Part II:

Issues in Islamic Jurisprudence

The Crisis of Thought and Ijtihad

INTRODUCTION

The Muslim mind experienced a crisis of thought when, during the early centuries of the Islamic era, ijtihad (independent judgment in juridical matters) began to be viewed as limited to legal matters, rather than as a methodology for dealing with all aspects of life. This limited understanding engendered a malaise that allowed *taqlīd* (imitation) to attain such prominence and respectability that its cancerous, constricting, and irrelevant fiqh (jurisprudence) spread throughout Muslim life. Had ijtihad retained more of its lexical meaning and creativity, and had fiqh been considered only one of its uses, perhaps Muslims would have overcome many of the problems that confronted them. However, this particularization of ijtihad confined the Muslim mind, and *taqlīd* eventually paralyzed its creative abilities.

Had ijtihad remained a way of life for Muslims, as Allah commanded, they would not have fallen behind in establishing the Islamic sciences necessary for their society and civilization. They also would not have had to watch the reins of leadership pass to the West, whose most important qualification was its ability to engage in creative and scientific reasoning. Although its intellectual tradition was tainted with pagan Greek influences, the West achieved world leadership. Had Muslims taken up those sciences and laid the foundations of their society on the basis of *tawḥīd* (unity), Earth would be different today and the state of civilization itself would be far more felicitous than it is at present.

Before ijtihad was confined to the purely legalistic framework of fiqh, the Muslim mind was enlightened, eager to deal with all manner of thought, able to meet challenges, generate solutions, and achieve its goals. Had it not been for *taqlīd* and its subduing of the Muslim mind, that mind would have

achieved great things. Certainly, a mind with its beginnings in the verse "Read! in the name of your Lord Who created ..." (96:1) should be more than able to renew the Ummah's mentality, continually adjust to changing circumstances, and initiate the sciences of civilization at a time when the West was still overrun by wild forest tribes.

WHAT DO WE MEAN BY IJTIHAD?

For the reasons indicated above, we are calling for a new type of ijtihad. Rather than the ijtihad specified by the scholars of *uṣūl*, we speak of an ijtihad that is more of a methodology for thought. Such an understanding would allow the Muslim mind to participate in an intellectual jihad, a jihad launched to generate ideas and build a new Muslim identity, mentality, and personality. This jihad would apply to all fields of knowledge, seek to make the Ummah qualified to shoulder its responsibilities as regards vicegerency (*khilāfah*), and enable it to serve as a median nation (*wasaṭiyyah*). While such an ijtihad would apply to legalistic, juridical, and jurisprudential fiqh, it would also apply to such new forms of fiqh as the fiqh of religiosity (*fiqh al-tadayyun*) and dialogue (*daʿwah*), as well as to all fields requiring the Ummah's attention and creative thinking.

IJTIHAD: THE ALLY OF JIHAD

Both ijtihad and jihad are derived from the lexical root, *j-h-d,* and both seek the same goal: to release all beings from devotion to the created so that they may be free to practice devotion to the Creator, to take them from the injustice of religious deviation and superstition to the justice of Islam, and to take them from the restrictions of the physical world and limited thinking to the wide horizons of Islam and the Qur'an. For this reason, ijtihad is counted among the pillars of Islam in the same way that jihad is. Without jihad there would be no Ummah, and without ijtihad the Ummah would have no vitality. Thus, both may be considered as essential and continual responsibilities.

Once *taqlīd* in matters of fiqh established itself as a pervasive intellectual attitude, all that remained of ijtihad was its extremely rare use – maybe once in a century – by individual Muslim thinkers and scholars. Their role was of inestimable importance and was, in some ways, just as important as that of modem parliamentary and democratic institutions.

Ijtihad was the methodological means that allowed Muslims to confront ignorance, oppression, and deviation. But when the Muslims themselves abandoned it, all manner of trouble beset them. By closing the door of ijti-

had, Muslims believed that they were solving their legislative problems. In reality, however, they only succeeded in crippling their own intellectual powers. Although the call to revive ijtihad was never entirely silenced, such calls were never enough to extract the Ummah from the intellectual crisis in which it had become mired. As a result, ijtihad was left mainly to heretics and deceivers, and, finally, to Orientalists. If a true Muslim were to articulate ideas to which people were unaccustomed or to announce his/her readiness to practice ijtihad, he/she would become an immediate target of ridicule and abuse by the supporters of *taqlīd*.

The Ummah must understand that ijtihad provides it with the fundamental means to recover its identity and reestablish its place in world civilization. Without ijtihad the Muslim mind will never rise to the levels envisioned for it by Islam, and the Ummah will not take its rightful place in the world. Unless the call to ijtihad becomes a widespread intellectual trend, there is little hope that the Ummah will make any useful contribution to world civilization or correct its direction, build its own culture or reform its society. To liberate the Muslim mind, the Ummah needs ijtihad in every aspect of its life. If it is to play its preordained role, it must undertake a new reading of the Qur'an and the Sunnah, study its past, analyze its present and, by means of these, ensure its future.

RIGHT OR WRONG,
THE *MUJTAHID* IS REWARDED

No mere call, announcement, or advertisement will result in ijtihad or produce a *mujtahid*. Such developments depend upon the preparation of needed intellectual and cultural atmospheres, for a *mujtahid* is one of the Ummah's most gifted and accomplished scholars. When the Prophet spoke of ijtihad and how one who performed it correctly received a double reward, and how one who made a mistake received one reward, he was addressing an Ummah that understood that only a few people could undertake it. The resulting responsibility was so great that even those few individuals who dared to undertake it did not always announce their opinions if they seemed contrary to those of majority or the rulers.

Clearly, any mention of ijtihad and its importance should be accompanied by serious efforts to bring about the right sort of intellectual and cultural atmosphere. The first step toward this goal is to create an environment of complete freedom of thought and expression. If people lack the courage to perform jihad, they find it even harder to perform ijtihad and accept the

consequent responsibilities. How many intellectual positions are harder to defend than military positions?

In the present straightened circumstances, no one who can generate sound ideas or perform even partial ijtihad should hesitate to announce the results of his/her ijtihad. No one who is aware that there is a reward even for those whose ijtihad is incorrect has an excuse to refrain from playing a role or from giving the Ummah the benefit of his/her ideas and creativity. After all, those ideas might become the foundations of a new cultural and intellectual order within the Ummah. Nor should anyone continue to listen to those who warn of the dangers inherent in allowing ijtihad. The Ummah has heard all of their arguments, and nothing they say has been of any help.

THE LEXICAL AND TECHNICAL
MEANINGS OF IJTIHAD

In the Arabic dictionary, the root *j-h-d* is defined as "the exertion of effort on a matter that requires it." In all of its different applications, the term denotes the expenditure of mental and intellectual effort. A *mujtahid*, there-fore, is a scholar who researches and studies all of the sources, information, statistics, and available material about a subject until he/she is satisfied that he/she has done everything to learn about the subject in question. After expending all of that effort, it may reasonably be assumed that his/her opin-ion is reliable. This is why al-Ghazālī defined ijtihad as "the expending, on the part of a *mujtahid*, of all what he/she is capable of in order to seek knowledge of the Shariʿah's injunctions." In a further clarification of this definition, he then wrote: "Complete ijtihad happens when the *mujtahid* expends all of his/her energies in seeking, to a point where he/she is satis-fied that no more can be done." This definition refers to ijtihad in the field of law and indicates that the effort expended must be exhaustive and emanate from those who are qualified. If an unqualified person undertakes these same efforts, one cannot say that ijtihad has been performed.

HOW CAN THE PROBLEMS OF *TAQLĪD* AND
DEPENDENCY BE OVERCOME?

In order to extract ourselves from the clutches of *taqlīd* so that we can cre-ate the circumstances under which ijtihad can flourish, we must define our intellectual premises carefully. In doing so, however, we must avoid the modern western paradigm that, for too many reasons to list, has become the center of every academic circle and the starting place for the majority of

modern thinkers. One major reason for doing so is that the western paradigm is based on secular materialism, an outlook that rejects revelation outright. It views only that which can be measured or quantified as a suitable subject for serious study. Those who have come under the West's influence define knowledge as information acquired either through the senses or experimentation. All of the contemporary social sciences and humanities, as well as the natural sciences, are founded on this premise. This is why modern theories of politics, society, economics, and ethics have their roots in the same definition. Secularism, therefore, has become the basis for all intellectual and academic research, analysis, and synthesis. Thinkers and scholars the world over have now accepted the secular paradigm of knowledge.

The acceptance of this western model has only served to increase the Ummah's intellectual dependency. At the same time, it has helped to eradicate whatever traits distinguished non-western cultures and civilizations from their western counterparts, and perhaps has had a role in the latter's outright plundering of the former. Unless the mentality of dependency is overcome, there can be no ijtihad or intellectual ingenuity.

Taqlīd and the Stagnation of
the Muslim Mind

THE ORIGINS AND BEGINNINGS OF *TAQLĪD*

Allah Most High chose the Muslims to be the Ummah of mission (*risālah*), exemplary good (*khayriyyah*), the golden mean (*wasaṭiyyah*), and witnessing (*shahādah*) to humanity. Along with these responsibilities came the capacity for renewal, ijtihad, and interpreting the Shariʿah correctly. As a result, there is a certain inseparable mutuality between the Ummah's roles as a median community cum civilizational witness for humanity and its other role as a moral and ethical exemplar, and between its capability for ijtihad and effecting reform. In order to facilitate these roles, Allah endowed the Qur'an and the Sunnah with the necessary flexibility in every aspect of Islam: its belief system, methodology, the Shariʿah, and organization.

Thus, it was only natural for the early generations of Muslims, both on an individual and a community level, to offer a unique picture to the world: the complete liberation of the human mind from all forms of mental slavery and idolatry. Further protection against falling from this exalted position was the provision made for avoiding mistakes, deviations, and misinterpretations: Only those statements that could be proven by acceptable, or supported by valid, testimony were to be believed. A look at the Companions' ijtihad, whether they were learned *qurrā'* (Qur'anic reciters) or common people, will suffice to illustrate the amazing transformation that Islam achieved.

Why do we not see this situation today? What has happened to the penetrating and enlightened mind, inspired by Islam, that freed our ancestors from their idols and the obstacles blocking their progress? How did such a mind return to its former prison and fetters, robbed of any chance to renew

and reform the Ummah through ijtihad? In a word, the answer is *taqlīd*, an illness that entered the Muslim mind and fed on it until it returned to its prison. This paper is a study of *taqlīd*, one designed to reveal why it has overtaken the Ummah.

TAQLĪD AND THE UMMAH'S CRISIS

Muslims and non-Muslims alike are amazed that one of history's most advanced civilizations could fall into such a state of overwhelming wretchedness, ignorance, backwardness, and decline. Why are there so many crises in the Ummah's thought? Why, when the Ummah possesses sufficient natural, human, spiritual, and civilizational resources, does its vision remain cloudy and its list of priorities confused? The answer(s) to such questions has not been found, despite the innumerable studies dealing with the overall problem by means of different methodologies and despite the fact that their results and conclusions about the causes have been identified, published, and analyzed.

But the amazement and frustrations remain. A civilization that placed such emphasis upon literacy and knowledge remains largely illiterate. An Ummah that received such clear divine guidance remains mired in a morass of misunderstanding, misinterpretation, and outright confusion.

Other questions are waiting to be answered: How did the Ummah of unity and *tawḥīd* become divided into so many sects and subsects? Why does the Ummah, blessed with all of the means and resources necessary for economic prosperity, continue to suffer from abject poverty? Why does the Ummah, blessed with all the means of dominance and invincibility, remain subjected to continuing political and military humiliation? Why does the thought of it people, to whom all the sources of guidance were revealed, remain awash in fallacy and delusion?

Unfortunately, our situation is even worse, for we see parts of our Ummah trying to defend these aberrations by presenting them as wholesome, ascribing them to others, trying to find scapegoats, or even attempting to downplay their importance by explaining that such things are natural and common.

TAQLĪD: A NATURAL (ORIGINAL) CONDITION OR A DEVIATION?

Allah has blessed this Ummah with an *ʿaqīdah* (creed), a Shariʿah, and a *minhāj* (method). This *ʿaqīdah* gives Muslims a clear perception of life and

the universe based on the principle of pure *tawḥīd* in harmony with the *fiṭrah* (the pattern on which Allah has made humanity[1]), in balance with all that exists and in explanation of all civilization's elements: *istikhlāf*,[2] *ibtilā'*,[3] *tamkīn*,[4] *tadāfuʿ*,[5] *taskhīr*,[6] *takrīm*,[7] *amānah*,[8] *ʿibādah*,[9] and *shuhūd*.[10]

The Shariʿah is a blessing because of its universality, comprehensiveness, perfection, effectiveness in preserving all of the necessities of existence, and provision of what is needed to build a civilization and its identity. The Shariʿah, moreover, comprehends all of the elements that give Islamic life its particular color and taste, and also contributes to achieving Islam's higher objectives. As such, the Ummah will achieve success and felicity in this life and in the Hereafter, and the Muslims will fulfill their role as Allah's vicegerent, only if the Shariʿah's objectives, purposes, and principles are clearly understood and appreciated.

The *minhāj* of Islam is a blessing, for the Prophet said: "It is the shining path whose night is as clear as its day." Thus, one who uses his/her reason and senses cannot go astray, for following the *minhāj* leads an individual to felicity, society to the common good, and the Ummah to its goals of *wasaṭiyyah* and *shahādah*.

Islam's *ʿaqīdah*, Shariʿah, and *minhāj* can be applied only by a mind illuminated with sure knowledge of and faith in Allah, able to understand its purposes and principles, conscious of Islam's premises so that they may be connected intelligently, and capable of achieving the highest degree of discernment. This is why Islam is so determined to free the human mind from its previous and present fetters. The Qur'an even states that if this is not accomplished at the outset, His Ummah will fail to perform ijtihad, carry out reform, give guidance, or follow in the prophets' footsteps: "Those were the ones who received Allah's guidance; so emulate the guidance they received" (6:90). Thus, we can say that the Muslim mind's present state is unnatural, for it has accepted, without proof, many concepts and practices that have led to reason's arrest and petrifaction.

For the Ummah, *taqlīd* represents a blameworthy innovation (*bidʿah*) as well as a deviation (*ḍalālah*) from the straight path. No researcher or scholar has ever found a valid text from either the Qur'an or the Hadith, or even an argument based on pure reason, to support Islam's approval of *taqlīd*, for the very idea is alien to Islam's view of humanity. Islamic teachings clearly state that all assertions must be supported by verifiable evidence or proof. If these elements are absent, the statement must be rejected. This applies to all statements (a fact has to be verifiable), a claim (it also to be verifiable), a ruling (it must have either valid testimony or evidence), or a com-

mand or a prohibition (they must have an issuing authority based either in revelation or existence and thus subject to empirical validity). If such conditions are not met, the assertion has to be rejected. These are the basic landmarks in the methodology of the Muslim mind.

TAQLĪD: FOR MUSLIMS OR NON-MUSLIMS?

A Muslim, or one who has been liberated from all shackles and fetters by the grace of Allah, has a free mind and a clear conscience. Thus, he/she will accept only the truth – that which is supported by proper evidence. Non-Muslims, those who have remained chained to and enslaved by their continuous idolatry (*shirk*), have been and remain easy prey for any sort of falsity. Of them, Allah has stated:

> When it is said to them: "Follow what Allah has revealed," they say: "On the contrary, we shall follow the ways of our fathers." What? Even though their fathers were devoid of wisdom and guidance? (2:170)

and:

> In the same way, We never sent a warner before you to any people except that the wealthy ones among them said: "We found our fathers following a certain religion; and certainly we shall follow in their footsteps." (43:23)

And they said:

> O Lord! We obeyed our chiefs and our great ones, and they led us astray from the right path. (33:67)

Sometimes an overbearing person will deceive others so as to influence them and, in the name of religion, gain control of their thinking. This is usually done by claiming one of the uniquely divine attributes, like that of legislation. Calling those who follow such people deluded, Allah has said: "They take their priests and anchorites to be their lords, in derogation of Allah" (9:31).

Commenting on this verse, Hudhayfah related a hadith in which ʿAdī ibn Ḥātim (a convert from Christianity) said to the Prophet: "But we didn't actually worship them, O Messenger of Allah." The Prophet replied: "But did they not make what was *ḥarām* for you *ḥalāl* and what was *ḥalāl* for you *ḥarām*? And did you not follow what they told you?" ʿAdī replied: "Yes," to which the Prophet said: "This is how you worshipped them."[11]

Such evidence has caused Muslim scholars to agree that *taqlīd* is wrong and must be avoided. Counter-arguments that these verses were directed toward only the non–Muslims' use of *taqlīd* are rejected on the grounds that any similarity between a *muqallid* (one who follows blindly) in matters of *kufr* (unbelief) and a *muqallid* in anything else is not *kufr*, but only following the customs of deceased Muslims that may or may not have conformed with the Shariʿah.

In addition, Muslim scholars are generally agreed on the blameworthiness of *taqlīd* in general, even if they differ on its degree and various forms. Obviously, one who follows an unbeliever is not the same as one who follows a sinner. Likewise, one who follows an ignorant person on a question of daily life is not the same as one who follows an ignorant person on a matter of religion. Still, a Muslim should not be involved in any sort of *taqlīd*, as Allah has explained to humanity what may protect and preserve it from this: "Allah will not mislead a people after He has guided them, in order to make clear to them what they are to avoid" (9:115).

A Muslim must never accept anything without proof or believe anything without evidence of its validity. Allah has emphasized this by linking a Muslim's legal competence with his/her ability to use reason. Thus, if he/she becomes incapable of reasoning according to Islamic norms and values, his/her competence is invalidated.

Any supposition unsupported by sound evidence (*ẓann*) is subject to certain rules, for there are some matters in which it, in the absence of anything better, is acceptable. Generally speaking, however, any supposition is to be rejected, for a Muslim is expected to actively seek out what is certain and not to rest until he/she is satisfied that the evidence is conclusive. Among the early Muslims this was a self-evident fact, and none of them ever accepted, used, cited, or fell back on *taqlīd*.

SOURCES OF KNOWLEDGE

Allah has divided the sources of knowledge into two basic categories: a) revelation (*waḥy*), as He has said in the Qur'an: "He revealed to you the Book (the Qur'an) and *ḥikmah* (the Sunnah), and He taught you that which you did not know" (4:113); "He taught Adam the names of all things" (2:31); and "Recite in the name of your Lord Who created, created humanity from a blood clot! Recite, for Your Lord is the Most Noble, the One Who taught by means of the eternal pen (of revelation); Who taught humanity what it did not know" (96:1-5); and b) the universe (*al-kawn*), for He has told us that:

> Verily in the creation of the heavens and Earth, in the alternation of night and day, in the ships that glide through the ocean with what benefits humanity, in the water Allah sends down from the sky to revive the earth after it was dead and to scatter throughout it every manner of beast, in the changing of the winds, in the clouds made subservient between the heavens and Earth, are signs for a people who reason. (2:164)

Allah has even informed humanity how it can attain knowledge from these two sources: "Allah brought you forth from you mothers' wombs when you knew nothing; and then He gave you hearing and sight and intelligence" (16:78); "It is not given to any human that Allah should speak to him/her except through revelation, or from behind a screen, or by sending a messenger who reveals, by His leave, what He wills. Surely He is Most Sublime, Most Wise" (42:51); and "Likewise, We have revealed to you a spirit by Our command, when before you did not know what the Book was nor what faith was" (42:52).

However, one can benefit from these means only if his/her mind is enlightened and capable of digesting and then developing from this information the theories and conclusions necessary for living in an Islamic manner. Apparently, it is not unusual for the mind to gain no benefit from the information that the senses provide, for Allah has said: "And they must have passed the town on which was rained a shower of evil; did they not see it?" (25:40); "Deaf, dumb, and blind, they are void of wisdom" (2:171); and "Many are the jinn and men We have made for Hell. They have hearts that do not understand, eyes that do not see, and ears that do not hear. They are like cattle – nay, even more misguided. Indeed, such people, they are the heedless ones" (7:179).

We notice that *taqlīd* is not presented as a third source of knowledge. In other words, it is not an alternative to either revelation or science. Thus, its use is unacceptable even if, in a rare instance, it leads to what is right or correct. Instead, individuals are asked to discover the truth through the faculties that Allah gave them so that they could explore, observe, and contemplate His creation. Allah has taught humanity to seek proof and search for evidence. In order to emphasize this and inform humanity that it should not give up this quest even in matters having to do with Him, He has said: "... so that humanity, after the coming of the prophets, should have no proof against Allah" (4:165). It is as if Allah wanted to explain to humanity that it must make every effort to find the necessary evidence to support its position(s). Thus, if Allah expects this sort of verification from humanity in its dealings with Him, what of its dealings on an individual level?

HOW DID MUSLIMS SINK TO
THE LEVEL OF *TAQLĪD?*

The Ummah did not suddenly plunge to the depths of *taqlīd*. On the contrary, we can trace the beginning of its gradual fall to the Tābiʿūn's era and as taking place in three phases: a gradual strengthening of the people's reliance upon the learned scholars' opinions, a deemphasis among the people on learning and scholarly pursuits, and a general hardening of hearts.

The major factor initiating the first phase was the individual Muslim's lack of interest in acquiring true learning and hard evidence. Instead, they grew more dependent on the scholars' reputations in the belief that such trust could replace his/her duty to seek evidence and proof for what the scholars taught.

Of course, the *qurrā'* and *fuqahā'* with which the early generations of the Muslims were blessed were greatly respected for their learning and piety, and deservedly so. However, the average Muslim soon forgot how these people used to ask the Prophet if he had spoken on his own authority (which could be disputed) or on that of revelation (which would immediately end all controversy). When the Prophet gave his own opinion, he would often encourage his Companions to help him make the correct decision. Sometimes he would even do what they suggested. Many hadiths report that he said: "Come on, people. Tell me what to do." A similar case is found in his telling ʿUmar and ʿAmīr: "Use ijtihad." Indeed, this encouragement motivated the *uṣūlī* scholars to debate whether the Prophet's ijtihad was subject to error or not, for he taught them never to accept anything he said or did until they were certain that it was based on revelation. *Taqlīd* could not exist in such an environment. As a matter of fact, the Muslims of that time considered it to be a trait of hypocrites and non-Muslims.

This state prevailed from the hijrah until around the last Companion's death in 99 AH. After this, deviation began to creep in as some Muslims seeking *fatāwā* began to feel somewhat awed in the presence of such great *ʿulamā'* and *mujtahidūn* as ʿUmar ibn ʿAbd al-ʿAzīz (101 AH), al-Ḥasan al-Baṣrī (110 AH), and Ibn Sīrīn (110 AH). Their vast knowledge, when joined with the gap between the generation of the Companions and that of the Tābiʿūn, gradually caused them to seem somewhat larger than life. This awe instilled within the common people a certain reluctance, born of admiration, esteem, and perhaps not a little awe, to ask them for evidence corroborating their legal rulings and opinions. At this stage, however, the majority of questioners still demanded proof, a practice that the scholars knew was their duty to provide and therefore did not resent.

But by the time of the third generation, learning and scholarly pursuits were no longer priorities for most Muslims, as they were more occupied with making a living. Thus, very few people attended the scholars' sessions to discuss knowledge or study and reflect on the textual evidence presented. Instead, when they had questions they would satisfy themselves with an answer (minus the requisite proof) from the scholars. This new practice permeated the intellectual environment and laid the groundwork for *taqlīd*.

The third stage was characterized by the Muslim masses accustoming themselves to accepting legal opinions without listening to either arguments or evidence, and by the legal scholars becoming comfortable with making pronouncements and providing no justification for doing so. In such an atmosphere, the following questions began to be asked: Is *taqlīd* permissible for an individual who is not a Shariʿah scholar? Who is a scholar? Who is required to seek evidence? Who cannot search for evidence on his/her own? Such questions divided the scholars of this period (circa 128 AH).

One group of scholars maintained that scholars still had to explain their evidence and that it was the questioner's duty, as stated in the Shariʿah, to demand this evidence. This group also claimed that it was *ḥarām* for scholars not to explain their proof, for doing so would seriously hinder the questioner's ability to make up his/her own mind. Another group of people, however, held that it was permissible for a non-scholar to follow a scholar: in other words, that *taqlīd* was *ḥalāl*. This opinion led to the widespread saying: "An ʿāmmī has no *madhhab* of his own; his *madhhab* is the *madhhab* of his mufti."

Thus, *taqlīd* was given a certain amount of legitimacy, even though, at least in theory, the ʿulamāʾ agreed that it was blameworthy and prohibited. Despite this, however, its popularity continued to spread, a development that would have very serious consequences for the Muslims' psychological disposition and mentality. At this point, *taqlīd* began to create a serious gap in the Muslim mind, for its acceptance led to generations of Muslims relying on unsubstantiated opinions and resulted in the creation of a mentality and a proclivity for slavish imitation.

THE CONSEQUENCES OF *TAQLĪD*

Realizing that the Ummah needed to change course, some people have sought a cure. Among those suggested were codifying a certain *madhhab*, giving it government support, and then requiring all citizens to follow it; and supporting only those *madhāhib* followed by a significant number of Muslims.

Several factors led the ʿulamāʾ to such ideas. One was the split between the Ummah's intellectual and political leadership that accompanied the deepening crisis of thought. Those in charge of the Muslims' affairs (*ulu al-amr*) were divided into two mutually opposed parties: the rulers (who had the power) and the ʿulamāʾ (who had the legal proofs and arguments).[12] This polarization shattered the two group's former complementarity and replaced it with a ruinous conflict over legitimacy and earning the Ummah's allegiance and support.

Under such circumstances, the rulers began to think of codifying the legal texts and declaring a state *madhhab*. The Abbasid ruler al-Manṣūr (d. 158 AH/755 AC) considered forcing his subjects to follow Mālik's *Al-Muwaṭṭaʾ*. Fearing that people would no longer deal directly with the Qurʾan and the Sunnah if this policy were implemented, and that one solution might not be applicable to all locations, Mālik discouraged the idea. Several rulers attempted to lend state support to a particular legal school, but in each case the scholars opposed the idea because they feared that it might lead to *taqlīd*.

Another factor that led to *taqlīd's* increasing influence was the growing belief in fatalism (*jabr*). This attitude helped *taqlīd* gain even more adherents, and it became increasingly common for political leaders to justify their mistakes and aberrations by citing this doctrine. Quite simply, if their actions and decisions had been determined beforehand, they could not be held accountable for them and their subjects had no justification to revolt. In effect, it gave rulers *carte blanche* to rule the Ummah as they saw fit. As *taqlīd* was to their advantage, many rulers and court-supported scholars favored it despite the traditional ʿulamāʾs opposition.

Thus, *taqlīd* cleared the way for fatalism, which prepared the ground for tyranny, injustice, and despotism. The "great ones," to use the Qurʾanic expression, accustomed themselves to giving orders, and the "lowly ones," by the same logic, learned to submit. This result, which should clarify for the Ummah once and for all the vital and inseparable relationship between *taqlīd* and despotism, is even mentioned in the Qurʾan: "Thus did he (Firʿawn) make fools of his people, and they obeyed him" (43:54) and "Firʿawn said: 'I only show you that which I see myself, and I only guide you to the path of [what is] right'" (40:29).

In conclusion, both the Qurʾan and history show us that those who engage in *taqlīd* soon lose sight of the truth of what they are following and do not think of the consequences. Through this voluntary cessation of independent thought, such people hand over their destiny to whoever is able to

establish control over them, even if this new leader leads them and the entire Ummah to destruction.

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Among *taqlīd's* most obvious consequences are the following:

First: The spread of indifference and the will to follow. *Taqlīd* has created within the Muslim's psychological makeup feelings of his/her inability to accept responsibility. As the Shariᶜah's essence is the acceptance of personal and communal responsibility, we can understand the extent of *taqlīd's* negative effect upon the Ummah.

Second: Taqlīd and partisanship for a specific legal school have led to the spread of public debates on theological and legal topics. This, in turn, has led to further polarization and increasing disunity. The end result has been the emergence of popular factions and heretical sects dedicated to destroying Islam and the Ummah. An even more dangerous result was that this *taqlīd*-based mentality and fiqh-based partisanship gradually replaced the mentality of free inquiry that the Qur'an had instilled in the early Muslims.

Third: This *taqlīd*-based mentality has also manifested itself among the previous generations of Muslims in their uncertainty regarding any legal decision for which there was no clear ruling. It has filled contemporary Muslims with doubts about how to conduct themselves in different spheres of Islamic activity without an opinion from the classical scholars. Amazingly enough, the most important thing today is that the opinion cited should be old; the writer's reputation or the work's value does not matter.

Muslims who have grown up in such an intellectual void can hardly be expected to engage in any serious analysis of Islamic subjects, whether they agree with the content or not. Instead, the Ummah has defaulted on this duty and has left it to the Orientalists, despite the latter's obvious biases and preferences, and to their clones among Muslim students.

All of this has contributed to the creation of a very significant gap in our thought, which I call the "vacuum of ijtihad." Out of fear of making an error, it seems that Muslims have declared ijtihad out of bounds for themselves, in effect leaving it to either non-Muslims or westernized/secularized Muslims who no longer understand or practice Islam's fundamental tenets. In short, it is wide open to the depredations of well-meaning but unqualified people, as well as those who are hostile to Islam.

Fourth: The negative environment engendered by *taqlīd* led to a consumptive syndrome, for Muslims began to retreat into their historical intellectual legacy in order to consume all that it had to offer. When the European awakening began, Muslims looked in all directions for a path that would lead them to the place that they felt they deserved. However, when the legacy's keepers were unable to provide direction, several groups decided to imitate the West, based on the belief that such a step would meet with success. However, they met with an identity crisis of such proportions that committed Muslims set out to find their historical identity while westernized Muslims searched for a geographical or cultural identity. Such a development was only possible after *taqlīd* had caused the Ummah's personality to melt away by laying the foundations for its backwardness and introducing into it a state of civilizational absence despite its former civilizational preeminence.

Fifth: The Ummah's *taqlīd*-based mentality resulted in a worldview dominated by expedience. This, in turn, actually made *taqlīd* a method for avoiding innovation (*bidʿah*). As it was generally felt that ijtihad would lead to error or one's adherence to the unacceptable, *taqlīd* became attractive as a prudent alternative.

Sixth: Among *taqlīd's* more disastrous side effects is its quasi-sanctification of the status quo, regardless of whether or not it adheres to the Shariʿah. As *taqlīd* is the consort of custom, the *muqallidūn* who become more accustomed to certain social conditions tend to block any movement for change or reform. Thus, *taqlīd* impedes social reform and represents a mentality that must either be significantly altered or destroyed before meaningful change can occur.

CONCLUSION

The curse of *taqlīd* continues to obstruct the Ummah's attempts at self-revival and self-reform. *Taqlīd's* negative and crippling effects cannot be overcome by changing the methods by which it is practiced or the people whom it venerates. Nor can we expect to accomplish anything by transforming issues of *taqlīd* into institutions that make a virtue of abandoning creative thought for the principle of following others and designating certain people as custodians of backwardness in the sacred name of *taqlīd*.

NOTES

1. See Qur'an 30:30.
2. *Istikhlāf*: Allah's appointment of humanity as His *khalīfah* (vicegerent) on Earth. See Qur'an 2:30; 10:14; 27:26; 35:39.
3. *Ibtilā'*: trial by affliction or through abundance. See Qur'an 3:186; 21:35; 89:15–16.
4. *Tamkīn*: Allah's aid in establishing people in the world, be it politically, financially, professionally, or otherwise. This concept carries with it the responsibility of the individual and his/her society to reciprocate by establishing prayer and doing good deeds. See Qur'an 22:41; 6:6; 7:10.
5. *Daf* and *tadāfu*: checking and balancing one group of people, or individual, checking another. See Qur'an 22:40; 2:251.
6. *Taskhīr*: Allah's subjection of nature and its laws to humanity for its benefit. For this favor, it is essential that humanity shows its gratitude (*shukr*). See Qur'an 22:36–37; 14:32; 16:12, 14; 22:65; 35:13.
7. *Takrīm*: the honor and favor bestowed on humanity by Allah. See Qur'an 17:70.
8. *Amānah*: the trust that Allah gave to humanity; the innate ability to choose between good and evil. This trust sets humanity at the pinnacle of Allah's creation. See Qur'an 33:72.
9. The purpose of humanity's creation is *ʿibādah*. See Qur'an 51:56.
10. *Shuhūd*: the concept or civilizational witnessing that Allah has made obligatory on His Ummah. See Qur'an 2:143; 3:140; 4:135, 5:8; 22:78.
11. This hadith was related by several Qur'anic commentators. The original hadith is found in al-Tirmidhī's collection.
12. In his commentary on the Qur'an, *Al-Manār* (4:203–4), Rashīd Riḍā wrote: "It is well-known that the *mufassirūn* give two interpretations to the term *ulu al-amr*: one is that they are the rulers or the governmental authorities, and the second is that they are the scholars, in particular the *fuqahā'* or the legal authorities. It is equally well-known that there were no governmental authorities in the time of the Prophet and no group of people called *fuqahā'*. So the intended meaning of *ulu al-amr*, as in the verse: 'When an issue of public security or agitation comes to them, they spread it abroad. But if they would refer it to the Prophet or to the authorities among them, those who derive meaning from it would come to know of it' (4:83), is the people of wisdom and importance in the Ummah who have the Ummah's interests at heart, who are capable of protecting those interests, and whose opinions are widely accepted by the Ummah at large."

Taqlīd and Ijtihad

(Part One)

THE POLEMICS OF IJTIHAD

From the second Islamic century until the present day, the reality, essence, rules, conditions, premises, means, and scope of ijtihad have remained a source of debate engaging some of the Islamic world's greatest theologians, scholars of *uṣūl*, and *fuqahā'*. This debate has also been enriched by proponents of the view that the door of ijtihad was closed and that the fiqh left by the Four Sunnī Imams (viz., Ibn Ḥanbal, Mālik, al-Shāfiʿī, and Abū Ḥanīfah) obviated the need for any further ijtihad, as well as by those who claimed that this door was still open and that the existing fiqh was not sufficient to guide the contemporary Muslim world.

In our own times, attention is focused on the Shariʿah's suitability as an order and a way of life. This new topic of debate, before unknown among Muslims, emerged after the crushing defeats experienced by the Muslim Ummah after the First World War, such as the dismantling of the *khilāfah* and the creation of artificial states ruled by Europe. Many Muslims blamed Islam and its institutions for their defeat, and soon began to emulate their conquerors. Others, however, had a quite different view: The Muslim Ummah experienced these disasters because it had become alienated from the eternal truths of Islam. Thus, what was required was a return to the true Islam, rather than its wholesale rejection in favor of alien institutions and ideologies. One fundamental part of this return would have to be the use of ijtihad, for how else could Muslims incorporate Islamic principles into situations with which they had never had to deal?

Muslims who hold the latter view know that they must meet their opponents in the realm of ideas, for that is where the Ummah's future course will be decided. To be successful, great energy will have to be expended in scholarship and conceptual thinking, in seeking to understand humanity's place in the divine scheme of existence and what is expected of it, and how this knowledge might be applied by Muslims as they struggle to make themselves and their societies conform with the will of Allah. Without a complete civilizational design, by means of which the Ummah may by restored to its former median position and fulfill its role as being a "witness unto nations," it will never regain its former position or even make a new beginning.[1]

Today, the Muslim Ummah is in a deplorable state. No longer can it present itself as having a unique culture, system of values, personality, or anything else that makes a civilization distinct from all others, for large-scale borrowing from the West has undermined and distorted all of its inimitable features. It is now a travesty of its former self, and can only perpetuate itself by producing religious specialists whose academic background is limited to the personal laws of Islam alone.

However, there are some signs that change is in the air. This has taken the form of an attempt at revival (*ṣaḥwah*), which is striving to raise the Ummah's consciousness, outline the features of its character, and bring together its past and present so that it can intelligently chart its future course by studying its cultural personality and civilizational components as reflected in its thought, methodology, sciences, disciplines, aesthetics, and so on.

However, none of this activity will be of any use if the end result is something other than a recognition of the fact that the Ummah's existing crisis of thought can be solved only by restructuring its cultural mold and reordering its priorities. The only way for even the first steps to be taken involves a coming together of those enlightened and capable Muslims who can see what has to be done. Ijtihad is indispensable, for it can be shown historically that the Muslim Ummah only entered its current crisis after ijtihad fell into disuse and was gradually replaced by *taqlīd*.

THE DYNAMISM OF IJTIHAD IN RESTRUCTURING ISLAMIC METHODOLOGY *(AL-MINHĀJ)*

The study of ijtihad and its principles is one of the pillars of the Islamization of Knowledge, and, as such, comes within the framework of studying a distinct Islamic methodology. If applied, this methodology will produce a com-

prehensive and uniquely Islamic understanding of sociological phenomena, their agents, essential elements, and relationships, along with an appreciation of their governing laws and principles. Such a development is now impossible, for the current methodological foundations are all creations of the West and, as a result, inherently hostile toward Islam and its concepts.

What is needed is the erection of an Islamic methodology that can replace its western counterpart. This is no easy undertaking, for it involves establishing a unique framework of knowledge, defining the sources of knowledge and the rules that govern their use, and initiating a critical review of all facets of both the western and the Islamic methodologies so that the suitable elements are retained and the unsuitable ones are either transformed and accepted or rejected outright.

In addition to dealing with characteristics of the western model, which will influence how Muslims deal with the Islamic model, there is an additional problem: the use of western terminology. It is next to impossible to free oneself from the categorizations and concepts upheld by western scholarship, or from their influences, when dealing with studies of any other civilizational model. Thus, most of

> ... the scientific methodologies in the West are incapable of looking at Islam, or Islamic society and its social strata, its economics, its political order. And this is what strips such West-oriented studies of their academic integrity, so that they appear little more than presumptuous deductions based on superficial similarities. This is because it is impossible to understand Islam from the perspective of what Western scholarship presupposes in regard to organized religion. In the same way, it is unrealistic to suppose that the Islamic model of society could be understood through the categories propositioned by the Western model as a result of its own historical experience.[2]

However, Muslims are fortunate in that they do not have to start this undertaking from the beginning, for a great deal of material in the classical Islamic legacy can be used. This same legacy also provides contemporary Muslim scholars with a framework for organizing the rules relevant to the Islamic epistemological sources and delineating the relationships between them. Thus, one may state that the level of scholarship attained by previous Muslim scholars using the methodology developed by the early *mujtahidūn* was extremely mature.[3]

As we consider the Islamization of Knowledge to be one of Islam's higher purposes, as well as a living and civilizational necessity, the need for

ijtihad becomes obvious. Not only is it required for creating an Islamic methodology, but it also plays a pivotal role in a Muslim's daily life as well as in forming a spiritually, mentally, and intellectually balanced Muslim personality that can assume the role of Allah's vicegerent and pursue the Ummah's best interests. Thus its correct exercise, in conformity to the specified conditions, is extremely important.

This illustrates a fundamental difference between the two types of Muslims we see today. One group accepts the viewpoint outlined above, while the other rejects it and calls for the wholesale adoption of western knowledge. This latter group, frequently referred to as "reformers," has yet to acquire an appreciation for the differences between Islam and the West, differences that sometimes reach the point of outright contradiction.[4]

As we noted earlier, the role of ijtihad in freeing the Muslim Ummah from its bondage to the West is primary. Only through ijtihad will Muslims be able to construct a new methodological infrastructure that can replace the current western one and enable Muslim scholars to once again base their knowledge and epistemological paradigms upon Islam's original sources. The degree to which we can accomplish this task is directly related to the amount of success we will have in freeing ourselves of western domination.[5] No efforts will be wasted, for all of them are investments in Islam's future and may eventually solve the apparent contradictions that bedevil us today: traditionalism versus modernism, classical thought versus contemporary thought, the material world versus the afterlife, science versus religion, and others.

Many of the current theories dealing with Islamic thought need definition, perspective, and proper points of departure, for the lack of a proper methodology and a clear overview make them appear to be the result of muddled and opaque thinking. The resulting theories are repeated and restated, discussed again and debated, and, finally, are treated to solutions either imported from abroad or inherited from the past. Thus, nothing gets settled, solved, or agreed upon, which is certainly an intolerable situation. For Muslims, ijtihad provides the way out of this morass.

<div align="center">A PANORAMIC ASSESSMENT
OF IJTIHAD'S PROGRESSION</div>

In this study, we would like to evaluate previous studies and extract what is useful. Also, we would like to discuss ijtihad from being the preserve of the few to one suited to the needs of all qualified scholars and thinkers in the Ummah. Hopefully, this may be the catalyst needed to help the Ummah

break through the barriers blocking its own cultural, scientific, and episte-mological frameworks and then regain its former position in the world community.

In classifying previous studies of *taqlīd* and ijtihad, we may say that they fall into two general categories: specialized *uṣūl* studies and non-specialized studies.

The first category can be subdivided into two additional categories. The first one consists of comprehensive works on *uṣūl al-fiqh* in general, meaning those works dealing with source evidence and how legal rulings are derived from it, as well as with the status of the *mujtahid* or *muqallid* who derives such rulings. Regardless of the author's *madhhab* or whether he/she wrote in the style of a *mutakallim* or a *faqīh*, or in a combination of both, these works have changed little over the centuries. Nearly every work contains a book, a chapter, or a subchapter on ijtihad and *taqlīd*. The topics discussed nearly always include the reality (*ḥaqīqah*) and different kinds of ijtihad, the ijtihad of the Prophet, whether or not every *mujtahid* is right, and similar complicated technical matters concerning its principles and how they are applied to obtain legal rulings.

The second one consists of books written specifically on ijtihad. In classical times, this kind of study closely resembled the type of studies found in the first category. The main difference, however, is that where the comprehensive *uṣūl al-fiqh* works only treated this subject briefly, these works explained at length the points that the comprehensive works only summarized, provided instances and examples, and even added such new topics as "Closing the Door of Ijtihad," "Partial Ijtihad," "Ijtihad within a *Madhhab*."

Nonetheless, the two categories are alike in presenting ijtihad in a purely descriptive perspective.[6] This makes it a complex, specialized exercise that is limited and qualified by its means, methods, and conditions.[7] Thus, it is no longer a creative and contemplative endeavor, but rather a technical one limited in its methodology and means, as well as restricted in the scope of its concern. On the other hand, non-specialized studies deal with ijtihad as an expression of a human intellectual and creative activity seeking to under-stand humanity, life, the universe, and creation. As such, it views *taqlīd* as a rigid and negative force.

These non-specialized sources may be described as generalized social studies, for they deal with matters of concern to the entire Ummah, such as its mental and intellectual state, the history of its culture and thought, its inertia and backwardness, and its failure to contribute anything new to the contemporary world. Thus, this group is clearly distinguished from the for-

mer one by its understanding of ijtihad not in the strict terminological sense, but rather in the wider lexical sense of expending intellectual effort, in the sense of a uniquely creative mental state diametrically opposed to the prevailing intellectual rigidity found among Muslims.

These studies often speak of closing the door of ijtihad and thereby opening the way for *taqlīd*, and then attempt to project this as symptomatic of the entire Ummah's mentality. But they are often surprised by others who claim that this door was never closed and that the final rulings have not been made. At this point in the discussion the larger focus usually gets lost, for participants then begin the endless debate over the exact status of ijtihad, who can or cannot practice it or close the door, and other ancillary matters. Regardless of all of the arguments presented by both sides, regular ijtihad has not been practiced for centuries, despite its very rare use by individual *fuqahā'*, and the Ummah's intellectual and cultural conditions have not been very conducive to its use.

These non-specialized studies may also be further subdivided into two categories: secular and non-secular. The first group consists of works by Muslim secularists, writing in Arabic, that present revival and modernity, in the western sense of those terms, as cures. Many of their arguments come from the European Age of Enlightenment, a time of intense anti-church feeling. Their use of such arguments has caused them to view Islam and Christianity, mosque and church, as well as *faqīh* and cleric, as one and the same. This leads to their further assumption that Muslims need a Renaissance to free themselves from these shackles so that they can follow the Christians down the road of progress, which, of course, includes secularism. They regard ijtihad as tailor-made for this endeavor, for once it has been stripped of its lexical and juridical meanings and made synonymous with one's personal opinions and inclinations, the path of the West can be followed quite easily.

However, those very people who stretched the meaning of ijtihad to the breaking point in order to justify their dream of modernization and westernization now find themselves hard-pressed to conceal the shallowness of their thought or the crisis of their identities. As a result, they have started to use other means and terminologies, both contemporary and classical, to accomplish their goal. Such writings are unmistakable for the kind of symbolism they employ and the folly they espouse.[8]

The second group consists of works by Muslims who believe that the Ummah is passing through a period of intellectual crisis that can only be ended by recovering its pristine character, reforming its inner life, reshaping

its mentality, and building up its individuality. In their opinion, the Ummah reached its present deplorable state only after its members had stopped making relevant and intelligent contributions to its daily life.

This group also eventually comes around to the same discussion engaging the first group of writers, but only after passing through the following steps: the rationalists (*ahl al-ra'ī*) versus the traditionists (*ahl al-ḥadīth*), the codification of fiqh-oriented ijtihad, and the history of the call to end further ijtihad and accept the legal authority of the Four Sunnī Imams or *taqlīd* – a truly barren landmark in the Ummah's intellectual life, as well as the starting point of its present intellectual crisis and cultural decay.

Then the discussion about opening and closing the door of ijtihad begins. Some participants, however, fail to realize that the Ummah's overall intellectual and cultural climate is one matter, while the discussion of ijtihad's lack of movement in one limited field of knowledge (i.e., fiqh) is an entirely different matter. Thus, discussion becomes controversial among those who argue whether ijtihad is still allowed or not.

In my opinion, the majority of those who claim that the door of ijtihad is closed are, in reality, pointing to the fact that the Ummah's intellectual contribution to the social sciences has ended, whereas the second group is saying that the collected corpus of *fiqhī* literature can still address current problems, regardless of whether legal decisions are issued or not. Nonetheless, *fiqhī* questions are essentially questions about details. Thus, if one scholar refuses to or cannot make a legal decision, another one will do so on the basis of earlier fatwas, through the application of basic principles and in consonance with the Shariʿah's higher purposes, or on the basis of analogy (*qiyās*). But this is not the matter of contention. Rather, the crisis is in regard to absolute and unrestricted ijtihad, to open minds, structured thought, and comprehensive vision – all matters without which the Ummah cannot build a viable society or serve as a "witness among nations."

Regardless of its apparent current abeyance, in its strictly legal sense (i.e., ijtihad being the knowledge of juridical source methodology, the rules for deriving legal rulings, and the ways of indicating legal preference) the practice of ijtihad never ended. Even in our own time, fatwas dealing with legal problems are issued. However, this does not balance out the occurrence, from a very early date, of an unhealthy intellectual and psychological state of mind, one that did not come about through a sultan's decree, government legislation, or the lethargy of one or more scholars. On the contrary, this situation is the result of several factors, and as the crisis worsened its ill effects spread to every aspect of life, including the *fiqhī* aspect. As the *muj-*

tahid played an essential role in Islamic civilization and may be regarded as
the Muslim version of what the West would call a "Renaissance Man," the
Ummah's scrutiny of the role of fiqh and of the *fuqahā'* are perfectly legiti-
mate and understandable.

THE TRADITIONAL ROLE
OF THE *FAQĪH*

Historically, the *fuqahā'* formed a major pillar of Islamic society. Trained as
scholars of the Qur'an and the Sunnah so that they could use ijtihad when
dealing with religious and temporal problems, such people were the
Ummah's fundamental guarantee that its leaders would not lead it astray. In
a sense, they were the equivalent of such major contemporary American
institutions as the House of Representatives and the Senate, and performed
the check and balance function of a federal judiciary system vis-à-vis the
government's executive and legislative wings. Moreover, their voice was
always a moral force for enjoining good and forbidding evil.

A traditional scholar never waited for someone to come along and
"award" him a degree that qualified him to exercise ijtihad. On the con-
trary, this status was achieved by dint of personal study, travel, instruction,
and by keeping the company of the learned. When he judged himself ready,
he would choose a pillar in the mosque, face the public, and begin his dis-
courses. His resulting success or failure depended upon his ability to answer
the questions of other scholars and his students, use his knowledge and abil-
ity in ijtihad, solve new problems, and whether his published works and
decisions were accepted or rejected by his peers and society at large. If his
views were accepted, what he viewed as correct would gradually become
part and parcel of the general public's mentality and psyche, while what he
viewed as incorrect would be rejected.

The Role of the Faqīh *in the Judiciary System.* Muslim scholars super-
vised the judiciary system (*al-qaḍā'*) and protected the Ummah's rights vis-
à-vis its rulers. Not only were they entrusted with ensuring that the rulers
did not transgress their proper bounds, but they were also expected to force
those rulers who did go astray to mend their behavior. Thus, Muslims have
always seen scholars as protectors of the Ummah and its rights. And so when
it seems that the scholars have stopped fulfilling these functions, thus bring-
ing many problems and disasters upon the Ummah, it is only logical for the
average Muslim to blame all of the ensuing misfortunes on them. They do
not consider it unreasonable to assume that the scholars' inability to perform

ijtihad lies at the root of the Ummah's current backwardness, lack of contribution to humanity, and muddled methodology.

The Faqīh *as a Social Scientist.* The time has now come for the Ummah to realize that the *faqīh* is essentially another of those social scientists that the Ummah needs so badly. While he cannot replace other social scientists, they cannot replace him. Moreover, the *faqīh's* traditional role can now be undertaken only by institutions that deal with educational, research, public management, supervisory, or moral-advisory matters. Clearly, the Ummah needs such institutions to give order to its life, direct its movements, oversee its policies and directions, and watch over the education and psychological well-being of all Muslims. Life today is so complex that it is entirely unrealistic to expect one *faqīh* to master all of the knowledge needed to deal with it. In reality, academic committees and academies that combine the various disciplines, including the *fiqhī* disciplines, must be established.

UNRESOLVED ISSUES OF IJTIHAD

I have gone through nearly 160 studies, research papers, and articles dealing with *taqlīd* and ijtihad, in addition to numerous chapters dealing with these subjects in books of fiqh, *al-uṣūl*, and the history of Islamic law. Despite this, I have noticed that almost all of these studies follow the same path laid down in the fourth and fifth Islamic centuries by the authors of the classical *uṣūl al-fiqh* compendiums. Moreover, these studies confine themselves to the same issues tackled by classical scholars: the meaning of ijtihad and *taqlīd*, the categories of ijtihad and how they are divided, the relation of ijtihad and *taqlīd* to certain related concepts, the essential conditions for exercising ijtihad, how there are no *mujtahidūn* today, how ijtihad has become fragmented, correct and incorrect ijtihad, and so on. At most, some of these studies may differ in their inclusion of other topics, possibly because of their author's viewpoint or because they include different and varied examples of ijtihad.

Thus, the majority of these studies proceed along nearly the same lines, differing only in unessential matters. For example, one might elaborate on what others merely indicate or arrange the subjects in a different way. In addition, I have noticed that many important subjects have been either entirely ignored or mentioned only in passing. Among the most relevant of these subjects are the following:

a) *The historical background of ijtihad and* taqlīd. This background is essential for understanding many of the issues related to these two questions,[9] such as the division between intellectual and political authority in

the history of Islam and its positive and negative effects on ijtihad and *taqlīd*; the advent of sects and doctrinal divisions (i.e., the Jabrites, the Qadarites, and the Muʿtazilites) and their positive and negative effects on ijtihad and *taqlīd*; the growth of a Muslim public character incorporating feelings of alienation and a slave mentality due to a distorted understanding of religion, the world, humanity, *shūrā*, authority, the head of state, relations between authority and citizenry, internal strife, the appearance of heretical thought and politics, and the effects of all this on ijtihad and *taqlīd*; and the lack of those institutions necessary for establishing the requisite methodological consciousness, which caused the consequent reliance on individual undertakings.

b) *The connection between ijtihad and the Shariʿah's higher objectives* (maqāṣid al-Sharīʿah). Many of these studies fail to illustrate either the affinity between ijtihad and the *maqāṣid* or the antipathy between *taqlīd* and the *maqāṣid*. The only exceptions have been works dealing exclusively with the question of the *maqāṣid* in an attempt to focus on the essential connection between ijtihad in its general sense and ijtihad as related to the *maqāṣid*.[10]

c) *The effect of multiple trends in ijtihad, how this effects the understanding of the "Oneness of Truth, Reality, and What is Correct," as well as the clarification of the true parameters of the controversy regarding this issue and its important intellectual, psychological, and educational consequences on the Muslim mind.* Moreover, this subject requires minute attention, for it deals with the most important factors leading to the realization of actual multiplicity in ijtihad, clarifying the truth behind differences of opinion (*ikhtilāf*), and distinguishing between two different kinds of *ikhtilāf* (i.e., differences of diversity and differences of contradiction, or, in other words, praiseworthy and permitted differences, and blameworthy and prohibited differences). Likewise, most studies dealing with ijtihad and *taqlīd* do not pay enough attention to the "Oneness of the Truth" and differences among scholars as to exactly what this means and entails. Also missing is any concern for the potentially dangerous effects of not placing this issue in its proper perspective in order to spare the Ummah any damaging negative thinking.

d) *None of these books have presented a realistic and practical solution to the present crisis of ijtihad or dealt with the possibilities of "group" ijtihad or establishing research institutions and academic organizations to support such an undertaking.* The absence of any solution has left the

field wide open for those who wish to create and then impose man-made legislation derived from their own understanding, which may or may not include the relevant *fiqhī* literature.

e) *The issue of* fiqh al-wāqiᶜ *(real-world* fiqh), *its contributory factors, and the necessity of linking it with ijtihad has been ignored.* As *fiqh al-aḥkām* (rulings derived from linguistic and lexical studies) was, there-fore, not dealt with in a satisfactory manner, the circumstances sur-rounding the formation of the ruling in question (i.e., the occurrence itself, the time, the place, and the human element) were overlooked. This resulted in many scholars understanding the entire process of ijti-had in only a partial manner. As a result, they placed it under *fiqh al-aḥkām* rather than *fiqh al-wāqiᶜ* where it belongs, and did not properly reference the one to whom the judgment would apply (the *maḥkūm ᶜalayhi*). Thus, they lost one of the most important elements in the overall process of ijtihad.

f) *Many of these studies have not gone into the details of* taqlīd *as regards to the individual or explained how ijtihad relates to the individual in question.* Is the relationship completely negative, as the majority of stud-ies would suggest, or is there some scope for a positive role? If so, what would be the nature of that role, not to mention the role itself? Studying such details is part of studying the *maḥkūm ᶜalayhi* as an element in the process of ijtihad, for surely the individual is one of its aspects. Moreover, the individual is an invaluable source of information for acquiring a proper understanding of *fiqh al-wāqiᶜ* and its constituent elements, not to mention a representation of where the resulting rulings are to be applied. Thus, we can see the importance of regularizing and defining the individual's role vis-à-vis ijtihad.

g) *The element of continuous self-renewal through meeting and adjusting to changing circumstances based upon rulings conducted within the framework of ijtihad is missing in many of these works.* This might be due to the view of ijtihad as a purely legalistic and legislative function, which severely limits its traditional and intended role. Without this ele-ment, and without a real understanding of the ties that bind the sources of Islamic thought and culture to the dynamics of ijtihad and the reali-ties currently facing it, the Ummah is destined to remain where it is, mired in hopelessness and stagnation.[11]

h) *The necessity of clarifying concepts.* Ijtihad is one of several fundamen-tal Islamic concepts that Muslims have either misused or misunderstood.

At present, there are essentially two interpretations of the term: It is either a technical and limited *fiqhī* exercise for the qualified few to the exclusion of everybody else, or it is represented by all new thoughts and ideas, regardless of whether their holders are qualified to exercise ijtihad or not.

It seems that neither the strict nor the liberal interpretations of ijtihad have given us this term's true meaning. Also, might there not be other interpretations, such as the one represented by those who believe that the Four Sunnī Imams have already done this duty, thereby obviating it for the Ummah at large? Or what about those who say that the entire *fiqhī* legacy must be discarded and replaced by a new one that is not necessarily based on traditional principles and guidelines, or those who believe that the Ummah's decline is the reason for the gulf that has opened up between it and the reality of Islam? This latter group, while well aware of what needs to be done to restore the Ummah to its former position in the world community, unfortunately does not have the necessary resources and numbers needed for actually changing the course of events. In addition, the Ummah's existing condition is so far removed from the purity of its original sources, and consequently distorted by secularism, westernization, and the process of cultural change, that no one group alone can do the job.

Given all of the above, are there any specific courses of action that will actually contribute to opening the door of ijtihad? Upon reflection, it seems that there are two: considering all of the guidelines, rules, and preconditions for the process of ijtihad, along with its higher purposes (i.e., so entrenching ijtihad in the Muslim mind that it becomes the regulator of the Ummah's every move); and accepting the option advocated by the secularists and non-religious Muslims: fling open the door of ijtihad as wide as possible and then interpret ijtihad in such a way that it can be used to justify the results, regardless of whether the rulings were based on traditional *fiqhī* criteria or not. Currently, it seems that this latter group has the upper hand, for it has found many unqualified people willing to issue the desired rulings. Also, some contemporary *fuqahā'* are more than willing to issue the rulings "requested" by those in authority. Moreover, those *fuqahā'* who have, for whatever reason, chosen to remain aloof and uninvolved have, in effect, left all self-proclaimed scholars free to issue their rulings.

A final factor is the failure of many contemporary *fuqahā'* to provide workable solutions to problems, due to their incomplete understanding of the issues or their inability to fully realize the significance of their premises and

predicates. Thus, many of their rulings seem to be more applicable to an earlier age, a development that only discredits the entire endeavor and the people involved.

Given all of the above, this study will focus on several of the previously ignored issues connected with ijtihad. The study's main goals are to place these issues within the overall context of the ijtihad process, explain why they must be studied, establish their validity and relevance, and define them. By doing this, establishing a contemporary Islamic methodology based on the classical discipline of juridical source methodology and fiqh may proceed apace by using its methodological resources to treat those issues that must be dealt with if the goals are to be realized.

Among these issues are the following:

- Presenting the Islamic theory of knowledge and its most important elements, means, and devices, as well as the role of each.

- Formulating an exact and precise definition of the relationship between revelation (*waḥy*) and reason. This will help Muslims solve many of the problems arising from the relationship of knowledge to religion and of knowledge to practice. It will also help us understand ijtihad from the perspective of reality, experience, and practice.

- Developing an agreed-upon system of argument and dialogue, respect and acceptance for differing opinions and results, and an understanding as to why this is essential if scholars are to guide the Ummah's footsteps aright.

Therefore, this article is presented in the spirit of being the first in a series designed to clarify the source methodology of fiqh and the methodology of ijtihad for those social scientists who are interested in applying what has been discussed here to the effort to Islamize knowledge in general, and its methodology in particular. Hopefully, this methodology will benefit from the resulting definitions, clarifications, and organization of a discipline so that it can one day stand on a solid methodological foundation. Only if this present dream becomes a reality will Muslim social scientists be able to study social phenomena, with all their attendant diversity and complexity, within an Islamic framework and an epistemological paradigm. Then, they will begin to rebuild Islamic civilization on the basis of its own understanding of the social sciences. This deconstruction and subsequent reconstruction must be achieved if the Muslim Ummah is ever to assume its divinely ordained position as a witness to other nations.

NOTES

1. The reference here is to the verse in *Sūrat al-Baqarah*: "Thus We have made of you a median Ummah, that you might be witnesses over all people" (2:143).
2. Munīr Shafīq, *Al-Islām fī Maʿrakah al-Ḥaḍārah*, 12-13. See also Sayf ʿAbd al-Fattāḥ, *Al-Tajdīd al-Siyāsī wa al-Khibrah al-Islāmiyyah.* Ph.D. diss., Cairo University, College of Economics and Political Science, 1987.
3. Shafiq, *Al-Islām,* 36. See also ʿAbd al-ʿAzīz al-Khayt, *Manāhij al-Fuqahāʾ* (Cairo and Damascus: Dar al-Salam, 1406/1986), 7.
4. For a more detailed discussion, see *Islamization of Knowledge: General Principles and Work Plan* (Herndon, VA: International Institute of Islamic Thought, 1409/1989).
5. For the distinction between praiseworthy and blameworthy differences (*ikhtilāf*), see al-Shāfiʿī, *Al-Risālah,* ed. Aḥmad M. Shākir (Cairo: al-Ḥalabī and Sons, 1940), 560; al-Shāfiʿī, *Jimāʿ al-ʿIlm,* ed. Aḥmad M. Shākir, (Cairo: n.d.); and Tāhā J. al-ʿAlwānī, *Adab al-Ikhtilāf fī al-Islām* (Herndon, VA: International Institute of Islamic Thought, 1987).
6. ʿAbd al-Raḥmān al-Maḥallāwī, *Tashīl al-Wuṣūl ilā ʿIlm al-Uṣūl* (Cairo (Muṣṭafā al-Bābī, n.d.), 8-9.
7. See Al-Shaykh al-Murṣafī, *Bughyat al-Muḥtāj* (Cairo: Maktabah al-Azhar, n.d.), no. 1442, 4.
8. Among the stranger instances of ijtihad undertaken by such writers is their transferral of the day and the duty of the *jumʿah* prayer to Sunday in western countries, where Sunday is nearly universally a holiday. Likewise, some of these people have proclaimed that Muslims may now eat pork, for pigs are raised under carefully controlled conditions, whereas during the time of the Prophet they were allowed to run free. Another instance of such "ijtihad " is the opinion that polygamy is allowable only for the guardians of orphans, as they are the only ones mentioned specifically in the verse that legislated polygamy. A further instance is denying that jihad as one of the principles of Islam.
9. Some of the recent studies of ijtihad and *taqlīd* presented tentative discussions of these issues, inasmuch as they at least indicated that they were important. But such indications, though certainly important, did no more than present these issues in a scattered and fragmentary manner. Thus, they were not placed within the framework of an overall scheme for the study of *taqlīd* and ijtihad, or for understanding.
10. *Muwāfaqāt al-Shāṭibī wa Maqāṣid al-Sharīʿah* (by Shaykh Muḥammad al-Ṭāhir ibn al-ʿĀshūr) and *Maqāṣid al-Sharīʿah* (by ʿAllāl al-Fāsī) are two examples of such works. There are several recent dissertations and graduate-level studies on the subject as well, such as *Al-Ahdāf al-ʿĀmmah fī al-Sharīʿah al-Islāmiyyah* (by Dr. Yūsuf al-ʿĀlim), soon to be published by the International Institute of Islamic Thought, and *Naẓarīyāt al-Maqāṣid ʿinda al-Imām al-Shāṭibī* (by Dr.

Aḥmad al-Raʿīsūnī), published in Morocco by the International Institute of Islamic Thought.

11. Among the studies that have dealt with this issue are the following: Muḥammad Muṣṭafā al-Marāghī, *Al-Ijtihād fī al-Islām* (Cairo: al-Maktab al-Fannī li al-Nashr, 1379 AH); Muʾtamar al-Fiqh al-Islāmī, *Al-Ijtihād fī al-Sharīʿah al-Islāmiyyah* (Saudi Arabia: Jāmiʿah al-Imām Ibn Saʿūd al-Islāmiyyah, 1401/1981); Al-Mūsāwī, *Al-Naṣṣ wa al-Ijtihād*, ed. Abū Mujtabā (Beirut: Al-Dār al-Islāmiyyah, 1414 AH); Riḍā al-Ṣadr, *Al-Ijtihād wa al-Taqlīd* (Beirut: Dār al-Kitāb al-Lubnānī, 1976); Muḥammad Ibrāhīm Shaqrah, *Al-Raʾī al-Sadīd fī al-Ijtihād wa al-Taqlīd* (1401/1981); and Aḥmad Ibrāhīm ʿAbbās al-Darāwī, *Naẓarīyat al-Ijtihād fī al-Sharīʿah al-Islāmiyyah* (Jeddah: Dār al-Shurūq, 1403/1979).

Taqlīd and Ijtihad

(Part Two)

THE LEXICAL AND TECHNICAL
MEANINGS OF *TAQLĪD*

The lexical meaning and structure of the word *taqlīd* clearly indicate the negative connotations surrounding its technical meaning as well as its retention of much of the literal sense. The Arabic root *q-l-d* comes from *qald*, which means "to twist or to twine." As most necklaces were either twined or braided, the word came to refer to necklaces, and the active form of the verb (*taqlīd*) to putting on a necklace. An example from early Arabic poetry uses *taqlīd* in this sense:

> They placed on her (round her neck) amulets,
> To ward off evildoers and enviers.

The same word is also used to refer to the marking made around the neck of an animal destined for sacrifice during hajj. In addition, a camel is said to be "necklaced" (*muqallad*) when a rope is placed over its head and around its neck. In a less literal usage, this word has the sense of placing responsibility on an individual, as in "The sultan charged (*q-l-d*) someone with a duty," as charging a person in such a manner resembles putting a necklace around his/her neck. Here, the one who accepts the responsibility is as one who wears a necklace.[1]

The classical *fuqahā'* define *taqlīd* as one's "acceptance of another's *madhhab* without knowing the other person's justification." (In this definition, *madhhab* includes everything that falls within the purview of ijtihad.[2]) Although the *fuqahā'* give different definitions, all agree that it signifies the acceptance of and acting upon another's word without trying to substanti-

ate it. In other words, the determining factor is one's trust in or reverence for the scholar, or his/her own negligence or lack of interest in trying to establish the truth on his/her own.

Having defined *taqlīd*, we shall now explain what it means to follow someone. The lexical meaning of "following" stems from the word for walking behind or falling into step with somebody else as he/she passes by (i.e., the way Muslims follow an imam during prayer).[3] Following, which can be either physical or ideational, has been technically defined as "deliberating over the commands of Allah and His Prophet and considering the Prophet's deeds and statements for the purpose of obeying and emulating the same."

Abū ʿUmar ibn ʿAbd al-Barr (463 AH) discussed this issue in his *Jāmiʿ Bayān al-ʿIlm*, in which he quoted Abū ʿAbd Allāh ibn Khuwayz al-Mālikī as saying: "The legal meaning of *taqlīd* is to adopt someone's opinion despite his lack of any justification (for that opinion). This is clearly prohibited in the Shariʿah. Following, however, occurs when there is a justification for that opinion (*mā thabatat ʿalayhi al-ḥujjah*)." In the same book, Abū ʿUmar says: "Whenever you follow someone's opinion without any justification for doing so, that is *taqlīd*, a practice that is incorrect in Islam. Whenever you follow the opinion of someone based on its valid proof, that is following, which is permitted. But *taqlīd* is prohibited."[4] Abū Dāwūd quoted Aḥmad ibn Ḥanbal as having said: "Following involves adhering to narrations concerning the Prophet and his Companions. As regards narrations of the practices of the successor generation (the Tābiʿūn), one is free to decide for oneself."[5]

Thus, the difference between *taqlīd* and *following* is perfectly clear: *taqlīd* means to follow someone without any justification for doing so, while *following* involves following what can be justified through proof. This difference makes the former prohibited and the latter permissible.

THE LEGAL RULING ON *TAQLĪD*:
THE COMPANIONS AND *TAQLĪD*

In an authentic narration of a conversation between ʿAlī ibn Abū Ṭālib and Kumayl ibn Ziyād al-Nakhaʿī, ʿAlī said:

> O Kumayl, hearts are like vessels: the best contain the most good. There are three kinds of people: knowers and people of the spirit, learners on the road to salvation, and the rabble who follow anyone who brays loud enough. This group is unenlightened by knowledge and has not sought support from anything substantial …

This narration censures those who believe that they know the truth despite the fact that they have little or no insight (*baṣīrah*), a condition that causes them to be troubled by doubt when confronted by anything they cannot understand.

Undoubtedly, an ignorant *muqallid* (follower), unaware of the proof or justification cited by the one he/she imitates, is part of this rabble, for all he/she knows about Islam is that a certain respected imam said this or did that – he/she does not even know whether the imam's opinion was correct or not. As a result, the follower is neither lighting his/her path with the light of knowledge nor standing on solid ground, because he/she does not know what is right and what is wrong. In a prophetic hadith, the Prophet said:

> Allah will not strip away knowledge from your breasts all at once. Rather, He will strip it away by taking away (through death and by slow degrees) the scholars. People will then take as their leaders those who are ignorant (of the Sharīʿah). When they are questioned, they will respond without really knowing the answers. In this way, they will go astray and lead others astray with them.[6]

It was related that Ibn ʿAbbās once said: "Woe to those who follow the mistakes of the learned!" When asked what he meant, he replied:

> When a scholar says something based only on his own opinion and then abandons it when he finds that someone more knowledgeable than he has given another opinion based on something related from the Prophet; while the person who asked for the opinion of the first scholar has gone away and knows nothing of the opinion based on the Prophet's hadith.

It was related that Ibn Masʿūd said: "Do not take the opinion of another in matters of religion so that if he believes you believe, and if he does not you do not. There can be no ideal in matters of evil."

Since both the Prophet and the Qur'an rejected *taqlīd*, the Companions and many others considered it an evil and also rejected it. Thus, scholars are those who give an opinion (fatwa) and then explain their proofs and evidences to the audience when questioned. In this way, those who ask become followers of evidence and not merely blind followers of certain respected personalities.

All of these citations indicate that *taqlīd* was forbidden. The successor generation (the Tābiʿūn) vigorously criticized it and warned people against it. ʿAbd Allāh ibn al-Muʿtamm said: "There is no difference between an animal that is led and a person who makes *taqlīd*." Thus, *taqlīd* is incorrect,

unacceptable, and inadequate in terms of fulfilling one's religious responsi-
bilities unless certain conditions are met. On the other hand, following is
allowed, for it involves someone convincing another person, through valid
evidence or proof, of the validity of his/her opinions. Ibn ʿAbd al-Barr said:

> There is no disagreement among scholars that *taqlīd* is corrupt ... that is
> why it was never widespread (among the early generations of Muslims). It
> was they who said: "If a *muqallid* respected and used his brain, he would
> never fall in behind another. Instead, he would use his own faculties to see
> for himself why it was that the great imams, even those within the same
> legal school, often differed."

THE IMAMS AND *TAQLĪD*

Imams Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Ibn Ḥanbal warned people not
to blindly follow what they said or did and denounced those who did so.
Imām al-Shāfiʿī said:

> One who seeks knowledge without proof is like a gatherer of wood who
> goes into the forest at night to collect fallen branches and is bitten by a
> snake when, thinking it to be another branch, he picks it up.[7]

His student and the narrator of his knowledge, Ibrāhīm al-Muzanī,
wrote in his *Al-Mukhtaṣar*:

> I have summarized all of this from the knowledge of Imām al-Shāfiʿī, and
> from the meaning of what he taught, in order to impart it to whoever
> wants it, along with notice of his prohibition of *taqlīd* (of his opinions) or
> of those of others, so that the reader will himself consider the evidence for
> the sake of his religion, and so as to be the more circumspect about it.[8]

The great *muḥaddith* Abū Dāwūd said:

> I once asked Aḥmad [Ibn Ḥanbal]: "Did Awzāʿī follow the Sunnah any
> closer than Mālik?" Ahmad replied: "In matters of religion, don't be a
> *muqallid* of any of those people. Take whatever is authentic from the
> Prophet, upon him be peace, and from the Companions. When it comes
> to the successor (Tābiʿūn) generation, you can choose."[9]

He also said: "Don't be a *muqallid* of mine, nor of Mālik, Thawrī, nor
Awzāʿī. Rather, take from the same sources they took from."[10] Abū Yūsuf
said: "No one may opine what we opine, unless they know the reasons why
we hold that opinion."[11]

When Abū Ḥanīfah was asked what should be done if one of his legal opinions was found to contradict the Qur'an, he replied: "Abandon what I said in favor of what is in the Qur'an." When asked what should be done if his opinion contradicted something in the hadith, he replied: "Abandon what I say in favor of the hadith of the Prophet, upon him be peace." When asked what should be done if his opinion contradicted opined by the Companions, he replied: "Abandon what I say in favor of what was opined by the Companions."[12] On the same subject, Mālik said: "I am human. Maybe I am wrong and maybe I am right. So look into my opinions. If they are in accordance with the Qur'an and the Sunnah, accept them. But those that are not, reject them."[13] Ibn al-Jawzī wrote: "*Taqlīd* is a nullification of reason, for reason was created for consideration and contemplation. It is therefore unbecoming on the part of one given the lamp of reason to extinguish it and grope about in the dark."[14]

Taqlīd, in general, appeared only after the first generation and its successors had passed away. This is also true in the case of the Four Sunnī Imams, who only began to be objects of *taqlīd* after their deaths. In fact, they were no different from their predecessors in their censure and rejection of *taqlīd*.[15] The stories of how Mālik refused al-Manṣūr and of how Abū Yūsuf refused al-Rashīd, when those rulers wanted to command their subjects to follow a single *madhhab*, are well known.[16]

An example of the kind of argument given by the early scholars is recorded here from Ibrāhīm al-Muzanī:

> It may be said to one who passes judgment on the basis of *taqlīd*: "Do you have proof for your judgment?" If he says: "Yes," there was no *taqlīd*, for he arrived at his judgment on the basis of evidence. If he says: "No," he should be asked: "Why did you shed blood, legalize intercourse, and dissolve financial assets when Allah has prohibited all that, unless there be sound evidence as to why it should be done? Allah said: 'You have no proof of that' (10:68)." If he replies that he knew his judgment was correct, even if he did not know the evidence, because he is a *muqallid* of a great scholar who gave legal opinions only on the basis of sound evidence, it should be said to him: "Then you mean to say that your *taqlīd* of your teacher was legitimate, even though you did not know his reasons for adopting the opinion? Thus you consider it legitimate for your teacher to make *taqlīd* of his teacher, even if he did not know his teacher's reasons for a certain opinion? So are you a *muqallid* of your teacher or of your teacher's teacher?" If he answers that he is a *muqallid* of his teacher's teacher, he has abandoned the *taqlīd* of his teacher in favor of his teacher's teacher ... which means that he abandons the *taqlīd* of teacher after teacher until he finally goes back to the

Prophet and his Companions (which is not *taqlīd*). If he denies this, he contradicts himself and may then be asked: "How do you legitimize your making *taqlīd* of someone whose knowledge and station are (relative to the Prophet's) so insignificant? That is clearly contradictory." If he replies: "Because my teacher, although of a lower station, combined his own knowledge with the knowledge he gained from his predecessors. Thus his opinions were more informed in terms of what he accepted and what he rejected," it may be said to him: "Then the same must be true of those who learned from your teacher, because they combined their knowledge with his and his predecessors' knowledge. You should, therefore, be the *muqallid* of your teacher's students. What this means is that you should be the *muqallid* of yourself, because you have combined your knowledge with that of your teacher and his predecessors."[17]

THE FORMS OF *TAQLĪD* AS
DEFINED BY THE *FUQAHĀ'*

There are three forms of *taqlīd*: a) *taqlīd* in matters that either result in knowledge or likely assumption. Examples of this are accepting testimony or evidence (when the conditions for their authenticity have been satisfied), accepting a scholar's opinions on an issue of personal relevance (to the non-scholar), a blind person's facing the qiblah toward which he/she is directed by someone who can see, accepting another's word about the biographical data of narrators of hadith or about their reliability or lack of it. Personally, I have my doubts about whether this category actually falls under the heading of *taqlīd* [18]; b) *taqlīd* that results in neither knowledge nor in likely assumption, depending on how these are defined and what conditions are set for each[19]; and, c) *taqlīd* that is permissible and legitimate. Al-Rāzī and those *uṣūlī* scholars who followed him considered this as *taqlīd* of a scholar by a non-scholar, or *taqlīd* of a more knowledgeable scholar by a less knowledgeable scholar.[20]

*   *   *

It should now be clear from the opinions and statements of the learned Companions, Tābiʿūn, *fuqahā'*, and *uṣūlīyyūn* that *taqlīd*, generally speaking, is to be avoided and that its prohibition, if not a matter of ijmaʿ (consensus among the learned), is at least the opinion of the majority (*jumhūr*). The crux of the matter is that one should rely on sources from which legal judgments may be derived. Moreover, when an individual performs ijtihad for himself/herself without legal proof, his/her subsequent actions are permissible only as a matter of juristic license (*rukhṣah*) and may not, therefore, be

blindly followed by another person, unless that person finds a legal basis (proof) for doing so.

If this is clear, then the first form of *taqlīd* mentioned above, if it can be considered *taqlīd* at all, is both acceptable and legally enjoined. Accepting testimony, for example, is enjoined in both the Qur'an and the Sunnah, while prohibiting the withholding of evidence is a matter of ijmaᶜ. The same is true for accepting the accounts of trustworthy narrators.

A non-scholar's questioning of a scholar is also enjoined, for Allah said: "Then ask the people of remembrance (scholars) if you yourself do not know" (16:43; 21:7). In the early days of Islam, the common people used to question the Prophet's Companions about rulings in cases that concerned them. When the Companions replied, the people would act in accordance with their replies. On another occasion, a person might ask a different Companion for his ruling, and then in complete confidence follow his advice.

Certain scholars considered the *taqlīd* of a scholar by an unlearned person not to be *taqlīd*, but rather following, for it is at least supposed that one who answers a question must have some kind of knowledge and that such a person would not give an answer unless there was evidence to support it. In a well-known hadith, the Prophet is reported to have said: "If they do not know the answer themselves, why do they not ask those who do? The only cure for ignorance is to ask questions."[21] Based on this, something resembling consensus arose on the unlearned's responsibility to question the learned when faced with confusing issues. After this, however, the question arose as to whether or not the questioner was required to learn the evidence in support of the scholar's answer. Must he/she know the reason for the answer? The majority of scholars opined that the questioner must ask for proof and that the scholar must mention it.[22]

What has been stated so far leads one to the certainty, or at least the likely assumption (*ẓann rājiḥ*), that the second type of *taqlīd* has no legitimacy and that we are responsible for making our own ijtihad and preparing ourselves to become capable of doing so. This form of *taqlīd* is prohibited, as any belief based upon it is no better than a guess, which is clearly unacceptable as the foundation for belief. Thus it also is unacceptable as the foundation for a legal ruling or legal advice (fatwa). Such *taqlīd*, whether of a living or a dead *mujtahid*, is expressly prohibited. The third form of *taqlīd* given above is no different from the first.

Scholars who hold that a certain form of *taqlīd* is permissible have differed among themselves as to whose opinions may be adopted. Some of their positions are:

- *Taqlīd* of classical and contemporary scholars more knowledgeable than the questioner is allowed, because Allah said: "Then ask the people of remembrance (scholars) if you yourself do not know" (16:43; 21:7).

- Some permit *taqlīd* of only the Companions and the Tābiʿūn, because the Prophet said: "The best of the generations is my generation, then the ones who follow them."[23]

- Al-Shāfiʿī (in an opinion that he later altered), Ibn Ḥanbal, Isḥāq ibn Rāhawayh, and Sufyān al-Thawrī said that only *taqlīd* of the Companions was permissible. In his early work, *Al-Risālah al-Baghdādiyyah*, al-Shāfiʿī wrote: "The Companions were superior to us in every respect when it comes to knowledge, ijtihad, piety, and understanding. Accordingly, their opinions are better for us than our own." In the same work, al-Shāfiʿī asked, after further extolling their many virtues: "So is it reasonable to expect that *taqlīd* of them should be the same as *taqlīd* of those who in no way measure up to them?"[24] Abū Dāwūd related that Ibn Ḥanbal said: "Following means that one follows what has come from the Prophet, upon him be peace, and from his Companions. After that, in relation to the Tābiʿūn, one may make up one's own mind."[25]

- Some scholars held that *taqlīd* of the Companions was limited to the first four caliphs (*al-khulafā' al-rāshidūn*), for the Prophet stated: "Adhere to my Sunnah, and to the Sunnah of the rightly-guided caliphs who come after me."[26]

- Other scholars held that *taqlīd* may be made only of Abū Bakr and ʿUmar, because the Prophet said: "Follow the two who come after me, Abū Bakr and ʿUmar."[27]

- Muḥammad ibn al-Ḥasan (Abū Ḥanīfah's student and al-Shāfiʿī's teacher) held that *taqlīd* by one less knowledgeable of one more knowledgeable is permitted.

- Another opinion is that one may make *taqlīd* only in regard to matters of immediate concern to oneself and not in matters that may be mentioned as fatwa to others.

- Ibn Surayj (of the Shāfiʿī school) opined that a student may make *taqlīd* of his/her teacher on a matter of immediate personal concern, but only if there is not enough time for him/her to perform ijtihad before the opportunity to act accordingly is lost.[28]

The different opinions of the classical scholars on this matter are rather nicely summarized by Ibn Taymiyyah:

> As regards the particulars of law, the majority of theologians and jurists say that ijtihad is a responsibility placed upon every individual, even on the non-scholars. That, however, is not a tenable position, for if seeking knowledge of the evidence were the responsibility of every individual, it would only be so where there was the ability to do so, and such ability is clearly not possessed by the great majority of non-scholars. On the other hand, there are some who follow one legal school or another who say that *taqlīd* is the responsibility of everyone who comes after the [four Sunnī] imams, including the learned and the unlearned.

> The position adopted by most scholars is that, generally speaking, ijtihad and *taqlīd* are permitted. They do not require ijtihad of everyone while declaring *taqlīd* to be *ḥarām*, nor do they require *taqlīd* while declaring ijtihad to be *ḥarām*. Ijtihad is permitted to those who are capable of it, and *taqlīd* is permitted to those who are incapable of ijtihad. What, then, of the one who is capable of ijtihad? May such a one resort to *taqlīd*? There is a difference of opinion on this question. The correct answer, however, is that *taqlīd* is permissible for such a person when he/she is unable to perform ijtihad due to conflicting evidence, insufficient time, or a complete lack of evidence. This is because when one cannot undertake ijtihad, the necessity to do so no longer remains. Instead, the alternative is prescribed, which, in this case, is *taqlīd*. This is analogous to the person who cannot find water to perform his/her ablutions.[29]

> The same is true with regard to the non-scholar. If he/she can perform ijtihad for himself/herself on certain questions, it is permitted, because ijtihad is not an absolute – the pivotal point is ability or the lack thereof. Thus, a person might be able to perform ijtihad on certain questions and not on others. Nonetheless, this ability may be acquired only through the knowledge of those sciences that lead to an understanding of what is sought. It is hard to imagine, however, how one's knowledge of a single aspect of a discipline or a science would qualify one for ijtihad. Allah knows best.[30]

*   *   *

Islam, moreover, forbids us to follow any way other than that of knowledge. Allah says: "Do not pursue matters of which you have no knowledge. Surely every act of hearing, of seeing, and of the heart will be inquired into" (17:36). Thus, our responsibility in regard to every aspect of the divine law (*sharꜤ*), be it a command or a prohibition, is that we attain knowledge of its

wisdom by whatever means possible. If sure knowledge is not possible, we have to reach an understanding based at least on the most likely possibility. This is why our scholars have not permitted *taqlīd*, except in the case of the most ignorant and incapable.[31]

NOTES

1.   Entries in the dictionaries of classical Arabic may be consulted as follows: *Al-Miṣbāḥ*, 704; *Al-Muʿjam al-Wasīṭ*, 2:706; *Tāj al-ʿArūs*, 2:474-76; and *Mufradāt al-Rāghib*, 411.

2.   For details of the classical *fuqahā's* various definitions, see al-Jurjānī, *Taʿrīfāt*, 57; al-Āmidī, *Iḥkām al-Aḥkām*, 4:221; al-Ghazālī, *Al-Mustaṣfā*, 2:387; al-Māwardī, *Adab al-Qāḍī*, 269; and al-Shawkānī, *Irshād al-Fuḥūl*, 234.

3.   *Al-Miṣbāḥ*, 1:99; and *Tāj al-ʿUrūs*, 5:385-88.

4.   Ibn ʿAbd al-Barr, *Jāmiʿ Bayān al-ʿIlm*, 109-19.

5.   Ibid., 2:117; Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn*, 2:190-200.

6.   Imām al-Bukhārī related it in the chapter of "Al-Iʿtiṣām bi al-Sunnah."

7.   This was related by Abū Bakr al-Bayhaqī. See Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn*.

8.   Al-Muzanī, *Al-Mukhtaṣar*, 1 (printed on the margin of vol. 4 of al-Shāfiʿī's *Kitāb al-Umm*).

9.   *Masāʾil Abū Dāwūd li al-Imām Aḥmad*, 276.

10. Ibid.

11. Ibn al-Qayyim, *ʿIlm al-Muwaqqiʿīn*, 2:201.

12. Al-Shawkānī, *Al-Qawl al-Mufīd*, 54.

13. Ibid.

14. Ibn al-Jawzī, *Tablīs Iblīs*, 90.

15. Al-Shawkānī, *Al-Qawl al-Mufīd*, 5.

16. Ibn al-Qayyim, *ʿIlm al-Muwaqqiʿīn*, 2:187. The attempts by Manṣūr, Hārūn al-Rashīd, and others to codify and standardize the law represented, in the eyes of the imams who refused to sanction such undertakings, an attempt to limit their freedom to formulate their own legal opinions. In fact, they feared that any limitation would lead to the rulers' attempt to quell the freedom of thought in general, thus paving the way to political absolutism. Several scholars suggested that a ruler's confusion, resulting from the presence of so many varied and conflicting legal opinions, could be solved by endorsing a single *madhhab* while allowing all other legal opinions to be taught and used for formulating alternative solutions to current issues. Thus, while no one would be prevented from formulating his/her own opinions through ijtihad, the problem of standardization within the courts and legal system would be resolved.

17. Ibn ʿAbd al-Barr, *Jāmiʿ Bayān al-ʿIlm*, 2:204.

18. Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn*, 2:254.

19. Knowledge might be defined as a certain perception that is in accordance with reality, whereas likely assumption (*ẓann*) may be understood as perception of the more likely of two possibilities.

20. Tāj al-Dīn al-Armawī, *Al-Ḥāṣil min al-Maḥṣūl*, unpublished manuscript, folio 3, 977.

21. This was related by Abū Dāwūd from Jābir. The same hadith was related by Aḥmad, al-Ḥākim, and Abū Dāwūd from Ibn ʿAbbās, though with the words: "Is not the cure for ignorance to ask questions?" See al-Suyūṭī, *Al-Fatḥ al-Kabīr*, 2:295.

22. Al-Āmidī, *Iḥkām al-Aḥkām*, 4:228; al-Shāṭibī, *Al-Muwāfaqāt*, 4:292. An opposing position was taken by Ibn Ḥazm. See al-Āmidī, *Iḥkām al-Aḥkām*, 1:151-53.

23. This hadith was related by al-Bukhārī, Muslim, al-Tirmidhī, and Aḥmad. See al-Suyūṭī, *Al-Fatḥ al-Kabīr*, 2:99. The scholars of hadith have spoken of this type of permission. See al-Māwardī, *Adab al-Qāḍī*, 1:27.

24. Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn*, 2:261-62.

25. Abū Dāwūd, *Masāʾil al-Imām Aḥmad*, 276.

26. Related by Aḥmad, Abū Dāwūd, al-Tirmidhī, Ibn Mājah, Ibn Ḥibbān, and al-Ḥākim on the authority of al-ʿIrbāḍ ibn Sāriyyah. See al-Māwardī, *Adab al-Qāḍī*, 1:271.

27. Related on the authority of Ḥudhayfah by Aḥmad, al-Tirmidhī, Ibn Mājah, and Abū Yaʿlā. See al-Suyūṭī, *Al-Fatḥ al-Kabīr*, 1:215.

28. This opinion was recorded by al-Māwardī in *Adab al-Qāḍī*, 1:262-63.

29. Under such circumstances, the legal alternative is to use dust under the conditions prescribed for *tayammum*.

30. Ibn Taymiyyah, *Majmūʿ al-Fatāwā*, 20:203-4.

31. Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn*, 2:260.

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

So the sun set on true ijtihad, 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 Sharī'ah studies, in general, and in fiqh, in particular. He wrote:

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 Shariʿah 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, perferring 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 Tābiʿūn) 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 (*qaḍā'*) 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 Shariʿah, [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 Sharīʿah. Some *fuqahāʾ* 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, ijtihad disappeared. Many of the pious, however, were concerned that unqualified and unscrupulous scholars would attempt to practice ijtihad 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 Shariʿah scholars who had no fear of Allah. This is why Imām al-Ḥaramayn (478/1086) claimed that there was ijmaʿ (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 Shariʿah, 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 ijmaʿ, 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 ijtihad 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 (*ʿaqā'id*) were vague, their behavior was corrupt, righteousness was nearly nonexistent, thought was petrified, ijtihad 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 *masājid*, 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 Shariʿah 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-Muwaṭṭaʾ*, and prohibit them from undertaking ijtihad 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 *qāḍi* 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-Maʾmūn told his subjects to adopt the Muʿtazilites' teachings in matters of theology.

Practically speaking, these attempts prepared the Ummah, mentally and intellectually, to tacitly accept that the door of ijtihad 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 ijtihad 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 Qurʾan and hadith and the foremost means of exercising ijtihad, was neglected. *Taqlīd* continued to

increase, ijtihad 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 Ḥanī-fah was given the title of *al-Imām al-A'ẓam* (the Greatest Imam), and his *madhhab* was called *Madhhab al-Imām al-A'ẓam*. Thereafter, many *awqāf* properties were directed toward teaching and promoting the Ḥanafī *mad-hhab*. 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 wide-spread 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 commenta-tors.

- 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 possi-ble 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 Shariʿah 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 *miḥrāb* 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 *fuqahāʾ*, 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 Shariʿah's *ḥudūd*. 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 ʿulamāʾ 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 Shariʿah 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 *fuqahāʾ* 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-ʿAdliyyah*.

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 ijtihad 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 *taqlīd* 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-Khuḍarī, 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 Shariʿah; and about the fifth period, because that was when the Shariʿah 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 *taqlīd* 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 *faqīh* 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-Khuḍarī, may be summa-rized 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-mutūn*).

• 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 testi-mony of reason.

It is interesting to note al-Khuḍarī'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-Khuḍarī 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-Khuḍarī listed examples of this writing style from three of the most noted works still used as textbooks in many of our Sharīʿah 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, ijtihad was prohibited. Then, in the fifth and sixth Islamic centuries, scholars were restricted to *tarjīḥ* (preferring the opinion of one imam or another on questions of fiqh). But then *tarjīḥ* 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 ijtihad 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 ijtihad was closed long ago and that Islam teaches that no one can exercise ijtihad 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 ijtihad 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 ijtihad and its legal basis and importance.

Thus, the assertion that the door of ijtihad 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 Shariʿah's preservation and continuation lay in the vitality of ijtihad and the succession of qualified *mujtahidūn*, one after another, down through the ages.

As an institution, ijtihad 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 ijtihad should be avoided because it included the possibility of error (and errors had to be accounted for), and that the door of ijtihad 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 ijtihad 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 Shariʿah evidence or the argument that there was no need for ijtihad. In fact, the Shariʿah 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 judgment[14] 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 Shariʿah 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 ijtihad is a *farḍ kifāyah* and not an individual responsibility (*farḍ ʿayn*). That being the case, as most people suppose, it is enough that a few specialized Shariʿah 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 ʿayn* 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 ijtihad 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, ijtihad means westernization, modernization, enlightenment, secularism, atheism, or change – even the nullification of all Shariʿah laws and freedom from the teachings of the source texts! Thus, the question of whether or not the door of ijtihad is still open continues to divide people.

The Third Viewpoint. In order to clarify the two previously mentioned viewpoints, it is necessary to explain ijtihad'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

Shariʿah concept. Rather, the most that they had to say about *taqlīd* 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 been discontinued and its door closed, *taqlīd* also came about gradually due to the materialization of several factors. Essentially, the reason for this was that *taqlīd* was alien to the Muslim mind and far removed from the nature of the *tawḥīd* that nurtured and enlightened that mind. Moreover, *taqlīd* was unknown in the first two centuries of Islam.[16] Nonetheless, circumstances were such that certain people supposed, albeit mistakenly, that *taqlīd* 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 *taqlīd*, 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 *taqlīd*-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 Shariʿah 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 *ʿilm al-kalām*. That is an area where all serious scholars agree that there is no

scope for ijtihad 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 subsects: "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-Ashʿarī's *Maqālāt Islāmiyyīn*, al-Shahrastānī's *Al-Milal wa al-Niḥal*, Ibn Ḥazm's *Al-Fiṣal*, al-Fakhr al-Dīn al-Rāzī's *Al-Iʿtiqādāt*, al-Baghdādī's *Al-Firaq*, al-Isfarāīnī's *Al-Tabṣīr*, and al-Yamānī al-Zubaydī's *Al-Ḥūr al-ʿIn* – all of these sects grew out of opinions on obscure points of theology, rather than as any result of ijtihad 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 ijtihad 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, ijtihad's true position will be clarified.

NOTES

1.   Ibn Jarīr al-Ṭabarī.
2.   If ijtihad 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 ijtihad 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-Zaylaʿī: "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 ijtihad to the exclusion of others. This was what his ijtihad 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-Zaylaʿī, *Naṣb al-Rāyah*, 2d ed. (Beirut: Dār Iḥyāʾ 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-iftāʾ* (giving legal advice) and *al-qaḍāʾ* (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-Shāfiʿī, and Aḥmad ibn Ḥanbal.

6. See Imām al-Ḥaramayn, ʿAbd al-Mālik al-Juwaynī, *Al-Burhān* (Qatar: Maṭābiʿ 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 Khālil, *Nūr al-Dīn Zanjī* and Mājid al-Kāylanī, *Kayfa Ẓahara Jīl 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 Qurʾan 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 diffi-
cult 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 tex-
tual aspects in another language? Indeed, all translations of the Qur'an are
works of interpretation (*tafsīr*) 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 *ʿulamā'*, 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 ijtihad must be proficient in Arabic.

ʿUmar 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 previ-
ously 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 Shīʿī imams.
Then, even though the majority of the people in that land had until that
time been Sunnīs, Shīʿism 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 Allāh*s, instead of dealing realisti-
cally 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 ʿAbd 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 ʿalā man Akhlada ilā al-Arḍ wa Jahila anna al-Ijtihād fī Kulli ʿAṣr Farḍ*, ed. al-Shaykh Khalīl al-Mīs (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1403/1983). See also ʿAlī al-Khafīf, *Al-Ijtihād fī al-Sharīʿah 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 ʿalā Ḥadīth al-Walī* (Cairo: Dār al-Kutub al-Ḥadīthah, n.d.), 290; Rifāʿah Rāfiʿ al-Ṭahṭāwī, *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: Maṭbaʿah Sharikat al-Maṭbūʿāt al-ʿIlmiyyah, 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-ʿAṣr*, 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 Ḥaqīqat al-Taqlīd* (Cairo: Dār al-Ṣaḥwah, 1985), 107.

18. For further reading on the subject of the door of ijtihad and the need to keep it open, see the following works: Yūsuf al-Qaraḍāwī, *Al-Fiqh al-Islāmī*, 39ff; Muṣṭafā al-Rāfiʿī, *Al-Islām: Inṭilāq Lā Jumūd* (Cairo: al-Majlis al-Aʿlā li al-Shuʾūn al-Islāmiyyah, 1386/1966), 174ff; Maḥfūẓ Ihrāhīm Faraj, *Al-Tashrīʿ al-Islāmī fī Madīnat al-Rasūl* (Cairo: Dār al-Iʿtiṣām, 1404/1983), 67ff; Muḥammad Suʿād Jalāl, *Al-Ijtihād fī al-Sharīʿah at Islāmiyyah* (Cairo: Dār Thābit, 1402/1982), 5ff; Muḥammad Sulaymān, *Bi Ayyi Sharʿ Taḥkum?* (Cairo: al-Maṭbaʿah al-Āmīriyyah, 1936), 12; Wahbah al-Zuḥaylī, *Tajdīd al-Ijtihād*, included in *Al-Ijtihād wa al-Tajdīd fī al-Tashrīʿ al-Islāmī*, Muṣṭafā Kamāl al-Tāzī et al. (Tunis: al-Sharikah al-Tūnisiyyah li al-Tawzīʿ, n.d.), 89-90, 95; Ẓuhūr Aḥmad, *Al-Ijtihād wa al-Shāʿir 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-Sharīʿah 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-Aʿmāl 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, *Zaghal al-ʿIlm* (Damascus: Matbaʿat 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.

The Role of Islamic Ijtihad in the Regulation and Correction of Capital Markets

I hesitate to speak on the role of ijtihad in an Islamic capital market, because this topic requires understanding two important but difficult areas whose primary sources are in different languages. The first area is ijtihad, which is connected with fiqh. Most of its sources are in Arabic. The second area is economics, which is connected with the analysis of capital markets. Most of its sources are in various European languages. Linking ethics and economics is necessary, because every economic choice has a spiritual dimension. But this is difficult, because secular economics severs the link by reducing values to tastes and arguing that different ethical values do not change the method of choice. Therefore, properly linking ijtihad and economics requires a determined effort to refute the secular separation of ethics and economics. I spent over 100 hours thinking, reading, and analyzing the essential points of both until I could establish a common ground between them.

Ijtihad, which is of central importance in *uṣūl al-fiqh,* is the method of implementing the spirit of the sacred texts in any environment. Since the third Islamic century, it has been the main theme of dialog between the different legal schools. To this day, scholars continue to debate the issue.

Economics is an important science that influences several other sciences. Since the capital market is a significant topic in economics, we must understand the strengths and weaknesses of the neo–classical analysis of capital markets in order to develop an Islamic capital market. In addition, we must understand the history of economic thought, how capital markets became an

important part of it, and why many neo-classical economists believe that their analysis is objective and spiritually neutral.

Since the ninteenth century, some of our *ᶜulamā'* have tried to build a common ground between economics and ijtihad on matters of economic development by adopting many of the economists' views. Some *ᶜulamā'* have called for imitating the West and its modernity to achieve prosperity and thus have adopted elements of western methodology. They believe that the Ummah resists change by clinging to such concepts of *ḥalāl* and *ḥarām* in economic activity, which hinder the community's development and prevent it from overcoming its economic problems. They have tried to justify this economic imitation on the community's *maṣlaḥah* (benefit), the relativity of fiqh, the absence of alternatives, or a combination of these.

However, this approach justifies *taqlīd* (blind imitation) of the West by erroneously combining ijtihad with western economics. A truly Islamic economics and ijtihad, on the other hand, must apply traditional principles to the contemporary world by combining the transmitted (*naqlī*) and intellectual (*ᶜaqlī*) sciences. A precise understanding of Islamic principles must inform both disciplines to establish the true complementarity between them and then successfully apply the Islamic paradigm to economic problems. A bad economic analysis can misinform the best ijtihad, just as an erroneous ijtihad? can vitiate the best economic analysis. Those who call for *taqlīd* of the West often combine both errors.

Thus, failure to apply traditional Islamic principles to either ijtihad or economics creates a duality between the old and the new, between *naql* and *ᶜaql*. And this duality creates a potential for opposition, which is a serious challenge to all Muslim thinkers, regardless of whether they are economists, political scientists, sociologists, or *fuqahā'*.

This challenge raises serious questions. Can Islam deal with this duality or not? Can the Shariᶜah give us solutions for any problems – past, present, or future? The Ummah needs to see that the Shariᶜah provides solutions by applying traditional Islamic principles to both *naqlī* and *ᶜaqlī* sciences. Thus, the solution must come from the epistemological and methodological viewpoint that carefully defines and applies Islamic principles, not from *taqlīd* of the West. To build a solution based on traditional Islamic principles, we need to understand the *maqāṣid al-Sharīᶜah* (the Shariᶜah's higher values and causes). Without looking at all of these points, it is very difficult to answer questions of economic policy and the challenge of secular economic thought, especially on capital markets.

The Islamic paradigm is essential to building a common ground between ijtihad and economics, on which the Islamic solution is based. Our paradigm is based on three essential Islamic principles: *tawḥīd* (God is the Absolute and the necessary starting point of any Islamic analysis), *tazkiyah* (purifying humanity and society from evil), and *ʿumrān* (building a civilization in order to accomplish the good).

These principles form a complete and consistent set that can be applied to ijtihad and economics, for knowing that God is the Absolute requires eliminating the evil and accomplishing the good. Moreover, all three principles are necessary in a truly Islamic society. For example, it would be hypocritical to know the truth but not use it to purify oneself and society from evil and to neglect real needs in building a civilization designed to accomplish the good). Similarly, purification from evil is not possible without knowledge of the truth, and the existence of an Islamic civilization is crucial to enabling humanity to know and conform to that truth. Finally, building a civilization to accomplish the good is not possible unless it is based upon truth and reflects pure intentions rather than greed.

These essential Islamic principles or higher values are the pillars of our Islamic paradigm. They guarantee that our paradigm is characterized by *wasaṭiyyah* (avoids excess as evil and finds the good situated between two excesses), *tawāzun* (balanced), *ʿadl* (just), *istiqāmah* (direct, not winding), *rabbāniyyah* (from God), *ʿālamiyyah* (global), *al-ʿumūm* (universal), and *al-shumūl* (includes every part of life).

When these three principles are the common ground of ijtihad and economics, we can integrate both to develop an Islamic capital market. However, the references on ijtihad and economics are very different. Ijtihad is a central issue in *uṣūl al-fiqh* among all legal schools, and is the seventh chapter of any traditional *uṣūlī* book. All of these sources are in Arabic, which poses a major obstacle for many researchers. Ijtihad will be the first topic of our discussion.

Economics and the capital market will be the second topic of our discussion. Unfortunately, there are few books in Islamic languages on this subject, but many in European languages. In most of these books, neo-classical economists conflate values and preferences in order to separate ethics and economics, thereby excluding essential spiritual principles from their analysis. Neo-classical economists make the questionable claim that their analysis is objective and spiritually neutral. We will establish that ethics and economics cannot be separated, because values and preferences cannot be con-

flated. This is the basis for an Islamic theory of choice. Of course, a full treat-
ment of this topic requires many researchers to deal with both Western and
traditional Islamic sources from different viewpoints.

This introduction indicates how difficult it is to properly link ijtihad and
economics and to deal with the capital market from an Islamic perspective.
Nevertheless, we should try to deal with this challenge. At this point, I
would like to emphasize that this paper will deal with the topics objectively
and without an attempt to give legal rulings or recommend specific policies.
We will try to discover the link between the two fields, dealing with those
principles that will help others apply them to specific cases.

IJTIHAD

When we think about ijtihad in *uṣūl al-fiqh*, we cannot unequivocally say
that its current format provides us with an effective methodology for deriv-
ing optimal solutions to all contemporary issues. We cannot make such a
claim, whether or not there is anyone who can be a *mujtahid muṭlaq* (an
expert qualified to make ijtihad in all areas of fiqh without conditions) and
whether or not we can identify such a person. Therefore, we need to recon-
struct the concept of ijtihad itself so that it can become a methodological
tool capable of responding to the challenges and questions of our time and
future generations. Ijtihad need not be a closed tool to be used only within
a specialized methodology.

To reconstruct ijtihad, we need to take note of the following. First, in
its *fiqhī* dimension, ijtihad is limited to the genius of a scholar who can for-
mulate the appropriate question, given the event(s), and go to the text of the
Qur'an and Sunnah for a ruling. If he/she cannot find a direct answer, then
he/she must look for an answer in the rulings derived from ijmaᶜ (consen-
sus), *qiyās* (analogy), or articulate his/her own considered legal principle.[1]

But in our time, the unprecedented and ongoing explosion of knowledge
and communication has made this impossible. With the advent of the social
sciences in world affairs and their continued spread into different spheres, there
is even more information to incorporate into ijtihad. Similarly, the collapse of
the idea of the "limitedness of the text and the unlimitedness of the events"
in the face of the holistic thought and purposes of the Qur'an and Sunnah
(which exemplifies Qur'anic principles) makes it necessary to apply Islamic
principles within ijtihad. In turn, this application requires information from
other sciences, meaning that ijtihad can no longer be limited to the *fiqhī*
sphere or to one person. Thus, we have to establish a strong connection

between the social sciences (as a tool for understanding the event[s] in order to formulate the relevant ethical question) and fiqh (as the science according to which these formulated incidents have moral value and meaning).

Second, due to the difficulty of individual ijtihad, we must adopt the principle of collective or institutional ijtihad based on diverse disciplines and specialists outside the framework of current fatwa committees or fiqh councils, despite their continuing importance. Ijtihad should be undertaken within the framework of establishing qualified research institutions featuring dedicated scholars from all *fiqhī* and *uṣūlī* schools, law, Hadith, and *tafsīr*, as well as social scientists, linguists, and community leaders. Guidelines may be established to determine the team's constitution depending on the issue. This does not negate the individual's role in ijtihad; rather, it emphasizes it and gives it direction.

Whenever such an institution for collective ijtihad develops, the nature of ijtihad itself will change. First, it will no longer be a process based on an individual *mujtahid's* theoretical dialog between the text and dictionaries in order to deduce a ruling established on an inference based on the semantics to which the scholars of *uṣūl* and logicians are accustomed.

Second, this institution will need to utilize all of the available social science methodological means, and possibly some of the available natural science methodologies, to understand, analyze, and better define the event. Such an approach includes, in addition to the linguistic method, the statistical, quantitative, and qualitative methods as well as other tools. Even the linguistic method will have to be modified to make better use of new developments that have taken place in the study, analysis, and deconstruction of the text in order to gain a deeper insight into its purpose.

Third, the Shariʿah's characteristics and the nature of its universal textual proofs (*al-adillah al-kulliyyah*) will have to be brought to the forefront. Thus, it will become imperative to understand the particular textual evidence within the framework of the universal textual proofs. It is no longer sufficient to collect only those particular proofs relevant to the issue; rather, such proofs or evidence need to be understood within the context the Shariʿah's universal textual proofs, goals, and purposes, as well as the nature of its originating source (the Qur'an) and its particular, clarifying, and binding source (the Sunnah).

Fourth, understanding the precise relationship between the Qur'an and the Sunnah will become apparent. This relationship shall consider the Qur'an as the only originating source of law and the Sunnah as the only clarifying and binding source. Such a relationship does not allow one source to

be separated from the other. In addition, it calls for understanding the nature of *bayyinah* (evidence), its characteristics, and how it details the general, interprets the vague, specifies the generic, and generalizes the particular. All of this is done to reveal the methodology used to apply the text to reality in the Prophet's time, and to show how such a methodology could be generalized for all ages so that humanity may be guided by the values and regulations of the Qur'an and the Sunnah until the end of time.

Fifth, after these centers and research academies are established, its members will have to reexamine "controversial legal indicators" (*al-adillah al-mukhtalaf fīhā*) and leave behind those that are no longer relevant. Other indicators may be renewed, developed, and further regulated by the originating and clarifying sources.

Sixth, the Shariʿah's higher values, *tawḥīd* (the unity of God and acknowledgment that God is the Absolute), *tazkiyah* (purification from evil), and ʿumrān (building of civilization to accomplish the good) shall be the guiding lights, regulating standards, and just scales against which the outcome of institutional ijtihad shall be evaluated.

Seventh, after such institutional ijtihad has become widespread, people will realize that no matter how many safeguards and means have been put into place, ijtihad cannot be presented as producing binding rules for future generations or that these rules respond to their needs. This ijtihad should not lead to new schools of thought and sects that may erode the Ummah's unity, impede its future development, and hinder future generations from practicing ijtihad. The most we can expect from any generation's fiqh is to offer solutions to crises and challenges that face a specific society in a certain time, place, and circumstance. The outcome of such ijtihad cannot be absolute and should only be binding on that generation and whoever chooses to adopt it. If a consensus exists among the people of a region or a certain time about a previous ijtihad ruling, it shall become binding upon them but not necessarily upon the people of other regions or other times. Only the Qur'an and the Sunnah have binding authority. Thus, we recover ijtihad's effectiveness, vitality, and continuity and make it an integral part – not an exception – of the Ummah's psychological and mental state.

Eighth, ijtihad conducted by academic and research centers will reveal Islam's universal characteristics, which are not merely virtues but rather items to be applied as methodological guidelines when formulating collective ijtihad. Islam's universality, which is at the forefront of these characteristics, is indicated by the fact that the Shariʿah is a law of ease and mercy, based on the Qur'an's authority, connected with prophethood's finality, and

provides a necessary methodology. This universality indicates that Islam's message is for all of humanity, regardless of time or place, until the Day of Judgment. Its rapid spread took place according to a perfect methodology that began by preparing the final Prophet, tasking him to warn his relatives (the people of Makkah and the surrounding area), and then building an Ummah that provided a model for the rest of humanity to emulate.

Islam's mission is global, although it addresses humanity through a specific social entity in its own language (Arabic) and deals with the community's needs and problems. These are not necessarily problems common to all of humanity in all times and places; rather, other societies can use them as a model for meeting their own different needs and problems by drawing on the Qur'an's methodology, values, and purposes. The Qur'an is so resourceful that it provides answers to specific questions regardless of time or place. At one level, it gives an answer for the Prophet's time, while at another level it applies the link to the Prophet's community to project the answer into the future. The text's multiple meanings and applications are fascinating, and this is how the Qur'an communicates absolute values in a relative environment, links the transient to the eternal and the specific to the general. This correlation between the relative and the absolute has been achieved in the Qur'anic text, for if it had ignored the problems of the Prophet's community, it could not have projected these absolute values forward. In other words, there would have been no example of how to apply the message.

In a short period of time, Islam incorporated many other civilizations due to its universal vision, thereby proving its beneficial power in every time and place. This final message, characterized by the Absolute Book and the Last Prophet, contains categories that integrate the continuous and the temporary, the general and the specific, and the global and the local to satisfy its goals and objectives.

Unfortunately, our current religious teachings and studies do not prepare us to understand these essential principles. As a result, some people approach the Qur'an as if it were meant only for themselves, like a closed letter that our ancestors carried without opening. This leads some people to misinterpret the Qur'an based on their current viewpoint, such as equating jinn with bacteria, or money with capitalism or socialism. Some people take the opposite position, holding that the Qur'anic message was meant for our ancestors and simply provides us with general directions but no specific instructions. Both positions represent extremes that do not reflect a true understanding of the Qur'an, for they place limits on the methodology used to understand it. A deep understanding requires a knowledge of the

dichotomies in Islamic discourse, namely, the absolute and the relative, the general and the specific, the continuous and the temporary, and the local and the global in the Qur'anic teachings. In the absence of this discourse, we cannot understand the sacred text.

Our ancestors understood these categories and incorporated them into *uṣūl al-fiqh* as "chapters of terminology" and "chapters of what is common in the Qur'an and Sunnah." These chapters include discussions of the general and the specific, the absolute and the limited, Qur'anic veses (*āyāt*) with locked and flexible meanings, abrogation and the abrogated, and other topics. In addition, they established some constraints and criteria to distinguish between the discourse's different levels, the legislative and the non-legislative, as well as the obligatory (*farḍ* or *wājib*), and the forbidden (*ḥarām*) or the reprehensible (*makrūh*). Our ancestors understood these distinctions so clearly that they formulated five categories for action: forbidden, reprehensible, indifferent, recommended, and obligatory. They even distinguished between two types of reprehensible categories: *makrūh tanzīh*, which implies unsuitability, and *makrūh taḥrīm*, which leads to the border of *ḥarām*. They also classified necessities into three categories: essential needs, means to these needs, and embellishments or accessories to support these means.

In order to serve and carry Islam's message, as well as prove its applicability and usefulness for every time and place, we need to build upon this great legacy. We must use our knowledge to go back and rethink what should be included in the different categories discussed above. This is an essential, dangerous, and difficult journey, particularly for a mentality that has been used to *taqlīd*, instead of ijtihad, for several centuries. To help us with this undertaking, we should also establish centers for collective ijtihad.

Let's consider one example of how a specific incident develops into a general legal principle so that we can understand how principles guide ijtihad. Take the case of adoption. The Qur'an deals with this through the example of Zayd (the Prophet's adopted son), declaring that the Prophet had no sons. Even though this message applied to a specific Arab community, the principle that adoption does not entail changing the child's name and literally creating new parents (although the Qur'an emphasizes the great rewards and spiritual virtues of caring for orphans) still applies today. There are many other examples of establishing a principle through specific events in fiqh, such as emancipating slaves and dividing war booty.

Since our ancestors understood that the Qur'an communicates principles through specific incidents, they did not need the Qur'an to tell them:

"This is relative, this is absolute. This is general, this is specific. If the circumstances change, do this or that." But Allah revealed the Qur'an as He wills, and He revealed it to the Ummah in this way, thereby placing the heavy responsibility of textual interpretation on the people of dhikr (remembrance) and the scholars:

> [Here is] a Book that We have sent down to you, full of blessings, that they may meditate on its signs, and that men of understanding may receive admonition. (38:29)

> Nor should the believers all go forth together; if a contingent from every expedition remained behind, they could devote themselves to studies in religion and admonish the people when they return to them – that thus they [may learn] to guard themselves [against evil]. (9:122)

Our ancestors produced many great achievements with this understanding. If our generation could function at the same level of ability without stopping ijtihad, we could understand correctly the Qur'anic categories mentioned in our *uṣūl al-fiqh*. If we pursue deep thought and illuminate our minds, we can build on our ancestors' great achievements.

Their *mujtahidūn* deduced many principles for making legal judgments and deriving appropriate solutions, such as alleviating legal hardship, blocking licit means to illicit ends, choosing the most prudent course, limiting the matter to make options more plentiful, and realizing that difficulties attract facility, that the illicit can be rendered licit by necessity or overwhelming circumstances, that the public's needs may be considered the same as the individual's needs, and that there may be acceptance in continuation for matters unacceptable in initiation. These rules represent deep jurisprudential and legal thought, and past generations may have considered them more than enough to deal with their problems. Through these partial rules that are based on the Shariʿah's total objectives, they could properly understand those rules related to specific situations. They did not necessarily articulate the framework they used to derive these partial rules or how to apply the holistic viewpoint involving different levels of Qur'anic discourse and instruction.

In this regard, how the Qur'an dealt with alcohol and slavery, both of which were widepread at the time of its revelation, is important. The Qur'an gradually prohibited alcohol, and the Muslims were expected to end slavery shortly afterward. However, the failure to eliminate slavery during the Prophet's time does not mean that it was left to continue. The ruling to eliminate slavery was in the Qur'an, but its full application took some time. Since

all of the Qur'anic rulings related to emancipation, not slavery, we know that slavery must ultimately end. Indeed, slaves were to be considered as the master's brothers and sisters, to eat what they eat, wear what they wear, and work as they work (not to be given overbearing tasks). All of this let people know that slavery was only a temporary situation. Moreover, people were forbidden to call others "slaves" and had to address them more affectionately. People have talked a lot about how Islam released slaves, but nobody talks about why slavery lasted until the recent universal emancipation. Why did we not reach global prohibition? We should have reached this conclusion ourselves, since we did not have any rules for enslaving people.

The truth is that slavery was a sensitive issue. The *fuqahā'* went around it – we did not find somebody to "break the egg." The Abbassids and Ottomans were more powerful than other civilizations of their time, but they did not abolish slavery because they did not understand the nature of the sacred text. For example, the texts require that a slave be freed to atone for an accidental killing. According to Nasafi's *Tafsīr*, freeing a slave is like giving life to what is dead. Indeed, slavery is associated with *kufr* in the Days of Ignorance, and *kufr* is related to spiritual death; a person who accepts Islam is like a person who was dead and to whom God gave life.

Moreover, the analogy between charity and freeing a slave is erroneous, because the essence of money is an object for use, whereas the essence of a person is to be free. Our ancestors supported emancipation, saying that slavery was like death and *kufr*. They came so close to, but did not embrace, the prohibition of slavery. But if it is our job to resist *kufr* and end every trace of it in our society, why did we not eliminate slavery in our society and the rest of the world? We had the power. Even if other civilizations continued with slavery, we could have at least eliminated it in ours. The whole question goes back to our inability to deal with what is continuous and limited, and with what is global and specific in the Qur'an. This is why we left it to the West to abolish slavery. We now turn to economics.

ECONOMICS AND THE
CAPITAL MARKET

The Islamic tradition of economics contains a rich history of economics as applied ethics. Muslim intellectuals were well aware of the distinction between tastes and values, and that values determine the methodology one uses to make a choice, whereas tastes do not. Since values cannot be reduced to preferences or tastes, differences in the content of desires, due to values, imply different methodologies of choice. Thus, Muslim scholars recognize

that ethics and economics are inseparable, for, since God is the Absolute, every choice has a spiritual dimension.

Secular neo-classical economic thought, on the other hand, denies that a "distinction between tastes, preferences, values and ethics can coherently be made."[2] The theory conflates values and tastes, argues that different values do not change the methodology of choice any more than tastes do, and thereby separates ethics and economics.[3] This is why Milton Friedman could declare at his Nobel prize acceptance address: "The great saints of history have served their 'private interest' just as the most money grubbing miser has served his interest."[4]

But if neo-classical theory does not logically distinguish between tastes and values, how can it contribute to Islamic economic policy, which does? We will pursue this question by suggesting that secular neo-classical theory cannot accommodate Islamic values and that an Islamic theory of choice, which recognizes the distinction between tastes and values, can better inform collective ijtihad on capital markets. In addition, we will draw out the policy implications of the essential Islamic principles of *tawḥīd*, *tazkiyah*, and *ʿumrān* for the capital market and respond to potential objections from neo-classical economists.

Let's begin with the neo-classical theory of choice, as espoused by Milton Friedman, Gary Becker, and the Chicago School of Economics, because they have won the most Nobel prizes in economics for the past decade and provide a good starting point for the neo-classical approach. While their approach attempts to answer essential economic questions, it lacks spiritual neutrality, for it is based on the doctrine that the only thing anyone can desire or pursue as an end in itself is one's own self-interest or utility, in which pleasure, satisfaction, and happiness are used as synonyms.[5] The theory admits that people sometimes desire the happiness of others, but insists that this desire is only a means to their own happiness. Purely altruistic and benevolent actions and desires, therefore, do not exist. In other words, according to neo-classical theory the noble actions of the Prophet or the *muqarrabūn* (those who are close to Allah) are disguised forms of self-serving behavior rather than models of conforming to the truth. It is one thing to suggest that people often "put their own interests first," which Islamic economics takes into consideration, but quite another thing to assert that they are capable of nothing else and thereby deny a person's ability to be motivated by the truth or God, rather than utility. As the Qur'an states, God is the Truth (*al-Ḥaqq*) because He is the Real.

While the Chicago School's neo-classical approach denies a person's spiritual nature (read their literature on the economics of crime, marriage, fertility, and so on), Islamic economics recognizes that the believers' ultimate motivating cause is not utility or happiness, but the truth, for although happiness accompanies conformity to the truth, it is an effect rather than a motivating cause. "Our willing is not inspired by our desires alone. Fundamentally, it is inspired by the truth, and this is independent of our immediate interests."[6] If a person meets his/her spiritual needs fully by conforming to the truth with his/her whole being, the result is spiritual virtue, or "beauty of soul."[7] With spiritual virtue comes true happiness, for beauty and the love of beauty give the soul happiness. Indeed, "sensible beauties are situated outside the soul, and their meeting with it is more or less accidental; if the soul wishes to be happy in an unconditional and permanent fashion, it must carry the beautiful within itself."[8] Happiness, therefore, is an effect that accompanies spiritual virtue. This explains why a pious person with few means is far happier than an impious person of great wealth. As the Prophet said: "The Muslim is happy [*bi khayr*] in every situation."

The Chicago School erroneously inverts cause and effect by subordinating truth to utility and declaring utility to be the sole motivating cause. It is a theory of choice appropriate for the *nafs al-ammārah* (the soul that commands to evil), for only the *nafs* would reduce values to tastes, subordinate the truth to utility, and ignore the reasons behind preferences. This reduction applies to both spiritual complements (e.g., physical needs) and opposites (e.g., anti-spiritual desires). For example, the Chicago School's neo-classical approach suggests that a spiritually inclined person should allocate his/her time between complementary needs (e.g., praying, eating, and working) such that the utility of the last moment spent in each of these activities is equal. This would maximize utility, since any discrepancy would mean that the individual could increase utility by reallocating his/her time. This principle also applies to allocating time to different questions on an exam.

But this approach to a hierarchy of spiritual and other needs is only appropriate for the *nafs*, because these needs are qualitatively different (points on an exam are not). Lumping "spiritual utility," "eating utility," and "working utility" into one utility is not possible, because doing so requires that spiritual and other needs to serve as substitutes for each other. Such a relationship would create tension between them. This view is further mistaken because a different type of "spiritual utility" accompanies both eating and working. As the Prophet said, a person working to feed his/her family is performing an act of worship, just as if he/she were praying. A person's life can be integrated

around a sacred center only if qualitatively different types of utility exist simultaneously. Such integration explains how the sacred is always present and not in conflict with a person's other needs. Islam holds every aspect of life to be sacred, because nothing is outside of the Absolute. Moreover, no aspect of life is profane, because everything is attached to God. Given this, believers have no need to allocate resources between the sacred and profane, or between spiritual and other needs, because everything has a spiritual context. They find the ultimate purpose of any action in God, because no end is beyond Him and no end has sufficient reason if it stops short of Him.

Thus, the neo-classical approach to spiritual and other needs collapses into one type of utility, creating trade-offs that do not exist in reality, but only as an illusion of the *nafs*. Indeed, such trade-offs could exist only if one does not recognize the spiritual nature of all activities on the one hand, and one vitiates spiritual activity with an inferior intention on the other. Through such false trade-offs, the Chicago School's neo-classical approach sets the stage for the sacrifice of spiritual needs.

The same principle applies when this approach is applied to the opposition between spiritual needs and anti-spiritual desires. For example, the Chicago School's literature on the economics of crime suggests that its spiritual costs can be traded off against its material benefits in a single measure of utility. Obviously, this is a theory of choice for the *nafs*, for such costs and benefits are incommensurable. Believers recognize that spiritual benefits cannot be traded off against criminal gain, for this would require the existence of an end beyond God, Who aggregates both. Such a proposition contradicts the truth that God is the Absolute. And so they do not engage in this particular type of calculation.

Unlike the *nafs*, the *rūḥ* (spirit) recognizes that good and evil are qualitatively different, given that they are related to different intentions, because there are qualitatively different criteria upon which to make a choice. The *rūḥ* judges the alternatives not with respect to utility, but with respect to the truth, by examining the reasons behind the various good and evil desires. Indeed, the *rūḥ* would not adjust its estimate of a "mono-utility" if the material benefits of crime increased. Moreover, not only is the neo-classical approach irrelevant for the *rūḥ*, it is also unstable for the *nafs*, since ignorance of the truth is not necessarily permanent. God saves whom He wills, and the *rūḥ* can overcome the *nafs al-ammārah* with the truth, transforming it into the *nafs al-muṭma'innah* (soul at peace). Thus, this neo-classical approach to both spiritual complements and opposites corresponds to a theory of choice for the *nafs*, not the *rūḥ*.

Economists attempt to make all choices commensurable, reducing them to a single intention, by employing the concept of "indifference." For example, if a person rates options A and B as being equally good, the person is "indifferent" to them. This indifference is only possible, however, when there is one intention – multiple intentions would lead a person to prefer option A to B, or vice-versa, depending on which intention has the higher priority. In other words, indifference is impossible and preference is necessary when there are two or more intentions. When many options are compared, a set of points that a person ranks equally form what economists call an "indifference curve." These curves are central to neo-classical economic analysis, because advanced mathematics can be applied to them (i.e., maximize utility according to the shapes of indifference curves). Given this, the saint and the money-grubbing miser simply have differently shaped indifference curves.

While this may be true for tastes that reflect a single intention, it cannot be true for values that reflect multiple intentions. Only by reducing values to tastes can the Chicago School claim to have a theory of choice that is independent of ethics. But this theory of choice itself incorporates bad ethics into economics and is only appropriate for the *nafs*. In fact, it even denies that there is an inner battle between the *rūḥ* and the *nafs*, for it maintains that everything is reducible to a single intention under indifference curves. In other words, the Chicago School denies the Prophet's teaching that we must continuously engage in the inner jihad, because no such battle exists for them.

Some economists recognize that this is obviously false and that there are major problems with the Chicago School's neo-classical approach. They attempt to limit the application of indifference curves to situations in which the alternatives are qualitatively similar and morally neutral, such as optimally allocating one's time to questions on an exam in order to maximize one's score. Since a variety of further intentions are consistent with this goal, such situations accommodate multiple intentions. While this approach to limiting the use of indifference curves is spiritually neutral, it suffers from a particular defect: These situations are too few to cover essential economic choices, since spiritual considerations appear everywhere. For example, how much wealth one strives for and the nature of economic institutions are spiritual choices in traditional Islamic civilization, for nothing is profane. Without explaining the "budget constraint" and the institutional environment, economic theory is fatally incomplete, abstracting from the essence of the problem it seeks to solve.

Moreover, applying indifference curves only to such goods as food and clothes does not eliminate the problem of spiritual neutrality. For instance, when one is overeating or buying way too many clothes simply to gratify his/her pleasure, indifference curves can exist between such tastes. But when one is directing needs for food and clothes to support spiritual work, they are not substitutes and thus indifference curves do not exist – one cannot wear food or eat clothes. They can only be viewed as substitutes toward a single intention, such as pleasure, if the *nafs*, instead of the *rūḥ*, is in control. In this sense, the incommensurability of real needs is based on values, whereas the commensurability of arbitrary desires is based on tastes. By reducing those needs that are not substitutes for desires, which are determined through indifference curves, neo-classical theory once again reduces values to tastes and violates spiritual neutrality. The range of spiritually neutral economic choices to which indifference curves apply is far narrower than any neo-classical economic approach accepts. Indeed, economists who recognize that indifference curves do not exist for spiritual needs must justify why they should exist between other qualitatively different needs.

Hence, these very indifference curves, which are central to neo-classical theory, force economists to choose between spiritual neutrality and logical completeness. Economists can either apply their theory of choice in a spiritually neutral way, leaving essential economic questions unanswered and the theory incomplete, or they can provide answers to essential questions by using a theory of choice that is not spiritually neutral.

Islamic economics does not have this problem, because it denies the existence of indifference curves between a hierarchy of qualitatively different spiritual and other needs on the one hand, and between spiritual needs and anti-spiritual desires on the other. Islamic economics recognizes the existence of indifference curves within each qualitatively comparable "level" and applies an ethical analysis to determine the differences between levels. Since only the *nafs* conflates values and tastes, by ignoring the reasons for these "preferences," neo-classical economics is only a theory of choice for the *nafs*. While indifference curves reflecting a single intention can exist for different tastes, they do not exist for different values. Whereas "there is no arguing about tastes," since they do not depend on the truth or require justification, there is an ethical argument about values that depend on truth and require justification. Islamic economics recognizes these crucial distinctions, and thereby combines ethics and economics in a theory of choice for the *rūḥ*, which is spiritually neutral (it recognizes God rather than utility as the Absolute) and logically complete.

Any effort at collective ijtihad on the capital market should, therefore, beware of neo-classical errors. Developing an Islamic capital market requires both a correct understanding of ijtihad and a correct vision of economics with which to inform ijtihad. One cannot base economic analysis on secular economic fallacies any more than one can base ijtihad on anti-Islamic principles. Indeed, modernists usually substitute *taqlīd* of the great imams like Abū Ḥanīfah and his school of law with *taqlīd* of some economists like Milton Friedman and the Chicago School. It is useful to remember that not too long ago many people were arguing for *taqlīd* based on Karl Marx rather than Abū Ḥanīfah, despite the fact that many religious leaders recognized and predicted that communism must fail because it inverts spiritual principles.[9]

The point is not that the Islamic world should blindly follow the imams of the past, but that one should not simply replace them with secular economists today. Indeed, blindly following Milton Friedman instead of Karl Marx may simply replace one error with another. Adopting the neo-classical fallacy, which inverts spiritual principles, necessarily leads to self-destruction, for the Qur'an and Hadith continuously warn humanity of spiritual indifference, regardless of whether it is applied to communism or any other economic system. In short, it is more dangerous to base *taqlīd* on secular economic thought than on past Islamic thought, and understanding the latter can play a key role in refuting the former to correctly inform ijtihad.

In brief, the danger of blindly following neo-classical economics in developing an Islamic capital market is illustrated by the secular analysis of *ribā*. (Regardless of how one defines *ribā* – "preferences" may generate either extremely high or low interest rates – the point is not to examine Islamic arguments on interest, but to examine whether the neo-classical justification of it is spiritually neutral.) Secular economists usually attempt to justify the morality of *ribā* by arguing that consumption today gives more utility than consumption tomorrow, so that a lender must restrain himself/herself in order to lend money. This theory was popularized by Irving Fisher, a major economist on capital markets, and is taught in economics courses on savings and investment. (While we recognize that this is not the only neo-classical justification for *ribā*, it is a popular one. Our purpose is simply to illustrate that it is not spiritually neutral.)

According to this argument, the lender's "effort" at self-restraint deserves a reward, just as the effort of labor in production deserves a reward. This secular economic argument equates not consuming too much, which a Muslim is supposed to do even without compensation, with the jihad of a person working to support his/her family. These two types of "effort" are not, how-

ever, comparable from the Islamic point of view. Abstaining from such an evil as over-consumption is not something that morally requires a payment, whereas accomplishing a good (e.g., working to support one's family) deserves compensation. As the Prophet said: "Pay the laborer his/her wages before the drying up of his/her sweat." He did not say to pay the person who has more money than he/she needs today extra money tomorrow so that he/she will not commit the sin of consuming too much today.

The real effort is to abstain from *ribā*, not simply restraining oneself from consuming too much today. Secular economists often respond that abstaining from *ribā* will ruin the economy. The Qur'an counters this by stating that Satan threatens the Muslim with poverty when he/she abstains from *ribā*, whereas God promises him/her blessings. God's promise is empirically verifiable by the simple fact that stock investments are far more profitable than bonds in the long-run. For example, statistics from Ibbottson Associates show that $1 invested in long-term government bonds in 1926 would be worth $33.73 today, whereas $1 invested in stocks on the New York Stock Exchange would be worth $1,370.95 and $1 invested in the smallest 10 percent of stocks on the exchange would be worth $4,495.99.[10] If someone objects that the stock market cannot accommodate small or short-term investments in order to offer superior returns to capital, the response is that in these cases, abstaining from *ribā* does not lead to the dire poverty envisioned by the economists.

On the contrary, guaranteed interest actually burdens future Muslim generations. As any natural resource economist will testify, maximizing the value of such non-renewable resources as oil requires selling practically everything within 50 to 100 years. Discounting the consumption of future generations places the value of their consumption of these nonrenewable resources at practically zero. The "optimal" sales plan is to exhaust nearly all of the resource within a few generations, after which the resource will have little economic value, because a positive interest rate makes $20 for a barrel of oil today worth far more than $20 for the same barrel 50 years from now. Therefore, future generations are not properly represented in the economic equation, a case of "missing markets" in the language of economists.

Moreover, labor has a spiritual purpose ultimately directed toward God in conformity with the truth, whereas *ribā* does not, for the Prophet said that a person working to feed his/her family is performing an act of worship just as if he/she were praying. Indeed, the Sharīʿah makes the effort to earn one's daily bread a religious act that is just as obligatory as specifically reli-

gious duties, and gives religious meaning to all acts that are necessary for a Muslim's life, but not to those that are exploitative luxuries, such as *ribā*. This is why the Qur'an implies that working for a living and being charitable to one's family, the opposite of hoarding wealth with *ribā*, is tantamount to defending the faith.[11]

The Prophet stressed this fact when a young man with a strong physique was running to his shop through the area where the Prophet was marshalling his troops to repel an enemy assault. Someone remarked that he wished the young man would use his body and health to run in the way of God by enlisting to defend the faith. The Prophet responded:

> If this young man runs with the intention of not depending on others and refraining from begging, he is following God. If he strives for the livelihood of his weak parents or weak children, he is following God. If he tries to show his health out of pride, he is following Satan.[12]

By defining *maṣlaḥah* as the effect of conforming to the truth, Islamic economics opposes the erroneous neo-classical definition of it as personal desire. Only a vision of economics that correctly recognizes the spiritual possibility of the truth as a motivating cause, and *maṣlaḥah* as an effect can inform the ijtihad necessary to develop Islamic capital markets.

This brief example suggests how *taqlīd* of such western economists as Milton Friedman can lead to ruin in formulating Islamic capital markets.[13] Indeed, *taqlīd* based on an older but truly Islamic ijtihad is preferable to the modern *taqlīd* of western economics based on a secular ijtihad. Even if this *taqlīd* is accidental, Muslims must never forget that blindly following secular economic thought, whether neo-classical or Marxist, eventually leads to ruin. Moreover, this accidental *taqlīd* is the real danger in the current environment. While some modernists argue that Muslims do not need a fatwa to justify the *taqlīd* of western financial institutions, other Muslims often unknowingly confuse a fatwa that supports such *taqlīd* with real ijtihad. The two are obviously completely different, just as an occupied territory is different from an independent state.

However, *taqlīd* of past legal rulings on economic matters is also dangerous. While the Islamic view of humanity as God's servant (ʿabd) and vicegerent (*khalīfat Allāh fī al-arḍ*) has not changed, the circumstances according to which people fulfill these roles and make their choices have. In today's complex environment of industrial production and institutional trade, *taqlīd* is no longer possible. Early fatwas dealt with relatively simple economic situations in which exchange was more individual than institu-

tional, and production was more agricultural than industrial. Since questions about just and unjust transactions were simpler, the *faqīh* (expert in Islamic jurisprudence) did not need the expertise of others and could make legal deliberations alone.

This is extremely difficult, for the knowledge required to deal with today's complex environment is enormous and requires specialized investigation in several areas. Moreover, early fatwas dealt with transactions within *dār al-Islām* at a time when Islamic civilization was politically and economically dominant, and did not address the international trade of today, when many Muslim countries are dominated economically if not politically. For all of these reasons, past fiqh on economic matters does not necessarily apply to the current environment. As a result, we must look to the Qur'an and the Sunnah for guidance.

The correct methodology is to apply Islamic principles to economic policy in order to integrate ethics and economics around the three essential principles of *tawḥīd*, *tazkiyah*, and ʿumrān. Each principle has important implications for the Islamic view of wealth and, by extension, the role of capital markets in an Islamic society. Applied to wealth, the truth that God is the Absolute requires that people recognize that wealth is a means that serves their spiritual interests, and that it is not an end in and of itself. If the Absolute is that which requires no further justification, then the first principle excludes the possibility of money or anything else being viewed as a self-sufficient end. Moreover, the first principle obviously requires that believers have God, rather than any other good, as their ultimate end, for God can never be a means to a further end. To suggest otherwise is to deny that He is the Sovereign Good "requiring no justification in terms of a higher good."[14]

The second principle, *tazkiyah*, requires that people's will and sentiment be pure and willing, and that they love all things for God's sake. Purity requires that the will of *homo Islamicus* should keep the Sovereign Good in view and consider all things in their connection with this Good. Their sentiments should be objective in loving all things in their divine context. It would be illogical and against the truth for *homo Islamicus* to will or love things outside of their Divine Cause, for that would constitute the sin of idolatry, defined as "to hate indirectly the Cause from which all perfection and all love derive."[15] The second principle, therefore, requires that people must not be passionately attached to wealth; must be grateful to God for their *rizq* (provisions) and view nature as an *āyah* (sign) of Allah; and must be generous when dealings with others. The fact that zakah is based on the

same root as *tazkiyah* shows just how intimately generosity is connected with purity.

The third principle, *ʿumrān*, requires that people accomplish the good in building civilization. In other words, they should not waste their God-given talents and resources either through underutilizing them and neglecting to fulfill their real needs or through exploiting them in the service of greed rather than God. In accomplishing the good, the third principle requires humanity to be vigilant and not slothful, build wealth and civilization to fulfill real spiritual and other needs, and not to abuse them for the sake of passion.

These three principles show that Islam recognizes the importance of wealth in a hierarchy of humanity's spiritual and other needs (*maṣāliḥ*). The Islamic economic hierarchy recognizes that such external goods as wealth are means to attain goods related to the body, such as health and beauty, which, in turn, is the physical support for the spiritual work that manifests itself in intrinsic virtue, the "goods of the soul." The Islamic principles of *tawḥīd*, *tazkiyah*, and *ʿumrān* regulate this hierarchy and integrate humanity's spiritual and other needs into a meaningful whole, thereby realizing and implementing the *shahādatayn* (the fundamental testimonies of faith). In this sense, Islamic economics recognizes the possibility that people can be motivated by the truth or God, rather than by utility or happiness, to eliminate the evil and accomplish the good.

Given all of the above points, we can say that Islam clearly recognizes the role of capital markets in raising funds for companies and projects designed to help the community fulfill its physical and other needs while also providing the necessary liquidity. But the capital market cannot betray the purpose of its existence, which is determined by these three essential Islamic principles. Islamic values must be in the marketplace as well as the mosque, for God is the witness to all contracts. Therefore, companies and investors must use resources ethically in a way that is consistent with these principles. This raises many questions, such as how the capital market can be used as a means to wealth or development that supports society's spiritual ends. Such questions cannot be answered by simply assuming that the capital market or wealth is an end in and of itself. Indeed, the principles imply that freedom is not an unconditional right, but rather the result of fulfilling one's responsibilities. It is self-contradictory to argue that human dignity gives unlimited rights to the basest of people, for this would allow such people to destroy what makes up a person's real dignity: his/her attachment to God.

Several questions that suggest the kinds of responsibilities these principles imply for companies and investors are given below. They are intended to be suggestive (not exhaustive) and relate directly to the equity (not the debt) market. Although several questions apply to both, they are placed in the context of the stock (rather than bond) market, for the latter ultimately contradicts essential Islamic principles. More investigation is needed to determine distinctions between bond types and which types are Islamically acceptable (e.g., bonds for such public works projects as airports).

Turning first to companies, these principles raise questions about corporate responsibility to customers, employees, and shareholders. For example:

- Is it Islamically acceptable for companies to use money raised in the capital market to create entry barriers that inhibit competition so that they can charge their customers higher prices? Islamic principles say it is not. But this has occurred in several American industries.[16]

- Can companies treat some shareholders differently, even when they make similar investments? Justice requires that investors be treated equitably and that arbitrary treatment be considered unacceptable.

- What type of technology will the companies buy with their raised capital? Case studies by the Appropriate Technology Institute reveal that the West often sells technology to developing countries that cannot be transplanted and is often inappropriate. E. F. Schumacher, an economist famous for popularizing appropriate technology, has demonstrated that large-scale western technology is often not in the people's best interests.[17] Some economists may object that the market always produces the most efficient types of technology, but the Appropriate Technology Institute's research shows this is not always the case and that inappropriate technology can conflict with spiritual principles. After billions of dollars have been loaned to developing countries to buy inappropriate technology with such dismal results, it is time to consider more appropriate technologies.

- What is a company's responsibility to the environment and future generations with respect to pollution and resources? For example, can companies use capital from the stock market to deplete non-renewable resources within 50 or 100 years in order to maximize financial gain? Once again, this violates Islamic principles. However, this is the regular practice of the oil industry, which represents some of the world's largest publicly traded companies. In short, capital must be used according to

Islamic principles if the idea of an Islamic capital market is to have any meaning.

Although these questions highlight some of the differences between Islamic and secular stock markets, there are several areas of common concern. Of particular concern is givng investors complete information on corporations so that unscrupulous brokers and companies cannot mislead them into purchasing practically worthless shares, as was common in the early days of the American stock market and, to some extent, today.

Only in the last decade did the U.S. Securities and Exchange Commission close such notorious brokerage firms as Blinder and Robinson, known to experienced investors and industry experts as "Blind'em and Rob'em." This brokerage firm routinely created companies in which it was the only "market-maker," or transactor of sales, and created an enormous spread between the "bid" price and the "ask" price, thereby making an enormous profit on the difference. To trick potential investors into buying shares, the brokerage firm would tell them that the company manufactured something morally commendable, like Bibles. It would then manipulate the stock price by sending it higher and higher, moving investors into and out of the stock (known as "churning the accounts"). On each transaction, it made a huge profit. The firm would continue to manipulate the stock price higher before bringing it crashing down and wiping out the remaining investors. The process would then begin again with a new round of investors. Certain types of stocks are still notorious for scandals, such as "penny stocks" in gold or oil companies, which attract investors with false promises of vast discoveries of gold or oil deposits. Thus, a large drop in a stock's price should be investigated to ensure that there has been no manipulation.

Similarly, unscrupulous brokers must be prevented from selling their own shares to customers at unnecessarily high prices by buying shares for themselves before their customers. However, eliminating these swindles is not sufficient to make the market "Islamic," because the Islamic market is concerned with other ethical questions as well. Moreover, the function of all participants (e.g., market-makers and dealers) must be examined and justified in light of Islamic principles.

Turning to investors, Islamic principles raise questions about the investments available to them. Of course, any investments in liquor and casino stocks, for example, are forbidden. But what about futures and options trading on companies selling *ḥalāl* products? Futures contracts on stocks require more study and should be stopped until they are properly analyzed. Of

course, futures contracts on commodities require the seller to actually have the commodity specified in the contract. Similarly, options are questionable because they allow one investor to buy shares from or sell shares to another investor before a given time and at a pre-determined price in exchange for a fixed, irretrievable payment. Many scholars argue that such a transaction encourages speculation and allows exploitation, both of which are against Islamic principles.

Similarly, one must determine how much leverage is Islamically permissible when investing in stocks? Can investors put down 10 percent in the hope of greater profits and pay interest on the 90 percent balance? This was the New York Stock Exchange's policy before the stock market crash of 1929. Afterwards, the minimum investment was increased to 50 percent, because such a high leverage contributed to the prices' collapse and so created instability by encouraging speculation. Such destabilizing speculation is clearly against Islamic principles and is the major reason why some modernists argue that bonds are necessary, since stocks are unstable.

But many economists have pointed out that debt financing and speculation are major causes of stock market instability.[18] This is especially important in the current market environment, when price-earnings ratios are at extremely high levels. In the past year, Alan Greenspan, chairman of the U.S. Federal Reserve, repeatedly warned investors to invest cautiously, clearly discouraging leveraged investments that increase market volatility. This is good advice, because price-earnings ratios and market volatility have now reached levels similar to those before the market crash of 1987. Some economists argue that the stock market's volatility is not rational, and that information systems on company performance and stock prices must be better utilitzed. Therefore, trading rules that limit leverage are critical to stabilizing the stock market and maximizing investor safety. Short-selling also increases instability and is clearly against Islamic principles. Under trading rules that allow leverage and short-selling, both of which decrease stability, fewer investors will prosper from the growth of publicly traded companies and fewer funds will be available for the capital market in the long term.

In general, neo-classical economists often argue that regulations that reduce choices for investors and companies are harmful. They argue that one must contradict the essential Islamic principles of the Qur'an or Sunnah because of the community's *maṣlaḥah*, fiqh's relativity, the absence of alternatives, or a combination of all three. However, those engaged in collective ijtihad must defend the Islamic economic approach which uses applied ethics from these erroneous charges. We will make a few suggestions in this regard.

Let's begin with the last argument: the lack of alternatives. Actually, this is a variation of the *maṣlaḥah* argument, since it derives its force from the harm that would befall the community if it abstained from the economic activity in question. As the earlier discussion on the principles of an Islamic capital market showed, alternatives do exist, but our lack of creativity and desire to realize this goal prevent their implementation. Therefore, this section focuses on the neo-classical economists' first two arguments: the community's *maṣlaḥah* and fiqh's relativity.

As pointed out earlier, what is relative must conform to the absolute, not vice-versa. Scholars in *uṣūl al-fiqh* have maintained that arguments based on what is relative (such as *maṣlaḥah* and time) are not valid against arguments based on what is absolute, namely, the Qur'an and Sunnah, as well as the principles that they necessarily imply. Erroneous arguments that contradict the absolute based on the relative make the relative absolute, and thereby contradict the first principle of *tawḥīd*. Without absolute and eternal standards based on *tawḥīd*, there is no basis upon which to evaluate either *maṣlaḥah* or changes in time. Consequently, there is no basis on which to purify individuals and society from evil or to accomplish the good, thereby contradicting the second and third principles of *tazkiyah* and *ʿumrān*, respectively.

The argument that humanity can determine what is in its best interests by thinking about *maṣlaḥah* without referring to revelation is absurd. The Qur'an commands us to think about our interests with an intelligence that is pure (*salīm*). But this is only possible if we follow the Shariʿah. When passionate desires control us and we break the Shariʿah, our intelligence alone is not sufficient to determine what is in our best interests.

Similarly, the fact that some parts of fiqh are relative cannot be used to argue that all parts are relative. This erroneous argument implies that everything is relative, which itself is self-contradictory. One scholar answers this absurd proposition in the following manner:

> Relativism sets out to reduce every element of absoluteness to relativity, while making a quite illogical exception in favor of this reduction itself. In effect, relativism consists in declaring it to be true that there is no such thing as truth, or in declaring it to be absolutely true that nothing but the relatively true exists; one might just as well say that language does not exist, or write that there is no such thing as writing. In short, every idea is reduced to a relativity of some sort, whether psychological, historical, or social: but the assertion nullifies itself by the fact that it too presents itself as a psychological, historical, or social relativity. The assertion nullifies itself

if it is true, and by nullifying itself logically proves thereby that it is false; its initial absurdity lies in the implicit claim to be unique in escaping, as if by enchantment, from a relativity that is declared alone to be possible.[19]

Thus, arguments that contradict the absolute because of *maṣlaḥah* or time are fallacious. Unfortunately, secular economics combines both errors in a way that is even more extreme than that of Najm al-Dīn al-Ṭūfī, who argued that *maṣlaḥah* has priority even over the Qur'an and Sunnah. Secular economists and some Muslims have used this type of argument against developing a truly Islamic capital market. Of course, specialists in *uṣūl al-fiqh* recognize the danger of al-Ṭūfī's argument and have developed an extensive literature on the appropriate use of *maṣlaḥah* in legal arguments. The scholars have strongly rejected radical interpretations of *maṣlaḥah*, as the following quote from Zāhid al-Kawtharī's criticism of al-Ṭūfī illustrates:

> One of their spurious methods in attempting to change the *Sharʿ* in accordance with their desires is to state that "the basic principle of legislation in such matters as relating to transactions among men is the principle of *maṣlaḥah*; if the text opposes this *maṣlaḥah*, the text should be abandoned and *maṣlaḥah* should be followed." What an evil to utter such statements, and to make it a basis for the construction of the new *Sharʿ*!

> This is nothing but an attempt to violate the divine law (*al-Sharʿ al-Ilāhī*) in order to permit in the name of *maṣlaḥah* what the *Sharʿ* has forbidden. Ask this libertine (*al-fājir*) what is this *maṣlaḥah* on which you want to construct your law? ... The first person to open this gate of evil ... was Najm al-Ṭūfī al-Ḥanbalī ... No Muslim has ever uttered such a statement ... This is naked heresy. Whoever listens to such talk, he partakes of nothing of knowledge or religion.[20]

Although al-Ṭūfī was clearly unsuccessful in his attempt to abuse the concept of *maṣlaḥah* and create heretical legislation, unfortunately, in the West, his British counterpart Jeremy Bentham, who was reacting to the injustices of the church, was far more successful. Bentham played a key role in developing the secular economics that now oppose the development of a truly Islamic capital market. Bentham defined *maṣlaḥah* in terms of individual desires, regardless of whether they are from the *nafs al-ammārah* or not. Modern economics uses the same approach by defining *maṣlaḥah* as any voluntary choice. According to this theory, more choice is always better because any voluntary exchange supposedly increases the society's *maṣlaḥah* (assuming that it does not create a negative "externality" or negatively affect others). According to

this theory, Islamic rules on ethics in the capital market are wrong, because they reduce the people's choices. Modern economics claims to be for the *maṣlaḥah* of society by maximizing these choices in accordance with the Pareto principle that "nobody can be made better off without anybody being made worse off."

From the Islamic point of view, this definition of *maṣlaḥah* is absurd and simply replaces serving God with serving one's passions in terms of utility. The theory makes the relative absolute by subordinating truth to desire, not distinguishing between "the mental states involved in believing something that really is true and a successful deception."[21] This neo-classical definition ignores whether an action or an intention conforms with the truth of the Absolute, thereby allowing an egoistic illusion to be preferable to the bitter truth, and a complete delusion that one has realized the meaning of existence to be the same as actually doing so. Thus it is irrelevant to economics if the perceived *maṣlaḥah* is false in relation to its object or level. In the latter case, "the object can be good, but happiness can be wrong if it cuts it[self] off from its Divine context…"[22]

Such false happiness or *maṣlaḥah* is unacceptable from any spiritual point of view. If the *nafs al-ammārah* is making the choices instead of the *rūḥ*, then fewer choices are better for both the individual and society. As al-Ghazālī said, some people have to be driven to heaven with a whip. Conforming capital markets to Islamic principles by eliminating evil choices and creating good choices is the true definition of *maṣlaḥah*. Unfortunately, many Muslim scholars believe that western economics can guide the Ummah to develop its capital markets. Therefore, it is vital to show how these economic arguments make *maṣlaḥah* absolute instead of God, and how they invert essential Islamic principles.

Indeed, the economic definition of *maṣlaḥah* destroys the Islamic integration of the Ummah's spiritual and other needs by inverting the three key principles. The definition clearly inverts the first Islamic principle (*tawḥīd*) by making *maṣlaḥah* absolute, instead of God. It denies that God is the Sovereign Good "requiring no justification in terms of a higher good," and replaces God with *maṣlaḥah*.[23] According to economics, wealth can be an end in and of itself because *maṣlaḥah* is not subordinate to the truth.

In replacing truth with error, economics similarly inverts the second Islamic principle (*tazkiyah*). By making *maṣlaḥah* absolute, economics denies the need for purity in willing and loving all things for God's sake, and makes its inversion unavoidable. Rather than eliminating evil, acting according to the economic definition accomplishes it. Without truth to regulate *maṣlaḥah*

and our desires, we are bound to be passionately attached to wealth, ungrateful, and greedy (*tazkiyah* requires detachment, satisfaction, and generosity), as the Qur'an and Hadith testify.

Similarly, this definition perverts the third principle (ʿumrān), substituting accomplishing the good with an exaggerated concept of development that resembles an irrational swelling more than an intelligible civilization. Unlimited greed leads to the exploitation of nature and, inevitably, to an environmental crisis. Moreover, society decays from the pursuit of immoral pleasures associated with this economic definition. This is obviously inconsistent with the third principle of building civilization to accomplish the good, because it implies a wealth motivated by greed rather than spiritual principles.

In fact, this is the very starting point of western economics, beginning with Adam Smith, who examined the wealth of nations, in his book of the same title, from the point of view of material pursuits.[24] As a Deist, he believed that God was detached from the world. Similarly, John Locke believed that God was unknowable and that civilization had to be based on human reason rather than revelation. For him, the purpose of government was to facilitate the unlimited accumulation of money and exploitation of nature for material prosperity. "The negation of nature," he argued, "is the way toward happiness."[25] Such doctrines are a parody of the Islamic concept of ʿumrān.

Such contemporary scholars as Muḥammad Saʿīd Ramaḍān al-Būṭī correctly argue that utilitarian philosophy, of which economics is the central application, represents nothing short of an attempt to destroy Islam.[26] To better understand this dangerous character of secular economics, it is helpful to understand more about Jeremy Bentham, the "founding father" of modern utilitarianism.[27] Bentham hated God and religion, and attacked both vehemently. John Colls, a former disciple of Bentham who later turned against him, described Bentham's volumes on religion as "volumes of blasphemy and slander ... against the Author of Christianity and His people."[28] Bentham attacked the Church's teachings, arguing that bans against practices that do not "harm others," such as sexual indulgence and homosexuality, actually decreased utility. For him, questions about the truth of religion were irrelevant and relegated to second-order considerations if divorced from justifications in terms of utility.

His book, *An Introduction to the Principles of Morals and Legislation*, established the utilitarian principles on which the state should replace religious laws so that it could govern society with secular laws based on the sci-

ence of legislative utilitarianism. After trying to influence others with the book before its publication, Bentham dreamed that he was "a founder of a sect, of course a personage of great sanctity and importance."[29] Bentham dreamed of himself as the savior of England and possibly the world. When asked by "a great man" what he should do "to save the nation," Bentham replied: "Take up my book, and follow me." Bentham implied that his book should replace scripture as the best plan to save the world, for it is a book with "the true flavour of the fruit of the tree of knowledge." The angel who delivered it to him said that Bentham "had no occasion to eat it ... as St. John did his: all I had to do was cram it as well as I could down the throats of other people."[30]

Given this account of Bentham's source of inspiration, one should have no questions about applying secular economics to the development of Islamic capital markets. Unfortunately, many Muslim scholars call for help from secular economists, not understanding the dangerous assumptions behind their economic policy recommendations. Secular economics has no category for motivation by the truth, because utility is absolute. Muslim economists can refute this approach by drawing on the valuable literature in *uṣūl al-fiqh*, which had a parallel refutation of al-Ṭūfī. Scholars in *uṣūl al-fiqh* must also be aware of the dangerous assumptions underlying neo-classical economics. Both groups of scholars can generate truly Islamic alternatives and refute the modernists' arguments that an Islamic economy does not serve society's *maṣlaḥah*.

CONCLUSION

Hence, *taqlīd* of secular economics and institutions is even more dangerous than *taqlīd* of scholars in Islamic law. Contemporary Muslim scholars must acquire an accurate understanding of both ijtihad and Islamic economics on which to base their capital markets policy. Bad economic analysis can misinform the best ijtihad, just as erroneous ijtihad can vitiate the best economic analysis. A correct understanding of both disciplines must be achieved by applying the three essential Islamic principles: *tawḥīd*, the truth that God is the Absolute; *tazkiyah*, the purification of humanity and society from evil; and *ʿumrān*, the building of civilization to accomplish the good.

By recognizing that truth is the believers' motivating cause in purifying themselves from evil and accomplishing the good, authentic ijtihad and Islamic economics can be combined in order to develop a truly Islamic capital market. The same analysis must also refute the erroneous legal and eco-

nomic arguments of those who favor *taqlīd* of the West with a fatwa. If current ijtihad fails to apply such essential Islamic principles, the Ummah will face a more perilous situation in the future, for nothing useful can be accomplished without the truth.

The most important cause of our current economic problems is the lack of wisdom. Consequently, we do not know how to properly use our God-given resources. The secular economist's argument that scarcity is necessary because everyone must have insatiable desires is a myth propagated by the West. God's justice must be the source of our guidance, for wealth is God's wealth, and humanity is God's creation. We are His vicegerents and must fulfill our duty to Him. God says the truth, and may He guide us.

NOTES

1. For example, that avoiding evil is prior to doing good.
2. Geoffrey Brennan, "The Economist's Approach to Ethics: A Late Twentieth Century View," in Peter Groenewegen, *Economics and Ethics?* (New York: Routlege, 1996), 124.
3. Ibid.
4. Quoted from Tibor Machan, "Reason in Economics versus Ethics," *International Journal of Social Economics* (1996): 21.
5. C. Dyke, *Philosophy of Economics* (Englewood Cliffs, NJ: Prentice-Hall, 1981), 10-11.
6. Frithjof Schuon, *Spiritual Perspectives and Human Facts* (Middlesex: Perennial Books, 1987), 93.
7. For example, humility comes from one's total dependence on God. This awareness prevents people from overestimating themselves and underestimating others.
8. As Seyyed Hossein Nasr notes, Marxism is Christian charity without Christ. See his *The Need for a Sacred Science* (Albany: State University of New York Press, 1993), 152.
9. Frithjof Schuon, *Esoterism as Principle and Way* (Middlesex: Perennial Books, 1981), 94.
10. Ibbotson and Associates, *Stocks, Bonds, Bills, and Inflation: 1997 Yearbook* (Chicago: Ibbotson and Associates, 1997).
11. Muhammad Abdul-Rauf, *A Muslim's Reflections on Democratic Capitalism* (Washington, DC: American Enterprise Institute), 5.
12. Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn* (New Delhi: Kitab Bhavan, n.d.), 2:54.
13. As the paper's first section clarifies, it is important to point out that an interest-free capital market does not by itself guarantee that the capital market is Islamic, for it is possible to have an un-Islamic capital market that is interest-free.

14.   E. F. Schumacher, *Guide for the Perplexed* (New York: Battam, 1997), 58.

15.   Frithjof Schuon, *Stations of Wisdom* (Bloomington: World Wisdom Books, 1995), 94.

16.   The breakfast cereal industry, represented by such companies as Kellogg's and Post, is a recent example. Only after the American government applied heavy legal pressure did the industry's companies respond by reducing their prices. See F. M. Scherer's *Industrial Organization* for these and other examples.

17.   E. F. Schumacher, *Small Is Beautiful: Economics as if People Mattered* (New York: Penguin, 1973).

18.   M. Umer Chapra, *Towards a Just Monetary System* (Leicester: The Islamic Foundation, 1985), 95–100.

19.   Frithjof Schuon, *Logic and Transcendence* (Middlesex: Perennial Books, 1984), l.

20.   Muhammad K. Masud, *Shatibi's Philosophy of Islamic Law* (India: Kitab Bhavan, 1997), 163.

21.   James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford: Clarendon Press, 1986), 13.

22.   Schuon, *Esoterism*, 102.

23.   Schumacher, *Guide for the Perplexed*, 58.

24.   Harry Landreth and David Collander, *History of Economic Thought* (Boston: Houghton Mifflin Co., 1994), 67.

25.   Jeremy Rifkin with Ted Howard, *The Emerging Order: God in the Age of Scarcity* (New York: G. P. Putnam's Sons, 1979), 30.

26.   Masud, *Shatibi's Philosophy*, 132.

27.   The following account of Bentham draws from an article by Waleed El-Ansary on "The Spiritual Significance of Jihad in Economics," *American Journal of Islamic Social Sciences* (June 1997): 251.

28.   Quoted from James Crimmins, *Secular Utilitarianism: Social Science and the Critique of Religion in the Thought of Jeremy Bentham* (Oxford: Clarendon Press, 1990), 148.

29.   Ibid., 287.

30.   Ibid., 315.