Behnam Sadeghi

The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition. NY: Cambridge University Press, 2013. Pp. 210. ISBN 978-1-107-00909-7 (hardback).

In this monograph, Sadeghi attempts to explain the legal thought of Ḥanafī jurists in the post-formative period, which he defines as "the period after the birth of the Ḥanafī legal tradition in the second/eighth century (p. 4)." The thesis of the book can be best summarized in his own words: "The reasons jurists give for the laws ("legal reasons") adapt to accommodate the laws, and the laws adapt under the pressure of social conditions." However, the default state is that laws do not change due to legal inertia (p. 163-164).

In chapter 1, Sadeghi rejects what he calls "perhaps the more usual understanding of Islamic law," according to which laws are derived from binding texts through interpretation. Sadeghi pictographically represents this with a diagram of what looks like a meat grinder with binding texts coming from the top into the machine of interpretation and coming out as laws (p. 5, fig. 1a). In the alternative model he articulates (p. 21, fig 8), which he thinks can be used for any legal system based on a foundational text, there are three inputs: the canon, defined as "absolutely binding foundational texts (p. 13)," the received law, which refers to laws advocated by the school, and precedent blind, canon blind law, which refers to contemporary norms and conditions. The last two come together under the category of canon-blind law. Hence the canon and canon-blind law inputs come together and are treated with the hermeneutic-methodological approach, which can be influenced by factors such as bias for the apparent meaning of the canon, bias for the canon-blind law, and the hermeneutic flexibility of the jurist to produce the law he advocates. Sadeghi argues that according to these criteria, post-formative Ḥanafī law consists of only canon-blind law, binding texts playing no role in juridical thinking, because of maximum bias for canon-blind law and maximum hermeneutical flexibility. He then attempts to prove his thesis by three case studies in three chapters concerning women and ritual law, which are preceded by a brief chapter 2 in which he introduces the problems and provides a helpful chronological list of major Ḥanafī jurists.

In chapter 3, Sadeghi studies the Ḥanafī law according to which if a woman prays adjacent to a man in a communal prayer his prayer becomes invalid. Chapter 4 deals with the issue of whether a woman can lead other women in prayer. In these issues Ḥanafī jurists adduce different arguments to support the opinion of the founders. Chapter 5 considers the issue of whether women should join men in communal prayers in mosques. Here although Abū Ḥanīfa allows old women to go out for the night and dawn prayers, the later jurists argue that they should not go out for any prayer citing safety concerns, preferring precedent blind, canon blind law to received law, to use Sadeghi's terms. In all three chapters Sadeghi portrays the thinking of Ḥanafī jurists as inconsistent and unjustified as possible, arguing that Ḥanafī legal thought is based on weak hadiths or contradict sound ones, and hence is not based on the canon.

In chapter 6, Sadeghi attempts to outline the development of Ḥanafī school based on his conclusions. He agrees with Schacht in regarding Abū Ḥanīfa as a follower of Ibrāhīm al-Nakhaʿī, to the extent that he makes the drastic statement "Had Ḥanafī law been named after Ibrāhīm al-Nakhaʿī, that would not have been a misnomer (p. 131)." Sadeghi's idea of formative Ḥanafī law is thus based on Schacht's model in which jurists were following local tradition while Hadith folk championed exclusively following the Prophet, until Shāfiʿī convinced everyone that Hadith folk were right (For a detailed rejection of Schacht's model and the claim that Abū Ḥanīfa was a follower of Ibrāhīm, see my dissertation "A New Historical Model and Periodization for the Perception of the Sunnah of the Prophet and His Companions"). Sadeghi argues that once the precedent of the Prophet was established as the canon, in the post-formative period Ḥanafīs were able to preserve received law through maximal hermeneutical flexibility, disregarding the apparent meaning of the canon through interpretation.

Chapter 7 is a critique of contemporary scholarship in which Islamic law is often taken to represent the values of Islamic society. Sadeghi argues "the inferential road from juristic literature to jurists' values and other aspects of social reality is littered with hazards (p. 143)." He delineates these hazards one by one, concluding that Islamic law should primarily be seen as a system of law, rather than a mirror of Muslim society. Chapter 8 summarizes the conclusions using some concepts of formal logic, whence comes the title of the book. In the appendix, which is a new version of a previously published article, Sadeghi joins a growing number of students of Islamic law who reject the allegation of Calder and those who agree with him such as Chaumont and Melchert that early legal sources are spurious. Based on stylistic analysis, Sadeghi shows beyond reasonable doubt that *Kitāb al-Āthār* and *Muwaṭṭaʾ* belong to al-Shaybānī as recorded by his immediate students. He also rejects Schacht's argument that Ibrāhīm's opinions are spurious, showing that his argument is circular.

As for evaluation, the monograph suffers from enormous methodological flaws and deep unfamiliarity with Ḥanafī thought so that it is practically useless for understanding the development of the Ḥanafī school. The work is a straw man. As is known, a straw man is an informal fallacy in which one presents a false proposition that is not advocated by anyone only to refute it. In each chapter, and in almost every section of each chapter Sadeghi repeats that in the post-formative period Ḥanafī jurists start with the received law and attempt to justify it with the canon, as opposed to "perhaps the more usual understanding of Islamic law" of starting with the canon and coming up with the laws as mentioned in the beginning of the work, which is an oversimplified description of the process generally called *ijtihād*. The obvious question is who holds this more usual understanding that is refuted through laborious arguments. There are two traditions that describe the development of the Ḥanafī school, one is that of the Ḥanafī jurists themselves, and the other is that of modern western academic research. If one takes Schacht to represent the latter, he argued approximately half a century ago that post-formative Islamic law was characterized by *taqlīd*, not *ijtihād* as Sadeghi notes. In the Ḥanafī tradition, the most famous classification of jurists is that of Ibn Kamāl Pasha, which is transmitted in both Ibn

ʿĀbidīn's *Rasm al-muftī* and *Radd al-muḥtār*, as well as in introductory textbooks in Ḥanafī law written in Arabic, such as Abū Zahra's *Abū Ḥanīfa*. According to this classification there are absolute mujtahids such as Abū Ḥanīfa, who apply a legal methodology they themselves systematize, mujtahids in the school, who generally follow the methodology of the school but do not follow the rulings of the founder, themselves deriving rulings from the original sources of Islamic law, such as Abū Ḥanīfa's immediate students, and mujtahids in new issues, who will not oppose the founders, but can derive rulings on issues that were not discussed by them. The other classes do not concern us here, since according to this classification they do not engage in *ijtihād* at all. The problem here with Sadeghi's argument is that none of the jurists Sadeghi mentions are considered mujtahids in the school according to the school. If the consensus both in the Ḥanafī school and western scholarship is that there were no mujtahids in the school in the post-formative period, who is Sadeghi arguing against? Who holds "the more usual understanding" Sadeghi laboriously tries to disprove?

If one indeed wanted to see whether and how Ḥanafī jurists derived laws from the canon in the post-formative period, the natural place to look at would be new issues in which there are no opinions from the founders of the school, since Ḥanafīs do not believe in reinventing the wheel in each generation, but the three issues Sadeghi considers are those in which there are opinions from the founders.

Let us take a second look at Sadeghi's own summary of his work in the final chapter, "The reasons jurists give for the laws ("legal reasons") adapt to accommodate the laws, and the laws adapt under the pressure of social conditions." Since he re-presents his findings in this chapter in terms of formal logic, one can ask what the logical quantifier of this statement is. It is not universal (all reasons…all laws), since there are numerous instances in which Ḥanafī laws are based on apparent meaning of the canon, and the legal reasoning for the law remains constant until the present day. Sadeghi acknowledges one instance in the prohibition of wine (p. 165). If the quantification is existential (some reasons…some laws), again the proposition becomes banal. If what Sadeghi means is most, one cannot prove this on the basis of three issues in a legal tradition that consists of thousands. Any reader of Ḥanafī positive law can bring numerous counter examples. This assuming that his analysis of the three issues is convincing, which it is not.

In a monograph which repeats countless times that Ḥanafī law is not based on the canon, sound methodology would necessitate some sort of summary of what the canon is according to the Ḥanafīs, so that the reader can judge for himself whether a particular law is based on the apparent meaning of the canon. This is oddly absent in the work. Sadeghi simply takes Schacht's model for granted, thinking that Ḥanafīs accepted Shāfiʿī's understanding of the canon, so that any time they do not think like Shāfiʿī or Sadeghi, their thinking is non-canonical. This indicates unfamiliarity with Ḥanafī works of jurisprudence (*uṣūl al-fiqh*), which generally consist of rejections of almost every major point that Shāfiʿīs advocate. Shāfiʿī argues that *khabar al-wāḥid* (a hadith transmitted by a single individual) can specify (*takhṣīṣ*) the general meaning (*ʿām*) of

the Qurʾān; Ḥanafī doctrine is that it cannot. Shāfiʿī argues that *khabar al-wāḥid* can clarify (*bayān*) a specific command (*khāṣṣ*) of the Qurʾān; Ḥanafī doctrine is that it cannot. The bedrock of Shāfiʿī thought is that *ẓannī* (probable) evidence, such as *khabar al-wāḥid*, can qualify *qatʿī* (certain) evidence, such as the Qurʾān; the bedrock of Ḥanafī thought before and after Shāfiʿī is that it cannot, based on Qurʾān 10:36. The canon of the sunna according to the Ḥanafīs does not consist of all sound hadiths, some of which they reject both in their legal theory and positive law, but those hadiths whose apparent meaning does not contradict the Qurʾān and what the Prophet and the Companions persisted upon. Without understanding this one becomes deeply confused about why Ḥanafīs reject seemingly sound hadiths (because their apparent meaning contradicts the Qurʾān or the persistent practice of the Prophet and the Companions), but follow to the letter seemingly weak ones even at the expense of rejecting clear analogy (when the reports do not contradict the apparent meaning of the Qurʾān and the persistent practice). Once one understands this, a lot of the seeming inconsistencies are resolved (for extensive evidence for the legal methodology outlined here from sources before Shāfiʿī, see my dissertation). In other words to argue that Ḥanafī *furūʿ al-fiqh* is not based on Ḥanafī *uṣūl al-fiqh*, common sense requires that one provides at least a broad outline of the latter.

With this in mind, let us look at Sadeghi's presentation of one issue as an example of the problematic nature of his arguments. In the first issue, the Ḥanafī opinion is that if a woman prays next to a man in a communal prayer, his prayer becomes invalid. Sadeghi has the following explanation for the phenomenon. In Basra in the first century there were the opinions that women contaminate water and break the prayers of men if they pass in front of them, which constitute the source of the view of Ibrāhīm and the Ḥanafīs that if a woman prays next to a man in a communal prayer, his prayer becomes invalid. The problem with this truly bizarre claim is that Ibrāhīm and Ḥanafīs explicitly reject both Basran opinions (they neither accept that women contaminate water nor that they invalidate anyone's prayer if they pass in front of them) and the Basran opinions have nothing to do with a woman invalidating a man's prayer if she prays next to him in a communal prayer. Sadeghi tries to overcome these facts that annihilate his argument with a quotation from the legal historian Alan Watson who writes "individual foreign legal rules may be transferred into a system constructed on very different principles (p. 55)," even though in this case there is no transfer of any law whatsoever. Sadeghi then repeats this unfounded assertion as the origin of the Ḥanafī law several times in the monograph as if it is an established fact.

There is a much simpler explanation for the Ḥanafī position. According to Ḥanafī jurists the opinion is due to a well-attested hadith in which men are commanded to be in front of women in communal prayers. Sadeghi writes "nor indeed is the tradition ascribed to the Prophet in Sunnī or Imāmī compilations of *ḥadīth* (p. 68)." Yet in the attached footnote he notes that the hadith is ascribed to the Prophet on the authority of Ḥudhayfa b. al-Yamān (who happened to live in Kufa and is one of the principle Companions from whom Abū Ḥanīfa transmits hadiths, two obviously relevant facts that Sadeghi does not acknowledge) by (the Mālikī hadith scholar) Razīn and (the

Shāfiʿī hadith scholar) Ibn al-Athīr. The hadith is also transmitted from the Prophet on the authority of Ḥudhayfa by the Shāfiʿī hadith scholar Khaṭīb al-Tabrīzī in *Mishkāt al-maṣābīḥ* from Razīn, which Sadeghi missed. The hadith is also transmitted by Ibrāhīm with a sound *isnād* from ʿAbd Allāh b. Masʿūd as a companion statement in the *Muṣannaf* of ʿAbd al-Razzāq. It is quite clear that the simpler explanation is that the opinion of Ibrāhīm and the Ḥanafīs is based on the hadith transmitted from Ḥudhayfa or Ibn Masʿūd who are among the most prominent Kufan authorities. Of course, this simple explanation would go against Sadeghi's claim that Ḥanafī law has nothing to do with the canon, which is why he has to make the convoluted argument for a Basran origin.

Sadeghi also rejects the claim that the hadith is well-attested, following Ibn al-Humām who also rejects the claim. As far as I can understand, what Ibn al-Humām means is that it is not well-attested according to the standards of the hadith scholars, not that it is not well-attested according to Ḥanafī legal methodology. According to the latter, a well-attested hadith is one which is related by a single or few Companions but whose meaning is corroborated by the practice of all or vast majority of the Followers. On this issue of the position of women in communal prayer does this hadith match the Ḥanafī definition of well-attested, or are Ḥanafī jurists just using this attribute to save the day as Sadeghi claims? One way of judging would be to see what non-Ḥanafīs say about the issue. Concerning the position of women behind men in communal prayers this is what the Ḥanbalī hadith scholar Ibn Rajab says: "there is no disagreement among ulama concerning this, as they are forbidden to be in line with men. The lines of women in the time of the Prophet, may peace and blessings be upon him, and the rightly-guided caliphs were indeed behind men. Because of this Ibn Masʿūd said "place them back where Allah placed them back (*Fatḥ al-Bārī, bab al-marʾa takūn waḥdahā ṣaffan*)." It is clear why Ḥanafīs considered the hadith well-attested according to their definition, even though it might not be so according to some hadith scholars. This is not to say that anyone has to agree with the Ḥanafī position, but to say that the law they advocate is consistent with their legal theory in this issue. This indicates a flaw in Sadeghi's model. If an opinion of Abū Ḥanīfa is based on the apparent meaning of the Ḥanafī understanding of the canon in Islamic law, or a decision of the Supreme Court in the US is based on the apparent meaning of the constitution, in Sadeghi's model these would be called canon-blind as received law, which is obviously misleading. The scope of this review does not allow for discussing all the other problems in the monograph as regards the arguments.

As for the format of the book, rather than follow the conventional method of footnoting a source when it is cited in the text, Sadeghi gives a list of all the primary sources he uses in the chapter as the first footnote, stating "quotations in the chapter are from these sources unless specified otherwise." I found this quite inconvenient and difficult to follow.

As for technical mistakes, in the preface *furūʿ* is written as *fūrūʿ* (p. xiv). In the list of jurists, *al-Nahr al-fāʾiq* of Sirāj al-Dīn b. Nujaym is incorrectly described as "a commentary on his brother's *al-Baḥr al-rāʾiq* (p. 45)," while in fact it is a commentary on al-Nasafī's *Kanz al-daqāʾiq*. Sadeghi reads al-Kākī's *taʿlīman li-al-jawāz* as *taʿlīman li-al-jawārī*, although both al-

Kākī's manuscript and al-ʿAynī's quotation of al-Kākī has *jawāz* (p. 89). Sadeghi's reading is incorrect. Ḥanafīs repeatedly use the former expression in their works (including al-ʿAynī himself) to indicate doing something once or a limited amount of times to establish that something is valid rather than to establish it as a sunna, whereas there is not a single instance of the alternative Sadeghi suggests in any Ḥanafī work to my knowledge.

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