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On the Conditions of Ijtihad, and the Agreement-Disagreement Dialectic

ONE OF THE most controversial ijtihad-related topics has been the conditions that must be met by the *mujtahid*, that is, the individual deemed qualified to engage in ijtihad. *Uṣūl* scholars have differed widely over the types of conditions that must be met, and their stringency or leniency.

This controversy has continued into modern times, especially given the Muslim community's failure to progress in numerous areas of its life. Controversy has raged over how much expertise a *mujtahid* is expected to have in various fields, particularly that of Islamic law. Contemporary Islamic thought still exhibits the lingering effects of ages of decadence, stagnation and blind imitation. However, efforts are underway to liberate it from these hindrances and to prepare *mujtahid*s better to respond to current challenges.

[THEME 1]
Contemporary Thought and the Preservation-Revision Debate

The contemporary controversy over the conditions required of a qualified *mujtahid* has yielded two overall trends. The first trend is to revise and reduce these conditions given the difficulty of fulfilling them in their traditional form, while the second is to preserve them unchanged, especially in light of enhanced opportunities for academic achievement and learning in the present day.

In the early generations of Islam, such conditions were not in common circulation. The issue simply had not arisen for the Companions, the Successors, or even the founders of the schools of Islamic juristic thought. The first person to begin laying down explicit conditions such as those that developed in the field of jurisprudence may have been al-Shāfiʿī. There was no committee responsible for identifying the various stages or levels of ijtihad. Instead there was what might be termed "community oversight" (*raqābat al-ummah*) by both scholarly classes and laity.

One argument cited in favor of revising the existing lists of conditions is that they were not based on explicit texts from the Qur'an or the Sunnah. Rather, they were based primarily on the conviction that such conditions helped to ensure that ijtihad fulfill its intended function of guaranteeing the sound understanding and application of the divine revelation. However, since none of these means had been spelled out in an explicit text, disagreement arose as to which of them were necessary in order to regulate the ijtihad process by protecting its outcomes from human error and caprice, and which were not.

It has been proposed that the imposition of overly stringent conditions on *mujtahid*s has killed the spirit of ijtihad and perpetuated a tendency to imitate what others have done and thought in the past. Another undesirable effect of such strict conditions is that, given their stringency, there has often been no one who could meet them, resulting in an absence of *mujtahid*s from whom legal rulings could be sought.

In our present day in particular, it should be borne in mind that the Muslim community has come to face many issues, problems and situations that had no parallel in earlier ages and generations. As al-Jabiri has noted, the tremendous changes that resulted from the emergence of industrial civilization, and which are taking place now with 'the information revolution', have made it all the more necessary that Muslim scholars open themselves to broader fields of knowledge and expertise if they are going to be able to engage in ijtihad in a competent manner.

Some of the boldest proposals for renewal and reinterpretation as they relate to the Islamic legal sciences in general, and to the principles of Islamic jurisprudence in particular, have been made by Hasan al-Turabi. In al-Turabi's view, the rules that govern ijtihad are not merely

formal boundaries within which society remains divided between a lay populace who are exempted from the responsibility to reflect on their religion, and an intellectual elite who have a monopoly on the religion's mysteries and inner truths. Certain formal criteria might be employed to determine whether someone is qualified for the job of *mujtahid* – for example, that he or she have a university degree in a particular field. However, whatever the formal qualifications happen to be, it is the general Muslim public to whom judgment should be deferred in the end as to what is truer and more fitting.

Al-Turabi's statements are consistent with what we know about how the conditions for a *mujtahid* were applied historically before they were standardized and set down in writing. He wrote:

> If we find ourselves in an age in which Islamic jurisprudence is stagnant and backward, with a plethora of issues to address and a dearth of *mujtahids*, we may need to relax the conditions that one must meet to qualify as a *mujtahid*, since in this way we will allow for a broad type of ijtihad that meets the needs of the faithful. If, however, the scope of ijtihad is broadened to the point where we fear that things will spin out of control, we will need to tighten the strictures on who is allowed to engage in ijtihad, lest the practice be undertaken by those who are not fit to do so.

Another distinctive condition added by al Faruqi is what we might term "Islamicness." He justified this addition based on the fact that, firstly, "Islamicness" was a precondition for all of the aforementioned conditions stipulated by *uṣūl* scholars. Secondly, the legal rulings formulated by the *mujtahid* are governed by higher aims or intents, which are in turn shaped by Islamic doctrines and values.

[THEME 2]
Conditions for Engaging in Ijtihad: Historical and Contemporary Models

After summarizing the sources of Islamic legislation – the Qur'an, the

Sunnah, consensus (*ijmāʿ*), traditions passed down from the Companions, and conclusions drawn from analogical deduction (*qiyās*) based thereon – al-Shāfiʿī stated the view that "the only person entitled to engage in analogical deduction is one who has the tool with which to engage in such reasoning." As for the conditions a *mujtahid* must meet, al-Shāfiʿī identified them as

> ...knowledge of God's precepts, including what is obligatory and what is recommended, which texts abrogate others, which are general and which are specific, and which of them offer non-binding guidance. When dealing with texts that could be interpreted allegorically or symbolically, the *mujtahid* seeks understanding from the examples set by the Messenger of God. If no guidance is to be found in the examples of the Prophet, such an individual looks to the consensus of the Muslim community. And if there is no consensus, he seeks guidance through analogical deduction.... As for someone ... who is not knowledgeable of the matters we have just described, he is not permitted to engage in analogical deduction, since he does not know on what basis to draw an analogy.

One of the most important conditions stipulated by al-Shāfiʿī was the ability to combine written traditions with a solid understanding thereof. However, advice of this nature appears only rarely in the writings of *uṣūl* scholars who succeeded him despite the fact that it is this type of advice that guides the steps of a *mujtahid* in such a way that he is more likely to be led to truth than to error. Al-Shāfiʿī's principle concern thus appears to have been to ensure that once a scholar has obtained the necessary theoretical knowledge of Islamic law and its principles, he or she adhere to sound methods of investigation, analysis and practical applications.

In his book, *Al-Burhān*, Al-Juwaynī summarized what a number of other *uṣūl* scholars had written about the characteristics required in a *mujtahid*. Al-Isfarāyīnī (317-418 AH/949-1027 CE) listed no fewer than forty such distinguishing traits. The *mujtahid* must, for example, (1) have reached adulthood; (2) know Arabic well; (3) be familiar with the Qur'an and the Qur'anic sciences, the principle sources of Islamic

law, history, the hadith sciences, and jurisprudence, and (4) have an innate understanding of human psychology. As for al-Ghazālī, his approach included that of al-Shāfiʿī with respect to the need to distinguish between principles and sources on one hand, and, on the other, the tools employed in drawing conclusions from them. And, like al-Juwaynī before him, al-Ghazālī also specified extenuating circumstances associated with each condition.

This does not mean that what al-Ghazālī stipulated in *Al-Mustaṣfā* was the only possible list of conditions. Rather, he stated:

> There are two conditions which a *mujtahid* must meet. First, he must have a thorough grasp of the higher aims of Islamic law, and be skilled at raising and reflecting on relevant questions and issues and ordering them in terms of their relative degrees of importance. Secondly, the *mujtahid* must be an individual of upright character who avoids sins that would compromise his ability to mete out justice to others. A thorough grasp of the aims of Islamic law includes mastery of the Qur'an, the Sunnah, consensus, and reasoning skills.

Al-Ghazālī placed importance on the hadith sciences, linguistics, and the principles of Islamic jurisprudence; as for the disciplines of scholastic theology and the various sub-divisions of jurisprudence, al-Ghazālī saw no need for them in the practice of ijtihad. Hence, although both al-Juwaynī and al-Ghazālī reduced the list of conditions to three, al-Ghazālī replaced al-Juwaynī's requirement of juristic knowledge with a knowledge of the hadith sciences.

Al-Ghazālī's division followed that of Fakhr al-Dīn al-Rāzī (d. 606 AH/1209 CE); moreover, al-Ghazālī concluded that "the most important discipline for a *mujtahid* is the principles of Islamic jurisprudence." In fact, al-Ghazālī attached little or no importance to other related disciplines, including scholastic theology and the subdivisions of Islamic jurisprudence. After all, he noted, since the various subdivisions of jurisprudence had been identified and listed by *mujtahids*, how could knowledge of these subdivisions be a precondition for engaging in ijtihad?

Al-Ghazālī's analysis was adopted by Al-Āmidī (d. 631 AH/1233

CE), who summed up the various sciences, sources and tools required of a *mujtahid* into two conditions. The first of these was related to the premises of scholastic theology and the basic sources of religious instruction, while the second had to do with an in-depth understanding of Islamic legal rulings and of relevant extenuating circumstances. In his *Al-Baḥr al-Muḥīṭ*, al-Zarkashī (d. 794 AH/1392 CE) adhered to al-Ghazālī's list of conditions.

The aforementioned scholars were criticized, however, for their insistence that only five hundred verses of the Qur'an yield legal rulings. They were also criticized for limiting themselves to the use of sources that were simply compilations of hadiths relating to legal rulings, such as *Sunan Abū Dāwūd* and *Sunan al-Bayhaqī*. Al-Nawawī (d. 676 AH/1277 CE), for example, objected that "it is invalid to cite examples from Abū Dāwūd, since he failed to include all, or even most, of the authentic hadiths relevant to Islamic legal rulings." Aḥmad ibn Ḥanbal (d. 241 AH/855 CE) has been quoted as saying that in order to qualify as a *mujtahid*, a scholar must have memorized no fewer than 500,000 (or 300,000) hadiths. According to some scholars, Ibn Ḥanbal only required a *mujtahid* to have memorized such large numbers of hadiths as a kind of reserve, or as a means of adding emphasis to a given ruling, while according to others, the numbers '500,000' and '300,000' were meant to include traditions passed down by the Companions and Successors along with their various chains of authority (*asānīd*, plural of *isnād*).

One of the conditions mentioned by al-Zarkashī was what he termed "way of seeing" (*kayfiyyat al-naẓar*), that is, an understanding of how to make use of proofs and definitions, and construct valid premises. In this connection al-Zarkashī wrote, "This is based on al-Ghazālī's stipulation that [a *mujtahid*] understand the science of logic." However, Ibn Taymiyyah (d. 728 AH/1328 CE) assailed this approach in *Majmūʿ al-Fatāwā*, where he stated that if anyone claimed that an understanding of logic was a condition for the ability to engage in ijtihad, this claim would simply expose the claimant's "ignorance of both Islamic law and the true nature of [Greek] logic." According to Ibn Taymiyyah, such a claim is patently invalid, and should be recognized as such by all Muslims. This is clear, he stated, by virtue of the

fact that the best Muslims who ever lived, namely, the Companions of the Prophet, their Successors and the scholars who founded the principle schools of Islamic jurisprudence were all aware of what they needed to do, and their faith and knowledge were complete without knowing anything about Greek logic.

In a discussion in *Al-Baḥr al-Muḥīṭ* of the debate raging over the qualifications of a *mujtahid*, al-Zarkashī listed "perspicacity and intelligence", "a comprehensive knowledge of the basic sources of the religion", and "knowledge of arithmetic" as conditions stipulated by various Muslim thinkers. Expanding on the specifications a mufti should meet, Imam Aḥmad ibn Ḥanbal wrote:

> No one should set himself up as a deliverer of legal opinions unless he meets the following five conditions. First, he should intend to fulfill this role in the best possible manner. Second, he should be knowledgeable, serious, and calm. Third, he should be firmly grounded in character and knowledge. Fourth, he should possess adequate financial means, since otherwise, people will speak ill of him. And fifth, he should have a knowledge of people.

These five traits were discussed by Ibn al-Qayyim (d. 751 AH/1350 CE) in his *Iʿlām*.

As for al-Shāṭibī, he summed up the qualifications of a *mujtahid* in two conditions that no one before him had stipulated explicitly or in detail, namely: (1) a complete understanding of the aims and intents of Islamic law, and (2) the ability to deduce rulings based on this understanding. If the process of ijtihad is related to the ability to deduce rulings from texts, then knowledge of Arabic also becomes a qualifying condition. If, on the other hand, it is related to the ability to identify sources of benefit and harm – with or without regard for what particular texts say – then knowledge of Arabic is not required; rather, what is required is a knowledge of the higher aims and intents of Islamic law.

Al-Suyūṭī (d. 911 AH/1505 CE) devoted a chapter of his book, *Ḥusn al-Muḥāḍarah* to a discussion of "the *mujtahid* imams of Egypt." He included a detailed account of his own life, complete with details of his travels and the academic disciplines he had mastered. He related that

he had drunk zamzam water with a number of aims, including the hope that "in the field of jurisprudence, he would achieve the status of Shaykh Sirāj al-Dīn al-Balqānī (d. 805 AH/1403 CE), and in the hadith sciences, that of al-Ḥāfiẓ ibn Ḥajar (d. 852 AH/1449 CE)." Al-Suyūṭī claimed to be a fully qualified *mujtahid* in the three fields of legal rulings, Prophetic hadiths, and the Arabic language.

Al-Rāzī wrote in *Al-Maḥṣūl fī ʿIlm al-Uṣūl*, "The individuals whose views are taken into consideration when determining whether there is a scholarly consensus in a given area are those who are qualified *mujtahid*s in that area, even if they are not thus qualified in other areas." Hence, if one is researching whether a consensus exists on a juristic question, the only opinions that count are those of qualified jurists, not those of theologians, and if one is researching whether a consensus exists in the field of scholastic theology, the only persons whose opinions matter are those qualified in the area of scholastic theology, not that of jurisprudence. A theologian's opinion counts for nothing on juristic issues, nor does a jurist's opinion count on theological matters, and so on.

In the context of modern Islamic thought, there is little discussion of these conditions, and rarely do we encounter any serious rethinking of them based on present-day realities. One of the most comprehensive treatments of this subject is that offered by al-Qaradawi, who stipulates that a *mujtahid* must be knowledgeable on eight topics: the Qur'an, the Sunnah, the Arabic language, points of consensus, the principles of jurisprudence, the aims and intents of the Islamic Law, people, and life affairs.

According to Allal al-Fasi, the *mujtahid* engaged in deducing legal rulings draws on three fundamental sources: (1) knowledge based on divinely given evidence derived from the Qur'an, the Sunnah, *ijmāʿ*, and other sources over which scholars have differed; (2) an investigation of the meanings of particular Arabic words based on their lexical definitions and the ways in which they have been used by Arab litterateurs; and (3) the process of weighing evidence and choosing that which has the most in its favor.

A contrasting approach has been offered which has classified conditions into 'non-acquired' and 'acquired.' Non-acquired conditions

include such things as being Muslim, being a legal adult, and being of sound mind, while acquired conditions belong to either of two types: basic, or complementary. Basic acquired conditions include, for example, knowledge of the Qur'an, the Sunnah, the Arabic language, and the scholarly consensus of the Muslim community, while complementary acquired conditions included knowledge of the aims and intents of the Islamic law and general rules pertaining thereto, points of disagreement, and [Greek] logic, as well as self-confidence. (However, one wonders on what basis this thinker classified what al-Shāṭibī viewed as the essence of the Qur'an and the Sunnah – namely, their aims and intents and the universal values they embody – as being complementary rather than basic to the process of ijtihad. Similarly, one wonders how some scholars could have classified these as disputed points or failed to mention them altogether!)

A figure who appreciated the formative and educational role played by these conditions was al-Hajwi al-Thaalibi (1291-1376 AH/1874-1956 CE) who, in his book, *Al-Fikr al-Sāmī*, defined the *mujtahid* as being an "intelligent adult" who possesses a knack for understanding various academic disciplines, who recognizes the value of rational evidence, and who has a reasonable mastery of linguistics, Arabic, religious fundamentals, rhetoric, and the relevant evidence for legal rulings derived from the Qur'an and the Sunnah. Al-Thaalibi wrote:

> It appears to me that the scarcity or absence of *mujtahid*s is a result of the inertia that has overcome the Muslim community in both the sciences and other areas. But if it wakens out of its long slumber and the mists of lethargy dissipate, it will move forward toward the achievement of its intended purpose. We look to the emergence of outstanding Muslim scholars, inventors and other creative minds in the fields of the natural sciences, mathematics and philosophy such as those arising in Europe and the Americas, and once this takes place, religious and secular scholars will interact and give birth to a new generation of *mujtahid*s ... Moreover, given that tyranny seeks to annihilate creative thinking and interpretation, freedom of thought is thus a precondition for proper ijtihad.

[THEME 3]
'Right' and 'Wrong' in Ijtihad-Related Thought

The question of 'right' and 'wrong' in ijtihad-related thought is closely related to the conditions a person has to meet in order to qualify as a *mujtahid*. The purpose for setting these conditions is to ensure that the seeker of knowledge is prepared to take on the role of *mujtahid*. Once he or she has mastered the process of ijtihad, the likelihood of his or her reaching correct conclusions increases accordingly, while the likelihood of errors diminishes. As we have seen, Islamic law stipulates that a *mujtahid* earns two rewards if his ruling is correct, and one reward if it is mistaken. From a strictly rational point of view, one would expect the *mujtahid* who has reached a mistaken conclusion to be pardoned for his error, but to receive neither reward nor punishment and the *mujtahid* who has reached a correct judgment to receive a single reward. Hence, the Islamic law's designation of two rewards for the *mujtahid* whose judgment was correct – one for his effort, and the other for the correctness of his judgment – and a single reward for the effort expended by a mistaken *mujtahid*, shows clearly that ijtihad is viewed as a significant religious duty.

However, unqualified individuals are strictly forbidden to engage in ijtihad, Even if their rulings are correct, they are viewed as being both mistaken in their judgments and guilty of wrongdoing, since the correctness of their rulings will be a result of mere chance rather than the outcome of an informed examination of the sources of Islamic law. Ijtihad, which is intended to be an ongoing process, is required for the correction of errors that creep into the Muslim community's thought or practice. The fact that the Muslim community has been infiltrated by groundless innovations and misleading ideas and afflicted with lethargy, backwardness and stagnation is due to a failure to maintain the practice of ijtihad in so many areas of life. When by contrast, ijtihad is an ongoing practice, errors and unfounded opinions cannot survive, since *mujtahid*s will move promptly to correct and root them out.

The issue of the 'rightness' and 'wrongness' of *mujtahid*s has been the topic of prolonged debate among *uṣūl* scholars, whose overall conclusion has been that as long as thinkers are qualified to engage in

ijtihad, their various interpretations can all be viewed as essentially correct. *Uṣūl* scholars who start from the premise that there is a single, uniform 'truth' have concluded that all *mujtahid*s, regardless of their disagreements, are basically correct on the surface so long as it is impossible to determine which of them has grasped this 'truth' most fully in his ruling. However, those who start from the premise that truth takes different forms in relation to different situations and cases likewise conclude that all *mujtahid*s are right regardless of their disagreements.

Ibn Taymiyyah pointed out that the Arabic word 'wrong' (*khaṭa'*) sometimes means 'morally wrong', 'sinful' or 'blameworthy', while at other times, it means simply 'mistaken,' or 'lacking in knowledge.' No *mujtahid* who undertakes his task with a sincere desire to obey God will ever be 'wrong' in the former sense of the word. Such a *mujtahid* might, however, be 'wrong' in the latter sense of the word due to some aspect of a situation that he has failed to see or understand, but for which he is not held responsible due to his inability to perceive it, and he receives a reward for his attempt to understand it fully. As for the *mujtahid* who understands a situation fully and thus formulates the correct ruling, he receives two rewards: one for his effort, and the other for actually arriving at the correct conclusion.

In their discussions of 'right' and 'wrong', many scholars have drawn a distinction between the realm of 'rational statements' (*ʿaqliyyāt*) and that of 'legalities' (*sharʿiyyāt*). An error on the level of rational statements may prevent one from knowing God and His Messenger, since in this realm, there is one Truth and no other; those who affirm this Truth are on the path of faith, while those who fail to affirm it are deemed nonbelievers; as for people who fall somewhere in between, opinions concerning them differ. As for the realm of 'legalities', some of these are definitive and form essential aspects of the religion such that those who affirm them are in the right, while those who do not affirm them have no excuse for not doing so. As for those legalities for which there is definitive evidence but which are not classified as essential aspects of the religion, it is said that those who neglect them are mistaken and guilty of wrongdoing, whereas if they do not neglect them, they are mistaken, but not guilty of wrongdoing.