool*. Q 2:191 reads: “And slay them wherever you find them, and expel them from where they expelled you, for *fitna* is worse than slaughter. And fight not with them at the Sacred Mosque until they first attack you there, but if they attack you (there) then slay them. Such is the recompense of disbelievers.”

40 This verse reads, “Then, when the sacred months have passed, slay the polytheists wherever you find them, and take them (captive), and besiege them, and prepare for them each ambush. But if they repent and establish worship and pay the alms tax, then leave their way free. Truly, God is All-Forgiving, All-Merciful.” For diverse Muslim interpretations of this verse, see Afsaruddin, *Striving in the path of God*, 71–75. Note that Muḥammad b. al-Hādī does not include “the sword verse” among his 199 legal passages in *The Garden and the Pool*, presumably because he addresses its legal impact in his earlier commentary on Q 2:191.

41 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:119–120; YMDI, 43. Muḥammad b. al-Hādī also quotes Imam ‘Alī, who said, “Only Islam or the sword is accepted from the Arab polytheists.” This report is found in Zayd b. ‘Alī, *al-Majmū‘*, 240.

42 *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:120; YMDI, 43.

43 *al-Tahdhīb*, 4:3079–3080. The final opinion al-Jishumī narrates is that this is a general verse

verse is untethered to any historical moment and is a general Qur'ānic rule. In his section on meaning, he states that *jizya* is “property/wealth taken from them as compensation for their lives.”⁴⁴ As for who the People of the Book are, he claims that most Zaydī scholars and the Ḥanafīs restrict this classification to Jews and Christians, unlike al-Shāfi'ī, who considers Zoroastrians (*mājūs*) to be among the People of the Book. Muḥammad b. al-Hādī also agrees with the Ḥanafī master jurists and opposes al-Shāfi'ī when he expounds on the graduated rate of *jizya*, with 48 dirhams for wealthy People of the Book, 24 dirhams for those in the middle (*mutawassit*), and 12 dirhams for the poor.⁴⁵ These numbers are supported by means of a report narrated by Imam Zayd b. 'Alī, which he ascribed to Imam 'Alī, as well as the rate the Caliph 'Umar established in consultation with the Companions, and is essentially equivalent to consensus on this issue.⁴⁶

Muḥammad b. al-Hādī also breaks with al-Shāfi'ī over the topic of the cessation of the *jizya* tax upon a Jew's or Christian's conversion to Islam or death. For al-Shāfi'ī, the *jizya* is owed by the Jewish or Christian community for that year, regardless of conversion or death, while Muḥammad b. al-Hādī argues that this financial obligation ends as soon as a Jew or Christian converts to Islam or dies. What is his evidence? Here Muḥammad b. al-Hādī relies on two prophetic *ḥadīths*, one of which unambiguously says, “There is no *jizya* on Muslims,”⁴⁷ while he returns to the literal meaning of Q 9:29 to refute the premise that *jizya* is owed on a deceased Person of the Book. This verse opens with the command, “Fight against such of those who have been given the Book who believe not in God nor the Last Day, and forbid not what God and His messenger have forbidden, and follow not the religion of truth,” which indicates that the *jizya* is paid as compensation for Muslims not fighting and slaying People of the Book. Muḥammad b. al-Hādī makes the logical argument that since it is impossible to fight a deceased person, it therefore is impossible to take *jizya* from him in compensation for not fighting him. He also argues that this verse indicates that

(*al-'umūm*), untethered to any historical event, which is the position Muḥammad b. al-Hādī adopts; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:113; YMDI, 224.

44 Arabic: *al-jizya al-māl al-ma'khūdh minhum 'iwaḍan min al-qatl*; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:114; YMDI, 225. Literally, it reads “as compensation for them being killed.”

45 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:115; YMDI, 225. Note that al-Shāfi'ī called for a flat tax of 1 dinār for each Person of the Book. These *jizya* rates are found in al-Jishumī, *al-Tahdhīb*, 4:3087. The Zaydī Imam Abū Ṭālib al-Hārūnī relates these *jizya* rates in his influential legal manual *al-Taḥrīr* in the chapter on the alms tax (*zakāt*); *al-Taḥrīr* (Ṣa'da: Maktabat Ahl al-Bayt, 2011), 128.

46 *Shifā' al-uwām*, 1:61–62. I have not located this report in Zayd b. 'Alī's *al-Majmū'*.

47 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:116; YMDI, 225.

the tax is meant to be humiliating for the People of the Book, as the verse says “until they pay the tribute, by hand, being brought low,” and that it is impossible to humiliate and abase someone who is deceased, an argument which may be weaker than his previous one, given the all too common practice of the desecration of cemeteries and corpses over the centuries.⁴⁸

3 Spoils and the Fifth (*khums*)

Earlier in this chapter I showed that Muḥammad b. al-Hādī allows for the seizure and distribution of spoils even when the Imam is victorious over Muslim rebels, so his legal discussion of their distribution sheds additional light on what his hypothetical Imamate would look like. Most of his legal reasoning is found in his commentary on Q 8:41, which reads, “And know that whatever you take as spoils of war, a fifth thereof is for God, and for the Messenger and for the kinsman and orphans and the needy and the wayfarer, if you believe in God.” This legal passage clearly identifies six categories of recipients of one fifth of the spoils,⁴⁹ but questions immediately arise. How does God receive His share? How does the Prophet receive it after his death? Who is “the kinsman”? Do all six categories of recipients need to receive a share, or can the Imam designate the fifth merely for one of them? Fortunately, Muḥammad b. al-Hādī addresses these questions and more in *The Garden and the Pool*.

Muḥammad b. al-Hādī insists that all six of the enumerated categories of recipients in Q 8:41 are due a share of the spoils. God’s share is for the benefit of the Muslims, and includes building mosques, repairing roads, digging wells—what today we would call public works. It is left to the Zaydī Imam’s discretion how to spend these resources. The share assigned to the Prophet Muḥammad in the Qur’ān goes directly to the Imam to spend on his personal needs, according to the Family of the Prophet, in contrast to al-Shāfi‘ī, who assigns it to the Muslim community at large.⁵⁰ Muḥammad b. al-Hādī’s argument here is the claim that the Companions generally transferred the Prophet’s responsibilities

48 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:116; YMDI, 226.

49 The other four-fifths of the spoils are distributed among the fighters in the victorious battle by the local commander. Note that Imam Abū Ṭālib al-Hārūnī assigns the topic of “the fifth” its own unique chapter in *al-Taḥrīr* that is adjacent to the chapter on the alms tax and far from the topic of warfare. This placement is probably due to the fact that needy descendants of the Prophet are forbidden from taking alms but allowed to take from the fifth of the spoils. The distribution of spoils more broadly is discussed in the chapter on warfare (*siyar*) as well.

50 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:95; YMDI, 216.

to the Imam (or, for Sunnīs, the caliph) after his demise, unless there was evidence to the contrary.⁵¹ This is a good example of Muḥammad b. al-Hādī's citing the practice of the Companions of the Prophet in defense of a Zaydī position against a Sunnī one.

The most contentious shares are those for the kinsmen, the orphans, the needy, and the travelers. Who is the kinsman (*dhū l-qurbā*)? Muḥammad b. al-Hādī reports that all Muslims agree that "the kinsman," which is in the singular form, refers to the close blood relatives (plural) of the Prophet Muḥammad, although they disagree slightly over which relatives are intended. More seriously, Muḥammad b. al-Hādī refutes Abū Ḥanīfa's position that this share of the spoils only applied during the lifetime of the Prophet and then was suspended.⁵² Here Muḥammad b. al-Hādī finds himself on the same side of the argument as al-Shāfi'ī and the descendants of the Prophet, for he appeals to the literal text of Q 8:41 and the absence of any textual indicator that this share expired with the death of the Prophet Muḥammad.⁵³ He finds himself opposed to his school's eponym, Imam Zayd b. 'Alī, on the question of whether wealthy relatives of the Prophet are entitled to a share of the spoils, or whether it is reserved for the needy relatives, the latter of which is the position of Imam Zayd and Abū Ḥanīfa.⁵⁴ Interestingly, Muḥammad b. al-Hādī insists that male and female blood relatives of the Prophet receive equal shares of the spoils, in contrast to al-Shāfi'ī, who assigns male relatives double the share of female ones,⁵⁵ and Abū Ḥanīfa, who asserts that the Imam can divide them any way he sees fit. Why does Muḥammad b. al-Hādī embrace gender equality in this specific case? He informs us that, in contrast to the legal passages in the Qur'ān on inheritance, which specify unequal shares based on gender in several cases, if there is no textual evidence for a distinction based on gender, then the assumption should be equality.⁵⁶ In other words, Muḥammad b. al-Hādī appears to be

51 Arabic: 'alā 'umūm al-āya wa-mā thabat 'an al-ṣaḥāba min annahu mā kāna li-l-nabī (ṣ) fa-huwa li-l-imām ba'dahu illā mā khaṣṣathu dalāla.

52 Abū Ḥanīfa's position is confirmed by Ibn al-Ḥaddād in *al-Jawhara al-nayyira*, 2:594. He adds that Abū Ḥanīfa held that descendants of Banū Hāshim and Banū Muṭṭalib have precedence for shares of the fifth designated for orphans, poor, and travelers, so long as they are needy, but they do not receive the share designated for them in Q 8:41.

53 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:95–96; YMDI, 216.

54 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:97; YMDI, 217.

55 This unequal distribution is also the position of the Ḥanafīs; see Ibn al-Ḥaddād, *al-Jawhara al-nayyira*, 2:594.

56 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:97; YMDI, 217. Arabic: اَنَّ الأدلة أوجبت لذوي القربى ولم تفرق بين الذكر والأنثى كما فرّق في الموارث لأسباب أوجبت ذلك ولهذا ساووا بين بعض الورثة لما لم يفرق النصّ فيها كالأخوة لأمّ والله أعلم.

rejecting the common juristic practice of using analogy for gender inequality in one case, such as inheritance, and applying it to multiple other cases.

The final major questions concern the shares for orphans, needy, and travelers, and whether the Imam can assign the fifth of the spoils for which he is responsible to exclusively one of the six designated categories of recipients. The first question is whether these last three categories of spoils recipients are restricted to relatives of the Prophet, or are they general? Unlike the Twelver Shī'a, who long have restricted these last three categories of recipients to blood-relatives of the Prophet,⁵⁷ Muḥammad b. al-Hādī reports that Zaydī Imams prior to him were divided over this issue. The position he upholds, along with Imams al-Nāṣir al-Uṭrūsh, Abū Ṭālib al-Hārūnī and his own great uncle Amīr al-Ḥusayn, is that the Imam must distribute the fifth exclusively to the orphans, needy, and travelling relatives of the Prophet if they are present.⁵⁸ This is in contrast to the views of Imam al-Mu'ayyad bi-llāh and some of the followers of Imam al-Nāṣir al-Uṭrūsh, who considered it merely praiseworthy (*mustaḥabb*) to allocate these resources to the orphans, needy and travelers among the Prophet's relatives. Muḥammad b. al-Hādī summons the authority of Imam 'Alī b. Abī Ṭālib and Imam Zayn al-Ābidīn 'Alī b. al-Ḥusayn, both of whom allegedly restricted these shares to the Prophet's relatives. Finally, Muḥammad b. al-Hādī narrates an impressively long list of Zaydī Imams who agreed with him that the Imam can assign the fifth of the spoils to a single one of the six categories of recipients, rather than to all six of them, and his evidence is the distributive practice of the Prophet Muḥammad and Imam 'Alī, the two most authoritative men in the eyes of Zaydī jurists.⁵⁹

The last legal topic concerning warfare grounded in the Qur'ān is that of captives or, in modern parlance, prisoners of war. The Qur'ān contains two brief rules regarding captives: "It is not for any prophet to have captives (*asrā*) until he has made slaughter in the land;" (Q 8:67) and the cryptic rule "And afterward, either grace or ransom, till the war lays down its burdens" (Q 47:4). Muḥammad b. al-Hādī has little to say about the first of these verses beyond his interpretation that captives cannot be seized prior to the outbreak of fighting, perhaps

57 For example, see the Twelver legal Qur'ān commentary, al-Miqdād al-Suyūrī, *Kanz al-'irfān fi fiqh al-Qur'ān* (Qumm: Maktab Navīd Islām, 1424 AH), 232–233. For a detailed study on this topic, see Norman Calder, "Khums in Imāmī Shī'ī Jurisprudence," *Bulletin of the School of Oriental and African Studies* 45.1 (1982): 39–47.

58 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:98; YMDI, 217.

59 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:98–99; YMDI, 217. This list of Zaydī authorities includes Imams al-Hādī, al-Mutawakkil 'alā llāh, al-Manṣūr bi-llāh, al-Sayyid al-Imām al-Dā'ī Muḥammad b. Aḥmad b. Yaḥyā b. Yaḥyā, al-Qāḍī Ja'far b. Aḥmad, al-Sayyid al-Imām al-Dā'ī b. al-Muḥassin, and his great uncle Amīr al-Ḥusayn, in his book *al-Taqrīr*.

implying that kidnapping an adversary's men prior to battle is unlawful.⁶⁰ He refers readers to his fuller commentary on the second verse, which lacks the word "captive" but is understood to be in reference to them. Muḥammad b. al-Hādī does not report any disagreement among Zaydī Imams and scholars over the five legal points he makes in connection with this Qur'ānic passage, unlike countless other legal topics discussed in *The Garden and the Pool*. In fact, the only Sunnī master jurist with whom he reports conflict is Abū Ḥanīfa, save for the first topic concerning whether the Imam can execute captives. On this topic, about which these two verses are silent, Muḥammad b. al-Hādī enlists the literal meaning of the rule in Q 2:191, "And slay them wherever you find them," which is unspecified and so includes war prisoners, as well as the Prophet Muḥammad's own practice after the Battle of Badr, when he executed 'Utba b. Abī Mu'ayt, Umayya b. Khalaf, and al-Naḍr b. al-Ḥārith.⁶¹ However, the Imam also has the option to release prisoners with or without a ransom, which is stated explicitly in Q 47:4. According to Muḥammad b. al-Hādī, he can also ransom non-Muslim prisoners for Muslim prisoners and ransom women, children, and the elderly. In short, Muḥammad b. al-Hādī and nearly all Muslim master jurists allow the Imam (Muslim leader) a range of options for how to treat prisoners of war, from execution to free release, so long as what he does is in the best interest of his Muslim subjects.

4 Conclusion

Like the topic of divorce that I analyzed in the previous chapter, Sayyid Muḥammad b. al-Hādī's legal Qur'ān commentary shows that the Qur'ān provides foundational rules and a framework for the laws of warfare. Even though only nineteen of the twenty-eight warfare passages in *The Garden and the Pool* are rules, they provide concrete guidelines for whom to fight, who is obligated to fight, how to end fighting, how to distribute battle spoils, and how to treat war captives. The three open commands add the additional details that Muslims are obligated to contribute financially to military campaigns, serve in the military, and to fight proximate disbelievers prior to fighting remote ones. The remain-

60 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:106–107; YMDI, 221.

61 *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:281; YMDI, 300. Ibn Hishām reports the killing of these three men while they were captives, but it is not clear that the Prophet authorized the killing of Umayya b. Khalaf, who was the Meccan who had tortured Bilāl when the latter was a Muslim slave in Mecca; see Guillaume, *The Life of Muhammad*, 302–303 (Umayya); 308 (Naḍr and 'Utba).

ing legal statements and subtle passages lack obvious applicability to Islamic law, which reinforces the value of my four-category taxonomy for analyzing the Qur'ānic passages Muslim jurist-exegetes consider pertinent for an aspiring master jurist to learn. Had modern researchers ignored these verses on account of their opaque connection to Islamic law, they would have neglected nearly one-quarter of the passages on warfare that Muḥammad b. al-Hādī selected in *The Garden and the Pool*.

Muḥammad b. al-Hādī draws on some additional methods and sources, along with his previously encountered ones, in his elucidation of the laws of warfare. He makes creative use of Q 4:95, which is not among his set of 199 legal passages, in order to reinforce his argument that military service is a communal, rather than an individual, obligation. Likewise, he deploys the open command Q 9:123, which addresses fighting non-Muslims, to argue that it is preferable for the Imam to fight nearby Muslim rebels than to fight non-Muslims. Finally, Muḥammad b. al-Hādī stresses the literal meaning of Q 8:41 to support his position that female and male descendants of the Prophet receive the same shares of the war booty fifth because the verse does not indicate that men should receive a greater share than women. In each of these cases, Muḥammad b. al-Hādī interprets the Qur'ān by means of additional Qur'ānic verses or the literal meaning of the text itself to defend his legal positions.

There is also a greater reliance on historical sources in Muḥammad b. al-Hādī's legal reasoning on the laws of warfare than on the rules of prayer or divorce. Perhaps this should have been expected, given the numerous military campaigns the Prophet Muḥammad and Imam 'Alī led, along with Muslims' deep tradition of historical writing. Muḥammad b. al-Hādī takes Imam 'Alī's treatment of the Khārijites who were defeated at the battle of Nahrawān as normative and thus in support of his contention that the property of defeated Muslim rebels can be divided as spoils. He also draws on the Prophet Muḥammad's draft treaty with the tribe of Ghaṭafān that Ibn Hishām reports happened during the Battle of the Trench to argue that Muslims can sign a peace treaty with non-Muslims when they are weak, even though the treaty never was implemented. He cites the Companions' general practice of assigning the Prophet Muḥammad's political responsibilities to the Imam/caliph as evidence that the Prophet's share of the war spoils fifth transfers to the Imam after the Prophet's death. Finally, he cites the Prophet's example of executing three prominent Qurayshī captives after the Battle of Badr as evidence that the Imam can execute war captives if, and only if, this act is perceived as being advantageous to the Muslim community.

In addition to using his commentary to weigh in on intra-Zaydī legal disputes, Muḥammad b. al-Hādī also deploys it to indicate his priorities were he

to make a claim to the Zaydī Imamate. In his commentary on Q 49:9, he makes it explicitly clear that he would concentrate his armies on battling Muslim rebels in Yemen, rather than non-Muslims elsewhere, and that he would not hesitate to distribute vanquished Muslim rebels' property as spoils among his troops. He would distribute a portion of the fifth of this booty equally among male and female descendants of the Prophet who were orphans, poor, or traveling, or to only one of these three groups if he considered it socially beneficial. He would annul the annual *jizya* tax on Yemeni Jews and other non-Muslims who either died or converted to Islam if it had not been collected during the year prior to their deaths or conversions. He would oppose universal conscription, and he would urge his soldiers to refrain from killing women, children, and elderly men unless they were actively contributing to his adversary's war effort. Even though there is no evidence Muḥammad b. al-Hādī sought the Imamate, the facts that two of his close ancestors were widely recognized as Zaydī Imams and that he composed two impressive works of legal scholarship suggests that the thought of making the call may have crossed his mind during his lifetime.

Conclusion

Knowledge of the law in Islam is what was seen as a happy synthesis between human reason and the divine word.

Wael Hallaq, *Shari'a*, p. 83



According to a recent study by Samuel Ross, there are approximately 2,700 Qur'ān commentaries extant in manuscript.¹ As of 2003, only about three hundred of these commentaries, or 15 % of the corpus, had been published. Only a tiny percentage of these published Qur'ān commentaries have been investigated by Western Islamicists, while virtually none of the unpublished ones has received scholarly attention. Ross's study provides ample evidence that the Western study of *tafsīr* is in its infancy, despite the tremendous growth in publications on Qur'ānic Studies in recent decades.

Sayyid Muḥammad b. al-Hādī's *The Garden and the Pool* is an excellent example of a Qur'ān commentary that could easily remain overlooked for centuries. It was only published in 2024 in Yemen and survives in fewer than ten manuscript copies. Despite its author being a Zaydī scholar from a prominent family in northern Yemen, it could not compete with the popularity of subsequent legal Qur'ān commentaries by Zaydī scholars Yūsuf the Jurist, Fakhr al-Dīn al-Najrī, and Muḥammad b. al-Ḥusayn. These latter three books became part of the Zaydī al-Madrasa al-ʿIlmiyya curriculum in the early twentieth century and have been published in full or in part. Were it not for the Yemeni Manuscript Digitization Initiative hosted by Princeton University Library, Muḥammad b. al-Hādī's valuable *tafsīr* would have been completely inaccessible to a researcher prior to 2024 who did not have access to the Biblioteca Ambrosiana in Milan, the Ambrosiana microfilm surrogates at Notre Dame University in Indiana, the Topkapi Palace library in Istanbul, or to a handful of libraries in northern Yemen. Today, for the first time in history, anyone with access to the internet can read a complete manuscript of *The Garden and the Pool* along with the Maktabat Ahl al-Bayt print edition of it.

1 Samuel Ross, "What Were the Most Popular *Tafsīrs* in Islamic History," 4–5.

The purpose of this book has been to disseminate insights I have acquired from my close reading of Muḥammad b. al-Hādī's legal Qur'ān commentary and examination of its intellectual context. Despite the heroic efforts by scholars like Hassan Ansari and Sabine Schmidtke to chart the intellectual history of diverse Zaydī communities, we still know very little about the intellectual landscape in northern Yemen during Muḥammad b. al-Hādī's lifetime (651–720/1253–1320). This was the time when the Sunnī Rasūlids were on the ascent politically and intellectually, while the Zaydī Imams, at least prior to al-Mahdī Muḥammad b. al-Muṭaḥhar (r. 701–728/1301 or 2–1328) and perhaps his father, were restricted to the most remote fortresses of northern Yemen. Muḥammad b. al-Hādī profited from the vibrant intellectual landscape that followed the importation of a wide array of Zaydī, Mu'tazilī, and Sunnī books to northern Yemen during the relatively strong Imamates of al-Mutawakkil 'alā llāh Aḥmad b. Sulaymān (r. 532–566/1137–1170) and al-Manṣūr bi-llāh 'Abd Allāh b. Ḥamza (r. 593–614/1197–1217). Among these new arrivals were al-Ḥākim al-Jishumī's *al-Taḥdhīb fī l-tafsīr* and al-Qāḍī Zayd al-Kalārī's *al-Jāmi' fī l-sharḥ*, popularly known as *Sharḥ al-Qāḍī Zayd*, both of which served as the primary sources for *The Garden and the Pool*, which in turn initiated a modest tradition of Zaydī legal Qur'ān commentaries in Yemen.

I found Muḥammad b. al-Hādī's legal Qur'ān commentary to be an optimal book for analyzing the legal passages of the Qur'ān. In contrast to the Jewish rabbinic tradition, which fixed the number of legal commandments in the Torah at 613, Muslim scholars have never agreed upon the exact number of legal passages in the Qur'ān. This ambiguity has resulted in a wide range of verses being considered legal, from approximately 200–600 of the Qur'ān's roughly 6,200 total verses. Muḥammad b. al-Hādī limited the number of legal passages to 199, in part due to his desire to avoid repetition and in spite of his awareness that jurists writing in the genre of legal theory typically claimed that there were five hundred legal verses. This smaller set of legal passages, selected by a serious Muslim jurist, allowed me to identify prayer, warfare, and divorce as the most prominent legal topics present in the Qur'ān, among a total of twenty-five topics. I also identified a small set of general principles (eight passages), like parental favoritism and the prohibition of miserliness, which fell outside the standard topics found in an Islamic legal manual.

Muḥammad b. al-Hādī's selection of 199 legal passages also inspired me to adopt the nomenclature of “legal passages” rather than “legal verses” for the Arabic term *aḥkām al-Qur'ān*. The reasons for this choice were due to Muḥammad b. al-Hādī's decision to divide some individual verses into multiple *aḥkām* and occasionally to combine two verses into a single *ḥukm*. I also eschewed calling these passages “rulings” or “commandments” and chose instead to divide

them into four categories. The largest category (65%) consisted of rules, which followed the formula proposed by Rosalind Ward Gwynne, “In circumstance X, Y is required/permitted.” The second category was open commands (8%), which typically took the form of “Your raiment, purify” or “fasting is ordained for you” without providing any concrete guidance for how these obligations are to be fulfilled. The third category was legal statements (7.5%), which were passages in which a recognizable legal concept was mentioned, but its connection to Islamic law was ambiguous. For example, “And that which God gave as spoils to His Messenger from them” (Q 59:6), refers to the legal concept of battlefield spoils but does not offer any guidance regarding their distribution. The final category, which I call “subtle passages,” consists of thirty-eight passages that lack any transparent connection to Islamic law yet serve as sites for Muḥammad b. al-Hādī to discuss legal topics. Many of these passages occur in narratives about pre-Islamic prophets, like Noah and Moses, such that it is unclear whether their teachings are applicable to the Prophet Muḥammad’s community. I have proposed that Muḥammad b. al-Hādī’s identification of subtle passages is one of the more creative aspects of *The Garden and the Pool*, and merits further investigation in the field of legal Qur’ān commentaries more broadly.

In addition to shedding light on the intellectual landscape of northern Yemen during the early Rasūlid period and the legal content of the Qur’ān, Muḥammad b. al-Hādī’s *The Garden and the Pool* provided me with deep insight into the global genre of legal Qur’ān commentaries. As Muḥammad al-Dhahabī has shown is his two-volume survey of *tafsīr*, a modest number of Muslim jurists composed commentaries devoted exclusively to the legal passages of the Qur’ān.² Many of these works have been published, and each of the major Sunnī and Shī‘ī schools of law has representative works in this genre.³ While al-Dhahabī highlighted and criticized the *madhhab*-partisanship of these books, I have argued that they serve a different purpose, based primarily on my close reading of *The Garden and the Pool* and preliminary reading of the legal commentaries that followed it in Yemen. First, these *tafsīr* works have a valuable pedagogical function because they explicitly link specific passages of the Qur’ān to legal topics and they allow the jurist-exegete to explore competing interpretations between and within legal schools over the relevant rulings. Secondly, I argued that legal Qur’ān commentaries offer their compilers a platform for them to demonstrate their own legal expertise by showing the evidence for

2 al-Dhahabī, *al-Tafsīr wa l-mufasssirūn*, 2:432–473.

3 Recall that the only mainstream Zaydī *tafsīr* to which al-Dhahabī had access was the legal commentary by Yūsuf the Jurist, *The Ripe Fruits*, a volume of which he had in manuscript.

numerous legal positions within their school and occasionally to advance novel opinions that challenge their school's preponderant positions.

The pedagogical value of legal Qur'ān commentaries, like *The Garden and the Pool*, is manifest on every page. Muḥammad b. al-Hādī organizes his exegetical and legal erudition along the lines of al-Jishumī's *al-Tahdhīb*, with discreet sections on lexicon, occasions for revelation, meaning, and then legal rulings. In the case of his commentary on the Sūra of Light, which I analyzed in chapter 4, Muḥammad b. al-Hādī guides his reader through debates over eleven legal topics related to fornication, eight topics on the uncorroborated accusation of fornication, and eleven topics concerning manumission by contract, among many other legal topics. In the fifth chapter, I showed that Muḥammad b. al-Hādī identified and explained thirty Qur'ānic passages, many of which were legal statements or subtle passages related to prayer. In chapter six, we saw that he analyzed nearly every aspect of divorce—revocable divorce, irrevocable divorce, female-initiated divorce (*khul'*), divorce prior to consummation, alone time, the waiting period, and oaths that can effect a divorce, such as saying to one's wife, "You are forbidden to me." Finally, in the seventh chapter I examined how Muḥammad b. al-Hādī educated his reader about the major issues regarding warfare, such as who is obligated to fight, how to end fighting, division of the battlefield spoils, and the treatment of war captives. In each of these chapters, I showed that Muḥammad b. al-Hādī consistently used his Qur'ān commentary to teach his readers how Zaydī legal positions relate to the web of Sunnī jurisprudence, along with legal disagreements between prominent Zaydī Imams and jurists.

The utility of a legal Qur'ān commentary to demonstrate one's legal expertise and advance non-conformist legal opinions is also supported by Muḥammad b. al-Hādī's *The Garden and the Pool*. The YMDI online manuscript of this work contains nearly eighty marginal notes in which the owner indicated Muḥammad b. al-Hādī's choice on a specific legal topic. Some of these highlighted choices that I mentioned throughout this book include his opinion that a Muslim man can marry a Jewish or Christian woman; that a slave can pay his manumission contract in a single installment; that it is permissible to assist a fellow congregant verbally with a low voice during the sermon of the Friday prayer; and that it is preferable to fight Muslim rebels, even in the absence of an Imam, than to fight non-Muslims. In nearly all of these cases, Muḥammad b. al-Hādī adopted and defended a minority position among Zaydī jurists and challenged the opinions of the foundational Imams al-Qāsim b. Ibrāhīm and his grandson al-Hādī ilā l-Ḥaqq. However, it is important not to overstate this quality of *The Garden and the Pool*; in the vast majority of cases, Muḥammad b. al-Hādī defends the majority position of the Zaydī school, drawing on his excel-

lent knowledge of the Qur'ān, *ḥadīth*, consensus of the family of the Prophet, analogy, and even, in some cases, early Islamic history. The entire book of *The Garden and the Pool* is a *tour de force*, written in a clear Arabic style, and easier to navigate than its two primary sources, al-Jishumī's *al-Taḥdhib* and *Sharḥ al-Qāḍī Zayd*.

While Muḥammad b. al-Hādī's *tafsīr* supports my argument concerning the two primary functions of legal Qur'ān commentaries, do other works in this genre do so as well? Certainly, it is difficult not to appreciate the pedagogical value of legal Qur'ān commentaries. These works typically are shorter than general *tafsīr* books for the simple reason that they only explain a fraction of the verses of the Qur'ān, rather than the entire text, which makes it easier to read them in their entirety. That fact alone renders them more accessible and makes them easier to benefit from than the typically long general books of *tafsīr*. Legal Qur'ān commentaries, such as al-Jaṣṣāṣ's *Aḥkām al-Qur'ān* or Yūsuf the Jurist's *The Ripe Fruits*, contain a significant amount of legal disagreements, which illuminates how the compiler's school position relates to those of other schools, as well as to debates within their own school. Even al-Najrī's succinct *Commentary on 500 Verses* offers its readers a surprising amount of legal dissent, in part by using single letter abbreviations, rather than the complete names of each master jurist it cites, in order to save space. Finally, the fact that three of the four *tafsīr* books in Imam Yaḥyā's al-Madrasa al-'Ilmiyya curriculum were Zaydī legal Qur'ān commentaries testifies to their pedagogical value.

However, did jurist-exegetes other than Muḥammad b. al-Hādī deploy legal Qur'ān commentaries to demonstrate their legal acumen or advance novel legal positions that challenged their school's opinions? This is a more difficult question to answer. Al-Jaṣṣāṣ almost certainly would be remembered as a master Ḥanafī jurist had only his expansive commentary on al-Taḥāwī's *al-Mukhtaṣar*, his abridgement of al-Taḥāwī's *Ikhtilāf al-fuqahā'*, and his pioneering book on legal theory survived, even though his *Aḥkām al-Qur'ān* remains the most frequently published legal *tafsīr* in the Ḥanafī school. Given that the Ḥanafī school has three major foundational authorities—Abū Ḥanīfa, Abū Yūsuf, and Muḥammad al-Shaybānī—who frequently disagreed, a scholar like al-Jaṣṣāṣ had to navigate considerable internal normative pluralism within his school, which would demonstrate his legal expertise even if his positions remained within the range of opinions offered by these three authorities. However, in his thorough study of al-Jaṣṣāṣ's *Aḥkām al-Qur'ān*, Ṣafwat Khalilūfīṭsh found virtually no cases of this master jurist challenging Ḥanafī school opinion.⁴

4 Khalilūfīṭsh, *al-Imām Abū Bakr al-Rāzī al-Jaṣṣāṣ*, 398–403. He identifies a mere three cases of disagreement, two of which are topics of legal theory.

Returning to Yemen, the modern editor of Muḥammad b. ‘Alī al-Mawzi’i’s *Taysīr al-bayān fī aḥkām al-Qur’ān* notes that its compiler occasionally adopted positions outside of the Shāfi’ī school tradition to which he adhered and described him as an independent master jurist (*mujtahid*).⁵ For example, al-Mawzi’i insists that a virgin woman cannot be compelled by her guardian to marry a man without her consent and that the expression “touching women” in Q 4:43 refers to intercourse rather than touching with one’s hand. Both opinions oppose the standard Shāfi’ī positions and in each case al-Mawzi’i analyzed the textual indicators in the Qur’ān and *ḥadīth* prior to reaching his judgment. Thus, he appears to be using his legal Qur’ān commentary in a similar manner to Muḥammad b. al-Hādī, even though there is no evidence that he was familiar with *The Garden and the Pool*.

Another far more recent example of an exegete using the legal Qur’ān commentary format to promote a minority position can be found in Muḥammad ‘Alī al-Ṣābūnī’s (1930–2019) *Rawā’i’ al-bayān*. This two-volume *tafsīr* consists of seventy lectures, each of which is connected to a legal passage (or passages) of the Qur’ān, and was completed in September 1971. In addition to providing a clear overview of the legal content of the Qur’ān, al-Ṣābūnī used this format to devote two of his lectures to the topic of female dress.⁶ Provocatively, al-Ṣābūnī titled the concluding section of his first lecture on this topic, “The innovation of unveiling the face,” and proceeded to argue forcefully for the minority position that Muslim women must cover their entire bodies in public, including their face and hands. Lest one assume that he is challenging liberal Muslims, he states in a footnote that he is responding to the famous Salafi scholar Nāṣir al-Dīn al-Albānī’s (1919–1999) legal opinion that Muslim women are not obligated to cover their faces.⁷ In addition to basing his argument on the specious claim that women’s faces are a source of social disorder (*fitna*), al-Ṣābūnī reinforces his arguments with passages from Qur’ān commentaries by two leading Islamists of the twentieth century, Sayyid Qutb (1906–1966) and Abul A’la Mawdudi (1903–1979). By devoting two of the final thirty lectures to female dress, al-Ṣābūnī elevated his minority position concerning the face-veil to far greater prominence than it enjoys in pre-modern legal Qur’ān commentaries, given that only three of the 200–600 legal passages in the Qur’ān touch upon women’s dress.

5 al-Mawzi’i, *Taysīr al-bayān*, 1:11–17.

6 These are lectures 6 and 17 in the second volume, on Q 24:30–31 and Q 33:59, respectively.

7 Muḥammad al-Ṣābūnī, *Rawā’i’ al-bayān tafsīr āyāt al-aḥkām min al-Qur’ān*, 2 vols. (Beirut: al-Maktaba al-‘Aṣriyya, 2017), 2:161–164.

Numerous future research projects can and hopefully will build upon the findings of my study on Muḥammad b. al-Hādī's *The Garden and the Pool*. At the level of Zaydī intellectual history, the relationship between *The Garden and the Pool* and the three succeeding Zaydī legal *tafsīr* works by Yūsuf the Jurist, Fakhr al-Dīn al-Najrī, and Muḥammad b. al-Ḥusayn merits investigation. One observation I have made while looking at these works is the tremendous increase in citation of Sunnī *ḥadīth* collections in *The Ripe Fruits* and especially in the eleventh/seventeenth century *Muntahā al-marām*. This contrasts sharply with Muḥammad b. al-Hādī's general reluctance to cite Sunnī *ḥadīth* books, preferring instead *Sharḥ al-Qāḍī Zayd* (or perhaps his great-uncle's *Shifā' al-uwām*) and Imam Zayd's *al-Majmū'*. It would also be beneficial to engage in comparative studies of Zaydī, Sunnī, and Twelver Shī'ī legal Qur'ān commentaries, especially regarding the question of which verses their compilers considered to be relevant for an aspiring master jurist to know. Careful readings of individual legal Qur'ān commentaries should also reveal whether their compilers deployed them to offer novel legal opinions that challenged entrenched school positions, as Muḥammad b. al-Hādī did on occasion, or whether they used them exclusively for pedagogical purposes, to show that their school tradition aligned with the Islamic scripture. And, as Samuel Ross reminds us in his article I cited earlier, there must be many unpublished legal Qur'ān commentaries in manuscript that will provide further insights into this special genre of *tafsīr*.

Sayyid Muḥammad b. al-Hādī's legal Qur'ān commentary, *The Garden and the Pool*, provides exceptional insights into the legally relevant content of the Qur'ān, the connection between the Qur'ān and Islamic law, the relationship between the Zaydī school of law and the Sunnī legal schools, and its author's personal legal opinions. In it the reader witnesses a master jurist-exegete assessing the textual and extra-textual indicators for hundreds of legal cases covering most of the major topics of Islamic law. Not only does this fine *tafsīr* merit a wide readership, I have also endeavored to show that it offers valuable insights into the form and function of legal Qur'ān commentaries more broadly, and the Zaydī legal and exegetical traditions in particular. And God knows best.

Critical Edition of the Commentary on the Sūra of Light in *The Garden and the Pool*

This appendix contains a critical edition of Sayyid Muḥammad b. al-Hādī's commentary on the Sūra of Light (Q 24) based primarily on Muḥammad b. al-Hādī's own handwritten copy of *The Garden and the Pool*, MS Milan, Ambrosiana A6, fols. 30^v–61^v. It identifies where he drew on material from al-Jishumī's *al-Tahdhīb fī l-tafsīr* and most of the poets whose verses he cites for lexical purposes. This section of his commentary is valuable on account of the diverse legal topics Muḥammad b. al-Hādī discusses in it, most of which are analyzed above in chapter 4.

This edition is based on the following manuscripts:

- م MS Milan, Ambrosiana, Nuovo Fondo ar. A6, copied Jumada II 714/November 1314 (holograph)
 ي MS Princeton, YMDL_03_76, copied Shawwal 1088/December 1677¹

سورة النور

م: ٣٠/
ي: ٢٦٥

تذكر فيها سبع عشرة آية منها أربع معاً
 بسم الله الرحمن الرحيم

الآية الأولى

قوله تعالى: ﴿الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة ولا تأخذكم بهما رأفة في دين الله إن كنتم تؤمنون بالله واليوم الآخر وليشهد عذابهما طائفة من المؤمنين﴾.²

¹ <https://catalog.princeton.edu/catalog/9978494053506421> (scroll down to image 267).

² سورة النور: ٢.

الفصل الأول: اللغة

الرأفة الرحمة، ومنه الرؤوف الرحيم.³ والطائفة القطعة من الشيء. يقال: طائفة من الناس، ومنه قوله في الآية ﴿وليشهد عذابهما طائفة من المؤمنين﴾. قال الشاعر:⁴
 فطائفة قد أكفروني⁵ بحبكم وطائفة قالوا مُسيء ومُذنب

الفصل الثاني: المعنى⁶

قوله تعالى ﴿الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة﴾: هذا هو الحد في الحرّين البالغين البكرين الفاعلين له في دار الإسلام، ويكون ذلك في وقت الإمام. وإذا خالف في أحد هذه الوجوه تغيّر الحكم.

والزنا هو الوطء والإيلاج في الفرج من غير عقد النكاح أو شبهة نكاح أو غلط.
 قوله ﴿فاجلدوا﴾: قيل هو خطاب لجميع المسلمين؛ وقيل هو خطاب الأئمة. والإجماع على أنّ الحدود إلى الإمام دون غيره. فإذا كان الخطاب عامًّا للمسلمين كان الوجه فيه أنّه يجب عليهم إقامة الإمام يقيم الحدود ويسدّ الثغور ويحفظ بيضة الإسلام وعليهم القيام معه.
 قوله ﴿ولا تأخذكم بهما رأفة﴾: قيل رحمة تمنع من إقامة الحد؛ ذكره مجاهد وعكرمة وعطاء وسعيد بن جبير وإبراهيم وسليمان بن يسار وابن زيد.

ي: ٢٦٦

وقيل | رحمة تمنع من الجلد الشديد بل يوجعان ضرباً؛ ذكره الحسن وسعيد بن المسيّب وعامر الشعبي وحمّاد. قال الزهري: يجتهد في حدّ الزنا والفرية ويخفف في حدّ الشرب. وقال قتادة: يجتهد في الزنا ويخفف في الفرية والشراب. قال حمّاد: تخلع ثياب الزاني، وتلا هذه الآية، قال: ويحدّ القاذف والشارب وعليهم الثياب.

قوله ﴿في دين الله﴾: معناه في حكمه.

قوله ﴿إن كنتم تؤمنون بالله﴾: معناه تصدّقون بالبعث والحساب. وقيل: إن كنتم مؤمنين، نخالفوا من خالف أمري وارتكب ما نهيت عنه.

3 الحاكم الجشمي، التهذيب في التفسير، ٥١١٠:٧.

4 في هامش ي: هو الكيت بن زيد.

5 في الديوان: كفّرتي.

6 انظر إلى الجشمي، التهذيب، ٥١١٣-٤.

قوله ﴿وليشهد عذابهما طائفة﴾: معناه ليحضر موضع حدّهما طائفة: معناه جماعة تغليظاً للأمر وإظهاراً له لعظم ما ارتكبا من المعصية ولطفاً واعتباراً لمن يشاهد حالهما.

وقيل: الطائفة الشهود لأنّه يجب حضورهم.

وذكر النخعي ومجاهد أنّ أقلّ من يحضر رجلٌ، واحتجّاً بقوله ﴿وإن طائفتان من المؤمنين﴾⁷.

وقيل: اثنان فصاعداً، ذكره عكرمة وعطاء.

وقيل: ثلاثة؛ ذكره الزهري وقتادة وأبو علي. قال الحاكم [الجلشمي] رحمة الله عليه: وهو الذي يقتضيه ظاهر اللفظ.⁸

وقيل: أربعة، بعد شهود الزنا؛ ذكره ابن زيد.

وقيل: يحضر الشهود ليعلم بقاءهم على الشهادة.

وقيل: عشرة؛ حكاها القميّ علي بن موسى عن الحسن وأبي برزة.

الفصل الثالث: الأحكام

م: ٣١ و الآية تدلّ | على حدّ الزنا وظاهرها لم يفصل بين البكر والمحسن ولا بين الحرّ والعبد إلا أنّ السنة والإجماع فصلا بينهما.

وفيه مسائل:

الأولى: أنّ المراد بالزاني هاهنا هو البكر، وهذا إجماع.

الثانية: أنّ حدّ الزاني مائة جلدة إذا كان حرّاً عاقلاً، وهذا إجماع.

الثالثة: أنّه إذا كان عبداً فحدّه خمسون، وهو إجماع الجمهور. وذهب أهل الظاهر إلى أنّ حدّ العبد الذكر مائة لظاهر الآية؛ وأمّا الأنثى، فخمسون للنصّ عليها.

وجه قولنا: ما روي عن علي عليه السلام أنّه قال: حدّ العبد نصف حدّ الحرّ. ولم يرو خلافه عن أحد من الصحابة.

فصل ولا يجب التغريب عندنا، وهو قول أئمتنا عليهم السلام؛ وهو قول أبي حنيفة (ح) وأصحابه (ص).

وعند مالك والأوزاعي التغريب ثابت في الرجل دون المرأة؛ ودون العبد عند مالك.

7 سورة الحجرات: ٩.

8 الجلشمي، التهذيب، ٥١١٤.

وعند الشافعي (س) والثوري وابن أبي ليلى وابن حيّ، فيهما جميعاً جلد مائة وتغريب عام. وجه قولنا: ما ورد من الأخبار في حدّ المماليك وغيرهم ولم يشرط التغريب. وما احتجّوا به في الخبر: جلد مائة وتغريب عام، وقد حمّله أصحابنا على التأديب. وقد روي عن علي عليه السلام جلد مائة وحبس سنة، والسنة للتأديب نحو التغريب. الرابعة:⁹ أنّ الزاني يلزمه الحدّ سواء زنا بالغة أو غير بالغة إذا كانت تصلح للجماع، وسواء كانت عاقلة أو غير عاقلة، حرّة أو غير حرّة؛ ولا خلاف فيه. الخامسة:¹⁰ أنّ الزانية البالغة العاقلة يجب عليها الحدّ سواء كان الزاني بها بالغاً أو غير بالغ إذا أُولج، عاقلاً أو غير عاقل، حراً أو غير حرّ، وهو قول الجمهور. وعند أبي حنيفة: إذا مكنت العاقلة نفسها من مجنون فزنا بها، لا حدّ عليها. وجه قولنا:—الآية—فإنّ العاقلة تدخل تحت عموم النصّ. السادسة:¹¹ أنّ الزاني إذا كان محصناً حراً عاقلاً جلد بهذه الآية ورُجم بالسنة والإجماع. ويجمع بينهما عندنا، وهو قول علمائنا عليهم السلام؛ وهو قول مالك والظاهرية. وعند أبي حنيفة وأصحابه والشافعي يرمم ويسقط الجلد عنه. ودليلنا ما روي عن النبيّ صلى الله عليه وآله أنّ حدّ الثيب جلد ورجم؛ وقوله صلى الله عليه وآله: الثيب بالثيب جلد مائة والرجم. فإن قال المخالف: هذا الخبر منسوخ، فهذه دعوى لا دلالة عليها. والنسخ لا يثبت إلاّ بدليل. دليل آخر: قول أمير المؤمنين عليه السلام، وقد جلد شراحة الهمدانية ثمّ رجمها، وقال: جلدتها بكّاب الله ورجمتها بسنة النبيّ صلى الله عليه. فصل والمملوك لا رجم عليه وكذلك المدبر وأمّ الولد، وإن كانوا محصنين، ولا خلاف فيه. السابعة:¹² أنّ الحدود إلى الأئمة، فإن لم يكن إمام، لم يُقم أحد الحدود. وهو إجماع أهل البيت عليهم السلام، وهو قول جماعة. وعند أبي حنيفة يقيمها أمراء الأمصار وحكّامها.

9 الرابعة: الثالثة، م.

10 الخامسة: الرابعة، م.

11 السادسة: الخامسة، م.

12 السابعة: السادسة، م.

وعند مالك يقيمها غير الإمام، كما يقيمها الإمام.

وجه قولنا: أنه قول العترة.

الثامنة: ¹³ أن العبد لا يقيم عليه مولاه الحدّ عندنا، وهو قول زيد بن علي والقاسم والناصر الكبير عليهم السلام، وهو قول أبي حنيفة وأصحابه وبعض الشافعية.

وعند الهادي والمنصور عليهما السلام، والشافعي وبعض أصحابه أنه يقيم عليه الحدّ.

وجه قولنا: أنه لا خلاف أن الحدود إلى الإمام، والأخبار الواردة في حدّ السيد لعبده محتملة، فإنّ في أكثرها الجلد. والجلد يحتمل التعزير وما كان منها فيه ذكر الحدّ. فإنّ الوارد منها في زمان النبيّ صلى الله عليه وآله وزمان علي عليه السلام، فيمكن أن يكون الأمر للسيد بحدّ عبده، عن أمر النبيّ عليه السلام وأمر الإمام، ويمكن تسمية التعزير حدّا مجازاً لأنّه منع وزجر كالحدّ حقيقة.

ويدلّ عليه قوله صلى الله عليه وآله: ألا أخبركم بشراركم؟ من أكل وحده ومنع رفده وجلد عبده.

وعن ابن عمر وعمر بن ياسر: أربعة إلى الولاية: الفء والحدود والجمعة والصدقات.

وجه القول الثاني: قوله صلى الله عليه وآله: إذا زنت أمة أحدكم فليجلدها، فإن عادت فليجلدها فإن

عادت فليبعها، ولو بصغيرة؛ وفي خبر: ولو بصفيرة.

وروي عن رسول الله صلى الله عليه وآله أنه قال: أقيموا الحدود على ما ملكت أيمانكم.

وروي عن فاطمة عليها السلام أنها جلدت الأمة.

ويمكن أن يجاب عن ذلك بأنّها فعلت ذلك بأمر علي عليه السلام، وهو إمام بعد رسول الله صلى الله عليه وآله بلا فصل.

وأما مولى العبد فيمكن أن يكون رسول الله صلى الله عليه وآله جعل إلى المولى إقامة الحدّ بأمر الإمام.

التاسعة: ¹⁴ أن من شرائط الرجم الإحصان؛ والشهادة على الإحصان تثبت بشهادة شاهدين. والزنا

بشهادة أربعة | وهذا إجماع.

العاشر: ¹⁵ أنه يجوز شهادة رجل وامرأتين على الإحصان، ولا بدّ أن تكون الشهادة مصرّحة

لاحتمال لفظة الإحصان؛ هذا عند علمائنا؛ وهو قول أبي حنيفة وأصحابه.

13 الثامنة: السابعة، م.

14 التاسعة: الثالثة، م.

15 العاشرة: التاسعة، م.

وعند الشافعي لا بدّ من شهادة رجلين.

وجه قولنا: عموم قوله تعالى ﴿فَإِنْ لَمْ يَكُنْ رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ﴾¹⁶.
الحادية عشر:¹⁷ أنه إذا أقرّ بالزنا أو بالسرقة أو بشرب الخمر ثمّ رجع قبل رجوعه ولم يُحدّ ويضمن المال المسروق. ولا يبطل رجوعه المال، وإنما يبطل الحدّ.

الآية الثانية

قوله تعالى: ﴿وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ | ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ﴾¹⁸

الفصل الأول: اللغة

الرمي على الحقيقة هو الرمي بالسهم والمحر. قال الشاعر:¹⁹

ذاك خليلي وذو [يواصلني]²⁰ يرمي ورأيي بأمسهم وأمسله

ثمّ قد يسمّون الكلام على الغير رمياً على سبيل المجاز والتوسع والتشبيه. فيقال: رماه بالزنا، وبغيره.
قال الشاعر:²¹

رمانى بأمير كنت منه ووالدي برّياً ومن [أجل]²² الطويّ رمانى

والإحصان في أصل اللغة المنع واستعمل في المرأة، فيقال: محصنة، ويراد أنها مسلمة. وقد يراد به أنها عفيفة. وقد يراد به أنها حرة. وقد يراد به أنها ناكحة لما كان الإسلام يمنع من المحظور والعفة تمتنع م: ٣٣ و
من الفعل القبيح.

16 سورة البقرة: ٢٨٢.

17 الحادي عشر: العاشر، م.

18 سورة النور: ٤.

19 هو جبير بن غنمة: <http://ar.lib.eshia.ir/40799/1/141>.

20 يواصلني: مقاربتني، ي؛ تعاونني، م.

21 هو عمرو الباهلي: <https://www.aldiwan.net/poem45436.html>.

22 أجل: فوق، م ي.

قال الشاعر:²³

حَصَانٌ رَزَانٌ مَا تُزَنُّ بَرِيَّةٌ وَتُصْبِحُ غَرَّتِي مِنْ لُحُومِ الْغَوَافِلِ

وكذلك الحرّة والتزويج مانعان. يقال: امرأة حصان وحصان، ظاهرة الحصانة ممتعة مما يشينها. ويقال: أحصن الرجل، فهو محصن إذا نكح. ومنه سمي الذكر من الخيل حصاناً. ومنه سمي الموضع المنيع حصناً.

الفصل الثاني: النزول²⁴

قيل: نزلت الآية في عائشة رضي الله عنها لما قُذِفَ بالزنا؛ ذكره سعيد بن جبير. وقيل نزلت في نساء المؤمنين؛ ذكره الضحاك.

الفصل الثالث: المعنى

قوله تعالى ﴿والذين يرمون المحصنات﴾: معناه يرمون المحصنات بالزنا. والمحصنات هنّ الحرائر المسلمات العفيفات. وقيل غيره.

فإن قيل: هذا دليل على حدّ قاذف المحصنات، فما الدليل على حدّ قاذف الرجل؟

قلنا: اختلف العلماء على قولين. فمنهم من قال: هذه الآية دليل على حدّ القاذف رجلاً كان المقدوف أو امرأة، والمراد بالمحصنات في الآية هي الفروج المحصنة. والإحصان صفة للفروج، يدلّ عليه قوله تعالى ﴿والتي أحصنت فرجها﴾²⁵ فتناولت الآية الذكر والأنثى من أهل الفروج المحصنة. وقيل: في هذه الآيات حكم الذكور وحكم الإناث معاً، في قوله ﴿إِنَّ الَّذِينَ يَجْبُونَ أَنْ تُشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا﴾²⁶. ولا أبلغ في التشيع من القذف بالفاحشة. | وقيل: يُعرف حكمها بالإجماع؛ فهذا قول بعضهم.²⁷

ومنهم من قال: يعلم حدّ القاذف للذكور قياساً على حدّ القاذف للإناث في هذه الآية. وهذا الوجه أقرب، لأنّ الآية يسبق إلى الأفهام منها أنّ المحصنات فيها هنّ النساء دون الفروج؛ والله أعلم.

23 في هامش ي: هو حسان بن ثابت، في عائشة.

24 الجسمي، التهذيب، ٥١٣٣.

25 سورة الأنبياء: ٩١.

26 سورة النور: ١٩.

27 الجسمي، التهذيب، ٥١٣٤.

قوله ﴿ثم لم يأتوا بأربعة شهداء﴾: معناه لم يأتوا بأربعة يشهدون على صحة ما رمى به من الزنا.
قوله ﴿فاجلدوهم ثمانين جلدة ولا تقبلوا لهم شهادة أبداً أولئك هم الفاسقون﴾: معناه لا تقبلوا لهم شهادة أبداً ما لم يتوبوا. هذا قول الأكثر. ومن الفقهاء من قال: لا تُقبل شهادته وإن تاب. والفاسقون هم الخارجون عن طاعة الله.

الفصل الرابع: الأحكام

الآية تدلّ على حدّ القذف على ما قدّمنا تفصيله. وفيه مسائل:

الأولى: أنّ حدّ القاذف ثمانون جلدة إن كان حرّاً. وإن كان عبداً فأربعون. وإن كان مكاتباً فعلى حساب ما أدّى من مال الكّابة. ودليلنا في المكاتب (إذا أصاب المكاتب ميراً أو حداً فإنه يرث على

قدر ما اعتق منه ويقام عليه الحدّ على قدر ما اعتق منه ومثله عن علي عليه السلام).²⁸ ي: ٣٦٩

الثانية: أن يكون القاذف عاقلاً بالغاً، وهذا ممّا لا خلاف فيه.

الثالثة: أن يكون المقدّوف بالغاً حرّاً مسلماً عاقلاً عفيفاً عن الزنا؛ ولا أعلم فيه خلافاً.

الرابعة: أنّه لا حدّ على من قذف عبداً أو أمة أو مدبراً أو مدبرة أو أمّ ولد أو صبيّاً أو صبية أو مجنوناً

أو مجنونة. وإن رأى الإمام تعزيره عزّره. ولا أعلم في هذه الجملة خلافاً من أهلنا. م: ٣٤٠ و

فصل وكذلك الحكم إن قذف المسلم ذميّاً، فلا حدّ عليه. ولا أعلم فيه خلافاً.

الخامسة: أنّه إن عفا المقدّوف عن القاذف قبل رفعه إلى الإمام صحّ العفو عند علمائنا، وهو قول

الشافعي.

وعند أبي يوسف لا يسقط الحدّ بعفوه.

وجه قولنا: قوله صلى الله عليه وآله: تعافوا الحدّ فيما بينكم فما بلغني من حدٍّ وجب.

السادسة: أنّه إذا تاب لا يسقط عنه الحدّ بالتوبة إذا كان قد بلغ إلى الإمام.

وروي عن الشعبي والشافعي في أحد قوليه أنّ التوبة تسقط الحدّ.

وجه قولنا: ما روي أنّ النبي صلى الله عليه وآله رجم الزانية الزائبة²⁹ وقال: لقد تابت توبة لو قُسمت

بين سبعين من أهل المدينة لو سعتهم. وروي عن علي عليه السلام مثله.

السابعة: أنّ ألفاظ القذف صريح وكناية وتعريض.

28 قد كتب السيد محمد بن الهادي ما بين القوسين في هامش النسخة في خطّه للروضة والغدير.

29 الزانية الزائبة: الزانية التي.

فالتصريح أن يقول: يا زاني، أو يا زانية.
والكناية أن يقول: لست ابن فلان، لمن هو مشهور النسب، وهذا يلحق بالصریح.
والتعريض أن يقول: يا ولد الحلال، أو: تعرف الزاني مني ومنك؟
وتفاصيل ذلك في الشروح والخلاف فيه، نخذه من هناك.
الثامنة: أنَّ القاذف إذا تاب قُبِلَت شهادته عندنا، وهو قول علمائنا عليهم السلام وقول جمهور الفقهاء.

وعند أبي حنيفة وأصحابه لا تقبل شهادته أبداً وإن تاب.
وجه قولنا: قوله تعالى في الآية التي بعدها ﴿إِلَّا الَّذِينَ تَابُوا﴾. ومن حق الاستثناء أن يرجع إلى
م: ٣٥٥ ظ جميع ما تقدم إلا ما خصه الدليل. |

الآية الثالثة وما يتعلق بها من الآيات، (وهي الرابعة والخامسة والسادسة)³⁰

قوله تعالى ﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ وَالْخَامِسَةُ أَنَّ لَعْنَةَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ﴾³¹.

الفصل الأول: اللغة

الرمي هاهنا المراد به الرمي بالزنا، وهو مجاز وتوسّع والأصل الرمي بالحجارة والتبل. وقد فصلناه في الآية التي قبل هذه.

والزوج اسم يقع على الرجل والمرأة جميعاً. يقال: هما زوج صالح، ويقع على كلّ واحد منهما على انفراده.

قال الشاعر:

لزوج ابني ولزوج ابنتي يا لك ويل وخسران
والدرء الدفع. درأتُ عنك كذا وكذا أي دفعته عنك. ومن قول النبي صلى الله عليه وآله عند ذكر ما يفسد الصلاة: فأدرؤا ما استطعتم. معناه: ادفعوا ما استطعتم مما يعرض لكم في الصلاة.

30 كتب السيد ابن الهادي هذه كلمات فوق السطر في م.

31 سورة النور: ٩-٦.

والعذاب في الأصل الضرب. ومنه قول الله ﴿وليشهد عذابهما طائفة﴾³². والعذاب ما يصيب النفس من ألم.

الفصل الثاني: النزول

ي: ٢٧٠

م: ٣٥٠

قيل: نزلت في قصّة هلال بن أمية وامرأته؛ ذكره ابن عباس. | وقيل: نزلت في عويمر وامرأته خولة ابنة قيس؛ ذكره ابن عباس أيضاً ومقاتل، ولعلّ الروائتين وقعتا معاً. ونحن نذكر ما ورد في الروائتين، فنقول:

أمّا هلال بن أمية³³ فروى عكرمة عن ابن عباس أنه لما نزلت قوله ﴿والذين يرمون المحصنات ثم لم يأتوا بأربعة شهداء﴾ قال سعد بن عباد: لو أتيت لكاع³⁴ وقد تفخذها رجل، لم يكن لي أن أهيبه ولا أحرّكه حتّى آتي بأربعة شهداء؟ فوالله ما كنت آتي بأربعة شهداء حتّى يفرغ من حاجته ويذهب! وإن قلت ما رأيت إنّ في ظهري لثمانين جلدة!

فقال رسول الله صلى الله عليه وآله: يا معشر الأنصار، أما تسمعون إلى ما قال سيّدكم؟ فقالوا: لا تلهه فإنّه رجل غيور.

فقال سعد: إنّني لأعرف أنّها من الله وأنّها لحقّ، ولكن عجبت من ذلك.

فقال صلى الله عليه وآله: فإنّ الله يأبى إلّا ذاك.

فقال سعد: صدق الله ورسوله.

فلم يلبثوا إلّا يسيراً حتّى جاء ابن عمّ له، يقال له هلال بن أمية: من حقيقة له، فرأى رجلاً مع امرأته، فلما أصبح غدا إلى رسول الله صلى الله عليه وآله فقال: إني جئتُ أهلي عشيّاً فوجدتُ رجلاً معها، رأيته بعيني وسمعته بأذني.

وكره ذلك رسول الله حتّى رأى الكراهة في وجهه. فقال هلال: إنّني لأرى الكراهة في وجهك، والله يعلم أنّي لصادق وأنّي لأرجو أن يجعل الله فرجاً.

فهمّ رسول الله صلى الله عليه وآله | بضربه واجتمعت الأنصار وقالوا: ابتلينا بما قال سعد أن يجلد هلال وتبطل شهادته.

32 سورة النور: ٢.

33 قصة هلال بن أمية الكاملة في الجشمي، التهذيب، ٣-٥١٣٢.

34 في هامش ي: اسم للمرأة.

فنزلت الآيات، فقال رسول الله: يا هلال، فإن الله قد جعل فرجاً.
فقال: كنت أرجو ذلك.

واجتمعوا عند رسول الله صلى الله عليه وآله فقال: إن أحداً كاذب فهل من تائب؟
فقال هلال: يا رسول الله، بأي أنت وأمي لقد صدقتُ.
فلاعَنَ بينهما، فلما شهد هلال أربع مرّات، قال صلى الله عليه وآله: اتق الله يا هلال، فإن عذاب الدنيا أهون من عذاب الآخرة، وإن هذه الخامسة هي الموجبة.
فقال هلال: والله لا يعذبني عليها، وشهد الخامسة.
ثم شهدت المرأة أربع شهادات، فقال عند الخامسة: اتقي الله، فإنها موجبة. فهتّت بالاعتراف ثم قالت: لا أفضح قومي، فشهدت الخامسة. ففرّق بينهما، وقضى أنّ الولد لها، ولا يدعى لأب.
فهذه رواية هلال وامراته.

وأما الرواية الثانية: 35

فقيل لما نزل قوله تعالى ﴿والذين يرمون المحصنات﴾ قرأها رسول الله صلى الله عليه وآله على المنبر يوم الجمعة. فقال عاصم بن عدي: جعلني الله فداك إن رأيت رجلاً مع امرأته رجلاً فأخبر بما رأى جلد ثمانين وسمّاه المسلمون فاسقاً ولا تقبل شهادته أبداً. وكيف لنا بالشهداء ونحن إذا التمسنا الشهداء كان الرجل قد فرغ من حاجته؟ وإن قتله قُتل به، وإن سكت سكت على غيظ شديد. اللهم بين! وكان لعاصم ابن عم يقال له عويمر وله امرأة تسمى خولة ابنة قيس. فأتى عويمر عاصماً فقال: رأيت شريك بن السحماء³⁶ على بطن امرأتي خولة، وكنا من بني أعمام عاصم أيضاً. فاسترجع عاصم وأتى رسول الله صلى الله عليه وآله في الجمعة الأخرى | وقال:

يا رسول الله أما إنني ابتليتُ بالسؤال الذي سألتُ في أهل بيتي، وقصّ قصة شريك وخولة، فقال صلى الله عليه وآله لعويمر: اتق الله في زوجتك وحليلتك وابنة عمك.

فقال: يا رسول الله، أقسم بالله لقد رأيت شريكاً على بطنها وهي حبلية ولم أقربها منذ أربعة أشهر. وأنكر شريك والمرأة ما ذكر، فنزلت الآية فأمر فنودي الصلاة جامعة ثم قال لعويمر: قم.

فقام وشهد أربع مرّات: أشهد بالله أنّ خولة زانية وأتى لصديق. وقال في الخامسة: لعنة الله على عويمر إن كان من الكاذبين فيما قال على خولة.

35 الجشمي، التهذيب، ٢-٥١٣٠.

36 اسمه في التهذيب: شريك بن السحماء، ٥١٣١.

ثم قال لخولة: قومي.

فقامت وشهدت أربع شهادات بالله أنه كاذب فيما رماها به وما هي بزانية. وقالت في الخامسة: غضب الله عليها إن كان صادقاً.

ففرق بينهما ثم قال: إن جاءت به كذا فهو لشريك؛ وإن جاءت بكذا فهو لغيره.

فقال ابن عباس: فجاءت بأشبه خلق الله بشريك، فقال صلى الله عليه: | لولا هذه الأيمان لكان لي ولها شأن.

فهذا ما ورد في الروايتين.

الفصل الثالث: المعنى³⁷

قوله تعالى ﴿والذين يرمون أزواجهم﴾ يعني بالزنا.

قوله ﴿ولم يكن لهم شهداء إلا أنفسهم﴾ معناه شهداء يشهدون على قذفهم لأزواجهم إلا أنفسهم. ﴿فشهادة الرجل﴾ أربع شهادات بالله أنه لمن الصادقين ﴿فيما رماها به من الزنا﴾ والخامسة أن لعنة الله عليه إن كان من الكاذبين ﴿فيما رماها به من الزنا﴾.

قوله ﴿ويدرأ عنها العذاب﴾ معناه يدفع عنها حد الزنا. وقيل: يدفع عنها حد الحبس.

قوله ﴿أن تشهد أربع شهادات بالله إنه لمن الكاذبين﴾ يعني الزوج فيما رماها به من الزنا ﴿والخامسة أن غضب الله عليها﴾ وهو العقاب لها منه تعالى ﴿إن كان﴾ الزوج ﴿من الصادقين﴾ فيما رماها به من الزنا.

الفصل الرابع: الأحكام

والآية تدلّ على ثبوت اللعان بين الزوجين إذا لم يكن للزوج بيّنة على قذف زوجته. فإن وجد بيّنة تغير³⁸ الحكم وبطل اللعان.

وفيه مسائل:

الأولى: أنّ اللعان يثبت بين الزوجين إذا كان الزوج ممن يثبت عليه حد القذف وتكون المرأة ممن يستحقّ قاذفها الحد. وهذا مما لا خلاف فيه على الجملة.

37 الجشمي، التهذيب، ٥١٣٤.

38 تغير: تعين، ي.

الثانية: أنَّ من شرط اللعان بينهما أن يكون الزوجان حرين بالغين عاقلين، ولا خلاف في ثبوت اللعان بينهما | إذا كان الزوجان على هذا الشرط. م: ٣٧ و

الثالثة: أنَّ الزوجة إذا كانت حرة وكان الزوج مملوكاً، فعند القاسمية والناصر والشافعي يجب اللعان بينهما. فإن كانت الزوجة مملوكة والزوج حراً فلا لعان ولا حد في أحد قولي الناصر. وعند زيد بن علي والصادق وأحد قولي الناصر، إذا كان أحد الزوجين مملوكاً فلا لعان، وهو قول أبي حنيفة.

الرابعة: أنَّهما إذا كانا صغيرين أو أحدهما، أو مجنونين أو أحدهما، فلا لعان بينهما. ولا أعلم فيه خلافاً عن أحد من العلماء.

الخامسة: أنَّه إذا رماها بالزنا قبل الدخول صحَّ اللعان عندنا، وهو قول زيد بن علي والقاسمية عليهم السلام جميعاً.

وعند الباقر والصادق والناصر عليهم السلام، لا يصحَّ اللعان ويحدُّ الزوج، وهو قول بعض الفقهاء. وجه قولنا: أنَّها لو أتت بولد ثبت نسبه ولا ينتفى نسبه إلا باللعان.³⁹

السادسة: أنَّها إذا كانت صغيرة يتأتَّى منها الجماع، فإنَّها إذا بلغت فليس لها أن تطالب باللعان عندنا ولا يظهر من أئمتنا عليهم السلام خلافة. | ي: ٢٧٢

وعند أصحاب الشافعي أنَّها إذا بلغت فلها أن تطالب باللعان.

وجه قولنا: أنَّها ممن لا يحدُّ قاذفه فلا يجب اللعان بينهما كالجنونة.

السابعة: إذا كانا كافرين أو مملوكين فلا لعان بينهما عندنا ولا يظهر فيه خلاف بين علمائنا عليهم السلام؛ وهو قول أبي حنيفة وأصحابه.

وعند الشافعي يصحَّ اللعان بينهما لأنَّ من أصل الشافعي أنَّ من يصحَّ طلاقه يصحَّ لعانه. ودليلنا ما روي عن النبي صلى الله عليه وآله أنه قال: لا لعان بين اليهودي والنصراني والمملوك تحت مملوكة والحرّة تحت المملوك.

وتأوّل أصحابنا | قوله (الحرّة تحت مملوك) على الحرّة الصغيرة. م: ٣٨ ظ

وحجّة أهل القول الثاني شمول آية اللعان، فإنَّها لم تفرّق في ذلك.

الثامنة: أنَّ الزوج إذا كان محدوداً في قذف صحَّ لعانه قبل التوبة وبعدها عندنا، وهو الذي ذكره أصحابنا؛ وهو قول الشافعي.

39 كتب السيد ابن الهادي هذه الجملة بين سطرين نسخته.

وعند أبي حنيفة: لا لعان بينهما لأنه ليس من أهل الشهادة، واللعان عنده شهادة. وهذا فاسد على أصلنا لأنّ اللعان عندنا يمين.

فصل وإذا كانت الزوجة رتقاء فلا لعان وكذلك فلا لعان بينه وبين أم ولد؛ ولا أعلم خلافه. التاسعة: أنّ الزوج ليس له أن يلاعنها ابتداءً إلّا أن يكون هناك ولد يريد نفيه. فإن لم يكن ولد فليس له أن يلاعنها إلّا أن تطلبه هي وترفعه إلى الحاكم، فإنه يلاعنها؛ وهو الذي ذكره أصحابنا، وهو قول بعض الشافعية.

وبعضهم قال: له أن يلاعنها ابتداءً على القذف لدفع العار وزوال الفراش. وعند الشافعي وأبي حنيفة وأصحابه: ليس للزوج أن يبتدئ الملاعنة سواء قذفها أو نفى ولدها حتى ترافعه. فإذا رافعته إلى الحاكم كان له أن يلاعنها لإسقاط الحدّ عن نفسه. وجه قولنا: أنّ الزوج يبتدئ بطلب الملاعنة إذا كان هناك ولد ينفيه لأنّ له المطالبة بنفي نسب الولد منه لأن لا يلزمه نسب الغير. فأما إذا لم يكن ولد لم يكن له الابتداء بطلب اللعان.

وقول | من قال من الشافعية: له الابتداء وإن لم يكن ولد وعلّوا ذلك برفع العار وزوال الفراش م: ٣٨ وبيطل بالطلاق، فإنّ بالطلاق يزول الفراش ويرتفع العار. والوجه في أنّ الزوجة هي المطالبة ابتداءً من حيث أنّ لها بما يوجب القذف لها من الحدّ أو اللعان من الزوج كما يجب لها المطالبة إذا قذفها غير الزوج.

العاشرة: أنّ⁴⁰ اللعان يكون بالقسم. فيقول: والله العظيم، أربع مرّات، إني لصادق فيما رميتك به من الزنا ونفي ولدك. ويقول في الخامسة: لعنة الله عليّ إن كنت من الكاذبين فيما رميتك به من الزنا ونفي ولدك هذا.

وتقول المرأة: والله العظيم إنه لمن الكاذبين فيما رماني به من الزنا ونفي ولدي هذا؛ تقول ذلك أربع مرّات. ثم تقول في الخامسة: غضب الله (عليّ)⁴¹ إن كان من الصادقين فيما رماني به من الزنا ونفي ولدي هذا. وحينئذ تمّ اللعان بينهما.

الحادية عشر: أنّ اللعان يمين وليس بشهادة؛ ذكره [الهادي] في (الأحكام) وصحّحه السادة، وهو قول الشافعي.

40 + ان: م.

41 عليّ: عليها، م ي.

وعند أبي حنيفة وأصحابه، وقول الهادي عليه السلام في (المنتخب) إنه شهادة. وروى عن الناصر بعض أهل مذهبه أنه يمين إلا أنه يأتي بها بلفظ الشهادة.

وجه القول الأول: قوله صلى الله عليه وآله للملاعن: قم وأحلف؛ فسمّاه حلقاً. وقوله صلى الله عليه وآله: لولا الأيمان لكان لي ولها شأن.

الثانية عشر: أن اللعان لا يتم إلا بقولهما جميعاً عند علماء العترة عليهم السلام، وهو قول أبي حنيفة. وعند الشافعي: إذا لاعن الزوج وقعت الفرقة.

م: ٣٩/ ي: ٢٧٣

وجه قولنا: أن اللعان سبب يتخلص به عن حد القذف، كما يتخلص عنه باليمنة. فوجب أن لا يتم إلا بقولهما جميعاً.

الثالثة عشر: أن الفرقة لا تقع بين المتلاعنين إلا بتفريق الحاكم عندنا، وهو قول زيد بن علي والقاسمية عليهم السلام جميعاً. وهو أحد قولي الناصر، وهو قول أبي حنيفة وأصحابه.

وعند الباقر والصادق ومالك وزفر والليث وربيعة وداود: إذا فرغا من اللعان معاً وقعت الفرقة. وقد ذكرنا في المسألة التي قبلها أن الشافعي قال: تقع الفرقة إذا لاعن الزوج.

وعند عثمان البتي أن اللعان لا تقع به الفرقة أصلاً، وإنما ينتفي به النسب وتسقط الحدود. ودليلنا ما روي عن النبي صلى الله عليه وآله أنه فرق بين المتلاعنين وألحق الولد بأمه. وما روي عنه صلى الله عليه وآله أنه فرق بين هلال وامرأته وأمر أن لا يدعى ولدها لأب. فأضافت رواية الأخبار التفريق إلى النبي عليه السلام ونفي الولد.

الرابعة عشر: أن نسب الولد لا ينتفي إلا بحكم الحاكم بعد تمام اللعان بين الزوجين؛ وهو قول أبي حنيفة.

وعند الشافعي: إذا فرغ الزوج من اللعان انتفى نسب الولد منه كما تقع الفرقة عنده بفراغ الزوج من اللعان.

وجه | قولنا: ما ذكرناه من الأخبار في المسألة التي قبلها من أن الرواة أضافوا⁴² نفي الولد والفرقة إلى النبي عليه السلام.

م: ٣٩ و

الخامسة عشر: وعندنا أنه إذا فرق الحاكم بعد لعانها لم يجتمعا أبداً. وهو قول القاسم عليه السلام وقول الهادي في (الأحكام). وهو قول المؤيد بالله وغيره من أصحابنا. وهو قول عمر وابن عمر وابن مسعود وعطاء والزهري والثوري ومالك والشافعي والأوزاعي وأحمد وإسحاق وأبي يوسف وزفر والحسن بن حي.

وعند الهادي عليه السلام في (المنتخب) إذا تاب وأكذب نفسه وأُقيم عليه الحدّ جاز أن يتزوجها بنكاح جديد؛ وهو قول أبي حنيفة ومحمد [الشيباني].

وعند ابن مسعود إذا أكذب نفسه رُدَّتْ إليه امرأته ما دامت في العدة.

ودليلنا: ما روي عن النبي صَلَّى اللهُ عليه وآله أَنَّهُ قَالَ: المتلاعنان لا يجتمعان أبداً. وما روي عنه صَلَّى اللهُ عليه وآله، وقد سئل عن الملاعن فقال: لا ينكحها أبداً.

دليل آخر: أَنَّهُ مروى عن أمير المؤمنين عليه السلام.

السادسة عشر: أَنَّ الزوج إذا أتى بلفظ الشهادة على امرأته ومعه ثلاثة يشهدون، فإنَّ المرأة تُحدّ عندنا. وهذا قول الهادي عليه السلام ولا نعلم خلافاً عن أحد من أئمتنا عليهم السلام؛ وهو قول أبي حنيفة.

وعند مالك والشافعي: لا تُقبل شهادته عليها ولا بدّ من أربعة سواه، ويلاعنها الزوج ويحدّ الثلاثة إذا كانوا دون أربعة. وروي هذا القول عن ابن عباس.

وجه قولنا: ظاهر الأدلة ولأنَّه من أهل الشهادة ولا وجه يمنع من صحّة | شهادته ولأنَّه قد كل م: ٤٠٠ ظ

نصاب الشهادة، فلا يُحدّ الثلاثة.

الآية الرابعة

قوله تعالى ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا ذَلِكَ خَيْرٌ لَكُمْ لَعَلَّكُمْ تَذَكَّرُونَ﴾⁴³

الفصل الأول: اللغة

البيوت هاهنا هي المساكن، ومنه قول النبي صَلَّى اللهُ عليه وآله: النساء عي وعورات، فاستروا عينهن بالسكوت وعوراتهن بالبيوت.

والاستئناس الاستعلام عن أهل الدار بالسلام أو غيره. وقد رويت قراءة أخرى | وهي: حَتَّى ي: ٢٧٤ تستأذِنوا.⁴⁴ والمعنى في القراءة واحد، والأولى هي الظاهرة.

43 سورة النور: ٢٧.

44 هي قراءة شاذة عن ابن عباس والأعمش؛ الجشمي، التهذيب، ٥١٦٤.

الفصل الثاني: النزول

روي أنّ امرأة أنصارية جاءت إلى رسول الله صلى الله عليه وآله وقالت: يا رسول الله، إني أكون في منزلي على حال لا أحب أن يراني عليها أحد، ولا يزال يدخل علي رجل من أهلي وأنا على تلك الحال، فكيف أصنع؟ فنزلت الآية.⁴⁵

الفصل الثالث: المعنى⁴⁶

قوله تعالى ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا﴾ قيل بالتنحيز والكلام الذي يقوم مقام الاستئذان؛ ذكره مجاهد والسدي.

وقيل: هو السلام لقوله ﴿تَسَلَّمُوا﴾.

وقيل هو التسييح والتكبير ونحوه؛ ذكره عكرمة.

وقيل في مصحف ابن مسعود: حَتَّى تَسَلَّمُوا وَتَسْتَأْذِنُوا.

وقيل: قد قرئ: حَتَّى تَسْتَأْذِنُوا. ورويت هذه القراءة عن ابن عباس وأبي والأعمش، وهي قراءة غير مشهورة. ويحتمل أنهم قالوا ذلك تفسيراً | لتستأنسوا؛ والله أعلم.

وقيل معناه: تستأنسوا بأن تسلموا، فيقول المستأذن: السلام عليكم أدخل؟ وقد روي معنى ذلك عن رسول الله صلى الله عليه وآله، وهو أحسن الأقوال عندنا.

الفصل الرابع: الأحكام

وفيه مسائل:

الأولى: أنه يحرم دخول بيت الغير إلا بإذن؛ وهو إجماع ولا نعلم خلافاً. ويدل عليه قوله صلى الله عليه وآله: من أطلع في دار قوم من غير إذنهم ففقؤوا عينه، فقد هدرت عينه.

الثانية: أن التعبد بالسلام مشروع على أهل المنزل، وفيه خلاف.

فعدنا أن السلام المذكور في الآية من النوافل، وهو قول بعضهم. ومن العلماء من قال: هو واجب على الأعيان. ومنهم من قال فرض على الكفاية.

ولا دلالة على الوجوب فثبت ما قلنا.

45 الجشمي، التهذيب، ٥١٦٦.

46 الجشمي، التهذيب، ٥١٦٩-٥١٦٨.

الثالثة: أنَّ السَّنة في الاستئذان ثلاثٌ بالسلام ونحوه. ويقول: أدخل أم لا؟ حتى يعلموا به. فإن أذنوا له، وآلا عاد. هذا عندنا، وهو قول الهادي عليه السلام وغيره من علمائنا. وهو قول بعض المفسرين وقواه الحاكم [الجشمي] رحمة الله عليه.⁴⁷

وعند بعضها الاستئذان بالتكبير والتسييح ونحوه.

وعند بعضهم بالتنحنح والكلام الذي يقوم مقام الاستئذان ثلاث مرّات.

والدليل على أنَّ الاستئذان ثلاث ما روي عن أبي سعيد الخدري أنّه قال: كنتُ جالساً في مجلس من مجالس الأنصار فجاء أبو موسى فزَعاً فقلنا له: ما أفزعك؟ فقال: أمرني عمر آتيه فأتيته فاستأذنت فلم يؤذن لي، وقد قال صلى الله عليه وآله: إذا استأذن أحدكم ثلاثاً فلم يؤذن له فليرجع. فقال أناس: أتت على هذا بالبيّنة. فقال أبو سعيد له: لا يقوم معك إلا أصغر القوم فقام أبو سعيد فشهد له. وقد روي أن أبا موسى لما روى هذا الخبر دعا عمر وقال: لتأتين بيّنة أو لأعاقبك! فأتاه بمن سمعه معه. وأمّا الدليل على أنَّ أحسن ما يستأذن به ما ذكرنا من السلام وقول أدخل، فهو ما روي أن رجلاً استأذن على رسول الله صلى الله عليه وآله فتنحنح. فقال صلى الله عليه وآله لامرأة: قومي إليه فعلّيه. فقولِي له: قل السلام عليكم أأدخل؟

الرابعة: أنَّ المستأذن يستأذن من يمين الباب أو شماله متنجياً عن قبالة الباب لأنَّ | الاستئذان لم يجب إلا لأجل أن لا ترى عورة أهل الدار. ويدلّ عليه أنَّ النبي صلى الله عليه وآله كان يفعل كذلك وينهى عن مقابلة الباب. (وقال صلى الله عليه وآله وسلم لرجل وقف مستقبل بابه: هكذا عنك، أو هكذا فإنما الاستئذان من النظر).⁴⁸ وكذلك أمير المؤمنين عليه السلام كان لا يقف إلا بأحد الجانبين إذا طلب حاجة من بعض أهل الدور نحو فعله يوم أتى إلى النبي صلى الله عليه وآله يخاطب فاطمة عليهم السلام وكان النبي صلى الله عليه وآله في بيت أمّ سلمة. فلما دقّ أمير المؤمنين عليه السلام قال النبي عليه السلام لأمّ سلمة: قومي | افتحي الباب، فشقّ عليها ذلك مخافة أن ينظر إليها من دقّ الباب، وكانت ذات شعر وجمال ولم تعلم من هو صاحب الباب، فأخبرها النبي صلى الله عليه وآله أنَّ الذي على الباب ممن لا يخاف منه ذلك. ففتحت الباب ومال علي عليه السلام عن الباب حتى عرف أنها قد غابت عن عينه ثم دخل.

47 الجشمي، التهذيب، ٥١٧٠.

48 هذا الخبر في هامش نسخة المصنّف محمد ابن الهادي.

وهذه الأخبار تدلّ على أنّه يحرم على من يصل إلى باب دار فيها الساكن أن ينظر إليها. فلو لا أنّه محظور، لما تركه الرسول وأخوه أمير المؤمنين صلوات الله عليهما وعلى آلهما، ولما أمر به ونهى عن فعل خلافه.

ويدلّ عليه قوله تعالى ﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ﴾⁴⁹.
الخامسة: أنّه يجب الاستئذان والاحتراز على ما ذكرناه إلّا من زوجته وما ملكت يمينه وذلك أنّه يجوز له النظر إلى عورة زوجته وملك يمينه عندنا، وهو قول العترة عليهم السلام وجمهور العلماء ورواية عن الشافعي.

والرواية الأخرى عن الشافعي أنّه لا يجوز النظر إلى الفرج.
وجه قولنا: أنّه لما نزل قوله تعالى ﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ﴾ قيل: يا رسول الله، عوراتنا ما نأتي منها وما نذر؟ قال صلى الله عليه وآله: احفظ عورتك إلّا من زوجتك أو ما ملكت يمينك. قيل: يا رسول الله، لو كان أحدنا خالياً؟ قال: فالله أحقّ أن يُستحي منه.

الآية الخامسة

قوله تعالى ﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ | وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكَ أَزْكَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ﴾⁵⁰ م: ٤٢ ظ

الفصل الأوّل: اللغة

غَضَّ البصر كَفَّهُ عن النظر، مأخوذ من الغضغضة، وهي النقصان. ومنه قوله ﴿وَإِغْضُضْ مِنْ صَوْتِكَ﴾⁵¹ معناه انقص منه. فإذا غَضَّ بصره وغَضَّ صوته فكأنه نقص منهما.

قال الشاعر:⁵²

فُغِضَ الطَّرْفَ إِنَّكَ مِنْ مُنْمِرٍ فلا كعباً بلغت ولا كلاباً

49 سورة النور: ٣٠؛ وسنأتي بها وهي الآية الخامسة في تفسير هذه السورة من الروضة والغدير.

50 سورة النور: ٣٠.

51 سورة لقمان: ١٩.

52 هو جرير.

الفصل الثاني: المعنى⁵³

قوله تعالى ﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ﴾ معناه: قل يا محمد للمؤمنين يكفّوا أبصارهم عن النظر إلى ما لا يجوز لهم من العورات.

قوله ﴿وَيَحْفَظُوا فُرُوجَهُمْ﴾ معناه: عمّا لا يحلّ لهم من النساء، وعليه أكثر المفسّرين، وهو الصحيح لأنّه الذي يسبق إلى الأفهام. وذكر بعضهم أنّ المراد أن يحفظوا فروجهم عن أعين الناظرين. قال: وليس في القرآن شيء في ذكر حفظ الفرج إلّا والمقصود حفظه عن الزنا إلّا هذه الآية، فهي في حفظ الأعين؛ ذكره ابن زيد.

قوله ﴿ذَلِكَ أَزْكَى لَكُمْ﴾ معناه: أطهر لكم وأنقى للثمّة وأقرب إلى التقوى.

قوله ﴿إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ﴾ معناه: عليم بما تفعلون فيما أمرتكم ونهيتكم من غُضِّ البصر وحفظ الفرج، فيجازيكم به.

الفصل الثالث: الأحكام

الآية تدلّ على تحريم النظر إلى ما لا يجوز له وحفظ الفروج عمّا لا يحلّ، على ما انفصله في التي بعدها في قوله ﴿وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ﴾ لأنّ الحكم واحد في الرجال والنساء، فلا فائدة في إفراد كلّ واحد على حياله لما فيه من الإكثار وترك الاختصار لغير فائدة.

الآية السادسة

قوله تعالى ﴿وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلَا يَضْرِبْنَ بِمَخْرُجِهِنَّ عَلَى جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءَ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوْ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتُوبُوا إِلَى اللَّهِ جَمِيعاً أَيُّهَا الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ﴾⁵⁵

53 الجسمي، التهذيب، ٥١٧٥-٥١٧٤.

54 ما بين الكوسين مكتوب في هامش نسخة المصنف رحمه الله.

55 سورة النور: ٣١.

الفصل الأول: اللغة

غَضَّ البصر: قد ذكرناه في الآية التي قبلها.
وانخمر جمع نِخار وهو ضرب من لباس الرأس. وسُمِّي نِخاراً لأنه يغطي الرأس ويستتره. ومنه انخمر لأنه يغطي العقل.
قال الشاعر:

ألا هَيَّ بَصَحْنِكَ فَاصْبِحْنَا وَلَا تُبْقِي نُحُورَ الْأَنْدَرِينَا⁵⁶

نحور جمع نحر.

والإربة الحاجة. يقال: لا أَرَبَ لي في كذا، معناه لا حاجة لي فيه. والمأربة أيضاً الحاجة، بضمّ الراء وفتحها. والأربة بضمّ الهمزة العقدة. والأرب بفتح الراء العقل، وبكسر الراء الرجل العاقل. والإرب م: ٤٣ ظ بكسر الهمزة | وسكون الراء، واحد الآراب، وهي الأعضاء.

الفصل الثاني: المعنى⁵⁷

قوله تعالى ﴿وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ﴾ معناه: لا ينظرن إلى ما لا يجوز لهنّ النظر إليه.
قوله ﴿وَيَحْفَظْنَ فُرُوجَهُنَّ﴾: قيل من الزنا، وهو الأظهر؛ وقيل من النظر، فلا يرى فروجهنّ أحدٌ.
وإن حمل على حفظهنّ لفروجهنّ من الزنا والنظر وغيره مما يحرمّ عليهنّ؛ فهو الأولى والآية تشملها ولا يبعد ذلك من الصواب عندنا.

قوله ﴿وَلَا يُبْدِينَ زِينَتَهُنَّ﴾ معناه: لا يظهرن مواضع الزينة لغير محرمّ. وقيل: مواضع الزينة القرط والقلادة والسوار والدملج والخلخال ونحوها.
وقيل: ما تتزيّن به من الثياب وغيرها.
وقيل: الحلقة هي من الزينة.

قوله ﴿إِلَّا مَا ظَهَرَ مِنْهَا﴾ قيل: مواضع الزينة، وهي الكحل والخضاب والسوار والخاتم؛ ذكره ابن عباس.

وقيل: هو الوجه والكفان؛ ذكره الضحاك والأوزاعي وعطاء.

وقيل: الوجه والبنان؛ ذكره الحسن.

56 هذا مطلع معلقة عمرو بن كلثوم، واسم هذا الشاعر مكتوب في هامش ي.

57 انظر إلى الجسمي، التهذيب، ٧٧-٥١٧٥.

وقيل: ما ظهر على سبيل الغفلة والنسيان.

وقيل: ما ظهر منها هو الثياب؛ ذكره ابن مسعود وإبراهيم. أخذوه من قوله تعالى ﴿خُذُوا زِينَتَكُمْ﴾ ي: ٤٣ وعند كلِّ مسجد⁵⁸ ورخص تعالى فيما ظهر لأنه ليس بعورة على حسب ما قد ذكرنا من الخلاف بين العلماء.

قوله ﴿وليضربن بخورهنّ على جيوبهنّ﴾ والمرأة تغطي بالتمار ما تحته من الشعر والعنق والصدر. قوله ﴿ولا يبدن زينتهنّ﴾ قيل الخفية، وهي ما عدا الوجه والكفّين وظاهر القدمين، على خلاف فيه أيضاً.

قوله ﴿إلا لبعولتهنّ﴾ إلى آخر المحارم المذكورين في الآية: فيجوز لهم النظر إلى مواضع الزينة الظاهرة.

قوله ﴿أو نسائهنّ﴾ قيل: نساء المؤمنين ولا يجوز للمسلمة أن تتجرد للمشركة إلا إن تكون أمة لها. ي: ٢٧٧ قوله ﴿أو ماملكت أيمنهنّ﴾ قيل: أراد جواريهنّ المشركات؛ ذكره ابن جريج. وقيل أراد مملوكاً لم يبلغ مبلغ الرجال؛ ذكره أبو علي. وقيل أراد الجواري على العموم. وقيل أراد المماليك ذكوراً وإناثاً لأنّ اللفظ يشملهم؛ ذكره الحسن، وهو الصحيح عندنا لأنّ اللفظ عام إلا إن ترد دلالة تخصّ بعضاً منهم دون بعض. ونحن نفصل القول فيه عند ذكر الأحكام في هذه الآية.

قوله ﴿أو التابعين غير أولي الإربة من الرجال﴾ قيل: هو الذي لا ينشر؛ ذكره الحسن. وقيل: هو الأبله | العنّين؛ ذكره ابن عباس في أحد الروايتين عنه. وذكر في الرواية الأخرى أنّه الذي يتبعك ليصيب من طعامك، ولا حاجة له في النساء.

وقيل: هم الذين يضيفونهم وليس لهم في النساء إربة؛ ذكر معناه ابن زيد.

وقيل: هو الأبله الذي لا يعرف شيئاً من النساء؛ ذكره مجاهد.

وقيل: هو المعتوه؛ ذكره سعيد بن جبير.

وقيل: هو المجنون؛ ذكره عكرمة.

قوله تعالى ﴿أو الطفل الذين لم يظهروا على عورات النساء﴾ قيل: هو الذي لا يقدر على الجماع. فأما من قدر منهم كالمراهق، فحكمه حكم الرجال.

قوله ﴿ولا يضربن بأرجلهنّ ليعلم ما يخفين من زينتهنّ﴾ معناه لا يحركن أرجلهنّ حتّى يسمع الرجال أصوات خلاخيلهنّ. ويكون في حكمه سائر ما يسمع من الحلي في العنق والرأس. فإنّ

وحى الحلي يبعث شهوات مَنْ سمعهنّ من الرجال ويدعوا إلى طلبهنّ. وكانت البغايا في الجاهليّة يحرّكنَ الخلاخيل إذا عرضن بمجالس الرجال.

الفصل الثالث: الأحكام

الآية تدلّ على أحكام شرعيّة وفيها مسائل:

الأولى: أنّ النظر مع الشهوة حرام إلّا بين الزوجين وبين المملوكة وسيدها. هذا على الجملة ولا خلاف فيه.

الثانية: أنّ النظر إلى الفرج من الزوجة والأمة مباح عندنا | وهو رأي العترة عليهم السلام وعمامة الفقهاء. م: ٤٤و

وللشافعيّة قولان أحدهما مثل قولنا. والقول الثاني لا يجوز.

والدليل على صحّة ما ذهبنا إليه قوله تعالى ﴿فَالآنَ بَاشِرُوهُمْ﴾⁵⁹ وقوله ﴿وقد أفضى بعضكم إلى بعض﴾⁶⁰. والاستمتاع بالنظر من جملة المباشرة والإفضاء. وكذلك حكم ملك اليمين من الإماء يجري هذا المجرى إذ لا أحد فرق بينهما.

الثالثة: أنّ العبد لا يجوز له النظر إلى مولاته ولا هي إليه إذا لم يكن ضرورة إلى ذلك سواء كان خلاً أو خصياً. وهذا هو قول علماء العترة عليهم السلام وجمهور العلماء. وعند الشافعي في أحد قوليّه هو جائز.

وجه قولنا ظواهر الأدلّة من الكتاب والسنة، فإنّها لم تفرّق بين العبد وغيره. فأما قوله ﴿أو ما ملكت أيمانهم﴾ فقد حمّله العلماء والمفسّرون على غير العبد الكبير. فقليل المراد به الصغار. وقيل المراد به المملوكة المشركة، يجوز مولاتها إظهار زينتها عليها للضرورة دون غيرها من المشركات. فإنّه يجب عند بعضهم التسترّ من المشركات ورخص في المملوكة المشركة.

الرابعة: فيما يجوز للمحرّم أن ينظر إليه إذا أمن الفتنة ولم يقارن نظره شهوة. فيجوز له أن ينظر إلى شعر أرحامه ومحارمه من نسب أو رضاع، من أمّ أو أخت أو غيرها. وإن | نظر إلى صدورها وإلى ثديين إلى المنكبين فما فوق؛ وإلى | ما تحت الركبة. هذا إذا أمن حركة الشهوة. فإن خاف ذلك حرّم عليه كالأجنبي من النظر والخلوة بها والسفر معها. وهذا مما لا أعلم فيه خلافاً.

م: ٤٥ظ

ي: ٢٧٨

59 سورة البقرة: ١٨٧.

60 سورة النساء: ٣١.

وكذلك المرأة يجوز لها النظر إلى محارمها من الرجال كما يجوز للرجل من الرجل إذا أمنت حركة الشهوة.

الخامسة: في العورة من الرجل والمرأة. فالعورة من الرجل هي الركبة وما فوقها إلى السرة. يدلّ عليه قوله صلى الله عليه وآله: الركبة عورة. وقد ذكرنا فيما تقدّم أنّ رسول الله عليه السلام أمر أن ينظر إلى ركبة أبي جهل يوم قُتل ليعرف، وهذا يدلّ على أنّها غير عورة.

السادسة: قال القاسم عليه السلام وتستر المرأة عن الصبي إذا عرف عورات النساء وميّز الحسن عن القبيح على قدر فطنة الصبيان. وأحسب أنّه قد روي لي عن الوالد السيّد الناصر للحق،⁶¹ صاحب (التقرير) عليه السلام، ترجيح قول القاسم عليه السلام. ومن السادة من حمل قول القاسم عليه السلام على أنّه من بلغ حدّاً يشتهي ويُسْتَهَى، وظاهر قول القاسم لا يقتضي أنّه من يشتهي ويُسْتَهَى فقط. بل من كان يميّز، وإن لم يبلغ حدّ الشهوة، وهو الأرجح عندنا.

والوجه فيه أنّه وإن لم يحرم الستر منه لأمر يرجع إلى نفسه، فإنّه يحرم لما لا يؤمن من نقل الخبر بما يشاهد إلى أهل الفتنة من الرجال، كما حرم الضرب بالرجل لثلاث سمع صرة | الخلخال م: ٤٥٥ ونحو تحريم التكبّش للمشرقة عند بعض العلماء ونحو تحريم التكبّش للدوّارات من النساء عند بعض العلماء لما لا يؤمن من تبليغهنّ حال النسوان إلى الرجال. وهذا قوي من جهة النظر؛ والله أعلم.

الآية السابعة

قوله تعالى ﴿وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ﴾⁶²

61 هو الحسين بن محمد بدر الدين، صاحب شفاء الأوام.

62 سورة النور: ٣٢.

الفصل الأول: اللغة

النكاح قد يُطلق ويراد به العقد ويطلق مرّة ويراد به الوطء. واختلف العلماء فيه. فذهب بعضهم إلى أنه حقيقة في الوطء مجاز في العقد، وذهب بعض إلى أنه حقيقة في العقد مجاز في الوطء. والذي يقرب عندنا أنه حقيقة في الوطء قبل ظهور قوّة اصطلاح الشرع. قال الشاعر:⁶³

التاركين على طُهر نساءهم والناكحين بشطي دجلة البقرا

وأما بعد الشرع، فهو يطلق على العقد والوطء، والعقد أظهر بالمعنى الشرعي؛ والله أعلم. والأياى جمع أيم، وهي التي لا زوج لها. ويقال ذلك للرجل والمرأة.

الفصل الثاني: المعنى⁶⁴

قوله تعالى ﴿وَأَنْكِحُوا الْأَيَامَى﴾ قيل: هذا خطاب للأولياء. وقيل هو خطاب لمن له أن يُزوّج ولياً كان أو غير ولي.

وقيل: أمر بالنكاح بشرط رضاها إذا كنّ من أهل الرضى. والأياى هو اسم لمن لا امرأة له من الرجال واسم لمن لا زوج لها من النساء.

قوله ﴿مَنْكُمْ﴾ معناه: من الحرائر فضلاً بين الأحرار والعبيد. وقيل: أنكحوهنّ من أقربائكم، فتزوّج الأيم من بني عمّها وأقربائها.

قوله ﴿وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ﴾ معناه: وأنكحو الصالحين من عبيدكم وإمائكم يستحبّ أن يزوّج بعضهم من بعض. وقيل: ليس بأمر إيجاب. وقيل: بل هو نداء. وقيل: هو إباحة.

والمراد بالصلاح: قيل في الدين. وقيل: في حقوق الزوجيّة. وقيل: الصلاح للنكاح، وهي أن لا تكون صغيرة ولا مجنونة.

قوله ﴿إِنْ يَكُونُوا فُقَرَاءَ يَغْنِمُ اللَّهُ مِنْ فَضْلِهِ﴾: وهذا راجع إلى الأياى من الأحرار دون العبيد لأنّ العبد لا يملك. وقيل: راجع إلى العبيد وهم يملكون إذا ملكوا. وقيل: أراد بالغناء الاستمتاع، وغنى الاستمتاع يقع بالنكاح بلا إشكال.

قوله ﴿وَاللَّهُ وَاسِعٌ عَلِيمٌ﴾ معناه واسع الرحمة عالم بمصالح الخلق.

63 هو قيس بن عمرو النجاشي الحارثي.

64 الجشمي، التهذيب، ٥١٨٣-٥١٨٢.

الفصل الثالث: الأحكام

تدل الآية على أن للولي حقاً في نكاح الولاية وتدل على التعبد بالنكاح وفيه مسائل:

الأولى: أن أولياء المرأة عصبتها وأولاهم الابن عندنا، وهو قول علماء العترة عليهم السلام؛ وهو قول أبي حنيفة وأبي يوسف ومالك والليث.

وعند الشافعي أنه لا ولاية بالبنوة البتة إلا أن يكون الابن من عصبتها من النسب. وعند محمد [الشيباني] وأحمد بن حنبل: الأب أولى من الابن، وإن كان الابن ثابت الولاية بالبنوة، بخلاف قول الشافعي.

وعند أبي حنيفة في قوله الآخر أنهما سواء.

وجه قولنا: عموم خطاب هذه الآية للأقارب من دون التخصيص لبعضهم من بعض؛ ولأنه ذكر يحوز جميع الميراث بالتعصيب، فأشبه الأب؛ ولأن تعصيب البنوة أقوى من تعصيب الأبوة، لأن الابن يسقط تعصيب الأب بالاتفاق. ولأن ولاية النكاح تتبع التعصيب، فتثبت بثبوته وتنتفي بانتفائه.

الثانية: أن الأب بعد الابن له ولاية عندنا على ما ذكرناه من الخلاف في المسألة.

الثالثة: الجد ثم الأخ لأب وأم، ثم الأخ لأب عندنا. وهو قول جمهور الفقهاء.

وعند محمد صاحب أبي حنيفة أن الجد والأخ سواء.

وجه قولنا: أن الجد أقوى تعصباً من الأخ لأنه يرجع إلى التسهم إذا كان أنفع له من مقاسمة الإخوة، ولأنه يجري مجرى الأب في الولايات.

فصل وقولنا أن الأخ لأب وأم أولى من الأخ لأب هو قول علماء العترة عليهم السلام، وهو قول أبي حنيفة وأصحابه، وقول الشافعي في الجديد.

وعند مالك والشافعي في القديم أنهما على سواء.

وجه قولنا: أن الأخ لأب وأم | يحوز الميراث دون الأخ لأب، فكان أولى بالنكاح. ويزيد ذلك م: ٤٧ ظ قوة أنه مما لا خلاف فيه بين علماء العترة عليهم السلام.

وعلة من سوى بينهما أن نسب الأم لا حظ له في التعصيب، فيستوي فيه وجودها وعدمها.

الرابعة: ثم العم لأب وأم، ثم العم لأب، ثم ابن العم لأب وأم، ثم ابن العم لأب، إلى آخر العصبات، وإن بعدوا من النسب، ثم المولى المعتق وعصبته.

الخامسة: أنه إذا غاب الولي الأقرب انتقلت الولاية إلى الذي يليه في القرب عندنا. وهو قول علمائنا عليهم السلام، وهو قول أبي حنيفة.

وعند الشافعي تنتقل إلى السلطان.

وعند زفر لا تنتقل بل تنتظر.

وجه قولنا: أنه إذا بطلت ولايته بالغيبة وجب أن تنتقل إلى الذي يليه كالموت؛ ولأن في انتظارها ضرر عليها والولاية لا يملك فيها الولي الضرر.

السادسة: إذا عضل الولي انتقلت الولاية إلى الأقرب بعده عندنا، وهو الذي ذكره على مذهب الهادي وولده محمد وأبي العباس وغيرهم من علمائنا؛ وهو قول أصحاب أبي حنيفة.

وعند المؤيد بالله تنتقل إلى الإمام أو الحاكم.

وعند الشافعي إذا غاب أو عضل انتقلت الولاية إلى السلطان لا إلى الولي الأقرب بعده.

وعند زفر: لا تنتقل إلى من بعده.

وجه قولنا: أنه إذا عضل انتقلت إلى الذي يليه في القرب كما تنتقل إليه بغيبة الأقرب أو موته.

السابعة: أنه لا ولاية للمجنون ولا لمن لم يبلغ ولا للعبد. وهذا مما لا أعلم فيه خلافاً عن أحد من

العلماء الراشدين.

الثامنة: أن البلوغ بالاحتلام للرجال مما لا خلاف فيه، وأن الحيض بلوغ للنساء بلا خلاف.

التاسعة: الإنبات: فهو حدّ للبلوغ عندنا في النساء والرجال، وهو قول علمائنا عليهم السلام؛ وهو

قول أبي يوسف ومحمد.

وعند الشافعي مثل قولنا في أولاد الكفار وله في أولاد المسلمين قولان.

وعند أبي حنيفة ليس الإنبات حدّاً للبلوغ.

ودليلنا ما روي أن النبي صلى الله عليه وآله قتل من بني قريظة من نبتت عانته أو كان محتلباً. وقد

روي هذا عن بعض الصحابة ولم يُروَ خلافه عن أحد منهم، فجري مجرى الإجماع في كونه حجة.

العاشرة: أن البلوغ في السنين يقع بخمس عشرة سنة عندنا، وهو قول علمائنا عليهم السلام، وهو

قول الشافعي وأبي يوسف ومحمد.

وعند أبي حنيفة ثمان عشرة سنة، وروي عن أبي حنيفة قول آخر أنه تسع عشرة سنة، وفي الجارية

سبع عشرة سنة.

وعند زفر ثمان عشرة سنة.

ودليلنا ما روي عن ابن عمر أنه قال: عرضت على رسول الله صلى الله عليه وآله يوم أحد وأنا

ابن أربع عشرة سنة، فلم يُجزني في المقاتلة | وعرضت عليه يوم الخندق وأنا ابن خمس عشرة سنة،

فأجازني في المقاتلة.

م: ٤٧
ي: ٢٨٠

م: ٤٨
ظ

الحادية عشر: أنه إذا لم يكن في الزمان إمام، ولت أمرها رجلاً من المسلمين في إنكاحها عندنا، وهو قول علمائنا عليهم السلام وبعض الفقهاء. وحكي عن أبي ثور مثل قولنا، وحكي عنه قول آخر أن تولّي رجلاً من المسلمين مع وجود الولي.

وروي عن بعض المتقدمين أنه يجب عليها الصبر إلى أن يتفق وجود الإمام. وجه قولنا: عموم الأدلة نحو قوله ﴿والمؤمنون والمؤمنات بعضهم أولياء بعض﴾⁶⁵ فوجب بعمومه أن كل مؤمن ولي لكل مؤمنة، إلا ما خصّته دلالة. ونحو قوله في هذه الآية ﴿وأنكحوا الأيامى﴾ وهذا خطاب لجميع المسلمين من الأقرب والأبعد ولا يقع التخصيص إلا بدلالة. الثانية عشر: أن الكافر لا يكون ولياً لمسلمة في النكاح، وهذا مما لا خلاف فيه، والأدلة عليه ظاهرة من الكتاب والسنة، نحو قوله تعالى ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ﴾⁶⁶. ويدل عليه ما روي أن النبي صلى الله عليه وآله تزوج [أم] حبيبة بنت أبي سفيان من غير إذن أبيها أبي سفيان.

الثالثة عشر: أن المسلم لا يكون ولياً للكافرة عندنا، وهو قول علماء القاسمية وزيد بن علي؛ وهو قول أبي حنيفة وأصحابه والشافعي وإحدى الروايتين عن مالك.

وعند مالك في الرواية الأخرى وابن صالح أن المسلم يكون ولياً للكافرة. ومثله رواية عن الناصر. وجه قولنا: قوله تعالى ﴿والمؤمنون والمؤمنات بعضهم أولياء بعض﴾⁶⁸ ولأنهما لا يتوارثان، فلا يكون ولياً لها كالعبد والأجنبي.

الرابعة عشر: أنه لا ولاية للوصي في النكاح عندنا، وهو قول علمائنا عليهم السلام؛ وهو قول الشافعي وأبي حنيفة وأصحابه والثوري.

وعند مالك وربيعة والليث ويحيى بن سعيد أن الوصي أولى بالتزويج من الولي غير الأب. وجه قولنا: أن الوصاية لا تثبت بها ولاية النكاح فلا يكون ولياً، ولأن الولاية للعصبة والوصي غير العصبة، فلا تكون إليه ولاية النكاح. |

65 سورة التوبة: ٧١.

66 سورة النساء: ١٤٤.

67 ساقطة من م ويبد متأخرة بين السطرين في ي.

68 سورة التوبة: ٧١.

الخامسة عشر: اليتيمة إذا لم يكن لها ولي ولم يكن إمام زوجها الحاكم متحرراً للصالح عندنا، وهو قول الهادي والمؤيد بالله وأبي حنيفة في أحد قوليّه ومحمد.
وقول أبي حنيفة الثاني: ولايته كولاية الأب ولا خيار لها.
وجه قولنا: أنّ ولاية النسب أقوى من ولايته، ولهذا لا ينكح إلا بعد عدم الأولياء، وهذا ظاهر.

الآية الثامنة

قوله تعالى ﴿والذين يبتغون الكتاب مما ملكت أيمانكم فكاتبوهم إن علمتم فيهم خيراً وءاتوهم من مال الله الذي ءاتاكم ولا تكرهوا فتياتكم على البغاء إن أردن تحصناً لتبتغوا عَرْضَ الحياة الدنيا وَمَنْ يُكْرِهِنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَحِيمٌ﴾⁶⁹ م: ٤٩ ظ

الفصل الأوّل: اللغة

الكتابة هاهنا هو أن يكتب العبد سيّده على مال يؤدّيه إليه ثمّ يعتق. وهو مأخوذ من أصل اللغة، فإنّ أصل الكتابة الجمع، ومنه الكتاب، لأنّه مجموع. ومنه الكُتّبة لاجتماع الجيش فيها. فلما كان العبد عتقه على هذه الصفة على المال يجمعه فيُعطيّه المولى، فيضيفه إلى ماله، ويجتمع الكلّ سميّ (كتابة).

والإكراه الإكراه على الشيء. قال الشاعر:⁷⁰

حَمَلَتْ بِهِ فِي لَيْلَةٍ مَرْوُودَةٍ كَرَهَا وَعَقْدُ نَظَاقِهَا لَمْ يَحْلَلْ

والفتيات جمع فتاة، والفتاة هي الأمة، والفتى هو العبد في لغة العرب، ومنه قوله تعالى ﴿تراود فتاه عن نفسه﴾⁷¹ لا اعتقادهم أنّ يوسف عليه السلام عبد لها.

69 سورة النور: ٣٣.

70 وهو ثابت بن جابر: <http://www.adab.com/modules.php?name=Sh3er&doWhat=shqas&qid=>

19459&r=&rc=6

71 سورة يوسف: ٣٠.

الفصل الثاني: النزول⁷²

قيل نزلت الآية في عبد لحويطب بن عبد العزى، سأل مولاه الكتابة فأبى مولاه، فنزلت الآية. فكتبه على مائة دينار ووهب له منها عشرين ديناراً وأداها.

فأما قوله ﴿ولا تكرهوا﴾ فتياتكم على البغاء﴾ فنزلت في جارية لعبد الله بن أبي بن سلول⁷³ أكرهها م: ٤٩، و على الزنا بجعل.

وقيل: في ست جوارله أكرههن كذلك، فشكا بعضهن إلى رسول الله صلى الله عليه وآله، فنزلت الآية؛ ذكره مقاتل.

وقيل: كان لعبد الله جارية وأسر رجلاً من قریش يوم بدر فأرادها الأسير، فأبت الجارية، وكانت مسلمة، فأكرهها عبد الله بن أبي⁷⁴ ورجا أن تحمل، فيطلبه الأسير بفداء ولده؛ ذكره الزهري.

الفصل الثالث: المعنى⁷⁵

قوله تعالى ﴿والذين يبتغون الكتاب﴾ معناه: يطلبون الكتابة من المماليك.

قوله ﴿فكاتبوهم﴾ قيل: هو فرض وحتم إذا طلبه المملوك وعلم فيه الخير؛ ذكره عطاء وعمر بن دينار، وهو قول داود.

وقيل: ندب واستحباب، عن أكثر العلماء.

قوله ﴿إن علمتم فيهم خيراً﴾ قيل: قدرة على كسب مال الكتابة وأداها؛ روي ذلك عن ابن عباس وابن عمر وابن زيد ومالك والثوري.

وقيل: مالا؛ ذكره ابن عباس أيضاً والضحاك وعطاء.

وقيل: الإسلام والوفاء؛ ذكره الحسن.

وقيل: صدقاً ووقاراً وأمانة؛ ذكره إبراهيم وعبيدة وأبو صالح وابن زيد.

72 الجشمي، التهذيب، ٥١٨٨.

73 بن: -، ي.

74 + سلول: ي.

75 انظر إلى الجشمي، التهذيب، ٥١٩٠-٥١٨٨.

- وقيل: مالا وأمانة؛ ذكره طاوس وعمر بن دينار.
- م: ٥٠ ظ وقيل: صلاحاً في الدين وعملاً بالحق؛ ذكره بعضهم.
- وقيل: هو أن يكون بالغاً عاقلاً دون الصبي والمجنون، فكاتبه هؤلاء لا تصح إلا أن يكون الصبي مراهقاً مأذوناً. فقال أبو حنيفة: تصح كتابته.
- قوله ﴿وأتوهم من مال الله الذي آتاكم﴾ قيل: أمر للموالي بحدّ شيء من مال الكاتبة. قيل: على سبيل الوجوب.
- وقيل: على الاستحباب.
- ي: ٢٨٢ وقيل: خطاب للمؤمنين جميعاً ليعينوهم على التخلص من الرقّ بدفع شيء إليهم.
- وقيل: خطاب لأهل الصدقات ليؤتوهم شيئاً منها.
- قوله ﴿ولا تُكْرَهُوا فِتْيَانَكُمْ عَلَى الْبَغَاءِ﴾ معناه: لا تُكْرَهُوهنَّ على الزنا.
- قوله ﴿إِنْ أُرْدُنَ تَحَصَّنًا﴾ معناه: تعفّفوا عن الزنا، وليس ذلك بشرط، بل لا يجوز إكراههنَّ أردن التعفّف أم لا.
- قوله ﴿لَتَبْتَغُوا عَرَضَ الْحَيَاةِ الدُّنْيَا﴾ قيل: كراء الزنا. وقيل: الولد.
- قوله ﴿وَمَنْ يُكْرِهِنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَحِيمٌ﴾ معناه: إنّ الله بعد إكراههنَّ لا يؤاخذهنَّ.

الفصل الرابع: الأحكام

- الآية تدلّ على الكاتبة وعلى أحكام في الإكراه وفيه مسائل:
- الأولى: أنّ الكاتبة مندوبة غير واجبة عندنا، وهو قول علمائنا عليهم السلام؛ وقول الحسن والشعبي والشافعي ومالك وأبي حنيفة وأصحابه وأكثر العلماء.
- م: ٥٠ وعند عطاء وعمر بن دينار وداود وأصحابه أنّها واجبة. وروي | عن ابن عباس نحو قولهم، ولا خلاف في استحبابها.
- وجه قولنا: أنّ الكاتبة عقد معاوضة فلا تجب كما لا تجب سائر عقود المعاوضات، كالبيع والهبة. وقد تقرّر من الشرع الشريف أنّه لا يجب على المالك إزالة ملكه إلى الغير إذا طلبه منه ذلك الغير إذا كان بغير حقّ. ولا يلزم عليه إجبار المعسر على بيع ماله للدين.
- ويدلّ عليه قوله صلى الله عليه وآله: لا يحلّ مال امرء مسلم إلا بطيئة من نفسه. والعبد من جملة المال.

الثانية: أنَّ الخير المذكور في المكاتب هو الدين والصالح والوفاء عندنا. وهو قول علمائنا على المذهب، وهو الذي صحَّحه الحاكم [الشمسي] رحمه الله عليه.⁷⁶ وذهب كثير من العلماء إلى أنَّ الخير غير ذلك مما ذكرنا في فصل المعنى قبل هذا الفصل.

والدليل على صحَّة قولنا أنَّه السابق إلى الأفهام من الآية. واشترطنا الدين والصالح لأنَّ عتق الفاسق لا قُرْبَة فيه. واشترطنا الوفاء لأنَّ المكاتبَة لمن لا يقدر على الوفاء تكون عيباً وتكليفاً للعبد على ما لا يُطيقه؛ وإليه ذهب أحمد بن حنبل، أعني في الوفاء.

الثالثة: أنَّ الإتياء المذكور في الآية هو المعاونة | للعبد من مال الصدقات والزكاة عندنا. وهو قول م: ٥١هـ علمائنا عليهم السلام وهو قول أبي حنيفة وأصحابه.

وعند الشافعي يجب الإتياء على السيّد، وهو أن يضع من مال الكُتّابة شيئاً ويُجبر على ذلك إن أبي. وجه قولنا: ما روي عن النبي صَلَّى الله عليه وآله أنَّه قال: المكاتب عبد ما بقي عليه درهم. ولأنَّ العبد مال للمالك فلا يجب عليه شيء فيه بقوله صَلَّى الله عليه وآله: لا يحلّ مال امرء مسلم إلا بطيئة من نفسه.

الرابعة: أنَّ الكُتّابة لا بدّ أن تكون على عوض معلوم يصحّ مثله في البيع. وإذا وقعت على ما ذكرناه، فلا خلاف في صحَّتها بين العلماء.

الخامسة: أنَّ الكُتّابة إذا كانت على عوض مجهول نحو ثوب مجهول أو على نحر أو حرير، فهي كُتّابة فاسدة ويعتق العبد بأدائها لأنَّها تجري مجرى العتق المشروط فإنَّه يقع عند وجود الشرط.

فصل فإن كان ما أدّاه دون قيمته فعلى العبد تمام قيمته لأنَّه استهلك نفسه على مولاه؛ ذكره القاضي زيد عن المؤيّد بالله.

السادسة: أنَّ الكُتّابة الحالة تصحّ عندنا؛ وهو تخريج المؤيّد بالله على⁷⁷ المذهب، وهو اختيار المؤيّد بالله لنفسه؛ وهو قول أبي حنيفة وأصحابه ومالك.

ي: ٢٨٣

وعند الهادي عليه السلام على ما خرَّجه أبو العباس وأبو طالب أنَّ الكُتّابة الحالة لا تصحّ؛ وهو الذي يظهر من اختيارهما، وهو قول الشافعي. | قال الشافعي: لا تصحّ الكُتّابة إلا على نجين فما فوق. م: ٥١هـ قال أبو طالب: وهكذا يجب على ما قلنا.

76 التهذيب، ٥١٩٤هـ.

77 على: عن، ي.

وجه قولنا: قوله تعالى في الآية ﴿وَالَّذِينَ يَبْتَغُونَ الْكَأَبَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا﴾ ولم يفصل بين الحالة والمنجمة. ولأنه عقد معاوضة على عين، فيصح فيه الوجهان كسائر بيع الأعيان.

وجه قولهم: أن المكتبة غرر في الأصل لأنه لا يُدرى بمال الكتابة والعق هل يحصلان أو لا يحصلان، كبيع الطير في الهواء والسّمك في الماء. وقد نهى رسول الله صلى الله عليه وآله عن بيع الغرر، فلو خُلينا والظاهر، لقلنا إنها لا تصح أصلاً. فلما أجمعوا على أن المكتبة المؤجلة جائزة، خصصناها وبقي ما عداها على حكم الظاهر.

السابعة: أن العبد المكاتب إذا طلب أن يردّ في الرق واستقال من الكتابة جاز ذلك، ولا أعلم فيه خلافاً.

الثامنة: أنه إذا عجز عن الوفاء بما كُتِب عليه ردّ في الرق سواء كان قد أدّى أكثر مال الكتابة أم لا. هذا عندنا وهو قول علمائنا على المذهب؛ وهو قول الشافعي وأبي حنيفة وأصحابه وأكثر العلماء. وروى ذلك عن عمر وزيد بن ثابت وأم سلمة وعائشة. وعند ابن عباس أنه يعتق بالعقد ويكون المال ديناً عليه.

فصل هذا إذا تراضى المولى والعبد على فسخ الكتابة والرجوع في الرق. فأما إذا تنازعا رجعا إلى الحاكم فيؤجله في النجم إلى ثلاثة أيام. فإن أوفى، وإلا فحكم عليه بالرجوع في الرق. وجه قولنا: أخبار كثيرة رويت عنه صلى الله عليه وآله تنفيذ معنى واحداً، منها قوله صلى الله عليه وآله: أيما رجل كاتب غلاماً له على مائة أوقية فأدّاها إلا عشر أواق، فهو عبد. ومنها قوله صلى الله عليه وآله: وأيما عبد كُتِب على مائة دينار فأدّاها إلا عشرة دنانير، فهو عبد. ومنها قوله صلى الله عليه وآله: المكاتب عبد ما بقي عليه درهم.

التاسعة: إذا اختلفا في مال الكتابة فقال العبد: هو مائة، وقال السيّد: هو مائتان، فالقول قول العبد عندنا، وهو الذي ذكره علماؤنا عليهم السلام؛ وهو قول مالك والأوزاعي. وعند أبي حنيفة: أنهما يتخالفان ويترادان، وهو قول الشافعي. هذا قبل العتق. فأما بعد العتق فقال يتخالفان ويترادان على القيمة.

وجه قولنا: أنهما قد اتفقا على صحّة الكتابة فلا يفسخها اختلافاً في المال، كاختلاف البائع والمشتري في القيمة بعد اتفاقهما على أصل البيع. فلا يقع فسخ البيع ويكون القول قول العبد، كالمشتري مع البائع. ويدلّ على ما قلناه قوله صلى الله عليه وآله: البيّنة على المدعي واليمين على المدعى عليه.

م: ٥٢

م: ٥٢

العاشرة: أنَّ من كاتب عبده على مال مؤجل ثمَّ صالحه قبل حلول الأجل على أن يأخذ منه بعض المال معجلاً ويبريه من الباقي، صحَّ ذلك عندنا وهو الذي ذكره المؤيد بالله على مذهب الهادي عليه السلام، وأحسبه مقتضى مذهبه؛ وهو قول أبي حنيفة ومحمد.

وعند أبي يوسف أنه غير جائز.

وجه قولنا: أنه حطَّ لبعض الحقِّ فيصحَّ كالخطِّ من ثمن المبيع.⁷⁸

الحادية عشر: في إكراه الجوارى المذكور في الآية. فالآية تدلُّ على صحَّة إكراه⁷⁹ المرأة، وهو ي: ٢٨٤ ظاهر. وقد ذكرنا جميع أنواع الإكراه في الآية الثامنة⁸⁰ من سورة النحل.⁸¹ وذكرنا هذه المسألة هنالك.

الآية التاسعة

قوله تعالى ﴿وَإِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ لِيَحْكُمَ بَيْنَهُمْ إِذَا فَرِيقٌ مِنْهُمْ مُعْرِضُونَ﴾⁸²

الفصل الأوَّل: اللغة

الدعاء معروف نحو أن يدعو⁸³ له أو يدعو عليه. والدعاء قد يكون بمعنى الاستعانة؛ ومنه قوله تعالى ﴿وَادْعُوا شُهَدَاءَكُمْ﴾.⁸⁴

قال الشاعر:⁸⁵

وقبلك ربَّ خصم | قد تمالوا عليَّ فما جزعْتُ ولا دعوتُ م: ٥٣٠ظ

78 المبيع: البيع، ي.

79 إكراه: إكراهه، ي.

80 الثامنة: بياض في الأصل م، وبيد متأخرة في ي.

81 النحل: بياض في الأصل م، وبيد متأخرة في ي.

82 سورة النور: ٤٨.

83 يدعو: يدعو، م.

84 سورة البقرة: ٢٣.

85 البيت في شمس العلوم لنشوان الحميري، ١٢٥: ٢.

ودعا إلى فلان إذا صاح به. ويقال: دعاه الله بما يكره إذا أنزل به ذلك. قال الشاعر:⁸⁶
 دعاك الله من رجل بأفعى إذا دخل الظلام⁸⁷ سرت عليك
 والإعراض الميل وهو المذكور في الآية. والإعراض الإضراب عن الشيء.

الفصل الثاني: النزول⁸⁸

قيل: نزلت في منافق ويهودي اختصما في أرض. فجعل اليهودي يحجره إلى رسول الله صلى الله عليه وآله وجعل المنافق يحجره إلى كعب بن الأشرف ويقول: إنَّ محمداً يحيف إلينا. وقيل: نزلت في المنافقين. وقيل غير ذلك.

الفصل الثالث: المعنى

قوله تعالى ﴿إِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ﴾ معناه: دعوا إلى حكم الله في كتابه وشريعته وإلى رسوله المبلغ عن الله.
 قوله ﴿إِذَا فَرِيقٌ مِنْهُمْ مَعْرُضُونَ﴾ معناه: مائلون.

الفصل الرابع: الأحكام

الآية تدلّ على وجوب إجابة الخصم إلى القضاة الحاكمين بحكم الله. وفيه مسائل:
 الأولى: إذا دعا الخصم خصمه إلى العالم المجتهد الورع الذي لا يعلم منه جرأة في دينه ولا جور في حكمه فإنه يجب عليه إجابته، ولا يسعه التأخر؛ وهذا موضع إجماع فيما أعلم.
 وعندني أنه إن دعاه في حقّ له ثابت يبلغ نصاب السرقة فما فوق إلى هذا الحاكم ولم يجبه كان فاسقاً. وأحسبه ممّا لا خلاف فيه بين العلماء، والآية تدلّ عليه.
 الثانية: أن يدعو⁸⁹ الخصم خصمه إلى غير عالم مجتهد ولا ورع معروف بالديانة ظاهر الأمانة، لم يجب عليه إجابته. وهذا أيضاً ممّا لا أعلم فيه خلافاً.

م: ٥٣ و

86 البيت في شمس العلوم لنشوان الحميري، ١٢٥:٢.

87 ظلام: طعام، في شمس العلوم.

88 الجسمي، التهذيب، ٥٢٢٨-٥٢٢٧.

89 يدعا: م.

الثالثة: أن يدعو إلى عالم غير مجتهد لكنّه⁹⁰ من أهل الورع والدين، فإن كان هذا المدعو⁹¹ إلى هذا الحاكم ممن يقول بقضاء المقلّد عن تقليد صحيح أو اجتهاد، وجب عليه الإجابة إليه، ويأثم إن لم يفعل. وهذا ممّا تقتضي به الأصول وتقتضيه أقوال العلماء، وظاهر الآية يدلّ عليه.

الرابعة: أن يدعو إلى حاكم غير مجتهد وهو من أهل الصلاح ومسألتهما ممّا لا خلاف فيها بل هي من مواضع الإجماع، وجب عليه أيضاً أن يجيبه. وهذا أيضاً ممّا تقتضيه الأدلّة.

الخامسة: أن يدعو إلى هذا العالم المقلّد الصالح ورضي المدعو بالحكمة إليه فإنّه إذا وقع الحكم وأراد أن يردّه بعد فصله لم يكن له ذلك ونفذ عليه وصحّ ولزمه الامتثال. وأحسبه أيضاً ممّا لا خلاف فيه.

السادسة: أن يدعو إلى هذا العالم المقلّد الصالح وليس المدعو⁹² ممن يقول بقضاء المقلّد فإنّه لا يجب عليه أن يجيبه إليه.

السابعة: أن يكون هذا الحاكم المقلّد نصبه الإمام وألزم الناس | المحاكمة إليه، فإنّه يجب على هذا الخصم الإجابة إلى هذا الحاكم المنصوب من جهة الإمام لثبوت ولاية الإمام (ووجوب امتثال أمره).⁹³ وهذا هو قولنا وهو مقتضى قول بعض أئمّتنا عليهم السلام.

الآية العاشرة

قوله تعالى ﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لِيَسْتَأْذِنَ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهْرِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثَ عَوْرَاتٍ لَكُمْ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَھُنَّ طَوَافُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾⁹⁴

90 لكنه: لاكنه، م.

91 المدعو: المدعوا، م.

92 المدعو: المدعوا، م.

93 ما بين القوسين ساقط من ي.

94 سورة النور: ٥٨.

الفصل الأول: اللغة

الاستئذان طلب الإذن.

والحلم هو ما يراه الإنسان في حال النوم، ومنه الحلم المذكور في الآية وهو الذي يتعلّق به حكم البلوغ. وهو دفع الماء في حال النوم. قال أمير المؤمنين عليه السلام:

سبقتكم إلى الإسلام طُرّاً صغيراً ما بلغتْ أَوَانَ حُلِيِّ.

م: ٥٤٥ والعورة سوءة الإنسان وما اتّصل | بها ممّا يستحيا منه. ومنه قوله صلى الله عليه وآله: ما بين السرة إلى الركبة عورة. والجمع عورات بفتح الواو وسكونها. والعورة كلّ شيء يقع منه الخوف من حرب ونحوه. ومنه قوله تعالى ﴿إِنَّ بَيْتَنَا عُورَةٌ﴾.⁹⁵

الفصل الثاني: النزول⁹⁶

ذكر ابن عباس أنّ رسول الله صلى الله عليه وآله وجه غلاماً من الأنصار إلى عمر ليدعوه وذلك وقت الظهيرة، فرأى الغلام عمر على حالة كره عمر أن يراه عليها، فقال: يا رسول الله لو أنّ الله أمرنا ونهانا في حال الاستئذان! فنزلت الآية.⁹⁷

وقيل: امرأة كان لها غلام كبير دخل عليها في وقت كرهته، فأتت المرأة إلى رسول الله صلى الله عليه وآله وقالت: إن خدمننا وغلبننا يدخلون علينا في حال نكرهها. فنزلت الآية.

الفصل الثالث: المعنى⁹⁸

قوله تعالى ﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَيْسَ أَذْنُكُمْ﴾ معناه: ليطلبوا الإذن.

قوله ﴿الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ﴾ قال ابن عباس: هو في الرجال والنساء من العبيد. وقال ابن عمر: في الرجال خاصة. وقال أبو عبد الرحمن السلمي: هو في الإماء. وقال أبو علي: هو في أطفال الممالك والعبيد. ورجّح الحاكم قول أبي علي.⁹⁹

قوله ﴿وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ﴾ والمراد من الأحرار.

95 سورة الأحزاب: ١٣.

96 الجسمي، التهذيب، ٥٢٤٢.

97 ليس هذا الخبر مذكوراً في المختار من الروضة والغدير المطبوع في اليمن.

98 الجسمي، التهذيب، ٥٢٤٤-٥٢٤٣.

99 التهذيب، ٥٢٤٣.

قوله ﴿ثَلَاثَ مَرَّاتٍ¹⁰⁰ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهْرِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَكُمْ﴾ والمراد أنَّ الإِذْنَ يَقَعُ فِي هَذِهِ الثَّلَاثَةِ الْأَوْقَاتِ لِأَنَّهَا أَوْقَاتُ الْخُلُوتِ مَعَ الزَّوْجَاتِ وَكُشِفِ الثِّيَابِ عَنِ الْعَوْرَاتِ. وَهَذَا هُوَ الْغَالِبُ مِنَ الْحَالَاتِ.

قوله ﴿لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَافُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ﴾ مَعْنَاهُ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ حَرَجٌ وَلَا إِثْمٌ فِي تَرْكِ الْإِذْنِ إِذَا طَافُوا فِيمَا عَدَا هَذِهِ الْأَوْقَاتِ الثَّلَاثَةَ. وَقِيلَ: إِنَّ هَذِهِ الْآيَةَ قَدْ نُسِخَتْ. وَذُكِرَ عَنِ الْهَادِي عَلَيْهِ السَّلَامُ وَعَنِ الشَّعْبِيِّ أَنَّهَا غَيْرُ مَنْسُوخَةٍ.

الفصل الرابع: الأحكام

الآيَةُ تَدَلُّ عَلَى التَّعَبُّدِ بِالْإِذْنِ فِي هَذِهِ الْأَوْقَاتِ. فَقِيلَ: هُوَ تَعَبُّدٌ وَجُوبٌ. وَقِيلَ: إِرْشَادٌ. وَفِيهِ مَسَائِلٌ:

الأولى: أَنَّ حَكْمَ الْآيَةِ بَاقٍ عِنْدَ الْحَاجَةِ إِلَيْهِ عِنْدَنَا، وَهُوَ قَوْلُ الْهَادِي عَلَيْهِ السَّلَامُ وَالشَّعْبِيِّ.

وعند أكثر العلماء أَنَّ حَكْمَ الْآيَةِ قَدْ نُسِخَ وَكَانَ ذَلِكَ فِي أَوَّلِ الْإِسْلَامِ | وَعَدَمُ السُّتُورِ وَضَيْقُ الْحَلَالِ ي: ٢٨٦

بِالْأَنْصَارِ وَالْمُهَاجِرِينَ.

وجه قولنا: أَنَّ النسخ لا يثبت إلَّا بدلالة ولا دلالة على نسخ هذه الآية، فيكون حكم الآية باقٍ عند الحاجة إليه. والحال يختلف بالعادات والأوقات؛ والله أعلم.

الثانية: أَنَّ الْمُرَادَ بِمَلِكِ الْيَمِينِ هَاهُنَا الْجَوَارِي وَمَنْ دُونَ الْبُلُوغِ مِنَ الْمَمَالِكِ لِأَنَّ الْبَالِغَ مِنَ الْعَبِيدِ الذَّكُورِ مُمْنُوعٌ فِي هَذِهِ الْأَوْقَاتِ وَغَيْرِهَا هَذَا عِنْدَنَا. وَهُوَ قَوْلُ عَلِيٍّ عَلَيْهِ السَّلَامُ | وَهُوَ قَوْلُ أَصْحَابِ أَبِي حَنِيفَةَ وَأَحَدِ قَوْلِي الشَّافِعِيِّ؛ وَأَحْسَبُهُ قَوْلَ أَبِي عَلِيٍّ وَالْحَاكِمِ.

وعند ابن عباس المراد به ملك اليمين من العبيد الإناث والذكور.

وعند الشافعي أَنَّ الْعَبْدَ الْبَالِغَ لَا يَحْرَمُ عَلَيْهِ النَّظَرُ إِلَى مَوْلَاتِهِ، وَهُوَ مُحْرَمٌ لَهَا. فَعَلَى قَوْلِهِ عَلَيْهِ أَنَّ يَسْتَأْذِنُ فِي هَذِهِ الْأَوْقَاتِ كَمَا تَسْتَأْذِنُ الْجَوَارِي الصَّغَارُ.

وجه قولنا: أَنَّ الْعَبْدَ الْبَالِغَ غَيْرَ دَاخِلٍ فِي الْآيَةِ بَلْ هُوَ مُمْنُوعٌ فِي كُلِّ حَالٍ إِلَّا عِنْدَ الضَّرُورَةِ بِدَلِيلِ قَوْلِهِ تَعَالَى ﴿وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ﴾¹⁰¹. وَهَذَا نَصٌّ صَرِيحٌ عَلَى تَحْرِيمِ بَالِغِ الْأَحْرَارِ. فَإِذَا كَانَتِ الْعِلَّةُ فِي تَحْرِيمِ النَّظَرِ لِلْحُرِّ إِلَى غَيْرِ الْمُحْرَمِ مِنَ النِّسَاءِ لَمَّا فِي

100 مرات: عورات، م ي.

101 هي الآية التالية من سورة النور.

ذلك من الفتنة، حرم على العبد. ولهذا يحرم النظر إلى المحرم من النساء إذا خاف حركة الشهوة. فبالأولى أن يحرم على العبد؛ وهذا ظاهر والله الهادي.

الثالثة: فمن هو دون البلوغ من الأحرار فإنه يستأذن في هذه الأوقات الثلاثة كما يستأذن صغار المماليك ونساءؤهم، والآية تدلّ عليه.

الرابعة: أنّ الأوقات الثلاثة قبل صلاة الفجر لأنّ الغالب من حال المسلمين أنّهم في تلك الحال يقومون للطهارة وربما يباشرون نساءهم قبل الطهارة؛ وعند نصف النهار إلى الظهر لأنّ الناس في تلك الساعة يفرغون من التصرف لأنواع المعاش ثمّ يقلون؛ | ومن بعد صلاة العشاء الآخرة لأنّ الناس في تلك الحال يفرغون من الصلاة والمعاش.

م: ٥٦ ظ

الخامسة: أنّ هذا الاستئذان حكمه باق على ما ذكرناه في المسألة الأولى، وهذا عندنا يختلف باختلاف العادات والعرف الجاري في الجهات وضيق الحلال.¹⁰² فقد يجب الاستئذان في حال ولا يجب في حال، والله أعلم.

الآية الحادية عشر

قوله تعالى ﴿وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمْ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾¹⁰³

الفصل الأوّل: اللغة

الطفل الصغير من الأولاد من بني آدم وغيرهم من الحيوان، كالصغار من أولاد الوحش والبقرة. وقد يسمون قريب العهد بالطفولية من الشباب طفلاً. قال الشاعر:

عرضت لعامر وانخيل¹⁰⁴ تردّي بأطفال الحروب مشمرات

وقال أيضاً:

102 الحلال: الحال، ي.

103 سورة النور: ٥٩.

104 انخيل: الخير، ي؛ ومكتوب في هامش ي: لعله وانخيل.

وأُسرع في الفواحش كلّ طمّل يجبر المخزيات ولا يبالى¹⁰⁵
وعليه حملوا قول رسول الله صلى الله عليه وآله في أطفال المشركين: هم في النار.

الفصل الثاني: المعنى¹⁰⁶

قوله تعالى ﴿وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ﴾ وهو وقت البلوغ مبلغ الرجال.
قوله ﴿فَلَيْسَتُ أَذْنًا﴾ معناه: لا يدخلوا إلّا بإذن في جميع الأوقات لأنهم قد بلغوا حدّاً يحرمّ معه
النظر إلى غير ذات الرحم المحرم.

قوله ﴿كَأَسْتَأْذِنُ الَّذِينَ مِنْ قَبْلِهِمْ﴾ والمراد بـ ﴿مِنْ قَبْلِهِمْ﴾ الأحرار الكبار.
قوله ﴿كَذَلِكَ يَبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ﴾ معناه: يبيّن لكم ما شرع عليكم من التكليف.
قوله ﴿وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾ معناه: عليم بمصالح تكليفكم، حكيم فيما كلّفكم.

الفصل الثالث: الأحكام

الآية تدلّ على أحكام شرعية تقع بالبلوغ وفيه مسائل:
الأولى: أنّ البلوغ يقع بالاحتلام في الرجال، وهذا موضع إجماع بين العلماء. وقد مضى تفصيل
البلوغ في هذه السورة في الآية السابعة قبل هذه الآية.
الثانية: أنّ للبلوغ أحكام كثيرة قد مضت في أثناء المسائل منها أنّه بالبلوغ إذا كان عاقلاً، فإنّ
الولايات عليه تبطل بالبلوغ وتثبت له الولاية بالبلوغ على ما كانت الولاية ثابتة له فيه، نحو النكاح من
هو ولي لها وولايته على مال أولاده وما جرى هذا المجرى.
الثالثة: أنّ المرأة بالبلوغ يثبت لها الخيار في النكاح إذا أنكحها غير الأب أو الجدّ، على الخلاف في
الجدّ.

الرابعة: أنّ الصغير حكمه حكم أبيه¹⁰⁷ في الكفر أو الإسلام. فإذا بلغ كان الحكم متعلّقاً به من
كفر أو إسلام. وقد روي ذلك عن رسول الله صلى الله عليه وآله فقال صلى الله عليه وآله: كلّ مولود
يولد على الفطرة فأبواه يهودانه وينصرانه ويمجسانه.

¹⁰⁵ كذا في ديوان لبيد، كما ذكر محقق شمس العلوم، ١٥٣: ٤١٥٣. فربما بدل السيد محمد بن الهادي (طمّل) إلى (طفل). وأشكر د. محمد مصطفى لمساعدته في هذا بيت الشعر.

¹⁰⁶ الجسمي، التهذيب، ٥٢٤٤.

¹⁰⁷ أبويه: أبوه، ي.

الآية الثانية عشر

قوله تعالى ﴿وَالْقَوَاعِدُ مِنَ النِّسَاءِ اللَّاتِي لَا يَرْجُونَ نِكَاحًا فَلَيْسَ عَلَيْهِنَّ جُنَاحٌ أَنْ يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِزِينَةٍ وَأَنْ يَسْتَغْفِنَ خَيْرٌ لَّهُنَّ وَاللَّهُ سَمِيعٌ عَلِيمٌ﴾¹⁰⁸

الفصل الأول: اللغة¹⁰⁹

م: ٥٧ ظ القواعد | اللاتي قعدن عن الحيض وعن الأزواج. والقواعد جمع قاعد بغير هاء.¹¹⁰ فإذا قيل (قاعدة) بالهاء فهو من القعود عن القيام. وقاعدة البيت إحدى قواعد الأساس. والتبرج إظهار النساء لمحاسنهن¹¹¹ مأخوذ من أصل اللغة. فإنّ التبرج في الأصل هو الظهور، ومنه البروج للنجوم الكبار لظهورها؛ ومنه البروج وهو البناء العالي لظهوره.

الفصل الثاني: المعنى¹¹²

قوله تعالى ﴿وَالْقَوَاعِدُ مِنَ النِّسَاءِ﴾ المراد من قعدت عن الحيض والزوج للكبر. قوله ﴿اللَّاتِي لَا يَرْجُونَ نِكَاحًا﴾ المراد لا يطمعن فيه. وقيل: لا يُردنّه. قوله ﴿فَلَيْسَ عَلَيْهِنَّ جُنَاحٌ أَنْ يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِزِينَةٍ﴾ المراد أنّه لا إثم عليهنّ ولا حرج في وضع ثيابهنّ عند الرجال ما لم يقصدن بوضع الثياب إظهار زينتهنّ إن بقي منها شيء. والنساء يختلفن في ذلك. واختلف العلماء في هذه الثياب التي رخص لهنّ في وضعها عند الرجال. فذكر ابن مسعود أنّه الجلباب فوق الخمار. وقيل: الخمار والرداء. وقيل: الرداء. قوله ﴿وَأَنْ يَسْتَغْفِنَ خَيْرٌ لَّهُنَّ﴾ معناه يطلبن العفة بلبس الجلابيب. قوله ﴿وَاللَّهُ سَمِيعٌ عَلِيمٌ﴾ معناه يسمع الأقوال ويعلم الضمائر.

108 سورة النور: ٦٠.

109 الجسمي، التهذيب، ٥٢٤٢-٥٢٤١.

110 اي بغير تاء مربوطة.

111 + فهو: بين سطرين ي بيد متأخرة.

112 الجسمي، التهذيب، ٥٢٤٥-٥٢٤٤.

الفصل الثالث: الأحكام

الآية تدلّ على الترخيص للعجوز في ترك التسرّع عند الرجال فيما ليس بعورة إذا كانت همّة لا يرغب الرجال في مثلها ولا | خلاف في ذلك.

م: ٥٧و

الآية الثالثة عشر

قوله تعالى ﴿ليس على الأعمى حرج ولا على الأعرج حرج ولا على المريض حرج ولا على أنفسكم أن تأكلوا من بيوتكم أو بيوت آبائكم أو بيوت أمهاتكم أو بيوت إخوانكم أو بيوت أخواتكم (أو بيوت أعمامكم أو بيوت عمّاتكم)¹¹³ أو بيوت أخوالكم أو بيوت خالاتكم أو ما ملكتم مفاتحه أو صديقكم ليس عليكم جناح أن تأكلوا جميعاً أو أشتاتاً فإذا دخلتم بيوتاً فسلّموا على أنفسكم تحية من عند الله مباركة طيبة كذلك يبيّن الله لكم الآيات لعلكم تعقلون¹¹⁴﴾

ي: ٢٨٨

الفصل الأول: اللغة

الحرج في أصل اللغة هو الضيق ثم يستعمل الحرج في الإثم. يقال حرج وتحرّج إذا أثم والحرج جمع حرجة وهو مجمع شجر ملتف يضيق سلوكه. ويقال: حراج وحرجات أيضاً. قال الشاعر:¹¹⁵
أيا حرجات الحيّ حين تحمّلوا بذي سلّم لا جادكنّ ربيعُ
ومنه ﴿ضيّقاً حرجاً﴾.¹¹⁶

والتحية هي السلام؛¹¹⁷ ومنه قوله ﴿وَإِذَا حُيِّتُمْ بِتَحِيَّةٍ فَخَيُّوا بِأَحْسَنِهَا أَوْ رَدُّوْهَا﴾.¹¹⁸
وقال الشاعر:¹¹⁹

إنا محيوك يا سلمى فخيّننا وإن سقيت كرام الناس فاسقيننا

113 ما بين القوسين في هامش م.

114 سورة النور: ٦١.

115 هو قيس بن الملوّح؛ وهذا البيت في الجشمي، التهذيب، ٥٢٤٩.

116 سورة الأنعام: ١٢٥.

117 سلام: سلم، م.

118 سورة النساء: ٨٦.

119 وهو بشامة بن حزن النهشلي. والبيت في نشوان الحميري، شمس العلوم، ١: ٤٨٩.

وقال آخر: 120

إنا محيوك فاسلم أيها الطلل وإن بُليت¹²¹ وإن طالت بك الطيل¹²²
وقيل: التحية هي الملك. قال الشاعر: 123

م: ٥٨ ظ

من كل ما نال الفتى قد نلتُهُ إلا التحية
وسميت التحية مُلكاً لأنَّ الملك يقال له من التحية ما لا يقال لغيره. فيقال له: أنعم صباحاً، ويقال
له: أبيت اللعن، فسميت التحية بالملك. قال لبيد الشاعر للملك النعمان:
[مهلاً] 124 أبيت اللعن لا تأكل معه
والمباركة البركة هي الزيادة، ومنه قوله تعالى ﴿بركات من السماء والأرض﴾. 125
والطيبة نقيض الخبيثة.

الفصل الثاني: النزول 126

قيل: نزلت الآية في هؤلاء الزمّني إذا خلفهم الغزاة في منازلهم وكان الغزاة يسلمون إليهم المفاتيح
فتحرّجوا، فنزلت الآية رخصة لهم؛ ذكره الزهري وسعيد بن المسيّب.
وذكر سعيد بن جبّير والضحاك ومقسم أنّ أهل المدينة كانوا لا يخالطون هؤلاء الزمّني في طعامهم
فامتنع الزمّني عن مؤاكلتهم لأنّ الناس يتقدّرونهم، فنزلت الآية.
وذكر ابن عباس أنّه لما نزل قوله ﴿ولا تأكلوا أموالكم بينكم بالباطل﴾ 127 تحرّج المسلمون عن مؤاكلته
هؤلاء الزمّني خشية أن لا يستوفوا نصيبهم لضعفهم، فنزلت الآية.
وذكر ابن عباس أيضاً أنّه لما نزل قوله تعالى ﴿ولا تأكلوا أموالكم بينكم بالباطل﴾ تحرّج قوم من
الأكل في هذه البيوت المذكورة في هذه الآية، فنزلت هذه الآية.

120 وهو القطامي التعلّبي: <https://www.poetsgate.com/ViewPoem.aspx?id=82520>.

121 بليت: كمت، ي.

122 الطيل: الطول، ي، وكذلك في م بيد المصنف ثم صححه الى (الطيل) شخص آخر.

123 هو زهير بن جناب الكلبي. والبيت في نشوان الحميري، شمس العلوم، ٤٩٠: ١.

124 مهلاً: احذر، م ي؛ والبيت مشهور.

125 سورة الأعراف: ٩٦.

126 الجسمي، التهذيب، ٥٢٥١-٥٢٤٩.

127 سورة البقرة: ١٨٨.

وروي عن ابن عباس أيضاً أنها نزلت في مالك بن زيد وقد خلفه الحارث بن عمر¹²⁸ على أهله م: ٥٨ و قد خرج غازياً مع رسول الله صلى الله عليه وآله فرجع الحارث من طريقه فوجد مالك مجهّداً. فسأله عن حاله فقال لحارث: تحرّجت أن أكل طعامك بغير إذنك، فنزلت الآية. وأما قوله تعالى ﴿أَنْ تَأْكُلُوا جَمِيعاً أَوْ أَشْتَاتاً﴾ فقال ابن عباس: نزلت في قوم كان الغني منهم يدخل على الفقير من قرابته وصداقته فيدعوه إلى طعامه فيتحرّج، فنزلت الآية رخصة لهم. وقيل: كان الواحد من العرب لا يحلب ناقته إلا أن يجد من يشرّبها ولا يأكل في بيت أحد تكراً، فنزلت الآية.

وقيل: لما نزل قوله تعالى ﴿لَا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ﴾¹²⁹ كره قوم مؤاكلة أقاربهم من المنافقين والكافرين، فنزلت الآية برفع الحرج. وقيل: نزلت في قوم من الأنصار كانوا لا يأكلون مع الضيف إذا نزل بهم، فنزلت الآية بالترخيص في الأكل كيف شاءوا مجتمعين أو أشتاتاً؛ ذكر ذلك عكرمة وأبو صالح. وذكر قتادة والضحاك وابن جريج أنّ هذه الآية نزلت في قوم من كنانة كانوا يتحرّجون | عن أكل الرجل وحده.

الفصل الثالث: المعنى¹³⁰

قوله تعالى ﴿لَيْسَ عَلَى الْأَعْمَى حَرَجٌ وَلَا عَلَى الْأَعْرَجِ حَرَجٌ وَلَا عَلَى الْمَرِيضِ حَرَجٌ﴾ معناه: لا إثم عليكم ولا ضيق عليكم في مؤاكلة هؤلاء؛ ذكر معناه ابن عباس. وقيل لا ضيق عليكم في الأكل من بيوت الغزاة إذا خلفتم فيها بغير إذنهم؛ ذكره الزهري. وقيل: لا حرج عليكم في الأكل من بيوت حمل غير أهلها إليها شيئاً؛ ذكر معناه مجاهد. | وقيل لا حرج عليكم في التخلف عن الجهاد؛ ذكره ابن زيد والحسن وأبو علي.

ورجح الحاكم [الجشمي] رحمة الله عليه أنّ المراد برفع الحرج هاهنا في المؤاكلة. قال: لأنّه لم يجز ذكر الجهاد قبله ولا بعده.¹³¹

128 كذا في الروضة؛ وفي التهذيب: عمرو (سوى مخطوطة واحدة).

129 سورة المجادلة: ٢٢.

130 الجشمي، التهذيب، ٥٢٥٢-٥٢٥٤.

131 التهذيب، ٥٢٥٢.

قوله ﴿ولا على أنفسكم﴾ قال أبو علي: هذا مبتدأ كلام قد انقطع مما قبله. فأول الآية في الجهاد وهذا في الأكل.

وقيل: بل كلّها في الأكل وهذا متصل بما قبله، ورّجحه الحاكم.¹³²

ومعناه: لا حرج عليكم في الأكل من بيوتكم.

قيل: كانوا يتحرّجون في أكل الذي يجدون في بيوتهم إذا لم يعلموا من أين اكتسبوه، فرخص لهم في ذلك. ثم رخص لهم عزّ وجلّ في الأكل من البيوت المذكورة في الآية إلى بيوت الخالات.

فقيل: أباح تعالى الأكل من بيوت هؤلاء بغير إذن.

وقيل: أبيع ما جرت العادة بأن مثله مباح لمن تخلف في بيته، ولذلك عطف عليه الصديق. فقد جرت العادة بأن الصديق يأكل في بيت صديقه من غير إذن.

قوله ﴿أو ما ملككم مفاتحه﴾ قيل: ما ملكه الرجل في بيته؛ ذكره مجاهد.

وقيل معناه: بيوت عبيدكم ومماليكم؛ ذكره الضحاك.

وقيل: هو وصي اليتيم إذا كان فقيراً فله الأكل بالمعروف.

وقيل: هو الوكيل والقيم على الضيعة والماشية فله الأكل بالمعروف؛ ذكره ابن عباس.

وقيل: هو المخلف في المنزل المأذون له في الأكل.

قوله ﴿أو صديقكم﴾ قيل: للإنسان أن يأكل من طعام صديقه وأن يدخل منزله بغير إذن؛ ذكره الحسن وقتادة.

وذكر بعضهم أنه يستوي حال المسلم والمعاهد في الإباحة. وقيل: هو الصديق في الدين لأنّ الغالب هنالك وجود الرضى.

وقيل: إنّ الإباحة كانت ثابتة ثمّ نسخت. وقيل: أباح الأكل مع الإذن من بيوت هؤلاء، وإن كانوا مخالفين في الدين؛ ذكر معناه أبو مسلم. وهذا قول بعيد جداً.

قوله ﴿ليس عليكم جناح أن تأكلوا جميعاً أو أشتاتاً﴾ معناه: مجتمعين أو مفترقين. فقيل: يأكل الغني مع الفقير في بيته؛ ذكره ابن عباس. وقيل: يأكل وحده أو يأكل مع الضيف أو مع غيره.

قوله ﴿فإذا دخلتم بيوتاً فسلّموا على أنفسكم﴾ قيل: يسلم بعضكم على بعض؛ ذكره الحسن.

وقيل: إذا دخلتم بيوتكم فسلّموا على أهلكم وعيالكم؛ روي ذلك عن ابن عباس، وهو قول جابر وطاوس والزهري وقتادة والضحاك.

وقيل: إذا دخلتم المساجد فسلّموا على الذين فيها.

وقيل: إذا دخلتم بيوتاً خالية قلتم: السلام علينا وعلى عباد الله الصالحين؛ ذكره إبراهيم.
وذكر أبو مسلم ما معناه أنّ الإباحة وقعت في الأكل من بيوت الكفار. فأما السلام فنخص به المسلمين فقال: ﴿فسلّموا على أنفسكم﴾. ولو كانوا مسلمين لقال: فسلّموا على أهلها. وليس هذا القول بشيء، ونظيره قوله تعالى ﴿أن اقتلوا أنفسكم﴾.¹³³

قوله ﴿تحية من عند الله﴾ قيل: تحية أمر الله بها. وقيل: تحية حيّاكم الله بها.

قوله ﴿مباركة طيبة﴾ قيل: بورك فيمن استعملها. وقيل: مباركة | بالأجر طيبة بالمغفرة. وقيل: ي: ٢٩٠
مباركة طيبة لما فيها من الأجر والثواب.

قوله ﴿كذلك يبين الله لكم الآيات لعلكم تعقلون﴾ معناه: لتعقلوا معالم دينكم.

الفصل الرابع: الأحكام

الآية تدلّ على الأحكام وفيها مسائل.

الأولى: في معنى هذه الإباحة في الأكل ومقدارها. فالذي أذن فيه الشرع ما جرت به العادة في جهتهم وكان عرفاً في بلادهم. وهذا الذي تحمل عليه الآية ولا يحتاج إلى نسخ فيها. والذي ذكرناه في العادة والعرف جوازه مما لا خلاف فيه.
فأما من يقول: كانت الإباحة للأكل من بيوت هؤلاء ثابتة على الإطلاق ثم نسخت، فهذا القول تعسف ويحتاج إلى النسخ، ولا دلالة عليه.

الثانية: إباحة الأكل مع الاجتماع والافتراق، وإن وقع التفاضل في الأكل فيما بينهم فذلك جائز على وجهين: أحدهما أن يكون ذلك الطعام مباح لهم من مالكة أو يكون لهم والعادة جارية بينهم في الأكل من غير نظر إلى التفاضل. فهذا لا إشكال فيه وهو يفهم من معنى الآية ولا خلاف فيه.

الثالثة: ¹³⁴ أن يكون لهم والقصد منهم أن يختص كل واحد بنصيبه أو يكون للغير ويهبه ¹³⁵ لهم على سواء. فإنّه والحال هذه لا يجوز خلافه. ومفهوم الآية يدلّ على الوجه الذي قلناه، وأحسبه مما لا خلاف فيه؛ والله أعلم.

133 سورة النساء: ٦٦.

134 الثالثة: الرابعة، م.

135 يهبه: يهبه، م ي.

الرابعة: 136 في السلام. وقد ذكرناه¹³⁷ في الآية الرابعة من هذه السورة في قوله ﴿حَتَّى تَسْتَأْذِنُوا وَتَسْلَمُوا عَلَى أَهْلِهَا﴾.

الآية الرابعة عشر

قوله تعالى ﴿فَإِذَا اسْتَأْذَنُوكَ لِبَعْضِ شَأْنِهِمْ فَأُذِنَ لِمَن شِئْتَ مِنْهُمْ وَاسْتَغْفَرَ لَهُمُ اللَّهُ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾¹³⁸

الفصل الأول: اللغة

الاستئذان طلب الإذن.

والشأن هو الحال والأمر ومنه قوله تعالى ﴿كُلَّ يَوْمٍ هُوَ فِي شَأْنٍ﴾.¹³⁹ والشأن هو الطلب. قال الشاعر:¹⁴⁰

يا طالب الجود إنَّ الجود مكّمة لا الجود منك ولا من شأنك الجود

الفصل الثاني: النزول¹⁴¹

قيل: إنَّ الآية نزلت في حرب الخندق وكان المنافقون ينصرفون لوأذاً مستخفين عن رسول الله صلى الله عليه وآله | يريدون بذلك توهين أمره. وقيل: كان يعرض بالمنافقين في خطبه فيلوذون بأصحاب رسول الله صلى الله عليه وآله.

136 الرابعة: الخامسة، م.

137 ذكرناه: ذكرنا، ي.

138 جزء من سورة النور: ٦٢.

139 سورة الرحمن: ٢٩.

140 هذا البيت في نشوان الحميري، شمس العلوم، ٢: ٥٣٥.

141 الجسمي، التهذيب، ٥٢٥٨.

الفصل الثالث: المعنى¹⁴²

قوله تعالى ﴿فَإِذَا اسْتَأْذَنُوكَ لِبَعْضِ شَأْنِهِمْ﴾ معناه: لبعض حوائجهم وأمورهم.
قوله ﴿فَأَذِنَ لِمَن شِئْتَ مِنْهُمْ﴾: فأذن لمن شئت منهم في الانصراف.
قوله ﴿وَاسْتَغْفِرْ لَهُمُ اللَّهُ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾ قيل: إذا تكامل إيمانهم فاستغفر لهم. وقيل: إذا تركوا الجهاد بإذن منك فاستغفر لهم ليكون استغفارك جبراً لما نقص عليهم من ثواب الجهاد.

الفصل الرابع: الأحكام

الآية تدلّ على جواز الإذن للنبيّ صلى الله عليه وآله، فكذلك الإمام. وفيه مسائل:
الأولى: أنّ الإمام إذا كان بالمسلمين ضعف وقوة المحاربين لهم ظاهرة والمستأذن في تلك الحال لا يقوم غيره مقامه أو يكون الفرض في تلك الحال فرض عين. فإنّه لا يجوز للإمام أن يأذن له ولا يجوز له أن يستأذن هذا عندنا. وأحسب أنّه لا يخالف فيه | أحد من المحصلين.
فأما من يقول إنّ الجهاد تطوّر على ما قدّمنا ذكره، فذلك مخالف للأدلة وليس بعيداً من خلاف الإجماع. والدليل عليه قوله تعالى ﴿عَفَا اللَّهُ عَنْكَ لِمَ أَذْنَتْ لَهُمْ﴾¹⁴³ وهذا يدلّ على أنّ الإذن لا يكون في كلّ حال. وهو وإن نزل على سبب فهو لا يقصر على سببه عند المحصلين لأنّ أكثر النصوص الشرعية من الكتاب والسنة نازلة على أسباب ولم تقصر على سببها.
فإن قيل: إنّ الإذن لم يكن في القعود بل قيل: لم آذن لهم في الخروج خوفاً لفسادهم.
قيل: السابق إلى الفهم هو الإذن في القعود ولا دلالة على عكسه توجب الحمل عليه وسياق الآيات يقضي به في قوله ﴿لَوْ كَانَ عَرَضًا قَرِيبًا وَسَفَرًا قَاصِدًا لَا تَبْجُوكَ﴾.¹⁴⁴ ثمّ قال في الآية فيما بعدها ﴿وَلَوْ أَرَادُوا الْخُرُوجَ لَأَعَدُّوا لَهُ عُدَّةً﴾.¹⁴⁵ وكلّ هذا دليل على أنّهم طلبوا الإذن في القعود، وهو قول الأكثر. فعلى هذا عاتب الله رسوله في الإذن لهم حتّى قال بعض¹⁴⁶ العلماء هي صغيرة | من النبيّ صلى الله عليه وآله.

ي: ٢٩١

م: ٦١ ظ

142 الجشعي، التهذيب، ٥٢٥٩-٥٢٥٨.

143 سورة التوبة: ٤٣.

144 سورة التوبة: ٤٢.

145 سورة التوبة: ٤٦.

146 بعض: بعضهم بعض، ي.

والأدلة متظاهرة على ما ذكرنا نحو قوله ﴿مَا كَانَ لِلْمُؤْمِنِينَ أَنْ يَتَخَلَّفُوا عَنْ رَسُولِ اللَّهِ وَلَا يَرْغَبُوا بِأَنْفُسِهِمْ عَنْ نَفْسِهِ﴾¹⁴⁷ وغير ذلك من الأدلة من الكتاب والسنة.

الثانية: أن يكون المسلمون أقرب إلى القوة، والفرض في تلك الحال فرض كفاية والمستأذن غيره يكفي كفايته ويغني غناه. فإنه والحال هذه الحال يجوز للإمام أن يأذن له ويجوز له أن يستأذن. وهذا مما لا أعلم فيه خلافاً عند أحد من المحصلين إلا عند من يقول إن الجهاد فرض عين. فقولُه يقتضي المنع؛ والله أعلم. وهو قول يخالف الإجماع ونصوصات الأدلة.

الثالثة: أن يكون حال المسلمين إلى القوة، والفرض غير متضيّق بل هو فرض كفاية إلا أن المستأذن لا يقوم غيره مقامه ويقع بوقوفه عن المسلمين وهنّ يؤثر في حالهم ولا ينتهي إلى الضرورة فالمسألة محتملة للنظر. والأرجح عندي أنه لا يجوز للإمام أن يأذن له ولا يجوز له أن يستأذن.

وإنما قلنا ذلك لما لا يؤمن أن ينتهي الحال إلى الضرورة التي ذكرنا في المسألة الأولى. وقد قال صلى الله عليه وآله: رحم الله من لم يؤت المسلمون من ثغره.

م: ٦١ و إذا تخلف عن الإمام أتى المسلمون من ثغره ولم يؤمن أن يقع بوقوفه قوة لقلوب المخالفين وضعف لقلوب المسلمين، فيبعث المخالفين على نقض عهد أو تعدي حد، وهذا ظاهر لأولي البصائر؛ والله الهادي.

[انتهى تفسير سورة النور.]

English Translation of Muḥammad b. al-Hādī's 199 Legal Passages in the Qur'ān

Sayyid Muḥammad b. al-Hādī typically begins his commentary on each Sūra by stating how many legal verses it contains. Sometimes, he derives more than one ruling from the same verse, and, more frequently, he combines two verses and identifies them as a single passage. He often only cites a fragment of the verse, which is why many of the verses below are incomplete.

The translation of the Qur'ānic passages below is based on Mohammed Marmaduke Pickthall's *The Meaning of the Glorious Qur'ān*, in consultation with A.J. Arberry's and Tarif Khalidi's translations of the Qur'ān. I have included page references to the 2024 Maktabat Ahl al-Bayt edition of *The Garden and the Pool*¹ and YMDI manuscript of it.² (Note that the Maktabat Ahl al-Bayt edition verse numbers follow the standard reading of Qālūn, whereas the verse numbers I provide below are in accordance with the standard Ḥaḥṣ reading of the Qur'ān that is prevalent outside of Yemen and North Africa.)

Sūrat al-Baqara (The Cow): 54 Verses

1. And sell not My revelations for a trifling price, and fear Me.³
2. Establish prayer, pay the alms tax, and bow with those who bow.⁴
3. To God belongs the East and the West, and wherever you turn, there is God's countenance.⁵
4. Take as your place of worship the station of Abraham.⁶
5. So turn your face toward the Sacred Mosque, and you, wherever you may be, turn your faces toward it.⁷

¹ <https://ziydia.com/Book/755>

² <http://publ.princeton.edu/viewer.php?obj=t722hb1ot#page/11/mode/2up>

³ Q 2:41; *al-Rawḍa wa-l-ghadīr*, Maktabat Ahl al-Bayt, 1:35; YMDI_03_76, 8.

⁴ Q 2:43; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:37; YMDI, 9.

⁵ Q 2:115; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:59; YMDI, 17.

⁶ Q 2:125; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:61; YMDI, 18.

⁷ Q 2:144; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:63; YMDI, 19.

6. Al-Safa and al-Marwa are among the rites of God. There is no blame for him who is on pilgrimage to the House (of God) or visits it, to go around them. And he who does good of his own accord, God is All-Grateful, All-Knowing.⁸

7. O you who believe! Eat of the good things We have provided you.⁹

8. He has forbidden you only carrion, and blood, and swine-flesh, and that which has been consecrated to other than God. But he who is driven by necessity, neither craving nor transgressing, it is no sin for him.¹⁰

9. O you who believe! Retaliation is ordained for you for the slain: the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven by his brother, then gracious pardon must be offered, and payment to him in kindness. This is an alleviation and a mercy from your Lord. He who transgresses after this will have a painful torment.¹¹

10. It is ordained for you, when death approaches one of you, if he leaves behind wealth, that he bequeath it to parents and near relatives in kindness—an obligation on the God-fearing.¹²

11. [If anyone fears from the testator error or sin] and makes peace between the parties, there is no sin upon him.¹³

12. O you who believe! Fasting is ordained for you, just as it was ordained for those before you, that perhaps you may be God-fearing.¹⁴

13. (Fast) a certain number of days; and for him who is sick among you, or on a journey, then a number of other days. And for those who can afford it there is a ransom: the feeding of a man in need. Whoever does good of his own accord, it is better for him; and that you fast is better for you if you did but know.¹⁵

14. The month of Ramaḍān in which was sent down the Qurʾān, a guidance for humanity, and clear proofs of the guidance, and the Criterion (of right and wrong). Whoever of you witnesses it, let him fast the month, and whoever of you is sick or on a journey, a number of other days. [God desires for you ease; He desires not hardship for you; and that you should complete the period, and that you should magnify God for having guided you, and that perhaps you may be thankful.]¹⁶

8 Q 2:158; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:65; YMDI, 20.

9 Q 2:172; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:68; YMDI, 22.

10 Q 2:173; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:70; YMDI, 22.

11 Q 2:178; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:76; YMDI, 25.

12 Q 2:180; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:83; YMDI, 28.

13 Q 2:182; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:89; YMDI, 31.

14 Q 2:183; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:91; YMDI, 32.

15 Q 2:184; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:94; YMDI, 33.

16 Q 2:185; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:101; YMDI, 35.

15. It is made lawful for you to enjoy your wives on the night of the fast. They are a garment for you and you are a garment for them. God is Aware that you were deceiving yourselves in this respect and He has turned in mercy toward you and forgiven you. So go in and lie with them and seek that which God has ordained for you, and eat and drink until the white thread becomes distinct to you from the black thread of the dawn. Then complete the fast till night-fall.¹⁷

16. And touch them not while you are at your devotions in the mosques. These are the limits imposed by God, so approach them not. Thus God expounds His signs to humanity that they may be God-fearing.¹⁸

17. And eat not up your property among yourselves in vanity, nor seek by it to gain the hearing of the judges to consume knowingly a portion of the property of others wrongfully.¹⁹

18. Fight in the way of God those who fight you, but aggress not. Truly, God loves not the aggressors.²⁰

19. And slay them wherever you find them, and expel them from where they expelled you, for *fitna* is worse than slaughter. And fight not with them at the Sacred Mosque until they first attack you there, but if they attack you (there) then slay them. Such is the recompense of disbelievers.²¹

20. And fight them until there is no more *fitna*, and religion is for God. But if they desist, then let there be no hostility except against evildoers.²²

21. Spend wealth in the cause of God, and do not, by your own hands, cast yourself to ruin. And do good, for God loves the righteous.²³

22. Complete the pilgrimage and the visit (to Mecca) for God.²⁴

23. And if you are prevented, then make an offering as can be obtained with ease, and shave not your heads until the offerings have reached their destination.²⁵

17 Q 2:187; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:103; YMDI, 36.

18 Q 2:187; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:108; YMDI, 38.

19 Q 2:188; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:112; YMDI, 39.

20 Q 2:190; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:115; YMDI, 41.

21 Q 2:191; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:118; YMDI, 42. For the meanings of *fitna*, see above, p. 180. Pickthall and Arberry render it as "persecution," while Khalidi uses "forced apostasy."

22 Q 2:193; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:121; YMDI, 43.

23 Q 2:195; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:122; YMDI, 44.

24 Q 2:196; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:128; YMDI, 46. The next four legal passages are all from this single verse.

25 Q 2:196; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:148; YMDI, 55.

24. And whoever among you is sick or has an ailment of the head must pay a ransom of fasting or almsgiving or sacrifice.²⁶

25. And if you are in safety, then whosoever contents himself with the visit for the pilgrimage shall give such offering as can be had with ease. Whoever has nothing to offer, then a fast of three days while on the pilgrimage, and of seven when you have returned; that is, ten in all.²⁷

26. That is for him whose family is not present at the Sacred Mosque.²⁸

27. The pilgrimage is in the well-known months. Whoever undertakes to perform the pilgrimage therein, there is no lewdness nor abuse nor disputing on the pilgrimage.²⁹

28. But, when you press on in the multitude from 'Arafāt, remember God by the sacred waymark.³⁰

29. Then press onward from the place whence the multitude pressed onward, and ask forgiveness of God.³¹

30. [Remember God through the appointed days]. Then whoever hastens on in two days, it is no sin for him, and anyone who delays, it is no sin for him, if he be God-fearing. Fear God, and know that to Him you will be gathered.³²

31. Fighting is ordained for you, though it is hateful to you. It may happen that you hate a thing which is good for you, and it may happen that you love a thing which is bad for you. God knows, while you know not.³³

32. They question you about wine and games of chance. Say: In both is great sin, and (some) benefit for people; but the sin of them is greater than their benefit.³⁴

33. And they question you concerning orphans. Say: To improve their lot is best. And if you mingle your affairs with theirs, then they are your brothers. God knows the dishonest from the honest. Had God willed He could have overburdened you.³⁵

34. Wed not women who associate partners with God till they believe; for a believing slave woman is better than someone who associates partners with God, though she please you. And give not your daughters in marriage to men

26 Q 2:196; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:153; YMDI, 57.

27 Q 2:196; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:158; YMDI, 59.

28 Q 2:196; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:162; YMDI, 60.

29 Q 2:197; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:162; YMDI, 61.

30 Q 2:198; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:167; YMDI, 62.

31 Q 2:199; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:168; YMDI, 63.

32 Q 2:203; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:170; YMDI, 63.

33 Q 2:216; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:172; YMDI, 64.

34 Q 2:219; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:173; YMDI, 65.

35 Q 2:220; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:178; YMDI, 67.

who associate partners with God till they believe, for a believing slave is better than someone who associates partners with God, though he please you. These invite to the Fire, while God invites to the Garden, and to forgiveness by His grace, and expounds His signs to humanity that perhaps they may remember.³⁶

35. They question you concerning menstruation. Say: It is an infirmity, so let women alone at such times and go not into them till they are cleansed. And when they have purified themselves, then go into them as God has enjoined upon you. Truly God loves those who repent constantly, and loves those who have a care for cleanness.³⁷

36. Your women are a tilth for you, so go to your tilth as you will, and send (good deeds) before you, for your souls, and fear God. Know that you will meet Him and give glad tidings to believers.³⁸

37. God will not take you to task for what is unintentional in your oaths. But He will take you to task for that which your hearts have earned. God is Forgiving, Clement.³⁹

38. Those who forswear their wives have four months. Then, if they change their mind, God is Forgiving, Merciful. And if they decide upon divorce, God is Hearer, Knower.⁴⁰

39. Women who are divorced shall wait, keeping themselves apart, three menstrual cycles. And it is not lawful for them to conceal that which God has created in their wombs if they are believers in God and the Last Day. And their husbands have a better claim to take them back if they desire reconciliation. And women have claims similar to those of men over them in kindness, and men are a degree above them. God is Almighty, All-Wise.⁴¹

40. Divorce may be pronounced twice and then (a woman) must be retained in honor or released in kindness. It is not lawful for you to take back from women anything you have given them except when both fear that they cannot observe within the limits of God. And if you fear that they cannot observe the limits of God, in that case it is no sin for either of them if the woman ransoms herself. These are the limits (imposed by) God. Transgress them not. For whoever transgresses God's limits are evil-doers.⁴²

36 Q 2:221; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:182; YMDI, 68.

37 Q 2:222; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:185; YMDI, 69.

38 Q 2:223; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:194; YMDI, 73.

39 Q 2:225; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:195; YMDI, 73.

40 Q 2:226–227; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:200; YMDI, 75.

41 Q 2:228; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:208; YMDI, 78.

42 Q 2:229; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:214; YMDI, 80.

41. And if he has divorced her (the third time), then she is not lawful to him thereafter until she has wedded another husband. Then if he divorces her, it is no sin for both of them that they come together again if they consider that they are able to observe the limits of God. These are the limits of God. He manifests them for people who have knowledge.⁴³

42. When you have divorced women, and they have reached their term, then retain them in kindness or release them in kindness. Retain them not to their hurt so that you transgress. He who does that has wronged himself.⁴⁴

43. And when you have divorced women and they reach their term, place not difficulties in the way of their marrying their husbands if it is agreed between them in kindness. This is an admonition for him among you who believes in God and the Last Day.⁴⁵

44. Mothers shall nurse their children for two whole years for those who wish to complete the nursing. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor should he to whom the child is born (be made to suffer) because of his child. And on the (father's) heir is incumbent the like of that (which was incumbent on the father). If they desire to wean the child by mutual consent and consultation, there is no blame upon them. And if you wish to give your children out to nurse, it is no sin for you, provided that you pay what is due from you in kindness. Fear God and know that God is Seer of all that you do.⁴⁶

45. Such of you that die and leave behind them wives, they shall wait, keeping themselves apart, four months and ten days. And when they reach the term, then there is no blame for you regarding what they may do with themselves in decency. God is informed of what you do.⁴⁷

46. There is no blame for you in that which you proclaim or hide in your souls concerning your marriage proposals with women. God knows that you will remember them. But do not make promises to women except by uttering a good speech. And do not consummate the marriage until (the term) prescribed is run. Know that God knows what is in your souls, so fear Him and know that God is All-Forgiving, Clement.⁴⁸

43 Q 2:230; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:224; YMDI, 85.

44 Q 2:231; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:231; YMDI, 88.

45 Q 2:232; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:235; YMDI, 89.

46 Q 2:233; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:241; YMDI, 92.

47 Q 2:234; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:249; YMDI, 94.

48 Q 2:235; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:255; YMDI, 97.

47. It is no sin for you if you divorce women while you have not yet touched them, nor designated them a dower. Provide for them, the rich according to his means, and the needy according to his means, a fair provision—an obligation for those who do good.⁴⁹

48. If you divorce them before you have touched them and you have designated them a dower, then half of what you designated, unless they (the women) agree to forgo it, or he in whose hand is the marriage tie agrees to forgo it. To forgo is nearer to piety. And forget not kindness among yourselves. God is Seer of what you do.⁵⁰

49. Be guardians of your prayers, and of the midmost prayer, and stand up with devotion to God.⁵¹

50. For divorced women a provision in kindness—an obligation for those who are God-fearing.⁵²

51. Those who devour usury shall not rise again save as he arises whom Satan has caused to babble from madness. That is because they say: Trade is just like usury. But God permits trading and forbids usury. He to whom an admonition from his Lord comes and refrains, he shall keep the previous gains, and his affair is with God. As for him who returns (to usury), they are the companions of the Fire. They will abide therein forever.⁵³

52. And if anyone be in difficulties, then let there be postponement to the time of ease. And if you remit (the debt) as almsgiving, that would be better for you, if you did but know.⁵⁴

53. O you who believe! When you contract a debt for a fixed term, record it in writing. Let a scribe record it in writing in your presence, in all fairness. No scribe should refuse to write as God has taught him. So let him write, and let him who incurs the debt dictate, and let him fear God his Lord, and diminish not thereof. But if the debtor is of limited understanding, or weak, or unable himself to dictate, then let the guardian of his interests dictate, in all fairness. And call to witness, from among your men, two witnesses. And if two men are not at hand, then a man and two women, of such as you approve as witnesses, so that if one woman forgets, the other will remind her. And the witnesses must not refuse when they are summoned. Be not averse to writing down (the

49 Q 2:236; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:259; YMDI, 98.

50 Q 2:237; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:263; YMDI, 100.

51 Q 2:238; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:267; YMDI, 101.

52 Q 2:241; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:270; YMDI, 102 (final line).

53 Q 2:275; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:272; YMDI, 103.

54 Q 2:280; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:281; YMDI, 107.

contract) whether it be small or great, with its term, for that is more fair in the sight of God, and more sure for testimony, and the best way of avoiding doubt between you, with exception of the case when it is actual merchandise you transfer among yourselves from hand to hand. In that case it is no sin for you if you do not write it down. And summon witnesses when you sell one to another, and let no harm be done to scribe or witness. If you do (harm them), it is wickedness. Fear God and God will teach you. And God is knower of all things.⁵⁵

54. If you are on a journey and cannot find a scribe, then a pledge is handed over. And if one of you entrusts to another let him who is trusted deliver what is entrusted to him and let him fear God, his Lord. Hide not testimony. He who hides it, verily his heart is sinful. God is Aware of what you do.⁵⁶

Sūrat Āl ‘Imrān (The Family of ‘Imrān): 1 Verse

55. And when the wife of ‘Imrān said: My Lord! I have vowed to You, in dedication, what is in my womb. Accept it from me. You, only You, are the Hearer, the Knower!⁵⁷

Sūrat al-Nisā’ (Women): 29 Verses

56. Give to orphans their wealth and do not exchange the good for the bad, nor absorb their wealth into your own wealth. Lo! That would be a great sin.⁵⁸

57. And if you fear that you will not deal fairly with the orphans, marry of the women, who seem good to you, two or three or four. If you fear that you cannot be fair to them, then one, or those whom your right hands possess. Thus, it will be more likely that you will not do injustice.⁵⁹

58. And give to the women free gift of their dowers; but if they of their own accord remit to you a part thereof, then you are welcome to accept it, with wholesome appetite.⁶⁰

55 Q 2:282; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:284; YMDI, 108.

56 Q 2:283; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:303; YMDI, 115.

57 Q 3:35; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:308; YMDI, 117.

58 Q 4:2; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:315; YMDI, 120.

59 Q 4:3; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:317; YMDI, 121.

60 Q 4:4; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:331; YMDI, 127.

59. Give not to the foolish from their wealth, which God has given you to manage; but feed and clothe them from it, and speak kindly to them.⁶¹

60. Test orphans till they reach the marriageable age. Then, if you find them of sound judgment, deliver their property over to them. Do not devour it by squandering it and in haste before they come of age. Whoever is rich, let him abstain generously; and whoever is poor, let him spend it reasonably. And when you deliver property to orphans, have it witnessed in their presence. God suffices as a Reckoner.⁶²

61. To the men belongs a share of that which parents and near relatives leave behind, and to the women a share of that which parents and near relatives leave behind, whether it be little or much—an apportioned share.⁶³

62. God charges you concerning your children: to the male the equivalent of the portion of two females, and if there be more than two females, then theirs is two-thirds of the inheritance. If there be one female, then the half. And to each of his parents one-sixth of the inheritance, if he has a son. If he has no son and his parents are his heirs, then his mother receives one-third. If he has brothers, then his mother receives one-sixth, after any bequest he may have bequeathed, or debt (has been paid). Your parents and your children: You know not which of them is nearer to you in benefit. It is an apportionment from God and God is All-Knowing, All-Wise. To you belongs a half of what your wives leave, if they have no children; but if they have children then to you one-fourth of what they leave, after any bequest they may have bequeathed, or debt (has been paid). And to them belongs one-fourth of what you leave if you have no children, but if you have children then, one-eighth of what you leave, after any bequest you may have bequeathed, or debt (has been paid). And if a man or a woman have a distant heir, and they have a brother or a sister, then to each of them twain (the brother and the sister) one-sixth, and if they be more than two, then they shall be sharers in the third, after any bequest that may have been bequeathed or debt, not injuring—an apportionment from God, and God is All-Knowing, Clement.⁶⁴

63. And if you wish to exchange one wife for another and you have given the first one a heap of riches, take nothing from it. Would you take it falsely and in

61 Q 4:5; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:340; YMDI, 131. The Qurʾān literally says “your wealth,” although the context indicates that it is the foolish person’s wealth that has been interdicted and become part of their guardian’s wealth. Arberry translates this as “their wealth;” *The Koran Interpreted*, 100.

62 Q 4:6; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:344 YMDI, 132.

63 Q 4:7; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:349; YMDI, 134.

64 Q 4:11–12; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:351; YMDI, 135.

open sin? How can you take it back after one of you has gone into the other, and your wives have taken a solemn pledge from you?⁶⁵

64. And marry not those women whom your fathers have married, except what has already happened in the past. It was ever lewdness and abomination, and an evil way.⁶⁶

65. Forbidden to you are your mothers, and your daughters, and your sisters, and your father's sisters, and your mother's sisters, and your brother's daughters and your sister's daughters, and your foster-mothers, and your foster-sisters, and your mothers-in-law, and your step-daughters who are under your protection (born) of your wives to whom you have gone in—but if you have not gone into them, then it is no sin for you—and the wives of your sons from your own loins. And it is forbidden that you should have two sisters together, except what has already happened in the past. God is ever All-Forgiving, All-Merciful.⁶⁷

66. Forbidden too are all married women, save those whom your right hands possess. Thus God prescribes for you. Lawful to you are all beyond those mentioned, so that you seek them with your wealth in lawful marriage, not lovers. And those in whom you seek pleasure, give to them their portions as an obligation. And there is no sin for you in what you do by mutual agreement after the obligation. God is All-Knowing, All-Wise.⁶⁸

67. And whoever is not able to afford to marry free, believing women, let them marry from the believing maidens whom your right hands possess. God knows best your faith; the one of you is as the other. So wed them by permission of their people, and give their dowers to them in kindness, they being legal wives, not lovers, nor mistresses. And if, when they are legally married, they commit lewdness, they shall incur half of the prescribed punishment for free women. This is for him among you who fears committing sins. But to have patience would be better for you. God is All-Forgiving, All-Merciful.⁶⁹

68. As for those from whom you fear rebellion, admonish them and banish them to beds apart, and strike them. Then if they obey you, seek not a way against them.⁷⁰

65 Q 4:20–21; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:363; YMDI, 139.

66 Q 4:22; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:367; YMDI, 141.

67 Q 4:23; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:371; YMDI, 142.

68 Q 4:24; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:376; YMDI, 144.

69 Q 4:25; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:381; YMDI, 146.

70 Q 4:34; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:384; YMDI, 147.

69. And if you fear a breach between a married couple, appoint an arbiter from his family and an arbiter from her family. If they desire reconciliation, God will bring them together.⁷¹

70. O you who believe! Draw not near to prayer when you are drunk, till you know what you say, nor when you are polluted, save when journeying on the road, till you have bathed. If you are ill, or on a journey, or one of you comes from the toilet, or you have touched women, and you do not find water, then go to clean soil and rub your faces and your hands. God is All-Pardoning, All-Forgiving.⁷²

71. God commands you to restore deposits to their owners, and, when you judge between mankind, that you judge justly. Admirable is this which God admonishes you to do! God is ever Hearer, Seer.⁷³

72. When you are greeted with a greeting, return the greeting with a better one than it.⁷⁴

73. It is not for a believer to kill a believer save in error. He who has killed a believer in error must set free a believing slave, and pay the blood-money to the family of the slain, unless they remit it as a charity. If he be of a people hostile to you, and he is a believer, then set free a believing slave. If he comes of a people between whom and you there is a covenant, then the blood-money must be paid to his people and a believing slave must be set free. And whoever has not the wherewithal must fast two consecutive months. A penance from God. God is All-Knowing, All-Wise.⁷⁵

74. Whoever slays a believer intentionally, his recompense is Hell forever. God is angry with him and He has cursed him and prepared for him an awful torment.⁷⁶

75. And say not to one who offers you greetings: "You are not a believer."⁷⁷

76. As for those whom the angels take in death while they wrong themselves, they will ask: In what were you engaged? They will say: We were oppressed in the land. (The angels) will say: Was not God's earth spacious that you could have migrated therein? As for such, their habitation will be Hell, an evil journey's end.⁷⁸

71 Q 4:35; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:386; YMDI, 148.

72 Q 4:43; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:389 YMDI, 149.

73 Q 4:58; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:394; YMDI, 151.

74 Q 4:86; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:401; YMDI, 154.

75 Q 4:92; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:404; YMDI, 154.

76 Q 4:93; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:409; YMDI, 156.

77 Q 4:94; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:413; YMDI, 158.

78 Q 4:97; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:414; YMDI, 158.

77. Except the feeble among men, and the women, and the children, who were unable to devise a plan and were not shown a way. As for such, it may be that God will pardon them. God is ever All-Pardoning, All-Forgiving.⁷⁹

78. And when you go forth in the land, there is no blame for you to curtail your prayers if you fear that those who disbelieve may attack you. In truth the disbelievers are an open enemy to you.⁸⁰

79. And when you are among them and arrange their prayer for them, let only a party of them stand with you, and let them take their arms. Then when they have performed their prostrations let them fall to the rear and let another party come that has not prayed and let them pray with you, and let them take their precaution and their arms. Those who disbelieve long for you to neglect your arms and your baggage that they may attack you in one rush. No blame is upon you if you lay aside your arms, when rain impedes you or you are sick. But take your precaution. God prepares for the disbelievers a shameful torment.⁸¹

80. Prayer at fixed times has been prescribed for the believers.⁸²

81. They seek your judgment concerning women. Say: God pronounces judgment concerning them, and the scripture which has been recited to you, concerning female orphans and those to whom you give not what is ordained for them, though you desire to marry them. So also concerning the weak among children, and that you should deal justly with orphans. Whatever good you do, God knows full well.⁸³

82. If a woman fears ill treatment from her husband, or aversion, there is no blame for them both if they make terms of reconciliation between themselves. Reconciliation is better. But greed has been made present in their souls. If you do good and keep from evil, God is ever Informed of what you do.⁸⁴

83. You will not be able to deal equally between your wives, however much you desire. But turn not wholly away from her, leaving her like one suspended. If you reconcile and keep from evil, God is All-Forgiving, All-Merciful.⁸⁵

84. They ask you for a verdict. Say: God has pronounced for you concerning a deceased person without heirs. If a man die childless and he has a sister, her share is half of what he leaves, and he would have inherited from her had she died childless. And if there be two sisters, then theirs are two-thirds of what he

79 Q 4:98–99; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:417; YMDI, 160.

80 Q 4:101; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:418; YMDI, 160.

81 Q 4:102; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:424; YMDI, 163.

82 Q 4:103; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:431; YMDI, 166.

83 Q 4:127; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:438; YMDI, 169.

84 Q 4:128; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:440; YMDI, 170.

85 Q 4:129; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:443; YMDI, 172.

leaves. If they be siblings, male and female, to the male is the equivalent of the share of two females. God expounds to you, so that you err not. God is Knower of all things.⁸⁶

Sūrat al-Mā'ida (The Table Spread): 14 Verses

85. Forbidden to you are carrion and blood and swine-flesh, and that which has been consecrated to other than God, and the strangled animal, and the animal killed through beating, and the animal which fell from a height, and that which has been killed by the goring of horns, and the animal mangled by wild beasts—save that which you sacrifice—and that which has been sacrificed to idols.⁸⁷

86. They ask you what is made lawful for them. Say: all good things are made lawful for you. And those beasts and birds of prey you have trained, as hounds are trained, you teach them what God has taught you. So eat of that which they catch for you and mention God's name upon it, and fear God. God is swift to take account.⁸⁸

87. This day are all good things made lawful for you. The food of those who have received the Book is lawful for you, and your food is lawful for them. And so are the chaste women of the believers and the chaste women of those who received the Book before you (lawful for you), when you give them their marriage portions and live with them in honor, not in fornication, nor taking them as secret mistresses. Whoever denies the faith, his work is vain and he will be among the losers in the Hereafter.⁸⁹

88. O you who believe! When you rise up for prayer, wash your faces, and your hands up to the elbows, and wipe your heads and your feet up to the ankles. And if you are unclean, purify yourselves. And if you are sick or on a journey, or one of you comes from the toilet, or you have had contact with women, and you find not water, then go to clean soil and rub your faces and your hands with some of it. God would not place a burden on you, but He would purify you and would perfect His grace upon you, that you may give thanks.⁹⁰

86 Q 4:176; *al-Rawḍa*, Maktabat Ahl al-Bayt, 1:446; YMDI, 173. This is the final passage in the first volume of the 2024 Maktabat Ahl al-Bayt edition of *The Garden and the Pool*.

87 Q 5:3; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:5; YMDI, 175.

88 Q 5:4; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:8; YMDI, 176.

89 Q 5:5; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:13; YMDI, 178.

90 Q 5:6; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:18; YMDI, 180.

89. The only recompense of those who make war upon God and His messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled from the land. Such will be their shame in the world, and in the Hereafter theirs will be an awful torment—except those who repent before you overpower them. For know that God is All-Forgiving, All-Merciful.⁹¹

90. As for the thief, both male and female: cut off their hands. It is the recompense of their own deeds, an exemplary punishment from God. God is All-Mighty, All-Wise. But whoever repents after his wrongdoing and makes amends, God will relent toward him. Lo! God is All-Forgiving, All-Merciful.⁹²

91. O you who believe! Whoever among you turns from his religion ⁹³

92. And when you call to prayer, they take it for a jest and sport. That is because they are a people who understand not.⁹⁴

93. God will not take you to task for what is unintentional in your oaths, but He will take you to task for the oaths you swear in earnest. The expiation thereof is the feeding of ten of the needy with the average of that which you feed your own family, or the clothing of them, or the manumission of a slave. Whoever finds not the means, then a three days' fast. This is the expiation of your oaths when you have sworn. Honor your oaths. Thus God expounds to you His signs in order that you may give thanks.⁹⁵

94. O you who believe! Wine and games of chance and idols and divining arrows are only an infamy of Satan's handiwork. Leave it aside in order that you may succeed.⁹⁶

95. O you who believe! Kill no wild game while you are on the pilgrimage. Whoever among you kills it deliberately, he shall provide a domestic animal, equivalent of what he has killed, judged by two men among you of good character. This animal is to be brought as an offering at the Ka'ba. Or, for expiation, he shall feed poor persons, or the equivalent thereof in fasting, that he may taste the evil consequences of his deed. God forgives whatever may have happened in the past, but whoever relapses, God will take retribution from him. God is Almighty, Able to Requite.⁹⁷

91 Q 5:33–34; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:40; YMDI, 190.

92 Q 5:38–39; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:46; YMDI, 193.

93 Q 5:54; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:51; YMDI, 195.

94 Q 5:58; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:54; YMDI, 196.

95 Q 5:89; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:58; YMDI, 198.

96 Q 5:90; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:66; YMDI, 201.

97 Q 5:95; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:69; YMDI, 202.

96. To hunt and to eat the fish of the sea is made lawful for you, a provision for you and for seafarers ⁹⁸

97. O you who believe! Let there be witnesses between you when death draws near to one of you, at the time of the bequest—two witnesses, upright men from among you, or two others from another tribe, in case you are campaigning in the land, and the calamity of death befall you. You shall detain them both after the prayer, and, if you doubt, they shall be made to swear by God: We will not take a bribe, even though it were for a near kinsman, nor will we hide the testimony of God, for then indeed we should be of the sinful.⁹⁹

[Part II of *The Garden and the Pool*]

Sūrat al-Aʿrāf (The Heights): 3 Verses

98. O Children of Adam! Look to your adornment at every place of prayer, and eat and drink, but be not excessive. He loves not the excessive.¹⁰⁰

99. And when the Qurʾān is recited, give ear to it and remain silent; perhaps you will receive mercy.¹⁰¹

100. But they glorify Him and prostrate to Him.¹⁰²

Sūrat al-Anfāl (The Spoils of War): 8 Verses

101. They ask you about the spoils of war. Say: The spoils of war belong to God and the messenger, so fear God, settle your disputes, and obey God and His messenger, if you are true believers.¹⁰³

102. O you who believe! When you meet those who disbelieve in battle, turn not your backs to them. Whoever on that day turns his back to them, unless

98 Q 5:96; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:74; YMDI, 205.

99 Q 5:106; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:76; YMDI, 206. Following this verse, the scribe wrote, "There remains one more verse, which he did not mention, in this manuscript. The blank space was probably designated for it;" p. 207. It also reports that this copy was collated in 1089/1678 by Muḥammad b. ʿAlī b. Khālīd, who appears as one of the owners of the manuscript on the title page.

100 Q 7:31; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:81; YMDI, 210.

101 Q 7:204; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:82; YMDI, 210.

102 Q 7:206; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:85; YMDI, 211.

103 Q 8:1; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:87; YMDI, 212.

maneuvering for battle or intent to join a company, he truly has incurred wrath from God, and his refuge will be Hell, a wretched journey's end.¹⁰⁴

103. And know that whatever you take as spoils of war, a fifth thereof is for God, and for the Messenger and for the kinsman and orphans and the needy and the wayfarer, if you believe in God.¹⁰⁵

104. And if you fear treachery from any people, renounce (your compact) with them, fairly. God loves not the treacherous.¹⁰⁶

105. And if they incline to peace, incline also to it, and trust in God. He, even He, is the All-Hearing, All-Knowing.¹⁰⁷

106. Now God has lightened your burden, for He knows that there is weakness in you. So if there be of you a steadfast hundred they shall overcome two hundred, and if there be of you a thousand they shall overcome two thousand, by permission of God. God is with the steadfast.¹⁰⁸

107. It is not for any prophet to have captives until he has made slaughter in the land.¹⁰⁹

108. And blood relatives are nearer one to another in the Book of God. Truly, God is Knower of all things.¹¹⁰

Sūrat al-Barā'a (Disassociation): 8 Verses¹¹¹

109. Only he who believes in God and the Last Day shall tend God's places of worship.¹¹²

110. Fight against such of those who have been given the Book who believe not in God nor the Last Day, and forbid not what God and His messenger have forbidden, and follow not the religion of truth, until they pay the tribute, by hand, being brought low.¹¹³

111. The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be won over, and to free the slaves and

104 Q 8:15–16; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:90; YMDI, 213.

105 Q 8:41; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:93; YMDI, 215.

106 Q 8:58; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:99 YMDI, 218.

107 Q 8:61; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:101; YMDI, 219.

108 Q 8:66; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:104; YMDI, 220.

109 Q 8:67; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:106; YMDI, 221.

110 Q 8:75; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:108; YMDI, 221.

111 This sūra is also called *Sūrat al-Tawba* (Repentance).

112 Q 9:18; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:110; YMDI, 223.

113 Q 9:29; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:113; YMDI, 224.

the debtors, and for the cause of God, and the wayfarer. This is an ordinance of God. God is All-Knowing, All-Wise.¹¹⁴

112. And never pray over any of them who dies, nor stand by his grave, for they disbelieved in God and His messenger, and they died while they were evil-doers.¹¹⁵

113 & 114. Not upon the weak nor upon the sick nor upon those who can find nothing to spend is any fault (though they stay at home) if they are true to God and His Messenger. Not upon the good is there any blame. God is All-Forgiving, All-Merciful. Nor upon those whom, when they came to you to provide a mount for them, you said: I cannot find anything for you to mount.¹¹⁶

115. And the believers should not all go out to fight. Of every troop of them, a party should go forth, so that they may gain sound knowledge in religion, and that they may warn their people when they return to them, so that they may beware.¹¹⁷

116. O you who believe! Fight those of the disbelievers who are near to you, and let them find harshness in you, and know that God is with those who fear Him.¹¹⁸

Sūrat Hūd (Hūd): 1 Verse

117. Establish prayer at the two ends of the day and in some watches of the night. Truly, good deeds annul ill-deeds. This is a reminder for the mindful.¹¹⁹

Sūrat Yūsuf (Joseph): 10 Verses

118. And will perfect His grace upon you and upon the family of Jacob, as He perfected it upon your forefathers, Abraham and Isaac.¹²⁰

119. When they said: Joseph and his brother are dearer to our father than we are, though we are a band. Truly, our father is in clear aberration.¹²¹

114 Q 9:60; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:118; YMDI, 226.

115 Q 9:84; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:125; YMDI, 230.

116 Q 9:91–92; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:130; YMDI, 232.

117 Q 9:122; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:131; YMDI, 232.

118 Q 9:123; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:131; YMDI, 232.

119 Q 11:114; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:134; YMDI, 233.

120 Q 12:6; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:136; YMDI, 234.

121 Q 12:8; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:138; YMDI, 235.

120. We went racing one with another, and left Joseph by our things.¹²²

121. If his shirt is torn from the front, then she speaks truthfully and he is among the liars; and if his shirt is torn from behind, then she has lied and he is among the truthful.¹²³

122. Set me over the storehouses of the land, for truly I am a skilled guardian.¹²⁴

123. And when he provided them with their provision, he put the drinking-cup in his brother's saddlebag, and then a herald cried: O camel-riders! You surely are thieves!¹²⁵

124. And he who brings it shall have a camel-load, and that I guarantee.¹²⁶

125. So he turned away from them, saying: Alas, my grief for Joseph! And his eyes were whitened with the sorrow that he was suppressing.¹²⁷

126. So fill for us the measure and be charitable towards us, for God will reward the charitable.¹²⁸

127. And he placed his parents upon the throne.¹²⁹

Sūrat al-Ra'd (Thunder): 1 Verse

128. God knows that which every female bears and which wombs shorten their term, which they extend. And everything with Him is measured.¹³⁰

Sūrat al-Nahl (The Bees): 8 Verses

129. And cattle He has created, from which you have warmth and other uses, and of which you eat.¹³¹

¹²² Q 12:17; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:140; YMDI, 236.

¹²³ Q 12:26–27; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:143; YMDI, 237. MS Milan, Ambrosiana Nuovo Fondo ar., A6, which is a holograph manuscript of *al-Rawḍa wa-l-ghadīr*, begins at the very end of the commentary on these two verses. It contains the complete commentary on passages 122–199, as numerated here.

¹²⁴ Q 12:55; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:144; YMDI, 238.

¹²⁵ Q 12:70; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:148; YMDI, 239.

¹²⁶ Q 12:72; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:151; YMDI, 240.

¹²⁷ Q 12:84; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:153; YMDI, 241 (final line).

¹²⁸ Q 12:88; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:156; YMDI, 242.

¹²⁹ Q 12:100; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:158; YMDI, 244.

¹³⁰ Q 13:8; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:160; YMDI, 244.

¹³¹ Q 16:5; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:163; YMDI, 246.

130. And wherein is beauty for you, when you rest them, and when you take them out to pasture. And they bear your loads for you to a land you could not reach, save with great hardship to yourselves.¹³²

131. And horses, mules and donkeys, that you may ride them, and for ornament.¹³³

132. And of the fruits of palms, and the vines, from which you derive intoxicants and good provision.¹³⁴

133. God coins a similitude: a chattel slave, who has control of nothing, and a person on whom We have bestowed a fair provision from Us, and who spends thereof secretly and openly. Are these two equal?¹³⁵

134. Fulfill the covenant of God when you make covenants, and break not your oaths after the affirmation of them.¹³⁶

135. When you recite the Qurʾān, seek refuge in God from Satan, the outcast.¹³⁷

136. Whoever disbelieves in God after his belief—save him who is forced thereto and whose heart is still at peace with the faith ¹³⁸

Sūrat Banī Isrāʾīl (The Israelites): 3 Verses¹³⁹

137. Establish prayer at the setting of the sun until the dark of night, and the Qurʾān at dawn. The Qurʾān at dawn is ever witnessed.¹⁴⁰

138. And be not loud-voiced in your prayer nor yet silent therein, but follow a way between.¹⁴¹

139. And say: All praise belongs to God, Who has not taken for Himself a child, and Who has no partner in His dominion, nor has He any protector against humiliation. And magnify Him most magnificently.¹⁴²

¹³² Q 16:6–7; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:164; YMDI, 246.

¹³³ Q 16:8; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:166; YMDI, 247.

¹³⁴ Q 16:67; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:168; YMDI, 248.

¹³⁵ Q 16:75; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:170; YMDI, 249.

¹³⁶ Q 16:91; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:172; YMDI, 250.

¹³⁷ Q 16:98; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:173; YMDI, 251.

¹³⁸ Q 16:106; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:177; YMDI, 252.

¹³⁹ This sūra is also called *Sūrat al-Isrāʾ* (The Night Journey).

¹⁴⁰ Q 17:78; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:182; YMDI, 255. Arberry translates “Qurʾān” here as “recital,” while Khalidi translates it as “the Recitation,” both of which are among the literal meanings of the Arabic word *al-qurʾān*; Arberry, *The Koran Interpreted*, 311; Khalidi, *The Qurʾān*, 228.

¹⁴¹ Q 17:110; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:184; YMDI, 255.

¹⁴² Q 17:111; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:186; YMDI, 257.

Sūrat Ṭā' Hā' (Ta Ha): 2 Verses

140. I, even I, am God, there is no God save Me. So worship Me and establish prayer for My remembrance.¹⁴³

141. And glorify the praise of your Lord at the rising of the sun and the going down thereof. And glorify Him some hours of the night, and at the two ends of the day, that you may find acceptance.¹⁴⁴

Sūrat al-Ḥajj (The Pilgrimage): 4 Verses

142. Then from a little lump of flesh, shapely and shapeless.¹⁴⁵

143. These two (the believers and the disbelievers) are two opponents who disputed about their Lord. But as for those who disbelieve, garments of fire will be cut out for them; boiling water will be poured on their heads.¹⁴⁶

144. The Sacred Mosque, which We have appointed for humanity together, the dweller therein and the nomad.¹⁴⁷

145. And the beasts of sacrifice: We have appointed them among the ceremonies of God. In them you have much good. So mention the name of God over them when they are drawn up for sacrifice. Then when their flanks fall, eat thereof and feed the beggar and the suppliant. Thus have We made them subject to you, that perhaps you may give thanks.¹⁴⁸

Sūrat al-Nūr (The Light): 17 Verses, 4 of Which Are Together

146. The fornicator, male and female, flog each one of them a hundred lashes. And let not pity for them withhold you from obedience to God, if you believe in God and the Last Day. And let a party of believers witness their punishment.¹⁴⁹

147. And those who accuse honorable women but bring not four witnesses, flog them eighty lashes and never thereafter accept their testimony. They indeed are evil-doers.¹⁵⁰

143 Q 20:14; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:189; YMDI, 258.

144 Q 20:130; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:191; YMDI, 258.

145 Q 22:5; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:193; YMDI, 259.

146 Q 22:19; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:194; YMDI, 259 (final line).

147 Q 22:25; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:197; YMDI, 261.

148 Q 22:36; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:200; YMDI, 262.

149 Q 24:2; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:207; YMDI, 265.

150 Q 24:4; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:212; YMDI, 267.

148, 149, 150, 151. As for those who accuse their wives but have no witnesses except themselves, let the testimony of one of them be four testimonies, by God, that he is of those who speak the truth. And then a fifth time, invoking the curse of God on him if he is of those who lie. And it shall avert the punishment from her if she bears witness, before God, four times that the thing he said is indeed false, and a fifth time that the wrath of God be upon her if he speaks truthfully.¹⁵¹

152. O you who believe! Do not enter houses other than your own without first announcing your presence and greeting their inhabitants. That is better for you, perhaps you will remember.¹⁵²

153. Tell the believing men to lower their gaze and safeguard their private parts; that is purer for them. God is aware of what they do.¹⁵³

154. And tell the believing women to lower their gaze and to safeguard their private parts, and to display of their adornment only that which is visible, and to draw their shawls over their chests, and not to reveal their adornment save to their own husbands or fathers-in-law, or their sons or their husbands' sons, or their brothers, or their brothers' sons, or sisters' sons, or their womenfolk, or their slaves, or male attendants who lack vigor, or children with no intimate knowledge of women's private parts. And let them not stamp their feet to reveal what they hide of their adornment. And turn to God together, O believers, in order that you may succeed.¹⁵⁴

155. And marry the unwed among you and the pious of your slaves, male and female. If they are poor, God will enrich them from His bounty. God is All-Encompassing, Aware.¹⁵⁵

156. And any of your slaves who seek a contract of manumission, contract it with them if you are aware of any of good in them, and bestow upon them of the wealth that God has bestowed upon you. Force not your slave-girls to prostitution, that you may seek advantage from the life of the world, if they desire chastity. And if forced, then after their compulsion, God will be All-Forgiving, All-Merciful.¹⁵⁶

157. If they are summoned to God and His Messenger to judge between them—a faction of them will suddenly refuse.¹⁵⁷

151 Q 24:6–9; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:215; YMDI, 269.

152 Q 24:27; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:223; YMDI, 273.

153 Q 24:30; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:227; YMDI, 275.

154 Q 24:31; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:228; YMDI, 276.

155 Q 24:32; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:233; YMDI, 278.

156 Q 24:33; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:238; YMDI, 281.

157 Q 24:48; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:244; YMDI, 284.

158. O you who believe! Let your slaves, and those of you who have not come to puberty, ask permission of you at three times: Before the dawn prayer, and when you lay aside your garments for the heat of noon, and after the prayer of night. Three times of nakedness for you. There is no blame for them or for you at other times, when some of you go to and fro, each to each. Thus God makes clear the signs for you. God is All-Knowing, All-Wise.¹⁵⁸

159. And when your children reach puberty then let them ask permission, even as those before them used to ask it. Thus God makes clear His revelations for you. God is All-Knowing, All-Wise.¹⁵⁹

160. As for women past the age of child-bearing, who do not seek marriage, there is no blame for them if they discard their cloaks in such a way as not to show adornment. But to refrain is better for them. God is All-Hearing, All-Knowing.¹⁶⁰

161. No blame is there upon the blind, nor any blame upon the lame, nor any blame upon the sick, nor on yourselves, if you eat at your houses, or the houses of your fathers, or the houses of your mothers, or the houses of your brothers, or the houses of your sisters, or the houses of your fathers' brothers, or the houses of your fathers' sisters, or the houses of your mothers' brothers, or the houses of your mothers' sisters, or at any house whereof you hold the keys, or of a friend. No blame shall it be for you, whether you eat together or apart. But when you enter houses, greet one another with a greeting from God, blessed and wholesome. Thus God makes clear the signs for you, that perhaps you may understand.¹⁶¹

162. So, if they ask your permission to attend to some affair of theirs, grant permission to whom you will of them, and seek God's forgiveness for them. Truly, God is All-Forgiving, All-Merciful.¹⁶²

Sūrat al-Furqān (The Criterion): 4 Verses

163. And We send down purifying water from the sky.¹⁶³

164. And who spend the night before their Lord, prostrate and standing.¹⁶⁴

158 Q 24:58; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:246; YMDI, 285.

159 Q 24:59; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:250; YMDI, 286.

160 Q 24:60; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:252; YMDI, 287.

161 Q 24:61; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:253; YMDI, 287–288.

162 Q 24:62; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2: 258; YMDI, 290.

163 Q 25:48; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:261; YMDI, 291.

164 Q 25:64; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:265; YMDI, 293.

165. And those who, when they spend, are neither excessive nor grudging; but something reasonable between the two.¹⁶⁵

166. And make us a guide (*imām*) for those who are God-fearing.¹⁶⁶

***Sūrat al-Naml* (The Ants): 1 Verse**

167. [Must you] lust after men instead of women? Nay, but you are people who are ignorant.¹⁶⁷

***Sūrat al-Qaṣaṣ* (The Story): 1 Verse**

168. He said: I wish to marry you to one of these two daughters of mine, on condition that you hire yourself to me for eight years. Then if you complete ten, it will be of your own accord, for I do not wish to overburden you. God willing, you will find me among the righteous.¹⁶⁸

***Sūrat Muḥammad* (ṣ) (Muḥammad): 2 Verses**

169. And afterward, either grace or ransom, till the war lays down its burdens.¹⁶⁹

170. So do not falter and cry out for peace when you have the upper hand.¹⁷⁰

***Sūrat al-Faṭḥ* (The Victory): 1 Verse**

171. And if it had not been for the presence of believing men and believing women, whom you know not—lest you should tread them under foot and thus incur guilt for them unknowingly.¹⁷¹

165 Q 26:67; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:268; YMDI, 295.

166 Q 25:74; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:271; YMDI, 296. Khalidi renders the word *imām* in this verse as “guide,” while Arberry translates it as “model” and Pickthall as “patterns.” Muhammad Asad opts for “foremost,” while Abdel Haleem has “good examples.”

167 Q 27:55; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:274; YMDI, 297.

168 Q 28:27; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:276; YMDI, 298.

169 Q 47:4; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:280; YMDI, 300.

170 Q 47:35; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:283; YMDI, 301.

171 Q 48:25; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:285; YMDI, 302.

Sūrat al-Ḥujurāt (The Apartments): 2 Verses

172. O you who believe! If an evil-doer brings you news, verify it, lest you harm some people in ignorance and afterward regret what you did.¹⁷²

173. And if two parties of believers fall to fighting, then make peace between them. And if one party of them wrongs the other, fight the one which does wrong, till it returns to the command of God. Then, if it returns, make peace between them justly, and act equitably. Truly God loves the equitable.¹⁷³

Sūrat al-Najm (The Star): 1 Verse

174. And that man has only that for which he makes effort.¹⁷⁴

Sūrat al-Wāqī'a (The Calamity): 1 Verse

175. Which none touches save the purified.¹⁷⁵

Sūrat al-Ḥadīd (Iron): 1 Verse

176. And placed compassion and mercy in the hearts of those who followed him. But monasticism they invented—We ordained it not for them—only seeking God's pleasure, and they did not observe it correctly. We give those of them who believe their reward, but many of them are evil-doers.¹⁷⁶

172 Q 49:6; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:287; YMDI, 302.

173 Q 49:9; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:290; YMDI, 304. Note that the scribe of this manuscript accidentally wrote *inna llāha lā yuḥibbu l-muqṣiṭīn*, which is nonsensical. It is written correctly in the holograph manuscript; MS Milan, Ambrosiana A6, fol. 73r.

174 Q 53:39; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:295; YMDI, 306.

175 Q 56:79; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:297; YMDI, 307. This is in reference to the Qur'ān, as can be seen in the preceding two verses, "Verily it is a noble Qur'ān, in a book kept hidden."

176 Q 57:27; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:299; YMDI, 308.

***Sūrat al-Mujādila* (She who Disputed): 1 Verse**

177. Those who put away their wives (by saying they are like their mother's back) and afterward would go back on what they have said, from them is due the freeing of a slave before they touch one another. To this you are exhorted; and God is Informed of what you do. And he who has no slave, let him fast for two successive months before they touch one another. And for him who is unable to do so, then the feeding of sixty needy people. This, that you may put trust in God and His Messenger. Such are the limits; and for disbelievers there is a painful doom.¹⁷⁷

***Sūrat al-Ḥashr* (The Mustering): 3 Verses**

178. Whichever palm-trees you cut down or left standing on their roots, it was by God's leave, in order that He might confound the evil-doers.¹⁷⁸

179. And that which God gave as spoils to His Messenger from them, you urged not any horse or riding-camel for the sake thereof, but God gives His Messenger mastery over whom He will. God has power over all things.¹⁷⁹

180. That which God gives as spoils to His Messenger from the people of the townships, it is for God and His Messenger, and for the near of kin, the orphans, the needy, and the wayfarer, in order that it not circulate solely between the rich among you. And whatever the Messenger gives you, take it. And whatever he forbids, abstain from it. And fear God. Lo! God is stern in reprisal.¹⁸⁰

***Sūrat al-Mumtaḥana* (The Tested Woman): 3 Verses**

181. God forbids you not those who neither warred against you on account of religion nor drove you out from your homes, that you should show them kindness and deal justly with them. Truly, God loves the equitable.¹⁸¹

182, 183. O you who believe! When believing women come to you as emigrants, test them. God knows best of their faith. Then, if you know them to be

177 Q 58:3–4; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:302; YMDI, 309. This verse refers to the pre-Islamic *ḡihār* oath, in which a man swears that his wife is like his mother's back.

178 Q 59:5; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:310; YMDI, 313.

179 Q 59:6; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:314; YMDI, 315.

180 Q 59:7; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:316; YMDI, 315.

181 Q 60:8; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:318; YMDI, 317.

true believers, send them not back to the disbelievers. They (believing women) are not lawful for them, nor are they lawful for them. And give them (the disbelievers) that which they have spent (upon them).¹⁸² And it is no sin for you to marry such women provided you have given them their dues. And cling not to the ties of disbelieving women; but demand that which you have spent, and let them demand what they have spent. That is the judgment of God. He judges between you. God is All-Knowing, All-Wise. And if any of your wives has gone from you to the disbelievers and afterward you fall upon some spoils, then give to those whose wives have gone the like of that which they have spent, and fear God in Whom you are believers.¹⁸³

***Sūrat al-Jumu'a* (The Day of Congregation): 1 Verse**

184. O you who believe! When the call is made for the prayer of the day of congregation, hasten to the remembrance of God and leave your trading. That is better for you, if you did but know.¹⁸⁴

***Sūrat al-Munāfiqūn* (The Hypocrites): 1 Verse**

185. When the hypocrites come to you, they say: We bear witness that you are indeed God's Messenger. And God knows that you are indeed His Messenger, and God bears witness that the hypocrites indeed are speaking falsely.¹⁸⁵

***Sūrat al-Ṭalāq* (Divorce): 4 Verses**

186. O Prophet! When you divorce women, divorce them for their waiting periods, calculate the period, and fear God, your Lord. Expel them not from their houses nor let them go forth unless they commit open indecency. Such

182 These pronouns are gendered in Arabic, so it is obvious which references are to the believing women and which are to the disbelieving men in the original Arabic of the Qur'ān.

183 Q 60:10–11; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:320; YMDI, 317.

184 Q 62:9; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:327; YMDI, 320.

185 Q 63:1; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:336; YMDI, 324.

are God's limits, and whoever transgresses God's limits, he verily wrongs himself. You know not: it may be that God will afterward bring some new thing to pass.¹⁸⁶

187. Then, when they have reached their term, take them back in kindness or part from them in kindness, and call to witness two just men among you, and keep your testimony upright for God. Whoever believes in God and the Last Day is exhorted to act thus. And whoever fears God, God will appoint a way out for him and will provide for him when he has no expectation. And whoever puts his trust in God, He will suffice him. God brings His command to pass. God has set a measure for all things.¹⁸⁷

188. And for such of your women who despair of menstruation, if you doubt, their waiting period shall be three months, along with those who do not menstruate yet. And for those with child, their period shall be till they give birth. And whoever fears God, He makes his course easy for him. That is the commandment of God, which He sent down to you. And whoever fears God, He will remit from him his evil deeds and magnify the reward for him.¹⁸⁸

189. Lodge them where you dwell, according to your wealth, and do not harass them so as to constrict their lives. And if they are with child, then pay for them till they bring forth their child. Then, if they nurse the child for you, give them their due payment and consult together in kindness. But if you make difficulties for one another, then let some other woman nurse the child for him. Let him who has abundance spend of his abundance, and he whose provision is measured, let him spend of that which God has given him. God takes to task no soul save that which He has given it. God will bring about, after hardship, ease.¹⁸⁹

***Sūrat al-Taḥrīm* (Prohibition): 1 Verse**

190. O Prophet! Why do you forbid that which God has made lawful for you, seeking to please your wives? And God is Forgiving, Merciful.¹⁹⁰

186 Q 65:1; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:338; YMDI, 325.

187 Q 65:2–3; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:343; YMDI, 327.

188 Q 65:4–5; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:347; YMDI, 329.

189 Q 65:6–7; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:351; YMDI, 330.

190 Q 66:1; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:355; YMDI, 332.

***Sūrat Nūḥ* (Noah): 1 Verse**

191. And I have said: Seek forgiveness from your Lord. Truly, He was All-Forgiving. He will let loose the sky for you in plenteous rain.¹⁹¹

***Sūrat al-Muzzammil* (The Mantled One): 3 Verses**

192, 193, 194. Keep vigil the night long, save a little—A half thereof, or decrease a little thereof; or add to it—and chant the Qurʾān in a measured manner.¹⁹²

***Sūrat al-Muddaththir* (The Enfolded One): 2 Verses**

195, 196. Your Lord, magnify. Your garments, purify.¹⁹³

***Sūrat al-Qadr*¹⁹⁴ (Power): 1 verse**

197. Verily, We sent it down on the Night of Qadr.¹⁹⁵

***Sūrat al-Māʿūn*¹⁹⁶ (Small Kindnesses): 1 Verse**

198. Yet refuse small kindnesses!¹⁹⁷

***Sūrat al-Kawthar* (The Abundance): 1 Verse**

199. So pray to your Lord, and sacrifice.¹⁹⁸

191 Q 71:10–11; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:360; YMDI, 334.

192 Q 73:2–4; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:362; YMDI, 334.

193 Q 74:3–4; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:365; YMDI, 336.

194 *al-Rawḍa*, YMDI, 336; MS Milan, Ambrosiana, A6, fol. 102v: *Sūrat innā anzalnāhu fī laylati l-qadr*.

195 Q 97:1; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:367; YMDI, 336.

196 *al-Rawḍa*, YMDI, 338; MS Milan, Ambrosiana, A6, fol. 105r: *Sūrat a-raʿayta*.

197 Q 107:7; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:370; YMDI, 338.

198 Q 108:2; *al-Rawḍa*, Maktabat Ahl al-Bayt, 2:372; YMDI, 339.

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SCOTT C. LUCAS,

Ph.D. (2002), University of Chicago,
is Associate Professor of Islamic
Studies at the University of
Arizona. He has published on
Sunni *ḥadīth* literature, Qurʾān
commentary, and Zaydi Shiʿism,
including *Constructive Critics*,
Hadith Literature, and the
Articulation of Sunni Islam
(Brill 2004).

This book is the first Western-language study of a legal Qurʾān commentary and the first examination of a Zaydī *tafsīr*. It proposes an original taxonomy for classifying legal passages of the Qurʾān based on Sayyid Muḥammad b. al-Hādī's (d. 720/1320) Qurʾān commentary, *The Garden and the Pool*. It shows that the legal Qurʾān commentary format can serve both as a teaching tool and as a platform for a Muslim jurist to demonstrate his legal expertise. This book includes a critical edition of Muḥammad b. al-Hādī's interpretation of the Sūra of Light based on a manuscript written by the author himself.

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