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On the Methodological
Requirements of Ijtihad

THE PRACTICE of ijtihad must be based on an authoritative source.
When the source of one's ijtihad is a statement by the Messenger of
God, this statement is authoritative in and of itself, supported by the
Qur'anic revelation he had received and the infallibility with which he
delivered the message he had been given.

According to al-Shawkānī (d. 1250 AH/1834 CE), the opinions
formed by the Prophet's Companions through ijtihad were only au-
thoritative bases for legislation if they were affirmed and approved by
the Prophet. Al-Shawkānī stated that the first step in the process of ijti-
had is to look to what is written in the texts of the Qur'an and the
Sunnah. If the *mujtahid* finds that the question concerning which he
seeks to formulate a ruling is dealt with in the Qur'an and the Sunnah,
then these two sources are to be given priority over all else. If no guid-
ance is found in the Qur'an or the Sunnah, the *mujtahid* is to examine
the Prophet's actions and the actions of others which he approved. He
then looks to the consensus of the scholarly community (*ijmāʿ*) if he
recognizes this as authoritative, and lastly he should employ analogical
deduction (*qiyās*) based on an examination of the specifics of the case
at hand and how they compare to previous cases concerning which
legal rulings have been formed.

Abū Ḥanīfah (d. 150 AH/767 CE) described his approach to ijtihad
as follows:

> I first adopt whatever is stated in the Book of God. If I do not find the

answer I seek there, I look to the Sunnah of the Messenger of God. If I find no answer in either of these sources, I depend on what was said by the Companions. I draw on the sayings of whichever of them I wish, and disregard the sayings of whichever of them I wish. However, I do not rely on the words of anyone else.

Abū Ḥanīfah went on to explain that if he encountered views held by Successors such as Ibn al-Shaʿbī, Ibn Sīrīn, or al-Ḥasan, all of whom engaged in ijtihad, then he engaged in ijtihad as they had done.

Imam al-Ḥaramayn al-Juwaynī (d. 478 AH/1085 CE) expressed the view that lay persons need not adhere to the views of the leading Companions. Rather, he wrote, they should follow the teachings of later scholars who delved deep into the matters of concern and detailed the circumstances surrounding relevant questions, but who no longer relied on the teachings of the Companions. In so doing, al-Juwaynī adopted the view expressed by Ibn al-Ṣalāḥ (d. 643 AH/1245 CE) in *Kitāb al-Fatwā*, adding that he would only imitate those whose teachings had been set down in writing and had, accordingly, gained wide circulation, thereby making it possible for their unrestricted rulings to be restricted, and their general rulings to be specified. The author of *Fawātiḥ al-Raḥamūt bi Sharḥ Musallam al-Thubūt* wrote on the margins of *al-Mustaṣfā*:

> There is unanimous agreement that whoever professes the religion of Islam may imitate whichever scholars he so chooses without feeling himself constrained to do otherwise. Similarly, the Companions agreed unanimously that whoever sought a legal ruling from the Caliphs Abū Bakr and ʿUmar ibn al-Khaṭṭāb would also have been entitled to seek a ruling from Abū Hurayrah, Muʿādh ibn Jabal, or other Companions, and to apply this ruling without fear of condemnation. And anyone who claims that the consensus on these matters no longer applies must explain his or her position.

In the realm of contemporary Arab thought, al-Jabiri holds that in order to apply Islamic law in the manner appropriate to this age, we need to establish a source of authority that will govern our application of Islamic legal rulings. According to al-Jabiri, the authority that

surpasses all others on the levels of both content and method is the example set by the Companions of the Prophet. Only the example of the Companions can unite Muslims around a single point of view, since it preceded the emergence of the various juristic schools and the differences that arose over a wide range of issues and questions.

[ONE]
Ijtihad and Explicit Texts

As will be seen from the foregoing, the scope of ijtihad is that of the speculative, not that of the definitive; hence the motto, "No ijtihad with explicit texts" (*lā ijtihād maʿa al-naṣṣ*), that is, texts which are definitive in terms of both their reliability and their meaning. This maxim still retains its force; nevertheless, it has become the topic of discussion because it has been used to discourage innovative or creative interpretations of texts from the Qur'an and the Sunnah, particularly as they relate to the conditions for a text's application to concrete situations. The question is: If a text is viewed as definitive text, are we not allowed to engage in any form of ijtihad in relation to it?

According to some contemporary Muslim thinkers, the re-interpretations proposed by ʿUmar ibn al-Khaṭṭāb in connection with both issues that are addressed definitively in the Qur'an and the Sunnah and those that are not so addressed constituted forms of ijtihad in which he took new circumstances and conditions into account. ʿUmar's re-interpretations touched, for example, on the policies to be implemented in relation to new converts to Islam whose loyalty needed to be cemented, how to divide up the lands of Iraq, the punishment for theft during a year of famine, and whether to allow Muslim men to marry Jewish or Christian women. Commenting on these examples, Fathi al-Durayni has stated, "All of these issues had been addressed by definitive texts. However, ʿUmar adapted these texts' applications in a way that was consistent with their underlying purposes and intents, thereby helping to protect and preserve the Muslim community's interests."

Al-Durayni was one of the most impassioned proponents of ijtihad in relation to questions of Islamic law, whether or not the issue at hand

was addressed in definitive texts. Moreover, al-Durayni drew a distinction between definitive texts that have been explained and commented on, and those that have not. Muhammad Imarah (born 1931), by contrast, holds that there is an inseparable bond between 'text' and 'ijtihad'. Consequently, Imarah saw no objection to engaging in ijtihad in relation to texts that are speculative with respect to their meaning, their reliability, or both. However, when dealing with texts of definitive meaning and/or reliability, we need to determine the limits within which ijtihad is permissible depending on the nature of the text in question. According to Imarah the scope of ijtihad in relation to such texts is limited to that of understanding, derivation of branches, linking these branches to basic principles, comparison, and formulation of rulings.

In sum, ijtihad remains a valid practice even when dealing with texts of definitive meaning and reliability, including those of relevance to unchanging principles and beliefs. However, it should not go beyond the aforementioned limits. When dealing with texts of definitive meaning and reliability that deal with subsidiary, mundane issues, ijtihad does not permanently abrogate a ruling that was derived from the text at an earlier time; however, it might go beyond the previous ruling. In sum, Imarah views ijtihad as valid even in relation to texts of definitive meaning and reliability and those related to constants. In the first instance, however, ijtihad touches only upon understanding the text, deriving branches, and formulating rulings, while in the second, it involves going beyond the ruling but without abolishing it.

In modern times, as in earlier eras, the work of ijtihad tends to be restricted to two areas: (1) issues addressed by no explicit text in the Qur'an or the Sunnah, and (2) texts that are speculative in nature, whether with respect to their reliability, or with respect to their meaning. To these we might also add a third area proper to ijtihad and to which al-Durayni referred as textual application.

Abd al-Majid al-Najjar (born 1945) has suggested that the use of reason will differ from one text to another. The nature of the reasoning process is affected by the text's attestation and by its meaning, both of which may be either speculative or definitive. The more definitive a text is, the less of a role is played by reasoning in the text's understanding. Conversely, the less definitive a text is, the greater the role of

reasoning in its understanding, and the more difficult the process. Al-Najjar identifies two areas proper to the practice of ijtihad. The first of these is the use of reason to understand a text that is definitive with respect to both attestation and meaning; the second is the use of reason to understand a text of uncertain attestation, whose attribution to the Messenger of God should be verified using the critical methods employed in the hadith sciences.

In his book, *Al-Ijtihād fī al-Sharīʿah al-Islāmiyyah* (Ijtihad in Islamic Law), Shaykh Yusuf al-Qaradawi (born 1926) identifies a set of vital features and criteria of relevance to contemporary ijtihad. He stipulates, for example, that: (1) ijtihad requires that one make every effort to arrive at complete clarity on the issue at hand; (2) no definitive issues are subject to ijtihad; (3) speculative texts and rulings must not be treated as though they were definitive; (4) work should be done to bridge the chasm that presently exists between the juristic and tradition-based schools of thought; (5) beneficial new insights should be welcomed; (6) there is a need for a shift to communal ijtihad, since the view of an entire group is more likely to be correct than that of a single individual.

[TWO]
Ijtihad and the Principles of Jurisprudence

As Islam spread geographically and growing numbers of individuals from varied cultural/ethnic backgrounds embraced the new religion, additional problems and questions arose as to how to apply Islamic teachings to situations that had not been encountered previously. Accordingly, the need for ijtihad increased and its scope broadened. This type of development is reflected clearly in the instructions given by the Messenger of God to Muʿādh ibn Jabal when the latter was sent out to serve as a judge in Yemen. It is likewise observable in the methods of formulating legal rulings adhered to by the Companions, both those who went out to regions that had been conquered by Muslims and those who remained in Madinah, and in the emergence of the rival schools that came to be known as "The School of Opinion" (*madrasah*

al-ra'y), and "The School of Written Tradition" (*madrasah al-athar*).

Islamic Law is marked by a significant degree of both breadth and flexibility. Consequently, it leaves ample room for reasoning and interpretation in attempts to deduce rulings appropriate to a variety of situations. When faced with situations that are not addressed by any particular, explicit text, it is permissible to employ methods such as analogical reasoning (*qiyās*), judicial preference (*istiḥsān*), reasoning based on unrestricted interests (*istiṣlāḥ*), and others. The underlying aims and intents of Islamic Law are sufficiently comprehensive that they allow Muslim jurists to take both spiritual and material interests into account in their deliberations. They are also allowed to analyze and enumerate the concrete bases for specific legal rulings provided that such rulings are not classified as * taʿabbudiyyah*, (see Glossary).

Hasan al-Turabi (1932-2016) observed that Islamic legal texts that deal with the public sphere are fewer in number and more flexible than those dealing with private affairs. Such texts might better be described as statements of overall intent and purpose than as detailed regulations. The juristic concepts proper to this realm have often been neglected. However, when Muslim society's economic and political practices were governed by religious teachings, the juristic rules of relevance to them were given the proper attention. Al-Turabi wrote:

> Consensus (*ijmāʿ*) began as a communal juristic phenomenon; as such, interpretations were deliberated over until a well-attested view was formulated and adopted. Over time, however, it evolved into an imitative recording of statements passed down from earlier Muslim scholars. Similarly, the practice of judicial preference, or *istiḥsān*, began as a broad juristic principle. Eventually, however, jurists narrowed and regulated it out of existence. We then come to the practice of analogical deduction, or *qiyās*, which emerged during the days of the Companions and the Successors in a more or less untrammeled form that was left to the discretion of the individual jurist. But, for fear that this unregulated practice might result in its practitioners being led astray by their whims and caprices, this type of intuitive analogical deduction was abolished and replaced with rigorous formal logic, which reduced the process of analogical deduction to sterile, nitpicking formulas that were hardly capable of generating any new jurisprudence.

Al-Turabi's insightful analysis finds support in a statement by the late Isma‘il R. al Faruqi (1921-1986), who observed that the non-nuanced ijtihad being engaged in at the present time is governed by no systematic rules consistent with modern research methodologies. According to al Faruqi, Islamic values need to be organized into a hierarchy. In order to do this, we must identify the most fundamental principle in Islam, from which we can then derive subsidiary principles and their applications.

Al Faruqi asked rhetorically, "Isn't the practice of such thorough-going ijtihad dangerous for Islam and the Muslim community? By going back to the radical affirmation of the oneness of God, then introducing it into all areas of life and thought, are we not exposing ourselves to perils that might lead to our downfall?" He then proceeded to answer his own questions, saying, "On the contrary: ijtihad in the sense in which are referring to it lies at the heart of the Islamic movement. Those who allow *tawḥīd* – affirmation of God's unity – to be their guide in all things have nothing to fear. Their faith will be strong, their thinking will be enlightened, and their interpretations will be sound."

In al-Qaradawi's view, ijtihad should go beyond the perimeter of the juristic circle to its very center, where the principles of Islamic jurisprudence operate. A development such as this, offers al-Qaradawi, would complete the process begun centuries ago by Abū Isḥāq al-Shāṭibī (d. 790 AH/1388 CE) in his attempt to arrive at definitive juristic principles, and al-Shawkānī, who developed the concept of *tarjīḥ*, or juristic weighting.

In al-Shāṭibī's discussion of the principles of jurisprudence one discerns a distinction between two different levels. The first of these levels is that of universally agreed upon, definitive evidentiary rules; the second is that of juristic issues and questions whose resolution al-Shāṭibī sought to base on a definitive foundation. This distinction was a point of disagreement between al-Shāṭibī and his critics. One later thinker who took issue with al-Shāṭibī over this distinction was Tunisian scholar al-Tahir ibn Ashur (1879-1973). Explaining his opinion of al-Shāṭibī's work, Ibn Ashur wrote:

In the first introduction to his book *Al-Muwāfaqāt*, Abū Isḥāq al-Shāṭibī argued that the principles of jurisprudence are definitive in nature. However, his argument was not convincing... *[U]ṣūl* scholars have been unable to reconcile the evidence on which rulings were based with their aspiration to make the principles of jurisprudence as definitive as the revealed sources of the religion. Such scholars did, in fact, treat the principles of jurisprudence as definitive. When they recorded and compiled them, however, they discovered that almost none of them were as definitive as they had thought they were. And how could it have been otherwise, when most principles of jurisprudence are the subject of disagreements among qualified scholars?

As for Ahmad Raysuni (born 1953), he holds that *maqāṣid al-sharīʿah* (the higher aims and intents of Islamic Law) or *maqāṣid al-fiqh* (the aims of Islamic jurisprudence, which are derived from the aims of Islamic Law) are not only a means of correcting and improving the practice of ijtihad; they also provide a means of expanding the scope of ijtihad in such a way that it can encompass life in all of its vicissitudes and ramifications. If texts are understood in a superficial, literal manner, their scope will remain limited, and they will have little to offer us. If, on the other hand, they are understood in light of their underlying aims and applied in keeping with the causes and occasions that arise in concrete situations, they become an inexhaustible source of practical guidance and wisdom. When this occurs, the way opens to the proper use of analogical deduction (*qiyās*) and considerations of overall human welfare (*istiṣlāḥ*), and legal rulings will then fulfill their God-given purpose of achieving benefit and preventing harm.

Requirement 1: Evidence from Consensus

In his worked entitled *Irshād al-Fuḥūl*, al-Shawkānī defined the word *ijmāʿ*, generally rendered 'consensus', as "an agreement among the *mujtahid*s of the Muslim community following the Prophet's death in this or that age on this or that matter." This definition of *ijmāʿ*, which is accepted by *uṣūl* scholars generally, implies that if: (1) the agreement referred to is that of individuals not qualified to engage in ijtihad, (2) it applies to some community other than the Muslim community, and (3)

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it was an agreement that existed during the lifetime of the Prophet, it is not included within the definition of 'consensus.' Similarly, this definition implies that the term 'consensus' only applies to such an agreement if it is limited to a particular age, and if it concerns 'this or that matter.' Given the aforementioned drawbacks of this definition, we might be better advised to adopt the more detailed and inclusive definition offered by al-Khaṭīb al-Baghdādī (d. 463 AH/1071 CE), who wrote, "The term *ijmāʿ* may be defined as a statement and an action, as a statement and an approval, and as an action and an approval… Moreover, in order for *ijmāʿ* to be valid, it must be agreed upon by everyone qualified to engage in ijtihad, be they famed or obscure." The most important conditions *ijmāʿ* must meet in order to be authoritative were identified by al-Shāfiʿī. Specifically, (1) it must be based on the Qur'an or the Sunnah; and (2) the point in question must be agreed upon by everyone without exception. Given the stringency of this second condition, al-Shāfiʿī himself ruled out the possibility of achieving *ijmāʿ* in numerous situations, since by this time Muslims were living in many different countries, and jurists qualified to engage in ijtihad would have had little or no opportunity to meet and discuss the issues of concern. A similar position was taken by Aḥmad ibn Ḥanbal (d. 241 AH/855 CE), who stated frankly, "Anyone who claims the existence of a consensus is lying." After all, how can we be sure that no one disagrees with the so-called consensus? Instead, one should acknowledge that some people may, in fact, disagree with a position, and that the most the scholar can say is that if such disagreement exists, he has not been informed of it. As for Dāwūd al-Ẓāhirī (d. 270 AH/884 CE), he believed that it was reasonable to speak of consensus during the generation of the Prophet's Companions, but that after that time, consensus was rendered unachievable by the spread of Islam and the large numbers of Muslim scholars in scattered locations.

Ibn Ḥazm (d. 456 AH/1064 CE), himself a foremost Ẓāhirī scholar, took a position somewhere between that adopted by al-Shāfiʿī and that espoused by Dāwūd al-Ẓāhirī. Specifically, Ibn Ḥazm held that the only *ijmāʿ* of any value is that which is entirely certain, and that given its certainty, there is no need to explain or justify it through claims and arguments. Ibn Ḥazm also divided *ijmāʿ* into two types. The first type

includes everything about which there is no doubt on the part of any-one in the Muslim community – in other words, affirmations that one must be able to make if one is truly a Muslim – such as, for example, that "there is no god but God and Muhammad is the Messenger of God," that the five ritual Islamic prayers are obligatory, and the like. As for the second type, it includes actions of the Prophet which were witnessed by all of his Companions, or which were known about by those who did not witness them. These, according to Ibn Ḥazm, are the only two types of consensus, and no other type of consensus has any claim to validity.

Imam al-Juwaynī stated:

Some *uṣūl* scholars have made the claim that [only] the consensus of the Prophet's Companions serves as an authoritative basis for legal rulings. However, this claim is without foundation. The necessity of consensus is attested to for all eras and generations without distinction, and there is no basis either in revelation or reason for the conclusion that we are permitted to single out a particular era or generation as different from others…

In a similar vein, [his student al-Ghazālī] wrote:

Dāwūd [al-Ẓāhirī] and other adherents of the Ẓāhirī schools have stated that no authoritative force attaches to any consensus other than that of the Companions. However, this claim is invalid. The reason for this is that the three sources of evidence for the belief that consensus can be used as evidence in legal argumentation – namely, the Qur'an, the Sunnah, and reason – make no distinction between one era and another. If the Successors reached a consensus about a given matter, then their consensus is validly considered to be the consensus of the Muslim com-munity as a whole, and whoever refuses to abide by this consensus has strayed from the path of the believers.

Similarly, al-Bājī (d. 474 AH/1081 CE) argued that "the position taken by both earlier and later Muslim scholars – with only rare excep-tions – is that the consensus of every generation of Muslims constitutes an authoritative argument that one is forbidden to oppose."

The authoritative nature of consensus is amply supported by evidence from the Qur'an and the Sunnah. The best compilation of such evidence in response to those who challenge the authority of consensus is found in al-Khaṭīb al-Baghdādī's *Al-Faqīh wa al-Mutafaqqih* (Jurists and Those Educated in Juristic Matters). In *Al-Risālah*, al-Shāfiʿī quoted ʿUmar ibn al-Khaṭṭāb as having stated on the authority of the Messenger of God, "…Truly I say to you, whoever desires the comforts of Paradise should remain close to the community. Satan stands with the solitary individual, but if two people band together, he distances himself." It should be noted that al-Shāfiʿī thought it unlikely that the word for 'community' used in this statement – namely, *al-jamāʿah* – referred simply to the physical gathering of believers. Rather, he insisted, the word *jamāʿah* as used in this statement of the Prophet's referred to decisions of the Muslim community as to what was permitted and what was forbidden. He wrote:

> Whoever adheres to the opinion expressed by the Muslim community as a whole is obeying the Prophet's command to remain close to the community. When believers are divided, they succumb to ignorance and disunity. When one remains in the community, however, it becomes impossible to misunderstand or disregard the meaning of anything in the Qur'an, the Sunnah, or a conclusion based on analogical deduction, God willing.

According to al-Juwaynī, consensus possesses definitive authority in two situations. In the first, we find a community that has adopted a ruling in such a definitive manner that we know it is based on a definitive revelation. And in the second, we have a community that has agreed unanimously on a ruling based on speculative evidence and which states this explicitly; this, according to al-Juwaynī, also serves as an authoritative argument. The evidence for its being authoritative in al-Juwaynī's view is that bygone eras and nations agreed to reproach anyone who violated the consensus of the scholars.

As for al-Ghazālī, he based the authoritative nature of consensus on three sources. The first of these sources consisted of the Qur'an, the Sunnah, and reason, the most powerful in al-Ghazālī's view being the

Sunnah. Al-Ghazālī viewed reasoning based on Qur'anic verses that direct us to adhere to and obey the Qur'an and the Sunnah as weak. An example of such a verse is *Surah al-Nisā'*, 4:115, which reads, "But as for him who, after guidance has been vouchsafed to him, cuts himself off from the Apostle and follows a path other than that of the believers – him shall We leave unto that which he himself has chosen...". According to al-Ghazālī, this verse has nothing to do with the issue of consensus per se. Rather, it simply means that if someone opposed and warred against the Messenger of God rather than supporting and defending him against his enemies, God would leave this person to his own devices.

The second source on which al-Ghazālī drew in contrast to al-Juwaynī was the saying of the Prophet, "My [the Muslim] community would never agree together on that which is false (*lā tajtamiʿu ummatī ʿalā al-khaṭa'*)." The manner in which we confirm a given source of evidence is to say that the narrative on which it is based was passed down on the authority of the Messenger of God, with various wordings but with a consistent meaning given the Muslim community's immunity to falling prey to error. And these narratives continue to be circulated and recognized as valid among the Companions and Successors. They were not rejected by any hadith or Qur'an scholar, whether early or late; on the contrary, they have been accepted by Muslims everywhere, and the Muslim community uses them as the basis for argumentation in relation to the religion's central and subsidiary principles alike.

As for the third source on which al-Ghazālī drew, it was the fact that the Companions would not reach a definitive conclusion based on anything less than a definitive foundation, and if their number was sufficient to reach the minimum required for *tawātur*, it is unthinkable that they would have intended to lie. Similarly, it would have been impossible for them to be in error, since one of them would have been certain to notice the error in question. Herein lies the authoritative nature of consensus, which at the same time allows for the possibility of criticism, re-examination, additions and amendments, all of which were lost when juristic thinking stagnated and came to rely on nothing but commentaries on existing works, abridgement of earlier works, and imitation.

Consensus has been conceptualized in numerous ways that yield

neither knowledge nor fruitful action. Such conceptualizations were the subject of lengthy discussions by *uṣūl* scholars. In the beginning of Part II of his book *Al-Maḥṣūl*, for example, al-Rāzī refuted a number of mistaken notions and objections to reliance on consensus, and his treatment of the issues raised serves to illustrate the relevance of consensus to every age.

Of relevance here is the position set forth by al-Khaṭīb al-Baghdādī in his book *Al-Faqīh wa al-Mutafaqqih*, where he stated:

> If the Companions disagreed on an issue, with some of them taking one position and some of them taking another, and if they then died, their Successors were not permitted to agree on one of the two opposing positions while rejecting the other. The reason for this is that the Companions had agreed unanimously that it was permissible to adopt either of the two positions they had formulated, but that any other position would be invalid. Hence, if the Successors were to reject one of the two positions the Companions had pronounced acceptable, this would have been a violation of the Companions' consensus.

There are numerous other related issues, such as, for example, how many individuals must be in agreement on a given matter in order for their agreement to be deemed 'a consensus'; what conditions such individuals must fulfill in order for their agreement to qualify as a consensus; what to do if someone issues a ruling that conflicts with the one that enjoys wide agreement; how consensus is to be demonstrated (whether via words, actions, or silence); situations in which the residents of a particular region reach a consensus on an issue that differs from the consensus reached in another region; and whether to include laypersons among those whose agreement is required in order for there to be a recognized consensus. These and other questions have been the subject of debate; however, contemporary Muslim thinkers can benefit from the study of such issues by employing them as a basis for standardizing or identifying forms of consensus in the contemporary ijtihad movement.

Those who have forbidden the use of consensus have raised numerous arguments against it. Of these the most cogent may be the following

which al-Juwaynī quoted as follows:

> The geographical area encompassed by Islam has expanded. Conse-
> quently, Muslim legal scholars are separated by large distances. Add to
> this the fact that news does not circulate readily among most of the
> countries under Muslim rule. This being the case, how could any ques-
> tion of importance be brought before all the Muslim scholars in the
> world? And, assuming they did agree on this or that question, how
> could their agreed-upon opinion possibly be imposed on all Muslims,
> who differ on the levels of everything from intellectual ability and tem-
> perament to theological views and daily requirements?

Many scholars have attempted to refute such objections and to
establish the validity of the concept of consensus. They would argue,
for example, that non-believers, despite their vast numbers, agree in
their misguidedness! In *Al-Faqīh wa al-Mutafaqqih*, al-Khaṭīb al-
Baghdādī argued as follows:

> Some claim that there is no way to know whether there is a consensus
> among Muslims on a given issue due to the size and geographical
> spread of the Muslim community. The reply to their claim is that con-
> sensus is considered to exist among us based on the agreement of
> Muslim scholars. If the scholars agree on a point, the lay community is
> required to follow their lead. Moreover, it is possible to determine
> whether the Muslim scholarly community agrees on something, since if
> someone has engaged in scholarly efforts to the point where he is recog-
> nized by the community overall as a qualified *mujtahid*, this fact will be
> known among his family and neighbors ... Besides, a scholar of this
> caliber will be able to send out inquiries concerning what people are
> thinking and saying.

Nevertheless, the difficulty raised by those who object to reliance
on consensus is attested to by Muslims' historical experience. We find,
for example, that with the exception of the era of the Prophet's Com-
panions, the Muslim community has never witnessed the type of con-
sensus described above. Perhaps this is why, after citing the arguments
made by those who advocated for the legitimacy of consensus as a basis

for Islamic legal rulings, the *uṣūl* scholar al-Shawkānī stated in *Irshād al-Fuḥūl*:

> In sum, if you reflect on what we have stated in this regard and grasp it thoroughly, the indubitable truth will be made manifest to you. Even if we acknowledge the validity of all the arguments marshaled by those who advocate for reliance on consensus, the most we can conclude from such arguments is that what these people have reached a consensus on is valid. The mere fact that something is valid does not require us to adhere to it. Indeed, as those who support the use of consensus themselves acknowledge, a *mujtahid* may formulate a valid ruling without any other *mujtahid* being obliged to adopt his view on the matter in question.

Ibn Ḥazm defined consensus as "something that has been passed down by the entire Muslim community from one generation to another, such as [the necessity of] faith and the five daily prayers…," or, "something that has been passed down with uncontestable reliability by the entire Muslim community." After citing Ibn Ḥazm's proposed definitions, Shaykh Ahmad Shakir (1892-1958) commented approvingly:

> This author has spoken the truth with respect to consensus and argumentation in its favor. To wit, consensus consists in those truths which every Muslim believer must necessarily acknowledge. As for the type of consensus for which *uṣūl* scholars argue, it simply cannot be realized. Indeed, it is a mere illusion. There are many jurists who, when they are unsettled by an issue and lack convincing arguments in favor of their point of view, claim to have 'consensus' on their side, and brand their opponents as infidels. For shame! The only consensus whose rejection necessitates that one be classified as an unbeliever is affirmation of the core foundations of the faith which, in order to be included within the Muslim community, one must acknowledge of necessity.

In his book entitled, *Maqāṣid al-Sharīʿah al-Islāmiyyah wa Makārimuhā* (The Intents and Virtues of Islamic Law), Moroccan scholar Allal al-Fasi (1910-1974) stated, "The only valid consensus possible is one that originates with *mujtahid*s. There are at least two reasons for

the failure of consensus to be realized: (1) insufficient motivation to achieve it, and (2) the decline of the Caliphate, which would unify Muslims worldwide." Contemporary scholars differ over how to define the Arabic term *ijmā*ᶜ. Some continue to adhere to the traditional, *uṣūl*-based definition, while others have moved away from it. Al-Fasi went on to say, "*ijmā*ᶜ is the agreement reached by *mujtahid*s over a matter about which there is no explicit text in the Qur'an or Sunnah. This agreement must be based on the type of consultation spoken of in *Sūrah Āl ᶜImrān*, 3:159, where God commands the Prophet to "...And take counsel with them" his followers "in all matters of public concern...". *Ijmā*ᶜ does not mean that every *mujtahid* or scholar on Earth has to have investigated the issue in question and given his opinion on it in agreement with all the rest. Nor does it mean that we must have determined each scholar's opinion and polled people on all their ideas relating to the question at hand. This, at any rate, is not the way the Companions understood the agreement required of them on a given question. After all, after consulting the scholarly companions present among them, the Caliphs Abū Bakr, ᶜUmar, or ᶜUthmān would carry out the decisions they had made without waiting until they had been able to consult the many other scholars scattered throughout the Muslim empire.

In his book entitled, *Tajdīd al-Fikr al-Islāmī* (The Renewal of Islamic Thought), Hasan al-Turabi argued for an understanding of consensus as an agreement reached by Islam's scholarly community. Based on *Sūrah al-Nisā'*, 4:115 quoted above which reads, "But as for him who, after guidance has been vouchsafed to him, cuts himself off from the Apostle and follows a path other than that of the believers – him shall We leave unto that which he himself has chosen...", *Sūrah Āl ᶜImrān*, 3:159 which commands the Apostle to take counsel with his followers, the hadith according to which the Muslim community would never agree on error, and the hadith that affirms the necessity of adhering to the view of the community, Turabi wrote:

> People from many different backgrounds and nationalities entered Islam without knowing much, if anything, about the new religion. Additionally, it was no longer feasible for the Muslim community as a whole to

consult together, since there were now hundreds of thousands of them. In fact, they numbered in the tens of millions, and were scattered from East to West. For this reason, it became necessary for the consultation required of Muslims to be restricted to Muslim scholars, and for the consensus required to be the consensus of the Muslim scholarly community. In making this change, they were relying solely on the practical necessity with which they were faced.

Herein lies the importance of *ijmāʿ* in relation to the issues and challenges that face the Muslim community as a whole, not as scattered, disjointed subgroups. Unlike, Allal al-Fasi, I see no virtue in appealing to what was done by the Companions, who used to gather the believers for consultation and for ratification of their decisions. After all, the Muslim community at that time was in a situation that differed radically from the one that faces the present-day Muslim community, which is collapsing under the combined pressures of divisions from within and hostility from without. Moreover, it should be remembered that the early Caliphs, who were the leading *mujtahid*s of their age gifted with profound insight into how to meld earthly authority and the teachings of the Qur'an, were leagues ahead of those who came after them. The situation was summed up by Muhammad Iqbal (1877-1938) in his book *Tajdīd al-Fikr al-Dīnī* (The Renewal of Religious Thought), where he wrote, "In response to the pressure generated by new global influences and European peoples' political experiments, modern Muslims have become newly aware of the value of the notion of consensus and the possibilities it holds."

This situation was also acknowledged by Turabi, who wrote in *Tajdīd al-Fikr al-Islāmī*:

When we became aware of the need to unify our communal life under the banner of religion, we discovered that we lacked principles of public jurisprudence, such as, for example, consideration for human interests, and the systems of consensus and consultation. As such, we found ourselves unable to extend Islamic guidance to include the affairs of politics, economics, and international relations, and to provide foundations for the social and natural sciences.

Hence, what we are required to adhere to is not the particular applications adopted by the Companions but, rather, the principles of consultation (*shūrā*), re-interpretation (ijtihad), and consensus (*ijmāʿ*) upon which the Companions based their action. It was with this fact in mind that Ismaʿil al Faruqi distinguished between

> the consensus of principles, and the consensus of application, the latter of which is bound to the age in which the consensus is formed. Given this distinction, we may not limit the definition of consensus to a particular generation, including that of the Rightly Guided Caliphs. There are two reasons for this. The first is that since the time of the early caliphs, there have arisen new issues and questions which they never discussed, and concerning which they reached no consensus. The second is that our allegiance to them consists in our allegiance to the principles that guided them, not to the particular ways in which these principles were embodied in their lifetimes.

Ijmāʿ consists, first, of the consensus of the members of the Muslim community who are qualified *mujtahid*s. This consensus should then be circulated among all other members of the Muslim community in keeping with the command found in *Sūrah al-Tawbah*, 9:122, where we are told that Muslims at war are to study the faith while not on the front lines so that they can "...teach their homecoming brethren..." when the latter return from battle. In this way, the consensus of the scholarly community becomes, in effect, the 'consensus' of the Islamic community as a whole. There is no justification for replacing such a comprehensive accord with innumerable narrow consensuses, each of them proper to its own locale. Nor is there any justification for broadening the concept to the point where it is impossible for a consensus to be achieved.

Requirement 2: Communal Ijtihad

Communal, or group, ijtihad, is a response to the command to adhere to the beliefs of the Muslim community; it is also an expression of the Muslim community's intellectual, cultural, political and social unity, strength and integrity. In principle, there is widespread agreement

among Muslims on the need to organize and engage in group ijtihad, although differences have arisen over the form this work should take, the methods employed to achieve it, and the relationship between such communal ijtihad and executive centers of power such as governmental bodies.

In al-Qaradawi's view, ijtihad in our day and age must be communal in nature. As such, it should take place within the context of an academy whose members are highly qualified, competent jurists, and which issues its rulings fearlessly and freely without being subjected to any sort of social and political pressures and influences. Muhammad Iqbal likewise maintained that the only valid way in which to form *ijmāʿ* in modern times is to transfer the right to engage in ijtihad from individuals representing distinct schools of thought to an Islamic legislative body. The reason for this is that this transfer ensures that deliberations will be informed by the opinions of lay individuals with valuable insights into life's affairs. Only in this way, insisted Iqbal, can we inject new vitality into legislative systems that have grown sluggish and unresponsive to people's actual needs and circumstances.

As for al-Turabi, he was of the view that thanks to Muslims' shared faith in the oneness of the Divine (*al-tawḥīd*) and their communal methods of decision-making, no juristic disagreements would ever be so great as to prevent them from working toward a common goal. Parties to the disagreement come together based on the principle of consultation, which makes it possible for the conflict to be resolved. After consultation on the matter, the opinion favored by the majority of Muslims is adopted, and the ruling is thus issued on the basis of the will of the community. It then becomes binding on all Muslims, who submit to it on the level of implementation even if they disagree with its relative validity.

The Seventeenth Forum on Islamic Thought held in Algeria in 1403 AH/1983 CE on the subject of ijtihad yielded a number of important ideas, which were set forth in a statement issued by the Committee on Support for Communal and Institutional Ijtihad. Shaykh Muhammad al-Ghazali summed up the reasons for insisting on communal ijtihad as follows. First, he said, there are no longer many individuals of a sufficient academic and moral caliber for people to seek out their legal

opinions on an individual basis. Second, al-Ghazali noted, Muslims are scattered among no fewer than forty-seven different countries of the world, as a result of which reliance on re-interpretations arrived at by this or that individual will only lead to more division and confusion. Third, governmental intervention in all of society's affairs prevents people from engaging in individual ijtihad. By contrast, however, if scholars from various regions come together and agree on a set of ideas and opinions, this gives them a forum that no tyrannical ruler can take away from them. Communal ijtihad must, in fact, be undertaken freely and be autonomous of any and all governmental or other external authority.

It should also be remembered that there is no contradiction between a *mujtahid's* holding to his own opinion and his abiding in practice by the decisions of the wider community and the outcomes of contemporary communal ijtihad. Given the highly bifurcated, specialized nature of so many fields in this day and age, as well as these fields' interdependence and complementarity, it is no longer feasible to think of ijtihad-based interpretations that are absolute and unchanging. Indeed the fields of finance, economics, trade, sociology, medicine, development and the like, all present us with situations in which relevant rulings have to be formulated by highly experienced and skilled individuals with a thorough understanding of the field's procedures, methods and subject matter.

In the words of Syrian scholar Wahbah al-Zuhayli (1932-2015), "the view that the work of ijtihad should be divided up among a variety of scholars opened the way for them to soften the extreme position according to which 'the door to ijtihad' had closed. It was recognized that each succeeding generation stands in need of legal rulings on newly arising situations."

With respect to the organizational form within which the process of ijtihad might be framed and the parties who would participate in it, numerous proposals are currently in circulation. Some thinkers have suggested the establishment of an academy to be attended by the foremost scholars of the Islamic sciences. Such scholars, who would come from all regions of the Islamic world and represent the entire spectrum of juristic schools, would discuss the needs of the Muslim

community, agree among themselves on rulings concerning what would be required of Muslims everywhere, and publicize their decisions. In this connection, Ibn Ashur stated that he did not expect anyone to refuse to adhere to such rulings.

The aforementioned framework is consistent with the one commended by al-Qaradawi and described earlier in this discussion. Another suggestion is for Muslim states to mandate 'competent scholars' to form a legislative council representing the entire Muslim world, and whose decisions would be 'binding' upon all mandating states. According to al-Turabi, the notion of *ijmāʿ* might take the form of the modern practice of seeking out legal rulings from qualified scholars; an indirect consensus might also be obtained through a system of parliamentary representation. In other words a parliamentary council elected freely by the Muslims of the world would be responsible for formulating the official consensus on matters of concern. If, in fact, *ijmāʿ* is viewed as a consensus of an entire world community of Muslims whose purpose is to ensure Muslims' intellectual and political unity, and if this consensus is to be implemented on the ground, then the process of arriving at consensus will need to be broad enough to involve official decision-making bodies.

It follows, then, that as in the case of the term *ijmāʿ*, or consensus, we are using the term 'ijtihad' in a broader, more inclusive sense than that attached to it traditionally in the field of Islamic jurisprudence. What we are speaking of is a type of ijtihad that is marked by broad participation, and in the service of which all of the Muslim community's resources and potentials are brought into play.

Al-Turabi's proposed system of parliamentary representation complete with free elections is an ideal to strive for. However, I do not believe its time has come. Still others have proposed that Islamic legal rulings be decided upon by a majority vote. This is a highly relevant proposal because, although *ijmāʿ* in the sense of complete unanimity is the most perfect expression of agreement and unity, it should be remembered that, particularly in the early stages of such work, basing decisions on a majority vote is an important step toward the ideal of full consensus, and achieves most, if not all, of the purposes achieved by complete unanimity.

Ijtihad and Renewal

The concepts of ijtihad in the sense of creative re-interpretation, and *ijmā*, or consensus, are closely related in that the consensus sought consists in the Muslim community's agreement on a given interpretation of Islam's authoritative texts. Moreover, the door of ijtihad was originally opened by the Prophet, and no one has the right to close it. There is no verse in the entire Qur'an, and no saying of the Prophet, that requires us to abide by any particular juristic school. In fact, the founders of these very schools repeatedly forbade their followers to imitate the interpretations they had offered or to adopt such interpretations as unchanging statutes of the religion. It should be remembered in this connection that when the Abbasid Caliph Abū Jaʿfar al-Manṣūr (d. 158 AH/775 CE) wanted to treat the teachings contained in Imam Mālik's *Al-Muwaṭṭa'* as binding upon the whole Muslim community, Imam Mālik rejected this proposal out of hand.

Expressing the same sentiment, Shaykh al-Ghazali stated:

> The time has come for us to free ourselves from the shackles of slavish adherence to particular juristic schools of thought and emerge into the vast expanse created by the magnanimous law of Islam. With the various schools of thought and scholars' learned opinions before us, we must choose that which is most valid and appropriate for our own circumstances and the age in which we live. We must opt for what is most consistent with the spirit of the Islamic Law, and that which best serves to achieve justice and equality among people.

With its emphasis on factors that promote unity, this broadened vision of ijtihad has the capacity to absorb a great deal of the conflict that arises among the various trends and schools of contemporary thought. In this way, it may help us to avoid falling anew into the patterns of discord that have repeated themselves throughout history among the followers of the various schools of juristic thought, patterns which fly in the face of the godliness and forbearance championed by the founders of these very schools.

There have been attempts to group the various contemporary trends and schools into broad categories. Al-Qaradawi, for example, divides them into three main trends. The first of these is marked by a

tendency to narrow and restrict, with a focus on divisions between one school of thought and another. The second, which Qaradawi views as overly broad, tends to place human interests above the written text, and to favor interpretations that justify reality as it is. As for the third, moderate, trend, it strikes a balance between adherence to written texts and consideration for the aims and intents of Islamic Law.

Another classification was offered by Taha Jabir Alalwani (1935-2016), who identified the following five trends: (1) the modernist trend, which is entirely biased toward the West, (2) the imitative trend, which rejects ijtihad of all types, (3) a third trend which allows ijtihad within narrow confines, that is, in areas having to do with specific recent events or newly arising issues, (4) a fourth trend which uses ijtihad to justify the current social situation, and (5) a trend that defends Islamic thought based on the way of life adhered to by the Prophet.

The fifth trend identified by Alalwani, which is founded on basic Islamic principles but which, at the same time, lends consideration to modern variables and affirms group ijtihad as a means of addressing the problems that face the Muslim community, provides sound, authoritative points of reference and is thus worthy of attention as a means of correcting and guiding action.