

The Crisis in Fiqh and the Methodology of Ijtihad

INTRODUCTION

The year 310/922, in which the last of the acknowledged *mujtahidūn*¹ died, may be marked as the beginning of the crisis of fiqh that continues even to this day. At that time, Islamic fiqh took a very serious turn and, near the end of the fourth Islamic century, its most negative effects began to be apparent: The thinking of scholars was seriously influenced by the apprehension that certain rulers, by means of citing permission obtained through the misuse of fiqh, were exploiting the things held dear by the Ummah.

Thus, the idea of closing the door of *ijtihād* was born out of fear. This essentially defensive notion was accomplished by stipulations to the effect that recourse might be had only to the *ijtihād* made by the scholars of the earliest generations, that no changes could be made to their *ijtihād*, and that any opinion that did not conform to their's should be rejected.²

So the sun set on true *ijtihād*, and in its place came mere *taqlīd*, which allowed legal and intellectual lassitude to become widespread. Moreover, the Ummah's ties to the two sources of legislation, the Qur'an and the Sunnah, and to the other sources weakened and then fell away entirely. Finally, *fiqhī* studies were confined to a few specific textbooks, commentaries on those textbooks, commentaries on the commentaries, and annotations on the commentaries on the commentaries.³

Let us see how al-Ghazālī (505/1111) described this situation, and how his explanation mentioned the most important developments in Shari'ah studies, in general, and in fiqh, in particular. He wrote:

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You must know that the office of *khilāfah* after the Prophet of Allah, upon him be peace, was assumed by *al-khulafā' al-rāshidūn*, who were imams and Shari'ah scholars in their own right. Moreover, they were active in giving fatwas and making legal judgments. Therefore, only rarely if ever did they need to seek the opinions of the *fuqahā'*. The result of this was that the *fuqahā'* immersed themselves in knowledge of the next world and shunned all else. Thus, they were known for their refusals to give fatwas and legal advice on issues of worldly import, preferring instead to devote all of their deductive abilities to the worship of Allah Most High.

But when, soon after the deaths of *al-khulafā' al-rāshidūn*, the office of *khalīfah* passed into the hands of those unqualified to lead the Ummah and unlearned in matters of fiqh and fatwa, it became necessary to consult the *fuqahā'* and to seek their advice in nearly everything. At that time, there still remained of the successor generation (the *Tābī'ūn*) those who continued in the same way as before, practicing Islam in complete purity and following the example of the most learned and devout of their predecessors. Thus, if they were sought out (by those in power who would ask them questions), they would flee or otherwise evade them. The result of this attitude was that the rulers had to resort to pressuring scholars to accept positions as judges (*quḍāt*) and government officials. Thus, as the scholars repeatedly turned down the offers made by rulers and leaders, the people of those times witnessed the true nature of their scholarship. This, in turn, influenced many of them to go out and seek knowledge for themselves so that they too might earn the respect of the people and the notice of the rulers.

So people flocked to learn about the sciences of the fatwa. Thereafter, they did all they could to make themselves known to the rulers so that they could ask for positions and favors. Then, among them were those who failed and those who succeeded. But those who succeeded were unable to avoid the humiliation of sacrificing their dignity in order to ask. In this way, the *fuqahā'* went from being sought after to being seekers after, and from being respected for their spurning the offers of rulers to their being scorned for their opportunism. Of course, there were those true scholars of the religion (*dīn*) who were spared all disgrace by Allah Most High. But, in any case, the greatest interest in those times was in giving legal rulings (fatwas) and judgments (*qadā'*) because of the need for people to fill positions of authority in the courts and in government.

Thus, little by little, fiqh was transformed as a result of these mistaken practices. From acting as a means for the regulation of people's lives in accordance with guidelines from the Shari'ah, [it went] to functioning as a tool to be used for the purpose of legitimizing whatever was current or to satisfying purely intellectual desires to speculate on rulings that might be applied in conjectural situations.⁴

The state of *fiqh* in those days being what it was, it should come as no surprise that the Muslims felt uncomfortable and not a little confused. Oftentimes, something pronounced *ḥarām* by one *faqīh* would, at the same time, in the same place, and under the same circumstances, be pronounced *ḥalāl* by another *faqīh*. In order to have a sense of what really occurred in those times, it should suffice to note that a new and extensive chapter in jurisprudence was being written: *al-ḥiyal wa al-makhārij* (legal stratagems and dodges). Indeed, the mastery of this particular subject became a sign of the *faqīh*'s erudition and academic preeminence!

So, as time passed and as Islam's influence decreased, people began taking more and more liberties with the Shari'ah. Some *fuqahā'* even went to the extreme of transgressing its bounds and its higher purposes (*maqāṣid*), explaining that they had done so either to simplify matters or to make them more difficult. Among them, one group was ever intent on finding new ways to make *fiqh* conform to whims and worldly desires, while another group was determined to pronounce only the most harsh and disagreeable rulings.

Moreover, until this period of stagnation, the fatwa had never been used to justify the government's policies or practices. But this is what happened during a period of weakness in Ottoman rule, and hereafter the affliction continued to spread.

THE DECLINE OF IJTIHAD

Under these looming shadows, *ijtihād* disappeared. Many of the pious, however, were concerned that unqualified and unscrupulous scholars would attempt to practice *ijtihād* anyway. Indeed, this duty had been undertaken by people who, in many cases, had been reared under the eyes of rulers and who had grown practiced in twisting the texts to suit their appetites. The other group comprised those who had been seized by blind loyalty to one school of legal thought (*madhhab*). Thus, they either abrogated or reinterpreted everything that appeared contrary to their *madhhab*, or argued and disputed with anyone who opposed their *madhhab*, or attempted to issue *fatāwā* based on another *madhhab*.

When the pious scholars turned their attention to remedying this situation, the only solution they came up with was *taqlīd*: strict adherence either to the opinions of a particular *faqīh* or to the teachings of a particular *madhhab*. Imagine what a crisis it must have been for the solution to be the fetters of *taqlīd*!

And so it was that the *fuqahā*'s rivalry, incessant debating, and pedantic bickering and contradicting all led to the conclusion that the only way out of the resulting confusion was a return to the opinion of the earlier imams. Indeed, owing to the close ties between the judges and the rulers (who appointed and provided for them), and to the love of many judges for worldly things as well as their overlooking of many injustices, the people lost faith in them and their judgments. Ultimately, the only judgments respected among the people were those based on the opinions of one of the Four Sunnī Imams.⁵

And so the great Muslim masses followed these men, adhered to their opinions, and deduced what they had not said specifically from what they had said generally, believing this to be an adequate guarantee against the kind of judgments and opinions coming from Shari'ah scholars who had no fear of Allah. This is why Imām al-Ḥaramayn (478/1086) claimed that there was *ijma'* (consensus) among the scholars of his day and that the *taqlīd* of one of the Companions was not acceptable. Rather, people were to adhere to the fiqh of one of these four imams, who had probed and examined the Shari'ah, classified and given form to *fiqhī* questions, and had digested the teachings and opinions of the Companions and the Successors. This is what finally led to the dictum that the common man and woman, anyone other than a true *mujtahid*, is required to follow one of the four [Sunnī] *madhāhib*.⁶

Based on Imām al-Ḥaramayn's pronouncement and the claim of *ijma'*, Ibn al-Ṣalāḥ (643/1246) claimed that following one of these imams was obligatory (*wājib*), as only their teachings had been systematized, clarified, and preserved, while the opinions of the Companions and the Successors had never received such attention. Moreover, the four *madhāhib* had been passed on, in the form of common everyday practice, from generation to generation.

From this time onward, people began neglecting the Qur'an and its sciences, as well as the Sunnah and its associated disciplines. Instead, they satisfied themselves with quoting and arguing in favor of teachings from the different *madhāhib*, and, under what might be considered the best of conditions insofar as the exercise of legal acumen was concerned, using them as the basis for branching into details.

The decline continued, and the differences of opinion on legal issues increased and became more profound. Generations of scholars grew up under *taqlīd*, and thus all independent legal thought was stifled and the tree of *ijtihād* withered.

Consequently, people began to think of the *fuqahā'* as those who had memorized a portion of the earlier imams' teachings and opinions without ever developing the ability to distinguish between the sound and the unsound among them. Quite often, they had no knowledge of the evidence leading to the these teachings' formulation or of the methods used to deduce them from the sources.

Likewise, a *muḥaddith* became one who had memorized a number of hadiths and knew certain technical terms. A great scholar became one who had memorized the basic texts (*mutūn*) of a few of the major disciplines and had mastered the subtleties of one or another of the major *fiqhī* or *uṣūlī* texts to the point where he could speak or write at length on it. A great hadith scholar was one who could repeat what some of the early authorities had opined in regard to a hadith text's authenticity or its narrator's veracity.

In this atmosphere of pervasive intellectual gloom, however, a few shining lights were visible. Still, at the time the Ottoman Empire was established in 680/1342, this was the Ummah's condition. Thus, the Ottomans found themselves confronted with a people who retained very few elements of their true character; their beliefs (*'aqā'id*) were vague, their behavior was corrupt, righteousness was nearly nonexistent, thought was petrified, *ijtihād* was paralyzed, *fiqh* was defunct, infighting was commonplace, and divisions were widespread.

Accordingly, the Ottomans obliged the entire Ummah to accept the Ḥanafī *madhhab*. They chose Ḥanafī judges and other officials, designated Ḥanafī imams for their *masājīd*, and appointed Ḥanafī hadith and *fiqh* teachers for their schools. In their opinion, this course of action was by far the most prudent, as a return to the texts of the Qur'an and the Sunnah would have required an undertaking that they considered impossible: a collective effort by the gifted and dedicated Shari'ah scholars.

This important stage among the many stages of *fiqh*'s development needs to be subdivided into several stages based on developments in politics, society, thought, and *fiqh* itself. This requires a very comprehensive study; however, this is not the place for it. What has been alluded to above will have to suffice, so that we may proceed to discuss another point.

FIQH AND INTELLECTUAL FREEDOM

Attempts to quell academic freedom, including freedom in *fiqh*, may be traced back to quite an early date. Some of those attempts took place under the Umayyads; others occurred under the Abbasids.

Perhaps the most well-known attempt was Abū Jaʿfar al-Manṣūr's (r. 754–75) decision to compel all Muslims to follow Mālik's teachings, as recorded in *Al-Muwattaʿa*, and prohibit them from undertaking ijtihād outside of or in contradiction to that work. A similar example may be seen in the agreement between Hārūn al-Rashīd (r. 786–809) and his chief legal advisor, the *qādi* Abū Yūsuf, to limit the appointments of judges and muftis to followers of Abū Ḥanīfah in order to compel the people to follow the Ḥanafī *madhhab*. Likewise, al-Ma'mūn told his subjects to adopt the Mu'tazilites' teachings in matters of theology.

Practically speaking, these attempts prepared the Ummah, mentally and intellectually, to tacitly accept that the door of ijtihād had been closed. Had the Ummah realized the danger of this matter or its negative consequences, or had the scholars been able to differentiate between the purely academic (in which various opinions are offered to answer questions) and the essentially administrative (in which *taqlīd* is less stifling), the Ummah might have been spared the ensuing chaos in its fiqh and the turmoil in its thought. If such had been the case, there would have been no need to suppress the free flow of ideas at every level.

The Ummah's intellectual decrepitude reached its lowest ebb under the Abbasid rulers in the fifth Islamic century, when closing the door of ijtihād became a matter of state policy and academic doctrine. Indeed, this was tantamount to proclaiming the Ummah's mental and intellectual inability to confront the factors of deterioration and decline. Finally, even though a few thinkers and *mujtahidūn* did appear after this period, the general torpor in academic and *fiqhī* circles had spread to such an extent that individual efforts could no longer preserve the Ummah from the elements of dissolution.

Thus, when the Ummah was caught unawares by the Crusaders, it was barely able to defend itself. As a result, the Crusaders captured many of the most important cities and territories and established their institutions there, after humiliating the Muslims and defeating their armies. After much reform, however, and many bitter experiences, the Ummah managed to reclaim something of its former vitality. It then repelled the Crusaders, and Ṣalāḥ al-Dīn (Saladin: d. 1193) retook the holy city of Jerusalem.⁷

In many parts of the Muslim world, however, the affairs of the Ummah had passed to the Mamalik (Mamluks: slave rulers), who represented the power bases and military leadership. The outcome of this situation was that academics and fiqh, as well as the means for their reform, were ignored. In particular, the Arabic language, the language of the Qur'an and hadith and the foremost means of exercising ijtihād, was neglected. *Taqlīd* continued to

increase, *ijtihād* continued to be disregarded, and *fiqh* atrophied. Moreover, the common people held fast to their fathers' *madhāhib* and, what was worse, began to be fanatical in their partisanship for one *madhhab* or another. All of this, of course, only contributed to the Ummah's further dissolution and decline.

Then, in 656/1258, along came the Mongol armies, who found the way to Baghdad's destruction prepared for them by divisions resulting from differences in *madhāhib*, political schisms, and internal dissension.

FIQH IN THE OTTOMAN EMPIRE

After the Muslim Ummah had been made to suffer all manner of calamity and woes, the star of the Ottoman family began to shine above the horizon. Indeed, the establishment of the Ottoman Empire once again brought the Islamic world under a single banner. The Ottomans came to power in the seventh/thirteenth century, and soon much of the Islamic world was under their sway. In the following centuries, the Arab territories were added as the empire expanded and made major achievements in terms of leadership, military victories, power consolidation, and army organization.

The Ottomans won major victories in Europe and the Balkans, so that within a relatively short period their empire became the most powerful nation on Earth. Indeed, Europe was thoroughly preoccupied with the question of how to deal with the danger posed by the Ottoman Turks. Thus, the Muslims regained their lost honor and pride.

Owing to the Ottomans' martial character, however, they considered their military genius to be their greatest asset and the farthest limit of their ambition. Thus, they paid little attention to furthering their successes on the battlefield by reforming the Ummah's intellect or culture, or renewing the study of *fiqh*. Moreover, the Arabic language continued to be ignored, even though its script was adopted for writing Turkish.⁸

SIGNIFICANT FEATURES OF THE OTTOMAN PERIOD

In the field of *fiqh*, whatever freedom of thought had remained was finally dispensed with as the Ḥanafī *madhhab* was decreed to be the state *madhhab* and the only one referred to in court decisions. Scholars of the other three *madhāhib* were permitted to lead prayers according to the teachings of their *madhāhib* in certain mosques, but only if the worshippers were followers of that particular *madhhab*. Likewise, scholars could teach the *fiqh* of their

madhāhib if there was sufficient interest in it. During this time, Abū Ḥanīfah was given the title of *al-Imām al-A'zam* (the Greatest Imam), and his *madhhab* was called *Madhhab al-Imām al-A'zam*. Thereafter, many *awqāf* properties were directed toward teaching and promoting the Ḥanafī *madhhab*. The other *madhāhib*, however (other than the four major ones), were ignored completely. This was especially true of the Shī'ī *madhāhib*, as relations between the Ottomans and the Shī'ī Safavids in Persia remained stormy for 350 years.⁹

However, the Ottomans were not the first ones to make the Ḥanafī *madhhab* the state *madhhab*: In 170 AH, Hārūn al-Rashīd had appointed Abū Ḥanīfah's pupil and close companion, Abū Yūsuf, chief *qāḍī* of his empire; therefore, the appointment of all judges and muftis had to be approved by Abū Yūsuf or done at his recommendation. Thus, all judges in Iraq, Khurasan, Syria, Egypt, or North Africa had been Ḥanafīs. Obviously, this policy played a great role in the Ḥanafī *madhhab*'s spread.

Ibn Ḥazm is quoted as having said that two *madhhabs* became widespread due to official decree and authority: the Ḥanafī and the Mālikī. When the Ottomans adopted the Ḥanafī *madhhab*, however, there was a difference. The Tuks, the rulers, the governors, the leaders, and likewise the Albanians and other Balkan peoples, were Ḥanafīs to start with, and bigoted ones at that. So when this *madhhab* became the official court *madhhab*, the Muslims who followed the other imams really had no choice; either they became followers of Abū Ḥanīfah and made themselves eligible for positions in the military and civil service, or they contented themselves with limited opportunity, hardship, and obscurity.

THE CRISIS OF FIQH

The late Shaykh Maḥmūd Shaltūt, may Allah have mercy on his soul, described the beleaguered state of fiqh in those times as follows:

- The spirit of impartial academic inquiry was overcome by disputes over semantics and blind adherence to the words of authors and commentators.
- The opinions of earlier generations began to be treated as sacred, so that they were soon above criticism. As a result, new thinking was never taken seriously.
- Scholars became preoccupied with intellectual speculation about possible rulings on events and circumstances that had never actually taken

place, all the while ignoring the development of a practical fiqh that would address the needs of people in their daily dealings and legal affairs.

- Fiqh scholars became engrossed with inventing legal loopholes and stratagems that would allow people to avoid Shari‘ah rulings. Indeed, stratagems were worked out for nearly every subject covered in fiqh. Unlike the early imams, who worked out legal stratagems solely for the purpose of sidestepping damage or loss, these scholars set out to invent ways to dodge legal responsibilities.
- Fanaticism in placing a certain *madhhab* over all others led to debates over such issues as whether or not salah was permitted behind an imam who followed a different *madhhab*. As a result, mosques were built with more than one *mihṛāb* so that the followers of different *madhāhib* could pray behind their own imams.
- Credence was given to the idea that all but the four major *madhāhib* should be banned. In this way, a vast body of legal scholarship, itself a mercy from Allah to the Ummah, was dismissed.

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It appears that the Ottoman Empire, after contributing to fiqh’s petrification and attenuation, became annoyed with it. Thus, the state often ignored both fiqh and the *fuqahā’*, choosing instead to solve its problems by means of institutions erected, or legislation promulgated, by the state. The first Ottoman ruler to thus “take matters into his own hands” was Muḥammad al-Fātiḥ (d. 1481), who ordered that civil and criminal codes be prepared to replace the Shari‘ah’s *hudūd*. Indeed, the movement in this direction was completed by the tenth Ottoman ruler, Sulṭān Sulaymān (d. 1566), who was called al-Qānūnī (the “Lawgiver”), owing to the great number of laws he enacted. Indeed, Sulṭān Sulaymān instituted major changes in administrative procedures as well as in the organization of the *‘ulamā’* and teachers of religious knowledge. He also made the mufti the highest religious official in the judiciary, rather than the *qāḍī*, which was the way things had been before Muḥammad al-Fātiḥ.

Thereafter, when legal contradictions began to appear, especially when Shari‘ah judges would rule one way and government officials would rule another, both the people and the state were inconvenienced. So, it was finally decided that certain *fuqahā’* should be invited to reconcile all such contradictions by codifying the empire’s laws. Thus, as a first step toward helping judges and officials to understand the Ḥanafī *madhhab*, a collection

of legal rulings, known as *Al-Fatāwā al-Tatārkhāniyyah*, was compiled. This codification was concluded with the compilation of *Majallat al-Aḥkām al-‘Adliyyah*.

Nonetheless, the petrification of fiqh, the general intellectual malaise, the misinterpretation of Islam, and the repeated mistakes made in attempting to apply Islamic teachings to changing situations were greater problems than any such fractional solutions could remedy. The proper remedy would have been a comprehensive intellectual and fiqh-based effort to return the Muslims to the original sources, the Book of Allah and the Sunnah of His Prophet, and, through them, to bring about change in every aspect of life. Indeed, it is inconceivable that a community that considers the exercise of ijtiḥād to be suspect behavior, or that supposes the appointment of a judge from another *madhhab* to be an invitation to trouble, could hold on to the reins of world leadership, progress, and civilization. On the contrary, such a community’s fate can only be decline and the loss of its place a history to those who make better use of their genius, free their minds of all shackles, and confront their difficulties with learning and an understanding of the laws of the universe, life, nature, and humanity. This is how Muslims should be.

At that period of time, the Ummah had forgotten its sources, its heart had grown hard, and its people had become fatalistic. Philosophical notions and Sufi sentiments about one’s needing only to trust in Allah had blurred the Ummah’s vision. Then, having lost sight of its role in this life, the Ummah’s chance to renew itself disappeared just as the winds of awakening and change were beginning to blow across Europe. How ironic that the reformist thought put forward by Europe’s philosophers, writers, and thinkers came out, essentially, in reply to the challenge posed to Europe by Islam! In turn, then, the European Renaissance became the greatest of all threats to Islam!

One by one, the situations, questions, and issues brought to the fore by the Renaissance and then by the Industrial Revolution confronted the negligent Muslim Ummah. And, having no answer, the Ummah sank deeper into confusion, not knowing what to accept or what to reject. In such a state, its thought was useless and its fiqh was worthless. The spread of modern technology and inventions throughout the world left millions of Muslims stupefied. For many, this was surely the work of Satan or a sign of the Last Day’s coming, and thus was to be resisted or confronted by increased recitation of such soporifics as *Dalā’il al-Khayrāt*.¹⁰ Others sought refuge in proclaiming everything new to be *ḥarām*. After the printing press was invented and the state announced that it would print the Qur’an, the

fuqahā' disputed the matter until the majority ruled that such an undertaking would be *ḥarām!*¹¹

Nonetheless, the Ottoman-ruled lands contained people who advocated the reform of Muslim attitudes, thought, and fiqh. But the general trend was to reject all such calls to reform and amelioration. For example, the historian al-Jaburtī, while narrating the events that took place in Egypt during Ramadan 1711, wrote:

A sermonizer of Turkish extraction sat in the al-Mu'ayyad Mosque in Cairo and exhorted the people to denounce such practices as turning to the graves of the pious, rubbing themselves with the dust they found there, and petitioning the saintly inhabitants for their intercession with Allah. Indeed, the sermonizer acquired a large following. But the scholars of al-Azhar opposed him. At last, the authorities stepped in and beat or banished the man's followers, so that finally the controversy was quelled.¹²

The attempts at reform during times of oppression have been many, and many attempts have been made to throw off the stifling yoke of *taqlid* and free the Muslim mind from its influence. Nonetheless, that yoke continues to throttle the Ummah to the present day. Likewise, the yearning for true *ijtihad* continues to be just that: yearning, despite all of the attempts, many of which were truly inspired.

As I prepared this study, I returned to the writings of Muḥammad al-Khuḍārī, one of the best known authors on the history of Islamic law. In describing this period, from the fall of Baghdad (1258) to the present, he wrote: "It was not at all clear to me what I could possibly say about this period, because the stirrings of *ijtihad* had come to a standstill and there were no features of sufficient interest to write about."

Then he added:

There was much to say about the first period, because that was the time when Allah revealed His commandments to the heart of the Prophet, upon him be peace, who then propagated the message and explained it to the people; and about the second and third periods, because those were when the Companions and the Successors clarified the methods of deducing legal rulings from the Book of Allah, the Sunnah of His Prophet, and by means of sound reasoning; and about the fourth period, because that was when the major imams and the greatest of the *fuqahā'* were active in recording and giving order to the detailed rulings of the Shari'ah; and about the fifth period, because that was when the Shari'ah rulings were sorted and pruned and selected and given preference, one over another. But what is there to say about this last period? Especially when there is nothing to distinguish it?

Nonetheless, as this period includes our own, and as we are sorely in need of reforming ourselves as our pious predecessors had, I thought it would be useful here to list our shortcomings, for if these can be identified, our thinkers and scholars can devise solutions for them.

The most significant aspect of this period is the way that *taqlid* has so dominated the Muslim mind that not a single scholar has aspired to achieve the level of *mujtahid*. He continues:

From the outset of the tenth Islamic century to the present, the situation has changed, as have the landmarks, so that it has even been announced that no *faqih* is to choose between the teachings within a *madhhab* (in cases where more than one opinion on a certain question has been recorded from the imam or from his companions) or to attempt to give preference to one over another, because the time for that has passed, and because a great deal of time has elapsed since the books of the early fiqh scholars were written, so that scholars today should rely only on works produced by the later generations.

The reasons for decline, as articulated by al-Khudari, may be summarized as follows:

- The lack of ties between fiqh scholars from different Islamic lands.
- The lack of attention paid to, and outright ignorance of, the works of the earliest fiqh scholars.
- The debilitating trend toward abridgment, especially in textbooks (*al-mutun*).
- Faulty and timeworn methods of teaching.

In my own estimation, and certainly Allah knows best, these are only a few symptoms of the true reasons for our decline. Essentially, the underlying cause is the backwardness of our thought, what I call “the crisis of thought,” our loss of direct contact with the Book of Allah and the Sunnah of His Prophet, our loss of clear vision, and our complete ignorance of the testimony of reason.

It is interesting to note al-Khudari’s second reason, because it shows how unwilling our scholars have been to go back to the sources. What of their refusal to deal directly with the Qur’an and the Sunnah? They are loath to delve any further back than the fifth Islamic century! Moreover, when al-Khudari mentioned the trend toward abridgment, he wrote:

Near the end of this period, the trend toward abridgment took an unexpected turn. This was the attempt to cram as many questions of fiqh into as few words as possible. Then, as their facility with the Arabic language was limited (the authors of this genre of abridge *fiqhī* texts), their writing began to resemble puzzles, as if the authors had intended that their works should never be understood.

Indeed, I believe that they intended their works to be unraveled rather than understood, because the solving of puzzles was a sign of erudition among them! Al-Khudārī listed examples of this writing style from three of the most noted works still used as textbooks in many of our Shari‘ah institutions. In them, the meanings are so briefly summarized that they have become enigmatic. In many of the sentences you will find the predicate mentioned on the page after the subject is mentioned, or you may have to search even further for it, or you may have to surmise what it is by means of implication! This is why the textbooks required commentaries, the commentaries required notes, and the notes required glosses. The situation is so bad in some of these texts that the teacher’s attempt to explain the intended meaning of a single passage may take days on end!

At first, ijtiḥad was prohibited. Then, in the fifth and sixth Islamic centuries, scholars were restricted to *tarjih* (preferring the opinion of one imam or another on questions of fiqh). But then *tarjih* was prohibited, and scholars were restricted to choosing between the rulings within a single *madhhab* (in cases where more than one opinion on a certain question had been recorded from the imam or his companions). In this way, the door to independent legal thought was shut and then barred.

Having reviewed something of the historical background, we may now proceed to study ijtiḥad as a methodology that was affected by positive and negative factors in its historical development.

A METHODOLOGICAL PERSPECTIVE: IS THE DOOR OF IJTIHAD CLOSED?

Those opposed to an Islamic solution for contemporary society often charge that the door of ijtiḥad was closed long ago and that Islam teaches that no one can exercise ijtiḥad on issues not dealt with by the early imams. Of course, their intention is quite clearly to cause difficulties for the advocates of an Islamic solution by portraying them as incompetent people who cannot offer any reasonable answer to the numerous and complicated problems faced by the Ummah today. Furthermore, the opposition means to say that

Islam is essentially a historical phenomenon whose day has come and gone. Thus, they open the way for their own ideologies and pretensions.

In order to analyze this question properly, and in a way that clarifies its surrounding as well as resulting issues, it is necessary to study it from three separate viewpoints to discern the question with clarity.¹³

The First Viewpoint. All Muslims, specialists and non-specialists alike, agree that ijtiḥad is both a legal and vital necessity as well as a permanent religious responsibility. This understanding is substantiated by texts from the Qur'an and Sunnah, as well as by reason. All of this is documented in the *uṣūl al-fiqh* works dealing with ijtiḥad and its legal basis and importance.

Thus, the assertion that the door of ijtiḥad is closed is contrary to all of these sources of evidence. Indeed, at no time in the Ummah's history has there been a consensus among Muslims that this door had been closed. In fact, Muslims knew that the guarantee for the Shari'ah's preservation and continuation lay in the vitality of ijtiḥad and the succession of qualified *mujtahidūn*, one after another, down through the ages.

As an institution, ijtiḥad suffered more from factors inhibiting the Muslim mind than it did from any imagined loss of the institution itself. There seemed to be no end to the kind of distorted thinking that produced the notions that the earlier generations had left nothing for the later ones, that ijtiḥad should be avoided because it included the possibility of error (and errors had to be accounted for), and that the door of ijtiḥad had to be closed to ensure that the unqualified not enter it, and so on. For various reasons and with different intentions, rulers and scholars alike were encouraged to adopt the position that the door needed to be closed. The rulers' intention was that the Ummah should not feel free to express opposing opinions, even in academic matters, lest the people make a habit of vocalizing all of their opinions, including the political ones.

Finally, the point was reached where certain rulers actually issued edicts banning even fully qualified scholars from undertaking ijtiḥad or issuing fatwas on particular questions unless the results agreed with what the ruler wanted.

The Second Viewpoint. Never in any stage of its unfolding did this claim rely on authentic Shari'ah evidence or the argument that there was no need for ijtiḥad. In fact, the Shari'ah scholars proved most emphatically, by means of both reason and revelation, that such a need would always exist. One of their major arguments was to point out that the texts

of the sources of legislation are finite, while the occurrence of events requiring legal rulings is continuous. They also pointed out that every age must have a *mujtahid* capable of interpreting Allah's judgment¹⁴ and that the Ummah is responsible for ensuring that such scholars continue to be produced; otherwise, the entire Ummah can be held responsible for having committed wrong. The Shari'ah calls such group responsibility *farḍ kifāyah*, and it is possible that the claim of the door having been closed was aided, in part, by the common perception that *ijtihād* is a *farḍ kifāyah* and not an individual responsibility (*farḍ 'ayn*). That being the case, as most people suppose, it is enough that a few specialized Shari'ah scholars undertake this responsibility, and only those who are qualified may be held responsible.

This common perception, however, represents a faulty understanding of *farḍ kifāyah*. In fact, this type of *farḍ* is of great importance – of more importance, in reality, than the *farḍ 'ayn* duties, because *farḍ kifāyah* is the concern of the entire Ummah, since its duties usually concern principles by which the Ummah proves to be the Ummah, contributes to civilization, and promotes humanity's mission as *khalīfah* (vicegerent of Allah). Indeed, the Eternal Lawgiver prescribed these duties for the Ummah in its capacity as the Ummah, and not as a group of individuals gathered together. In this way, the responsibilities of civilization and culture were divided equitably and with care.

The concept of *ijtihād* is similarly misunderstood. In the past, it was assumed to be limited to *fiqh* and jurisprudence. In the present, its meaning has been so diluted that it no longer retains its original Islamic content; rather, it is used to denote any sort of intellectual activity, regardless of its nature or the ideological base from which it originates or toward which it is directed. All of this has contributed to confusion regarding the term's original Islamic significance, especially among contemporary writers. To some of them, *ijtihād* means westernization, modernization, enlightenment, secularism, atheism, or change – even the nullification of all Shari'ah laws and freedom from the teachings of the source texts! Thus, the question of whether or not the door of *ijtihād* is still open continues to divide people.

The Third Viewpoint. In order to clarify the two previously mentioned viewpoints, it is necessary to explain *ijtihād*'s opposite: *taqlīd*. Moreover, it is interesting to note that almost none of the early scholars of *uṣūl* attempted, with any clarity, to trace *taqlīd* to a legitimizing source in the texts of the Qur'an and Hadith, or even to defend it or consider it an absolutely accepted

Shari'ah concept. Rather, the most that they had to say about *taqlid* was that it was a legal concession based on necessity.¹⁵

Just as the progress of *ijtihad* was gradually impeded, until some of the later generations thought that it had been discontinued and its door closed, *taqlid* also came about gradually due to the materialization of several factors. Essentially, the reason for this was that *taqlid* was alien to the Muslim mind and far removed from the nature of the *tawhid* that nurtured and enlightened that mind. Moreover, *taqlid* was unknown in the first two centuries of Islam.¹⁶ Nonetheless, circumstances were such that certain people supposed, albeit mistakenly, that *taqlid* was a solution. Thus, the process of *ijtihad* was arrested.¹⁷

CONCLUSION

Taken jointly, the three viewpoints mentioned above form the essence of the methodological position on *ijtihad*. In short, *ijtihad* is a legal necessity and, therefore, no age may be without a *mujtahid*. Moreover, a *mujtahid* must meet certain qualifications such as possessing the legal expertise and erudition that transform *ijtihad* into an essentially exclusive process. Finally, the Ummah is jointly responsible for enabling *ijtihad* to continue in perpetuity; otherwise, every member will be held accountable as a doer of wrong.

Certainly *taqlid*, as the opposite of *ijtihad*, has played a major role in obstructing *ijtihad*. Furthermore, if the Ummah's *ijtihad*-based mentality enabled it to undertake a civilizational renovation and respond to the demands of progress, then a *taqlid*-based mentality incapacitated the Muslim mind so that it could no longer respond satisfactorily to events. Indeed, the manifestations of that mentality included state sponsorship of one particular *madhhab*, improper applications of *madhhab* rulings, stubborn adherence to the *madhāhib*'s teachings, daring to issue fatwas without proper qualifications, and the muftis' wavering between severity and laxity without having recourse to any sort of Shari'ah guidelines to govern their responses.¹⁸

Those who called for closing the door of *ijtihad* needlessly backed themselves into a position for which there were alternatives. Likewise, they acted in haste when there was plenty of time to decide the matter. But, ultimately, they closed what should have remained open (*ijtihad*) and left open what should have been closed: (*kalām* [scholastic theology]).

Actually, they thought that *ijtihad* was a factor in dividing Muslims. But this was true only in regard to the kind of *ijtihad* exercised in the field of *ilm al-kalām*. That is an area where all serious scholars agree that there is no

scope for ij̣tihād and where there is no plurality of what can be correct. In matters of belief, truth is exclusive. And, the safest way to reach it is to take it directly (as it was revealed in the Qur'an) from the Eternal and All-Knowing. Delving into matters of belief caused schisms in the Ummah and destroyed its unity, so much so that its entire being was weakened and its very existence threatened. The end result of this was the appearance of sects and subjects: "Those who split up their religion, and became sects – each party rejoicing in that which is with itself" (Qur'an 30:32).

Certainly, the sects discussed in the books of sects, like al-Ash'arī's *Maqālāt Islāmīyyīn*, al-Shahrestānī's *Al-Mīlāl wa al-Nihāl*, Ibn Ḥazm's *Al-Fiṣal*, al-Fakhr al-Dīn al-Rāzī's *Al-I'tiqādāt*, al-Baghdādī's *Al-Fīraq*, al-Isfārāīnī's *Al-Tabṣīr*, and al-Yamānī al-Zubaydī's *Al-Ḥūr al-Īn* – all of these sects grew out of opinions on obscure points of theology, rather than as any result of ij̣tihād exercised on issues of law or civilization.

Even the unfortunate events that took place in our history, events that may have seemed to be the result of differences over points of fiqh; in fact, had it not been for the questions of theology that were at the crux of these disputes, the differences in fiqh would never, on their own, have kindled the flames of open discord.

Obviously, our scholars must delineate the topics in which ij̣tihād may be practiced, describe the various fields, further explain the concept, and take care not to overstep the limits of excess or neglect. By doing this, ij̣tihād's true position will be clarified.

NOTES

1. Ibn Jarīr al-Ṭabarī.
2. If ij̣tihād had included an inherent capacity to reform itself and provide the necessary safeguards against abuse and against the Muslim *mujtahid's* being negatively influenced by outside pressures, then these scholars might have found another way out, one that did not involve closing the door of ij̣tihād and insisting on *taqlīd*.
3. Contrast this sorry state of affairs with how the earliest scholars approached fiqh. Muḥammad Zāhid al-Kawtharī wrote, in al-Bannūrī's introduction to *Naṣb al-Rāyah* by al-Zayla'ī: "The most obvious feature that distinguished the legal school of Abū Ḥanīfah was that it was a school of *shūrā* (mutual consultation)." Al-Kawtharī then cited several reports by the biographers of Abū Ḥanīfah. Those included a report that: "The associates of Abū Ḥanīfah, those who put fiqh down in writing with him, numbered forty; they were the greatest of the greatest (scholars). Among their number was Yaḥyā ibn Zakarīyā ibn

Abū Zā'idah who acted as their scribe for thirty years.” Another report, related by at Muwaffaq al-Makkī, stated that: “Abū Ḥanīfah made his school of legal thought a school of *shūrā* such that he never monopolized the process of *ijtihād* to the exclusion of others. This was what his *ijtihād* on the matter had led him to believe; and this was the way that he emphasized his good will for Allah, for the Prophet, and for all the Muslims. Thus, he used to toss out questions, one after another, and listen to what the others had to say about them. Only then would he give his own opinion. Thereafter, they would debate back and forth, sometimes for as long as a month, before they would agree on something, and their decision would be recorded.”

Most of the other great imams of *fiqh* in the early stages followed this method. See al-Zayla'ī, *Naṣb al-Rāyah*, 2d ed. (Beirut: Dār Iḥyā' al-Turāth al-ʿArabī, 1973), 37-38.

4. In the early days of Islam, the only duties of a scholar or a *mujtahid* were *al-iftā'* (giving legal advice) and *al-qaḍā'* (giving legal filings, or formally passing judgment). The scholars also had to teach. Indeed, the great imams of *fiqh* considered teaching a form of purification, a way of remembering their Lord and Creator, and a method for gaining greater understanding of the *dīn*, in itself a form of worship. For these reasons, the early generations of scholars never sought payment from the authorities for their teaching, but only from the *awqāf* funds. Those who had to took as much as they needed and no more, and those who had no need taught solely for the pleasure of Allah. In fact, many teachers personally financed their students' education, and many contributed to the endowments of the schools in which they taught.
5. Namely, Abū Ḥanīfah, Mālik, al-Shāfi'ī, and Aḥmad ibn Ḥanbal.
6. See Imām al-Ḥaramayn, ʿAbd al-Mālik al-Juwaynī, *Al-Burhān* (Qatar: Maṭābi' Doḥah al-Ḥadīthah, 1399 AH), 11:1146.
7. Ṣalāḥ al-Dīn al-Ayyubī (Saladin) would never have achieved his political and military triumphs without the prior occurrence of several reforms in the spheres of *fiqh*, culture, administration, thought, and politics. Indeed, these reforms were first brought about by his predecessor, Nūr al-Dīn Zanjī. He brought them to fruition through his victory over the Crusaders, in which we Muslims take pride even today. This period and these reforms need to be studied seriously. For more information, see ʿImād al-Dīn Khālīl, *Nūr al-Dīn Zanjī* and Mājid al-Kāylanī, *Kayfa Zahara Jil Ṣalāḥ al-Dīn*.
8. Allah Most High chose the Arabic language as the vehicle of His message to humanity. Through the medium of Arabic, He revealed His Book. Moreover, He chose it to be the language of His Final Prophet and those entrusted with spreading the message of Islam worldwide. Thus, the revelational sources of Islam, the Qur'an and Hadith, are in Arabic. Furthermore, regardless of the translations' quality or the translators' expertise, it is still next to impossible to translate all Arabic's nuances, its denotations and connotations, subtle indications, figurative expressions, and metaphorical usages.

In addition, there is an inimitability to the Qur'anic text that makes it difficult to arrive at its true and intended meaning solely on the basis of a literal reading. Rather, a complete understanding of the text's stylistic qualities and syntactical elements is required. This being the case in regard to the native speaker of Arabic, what chance remains of faithfully conveying all such textual aspects in another language? Indeed, all translations of the Qur'an are works of interpretation (*tafsir*) that depend, essentially, on the translator's ability to interpret what he/she understands. In no way can such a work be imagined to convey all shades of meaning, and in precisely the same way, as the original text. The 'ulamā', both past and present, have much to say on translating the Qur'an's meanings. But regardless of their opinions as to whether or not the translation of its meanings is permitted, they all agree that it is impossible to convey the Qur'an's full meaning in another language. Thus, all scholars agree that anyone who attempts to study fiqh or master the disciplines necessary for ijtilah must be proficient in Arabic.

'Umar ibn al-Khaṭṭāb said: "Become learned in the Sunnah, and become learned in Arabic." It is also related that he said: "Learn Arabic, for it is a part of your religion." The early Muslims spread the Arabic language to every place they settled. In a few generations, it was spoken all through the lands previously held by the Persians and Byzantines. At the present time, there is great need for redoubling our efforts to make Arabic the language of all Muslims. Moreover, it is particularly important that those scholars and thinkers involved in Islamizing the social sciences gain as complete an understanding of Arabic as possible. This in itself will represent a very significant step in the Islamization of Knowledge.

9. The Safavid dynasty in Persia, founded in 1507, was essentially theocratic in nature, as the monarchs claimed to be representatives of the Shī'ī imams. Then, even though the majority of the people in that land had until that time been Sunnīs, Shī'ism was imposed as the state religion. Until their fall in 1732, their differences with the Ottomans, both political and religious, were a source of constant friction. In fact, much of the Ottomans' energy was expended in checking this Muslim neighbor, thus depriving themselves of the resources, military and otherwise, needed so badly on their western borders.
10. I do not mean to undermine the value of this book or its contents. Rather, I condemn the mentality of those who turn to its recitation, or to the recitation of *Ṣaḥīḥ al-Bukhārī* or of 10,000 *Subḥān Allāhs*, instead of dealing realistically with the problem at hand.
11. Al-Nabahānī, *Al-Dawlah al-Islāmiyyah*, 138.
12. Ṭāriq al-Bishrī, *Al-Mas'alah al-Qānūniyyah*, 669.
13. Sayf al-Dīn 'Abd al-Fattāḥ, *Al-Tajdīd al-Siyāsī wa al-Khibrah al-Islāmiyyah*. Ph.D. diss., Cairo University, College of Economics and Political Science, 1987.

14. Jalāl al-Dīn al-Suyūṭī, *Kitāb al-Radd ‘alā man Akhlada ilā al-Arḍ wa Jahila anna al-Ijtihād fī Kullī ‘Aṣr Farḍ*, ed. al-Shaykh Khalīl al-Mīs (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1403/1983). See also ‘Alī al-Khafīf, *Al-Ijtihād fī al-Sharī‘ah al-Islāmiyyah*, 210-11.
15. Al-Shawkānī, *Al-Qawl al-Mufīd fī Adillat al-Ijtihād wa al-Taqlīd* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1347 AH), 3; Ibrāhīm Ibrāhīm Jalāl, *Wilāyat Allāh wa al-Ṭarīq ilayhā*, a study and critical edition of al-Shawkānī’s *Khaṭ al-Walī ‘alā Ḥadīth al-Walī* (Cairo: Dār al-Kutub al-Ḥadīthah, n.d.), 290; Rifā‘ah Rāfi‘ al-Ṭaḥṭāwī, *Al-Qawl al-Sadīd fī Adillat al-Ijtihād wa al-Taqlīd* (Cairo: Wādī al-Nīl, 1387 AH), 11.
16. Shāh Walī Allāh al-Dahlawī, *Al-Inṣāf fī Bayān Asbāb al-Ikhtilāf* (Cairo: Maṭba‘ah Sharikat al-Maṭbū‘āt al-‘Ilmiyyah, 1329 AH), 18. The author quotes Abū Ṭālib al-Makkī as saying: “These books and compendiums are recent developments. Likewise, the same is true of quoting others as authorities, of issuing fatwas only on the basis of a single *madhhab*, of considering that *madhhab* to be the law, of relating only the opinions of that *madhhab* in regard to all that occurs, and of studying only that one school of fiqh.” Certainly, that was not the way of the people in the first and second centuries.
17. Hishām al-Ayyūbī, *Al-Ijtihād wa Muqtaḍayāt al-‘Aṣr*, 147-53. Amīn al-Shinqīṭī points out that *taqlīd* of a *madhhab* is, in effect, tantamount to disregarding the Qur’an and the Sunnah. He writes: “This disregard for the Qur’an and the Sunnah, and the belief that they may be dispensed with through recourse to the recorded *madhāhib* followed by the great majority of Muslims, is among the greatest of calamities ever to befall the Ummah in the centuries of its history.” See Amīn al-Shinqīṭī, *Al-Qawl al-Sadīd fī Kashf Ḥaḳīqat al-Taqlīd* (Cairo: Dār al-Ṣaḥwah, 1985), 107.
18. For further reading on the subject of the door of ijtiḥād and the need to keep it open, see the following works: Yūsuf al-Qaraḍāwī, *Al-Fiqh al-Islāmī*, 39ff; Muṣṭafā al-Rāfi‘ī, *Al-Islām: Intilāq Lā Jumūd* (Cairo: al-Majlis al-‘A‘lā li al-Shu‘ūn al-Islāmiyyah, 1386/1966), 174ff; Maḥfūz Ihrāhīm Faraj, *Al-Tashrī‘ al-Islāmī fī Madīnat al-Rasūl* (Cairo: Dār al-Iṭisām, 1404/1983), 67ff; Muḥammad Su‘ād Jalāl, *Al-Ijtihād fī al-Sharī‘ah al-Islāmiyyah* (Cairo: Dār Thābit, 1402/1982), 5ff; Muḥammad Sulaymān, *Bi Ayyi Shar‘ Taḥkum?* (Cairo: al-Maṭba‘ah al-‘Āmiriyyah, 1936), 12; Wahbah al-Zuhaylī, *Tajdīd al-Ijtihād*, included in *Al-Ijtihād wa al-Tajdīd fī al-Tashrī‘ al-Islāmī*, Muṣṭafā Kamāl al-Tāzī et al. (Tunis: al-Sharikah al-Tūnisiyyah li al-Tawzī‘, n.d.), 89-90, 95; Zuhūr Aḥmad, *Al-Ijtihād wa al-Shā‘ir al-Islāmī Muḥammad Iqbāl*, published in the Proceedings of the Seventeenth Session of the Islamic Thought Forum in Algeria, Ministry of Religious Affairs, 1403/1983, 5; Ibrāhīm al-Qaṭṭān, “Al-Sharī‘ah Ṣāliḥah li Kull Zamān wa Makān,” *Majallat al-Dirāsāt al-Islāmiyyah* 6, vol. 17 (Nov-Dec. 1982): 48-49; Jamāl al-Dīn al-Afghānī, *Al-‘Aṃāl al-Kāmilah*, 329; al-Sayyid Muḥammad Rashīd Riḍā, *Muḥāwarāt al-Muṣliḥ wa al-Muqallid wa al-Waḥdah al-Islāmiyyah* (Cairo:

Maṭbaʿah al-Manār, 1323 AH), 135-36; see also Muḥammad Zāhid al-Kawthārī, ed. Shams al-Dīn al-Dhahabī, *Zaḡhal al-ʿIlm* (Damascus: Maṭbaʿat al-Tawfiq, 1347 AH), 21, in which al-Kawthārī writes: “The door of ijtihad is wide open for all time, but shut in the face of any ingenuous incompetent incapable of verifying even a single chapter of fiqh,” in commentary on the statement of al-Dhahabī: “...You don’t need *uṣūl al-fiqh*, O *muqallid*. O you who suppose ijtihad to be over with, and that there will never be another *mujtahid*.”; see also Maḥmūd al-Sharqāwī, *Al-Taṭawwur Rūḥ al-Sharīʿah al-Islāmiyyah* (Beirut: al-Maktabah al-ʿAṣriyyah, 1969), 212-18.