COLLECTIVE IJTIHAD

REGULATING FATWA IN POSTNORMAL TIMES

HOSSAM SABRY OTHMAN

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HOSSAM SABRY OTHMAN

LONDON • WASHINGTON

TO THE MEMORY OF MY BELOVED FATHER

No longer by my side but forever in my heart

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FOREWORD

IN THIS important work Hossam Sabry examines the relationship between fatwa issuance, *maṣlaḥah*, and application of collective or deliberative ijtihad (*ijtihād jamāʿī*) in the modern context, comparing contemporary models of decision-making to traditional mechanisms, as well as analysing the role jurists (muftis, *mujtahids* and imams) play in shaping rulings and final outcomes. Sabry calls for a reassessment of current institutional practices contending that Muslim societies need not be vulnerable to the demands of a media driven, technocratic age but that, in the interests of a healthy functioning society, issue fatwas cognizant of the wider modern context, specialist knowledge, as well as the cultural diversity that exists in the Muslim world. The work also analyses in detail the way in which rulings are controlled, rather than issued with full independence and authority by jurists, and additionally calls for an interdisciplinary approach through collective ijtihad, to be adopted, allowing experts to contribute to respective discourses, given the complex nature of modern challenges.

An interesting area is Sabry's analysis of the world of modern fatwa pronouncements with Muslims today wherever in the world or whatever their circumstances happen to be, able to simply text, telephone, or email their requests, and be provided with an answer by on-line muftis with immediacy. This leads to jurists having to give way to pressures of program timing and growing queues of people wanting an answer and so not possibly giving matters the time and attention they need.

Sabry hypothesises that the issue will become increasingly more complex and problematic as knowledge and technology advance, and societies evolve in response. Therefore for Sabry internal processes need to be managed today through a strategy employing collective

ijtihad, so that Islamic stability is not threatened tomorrow when that evolution and complexity become too unwieldy to handle.

This book is intended to benefit both general and specialist readers alike, with a view to increasing awareness of the question of the issue of fatwas, juristic opinions and how rulings are determined and disseminated. Doubtless readers may agree with some of the issues raised, and disagree with others, but it is hoped that for the most part they will benefit from the perspective offered and the overall issues examined.

The translation of the Qur'an used in this study is based on the translation provided by M.A.S. Abdel Haleem and published by Oxford University Press. The reason for choosing this translation lies in the fact that it is written in contemporary English language that remains faithful to the meaning and spirit of the original, making the text understandable while retaining its eloquence. The website Sunnah.com was consulted for translation of the prophetic hadiths with some occasional changes when necessary.

Dates of death cited after the proper names of the classical scholars and jurists are taken from *al-Aʿlām* of Khayr al-Dīn al-Ziriklī. Generally speaking, both Hijri and Gregorian dates are given after the first mention of the proper name. However, there are some exceptions where only the Hijri date is mentioned. Dates cited according to the Islamic calendar (hijrah) are labelled AH. Otherwise they follow the Gregorian calendar and labelled CE where necessary. Arabic words are italicized except for those which have entered common usage. Diacritical marks have been added only to those Arabic names not considered contemporary. English translations taken from Arabic references are those of the author.

Since its establishment in 1981, the IIIT has served as a major center to facilitate serious scholarly efforts. Towards this end it has, over the decades, conducted numerous programs of research, seminars and conferences as well as publishing scholarly works specializing in the social sciences and areas of theology, which to date number more than seven hundred titles in English and Arabic, many of which have been translated into other major languages.

We express our thanks and gratitude to the author for his co-operation throughout the various stages of production. We would also like to thank the editorial and production team at the IIIT London Office and all those who were directly or indirectly involved in the completion of this book. May God reward them for their efforts.

IIIT LONDON OFFICE

INTRODUCTION

BEING A vehicle of reform, renewal and religious guidance, ijtihad seeks to maintain the continuity of the fundamentals of Islam while also keeping pace with the ever-changing realities of societies. This concern for continuity and change characterizes the role ijtihad plays in its association with real life, making the Islamic Shari^{c}ah a living force in society and ensuring its flexibility and applicability to all times, generations and places. Being suitable for all times and places, the Shari^{c}ah is characterized by broadness and flexibility, and contains both changeable and unchangeable rules – a unique feature that ensures its viability and enables it to move through time with ease, transcending the spatiotemporal boundaries and providing the Muslim nation with up-to-date guidance.

Given the accelerated pace of social change and technological advancements with their attendant complexities, contemporary ijtihad has to grapple with very intricate issues born out of the particularities of our modern life. In fulfilling its role of providing religious guidance, it treads a delicate path capitalizing on the inherently fluid and evolutionary nature of Islamic fiqh, benefiting from the accumulated knowledge of past precedents and contributing to the contemporary juridical discourse. However, in light of the complex nature of the present-day world, the ramifications of the breathtaking advancements in all spheres of life and branches of knowledge and complexity of fresh issues to be juristically discussed, contemporary ijtihad requires interdisciplinary and multidisciplinary knowledge mostly unattainable by individual scholars.

Considering that the educational background of the overwhelming majority of religious scholars is almost exclusively theological and religious in nature and due to the peculiar and sophisticated character

of novel issues, a dire need arises to seek help of scholars from outside the domains of religious sciences to formulate the sound and precise perception. These experts can be specialists in finance, economics, medicine, veterinary science, architecture, astronomy, or any other discipline. Bearing this in mind, contemporary ijtihad needs to become a collective endeavor that combines the knowledge and contributions not only of the scholars of Shariʿah, but of experts in various disciplines. Together, jurists and experts approach the question in a deliberative mode to ensure a thorough understanding of all aspects of the issue under juristic investigation. Through this deliberative and collective mode of legal reasoning, it is possible to recover effectiveness, vitality, and continuity of ijtihad. Moreover, this mode of juridical reasoning can contribute to addressing various problems of fatwa.

The field of contemporary fatwa is afflicted by a chaotic situation where practically anyone can appoint himself a mufti and proceed to spew out abnormal legal verdicts that perplex the laity and contribute to the phenomenon of competing fatwas especially in the open space era in today's media-saturated world. Rather than being a tool of religious guidance, chaotic fatwa has become a source of perplexity among believers and constitutes one of the major quandaries facing the Muslim community. The most prominent problematic issues of individual *iftā'* include issuance of fatwa by unqualified individuals, shortcomings of live fatwas, politicization and manipulation of fatwa, and restricting fatwa to extreme leniency or overstrictness. Bearing this in mind, many scholars have voiced a dire need to regulate the process of producing fatwas especially when they touch upon highly technical issues that require specific qualifications. In line with these calls, this study investigates the possibility of employing the mechanism of collective ijtihad in regulating and rationalizing fatwa issuance. In this context, rationalization means to organize and control the way of producing fatwa to ensure efficiency and rationality.

Collective ijtihad is hypothetically characterized by having the potential to address intricate technicalities of complex novel issues which are characteristic of our age. Being a mechanism of collective reasoning, this mode of ijtihad is expected to be less prone to error in comparison with the individual endeavor. The collaborative nature

and involvement of many jurists and technical experts, rather than one single jurist, enable conducting a rigorous and multi-layered investigation before construing the religious ruling so that the possibility of reaching erroneous conclusions can be kept to the minimum. Ijtihad in its collective mode overarches all individual views by virtue of its twin qualities, namely agreement of competent jurists and complementarity between non-fiqh experts and Shariᶜah scholars. The opinion of the group is more likely to be closer to the truth than the individual view, as two heads are better than one. During a group deliberation, perhaps one person grasps an aspect of the subject that another does not notice, or recognizes what escapes the attention of others. The discussion may reveal some points that were hidden, unveil things that were obscure, or remind with things that were forgotten.

In the same vein, collective ijtihad ensures complementarity between scholars and experts. The nature of the modern educational system has fragmented sciences into various disciplines and created multiple specializations and subdivisions within each discipline to the extent that it has become almost impossible for contemporary Shariᶜah scholars to grasp resultant new techniques and subtleties. Accordingly, Shariᶜah scholars urgently need the involvement of scientists to fully understand the reality upon which they are expected to draw conclusions. Here, the mechanism of collective ijtihad comes into its own, for it allows scope for the potential unification of both scientists and religious scholars, pooling their efforts through practical application of another important principle, that of *shūrā*, a collective endeavor and a decision-making process based on mutual consultation. The notion of consultation has always been a historical human endeavor of paramount importance, ultimately embodied in the practice of the Prophet (ṢAAS)* and his Companions after his demise. This mechanism of *shūrā* can be instrumental in the process of ijtihad to ensure the complementarity required between non-fiqh specialists and jurists in an interdisciplinary and multidisciplinary approach.[1]

*(ṢAAS) – *Ṣallā Allāhu ᶜalayhi wa sallam*. May the peace and blessings of God be upon him. Said whenever the name of Prophet Muhammad is mentioned.

OVERVIEW

THIS study comprises an introduction, four chapters and a conclusion. The first chapter presents a theoretical and historical overview of the subject. As far as the theoretical aspect is concerned, the terms ijtihad, *al-ijtihād al-jamāᶜī* (collective ijtihad), *ijmāᶜ* and *fatwa* are briefly discussed and the relationship between them delineated in the first section. The historical framework is dealt with in the second section which gives a brief account of the historical development of collective ijtihad, beginning with the era of the Prophet through the formative period of Islamic law, with special reference to some efforts of this mode of intellectual reasoning in more later stages, namely *Al-Fatāwā al-ᶜĀlamgīriyyah* and the Ottoman *Mecelle*. Because ijtihad has taken on an institutional form in the modern age, the third section singles out three early institutions of collective ijtihad with their historical background, method of work, roles and some examples of their ijtihad investigated.

The second chapter begins with discussing the legal authority of collective ijtihad based on the authoritativeness of majority opinion. It also investigates the potential of this mechanism to be a viable alternative to classical *ijmāᶜ* which may be difficult to realize in the modern world. The second section discusses the question of the conditions and qualifications of the persons involved in this mode of juridical reasoning with emphasis on the critical need for complementarity between jurists and technical experts in order to reap the fruits of such a mechanism. The third section highlights these benefits of collective ijtihad and its reformative role in promoting unity, eliminating controversy, combating radicalism and extremism, and employing the highly emphasized principle of mutual consultation in deciding legal rulings.

The third chapter focuses on the role of a collective mode of reasoning and group ijtihad in rationalizing fatwa. It begins with analysis of the most prominent problematic issues of individual *iftā'* including the issuing of fatwas by unqualified individuals, live fatwas and their advantages and disadvantages, politicization and manipulation of fatwa, and fatwas oscillating between extreme leniency and overstrictness. The

second section discusses the potential of collective ijtihad to address problematic issues of individual *iftā'*, with special reference to bioethics and Shariᶜah supervisory boards in the Islamic banking sector.

Chapter four investigates the challenges and obstacles facing collective ijtihad. These include affiliation and lack of independence, the controversial role of technical experts and its scope, the limited pool of participant non-fiqh experts, the absence of female members in fiqh academies, the politicization of academy membership, and lack of liaison between different fiqh academies. In addressing this, special reference is given to the case of Shariᶜah supervisory boards where the problem of affiliation is more evident, while the role of experts is studied in light of ijtihad in biomedical issues. The chapter concludes with suggested solutions to ensure greater efficiency of collective ijtihad.

Finally, the Conclusion provides a quick review of the main arguments and recommendations of this study and suggests scope for future research.

CHAPTER 1

Conceptual and Historical Framework of Collective Ijtihad

Overview

MAIN concepts and key terminology to be used throughout this study are clarified, with definitions of the terms ijtihad, *al-ijtihād al-jamāʿī* (collective ijtihad), *ijmāʿ* and fatwa briefly discussed including the relationship between them. An account of the historical development of collective ijtihad is provided, beginning with the era of the Prophet through to the formative period of Islamic law, with special reference to some efforts of this mode of intellectual reasoning in later stages. Because ijtihad has taken on an institutional form in the modern age, the third section investigates three early institutions of collective ijtihad.

[1.1] COLLECTIVE IJTIHAD: CONCEPTUAL OVERVIEW

Concept of Ijtihad

The Arabic word ijtihad in its etymological sense is derived from the root '*Jehd*' or '*Juhd*', meaning exerting oneself to the utmost. The verb '*jahada*' or '*ijtahada*' literally means to do one's best and is generally

used in an activity which entails hardship and striving. Accordingly, ijtihad in the linguistic sense means doing one's utmost to realize a certain thing entailing hardship.[1]

Technically speaking, ijtihad is the total expenditure of effort made by a jurist in order to infer, with a degree of probability the rules of Shariᶜah from their detailed evidence in the sources.[2] In fact, the scholars of *uṣūl* put various definitions of ijtihad; however, there is no significant disparity among such definitions where their core denotes the utmost exertion to the point of intellectual exhaustion on the part of the qualified jurists to deduce legal rulings based on their independent reasoning and understanding of the texts of Islamic Shariᶜah. In this regard, Wael B. Hallaq states:

> As conceived by classical Muslim jurists, *ijtihād* is the exertion of mental energy in the search for a legal opinion to the extent that the faculties of the jurist become incapable of further effort. In other words, *ijtihād* is the maximum effort expended by the jurist to master and apply the principles and rules of *uṣūl al-fiqh* (legal theory) for the purpose of discovering God's law.[3]

It may be suitable here to cite some of the definitions put by the early scholars. According to Sayf al-Dīn al-Āmidī (d. 631/1233), ijtihad is the total expenditure of effort to reach a legal ruling by the way of probable knowledge (*ẓann*) to the extent that the jurisprudent feels unable to exert anymore.[4] Abū Ḥāmid al-Ghazālī (d. 505/1111) defines it as the "total expenditure of effort by a jurisprudent to acquire knowledge of Shariᶜah rulings."[5] Similarly, al-Subkī (d. 771/1370) defines it as the total expenditure of effort on the part of the jurisprudent to reach a probable knowledge of a ruling.[6] Al-Isnawī (d. 772/1370) also defines it as "the expenditure of effort to arrive at the rulings of Shariᶜah."[7]

These definitions revolve around the idea of the exertion of utmost effort by a jurisprudent, using all faculties, to realize a legal ruling. This process represents a very basic component of Islamic tradition. In the words of Aron Zysow, with the doctrine of ijtihad, we touch a very sensitive nerve of Islamic culture. For upon this doctrine hinges in large measure the role of law among the religious disciplines.[8] This perennial

significance is emphasized in light of the new issues and unprecedented incidents arising in every era, requiring much intellectual effort to infer legal rulings from the sources of Shariᶜah or to implement such rulings and apply them to particular cases. Such intellectual activity is the private preserve of Muslim jurists. Al-Shāfīᶜī explains in his *Risālah* the rationale behind allowing recourse to ijtihad, stating that:

> There is, for everything that befalls a Muslim, a binding rule [*ḥukm lāzim*], or, by means of pursuing the correct answer in regard thereto, some extant indication [*dalāla mawjūda*]. He [= the Muslim] must, if there is a rule concerning that specific thing, follow it. If there is no such rule, then one seeks the indication, by pursuing the correct answer in regard thereto by means of *ijtihād*. *Ijtihād* is, in turn, *qiyās*.[9]

This endeavor could take different shapes, including structural, selective, individual and collective. The structural mode of reasoning denotes that practice in which jurists embark on the process of deducing legal rulings based on their own understanding of the legal texts. It is an act of ijtihad from scratch. In contrast to this structural ijtihad, there is another form where the *mujtahid* selects the preponderant opinion among previously-stated views. Still, the juridical reasoning can be individually or collectively undertaken. The mode of *ijtihād jamāᶜī* is to perform this intellectual process in a collective disciplined and comprehensive effort to derive juridical rulings on given issues.

Concept of *Ijtihād Jamāᶜī*

In fact, *ijtihād jamāᶜī*, as a technical term, has no mention in the classical *uṣūl* manuals.[10] However, the idea of collective ijtihad could be easily found in the early practice of ijtihad and *ijmāᶜ* (as will be explained later). On the other hand, some contemporary scholars and researchers have attempted to define the term. According to them collective ijtihad means to entrust the mission of examining and deducing rulings to a specific group of scholars, experts and specialists, whether they undertake this mission on the basis of absolute consultation or within a specific council where they deliberate and consult each other to reach a

common opinion by unanimity or majority and issue it as a fatwa (legal verdict).[11]

In the recommendations and resolutions of a conference held by the UAE Faculty of Shariᶜah and Law on collective ijtihad in the Islamic world, a technical definition of collective ijtihad was formulated as "the agreement of the majority of jurists, within a certain fiqh academy, a legal body or an institution regulated by the ruler of an Islamic country, on a practical legal ruling for which there is no a definitive text in relation to the establishment and indication after expending their utmost effort in deliberation and consultation."[12] According to Abd al-Majid al-Sharafi collective ijtihad is the "total expenditure of effort by the majority of jurists to reach a juridical ruling by the way of probable knowledge (*ẓann*) based on juridical deduction where they agree on such a ruling unanimously or by majority after mutual consultation."[13] A fourth definition runs as follows: "Collective ijtihad is the consensus of more than one *mujtahid* on a juridical ruling by mutual consultation after performing their utmost effort in deducing it from its relevant sources."[14] Yet another definition states that: "Collective ijtihad is doing the best and utmost effort by a group of scholars in examining and discussing a certain matter to reach a suitable juridical ruling to be issued by the entire group."[15]

These definitions of *ijtihād jamāᶜī* share some common points, namely an expenditure of total effort on the part of jurists by means of mutual consultation and collective endeavor. However, they differ in terms of the nature of the collectivity, whether it is established by more than one jurist, or by the majority or a group of jurists. In fact, *ijtihād jamāᶜī* is a compound noun composed of two words, ijtihad and *jamāᶜī*; consequently, it can be defined in light of the definition of ijtihad while stipulating the collective element.

Linguistically speaking, *jamāᶜī* is taken from the word *jamaᶜah*, i.e. a group, whether small or large in number. It has the same meaning as the word *jamᶜ* (plural).[16] However, scholars hold different opinions concerning the least number that constitutes plural speech. The majority of jurists consider the least plural to be three and this opinion is held by Ibn ᶜAbbās, Abū Ḥanīfah, al-Shāfiᶜī, and the majority of the Arabic grammarians.[17] Based on this view and the aforementioned

definitions of ijtihad, we can conclude that *ijtihād jamāʿī* is a mode of ijtihad exercised by a group which consists of at least three jurists. It may be defined as total expenditure of effort by a group of jurisprudents to reach a probable knowledge of a legal ruling based on mutual consultation. Surely, when the group contains as many scholars and experts as possible, the resulting fatwa of such a process will be more reliable.

Concept of *Ijmāʿ*

Ironically, there is no consensus over the very definition of *ijmāʿ* 'consensus,' which most schools of law take as an authoritative source of legislation. Dozens of different definitions and conditions for its occurrence are set forth even within each school of law. As regards the linguistic meaning of *ijmāʿ*, it is used in the Arabic language as a synonym for *ʿazm* or resolution and determination to execute something, and *ittifāq*, or agreement. When a group of people agree on something it is said, "*ajmaʿū*" i.e. they have consensus. The root meaning of *ijmāʿ* is to collect, bring together, gather up, assemble, congregate, muster, or draw together. It also stands for determining, resolving or deciding upon an affair so as to make it firmly settled.[18]

Technically, *ijmāʿ* is defined in numerous ways. For instance, Abū al-Ḥusayn al-Baṣrī (d. 436/1044) defines it as agreement of a group on a certain matter either by action or abandonment.[19] For Abū Ḥāmid al-Ghazālī, *ijmāʿ* is used exclusively to mean the unanimity of the Ummah of Muḥammad particularly on certain religious issues.[20] Commenting on the definition cited by Ibrāhīm an-Naẓẓām (d. 231/845), al-Ghazālī clarifies that *ijmāʿ* for an-Naẓẓām is an expression for every statement whose proof is evident, even if it is a statement of an individual. He commented that this definition is contrary to both the linguistic and technical usages. An-Naẓẓām purposefully tailored it to his own view, for he did not consider *ijmāʿ* as an authoritative proof. Given the emphasis on *ijmāʿ* rendered by way of *tawātur* (indefinite number of people who cannot possibly agree upon a falsehood because of their huge number and geographical situation), he defined it as every position whose proof has been established.

In another definition of *ijmāᶜ*, the consensus of the whole community is reduced to that of the influential people only (*ahl al-ḥall wa al-ᶜaqd*). Al-Āmidī defines *ijmāᶜ* as agreement of all the people of binding and loosing who belong to the community of Muhammad, in a certain period of time, on a rule about a certain incidence.[21] Again, some definitions restrict the consensus to a certain group only. *Ijmāᶜ* according to the Zahirīs is the consensus of the Companions alone.[22] Mālikīs are said to limit it to the consensus of the people of Madinah. On the other hand, Shiite sources consider the Prophet's next of kin to form a legitimate consensus.[23] Another definition states *ijmāᶜ* to be a consensus of opinion of the persons competent for *ijmāᶜ* (*ahl al-ijmāᶜ*), when a religious issue arises, whether rational or legal.[24]

Many scholars, however, define it as the unanimous agreement of all *mujtahids* of the Muslim Ummah in any particular age on a particular Shariᶜah ruling, after the death of the Prophet.[25] A group of scholars are of the opinion that the condition of strict unanimity of all competent jurists turns *ijmāᶜ* into a mere theory which can hardly be put into practice. Scholars of *uṣūl* have remarkably differed on the authority of *ijmāᶜ*, its textual basis, feasibility and legal effect in terms of certainty and probability. Some proponents of this legal precept held its authority as a derivative of the certainty of revelation and not one which is self-constituted. They have also differed concerning the possibility of constituting *ijmāᶜ* on the basis of majority opinion. Moreover, some contemporary scholars consider this classical *ijmāᶜ* as a form of collective legislation, rather than a consensus of competent jurists.[26]

Concept of Fatwa

The Arabic word "fatwa" has a variety of meanings based on its linguistic root.[27] Fatwa is taken from the Arabic word "*afta*" which means "*abanā*" or to expound and elucidate something. To say, a jurist *afta*, means he expounded and clarified the juridical opinion. There are three related Arabic words in this context: "*afta*" which means to give an opinion; "*yastaftī*" which means to ask for a legal opinion; and fatwa which stands for the legal verdict and the answer to a given question.

The *Encyclopedia of Islam* explains the word fatwa as an opinion on a point of law, with the term "law" applying, in Islam, to all civil or religious matters. The act of giving a fatwa is a *futyā* or *iftā'*; the same term is used to denote the profession of the adviser; the person who gives a fatwa, or is engaged in that profession, is a mufti; the person who asks for a fatwa is a *mustaftī*.[28]

In the Qur'an, fatwa is used in two verbal forms meaning "asking for a definitive answer," and "giving a definitive answer" as in Qur'an 4:127, 176. The Arabic word fatwa can also refer to a dream interpretation, or a piece of advice and consultation. Those two meanings are used in the Qur'an (12:46, 27:32) where the term carries the connotation of a request to solve an unusually difficult problem. In Qur'an 12:43 and 47, for instance, Joseph is asked to interpret a complex dream which others found utterly puzzling. The same connotation appears to be present in the legal verses, which revolved around the rights of women and a difficult case of inheritance.[29] Accordingly, "fatwa" can be used in the Arabic language to denote a legal verdict or opinion given in an answer to a question concerning a religious affair to expound the Islamic ruling; a piece of advice and consultation; or the act of interpretation of dreams.

Technically speaking, both historical and present day jurists present a lot of definitions of the term fatwa. Sometimes, they use the word "*mujtahid*" to refer to the one issuing fatwa as in this quotation from Ibn Nujaym (d. 970/1563): "It is established for the scholars of Islamic jurisprudence that the *muftī* is the *mujtahid*."[30] I think this is meant only to clarify that no one is entitled to issue fatwas except for those able to deduce rulings and having the requisite qualifications and requirements for this unique position. This can be supported by Ibn Nujaym's earlier statement in the same book that, "the *muftī* should be reliable in his/her religiousness, chastity, etc. and should be a *mujtahid*. It is mentioned in *Fatḥ al-Qadeer* that the same traits cited in talking about the judge apply to the *muftī*; it is not permissible for any person to give fatwas except for the *mujtahid*."[31] As George Makdisi puts it the mufti is called upon to exert himself to the utmost in the study of the Sacred Scripture, the Qur'an and Hadith, and in researching the sources of the law, in order to arrive at his legal opinion. This exertion is

called ijtihad, and the jurisconsult who so exerts himself is called *mujtahid*.[32]

Al-Qarāfī (d. 684/1285) defines fatwa as: "Telling the juridical ruling on behalf of God, in obligation or permissibility."[33] In this definition, al-Qarāfī limits the legal rulings to the categories of obligation and permissibility only. Obligation in this context includes do's and don'ts. Another definition by al-Khurashī (d. 1101 AH) is as follows: "*Fatwa* is pronouncing the legal ruling in a non-binding manner, whether orally or in a written form."[34] The phrase "a non-binding manner" excludes the pronouncement of a verdict by a judge because in this case it will be binding. As for the word "mufti," it is defined as "the one who expounds the legal ruling and clarifies it without obligation or a binding force." Another definition is given by Ibn Ḥamdān (d. 695/1295) that "the *muftī* is the one who tells the ruling of God after knowing the evidence of such a ruling. It is also said that the *muftī* is the one who tells the ruling on behalf of God, or the one who has the ability to know the legal rulings for issues based on knowledge of their proofs and memorization of the bulk of fiqh."[35]

Considering these definitions, it is apparent that they have a similar wording that centers on the idea of expounding and telling a legal ruling in a way that is not binding. Contemporary jurists and researchers also use fatwa to denote the act of expounding a legal ruling on an issue as an answer to a question from somebody, whether the asker is known or anonymous, individual or a group of persons. One definition states that fatwa is "what a *muftī* tells in answer to a question, or a mere expounding of a ruling even without a question."[36] The process of giving fatwa is defined as: "Telling God's ruling based on a legal proof for anyone asking about it in an incident that is new."[37] But to claim something as God's ruling is not to be taken for granted because it is deduced by a jurist based on his own reasoning which could be proven true or false. Moreover, to limit the question to new incidents is disputable; that is why the Fiqh Encyclopedia of Kuwait defines fatwa as: "Expounding the legal ruling for anybody asking about it, including questions about new events and others."[38]

One of the best definitions of fatwa, from my point of view, is the following: "*Fatwa* is the jurist's expounding of the legal ruling

according to his diligent reasoning in an issue or a matter related to legal rules or creed, as an answer to a question from somebody that is known or anonymous, individual or a group."[39] The reasons for giving preference to this definition is because it encompasses the linguistic meaning and clarifies that the topic in question may relate to a legal ruling or a matter of Islamic doctrine; it also mentions that a fatwa comes as an answer to a question and this comes in agreement with the linguistic meaning and excludes what is raised for the specific purpose of teaching; finally, it states that a fatwa is the result of the jurist's reasoning and the definition includes the different parts of the *iftā'* process including: the mufti or the legal adviser, the *mustaftī* or the questioner, the field of fatwa and the process of giving fatwa itself. Omitted, however, in this definition is a mention of non-binding effect.

In the light of these definitions, fatwa may simply be defined as: "Expounding a legal ruling on the ground of sound proofs in a non-binding manner." In this sense, a mufti is "one expounding the legal ruling on the ground of sound proofs in a non-binding manner." The task of the mufti is to bring the universals of fiqh to bear upon the particulars of daily life.[40] There is a crystal-clear relationship between ijtihad, *ijtihād jamāʿī* and fatwa. Ijtihad is a process wherein jurisprudents are expected to arrive at legal opinions after reflecting upon the sources of the law to the best of their ability. This could be individually or collectively practiced. The result of this ijtihad is the fatwa. In case of collective ijtihad, the resulting fatwa could be reached either by unanimity or majority. As regards *ijmāʿ*, this differs from the concept of collective ijtihad as the latter does not require the total agreement of all scholars. Moreover, collective ijtihad is based on consultation between a group of jurists to decide on a certain issue, while this consultative characteristic is not required for *ijmāʿ* where there is no necessity to bring jurists together.

[1.2]
COLLECTIVE IJTIHAD FROM A HISTORICAL PERSPECTIVE

The purpose of this section is to present a brief account of the historical development of collective ijtihad. The historical survey begins with the era of the Prophet through the formative period of Islamic law. It also attempts to shed light on some efforts of this mode of intellectual reasoning in more later stages. In so doing, a special reference is given to *al-Fatāwā al-ʿĀlamgīriyyah* and *Mecelle*.

Era of the Prophet

The idea of collective ijtihad was present in early legal practice although there is no mention of the technical term itself. In fact, some researchers conclude that collective ijtihad was adopted during the lifetime of the Prophet who used to consult his Companions in various incidents. On the other hand, a group of researchers refuse this, affirming that collective ijtihad emerged only after the demise of the Prophet, with some of them totally denying any practice of ijtihad, whether individual or collective, during his lifetime.[41] To decide on this point, it may be suitable to highlight briefly the issue of ijtihad as seemingly exercised by the Prophet. Did the Prophet issue any judgment based on his own reasoning?

Muslim scholars have mostly agreed that the Prophet made some decisions based on his own judgment and independent reasoning in matters of a worldly and military nature. Ibn Mufliḥ al-Maqdisī (d. 763/1362) clarified that it was probable for the Prophet to practice ijtihad in worldly matters and that this actually took place according to the unanimous agreement of the scholars.[42] Similarly, al-Shawkānī (d. 1250/1834) has emphasized that the scholars are generally in agreement on the permissibility of practicing ijtihad by the prophets in worldly and military affairs. Such a consensus was narrated by Saleem al-Rāzī and Ibn Ḥazm. This actually happened when the Prophet tended to call a truce with the Ghaṭafān tribe, offering them one-third of the date harvest of Madinah.[43]

Another example of Prophetic ijtihad in worldly affairs appears in the hadith referencing the pollenating of palm trees. Muslim's narration states: "Talhah narrates: I was walking with the Prophet when he passed by some people at the tops of their palm trees. He asked: 'What are they doing?' They answered: 'Pollenating the male into the female.' He replied: 'I do not think that this will be of benefit.' When they were told about what the Prophet said, they stopped what they were doing. Later, when the trees had shed down their fruits prematurely, the Prophet was told about this. He said: 'If it is good for them, they should do it. I was just speculating. So, pardon me. But if I tell you something about God, then take it because I would never lie about God.' Another narrator added: 'You know your worldly affairs better than me.'"[44]

One may argue that this practice cannot be called ijtihad in the technical sense because ijtihad is technically concerned with attempting to realize a legal ruling on a purely religious issue. Yet others differ, such that Muslim scholars have held different views with regards to the exercising of ijtihad by the Prophet on purely religious matters. These views are summed up below.

The first view maintains that it is not permissible for the Prophet to exercise ijtihad in matters of a religious nature because of the possibility of realizing the legal ruling through the divine revelation. Ibn Ḥazm writes that "there is no way that the Prophet would practice ijtihad in enacting legislations given the fact that the commandments were categorically received without any ambiguity."[45] This view is also attributed to those denying *qiyās* (analogical deduction).[46]

The second view held by the majority of scholars maintains the permissibility of ijtihad being exercised by the Prophet.[47] Al-Isnawī states: "They [the scholars] differed concerning the permissibility of practicing ijtihad by the Prophet, with the majority of scholars accepting it as permissible."[48] Similarly, al-Shirāzī (d. 476/1083) notes that "the Prophet was entitled to practice ijtihad in different incidents and decide based on his own reasoning. The same is true for all prophets. However, some people say it was not permissible for the Prophet to do so, which is also shared by some Muʿtazilites."[49]

Beside these views, there is an act of suspension of judgement where some scholars cite the two different views and prefer not to choose

either.[50] Al-Shawkānī reports that al-Baqillanī (d. 403/1013) and al-Ghazālī chose this stand.[51] Moreover, al-Ṣirafī (d. 330/942) claimed this to be the stance of al-Shāfiʿī (d. 204/820), however, the latter maintains permissibility as clarified by al-Rāzī (d. 606/1210) who states that, "al-Shāfiʿī said, it is possible to find among the legal rulings issued by the Prophet some which were based on ijtihad."[52]

The same disagreement echoes among contemporary scholars and researchers. Whilst some find no problem in the Prophet practicing ijtihad and give examples of such ijtihad in support of their viewpoint, such as the issue of the setting free of captives in the battle of Badr,[53] others deny the possibility of the Prophet exercising ijtihad and retort that the examples cited by those in favour of it either pertain to worldly and military affairs or are irrelevant to the process of ijtihad as an effort to reach a probable knowledge of a legal ruling.[54]

Once again, this disagreement resonates with examination of the historical development of collective ijtihad. Consequently, one expects to find two different views, one tracing the collective practice of ijtihad back to the era of the Prophet while the other to a post-Prophetic era. From the early beginning, the Prophet adopted a consultative approach in dealing with new incidents faced by the Muslim community, and was keen to implant this approach in his Companions as proven in his teachings and acts. It was reported by ʿAlī b. Abū Ṭālib that he once asked the Prophet what they should do upon encountering a new incident for which no clear commandment existed. The Prophet replied, "consult the jurists and worshippers and do not decide individually."[55] This consultation lays the foundation for collective ijtihad.

The historical record shows a lot of critical decisions to have been taken on the basis of such consultation. For instance, the incident concerning how the captives taken in the battle of Badr were dealt with clearly reflects a consultative approach in a military issue. Having captured seventy people in this battle, it was the first time the Muslims had encountered such a situation, with no clear divine teachings concerning the captives. Therefore, the Prophet asked the Companions for their opinions and two different views emerged. Abū Bakr suggested setting them free in return for a ransom, while others led by ʿUmar b. al-Khaṭṭāb wanted to kill them. The Prophet preferred Abū Bakr's opinion and

decided to release the prisoners for ransom.[56] It may be argued that this decision was criticized in Qur'anic verse 8:67. However, the act of consultation remains praiseworthy regardless of its result. This can be supported by the fact that the Qur'anic injunction "and consult with them about matters" (3:159) was revealed after the battle of Uhud in which the Muslims were defeated. The Prophet consulted with his Companions whether to go out to fight or stay in Madinah. Although the Prophet initially wanted to stay in Madinah and defend the city, he accepted the result of the consultation and went to fight in the open field. Inspite of the defeat, the Qur'an emphasizes the significance of consultation. This consultative approach was adopted by the Prophet on many occasions including, for instance, the decision to change the place of the Muslim army in the battle of Badr; to go out and fight the Quraysh outside Madinah in the battle of Uhud; and to abstain from concluding a truce with the Ghaṭafān tribe during the battle of al-Aḥzāb.[57]

However, all of these examples concern military situations where consultation with army leaders was to be expected. So it may be suitable to cite here an example which had nothing to do with war. After migrating to Madinah, the Muslims were able to safely pray in congregation. The Prophet wanted to find a way to call people for the congregational prayers. According to some reports, the Prophet consulted his Companions and they offered different suggestions. Some proposed blowing a horn like the Jews, while others ringing a bell as Christians did. Later ʿAbd Allah b. Zayd saw in a dream a man carrying a bell pass him by, and on asking the man to sell him the bell to call people to prayer, the man responded with the words of the *adhān*. Intriguingly, ʿUmar saw the same dream and informed the Prophet. Thus, the Prophet accepted this and ordered Bilāl to raise the first *adhān*.[58]

Al-Sarakhsī (d. 483/1090) uses this incident to prove that the Prophet was entitled to issue some rulings based on his own independent reasoning and consultation with the Companions. Commenting on this way of sanctioning *adhān*, he states: "It is evident that he resorted to independent reasoning rather than revelation in this case. When ʿUmar told the Prophet that he saw the same vision, the Prophet said, God is

the Greatest! This is more certain. Actually, this saying by the Prophet would be meaningless if this matter was settled via revelation."[59]

Whether these examples represent technical ijtihad or not remains controversial among jurists; however, such consultative practice during the lifetime of the Prophet illuminated the Companions when they attempted to find legal rulings for new incidents especially in the era of the Rightly-Guided Caliphs, to which we turn next.

Era of the Rightly-Guided Caliphs

When the Prophet passed away, the Muslims encountered a new reality in which the Messenger was no longer present to provide them with legal rulings, either through divine revelation or sanctioned or even corrected ijtihad. Consequently, they had to exercise their own reasoning faculties in order to elucidate legal rulings for unprecedented incidents. Inspired by the consultative approach of the Prophet, the Companions generally resorted to the collective mode of ijtihad.

Al-Juwainī (d. 478/1085) states that the Companions of the Prophet were careful and scrupulous in examining different incidents, fatwas and legal issues, doing their utmost to determine suitable legal rulings. They would begin with consulting the Qur'an and if they did not find anything in it they would turn to the Sunnah of the Prophet, and if they did not reach anything here, they would then mutually consult each other and exercise ijtihad. In fact, they always employed this approach throughout their generation, with those coming after them following in their footsteps.[60]

This collective approach is easily evidenced in the practice of the Rightly-Guided Caliphs. Maymūn b. Mihrān reports that when Abū Bakr and ʿUmar were faced with a new issue with no direct ruling from the Qur'an or precedent from the Prophet, they would gather together the Companions and ask for their opinion. After this, they would pass judgment based either on a consensus or the majority opinion of those present at the time.[61] Moreover, we have the fact of a letter ʿUmar wrote to Qāḍi Shurayḥ asking him to abide by the directives of the Qur'an and the Sunnah and by the decisions of the righteous people. If these sources were absent of the directives, then he was informed it was up to him

either to proceed with the matter and reach a decision based on consultation with the people of knowledge and righteousness, or keep the matter in abeyance.[62] Abū al-Ḥasan al-Māliqī (d. after 792 AH) clarifies that ʿUmar predominately tended to execute judgments only in the presence of the Companions after consulting with them, even though he was well versed in deducing legal rulings and applying analogy. Similarly, ʿUthmān used to consult with four Companions before passing a final judgment.[63]

One of the most prominent manifestations of adopting such a consultative approach in dealing with new incidents appears in the way in which Abū Bakr was nominated as the first Caliph. A group of leading figures in the Muslim community gathered in a portico called *Saqīfah Banī Sāʿidah* to elect the head of state who would succeed the Prophet. After lengthy deliberations and discussions between the Muhājirūn and Anṣār, they pledged allegiance to Abū Bakr.[64] Analogy (*qiyās*) was instrumental in supporting this nomination wherein it was argued that leading the Muslim community could be considered analogous to leading prayer and only Abū Bakr had led Muslims in prayer during the lifetime of the Prophet.[65] Similarly, when Abū Bakr decided to fight those who refused to pay zakah, consultation and analogy were employed in persuading ʿUmar and other leading Companions to do so. The final decision was collectively taken when the majority of Companions inclined to Abū Bakr's view.[66]

Another example of collective ijtihad is ʿUmar's handling of a conquered territory in Iraq known as the land of Sawād. He gathered eminent Companions in order to determine what to do, with Bilāl b. Rabāḥ along with a considerable group of Companions encouraging him to divide it among the fighters as their battle-earned right, whilst ʿAlī, ʿUthmān, Ṭalḥa and Muʿādh b. Jabal held opposing views. After lengthy deliberation and consultation with the leading Companions, ʿUmar eventually decided not to distribute the land as booty, nor did he enslave the peasants, but rather declared Sawād to be a source of revenue (*fay'*) or sustenance (*mādda*) for the Muslims of present and future generations, ordering the lands to remain in the hands of the inhabitants of Sawād in return for a land tax to be paid to the treasury.[67]

Another incident witnesses ʿUmar convening a meeting with leading Companions and jurists to determine the penalty for consumption of wine which is not specified in the Qur'an. After consulting the gathering, he adopted the advice of ʿAbd al-Rahman b. ʿAwf to enforce the mildest prescribed punishment, that of eighty lashes.[68] There is another interesting example that took place in the era of ʿUmar when his wife Umm Kulthūm sent a gift to the empress of the Byzantines. The wife of Heraclius in return sent her a gift including a superb necklace. When the official post brought such gifts to ʿUmar, he ordered them to be seized and summoned the people together to pray. After finishing the prayer, ʿUmar states, "There is no good in any affair of mine that is decided without consultation. What about a gift that Umm Kulthūm sent to the wife of the Byzantine Emperor, who then sent a gift to her?" After listening to the different opinions, ʿUmar ordered the gift to be returned to the public treasury.[69] In this example, ʿUmar clearly states consultation being a fundamental recourse in his approach.

Similarly, ʿUthmān b. ʿAffān adopted the same approach in dealing with legal rulings and judicial issues. He would consult a group of four Companions before issuing any judgement. This group consisted of ʿAlī b. Abū Ṭālib, Ṭalḥa b. ʿUbayd Allāh, al-Zubayr b. al-ʿAwwām and ʿAbd al-Raḥmān b. ʿAwf.[70] ʿUthmān's consultative approach is evident in settling the issue of the slaying of al-Hurmuzān, Jufaynah and the daughter of Abū Lū'lū'ah by ʿUbayd Allāh b. ʿUmar in revenge for his father's murder. ʿUthmān summoned a group of leading Companions to consult with them in this regard. They held different views with ʿAlī stating that ʿUbayd Allāh had to be killed whilst others preferred blood money to be paid. Finally, ʿUthmān chose the advice of blood money to be paid on behalf of ʿUbayd Allāh.[71]

These examples are clear evidence of a collective mode of reasoning and consultation being a common legal practice of the Companions and Caliphs after the demise of the Prophet. However, this state of affairs was to go through tremendous change in the aftermath of the assassination of ʿUthmān, limiting consultative ijtihad to a far lesser extent than over the past generation.

Era of the *Tābiʿūn*

In the aftermath of the murder of ʿUthmān, political division and split intensified among Muslims with the spirit of unity which had hitherto characterized the Muslim community fading away. Moreover, the Companions had already dispersed across Islamic territories, formulating their own methods of reasoning and deducing legal rulings. Against this background, ijtihad tended to generally be a more individual endeavor without any collective consultation process except for few exceptions during the era of ʿUmar b. ʿAbd al-ʿAziz and the Umayyad dynasty in Andalusia.

ʿUmar b. ʿAbd al-ʿAziz followed in the steps of the Rightly-Guided Caliphs. As the ruler of Madinah, he formed upon his arrival an advisory council of ten notable jurists with whom he used to consult before taking any decision. Similarly, during the second Umayyad dynasty in Andalusia, the chief judge Yaḥyā b. Yaḥyā al-Laythī (d. 234 AH) set up a council of sixteen jurists to decide on different legal issues.[72]

Generally speaking, ijtihad in the era of the Tābiʿūn was performed on an individual basis. The earlier practice of convening leading juristic figures to discuss certain juridical issues was no longer common with legal matters now beginning to be individually addressed and decided.[73] When the Companions dispersed across Islamic territories, they employed their own methods of reasoning and deducing legal rulings, with this development leading to two distinctive schools, that of the partisans of hadith (traditionists) and that of the partisans of *al-ra'y* (rationalists). The disciples of both approaches laid the foundation for different schools of law. It is during this period that the first school of law begins to materialize at the hands of Abū Ḥanīfah (d. 150/767) who was a disciple of a group of eminent scholars of the *Tābiʿūn*, including Ḥammād b. Abū Sulaymān (d. 120/738), Ibrāhīm al-Nakhaʿī (d. 96/715), and al-Shaʿbi (d. 103/721). Abū Ḥanīfah was known for employing consultation in deducing legal rulings. In formulating his school of law, he used to discuss legal issues with his disciples, and they would sometimes spent more than a month deliberating over a certain issue until they reached a final decision.[74]

In fact, the era of the *Tābiʿūn* marks an important shift in the course

of ijtihad and its dynamics. Ijtihad became an individual effort with this state of affairs continuing throughout the Umayyad and Abbasid dynasties. The different schools of law came into existence, with each having its own methodology, legal instruments and followers. This naturally led to juridical disagreement among different schools and gave predominance to the individual mode of ijtihad. Based on this historical survey, we see collective ijtihad undergoing two main stages: one in which it thrives during the time of the Companions, and the other is the era of decline during the time of the Tābiʿūn and the formative period of Islamic schools of fiqh. That said, Islamic history occasionally witnessed some attempts to revive this collective form of reasoning before such attempts successfully materialize in the modern age with the establishment of certain academies and ijtihad institutions.

Collective Ijtihad in *Al-Fatāwā al-ʿĀlamgīriyyah* and *Mecelle*

Al-Fatāwā al-ʿĀlamgīriyyah

Al-Fatāwā al-ʿĀlamgīriyyh is a compendium of Islamic law containing authoritative doctrines and established juridical rulings relating to various branches of law, including religious, civil, penal and international issues from the viewpoint of the Ḥanafī school. It is named after the Mughal Sultan Aurangzeb ʿĀlamgīr who commissioned a board of forty Ḥanafī scholars to compile it. The compilation of *al-Fatāwā al-ʿĀlamgīriyyah* is believed to have taken eight years, spanning from 1075/1664 to 1083/1672.[75] It is a comprehensive legal text of Ḥanafī fiqh originally compiled in Arabic. The juristic opinions and precepts of the Islamic legal rulings collected in it are not those of muftis but rather legal opinions culled from earlier manuals of Ḥanafī fiqh which dominated in India after the Ḥanafī jurists arrived along with the earliest Muslim conquerors from Central Asia.[76] In the Indian subcontinent and Central Asia, the term "fatwa" often denoted an authoritative and accepted opinion of the Ḥanafī school, not necessarily an opinion issued in response to a question. Pre-modern Indian fatwa collections bear the names of rulers, indicating the status of these texts as authoritative opinions potentially enforceable in state courts.[77]

Some Indian historical sources state that Aurangzeb ʿĀlamgīr forcibly took control of the Mughal Empire in 1658, following a murderous war of succession that began with the imprisonment of his father. By overcoming the opposition of his elder brother and imprisoning his father, Aurangzeb crowned himself Mughal emperor and reigned over India for nearly 50 years, from 1658 to 1707. However, the manner in which he had seized power raised doubts over the legitimacy of his ascension to the throne. This is evident in the fact that the chief judge refused to recite the *khuṭbah* (sermon) in his name, stating that it was not valid to do so because his father, Shāh Jahān, was still alive. The inclusion of the ruler's name in the *khuṭba*, the sermon delivered each Friday by the *imām*, was the most public and weighty signifier of the legality, according to Islamic norms, of his sovereignty.[78] Trying to counter any accusations of illegitimacy, Aurangzeb took some steps to appease, mollify and win the support of scholars. Among the steps taken was commissioning the compilation of this massive compendium of fiqh, *al-Fatāwā al-ʿĀlamgīriyyah*. That said the myth and reality of Aurangzeb are two different things and stories of him imprisoning his father are difficult to verify and cannot be taken for granted. In fact, serious doubts have been raised by many Islamic sources against them.

Reasons for Compilation

Different views exist concerning the reasons for Aurangzeb's commissioning of the compilation of this *fatāwā*. It is stated that the emperor wanted to make Muslims act in accordance with the legal decisions of the Shariʿah and to raise standards of efficiency in the dispensation of justice. He thus decided to develop a new code of Islamic law, one more comprehensive and up-to-date than the several collections of *fatāwā* in use during this period.[79] At the time legal decisions were scattered across multiple sources, mixed up and lacking decisive authority due to the contradictory opinions of early jurists, and the number of books which needed to be consulted had grown considerably making research cumbersome, time consuming and unwieldy.

According to Mirza Muḥammad Kazim, court historian of Aurangzeb and author of the *ʿĀlamgīr-Nāmah*, the emperor realized that the basis of good government is justice, for which knowledge of the law

needed to be improved. Since and as mentioned Ḥanafī legal rulings of the time were dispersed across an array of texts making research unwieldy, decentralizing religious authority, and raising issues of contradiction, the practical solution would be as Aurangzeb understood it to compile a comprehensive collection of authoritative rulings[80] and by commissioning this work to facilitate the application of Shariʿah rulings in the courts. Realizing that judicial procedures were potentially being delayed by the lengthy process of having to consult all relevant written authorities, the emperor thus wanted to codify Islamic law into a single standard reference for judges and muftis. Soon after its compilation, Aurangzeb ordered the work to be utilized by the state departments and courts with the Mughals thus adopting *al-Fatāwā al-ʿĀlamgīriyyah* for their judicial administration, thus making it the foundation of their legal system and transferring it from legal theorization into real application.

Other historians however mention different reasons for the compilation of the *fatāwā*. They contend that because Aurangzeb had forcibly seized power, he decided to pursue its compilation to gain the religious approval of scholars to counter any doubts to the illegitimacy of his reign. In other words this project was a means for Aurangzeb to put forth his orthodox credentials and demonstrate his commitment to Islam and thereby the superiority of his claim to the throne over his father and older brother.[81] Whether driven by political necessity for a legitimate claim to the throne, or personal devotion to an expression of Islam that closely followed the Shariʿah or a mixture of such factors, Aurangzeb's appeal to Islam won him the support of the Muslim scholars.[82] Some scholars declared him a champion of orthodox Islam and an ocean of justice.[83]

Taking these discussions into account one can make the case that Aurangzeb had three specific goals: to reform the administration of law in the empire by facilitating access to legal materials that had become inaccessible or outdated; to legitimize his rule and earn the support of the authoritative scholars; and to unify the Sunni Muslims of South Asia by creating a law code that reflected regional customs especially in light of the multi-ethnicity of the population and the spread of Persian culture in South Asia.[84]

Procedure of Compilation

The emperor assembled the most prestigious jurists of the Mughal Empire and prepared a huge imperial library to facilitate their task in compiling this compendium. He formed a board of some influential jurists and religious experts to undertake the project and the state treasury incurred all expenses. Aurangzeb himself chose and employed the chief jurists who participated in this work. The work of compiling the *fatāwā* was conducted in a highly systematic and well-planned manner. Aurangzeb, who was well-versed in the Shariʿah, appointed a board of jurists, assembling about forty eminent scholars under the supervision of Shaykh Nizām al-Dīn of Burhānpūr. Nizām al-Dīn had four chief editors: Shaykh Wajīh al-Dīn of Gūpāmaw, Shaykh Jalāl al-Dīn Muḥammad of Machhlishhar, Qādī Muḥammad Ḥusayn and Mulla Ḥāmid of Janpūr. Each one was assisted by a team of ten or more jurists. The emperor himself supervised the work of the board. The chief editors were responsible to the president of the board for the collection, sifting, selection and collation of material and its use for the final text.[85]

The project was divided into four parts, with each part assigned to one of the four chief editors. They labored hard for eight long years to arrange in a methodical manner the most authoritative rulings of earlier and contemporary jurists scattered across a considerable number of sources. Almost all well-known and authoritative books on Ḥanafī fiqh had been consulted. The compilers cited the sources from which the legal cases were taken, listing reasons for giving preponderance to a certain opinion. The solutions to a specific legal issue were reached through *tarjīḥ*, the privileging of opinions in *ẓahir al-riwāyah* (authoritative transmission), and in the case of a disagreement between Abū Hanifah and his disciples, the opinion of the former was preferred.[86]

Al-Fatāwā al-ʿĀlamgīriyyah opens with a lengthy introduction discussing the nature of Islam and fiqh in addition to the jurists named as authorities. Its chapters and sections are arranged according to the *Hidāyah* of al-Marghīnānī (d. 593/1197), covering almost all chapters of fiqh, with special reference to judicial proceedings, rules of inheritance, economic transactions, rulings on land and treatment of laborers and employees. The source of each case is given, with at least 124 sources cited.[87] In addition to opinions dating to the formative and

post-formative periods of the Ḥanafī school, the text includes the opinions of contemporary scholars in South and Central Asia at the time of compilation. Aurangzeb took a keen interest in the progress of the work, involved himself personally in its compilation, maintaining from the very beginning a close contact with the board entrusted with the task of compilation. Being a jurist himself, Aurangzeb also participated in the revision and editing. He would listen to three or four pages on a daily basis.[88]

The text was compiled in Arabic, however, several chapters were written in Persian such as those on apostasy, commercial transactions, divorce and contracts.[89] *Al-Fatāwā al-ʿĀlamgīriyyah* has been reprinted numerous times in multiple languages, including Persian and Urdu. Some parts were translated into English. The original Arabic text has been published in Cairo in six volumes where it is known as *al-Fatāwá al-Hindiyyah* and has gained a reputation as a crucial Ḥanafī reference book in the Muslim world.[90]

Collective Ijtihad in Al-Fatāwā al-ʿĀlamgīriyyah

Al-Fatāwā al-ʿĀlamgīriyyah is a comprehensive legal text of Ḥanafī fiqh, compiled by a selected board of eminent jurists, muftis and judges who extracted rulings from a wide group of authoritative manuals. The work has the advantage of providing a comprehensive review of almost all reliable books of the Ḥanafī school of law including those produced by Indian scholars such as *Fatāwā-i Ghiyāthiyyah*, *Fatāwā-i Tātār Khānī*, *Fatāwā-i Qarā Khānī*, *Fatāwā-i Burhāniyyah*.[91] In this way, it became a register of those authoritative manuals and played a unique role in the development of Ḥanafī fiqh. In fact, this legal compendium is the most popular ruling collection of medieval India and highly acclaimed as a monumental work on Islamic law. Its notable comprehensiveness and consequent increased length as well as its authorship by the collective effort of a wide range of scholars make its contribution to fiqh literature very special and distinctive.[92]

In light of this discussion, it can be concluded that the project represents a form of collective ijtihad. The reason is clear because a large number of prestigious scholars were employed in the collective effort which united diverse scholars from across various regions of India in a

common project to review the existing collection of authorities, weigh their relative authority, decide between contradictory views and select the most applicable rulings. Furthermore, it was a selective restricted form of ijtihad as the members of the board of jurists, being qualified to exercise ijtihad, elected the preponderant opinions put forth by the earlier Ḥanafī jurists.[93] They did not practice a novel ijtihad from scratch; rather they examined the legacy of legal opinions and chose the most conclusive evidence, taking into consideration the requirements of their reality and era. Their collective endeavor resulted in a comprehensive popular multi-volume compendium of Islamic law.

The relation to Mughal authority was not the only reason behind the widespread popularity of this work in the Muslim world and its status as a leading source of Ḥanafī law. One of the important factors contributing to its popularity was the authority of its compilers who by selecting their opinions on the basis of consultation and collective endeavor, constructed a highly reliable legal work that has remained relevant down to the present day.[94] Due to this great significance, the compendium, which represented an early form of law codification, has been followed in the application of Islamic law in a lot of Muslim countries across the world. The principles contained therein have been incorporated in the code of different countries. It was used as a ready work of reference from Morocco to Indonesia and from Turkey to South Africa in countries applying Islamic legal theory and substantive and procedural laws. It was also printed in Cairo in six volumes in 1310 AH under the title of *al-Fatāwā al-Hindiyyah*.[95]

However, in spite of the great significance of this *Fatāwā*, it cannot be considered a complete codification of law but rather representative of an early effort at semi-codification not having been compiled in the form of law articles as was the *Mecelle* or *Majallat al-Aḥkām al-ʿAdlīyah* to which we turn next and which exemplifies collective ijtihad in codifying Islamic law.

Mecelle

Historical Background

Mecelle (Ar. *Majallat al-Aḥkām al-ʿAdlīyah*) is an Ottoman legal code promulgated between 1869 and 1876 CE during the *Tanẓīmāt* period. The term *Tanẓīmāt* is employed to designate an important series of reforms which took place in the Ottoman Empire between 1839 and 1876.[96] This *Tanẓīmāt* period was divided by the Crimean War (1853-1856) fought mainly on the Crimean Peninsula between Russia and the allied forces of Britain, France and the Ottoman Empire. The outbreak of this war resulted from a combination of Russian diplomatic and military aggression against the Ottoman Empire and concomitant British concerns about a potential recalibration of the balance of power in the Black Sea region to the benefit of Russia.[97] The war came to an end when Russia found it spinning out of control and had to agree to negotiations especially after the fall of Sevastopol and an Austrian threat to enter the war on the Allied side.

Following the Crimean War on February 18, 1856 Sultan ʿAbd al-Majīd (r. 1839–61) introduced a second phase of the *Tanẓīmāt* period issuing an Imperial Rescript of reforms which were far-reaching and behind which lay various reasons. These included the fact that the empire had been in decline as compared to Western European states as well as its immediate neighbors, the Austrian and Russian empires, with therefore the reforms initiated to safeguard the Ottoman Empire's existence. In addition, the empire was facing increasing pressure from ex-allies of the Crimean War to improve the situation of its non-Muslim citizens, and so in response to these pressures, the reform edict of 1856 was enacted. The reform movement during the *Tanẓīmāt* era brought about considerable transformations within the Ottoman Empire. Key provisions of the edict included assurance of equal treatment for its non-Muslim populations in the areas of justice, taxation, and education.[98] For instance, to meet the demands of the great powers and to mollify foreign nationals residing within the Empire, promises of establishing *Nizāmiye* courts in which the testimony of Christians against Muslims would be valid were soon embodied in the Imperial Rescript of 1856.[99] A lot of judicial and administrative institutions

were reorganized and modelled on the European pattern such that new *Nizāmiye* or lay courts were established along with the already existing Shariʿah courts, and new codes of law were enacted on the basis of the European laws being adopted, especially following an upsurge in commercial transactions conducted with foreign powers during the *Tanẓīmāt* era. This upsurge served as an impetus for the adoption of foreign laws in the Ottoman Empire.[100] Indeed, the legislation of this civil code, the *Mecelle*, is seen by some researchers as the single most important event to take place in the evolution of the *Nizāmiye* courts during the 1860s and early 1870s.[101]

Given the considerable increase in trade with European countries, there had been direct demands by European powers for a juridical reform that protected both non-Muslim subjects and European traders in their commercial transactions with the empire. Consequently, new regulations in judicial institutions, including the founding of civil courts, created the need for a code to be applied to both Muslims and non-Muslims. This set off a firestorm of controversy in the ruling circles concerning the code to be adopted. Generally speaking, two views existed, one privileging the French civil code to be translated and used as a fundamental law in the lay courts, while the other suggested that Shariʿah provisions in harmony with the demands of the times should be made into a compendium to be used in courts. Finally, the council of ministers set a preference for the latter view and the *Mecelle* committee came to be established.

Reasons for Compilation

Mecelle marks an important milestone in the Ottoman modernization project. Attempts to revitalize a feeble empire were resulting in the promulgation of new codes based primarily on western laws, and the compilation of the compendium came as a response from within the Islamic legal tradition to the penetration and hegemony of these western laws. Basically derived from the Ḥanafī school of law, the *Mecelle* incorporated jurisprudential opinions advanced by the early Ḥanafī jurists.[102] The Ottoman council of ministers decided to commission a work based on Islamic law and entrusted this task to a committee chaired by Aḥmed Cevdet Pasha (d. 1312/1895). The committee

included a select group of eminent scholars and meticulous jurists. In addition to the principal of *Dīwān al-Aḥkām al-ᶜAdliyya* (Council of Judicial Ordinances), Aḥmed Cevdet Pasha, the committee included members of the *Dīwān al-Aḥkām al-ᶜAdliyya*: al-Sayyid Ahmed Khulusi and al-Sayyid Ahmed Hilmy; the inspector of the Imperial Endowments, al-Sayyid Khalīl; members of the *Shūra al-Dawla*, Sayf al-Dīn and Muḥammad Amīn al-Jundī; and a member of the committee, ᶜAlā' al-Dīn b. Ibn ᶜĀbidīn (d. 1306/1889), the late nineteenth-century Damascene Ḥanafī authority.[103]

Cevdet Pasha clarifies in his memoirs that the number of Europeans coming to the Turkish Empire increased especially during the Crimean War. There was also a tremendous upsurge in commercial transactions to the extent that a single commercial court was unable to handle all disputes. Moreover, foreigners could not appear before Shariᶜah courts as the testimony of non-Muslims against Muslims was not permitted. This situation became of great concern to the super powers who exerted heavy pressure on the Ottoman Empire to find a satisfactory solution. According to this account, both the desire of non-Muslim subjects of the Ottoman Empire not to go to Shariᶜah courts and European pressure on the Ottomans in this regard led some individuals in the Ottoman Empire to advocate the translation of French laws. However, another group, consisting of Cevdet Pasha and those who were like-minded, wanted laws that were based on Islamic law. Finally, the council of ministers agreed to have the relevant part of fiqh compiled in a language which could be easily understood by all judges for use in both Shariᶜah and lay courts.[104]

In fact, one of the basic reasons behind the decision to compile the *Mecelle* was to satisfy the need of the growing Ottoman bureaucracy to create a reference for the judiciary and other judicial councils, which lacked traditional Islamic legal expertise. Consequently, the compendium was primarily prepared to influence judicial reasoning and expediate court proceedings.[105] As clearly stated by the *Mecelle* report, fiqh is a vast ocean without a shore and the process of deducing legal practical rulings is dependent on certain scientific skills and legal craft, especially in the Ḥanafī school. Because this school had not been systematically standardized in contrast to the Shāfiᶜī school, jurisprudential

cases were suffering a wide divergence adding to the difficulty of distinguishing the most authoritative opinion and applying it to new emergent incidents. Moreover, the exhaustion of knowledge of all prior Ḥanafī *Fatāwā* was also an extremely difficult task. The efforts of legal scholars could not encompass all the jurisprudential cases and accommodate all juristic differences. It was almost impossible to appoint members to the lay courts possessing the qualifications and skills necessary to review manuals of fiqh laden with lengthy discussions and decide on the most suitable judgment.[106] Compiling the *Mecelle* seemed to have the potential to address such problems. "It is an easy text to read, free of legal disputation, and it contains the most preponderant opinions in the Ḥanafī school. Therefore, Ottoman state officials, judges, Nizamiyye court officials, and administrative employees could all confidently rely on the *Mecelle* in their legal determinations"[107]

In sum, there existed multiple reasons leading to the compilation of the *Mecelle*. It represented a response to a growing western legal hegemony, especially following the Crimean War and upsurge in commercial transactions with their subsequent burdens on the judiciary. The lack of a sufficient number of skillful judges with adequate legal qualifications and the establishment of new civil courts whose judges lacked the juristic knowledge and ability to define the preponderant opinion from a wide range of legal sources motivated the compilation of the compendium. Thus, it served as an easy reference, free from legal disputations and lengthy discussions, and containing the most authoritative opinion in each article to be relied on and used by judges in their legal determinations.

Legal Significance in Light of Collective Ijtihad

One of the aims of the *Mecelle* was to provide, in the manner of a code, a clear and systematic statement of the law for the benefit of both the Shariʿah and *Nizāmiye* courts. To fulfill this aim, the *Mecelle* committee compiled an introduction and sixteen chapters including seventy-three sections with 1851 articles. The introduction presented two sections defining Islamic law and its nature and citing the basic legal maxims largely according to *al-Ashbāh wa al-Nazā'ir* of Ibn Nujaym. Together the introductory two sections account for one

hundred articles. The remaining articles making up the sixteen chapters cover different areas of law, including sales (*buyūᶜ*); hire and lease (*ijāra*); guaranty (*kafāla*); transfer of debts (*ḥawāla*); pledge (*rahn*); deposit (*amānāt*); gift (*hiba*); usurpation and property damage (*ghaṣb wa-itlāf*); interdiction, duress, and pre-emption (*ḥajr*, *ikrāh*, *shufᶜa*); joint ownership and partnership (*shirka*); agency (*wakāla*); amicable settlement and remission of debt (*ṣulḥ wa ibrā'*); acknowledgment (*iqrār*); lawsuits (*daᶜwā*); evidence and oaths (*bayyināt wa taḥlīf*); courts and judgeship (*qaḍā'*).[108]

It is easily apparent that the *Mecelle* was not limited to civil law, as it included four chapters on procedural provisions because it was essentially compiled for the newly-established courts, which did not have regulations concerning civil procedure. The *Mecelle* committee drafted fiqh into the form of a judicial reference modelled on modern laws in terms of sequencing, numbering, the simplicity of wording, putting the preponderant opinion in article form without citing legal proofs or juristic debate.[109] Despite resembling western legal codes in format, the *Mecelle* however did not include all sections normally found in western civil codes, such as family and inheritance laws.[110]

In terms of the approach employed by the drafting committee in compiling its material, an eclectic method was utilized in codification to include the most suitable rulings applicable to the current conditions of the times and needs of societies. The legal provisions of the Ḥanafī school were thoroughly investigated to determine the best choice. Although the *Mecelle* codified the dominant views within the Ḥanafī legal tradition, it sometimes opted for the less likely opinions within this particular school based on the principle of suitability for the new conditions and changes of time, customs and contexts. The adoption of the preferred opinion took into consideration the easiest for people and the most congruent with the interests of societies.[111]

Evidently, the Ottoman *Mecelle* marks an outstanding stage in the development of legal tradition as it represents the earliest attempt by an Islamic state to codify Islamic fiqh and enact it as the law of the state. It signifies the introduction of a legal genre solely dedicated to judicial reasoning and court procedures. It represents "the transposition of Islamic law from the fairly independent and informal terrain of the

jurists to that of the highly formalized and centralized agency of the state."[112] In addition, it came as an Islamic response to the hegemony of the westernization wave sweeping into the Ottoman Empire. The *Mecelle* proved the possibility of systemizing Shariʿah and presented clear evidence for the flexibility and viability of Islamic law; a fact that had proven remarkably true throughout the years.

After its complete publication, the *Mecelle* was promulgated as a Sultanic code to be used across the Ottoman Empire. It was applied in all Ottoman courts, except in Egypt and the Arabian Peninsula. This early codification project charted the course for others to follow and inspired many of the later codification attempts with its modern style and code-like structure. Its effect can be seen in the Tunisian law of contracts and debts, and in the law of debts in Iraq and Morocco. The *Mecelle* remained in force in the Ottoman Empire until the Turkish republic abrogated it in 1926. However, it kept its official status, partly or wholly, until 1932 in Lebanon, 1949 in Syria, 1953 in Iraq, 1977 in Jordan and 1980 in Kuwait. Most of its rules were in effect in Palestine until 1948. It remains the most important legal source for the Palestinian courts until the present day. Moreover, it remained in partial effect in Albania until 1928, in Bosnia until 1945, and in Cyprus until the 1960s.[113] In Southeast Asia, the Sultan of Johor adopted the *Mecelle*, had it translated into Malay and implemented it as the civil code of Johor in 1913.[114] In point of fact, the *Mecelle* meant more than merely a new organization of Ḥanafī law into numbered articles. Its mode of application as a legal standard in force both in Shariʿah and *Nizāmiye* courts throughout the empire turned it into it a "real" civil code, comparing to the old digests of Sultanic law, whereas previously judges addressing civil and criminal matters in the Shariʿah court had considerable leeway in choosing the relevant sources.[115]

Given the *Mecelle's* form, structure, content as well as the various commentaries and other literature that emerged around it, it continued to influence modern interpretations of Islamic law and legal reform in the 20th century Muslim world.[116]

Having highlighted the significance of the compendium, a further question needs to be addressed in terms of its reflection of a collective mode of ijtihad. The collective element is evident in the organisational

process of its compilation. Thus it was assigned to a committee of eminent figures possessing suitable juristic knowledge and technical qualifications. The committee convened, studied the classical manuals of Ḥanafī fiqh, scrutinized the differing views and then chose the ruling considered to be the most appropriate for their prevailing time and in harmony with the exigencies of life.[117] Over the course of compilation, separate parts were regularly sent to the Ottoman religious establishment and authoritative jurists to review and confirm the legitimacy of the work as representative of Islamic legal tradition and the accuracy of its Ḥanafī content.[118] Their feedback was taken into consideration and amendments were processed when necessary.[119]

Upon completion the *Mecelle* was circulated among legal authorities and the Ottoman religious institution for approval and endorsement, indispensable in the process to garner it legitimacy.[120] A form of collaboration between judges and jurists can be expected to have taken place in order to decide on the code-like formation. Similar to the compilation of *Al-Fatāwā al-ʿĀlamgīriyyah*, selective ijtihad was again employed in deciding upon the most suitable legal rulings to be included in the *Mecelle*. Finally, it can be surmised that the collective foundation of the *Mecelle* as well as the developmental and reformative reasons behind its compilation inspired future jurists in their calls and endeavors to revive collective ijtihad. This is discussed next.

[1.3]
COLLECTIVE IJTIHAD IN THE MODERN AGE

Since the era of the *Tābiʿūn* jtihad has generally tended to be an individual undertaking (with the exception of a few cases in which a collective mode was occasionally resorted to as discussed above) with this state of affairs continuing into the modern age until certain prominent scholars began voicing the necessity for institutionalizing ijtihad. This section discusses the appearance of collective ijtihad in the modern context in the form of institutions and fiqh academies. Three such institutions have been singled out by way of discussion due to their seminal contribution in the field of institutional ijtihad. Special reference is given

to their collective approach in dealing with different jurisprudential issues.

Overview

Al-Fatāwā al-ʿĀlamgīriyyah and *Mecelle* are considered to have inspired jurists of future generations and to have had a profound impact on the revival movement that has called for the codification of Islamic law and realization of collective ijtihad. For example, Muhammad b. al-Hasan al-Hajwī (d. 1376/1956) proposed compiling the jurisprudential views of the Mālikī school into one compendium to be used as a reference for the ruler and judges in Northwest Africa. According to him, this obligatory task should be entrusted to a committee of jurists employing collective ijtihad to garner scholars' support.[121] Similar concerns were voiced by the Tunisian mufti Muhammad al-Aziz Djait (d. 1389/1970) who called for a codification project of fiqh based on collective ijtihad within the Ḥanafī and Mālikī schools. He even secured official approval to establish a concerned committee to handle this project. The committee consisted of a wide spectrum of people, including judges of Shariʿah courts, prominent jurists, and some notable figures cognizant of Tunisian traditions. Although the committee managed to compile family law in three hundred articles, in the end the project was interrupted and the committee did not accomplish its mission.[122]

Indeed, Muslim scholars were alert to persistent attempts to marginalize the Shariʿah especially in the sphere of legislation and judiciary. In addition, the modern era has witnessed a whole raft of new incidents and unprecedented issues that require interdisciplinary ijtihad. Against this background, a lot of contemporary jurists have set great store by collective ijtihad to face the formidable challenge. According to Ibn Ashur (d. 1393/1973) the least duty of jurists in the present day is to establish a scientific academy comprising the most senior scholars of Shariʿah from all Islamic countries to examine the critical needs of the Ummah and collectively decide on suitable legal solutions.[123] Similarly, Mustafa al-Zarqa has emphasized that the only way to revitalize fiqh and meticulously address the numerous legal incidents arising with viable solutions lies in collective ijtihad which can only be realized

through a fiqh academy comprising the most knowledgeable jurists in the Islamic world.[124] During the Seventeenth Forum on Islamic Thought held in Algeria in 1403/1983 on the subject of ijtihad, Shaykh Muhammad al-Ghazali summed up the reasons for insisting on collective ijtihad as follows. First, there no longer exist many individuals of a sufficient academic and moral caliber for people to seek out their legal opinions on an individual basis. Second, Muslims are scattered over forty-seven different countries of the world, as a result of which reliance on re-interpretations arrived at by this or that individual will only lead to more division and confusion. Third, governmental interventions prevent people from engaging in individual ijtihad. Alternatively, al-Ghazali suggested that collective ijtihad is a premium opportunity to ensure free and autonomous practice of ijtihad.[125]

Similar calls were voiced by Rashid Rida, Shaltut, Mustafa Shalabi, Muhammad Yusuf Musa, Abd al-Wahhab Khallaf and many others.[126] Those calls have rung true and yielded tremendous results when Egypt took the lead in this regard through establishment of the Islamic Research Academy in 1961. Shortly thereafter, Saudi Arabia followed suit and established the Islamic Fiqh Council in 1977. In 1984, another council, the International Islamic Fiqh Academy, was established by the Organization of Islamic Cooperation (OIC) in Jeddah, KSA. From this time on, collective ijtihad has taken an institutional form.

Al-Azhar Affiliated Islamic Research Academy (IRA)

Collective ijtihad has come to be the principal method of arriving at consultative decisions through the parallel establishment of international Islamic law academies, made up of prominent jurists from various Islamic countries.[127] The first Islamic law academy to be established was the Islamic Research Academy, affiliated to Al-Azhar. It was established in 1961 to replace the Council of Senior Scholars, which was dissolved by the late president Jamal Abd al-Nasser upon the issuance in 1961 of Law no. 103 on the reorganization of Al-Azhar institutions.[128] Its establishment came as a step forward in the reform project and part of the reconstruction of Al-Azhar. Article 8 of Law 103 divides Al-Azhar into different bodies; namely, the Supreme Council,

Islamic Research Academy, Islamic Culture and Missions Department, Al-Azhar University and Al-Azhar Institutes.

According to Article 15, the Islamic Research Academy is the supreme body of Islamic research; it undertakes the study of all matters related to such research, striving for the renewal of Islamic culture, and freeing it from intrusion, vestiges and traces of political and ideological fanaticism, in order to reveal it in its unblemished essence. It endeavors to spread knowledge of Islamic culture at every level and in every environment, expressing an opinion on new ideological or social problems affecting the creed. It carries the responsibility for the call to God's way with wisdom and good exhortation.[129] The Academy consists of fifty members, representing all Muslim schools of thought, including no more than twenty scholars from countries other than Egypt. Certain conditions for membership were stipulated in Article 17 in terms of personal and technical qualifications. The Academy is structured into various bodies; the main Council, the Congress, the Secretariat and Islamic Mission City. The main council includes the Chairman, full-time members, Egyptian members and the Secretary General, while the congress includes all members.[130]

As stated in Article 15, Law no. 103 of 1961 in addition to the internal by-law of 1991, the Islamic Research Academy is responsible for reviving Islamic legacy; presenting and spreading the religion of Islam in its original pure form; clearing misconceptions about Islam and important Islamic figures; conducting research in all Islamic related areas; resolving all creed-based sectarian and social problems and calling to Islam with wisdom and gentleness. Other roles include sending delegates to different places all over the world; liaising with Al-Azhar University to supervise post-graduate Islamic studies and assessments; approving admission of foreign students to Al-Azhar University; publishing, distributing and approving Islamic books.[131]

The academy council convenes once every month, while the congress is called for meeting once a year. The Grand Imam of Al-Azhar is the president of this academy and is entitled to convoke the academy congress, whether in an extraordinary or ordinary session. During the ordinary session, the congress convenes for four weeks to discuss its agenda and deliberate on any required issues. Non-members can be

invited to participate in the discussions. Articles 19 and 20 of the by-law stipulate the procedure followed in such deliberations. For example, Article 19 states that the council is adequately convened when the majority of its members attend. Its decisions shall be taken by majority vote. In the case of an even vote, the vote of the chairperson shall be decisive unless a special text is provided. Article 20 adds that the council shall orally vote unless the majority of members require another method of voting.[132]

Moreover, the council has the right to form committees to undertake certain roles. The basic committees include the committee of the Glorious Qur'an research, committee of Sunnah research, committee of Fiqh research, committee of Philosophy and Doctrine, committee of Presenting Islam, committee of Reviving Islamic Legacy, committee of Education, committee of Cooperation between the Islamic Research Academy and Al-Azhar University, committee of Jerusalem and Muslim Minorities, Follow-up committee, committee of Interfaith Dialogue and committee for Scientific Miracles in the Glorious Qur'an and Sunnah. In addition to these basic committees, the council can form special ones for specific reasons and recruit whatever members and experts needed. The committee of Fiqh was established during the first session held in May 1964 to prepare research on specific legal issues and novel incidents to decide the best solution. The process of ijtihad is entrusted to this specialized committee along with the fatwa one which was formerly established in 1935 but was later affiliated to the General Secretariat of Da'wah and Religious Information.[133] Due to political events, there were years in which the Academy did not convene as in 1967, 1969 and 1973. Moreover, the Camp David accord had its effect on convoking the annual congress. The conferences were divided between some open sessions with participants from around forty countries and closed ones reserved for members of the Academy.[134]

From its very inception, the Islamic Research Academy assumed a crucial role in different fields but special attention has been given to the juristic domain. This is crystal clear in the agenda of various conferences held by the Academy. For example, the first conference of 1964 emphasized in its resolutions on the necessity of exercising ijtihad based on proper understanding of the texts of the Qur'an and the Sunnah by

those possessing the necessary qualifications. The best way to tackle new incidents and emerging situations is to choose the appropriate legal rulings from the opinions of schools of law. If the suitable rulings cannot be realized through the already established views, the solution is sought for by collective ijtihad.[135] The Academy has taken some steps to apply this kind of ijtihad; consequently, it decided in its seventh conference to entrust the committee of Fiqh research with the mission of setting the rules and necessary means to materialize collective ijtihad.[136]

In its fourth conference, held in 1968, the Academy called for the establishment of a committee of jurists and experts of positive law to conduct studies and draft resolutions that facilitate the application of Islamic law rulings, especially in the sphere of penal, commercial and maritime codes.[137] Moreover, the issue of fatwa and the qualified person to give fatwas was paid particular attention by the committee of Fiqh and the academy council which issued some resolutions in this regard including resolution nos. 30, 205 and 207. In its 205th resolution, the academy council urged the cable channels to host qualified persons only who are specialized in Islamic fiqh to issue fatwas, while taking into consideration the different specializations. Again, in its resolution no. 207 issued in the sixth meeting of the council in its forty-third session in December 2006, the council of Islamic research academy pointed out that Dār al-Iftā' is the official institution entitled to give fatwas.[138] Beside the emphasis on ijtihad and fatwa, the committee of Fiqh research conducted many studies on multiple subjects including for example the sources of legislation, right to ownership and intellectual property, financial issues and Islamic banking, female issues and marriage, organ transplantation, therapeutic cloning, surrogacy, and many others. The subject matters of those issues belong to different disciplines, so the committee sought the help of relevant experts in each field.

The scope of issues examined by the Academy was not limited to acts of worship or legal rulings only. The Academy was not isolated from the real world around it. It grappled with contemporaneous problems and social maladies. The second conference for example stressed on the significance of good upbringing and raising children according to religious teachings and values anchored in Islamic principles. This

religious upbringing is the best way to protect youth from deviation and social evils.[139] In addition, the Academy has shouldered its responsibility in challenging misconceptions and rebutting allegations against Islam. In this regard, the eighth conference of the Academy called for establishing a specialized entity to follow up on orientalist writings and refute their claims.[140]

Based on the foregoing discussion, it is evident that the Academy marked a remarkable stage in the history of collective ijtihad. It proved the possibility of institutionalizing ijtihad and exemplified interaction between fiqh and society where jurists are closely involved with the real world rather than being secluded in ivory towers. This keen engagement was reflected in the juristic treatment of urgent issues without which life for many people would be impossible given the new realities which have been taking shape. The following are some examples of such issues tackled by the academy.

Examples of IRA Collective Ijtihad

Contemporary ijtihad should cope with the cutting-edge developments in all walks of life and provide legal solutions that facilitate people's life. However, the intricate nature of some issues requires certain qualifications and knowledge which could hardly be attainable through individual ijtihad. Instead of turning a blind eye to such cases, Muslim scholars resorted to institutional ijtihad to find a suitable solution. Against this background, the Islamic research academy rose to the challenge and provided the legal ruling for new complicated issues in different spheres, particularly the medical and financial ones. Among the issues tackled by the academy come the questions of organ transplantation and banking dealings.

IRA Resolution on Organ Transplantation

The IRA council examined the issue of organ transplantation in its eighth meeting of the thirty third session in April 1997 and took the following decision:

1. It is unanimously agreed that the Islamic Shariʿah remarkably honors the human being, both soul and body, whether dead or alive. Among the supporting proofs in this regard is the Qur'anic verse (17:70): "We have honored the children of Adam and carried them by land and sea; We have provided good sustenance for them and favored them specially above many of those We have created." In line with this honor, the Shariʿah treats the human body as a trust from God. Nobody, including the person himself, is entitled to dispose of this trust in a way endangering it. God says (4:29-30), "Do not kill each other, for God is merciful to you. If any of you does these things, out of hostility and injustice, We shall make him suffer Fire: that is easy for God." It was reported by al-Bukhārī and Muslim on the authority of Abū Hurayrah that God's Messenger said, "Whoever purposely throws himself from a mountain and kills himself, will be in the (Hell) Fire falling down into it and abiding therein perpetually forever; and whoever drinks poison and kills himself with it, he will be carrying his poison in his hand and drinking it in the (Hell) Fire wherein he will abide eternally forever; and whoever kills himself with an iron weapon, will be carrying that weapon in his hand and stabbing his abdomen with it in the (Hell) Fire wherein he will abide eternally forever."[141] Among the manifestations of such high esteem given to the human body is the fact that the Shariʿah commands every Muslim to take care of their bodies, sparing no effort in maintaining physical health and using all necessary medications to cure any health condition. Again, al-Bukhārī and Muslim reported that the Prophet was quoted by Abū Hurayrah as saying, "There is no disease that God has created, except that He also has created its treatment."[142]

2. Scholars have unanimously agreed that a man is in no way allowed to sell any of his organs; they are nonsalable nor purchasable, and neither are they a commodity to be bargained. Being created by God, the human body is beyond sale. It is decisively forbidden to trade in it.

3. On the legal ruling of organ donation, the majority of jurists held the opinion that this act could be permissible if authorized by a Muslim physician provided that it would not entail any potential risks to the donor's safety; rather it would bring about a greater benefit for the recipient. We agree with this viewpoint because donating an organ is resorted to only in cases of extreme necessity and for the benefit of a very close person. This act of donation exemplifies the noblest form of altruism, which is a praiseworthy characteristic of believers. God says (59:9), "[They] give them preference over themselves, even if they too are poor."

4. Indeed, the Shariʿah honors the human being in case of life or death. Thus, it prevents any kind of disrespectfulness, mutilation, or any violation of the body. In line with this, it commands Muslims to have the dead body washed, shrouded and solemnly buried after the funeral prayer. Whenever the Prophet found dead persons after any battle, he used to bury them, whether they were Muslims or not.

5. Juridically speaking, death is the termination of life after a complete stoppage of all vital functions of all organs which are decided to be irreversible by doctors. In case of this certain death, it is permissible to take organs from a deceased donor to be transplanted into the patient under the donor's consent through a will or through his/her guardian, or declaration from the government (if the deceased does not have any next of kin). In any case, organ transplantation cannot be performed for the sake of money. It is also forbidden to retrieve organs or parts thereof that are associated with reproduction lest the genetic materials may be mixed and that the purity of the lineage of a person could be compromised. This permissibility is based on the legal maxim stipulating that a greater harm is to be eliminated by tolerating a lesser one. In the context of organ transplantation, the greater harm lies in the risk of severe illness or even the death of the recipient, while taking an organ from a deceased person constitutes the lesser harm.

6. The view of permissibility supported here is in agreement with a lot of previous fatwas by trustworthy scholars and respected jurists including for example:

a. The late Shaykh Hassan Mamoun in his fatwa published in volume 7, p. 2552 of "*Al-Fatwa al-Islāmiyyah*" of Dār al-Iftā' in 1959;

b. The late Shaykh Ahmed Haridi in his fatwa published in volume 6, p. 2278 of "*Al-Fatwa al-Islāmiyyah*" of Dār al-Iftā' in 1966;

c. The late Shaykh Jad al-Haqq Ali Jad al-Haqq in his fatwa published in volume 10, p. 3702 of "*Al-Fatwa al-Islāmiyyah*" of Dār al-Iftā' in 1979;

d. Dr. Sayyid Tantawi in his book entitled *Fatawa Sharʿiyyah*, p. 43 in addition to his fatwa in volume 21, p. 7950 of "*Al-Fatwa al-Islāmiyyah* of Dār al-Iftā';

e. A fatwa issued by Al-Azhar Fatwa Committee in 1981. In addition, other fatwas have been passed by some highly respected jurists and fiqh councils in some Islamic countries but there is no room here to cite all of them.[143]

It is clear that the issue of organ transplantation is of great significance for people especially in our contemporary era where many lives can be saved given the great advances in the medical field. Evidently, the academy council depends in its deliberation on the juridical principle of 'necessity' taking into consideration what is good for society at large and what serves public interest. In this regard, it warns against paid organ donation, which practice unfortunately is running rampant in our present-day world. The above-mentioned resolution refers to previous fatwas to lend support to its stance. However, it does not discuss the opposing view, which may be for limited space reasons. Such resolutions cannot accommodate lengthy discussions and I suppose this was already handled by the Fiqh research committee. It is worth mentioning that the council discussed in its next meeting two memos sent by the speaker of the People's Assembly and the minister of health on a proposed bill of organ transplantation. After deliberating over the bill, the council added some amendments deemed necessary and approved it.[144]

IRA Resolution on Conventional Banking Dealings

In May 1965, the Academy congress was convened with the participation of Egyptian and non-Egyptian members where some economic issues, among others, were discussed. The Academy deliberated over the issue of social security and decided to establish a specialized committee of jurists, economists, law experts and sociologists to further examine the different kinds of security involved and the relevant views of Muslim scholars drawn from across the Muslim world before deciding on a final legal ruling.

In terms of conventional banking services, the academy passed the following resolution:

1. All kinds of interest-bearing loans are forbidden, with no distinction between consumer loans or productive ones. The Qur'anic and Prophetic texts in totality are categorical in prohibiting both kinds.

2. *Ribā*,[145] whether much or little, is totally forbidden based on the correct understanding of the following Qur'anic verse (3:130), "You who believe, do not consume usurious interest, doubled and redoubled."

3. Lending money on the basis of *ribā* is prohibited; it cannot be rendered as permissible due to dire need or necessity. The sin incurred through necessity may be sometimes pardoned; however, the extent of necessity is measured in accordance with its true proportions which is eventually dependent on a person's piety and religiosity.

4. Certain banking services such as opening current accounts, cashing cheques, and obtaining letters of credit or home bills needed for transactions between merchants and banks are permissible and fees paid in return for such services do not constitute forbidden *ribā*.

5. Interest-based credits, interest-earning term accounts and all forms of interest-bearing lending are forbidden *ribā*.

6. The decision as to external bill dealings is to be postponed pending further research.

7. Given the profound impact of the banking sector on contemporary economic activity and in keeping with the Islamic emphasis on making good use of all new things while avoiding any harmful aspects, the Academy searches for an Islamic alternative to the conventional banking system. In this regard, the Academy invites all Muslim scholars, economists and financial experts to share their ideas and insights.[146]

The resolution reflects the real meaning of collective ijtihad where the expertise of all relevant parties is to be utilized to find the most reliable solution. This is why the Academy called for the help of economists and financial experts, and the call rang true for many people yielding tremendous results over the course of the ensuing years. Moreover, the Academy did not hesitate to establish specialized committees or refer the issue under discussion to any entity for further examination.

Despite the Academy having assumed a significant role in satisfying the needs of Muslim society at various levels, that role in recent years however has diminished, and with this weakening not likely to escape the attention of Al-Azhar officials, I think the re-establishment of the council of senior scholars in 2012 came as a response to the decline.

Islamic Fiqh Council (IFC)

Shortly after the establishment of the Islamic Research Academy, the Muslim World League (MWL) inaugurated its own academy in 1977.[147] As an affiliate of the MWL with an independent legal personality, the Islamic Fiqh Council (IFC) was founded by a resolution of the Constituent Council with the membership of a select group of Muslim jurists and scholars to collectively examine serious issues facing the Muslim Ummah and issue appropriate rulings based on the Qur'an, Sunnah, consensus of Muslim scholars and other established sources of legislation. The draft resolution regulating the institutional functions and boards of this council was discussed by the Muslim World League

in its 19th session where it was passed after a partial modification.[148]

Pursuant to the articles of its constitutive act, the Islamic Fiqh Council is an affiliate of the MWL established for the purposes of reviving and spreading the Islamic fiqh heritage, highlighting the superiority of Islamic law compared to all positive laws, and discussing all new issues and providing suitable legal rulings thereof. The Council is made of the assembly and the administrative board. To fulfill the Council mission, its assembly consists of twenty members other than the chairman and the deputy chairman. The chairman is to be elected by the majority vote of the council members, while the deputy position is assumed by the MWL Secretary General. The twenty members of the Council are chosen in a manner that takes into consideration its various relevant disciplines with two members nominated in each of the following fields: Qur'anic studies, Hadith sciences, and Islamic Jurisprudence in addition to fourteen scholars of Fiqh. Also required are two jurists with adequate knowledge of Islamic history alongside another two having good familiarity with English.[149]

The Council is convened in Makkah once a year upon the invitation of the chairman or the deputy. Resolutions are passed by majority vote. In the case of an even vote, the vote of the chairperson is decisive. The Council is entitled to appoint some corresponding members and the chairperson may invite them to attend any session. There are certain committees affiliated to this council including, the Committee of Fiqh Terminology, Committee of Fiqh Legacy, Committee of Scholarly Research, the Drafting Committee, and the Committee of Contemporary Studies. The Committee of Fiqh Terminology is responsible for expounding the linguistic and technical meanings of legal expressions in all schools of law, while the Committee of Fiqh Legacy is entrusted with the task of editing and publishing the most important classical books of fiqh. On the other hand, the aim of the Committee of Scholarly Research is to study new issues, especially in the field of financial transactions and encourage scientific research. Similarly, the Committee of Contemporary Studies is entitled to carefully examine different intellectual currents and new issues from an Islamic perspective.[150]

The Council meets once a year in an ordinary session for ten days, but may also be called to an extraordinary session if required. As an

institution of collective ijtihad, decisions are taken by majority vote. Since its foundation, the Council has been involved in discussions on many issues of great significance in different fields. It has also stood firmly against deviating ideologies and beliefs. Besides protecting Muslims from the latter, it has been employing ijtihad in order to provide people with legal rulings on various issues of a liturgical, financial, medical and social nature as shown below.

Being primarily an institution of ijtihad, the IFC has paid special attention to the issue of juristic difference and independent reasoning. In its eighth session held in 1985 the Council discussed in some detail the issue of ijtihad and emphasized the critical need for exercising independent reasoning in the contemporary era to arrive at legal rulings for unprecedented matters. According to the Council resolution, this endeavor should be practiced collectively through a fiqh academy or institution. This collective form of ijtihad was adopted during the era of the Rightly-Guided Caliphs and is more needed in the context of the modern world having the potential to address the intricate complexities of contemporary issues.[151]

Based on collective deliberation and examination of the issues under discussion, the IFC always takes its final decisions by majority vote. In some cases, the resolution refers to dissenting opinion held by some members of the Council. For instance, the Council in its first session held in 1977 ruled to prohibit commercial insurance. However, one particular member finding in his view no credible objections to commercial insurance raised serious doubts in this regard. Given that this was the first session of the Council with only half of the members attending, he went on to comment that such a grave resolution should be adopted in a session attended by all members of the Council or a majority of them. He also emphasized the necessity of consulting other scholars of the Muslim world and allowing them the opportunity to contribute to this highly controversial issue. His comments and opposing argument were annexed to the Council resolution.[152]

Since its very beginning, the Islamic Fiqh Council has taken the responsibility of elucidating legal rulings in different fields. This has resulted in a vast bulk of fatwas mostly published in the council half-yearly journal. Reflecting on its resolutions, what is readily apparent is

that the Council has kept pace with rapid developments in all walks of life and the following example is evidence of this.

IFC Resolution on Artificial Insemination

For most people having children is an essential part of life and to have a child is a great and blessed gift from God. Although both procreation and infertility are determined by His will, it is not impermissible in Islam to seek a medical solution to the latter with treatment attempts recommended even. And in the search for a cure one technique scientists have turned to is artificial reproduction known as assisted reproductive technology.

Robert Edwards, British medical researcher together with Patrick Steptoe, British gynecologist, first pioneered the fertility technique known as In Vitro Fertilization Pre- Embryo Transfer (IVF–ET). In July 1978, they announced to the world the birth of the first test-tube baby, Louise Brown, which was a landmark achievement in the science of reproductive medicine. Since then, a myriad of assisted reproductive techniques have surfaced.[153] In vitro fertilization (IVF) and artificial insemination are two examples of such assisted reproductive techniques. In the first case fertilization takes place in a test-tube, outside the human body, while in the case of artificial insemination fertilization takes place inside the woman's uterus.

IVF is a modern biomedical technique generally used when, due to some obstruction, the sperm of the husband cannot reach the wife's ovum. In this case, the ovum is removed from the woman's ovary at the time of ovulation, and exposed to the husband's sperm in vitro in hopes that it will be fertilized. The fertilized ovum is then preserved in a test-tube and at a later stage, when it becomes an embryo, is implanted in the woman's uterus. Through this procedure women who otherwise would not be able to conceive a child are able to carry to term the fetus conceived outside the body and give birth to biological offspring.[154]

Given the rapid development and evolution of these assisted reproductive technologies and as a result of globalization, in vitro fertilization and artificial insemination began gradually to spread into larger populations of the Muslim world. Consequently, many questions arose

regarding the Islamic viewpoint on such innovative techniques, to fulfill the dream of childless couples to have their own children. Many Islamic institutions took the initiative to examine the issue from an Islamic perspective. Numerous fatwas were issued including one by Dār al-Iftā' in Egypt (1980), one by the Islamic Fiqh Council (1984), the Islamic Organization for Medical Sciences in Kuwait (1983), the Islamic Organization for Education, Science and Culture in Morocco (2002), and the International Islamic Centre for Population Studies and Research, al-Azhar University (1980).[155]

The issue of artificial insemination and in vitro fertilization was firstly dealt with by the Islamic Fiqh Council in its fourth session in 1982. The Council reviewed detailed research prepared by some Council members in addition to all information collected from new literature on the subject. After comprehensively processing relevant materials, the Council concluded the issue of IVF to be highly sensitive from the religious perspective. It contained many dimensions, consequences and repercussions for the family. There was need for more research and investigation especially following recent writings by medical experts and scientists raising certain doubts on the procedures. Therefore, the council decided to postpone decision on the matter to the forthcoming session in order to allow room for more in-depth research and investigation.[156]

Again, in its seventh session held in 1984, the IFC reinvestigated the issue after reviewing a thorough study prepared by Shaykh al-Zarqa along with other relevant materials. The Council clarified the idea of artificial reproduction and its different methods, namely that of internal insemination by injection of sperm into a woman's uterus, and that of external insemination between sperm and a woman's ovum in the test-tube of medical laboratories scientifically known as in vitro fertilization. The different ways highlighted by the Council reflect the marital relationship between the male and female, that is whether married or not, and based on this relationship, the Council numerated different forms of insemination. The first form is the standard way of insemination in which sperm is taken from the husband and inserted in his wife's uterus with fertilization taking place inside the woman's uterus where the inserted sperm meets the egg during ovulation.

Another method is applied if the husband is infertile and there is no sperm in his semen, in which case the male sperm is taken from another male. These are the two methods of internal artificial insemination. The standard way of in vitro fertilization is to take a sperm from the husband, and an ovum from the ovary of his wife to be fertilized in a container and then inserted back into the wife's uterus. In certain cases, the ovum is taken from the ovary of a woman other than the wife but the fertilized egg is inserted back into the uterus of the wife; or taken from the wife and the fertilized egg is implanted in the uterus of another woman. Still, the sperm and ovum can be taken from two donors to be inserted back after fertilization in another woman.

The Council deliberated over all such permutations and finally took the decision that in vitro fertilization and artificial insemination can only be permitted between a husband and his wife, with the husband's sperm and the wife's egg fertilized and placed in the womb of the same wife. The case in which the sperm and ovum are taken from a married couple and the fertilized egg planted into the uterus of another wife of the same husband is also held to be permissible if necessary, so long as precautions are taken to ensure that the couple's gametes are not replaced by, or confused with, those of a third party. Some members of the Council refused to maintain the permissibility of the latter for being a form of surrogacy.[157] That said, artificial reproduction was deemed prohibited in the following cases:

1. If fertilization takes place between a sperm taken from the husband and an egg taken from a woman other than the wife, and the fertilized egg placed in his wife's womb;

2. If fertilization takes place between a sperm taken from a man who is not the husband, and an egg taken from the wife, with the fertilized egg implanted in the wife's uterus;

3. If fertilization is done externally between the sperm and egg of the couple, and the fertilized egg placed in the womb of a non-wife who volunteers to carry it (a surrogate mother);

4. If fertilization is done externally between the sperm of a man who is not the husband and the egg of a woman who is not the wife, then the fertilized egg is placed in the womb of the wife.[158]

Thus, in this manner the Council defined the parameters of permissible and forbidden in relation to forms of artificial insemination following lengthy discussions and deliberation. The resolution was signed by the Council members with some members adding a note next to their signature to show disagreement with the resolution regarding a specific case of permissibility. It is worth mentioning that the Council withdrew its approval of surrogacy in a session held in 1985.[159]

The degree of discussion and dialogue indicates the Islamic Fiqh Council as not being detached from the lived reality of Muslims. Rather, the Council is shown to address and present responses to real problems and questions within the ethico-legal framework of the Shariʿah. Being articulated mainly through institutional ijtihad, such responses were able to properly grapple with complicated questions. This state of affairs highlights the great significance of collective ijtihad institutions such as the Islamic Research Academy (IRA), the Islamic Fiqh Council (IFC) and the International Islamic Fiqh Academy (IIFA).

International Islamic Fiqh Academy (IIFA)

Based in Jeddah, Saudi Arabia, the International Islamic Fiqh Academy (IIFA) was established in 1981, as an affiliation to the Organization of Islamic Cooperation (OIC). The OIC third Islamic summit took the decision to establish the IIFA to gather "religious scholars and intellectuals in various cultural, scientific, social and economic disciplines from various parts of the Muslim world, to study problems of contemporary life and to engage in original effective ijtihad with the view to providing solutions, derived from Islamic tradition and taking into account developments in Islamic thought, for these problems."[160] It was King Khalid b. Abd al-ʿAziz of Saudi Arabia who enthusiastically supported the establishment of the Academy, calling for immediate action and removing all obstacles hindering the endeavor. Consequently, the OIC general secretariat assigned the task of preparing the

governing statute of the Academy to the committee of experts. The new draft statute for the Academy was reviewed and approved by the thirteenth Islamic Conference of Foreign Ministers which requested the general secretariat to submit observations and suggestions made by member states on the statute of the Academy to the general constitutive conference of the Islamic Fiqh Academy.[161]

The governing statute for the Academy stipulates its goals, including achieving the theoretical and practical unity of the Ummah in line with the principles of the Shariᶜah at the individual, social as well as international levels; practicing collective ijtihad to find legal solutions for contemporary problems in conformity with the higher objectives of the Shariᶜah; serving as a referential authority for Muslims to provide them with jurisprudential views on novel issues and any emerging challenges in all walks of life. The Academy is expected to bring about renewal of Islamic law that reconciles the differences between Islamic legal schools by emphasizing their common ground through a process of collective ijtihad. Moreover, the Academy is specifically charged with responding to those who wrongly purport to speak on behalf of Islam, particularly those who promote violence, condemn other Muslims, and issue wrong fatwas contradicting the entrenched principles of ijtihad.[162]

Membership of the Academy is organized by a separate article according to which members are appointed by member states of the OIC. Every member state nominates a jurist to represent it in the Academy, and membership is approved through a decision made by the Council (or by the bureau between sessions of the council). These members are required to adhere to Islamic faith both in theory and practice; specialize in Islamic fiqh with adequate knowledge of Shariᶜah studies and the reality of the Muslim world; master the Arabic language; have a good reputation and biography; and commit to defending the interests of the Ummah, its civilization and culture and protecting its material and moral rights.[163] The council of the Academy is entitled to elect other members in addition to those nominated by the member states. The elected members can be nationals of non-member states. Moreover, the council can appoint some corresponding members or experts to attend the meetings and participate in deliberations, although they do not have a vote.

The organizational structure of the Academy consists of the council, the specialized divisions, the bureau, and the general secretariat. The Academy council is formed of the appointed members and is presided by an elected chairman assisted by three deputies. The council is convened annually in an ordinary session; however, an extraordinary session can be held at the request of one fourth of the members, the OIC secretary general, the secretary general of the Academy or upon a decision by the bureau. A quorum shall be constituted when two thirds of the members are present and resolutions are to be passed by majority vote. In the case of an even vote, the vote of the chairperson shall be decisive. The Academy specialized divisions include the Fatwa Division, Division of Research and Studies, Division of Writing, Translation and Publication, Division of Encyclopedias and Lexicology, Division of Comparative Legislation, Division of Planning and Follow-up, and Division of Rapprochement between Islamic Schools of Thought. The fatwa division is responsible for examining the issues under discussion and preparing a thorough study to be presented to the Academy. Such a division is allowed to seek the help of any specialized experts for the sake of settling mediated issues from a comprehensive multidisciplinary perspective. The council bureau is charged with the task of reviewing the council agenda, following up the meetings of specialized divisions, reviewing membership nominations, and presenting any recommendations to the council. On the other hand, the general secretariat is tasked with the administrative and financial affairs in addition to receiving any written proposals from the council members.[164]

Recognizing the complex nature of the modern world and ramifications of the breathtaking advancements made in all spheres of life and knowledge, the Academy was fully aware of the fact that contemporary problems are too complex to be handled strictly by traditional approaches and require a more collective and collaborative endeavor that employs a trans-*madhhab* and trans-disciplinary approach to resolving them. This approach is reflected in the mechanism adopted in choosing members of the fatwa committee from different parts of the Muslim world representing various *madhhab* affiliations which in turn has enabled the Academy to study a wide range of subjects and issue scores of resolutions and recommendations in almost all fields.

IIFA Collective Ijtihad

Before issuing its final resolution on a certain issue, the Academy commissions a group of scholars and experts to thoroughly examine it and prepare a comprehensive study. The commissioned group consists of jurists and specialized experts in the relevant disciplines. They are required to write detailed papers on the issue under juristic discussion. The papers are shared with the council members one month before the Academy session. A public meeting is convened to discuss the papers where the issue is collectively investigated and thoroughly examined to arrive at a legal ruling. A special drafting committee prepares the draft resolution to be presented to the Academy, which in turn discusses it in the presence of qualified experts.[165] Following deliberate discussions, the Academy takes a final decision by majority vote and hence resolution stipulating a legal ruling is passed. On occasion, the Academy defers its decision pending further investigation as occurred in discussions on the issue of artificial insemination and test-tube babies. Having reviewed the studies presented by the learned jurists and physicians the Academy resolved to postpone any ruling on the subject to the next session. Moreover, it commissioned the then chairman of the council of the Academy, to prepare a thorough study on the subject and share his findings with all members, through the general secretariat of the Academy, at least three months prior to the next session.[166]

A review of various resolutions issued by the Academy since its foundation reveals its concerns with a broad spectrum of issues. For instance, the Academy in its second session[167] discussed the following topics: zakah on debts, zakah on real-estates and rented non-agricultural lands, test-tube babies, milk banks, resuscitation equipment, queries submitted by the Islamic Development Bank, insurance and reinsurance, transactions with banks dealing with *ribā* and transactions with Islamic banks, unification of the beginning of Lunar months, and letter of guarantee. As is apparent, these issues touch on different fields, including financial, medical and theological.

In addition to the three academies discussed above, there exist certain other institutions where ijtihad is exercised by scholars of Shari^{c}ah as well as by experts of other disciplines in a consultative process. Such

institutions include the Islamic Fiqh Academy of India established in 1988 in New Delhi and the Islamic Fiqh Academy of Sudan, established in 1998. Geographically, some of these academies are based in the Muslim world whereas others are located in the West and thus focus mainly on specific issues relevant to their locality. The Assembly of Muslim Jurists of America (AMJA) and the European Council for Fatwa and Research (ECFR) are of crucial importance at present. The ECFR was established in 1997 in Dublin, Ireland while AMJA was founded in Maryland, USA in 2002. The two councils are the main theorists and advocates of the modern trend within Islamic jurisprudence which keeps in mind the particular position of Muslims as religious minorities living in a non-Muslim context.[168]

There are also a number of international institutes and organizations that undertake specialized research in Islamic legal themes. The increasing need for a more intensive and systematic integration of the contributions made by physicians in the process of religio-ethical reasoning eventually led to the activation of the mechanism of collective ijtihad in the field of Islamic Bioethics by the beginning of the 1980s. The religious scholars base many of their conclusions in this field first on information provided by scientists. The Islamic Organization for Medical Sciences, established in Kuwait in 1984, is one of the most prominent institutions in this regard whose activities are exclusive to addressing bioethical issues from an Islamic perspective.[169]

Similarly, the intricate and highly technical areas of finance and economics require the input of highly trained experts and economists. This fact led to the establishment of Shariʿah boards in the banking sector. Fatwa and Shariʿah Supervisory Committee is a body entitled to supervise the Islamic financial institution to ensure its compliance with the rulings of the Shariʿah in all its activities. Such boards are a pivotal mainstay on which Islamic financial institutions are established. Those boards represent a form of specialized institutional ijtihad. Of special significance in this regard is the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), an independent international organization established in Algiers in 1990 and later moved to Bahrain. This organization prepares accounting, auditing, governance, ethics and, most importantly, Shariʿah standards for Islamic financial

institutions. Islamic banks, being a comparatively recent invention, were confronted with a host of problems easier to solve with the help of collective action. The information problems that are typical of Islamic banking, for instance, call for uniform norms for financial accounting. AAOIFI tries to fill the gap by publishing norms for accounting, auditing and solvability and, more recently, also for the application of the Shariʿah.[170] Besides being one of the most influential standard setters for Islamic financial institutions in the world today, this organization holds an annual Shariʿah conference to discuss emergent issues and challenges in the field of Islamic finance. The AAOIFI accounting standards are a modern case of collective ijtihad.[171]

Conclusion

The mechanism of collective ijtihad has been institutionalized through the establishment of various academies and institutions primarily in the Muslim world and elsewhere to a) ensure collaboration among Shariʿah scholars and b) integrate the specialized expertise of scientists and technical experts in various disciplines. This allows fiqh to be compatible with and relevant to the complex and fast changing challenges and realities of contemporary. Moreover, the mechanism allows for a lot of weight, credibility and authority to be given to the fatwas issued and serves as a referential authority and a viable alternative to classical *ijmāʿ* as shown in the next chapter.

CHAPTER 2

Collective Ijtihad: Authority, Conditions and Reformative Role

Overview

DISCUSSION focuses on the legal authority of collective ijtihad based on the authoritativeness of majority opinion. The potential of this mechanism to act as a viable alternative to classical *ijmāᶜ* (which may be difficult to realize in the modern world) is analysed. Also examined are the basic skills and qualifications required of persons involved in this mode of juridical reasoning, with emphasis on the critical necessity for complementarity between jurists and technical experts for effective outcomes. It is argued that the mechanism itself is reformative in terms of promoting unity, eliminating controversy, combating radicalism and extremism, and employing the highly emphasized principle of mutual consultation in deciding on legal rulings.

[2.1] LEGAL AUTHORITY OF COLLECTIVE IJTIHAD

In general terms, a majority vote constitutes the decisive factor in deciding a legal verdict arrived at through the process of collective ijtihad. This differs from classical *ijmāᶜ* which requires unanimous agreement as an essential constituent. Discussed in this section is the issue of the

authoritativeness of collective ijtihad, highlighting its potential as a possible alternative to *ijmāᶜ* and contending that the authority of collective ijtihad is technically based on the legal effect given to the majority opinion.

Authoritativeness of Majority Opinion

Collective ijtihad is a deliberative undertaking on the part of a group of jurisprudents to reach a legal ruling based on mutual consultation. This mode of ijtihad is predicated on agreement by the majority, an issue thoroughly examined in *uṣūli* literature in the course of discussions on the authority of *ijmāᶜ* and whether it can be constituted by a majority view or only through unanimous agreement. For this reason, it is important first to highlight the differing positions held by scholars regarding the legal authority of majority opinion before investigating the authoritativeness of the collective fatwa.

Scholars of *uṣūl* have held different positions with respect to the legal authority of majority opinion. According to the orthodox mainstream view, a majority opinion does not constitute *ijmāᶜ* and the disagreement of even a single competent jurist invalidates it. However, a group of other scholars have differed from this point of view, maintaining that the majority opinion of competent scholars constitutes *ijmāᶜ* or at least a speculative authority for a view without yielding certainty.[1] In support of the former it is argued that the validity of *ijmāᶜ* rests on the concept of the infallibility of the agreement of the whole Ummah. This understanding is based on several traditions, in various forms, which clearly state that the whole community can never agree in error. The Prophet declared the infallibility of the Ummah by a multitude of explicit statements. The word Ummah either denotes the whole or the majority and both connotations are applicable according to the Arabic language. However, the word Ummah should be taken here to denote the whole as in this case the majority is also included in the whole and such *ijmāᶜ* would be certain allowing no room for doubt. On the other hand, if the word Ummah would be construed as the majority, *ijmāᶜ* established in this case would not be certain as it remains probable that the Prophet perhaps meant the whole community when he used the word Ummah.[2]

In addition, it has been argued that if majority opinion is to be considered as constituting *ijmāᶜ*, then history would bear this out, with for instance the Companions criticizing those who disagreed with them. Indeed, differing from the majority view has been common practice in Islamic history with even the minority opinion sometimes being proven true. For instance, we have the case of Abū Bakr, who in the fledgling Muslim community insisted on fighting those who refused to pay zakah, even though the majority had initially refused to support this stand, evidence of the fact that truth is not necessarily the preserve of the majority; with legal effect also given to rational reasoning and weighty debate. In other words the issue of final decision is not one of minority versus majority, or vice versa, but rather of reasoning and evidence. In another incident, we witness Ibn ᶜAbbās going against the opinion of the majority of Companions in allowing the practice of *mutᶜah* (temporary marriage) and *ribā al-faḍl* (excess taken in exchange of specific homogenous commodities) whilst rejecting certain aspects of the inheritance law termed *ᶜawl* (where the shares of all fixed heirs are greater than the remainder of estate/assets). The Companions' response was indicative, whilst they did not critique him for his interpretation of *ᶜawl* as there is room for independent reasoning, they rejected his ijtihad in relation to *ribā al-faḍl* and *mutᶜah*. Similarly, Abū Mūsā al-Ashᶜarī held the view that ablution is not to be invalidated by sleep.

What is apparent is that the majority opinion was never imposed upon the community, nor did anyone reprimand upholders of the minority opinion. We see this clearly, for example, in Mālik's argument in response to al-Manṣūr's (r. 136/754-158/775) suggestion to impose *Al-Muwaṭṭa'* as the standard code of law for all Muslims. Mālik explained that as many Companions had dispersed across various lands with each teaching and giving judgements according to his own knowledge and ijtihad, every place therefore had its own way of doing things and it would thus be unreasonable, if not impossible, to force everyone to adhere to one particular view.[3] Historically, even when an opposing opinion was rejected, the majority did not deny the minority the right to maintain their own view. This is why differences of opinion on certain points of contention survive to the present day.[4]

Still, some upholders of the mainstream view have cited another line

of argument. The *mujtahid* is required to exercise his own reasoning without merely imitating and conforming to the others' view. Now, if majority opinion is to be taken as *ijmāᶜ* of the whole community, this presupposes that remaining jurists set aside their individual opinions and follow that of the majority, which goes against the requirement of avoiding mere conformity (*taqlīd*). An individual cannot be forced to conform to the views of others if he harbors his own point of view. Therefore, no *ijmāᶜ* will be valid as long as the minority opinion stands.[5]

In contrast, Abū al-Ḥusayn al-Khayyāt (d. ca 300/912) and Ibn Jarīr al-Ṭabarī (d. 310/923) held a different view maintaining the validity of *ijmāᶜ* by majority opinion. A group of scholars contend that if the number of those who disagree reaches the proportion of *tawātur* (indefinite number of people who cannot possibly agree upon a falsehood because of their huge number and geographical situation), *ijmāᶜ* cannot be constituted. According to Abū Ḥāmid al-Ghazālī however, the rectitude and validity of the opinion of the majority certainly cannot be considered that of the whole Ummah, and infallibility can only be established for the entire community.[6] Ibn al-Ḥājib (d. 646/1249) and Abū ᶜAbd Allah al-Jurjānī (d. 397/1007) are reported to have accepted that if the community allows exercising of ijtihad on some issues, then this disagreement would be considered in *ijmāᶜ* such as in the case of *ᶜawl* in which Ibn ᶜAbbās disagreed with the majority. If, on the other hand, the community does not allow ijtihad as in the reported case of temporary marriage by Ibn ᶜAbbās, this disagreement would not be taken into consideration. Another group maintains that majority opinion yields authority but does not constitute *ijmāᶜ*, while another group states that it is preferable to follow majority opinion, though it is permissible to oppose it. *Ijmāᶜ* established by majority opinion cannot be considered conclusively authoritative but rather only speculative.

As to the arguments advanced by opponents in favor of the majority opinion, they depend on textual evidence, *ijmāᶜ* and rational demonstration. The most central argument lies in the Prophetic traditions urging Muslims to follow the overwhelming majority. They cite as support for their stand a number of traditions to prove that the word Ummah applies to the majority of Muslims. They also employ *ijmāᶜ* to

corroborate their point of view. It is established that the Caliphate of Abū Bakr is grounded in *ijmāᶜ*. Because ᶜAlī and Sᶜad b. ᶜUbādah dissented from this consensus, it then follows that *ijmāᶜ* could be constituted by the overwhelming majority opinion as the dissent of one or two persons does not prevent the establishment of *ijmāᶜ*. In addition, they argue in their rational demonstration that the solitary isolated report does not result in decisive certainty while the report narrated by a group based on *tawātur* yields this certainty. The same principle can apply to the issue of ijtihad and *ijmāᶜ*. Additionally, according to the principles of narration, more weight is given to the majority report where majority is considered a decisive principle in giving preponderance. Again, this can be applicable to ijtihad. By the same token, if the disagreement of one or two prevents the establishment of *ijmāᶜ*, then *ijmāᶜ* would never be reached. A total agreement is possible only when the original decision is based on a conclusive indubitable text. In every case of consensus there always remains an opposing minority. Ibn ᶜAbbās is reported to have differed with the Companions on some issues but the Companions rejected them and *ijmāᶜ* was constituted on the same. From this it follows that *ijmāᶜ* is valid by majority view.[7]

A lot of scholars have refuted these arguments. For them the term Ummah must apply to the whole so that it may constitute positive evidence. The Prophetic traditions urging Muslims to follow the overwhelming majority are understood to refer to the fundamentals of faith. The validity of Caliphate is not contingent upon *ijmāᶜ*. Moreover, *ijmāᶜ* is finally reached regarding the Caliphate of Abū Bakr. The Companions rejected the view of Ibn ᶜAbbās on the basis of argument, because he opposed some clear Prophetic traditions. It has nothing to do with being an isolated opinion. Rather, he dissented in his opinions against the conveyed Sunnah which was well known among them and opposed obvious proofs which had been established in their view. Moreover, narration of reports is different from deciding legal rulings based on unanimity. The majority report is to be relied on in the case of traditions and it may entail certain knowledge, however this does not apply to *ijmāᶜ* established through exercising ijtihad. In case of narrations, a solitary report by one narrator may be accepted, but *ijmāᶜ* cannot be constituted by individual ijtihad.[8] In answering those in favor of basing

ijmāᶜ on majority opinion, Abū Bakr al-Jaṣṣāṣ (d. 370/980) was of the view that the majority opinion sometimes can err while the minority might be proven right. That is why sound reasoning carries more weight than majority or minority opinion. What constitutes *ijmāᶜ* is quality and not quantity.[9]

In light of this argument and counter-argument, a middle position was adopted by certain scholars maintaining that majority opinion yields authority but does not constitute *ijmāᶜ*. The contention being that when the majority of people agree on a certain issue, this is apparently based on a preponderant opinion. It is unlikely that the dissident's opinion is more reliable. Similarly, it is unlikely that they do not know the other argument or purposefully or unintentionally ignore it. The apparent circumstantial evidence cannot be ruled out by remote probability. In light of this probability and lack of certainty, the opinion of the majority constitutes authority, rather than conclusive unanimity.[10]

Whether or not the majority opinion constitutes *ijmāᶜ*, its legal significance cannot be underestimated in juridical reasoning. This significance is particularly emphasized in the realm of collective endeavor to realize legal rulings for new intricate issues. However, disagreement concerning the authoritativeness of majority opinion evidently echoes in discussing the legal effect of collective ijtihad, as explained below.

Legal Effect of Collective Ijtihad

Generally speaking, collective ijtihad deduces its authority from that of majority opinion. Contemporary scholars and researchers have differed concerning the authoritativeness and legal effect of this kind of ijtihad. The classical disagreement concerning the majority opinion is reiterated in this respect. A group of contemporary scholars holds the view that collective ijtihad, being an opinion of the majority, is the feasible *ijmāᶜ*. For them, total consensus on juridical issues subject to ijtihad is not possible and this kind of deliberative and collective reasoning is the viable alternative to *ijmāᶜ*. Interpreting *ijmāᶜ* as the agreement of all jurists in a certain era is a theoretical rather than practical idea. *Ijmāᶜ*, in its true sense, is an agreement of the majority.[11] A review of supposed *ijmāᶜ* incidents where the Companions agreed

on a certain issue reveals the fact that *ijmāᶜ* in the *uṣūli* sense never materialized. Rather, agreement was reached by the Companions present and based on a group consultation. It is established that whenever Abū Bakr and ᶜUmar wanted to settle an issue for which they did not find a ruling in the Qur'an or the Sunnah, they would gather the leading and righteous figures to consult them. When they agreed on a ruling, it was immediately endorsed. Surely, the consulted individuals did not represent the whole Muslim community and of course Abū Bakr and ᶜUmar would not postpone the decision to obtain the opinion of all *mujtahids* among the Companions. The practice dubbed by the scholars of *uṣūl* as *ijmāᶜ* is in fact a collective legislation.[12] Such a total *ijmāᶜ* according to them is not practically possible. The feasible *ijmāᶜ* is the incomplete one represented by the majority agreement.[13]

Another group maintains that collective ijtihad is a middle approach between *ijmāᶜ* and individual ijtihad. It constitutes a speculative authority weightier than the individual ijtihad and should be given priority. Some researchers conclude that it is considered to be on par with tacit *ijmāᶜ*.[14] Others opine that if this collective reasoning leads to *ijmā*, be it explicit or tacit, then it will yield certainty and constitute a conclusive authority. In the latter case it could have the authority of clothing legal rules with the mantle of certainty.[15]

Different viewpoints are held in terms of the legal effect of collective ijtihad, whether it is binding or not. The binding and non-binding dichotomy is applied to both jurists and lay persons. In the case of jurists, the legal effect of collective ijtihad depends on the resulting ruling. If the decision is reached by unanimous agreement of the jurists, then it has a binding effect and has to be followed by those jurists. The scholars of *uṣūl* have agreed that when the qualified *mujtahid* reaches a legal ruling on a certain issue based on his own reasoning, he is not allowed to abandon his view to imitate others and conform to their opinion. However, Muḥammad b. al-Ḥassan states that the *mujtahid* can conform to the viewpoint of someone who is more knowledgeable than him.[16] Accordingly, the collective fatwa has a binding effect on the jurists issuing it through a deliberative process of juridical reasoning. On the other hand, a difference of opinion arises when the legal decision is taken by majority view. One group of scholars maintains that

this legal ruling is a binding authority for the minority, while another refuses to consider such a ruling binding for the dissenting minority. A third group has agreed that it is not binding but better followed as it is more likely to overweigh the minority opinion.[17] Regarding the legal effect of collective ijtihad for the lay person, some researchers differentiate between two cases – if the collective ruling is decided by unanimity or by majority. In the case of unanimity, it is imperative for the lay Muslim to stick to this ruling. In the case of majority, the lay person may follow either view, but it is better to conform to the opinion held by the majority.[18] According to them, the public interest of the Muslim community dictates the binding effect of the resolutions of collective ijtihad.[19]

However, it can be argued that a legal ruling decided through the mechanism of collective ijtihad is only issued by a select group of jurists affiliating to a certain fiqh council. For this legal ruling to be binding, it has to be issued by all jurists at least on the regional level. Above all, the resulting decision of collective ijtihad remains a fatwa, even if it is collective. Being non-binding is a basic characteristic of fatwa. That being said, the importance of collective ijtihad should not be understated. The opinion of the majority carries more weight in the sphere of collective ijtihad especially when it is issued by a group of high-caliber jurists based on mutual consultation with each other and with technical experts. In this case, it is often more superior than the majority opinion formed by the totality of individual views and may be elevated to a status near *ijmā*.

Collective Ijtihad as Viable Alternative to *Ijmāᶜ*

A host of objections and counter objections have accumulated concerning *ijmāᶜ* and its basis, as registered in *uṣūl* works. The contentions touch on different areas including who enters into the consensus of the community and under what circumstances a consensus may be said to have been reached; on whom is consensus binding, whether on all future generations of Muslims or something less than that, etc.?[20] One intriguing question related to *ijmāᶜ* discusses whether consensus can occur in the case of a jurist or group of jurists expressing a view on a

legal matter with contemporaries of these jurists remaining silent.[21] Whether *ijmāᶜ* has ever been practically established is another controversial issue. *Uṣūli* literature has investigated this question comprehensively and highlighted below are the different standpoints taken in this regard with a feasible alternative introduced.

As mentioned earlier, there exists no agreement on the definition of *ijmāᶜ* or those whose views are counted in establishing it. While some definitions state it as being the consensus of the whole Ummah over a certain religious matter, still other definitions restrict it to the consensus of the Companions, as for example the Zahirī definition.[22] Mālikīs include the consensus of the people of Madinah, and have considered this consensus to be a legitimate source of legislation. On the other hand, Shiite sources consider the Prophet's next of kin to form a legitimate consensus.[23] A narration related to Aḥmed b. Ḥanbal considers the consensus of the first four Caliphs to be the legitimate consensus. Some *uṣūli* books mention certain opinions which held *ijmāᶜ* to be the 'consensus' of Abū Bakr and ᶜUmar, Makkah and Madinah, or even Kufa and Basra. No school of law had endorsed these opinions.[24] Similarly, unwarranted references to general consensus of the earlier jurists over one ruling or another proliferated, and even minor and relatively obscure opinions were elevated to the rank of *ijmāᶜ*. Given this considerable difference of opinions in defining *ijmāᶜ*, an important question arises: Is total *ijmāᶜ* possible on points of detail? In answering this question, scholars of *uṣūl* have held various views.

While the majority of scholars maintain the feasibility of *ijmāᶜ*, a group including Ibrāhīm an-Naẓẓām and some Shiite jurists have held an opposing view considering *ijmāᶜ* as not feasible. Opponents of *ijmāᶜ* have argued that it is impossible to ascertain the consensus of scholars on a certain ruling not necessarily self-evident tenet of religion. This impossibility being comparable to that of total agreement at any given moment on what they utter or what they eat. Moreover, the dispersal of scholars across provinces had made it impossible to communicate the ruling under juristic discussion with all of them. Accordingly, their consensus could not be secured. Since the jurists would normally be located in distant places, access to all of them to obtain their views was beyond the bounds of practicality. Moreover, their consensus on a legal ruling

was either based on irrevocably certain evidence or a speculative uncertain one. In case of consensus on a certain textual basis, the law of custom would have made it impossible that such conclusive evidence did not reach us, or was purposefully withheld. Undoubtedly such evidence would have been immediately known; thus, unknowing it is a proof of non-existence. Had there been any such evidence, it would have constituted the basis for the ruling and eliminated the need for *ijmāʿ*. Similarly, such an agreement of opinions could not be reached on the basis of an uncertain proof as custom has proved the actual occurrence of this kind of agreement to be impossible. Given the large number of jurists, their different intellectual faculties and their varied tendency to acknowledge the truth of argument, it is customarily impossible to agree on one opinion.[25]

The proponents of *ijmāʿ* retorted that consensus is unconceivable when there are two equal probabilities such as a specific food or a particular word; disagreement is possible in this case due to the variation of appetites, mood and temper. However, when one probability is more likely than another on the basis of a clear indication or evidence, then consensus is conceivable. The legal ruling is based on the evidence and they could agree on it. Moreover, the jurists in the early period of Islam were not scattered over territories, so it was easy to communicate the legal ruling under discussion with them. Later on, when they dispersed over many provinces, it was still applicable to communicate the ruling as they were actively keen to seek legal evidence and travel in pursuit of knowledge. Being distant was never a barrier for them. They further argued that although custom renders it impossible that conclusive evidence may not reach us, this is only applicable when a real need arises for it. However, when *ijmāʿ* is already established, there will be no longer any need for this evidence because such consensus, being weightier, suffices in justifying the legal ruling. Additionally, there are certain cases where consensus appears to have been reached on speculative evidence, especially when the evidence is crystal clear and its connotation is easily comprehendible. Such consensus is grounded in indubitable understanding of that evidence.[26]

The same disagreement can be observed among contemporary scholars and intellectuals. One group maintains classical *ijmāʿ* to be

only a theoretical concept or at best restricted to a consensus of the Companions. The Islamic philosopher Mohammad Iqbal for instance views the important notion of *ijmāᶜ* as merely an idea arguing that the transfer of the power of ijtihad from individual representatives of schools to a Muslim legislative assembly is the only possible form *ijmāᶜ* can take in modern times.[27] According to Shaykh Abū Zahra authoritative *ijmāᶜ* is represented in the consensus of the Companions before their dispersal across provinces and only in that era was *ijmāᶜ* feasible. Following this in the era of the *Tābiᶜun* when jurists dispersed across territories, *ijmāᶜ* was barely possible. Therefore, jurists hardly agreed on a ruling settled by the unanimity of the Companions. It would not be too far from the truth to assume that in fact no established *ijmāᶜ* exists other than that of the Companions.[28] Similarly, Shaykh al-Khuḍarī points out that we cannot safely consider *ijmāᶜ* as having taken place after the first two Caliphs. Even during their Caliphate, *ijmāᶜ* is theoretically conceivable but we cannot emphatically state that it already took place. All that can be stated in this context is a lack of known disagreement among them.[29]

Likewise, according to ᶜAbd al-Wahhab Khallaf, *ijmāᶜ* in the classical sense is not feasible in the present age if left to Muslim individuals and communities without governmental measures. It could only be feasible if it were to be facilitated by ruling authorities. In this case each government could, for example, specify certain conditions and qualifications required for the rank of *mujtahid*, and make this contingent upon obtaining a recognized certificate. Accordingly, every government could identify the *mujtahids* and verify their viewpoints when the occasion so required. When the views of all those identified jurists throughout the Islamic world concur upon a ruling, *ijmāᶜ* could be established. Such a legal ruling arrived at through this mechanism is binding upon all Muslims.[30] Based on this view, Khallaf emphasizes that *ijmāᶜ* in this sense never took place after the era of the Prophet. The occasions where *ijmāᶜ* was claimed to be established reflect a collective agreement based on group consultation.[31]

It should be noted that *ijmāᶜ* has been subject to a ceaseless controversy since its inception for its religious sanction. Despite being in favor of the authoritativeness of consensus, al-Juwaynī (d. 478/1085) for

example opines that the consensus on what seems to be a speculative legal judgment must have been reached on the basis of a presumably certain text.[32] In fact, scholars differed on *ijmāʿ* feasibility and authority, whether or not it is authoritative in itself, and if it yields certainty or probability. Besides, there are no clear criteria to define the persons whose views count in ijtihad. Countless difficulties are experienced in distinguishing a *mujtahid* from a non-*mujtahid*. Still, there are some jurists who are well-qualified to exercise ijtihad but they did not enjoy wide fame among people. Even if there would be a mechanism to identify and gather all qualified jurists, there remains no guarantee that some of them may change their view after a while.

Even if we assume, for the sake of argument, that *ijmāʿ* was feasible in the past, it is not conceivable to establish it in our present-day world. Surely, technological advances in communication have changed the face and the pace of the contemporary world, turning it into a small village where people can easily communicate with each other all over the globe. However, this great advance has also brought about new problems and obstacles. Given the proliferation of digital tools and mass communication, ramifications of breathtaking advancements in all spheres of life and complexity of fresh issues to be juristically discussed, ijtihad has to tread unprecedented paths and reach new horizons that require interdisciplinary and multidisciplinary knowledge unattainable by individual scholars. This adds to the impracticability of establishing total unanimity in any given issue. Moreover, in light of the intricate particularities of modern times, the qualifications of ijtihad have assumed new dimensions beside the specifications and requirements set by the classical scholars of *uṣūl*. Those qualifications are impossible to attain by individual persons; a fact which accentuates the need for a collective mode of legal reasoning. That is why this study suggests collective ijtihad as a viable alternative to classical *ijmāʿ*. This collective ijtihad brings together jurists and scientists of all disciplines to ensure integrating their expertise and knowledge in a deliberative discussion to realize the most reliable legal ruling. The process of ijtihad benefits from the accumulated knowledge. With their combined expertise and varied qualifications, the requirements and prerequisites for practicing ijtihad can be fulfilled and credence of their views can be ensured. No

total unanimity is necessitated and legal rulings can be re-examined by later generations of scholars in light of vicissitudes of time. In this way, Islamic law moves through time with notable ease, transcending spatiotem-poral boundaries and providing the Muslim world with up-to-date guidance.

[2.2]
CONDITIONS AND QUALIFICATIONS OF COLLECTIVE IJTIHAD

Existing fiqh literature is the result of an age-long ijtihad practiced by a select group of competent jurists dubbed as *mujtahids*. Such jurists must have certain characteristics and qualifications to assume their difficult role of providing legal guidance and rulings for issues born out of the particularities of a complicated life. The task of the *mujtahid* is to bring the universals of Shari^{c}ah to bear upon the particulars of daily life. In order to fulfill this task, some conditions need to be met.

Qualifications for Collective Ijtihad

Much has been written about the qualifications and conditions that have to be met by the practitioner of ijtihad. Muslim scholars enumerated the branches of knowledge in which one has to be proficient in order to qualify as a *mujtahid*. Because of the close link between ijtihad and *iftā'*, some scholars use the terms *mujtahid* and mufti interchangeably. Ibn Nujaym, for example, states that: "It is established for the scholars of Islamic jurisprudence that the *muftī* is the *mujtahid*."[33] Talking about the qualifications of the mufti, al-Juwaynī observes that the mufti should have an all-embracing knowledge and tools of ijtihad.[34] In *al-Mankhūl*, al-Ghazālī treats the qualifications of the *mujtahid* as the first subchapter of *Kitāb al-Fatwa*. Based on this, one can safely state that many scholars of *uṣūl* equate between the mufti and the *mujtahid*, in terms of conditions and qualifications.

The Muslim jurists stipulated certain conditions to be met for the office of ijtihad; some of them relate to personal characteristics while

others pertain to scientific qualifications. The first category includes that the *mujtahid* must be Muslim, trustworthy, honest, and free from causes of dissoluteness and nullifiers of virility. They should also be insightful and have a sound mind, sober thought, proper conduct and deduction, and be vigilant. Uprightness is stipulated as a necessary condition for the *mujtahid*. As for the conditions related to scientific qualifications, the *mujtahid* has to be well versed in Arabic language and philology, and be conversant with the teachings of the Qur'an, its ethical principles, its abrogating and abrogated texts, and its rules in general. In addition, the *mujtahid* needs to master sciences of *hadith* and *uṣūl al-fiqh*, have adequate knowledge of the opinions of his predecessors, and the consensus and disagreement of people on all legal questions. Additionally, a *mujtahid* should have an adequate understanding of reality, the objectives of the Shariʿah, and jurisprudence of consequences.[35]

Abū al-Ḥusayn al-Baṣrī stands among the early jurists to discuss the qualifications required for the *mujtahid*. According to him, these requirements include knowledge of the Qur'an, the Sunnah, the principles of juridical demonstration and inference and analogical deduction. Moreover, the *mujtahid* is required to have the ability to investigate the trustworthiness of narrations and narrators to verify the credibility of reports attributed to the Prophet. Understanding *qiyās* (juridical deduction) and its methodology is an indispensable tool to undertake ijtihad. To apply this juridical tool, the jurist needs to know the effective causes of rulings in order to show a resemblance between two parallel cases. In order to be able to deduce legal rulings from texts, a *mujtahid* needs to understand intricate exegetical matters. This requires a thorough knowledge of the principles of allegorical expression and metaphor, the difference between generalization and particularization, and the absolute and the restricted. Al-Baṣrī regards familiarity with customary law (*ʿurf*) as a necessary qualification for ijtihad, for it is essential to determine God's law in the light of the exigencies of life.[36]

Upon discussing the qualifications of a *mujtahid*, al-Ghazālī tried to relax the strict conditions set by some scholars. He explained that for a jurist to reach the rank of *mujtahid* he was required to know the 500 Qur'anic verses needed in law with committing them to memory

not a prerequisite. Similarly, the *mujtahid* is required to know the way to relevant hadith literature; he does not need to know all the traditions or commit them to memory, rather he needs only a reliable source of legal traditions to consult when necessary. It suffices to maintain a reliable copy of the collection of Abū Dawud or al-Bayhaqī. Knowing the substance of *furuᶜ* works and the points subject to *ijmāᶜ* is necessary, so that he does not deviate from the established laws. If he cannot meet this requirement, the *mujtahid* must ensure that the legal opinion he has arrived at does not contradict any opinion of a renowned jurist. In addition, the jurist needs to know the methods by which legal evidence is deduced from the texts, and to master the Arabic language; however, complete mastery of its principles is not a prerequisite. In terms of those rules governing the doctrine of abrogation, the jurist does not have to be thoroughly familiar with the details of this doctrine; it suffices to show that the verse or the hadith in question had not been abrogated. The *mujtahid* is required to investigate the authenticity of hadith; however, full knowledge of the science of hadith criticism is not required. According to al-Ghazālī these qualifications are necessary for jurists who intend to embark on ijtihad in all areas of substantive law. Alternatively, those who want to limit the scope of ijtihad to a specific area, e.g., family law, or only in a single case, are not asked to fulfill all the conditions but are instead required to know the methodological principles and the textual basis needed to solve that particular problem.[37]

Generally speaking, jurists stipulated various conditions with a certain degree of disparity but did not depart significantly from the qualifications propounded by al-Baṣrī and al-Ghazālī. However, some set a different number of Prophetic traditions that the *mujtahid* has to know. For example, Ibn Amir al-Hajj set 1200 traditions but even these are not necessarily to be committed to memory. They are three thousand traditions according to Abū Bakr b. al-ᶜArabi.[38] Aḥmed b. Hanbal is reported to have said about five hundred thousand traditions are required.[39] Al-Shawkānī requires a more encompassing knowledge of the Sunnah and suggests that a *mujtahid* must be conversant with the contents of known collections of hadith, such as the six collections, without having to commit them to memory.[40]

Another condition which merits attention is the knowledge of *maqāṣid* (higher objectives of the Shariᶜah). Abū Isḥāq al-Shāṭibī (d. 790/1388) emphasized this qualification and stated it as a condition for the correctness of ijtihad on all levels. According to him, *al-maqāṣid* represent the fundamentals of religion, basic rules of the law, and universals of belief. The rank of *mujtahid* cannot be attained without thorough knowledge of these higher objectives of Shariᶜah.[41] The jurist is required to study the question thoroughly, understand its context and consider its implications before deciding on a legal ruling. Equally important is the principle of divisibility of ijtihad as enunciated by the majority scholars of *usūl*.[42] By divisibility I mean the permissibility to practice ijtihad in a given area or a specific issue. This released the strong hold and heavy burden brought about by the strict conditions and qualifications stipulated by the classical theory of *usūl*. The importance of divisibility is further accentuated in the sphere of collective ijtihad, where jurists are still required to fulfill the requirement for ijtihad but encouraged to seek the help of highly-trained experts in the highly technical areas. Accordingly, it would be implausible to claim that the requirements for ijtihad as set forth in Muslim legal writings made it impossible for jurists to practice ijtihad.

Given the fact that collective ijtihad is generally practiced by jurists even if they are assisted by technical experts, a similar level of qualification is still required. However, some flexibility can be maintained in setting the qualifications for collective ijtihad. The practitioner of this collective mode of juridical reasoning does not need to be an expert in all branches of law. Through specialization in a particular subject or field, the *mujtahid* becomes well-prepared to grapple with the complex issues of such a field. However, it should be noted that collectivity does not serve as a substitute for the established requirements and conditions. If such conditions were to be waived, there would be no ijtihad because the acceptable ijtihad is only undertaken by competent and qualified jurists. Abd al-Wahhab Khallaf maintains that ijtihad should be practiced by a group of competent jurists having the required qualifications and conditions stipulated by Muslim scholars. Still, ijtihad should be practiced collectively rather than individually, regardless of the faculties of such an individual. The historical record shows that the

legislative chaos in Islamic fiqh was largely due to the individual practice of ijtihad. Similarly, the qualifications and conditions of ijtihad have to be met by each individual in such a group or their juridical reasoning is invalid and futile.[43] Nevertheless, I think it is not reasonable to prevent individual ijtihad. Both forms of ijtihad should continue to exist and function parallel to each other where the individual mode is illuminated and guided by the collective one.

Another aspect which merits special attention in terms of conditions of collective ijtihad is the necessity of collaboration between jurists and experts. Admittedly, contemporary ijtihad is in dire need of making use of the specialized expertise of various experts and scientists. The highly technical areas of law, as well as those of finance, medicine, genetics and numerous other areas require the input of specialized individuals and well-trained experts. This ensures epistemological complementarity of fields of inquiry as explained in the following section.

Complementarity between Jurists and Non-Fiqh Specialists

One of the established principles in Islamic jurisprudence states that passing a judgment on something is dependent on having a proper conception thereof. For jurists to reach the proper legal ruling on a certain issue, there has to be a right and precise perception of this issue. To fulfil this aim, jurists exert their utmost in understanding the reality of a given case and verifying the underlying basis and character in order to decide a ruling that is in consonance with the teachings of Islam. Ijtihad has been seen in the past as a juristic concept, a preserve of the jurist to the exclusion of specialists in other disciplines. However, given the fact that the educational background of the overwhelming majority of religious scholars is almost exclusively theological and religious in nature and due to the peculiar and sophisticated character of novel issues, there arises a critical need to seek the help of scholars outside the domains of religious sciences to formulate a sound and precise perception. These experts can be specialists in finance, economics, medicine, veterinary science, architecture, astronomy, or any other discipline. Together, jurists and experts can approach an issue in a deliberative mode to ensure a thorough understanding of all its aspects under juristic investigation.

This process is usually undertaken through the mechanism of collective ijtihad.

Thus, it is evident that valid ijtihad requires an accurate understanding of an issue with perception of all its aspects and dimensions. If the issue at hand is not accessible to non-specialists, jurists have to resort to specialists and experienced people. Hence, seeking the help of experts is permissible, even obligatory when the issue is hardly perceived without them because the means required for achieving an obligation is in itself obligatory. Permissibility of employing experts and specialists can be supported by the Qur'an, Sunnah, practices of the Companions, and corroborative statements of jurists. For instance, the Qur'an states: "you [people] can ask those who have knowledge (*Ahl al-Dhikr*) if you do not know" (16:43). A group of exegetes have stated *Ahl al-Dhikr* to refer to people of knowledge and every person possessing certain knowledge or specialization.[44] According to al-Āmidī the verse is generally applicable to all addressees and general in the command of asking about anything unknown.[45] This Qur'anic verse clearly indicates the legality of seeking the help of experts and scholars. Al-Sarakhsī used this Qur'anic dictum to justify the recommendation to judges to consult expert witnesses.[46] In addition, (5:95) states, "You who believe, do not kill game while you are in the state of consecration [for pilgrimage]. If someone does so intentionally the penalty is an offering of a domestic animal brought to the Kaʿbā, equivalent– as judged by two just men among you– to the one he has killed." This verse contains a clear indication of the permissibility of relying on experts to estimate the compensation of the game killed. A third Qur'anic verse (4:83) reads, "If they referred it to the Messenger and those in authority among them [*ulī al-'amri minhum*], those seeking its meaning would have found it out from them." Some scholars of exegesis have said that "those in authority" means those who grasp its intents by their insight, experiences, and knowledge of matters of war and its tricks.[47] This shows the obligation to consult experts. Moreover, God says: "so ask about Him one well-informed" (25:59). This noble verse supports the legality of making use of the people of expertise, because the person, who is aware and fully cognizant of the essence of things, is the only one who can adequately inform you about it.

In addition to the Qur'anic verses reviewed above, legality of seeking the help of experts is proven by narrations reported from the Prophet in which he considered views of people of expertise and specialists, and let them judge on some issues requiring their opinions. Among these narrations is a report narrated from ʿĀ'ishah concerning Zayd b. Ḥārithah and his son Osama in which she states, "Once the Messenger of God entered my house and he was in a very happy mood and said, 'O ʿĀ'ishah: Don't you know that Mujazziz al-Mudlijī entered and saw Osama and Zayd with a velvet covering on them and their heads were covered while their feet were uncovered.' He said, 'These feet belong to each other.'"[48] This hadith is construed by scholars to indicate the legality of using the words of a lineage tracker in cases of disputed paternity. (Note, lineage tracker was a person in Arabia who used to establish paternity by drawing similarities between a baby and proposed father. Mujazziz al-Mudlijī was one such person).

The possibility of employing experts is also established by some narrations supporting the permissibility of *Kharṣ* (estimation of the produce of trees). For example, it was narrated on the authority of Jābir b. ʿAbd Allah, ʿĀ'ishah and others that the Prophet used to send ʿAbd Allah b. Rawāha to the Jews of Khayber, and he would make an estimate of the palm trees when the fruit was in good condition before any of it was eaten. Then, he would let the Jews choose to take or give it according to this estimation to calculate the share of zakah before the fruits were eaten and distributed.[49]

Other evidence includes narrations reported from the Companions in which they sought the assistance of experienced people and specialists when making ijtihad in matters that required their help. For example, Abū Bakr sought the help of Ubayy b. Kaʿb in estimating the compensation for some killed game;[50] ʿUmar resorted to lineage trackers to prove paternity in many cases;[51] ʿUthmān also sought assistance in estimating a certain stolen item.[52] In addition to these reports, statements of jurists and scholars of *uṣūl* support the legality of making use of people of expertise. Al-Shāṭibī states:

> As for different kinds of knowledge, man is sometimes aware of them and diligently able to analyze them through ijtihad; however, on some occasions he may be adept at memorizing them and mastering their objectives, yet less able to analyze them; and other times he is neither memorizer nor conversant of them, yet he is aware of their general objectives and their necessity for the issue under examination. In the latter case, if he finds it difficult to decide on a given issue, he has to consult with people mastering its relevant knowledge and shall not independently decide on it.[53]

Here al-Shāṭibī discusses the position of ijtihad clarifying that it is essential for its practitioner to understand the objectives of the Shariʿah and be able to infer rulings based on his understanding of them. Such mastery is dependent on possessing kinds of knowledge needed for understanding the Shariʿah. These kinds of knowledge vary and practitioners of ijtihad are of varied conditions regarding them. So, when the reality of a matter is not accessible to the *mujtahid*, he should not decide on it before consulting specialists in this given field. If the ruling pertains to a medical issue requiring a specialized physician, he should consult a skillful one. Simply put, Ibn Qudāmah al-Maqdisī, while discussing the issue of identifying a terrible disease, states that, "For the disease about which he is confused, he should consult people of knowledge, i.e. the physicians, who have expertise based on practice and knowledge."[54]

Ibn Taymīyah also pinpointed the necessity of reference to people of expertise and specialists, and reliance on their statement in forging a Shariʿah ruling. He states in the context of elaborating on the legality of the sale of a product that cannot be seen (is hidden) at the time when the sale is contracted:

> It is agreed upon by scholars that the sold item should be known properly, so the Prophet forbade the sale of uncertainty, and this shall be judged by people of expertise. To decide whether a sold item is known or unknown is not undertaken by jurists; it is to be referred to people of expertise in this regard. What is exclusively sought from jurists is the knowledge of the Shariʿah rulings based on evidence. If experts state that they know descriptions of the specific item, therefore, their statement is to be taken as the primary reference to the exclusion of others even if

> held by those who are more knowledgeable in the religious matters. Accordingly, the Shariʿah ruling should be formulated on the basis of such information provided by people of expertise.[55]

Hence, it is clear from the foregoing that it is recommended to seek the help of experts of various academic disciplines, a matter which is required by the nature of developments occurring in various sciences and fields in the present age. Reliance on expert advice is dictated by the unique knowledge and experience of such persons, each in their field of expertise. The general reasoning behind this procedure is demonstrated by a textual-based maxim "With respect to each craft, seek the assistance of the best practitioner of the same craft."[56] This need for epistemological complementarity is further accentuated by the fact that it is impossible for jurists to fully grasp all arts and sciences. Sciences and arts evolve on a regular basis, and their branches and specialties become very diverse even within a single scientific field. Thus, it has become almost impractical to find a scholar who is able to fulfill the classical conditions of ijtihad. The educational background of the overwhelming majority of religious scholars is almost exclusively theological and religious in nature. Against this backdrop, there is noticeable difficulty in grasping the technicalities of scientific information, especially involving complex issues such as genetics, genetic engineering, genomics, multi-level marketing, devaluation and its effect on loans, new mortgage solutions, modern banking services, etc. Consequently, it is a necessity to refer to non-fiqh experts and specialists to ensure a proper perception of issues under juristic discussion.

The proper perception of issues is a preliminary prerequisite for the realization of legal rulings. Because giving a ruling on any matter depends on a thorough perception of this matter, a lack of proper understanding of the issue in question naturally leads to incorrect conclusions or erroneous fatwas being reached, jeopardizing the process of ijtihad and *iftā'*. A correct perception of issues represents the first stage the mufti goes through in order to reach a Shariʿah ruling, followed by jurisprudential classification to define the legal reality of a given issue. These stages require collaboration between Shariʿah scholars and non-fiqh specialists. Taking the economic field as an example, it has become

incumbent on the *mujtahid* investigating issues of an economic nature to seek assistance of specialists, such as economists, accountants and bankers in order to obtain the essence of the transaction and reach a correct jurisprudential classification of it. If we look at the economic expert, for example, we find that he is the one qualified to read and analyze the financial statements of a company and establish whether it is clean of vestiges of *ribā* or not. Being a clean company is one of the most important things on which the *mujtahid* bases his fatwa and decides on the ruling of holding shares in the company.

The necessity of this complementarity is also emphasized in the medical field where scientific dictums can challenge long established perception. The following example is a case in point. In their efforts to formulate specific religious rulings, classical Muslim jurists depended mainly on perceptions largely shaped by the medical knowledge available in their times. One interesting illustration highlighting the effect of this on juristic perception has been the historical issue of a 'sleeping fetus' or *al-rāqid*, relating to the maximum possible length of pregnancy allowed under Islamic law. In fact, "All four Sunnī law schools accepted a prolonged pregnancy of greater than nine months, but the notion was especially rooted in Mālikī law.... This ruling was widely accepted in spite of a Qur'anic teaching that the maximum length of time between conception and weaning of the child was 30 months (Qur'an 46:15)."[57]

Due to the manifold socio- and religio-cultural ramifications for society, impacting decisions such as establishing and negating paternity, and the legal waiting period for a pregnant divorcee and her maintenance, *al-rāqid* was a matter of serious concern for classical Muslim jurists, and even contemporary ones. And though it sounds strange to us today, the possibility of an extremely long gestational period was accepted[58] at the time and thus the concept of the "sleeping fetus" became decisive in shaping juristic conceptions.

Indeed, the seminal medical compendium *al-Shifā'* of Ibn Sīnā (Avicenna, d. 428/1037) was a primary source for a number of jurists, and Ibn Sīnā even goes so far as to speculate in this compendium that a woman can be pregnant for four years.[59] Of course with advances in modern medicine, contemporary Muslim jurists challenged this archaic

classical perception and critically reviewed the earlier legal rulings of their classical counterparts.

In 1983, the Islamic Organization for Medical Sciences in Kuwait (IOMS) held some regular sessions to discuss novel issues of a medical nature from the Islamic perspective. In doing so, the organization solicited both Muslim religious scholars and biomedical scientists to write papers on contemporary bioethical questions. The Jordanian scholar ʿUmar Sulaymān al-Ashqar was invited to participate in the third seminar of this series. He chose to address the ethical conundrums of extremely prolonged pregnancies which, he said, perplexed jurists. In his paper, al-Ashqar reviewed the various opinions expressed in the pre-modern Islamic legal sources which stated that pregnancy can continue for up to seven years. Interestingly he did not criticize these opinions, rather he restricted himself to the juristic argumentation relevant to the issue without any reference to relevant biomedical information. Later on, during this seminar, al-Ashqar came into direct contact with a number of Muslim biomedical scientists who updated him with recent biomedical knowledge. Some papers addressing the topic from a biomedical perspective were discussed. These papers stressed that a multi-year pregnancy is simply impossible from a biomedical perspective. By virtue of the information provided by these biomedical scientists al-Ashqar changed his stance. This shift can be clearly noticed in the revised version of his paper which he further developed into a two-volume book that he co-edited and published about two decades later. He expressed his astonishment that many contemporary jurists still depend on the classical sources without making use of up-to-date scientific data although biomedical scientists have already reached conclusive or at least preponderant results in this regard. He concluded that those who claim that pregnancy can continue for years are clearly mistaken.[60]

In the foregoing we analyzed the justification and importance of complementarity between jurists and technical experts. The mechanism of collective ijtihad ensures this complementarity which can be considered an additional condition for contemporary ijtihad especially when grappling with issues of a multidisciplinary nature. The experts will be responsible for developing the right perception, while the

religious scholars will make use of this scientific explanation in order to construe the religious perspective. This is fulfilled in a deliberative mode where the arguments and counter-arguments are thoroughly investigated to finally reach the preponderant legal ruling through the highly significant collective ijtihad.

[2.3]
REFORMATIVE ROLE OF COLLECTIVE IJTIHAD

Being a vehicle of reform, renewal and religious guidance, ijtihad seeks to maintain the continuity of the fundamentals of Islam while also keeping pace with the ever-changing realities of societies. This concern for continuity and change characterizes the role ijtihad plays in its association with real life, making the Shariʿah a living force in society. Ijtihad in modern times differs from what it was in the medieval ages. Muslim jurists in earlier times were mainly preoccupied with issues related to ritual acts of worship, simple forms of dealings and transactions, usury, marriage, divorce, property, and inheritance. The Muslim society was not prone to rapid changes and individual ijtihad was able to efficiently handle any emerging issues. Today there exists a different reality. The accelerated pace of social change and technological advancements with their attendant complexities necessitates a multidisciplinary approach to ijtihad. Taking this into consideration, contemporary ijtihad tends to become a collective endeavor that combines the knowledge and contributions not only of the scholars of Shariʿah, but of experts in various disciplines as well. This collective nature has enabled ijtihad to assume its desired role in illuminating and guiding Muslims in all walks of life. By its virtue, Islamic law could preserve its inherent flexibility and evolutionary nature within the bounds of the Qur'an and Prophetic Sunnah. In this light, the following section highlights the significance and reformative role of collective ijtihad in uniting Muslims, eliminating controversy, standing against deviation and extremism, countering aggression and promoting the sublime value of consultation.

Collective Ijtihad and Promoting Unity

Generally speaking, ijtihad has always been used as an instrument of difference and disagreement in terms of legal rulings. Admittedly, accepting disagreement is an outstanding merit and mercy as emphasized by Muslim jurists. However, not every disagreement is mercy, particularly if it leads to factional conflict, fanaticism and disunity. The religious commandments include some provisions pertaining to ritual acts of worship in addition to general principles organizing relationships between people. In terms of acts of worship, difference of opinion is somewhat limited in its scope as the legal rulings are derived from the same source according to pre-defined methods of juridical reasoning. Here the difference of opinion is mercy as it seeks easiness and removal of hardship. On the other hand, relationships and dealings between people are subject to universal principles equally applicable to all parties. When such principles are inconsistent and prone to individualist bias, the fabric and order of society are compromised.

Today, the Muslim Ummah desperately needs to unite in face of a deteriorating social fabric. Islam calls for unity and highly appreciates it; many texts of the Qur'an and Prophetic Sunnah lay great emphasis on the need for unity and consensus. The ideal collective ijtihad can serve as a vehicle for such unity especially in the legislative domain. If the way to geographic unity is hampered by territorial boundaries, the mechanism of collective ijtihad with its global presence surpasses any geographical barriers and transcends the spatiotemporal constraints of nation states. As a method of collective decision, this mode of ijtihad can contribute to achieving the desired consensus and unify the various opinions on the sensitive and complex issues of the whole Ummah as much as possible.[61]

The critical need for unity and maintaining a consistent stance in facing any emergent challenges has been a primary concern for scholars. They have always sought for a unified collective approach that eliminates individualistic tendencies. Indeed, individualism only increases the gap between Muslim countries and exaggerates discrepancies. Thus, a collective approach is necessary to depart from a self-interest based individualistic ethos. Taking this into consideration, Muslims

have felt the need to establish an international body that brings together influential scholars from different parts of the Muslim world to deliberate over Muslim issues and take a unified stance. This philosophy of having a collective voice for the Muslim world stands behind the establishment of the Organization of Islamic Cooperation (OIC). The OIC declares itself to be the 'collective voice' of the Muslim world and undertakes to safeguard and protect the interests of all Muslims. It asserts that it has the singular honor to galvanize the Ummah into a unified body.[62]

In order to further unity and expand it to the legislative domain, the need was then felt to supplement and enrich the scope of this endeavor by establishing a forum to facilitate collective interpretation on new issues. A project was undertaken by the Organization of Islamic Conference, which led to the formation of the Jeddah-based Fiqh Academy in 1981 and another Fiqh Academy in Makkah by the Muslim League. India and Pakistan have each established fiqh and Shari'ah academies of their own. There are also a number of international institutes and organizations that undertake specialized research in Islamic legal themes. An even earlier attempt along these lines was made by al-Azhar, which set up the Islamic Research Academy in 1961.[63]

The plethora of divergent views and the attendant controversy sometimes perplex people rather than guiding them. Realizing this fact, these institutions employ the mechanism of collective ijtihad to fulfill the purpose of minimizing differences and discrepancies. This role of collective ijtihad in promoting unity and eliminating controversy is evident in the many resolutions issued by different fiqh academies. One of the most important resolutions on Islamic unity was issued by the OIC Islamic Fiqh Academy in its eleventh session held in Manama, Bahrain in 1998. I would like to quote it fully as a representative sample of the resolutions taken by these collective institutions:

> Having examined the research papers presented to the Academy in connection with the issue of Islamic Unity, and in the light of the discussions which brought this issue into focus as being one of the most important issues that needs to be studied, both theoretically and practically, and in view of the fact that striving to unify the Muslim Ummah

intellectually, legislatively and politically, and draw it to the creed of pure monotheism, is one of the main objectives of this International Academy, the Council of Islamic Fiqh Academy resolves:

First: Islamic unity is a duty which Almighty God has commended us to adhere to and achieve and made it a concomitant characteristic of this Ummah when He said, "And hold fast, all of you, to the rope of Allah, and be not divided"; and He also said, "This nation of yours is one nation." The Prophetic Sunnah stressed this call through words and deeds. The Prophet said, "The blood of every Muslim is equal; they are one hand against others. The asylum offered by the lowest of them in status applies to them (all)."[64] This unity was realized by the Prophet in practical life by forging brotherhood between the *Muhājirīn* (immigrants) and *Al-Anṣār* (supporters). He also laid it down in the first document of the establishment of the Islamic State in *Al-Madinah Al-Munawwarah* in which he described the Muslims as being "a single Ummah unlike the rest of the human beings." The meanings of such verses from the Holy Qur'an and from the sayings of the Prophet make it incumbent upon the believers to unify their ranks under the banner of Islam, by holding firmly to the Holy Book and Sunnah, and renounce historical enmity, tribal differences and disputes, personal ambitions and racial slogans.

Second: Islamic unity lies in ensuring servitude to God Almighty, in belief and in words and deeds, under the guidance of the Qur'an and Sunnah. It also lies in preserving what unifies Muslims on common terms in the various intellectual, economic, social and political spheres of life. Once the Muslim nation abandoned the factors of its unity, reasons of discord began to emerge, deepening further, later on, disunity among Muslims.

Third: Jurisprudential differences which are based on ijtihad in understanding the meanings of Shariᶜah texts are, in themselves, natural consequences. They, in fact, contributed to the enrichment of legislation which realizes the purposes and characteristics of Shariᶜah, mainly making things easy and bearable for Muslims.

Fourth: It is a Muslim duty to preserve the status of all the Prophet's Companions. The *ᶜulemā'* should be called upon to extol the Companions' position and services in transferring Shariᶜah to the Muslim Ummah and highlight their rights over it. Also, governments should be called upon to issue regulations which address whoever denigrates or

> looks down upon them in any way whatsoever. This will preserve the sanctity of the Companions of the Prophet and nip in the bud one of the reasons of discord.
>
> **Fifth:** It is a Muslim duty to adhere to the Holy Book and Sunnah and to the guidance of the Ummah's worthy ancestors, the Companions (May God be pleased with them), and those who follow their steps. It is also a Muslim duty to discard delusions, avoid what spreads sedition among Muslims and what leads to their disunity, and instead channel Muslim efforts to the call for Islam and the propagation of its principles among non-Muslims.[65]

The resolution begins with stressing the fact that promoting unity among Muslims is one of the main objectives of the Academy. To establish this unity is a socio-political and religious necessity. The resolution warns against efforts aiming at deepening disunity and discord among Muslims. It also criticizes those who disparage the Companions of the Prophet and considers this act as one of the reasons for sowing disunity. To achieve unity, the council recommends certain measures be taken in order to protect Muslims from the dangers and consequences of disunity. Because these threats can undermine the spiritual and intellectual foundations of the Islamic civilization, Muslims have to unify ranks and get rid of the reasons for discord. This unity is feasible given the fact that the Ummah has all the necessary factors to do so such as a common belief and a common social, economic, legislative and cultural foundation. Among the measures recommended by the Academy are to employ mass media towards fostering a spirit of unity, promoting the ethics of dialogue and accepting views based on ijtihad. It also calls for formulating a joint Islamic media strategy, establishing a common Islamic market, and setting up an Islamic Court of Justice.[66]

The institutions of collective ijtihad paid due attention to the issue of unity and its manifestations. The Islamic Research Academy laid emphasis on the necessity of promoting unity during the sixth session of its congress held in 1971. The Academy congress recommended fostering of mutual acquaintance between Muslim countries and working toward establishing religious intellectual unity. Moreover, the congress urged Muslims to take serious steps towards economic unity. In order to establish religious intellectual unity, the Academy urged Muslims to

hold fast to the Qur'an and Sunnah and warned against sectarian divide. In pursuit of cultural unity, the Academy called for dissemination of Arabic language among the students of preparatory and secondary schools all over the Muslim world.[67]

Unification of the Muslim Calendar

One of the manifestations of the desired unity lies in the issue of the unification of the international Muslim calendar. Collective ijtihad and its institutions paid considerably greater attention to this issue. The various conferences and resolutions of fiqh academies and *iftā'* institutions afford us substantial evidence of the great importance given to this issue as being instrumental in establishing unity. The computation of the Muslim lunar calendar has been a subject of controversy for centuries. Attempts have been made to answer the age-long question of the preferred method in computing the Muslim lunar calendar. Should the Muslim countries work for the unification of their lunar calendar, although the new moons would occasionally appear on different dates in different countries, due to the variation in longitude? Or should every country observe the new moon on its own?

The determination of the beginning of lunar months is of crucial importance for Muslims as it relates to two important pillars of Islam; namely, fasting the month of Ramadan and performing pilgrimage. Disagreement on the lunar calendar poses a lot of challenges for Muslims all over the world. For instance, in June 1959, *Dār al-Iftā'* of Egypt was about to declare the beginning of Dhū al-Ḥijja. The grand mufti Ḥassan Ma'moun was told by the Ḥelwān observatory that the new moon would appear for just five minutes before sunset on June 7, however, it was doubtful whether it could be seen by the human naked eye. The grand mufti sent two persons to the observatory to witness the birth of the new moon. Only one of them claimed to have seen it. Failing to meet the requirement of two witnesses, Shaykh Ḥassan Ma'moun enquired if the moon had been observed in any neighboring country. Knowing that the new moon was not observed in any country, the mufti resolved not to declare the beginning of the new month and to postpone it to the following day. A few days later, however, the Saudi embassy informed

him that the new moon had been observed in Makkah on June 7. Consequently, he had to revoke his decision and declare that Dhū al-Ḥijja had already begun on that day. It is crystal clear that he revoked his first decision to avoid any confusion and inconsistency in terms of the date of standing on top of Mount Arafat. To make the confusion complete, Sudan and Lebanon, which had followed the previous declaration by the mufti, did not change their calendar.[68]

A lot of fatwas were issued on the question of moon sighting for Ramaḍān. An early fatwa was given by Dār al-Iftā' of Egypt in 1963 where the late Shaykh Ahmed Haridi explained the legal view on the observation of the new moon. He cited the different views of the classical jurists on crescent seeing and its legal effect in determining the beginning of fasting. He then favored the view of observing fasting based on seeing the moon in any country. He based his decision on the necessity to fulfil the objective of Muslim unity. Haridi spoke warmly about the unification of all Muslims which would be greatly enhanced if people began fasting simultaneously when a new moon had been observed in any Muslim country. As the observation of the new moon is the duty of the Muslim community at large, it should consequently transcend the geographical borders of different countries.[69] Similarly, the Islamic Research Academy in its third congress held in 1966 studied this issue and decided that:

> The new moon must be observed by the human eye. The observation is transmitted from person to person and must be trusted unless there are reasons not to. Among these reasons figure astronomical calculations. In order to make the fasting a general obligation, the observation needs confirmation from persons assigned by the government to observe the new moon. Geographical differences should not be taken into account as long as the regions share part of the night. The academy would urge Muslim peoples and governments to appoint agencies responsible for the observation of the new moons in their lands. These agencies should cooperate with astronomers and be in close contact with each other.[70]

Again in 1985 the same issue was handled by another institution of collective ijtihad. In its second session the OIC Islamic Fiqh Academy

reviewed the research papers submitted by its members and experts on the unification of the beginning of lunar months. After having a thorough discussion, the academy decided to postpone the decision to a later session and entrusted the General Secretariat of the Academy with the task of providing documented scientific studies conducted by qualified experts in astronomy and weather observatories. In the third session held in 1985, the academy reviewed the different papers and discussed the various opinions. After lengthy discussions the academy decided that sighting of the crescent could be established by any country and other Muslim countries have to follow it.[71]

The issue of unifying the Muslim calendar is taken by many scholars as a manifestation of the Muslim unity. This issue necessitates the input of astronomical experts in addition to the juridical reasoning of jurists as shown in the aforementioned resolutions by fiqh academies. Here appears the significance of collective ijtihad in settling such controversial issues which have an important bearing on the unity of the Muslim Ummah. The inclusion of competent experts in the legal reasoning process through the mechanism of collective ijtihad enhances the quality of legal rulings, and thus increases their credibility and reliability.

Rapprochement Between Different Schools

Actually, the possibility of Islamic unity is further enhanced through the effect of collective ijtihad in bringing different jurisprudential schools closer together and establishing rapprochement among them with a view to consolidating solidarity and strengthening the sense of belonging to one Islamic nation. This rapprochement aims at reducing the extent of disagreement and narrowing down its gap as much as possible. It also seeks to promote the sense of brotherhood among Muslims, based on common grounds that unify rather than divide and converge rather than diverge. Such a rapprochement is expected to bridge the gap between the followers of Islamic schools of law and reinforce Islamic unity. In this way, this rapprochement constitutes an important factor in eliminating disagreement and curbing extremism. Indeed, the various schools of law are in agreement on the fundamentals of Islamic jurisprudence. The scope of difference is limited to the

ancillary branches of substantive law. These juridical differences reflect natural diversity in Islamic legal methods and their adaptability to the varied realities and interests of Muslim societies. Such differences in legal reasoning never constituted a problem for the Muslim nation.

The desired rapprochement means to widen the scope of interaction and tolerance among all *madhāhib* so as to overcome any intellectual factionalism, political fanaticism, and social vandalism. The call for rapprochement between the different Islamic schools does not mean reducing such doctrines to one school. It is rather a step towards unifying Muslims, promoting mutual respect and dialogue among them. It is also a move to capitalize on the achievements of Islamic jurisprudence and theological doctrines, so as to accomplish a fresh start for Islamic thought, with a view to demonstrating the large margin of flexibility of jurisprudence and its capacity to face any trend rivaling Islam.[72] Again, rapprochement does not mean conflating the existing Islamic schools into one school. It does not aim at abandoning some or all schools and adopting a new Islamic opinion. Rather, the purpose of rapprochement is to highlight the elements of convergence among all schools, and to consolidate the legal links thereof. This rapprochement is based on the fact that the common grounds of jurisprudential issues shared by all schools are far greater than the matters on which they differ. Emphasis should be laid on preserving the principles of schools as intellectual and jurisprudential foundations dictated by Islamic interests, without breaching their invariable principles. Equally important is the concept of mutual respect between different schools.[73]

Realizing the importance of this rapprochement, almost all fiqh councils and academies set it as a basic goal and a point of departure. As provided by the governing Statute of the OIC International Islamic Fiqh Academy (IIFA), it works towards achieving the theoretical and practical unity of the Islamic Ummah in addition to finding potential consensus and rapprochement among the range of traditional schools of Islamic interpretation. Therefore, membership of such academies reflects the representation of different schools. For example, article 16 of Law no. 103 of 1961 organizing membership of Islamic Research Academy stipulates that up to twenty of its fifty members should be foreigners and that all *madhāhib* should be represented.[74] Moreover,

some of these institutions established a special department for the sake of bringing together the different schools. In this regard, the OIC academy established a Division of Rapprochement between Islamic Schools of Thought.

The issue of rapprochement between different *madhāhib* was remarkably present in the agenda of different institutions of collective ijtihad. The International Islamic Fiqh Academy discussed this issue in its seventeenth session held in the Jordanian capital of Amman in 2006 where the academy endorsed the principles included in the *Amman Message*.[75] The three points of this message go as following:

> Whosoever is an adherent to one of the four Sunni schools (*madhāhib*) of Islamic Jurisprudence (Ḥanafī, Mālikī, Shāfiʿī and Ḥanbalī), the two Shīʿī schools of Islamic jurisprudence (Jaʿfari and Zaydī), the Ibāḍī school and the Zāhirī school of Islamic jurisprudence is a Muslim. Declaring that person an apostate is impossible and impermissible. Verily his (or her) blood, honor, and property are inviolable. Moreover, in accordance with the Shaykh Al-Azhar's fatwa, it is neither possible nor permissible to declare whosoever subscribes to the Ashaʿri creed or whoever practices real *Taṣawwuf* (Sufism) an apostate. Likewise, it is neither possible nor permissible to declare whosoever subscribes to true Salafi thought an apostate. Equally, it is neither possible nor permissible to declare as apostates any other group of Muslims who believe in God, Glorified and Exalted be He, and His Messenger, the pillars of faith, and the five pillars of Islam, and does not deny any necessarily self-evident tenet of religion.
>
> There exists more in common between the various schools of Islamic jurisprudence than differences between them. The adherents to the eight schools of Islamic jurisprudence are in agreement as regards the basic principles of Islam. All believe in God, Glorified and Exalted be He, the One and the Unique; that the Noble Qur'an is the Revealed Word of God preserved and protected by God from any change or aberration; and that our master Muḥammad is a Prophet and Messenger unto all mankind. All are in agreement about the five pillars of Islam... Disagreements between the scholars of the eight schools of Islamic jurisprudence are only with respect to the ancillary branches of religion (*furūʿ*) in addition to some fundamentals. Disagreement with respect to the ancillary branches of religion is a mercy. Long ago it was said that

> variance in opinion among the scholars "is mercy."
> Acknowledgment of *madhāhib* within Islam means adhering to a fundamental methodology in the issuance of fatwas that no one may issue a fatwa without the requisite qualifications of knowledge. No one may issue fatwa without adhering to the methodology of the schools of Islamic jurisprudence. No one may claim to do absolute ijtihad and create a new opinion or issue unacceptable fatwas that take Muslims out of the principles and certainties of the Shariʿah and what has been established in respect of its schools of jurisprudence.[76]

The academy clarified that the essence of the Amman Message calls for acknowledging the different schools of Islamic jurisprudence and adhering to their fundamental methodology. By acknowledging these schools and affirming rapprochement between them it is possible to ensure fairness, moderation, mutual forgiveness, compassion, and mutually beneficial dialogue. Furthermore, the academy stressed on the necessity of casting aside discord between Muslims and unifying their stances and ranks; reaffirming mutual respect and affinity among people and states; and strengthening the ties of brotherhood. Additionally, the academy clearly stated the duty of encountering deviant intellectual trends that contradict the pure teachings of Islam. This special emphasis reveals the role undertaken by the institutions of collective ijtihad in countering fanaticism, intellectual deviation and extremism which will be highlighted in the following section.

Collective Ijtihad and Combating Extremism

Life-affirming and supportive values of peace, justice, cohabitation, harmony and honoring humanity are deeply entrenched in religions. However, extremism is found, to a greater or lesser degree, among all followers of different religions. Contrary to widespread perception, the perceived rise of religious extremism is not limited to a certain religion or peculiar to a specific country. It is premised on an ideology opposite to moderation seeking to impose a particular set of values and customs in a given society and rejecting diversity based on a corrupt reading of its own doctrine. In this sense, extremism includes any immoderate action, attitude, interpretation, or practice of religious tenets based on

a puritanical interpretation of the religion. This ideology imbues the radicals with a sense of spiritual superiority, setting themselves apart from the rest of society and embarking on a long journey of demonizing the other. Others in this context may be followers of the same religion or any other religion. This curtailment of diversity is an indication of predominance of an exclusionary ideology reflected in an outright or partial rejection of the other.

This phenomenon is not peculiar to Islam or Muslims. In some parts of the world it is Muslims who are the victims of persecution and violence at the hands of followers of other religions. Religious extremists are generally minded to suppress the rights of other religions or secular forces in society and even to organize violence against them.[77] Extremists claim the sole right to represent faith. The extremist mindset revolves around an absolutist claim to an authentic truth, rejecting all opposing cultural values or beliefs that are not perceived as indigenous to the religion. Against this backdrop, religious extremism, including religiously motivated terrorism, has been instrumental in destroying the achievements of great civilizations. It is one of the most pernicious and destructive issues which confronts the present-day world and paves the way to cultural, social, political and economic insecurities.

Credible Scholars as Primary Target of Extremism

A careful examination of history reveals that extremism has always been a serious threat to the whole world. In order to formulate an effective plan to counter extremism, it is necessary to define its root causes at the first place. Nonetheless, the root causes of extremism are quite complex and multidimensional. It has various entangled causes including social, political, intellectual and ideological ones. Conceptually, ideology is a means of understanding the world and events by linking beliefs, ideas and narratives for collective or particular actions. Ideologies can be instrumentalized, easily adapted and used by radical groups and movements to garner support for radical ideas and perceptions.[78] The ideological mindset entrenched in corrupt and marginalized readings of religious texts is the first and foremost reason of extremism.

Through instrumentalization and selective interpretation which misinterpret or purposely manipulate sacred texts and principles, extremism finds a baseless justification of radicalism, exclusionism and the violent actions of fanatic individuals or groups. This exclusivity is inherent to extremism and radical ideologies that claim the sole right to represent the faith and assert self-superiority over others. This self-perception of superiority leads them to defame and undermine any frame of reference and authority.

All religions, like all sociological and political movements, have a well-established method for defining authority. This authority, be formal or informal, defines for people what is binding. Actually, it defines what can be relied upon and what ought to be followed. Within the Islamic context, the referential authority communicates to Muslims what is objectionable, acceptable, and binding, and also what is formally a part of their religion.[79] The Muslim jurists represent this frame of referential authority. The Muslim masses have a high regard for their scholars and jurists who earn the greatest trust, respect, and loyalty of the public through their teaching and writing. By virtue of their scholarship, these scholars also enjoy the greatest influence on defining Islamic orthodoxy. This explains why they have always been a primary target for the extremists.

In the course of undermining any credible frame of referential authority, extremists target the moderate jurists and scholars. When human societies are left without models and credible referential authorities, they fell prey to extremists who make use of the explosion in self-declared experts in Islamic law to impose their deviate ideologies. Throughout history, Muslim jurists and scholars determined what was orthodox and legitimate within the religion. To this end, they have been fighting an uphill battle with extremism and its figures. They have been particularly vigilant about extremists' attempts to exploit the Shari^{c}ah as a powerful symbol of legitimacy in an effort to lure and appeal to the Muslim laity.

As an impoverished intellectual climate is suitable for their growth and expansion, extremists attempted to wreak havoc on the community. In a distorted milieu characterized by the absence of role models and lack of any clear demarcating points between the numerous parties

who pretend to speak on God's behalf, extremist ideologies find fertile grounds to flourish. Undoubtedly, the absence of referential authority gives room to those extremists to speak much louder than the moderates.

Role of Collective Ijtihad in Countering Extremism

Combating all manifestations of extremism has become a main priority and agenda regionally and globally. The efforts of countering extremism need to be directed towards eradicating the socio-cultural and ideological factors that contribute to generating narratives of radicalization, and instrumentalization of religion for particular agendas. This engagement should occur with endogenous Islamic reformist thought and scholarly reasoning in a collective endeavor. Collective ijtihad is key to coming to grips with this problematic issue. Taken into consideration the very nature of this mechanism where the opinion of the majority carries more weight and credibility in addition to the referential authority it represents as being issued by a group of high-caliber jurists, collective ijtihad has the potential to address some of the root causes of extremism. This fact did not escape the attention of Muslim leaders and was an underlying catalyst for the establishment or reform of some collective ijtihad institutions.

The Islamic Research Academy was envisioned as a forum for the renaissance of Islamic culture. According to article 15 of law no. 103 of 1961 this academy was established with a view to renewing Islamic culture and freeing it from intrusion, vestiges and traces of political and ideological fanaticism.[80] Similarly, the OIC international Islamic Fiqh Academy is specifically charged with responding to those who wrongly purport to speak on behalf of Islam, particularly those who promote violence and condemn other Muslims.[81] Such extremist practices have tarnished the image of Islam as a peaceful faith that inherently abhors and condemns extremism and violence. To enable the academy to shoulder its responsibility in rebutting fatwas issued by fanatical groups or individuals, it underwent restructuring to become one of the effective interlocutors on behalf of the Muslim world in countering Islamophobia and combating extremism. The OIC general secretariat was entrusted with the task of revising the academy statute. In 2006 an invitation was

extended to a group of jurists from different schools to start this process with the objective of coordinating fatwas, countering religious extremism, combating the accusations of heresy made against some Muslim schools of thought and disseminating the values of moderation and tolerance.[82]

To that end, a draft for the new statute of the Islamic Fiqh Academy was prepared and later approved by the jurists. It was presented to an open-ended working group drawn from the OIC member states. Later on, the new statute was approved by the thirty-third Islamic conference of foreign ministers in June 2006. This statute stipulates that the academy shall function independently to realize a set of objectives including undertaking collective ijtihad in contemporary issues; achieving intellectual harmony among Muslims; liaising with other authorities issuing fatwas; countering doctrinal bigotry, religious extremism and the excommunication of Islamic schools; refuting any views that negate Islamic basic tenets; and reconciling the various differences in Islamic schools of thought by emphasizing the common grounds.[83]

In June 2006, the newly restructured academy held its seventeenth session to discuss the issue of extremism, radicalism, and terrorism. In this session, the academy criminalized all acts and practices of terrorism and equated them with war crimes. The academy resolution stipulated that the terrorist is any individual or group that directly or indirectly participates in terrorist acts, supports or funds them. It also distinguished between terrorism and legitimate resistance against occupation as an established right recognized by international treaties. In addition, the academy emphasized the necessity of addressing the root causes of terrorism including radicalism, extremism, fanaticism, ignorance of the Shari^{c}ah rulings, violation of human rights and basic freedoms, and deterioration of economic, social, and political conditions.[84]

In the same session, the OIC International Islamic Fiqh Academy recommended certain measures to combat extremism and terrorism. The recommendations included strengthening the role of scholars, jurists, preachers, and the scholarly bodies in raising awareness of the central role of combating terrorism and addressing its root causes. It also urged the mass media to maintain accuracy in their reporting

especially on issues involving acts of terrorism and avoid jumping to conclusions by linking terrorism with Islam and Muslims given the fact that terroristic crimes are also committed by the followers of other religions and cultures. The academy called upon the educational and scholarly institutions to disseminate the pure image of Islam that emphasizes the values of tolerance, love, communication and collaboration. In addition, the academy urged the general secretariat to exert its utmost in this regard and convoke specialized seminars and focus groups to elucidate the Islamic point of view in addressing the root causes of terrorism. It also called the secretariat to set up a comprehensive legal framework covering all aspects of this issue. Furthermore, the Academy called the United Nations to intensify its efforts to counter terrorism, promote international collaboration in fighting it, and establish fixed international norms to apply a single standard in evaluating it. The International Islamic Fiqh Academy urged world governments to give high priority to peaceful co-existence, abandon their policies of occupation and denial of people's right to self-determination, and strengthen ties on the basis of mutual respect, peace and justice. Finally, the Academy asked western countries to re-examine their educational curricula, free it from the stereotypes and vestiges of Islamophobia to affirm the principle of peaceful co-existence and civilized dialogue.[85]

Again in 2018, the same academy held its twenty third session where the attendees discussed the practical and intellectual measures needed to combat extremism, radicalism and terrorism. In this session, the academy called for the renewal of Islamic discourse and adoption of collective *iftā'* to revive the institution of collective ijtihad and prevent unqualified persons from issuing legal verdicts. Recognizing the fact that practically anyone can appoint himself a mufti and proceed to spew out fatwas, without either a legal or a social process that would restrain him, the Academy called for enacting regulations and laws to prevent unqualified persons from doing so. It emphasized the necessity of promoting the principle of moderation and balance (*wasaṭīyyah*); correcting the misunderstood concepts; updating the educational curricula to implant the values of mutual respect and tolerance; honoring human rights; renouncing fanaticism and radicalism and valuing diversity.[86]

Likewise, the Fiqh Council affiliated to the Muslim World League deliberated over the issue of extremism and terrorism in more than one session to examine its causes and discover effective remedies. In 2003, the MWL Fiqh Council convened its seventeenth session to investigate the issue of extremism and terrorism where some detailed papers were reviewed and lengthy discussions were held. In an attempt to counter this phenomenon, the council highlighted root causes that required immediate action. These causes primarily include paying heed to deviant and aberrant fatwas issued by unqualified persons, social grievances and poor conditions of life, radical endeavors to fight religion, poor levels of education, lack of economic and human development, and marginalizing Shariʿah rulings.[87]

Again in 2017 the Muslim World League (MWL), through its Islamic Fiqh Council organized an international conference on "Ideological Trends between Freedom of Expression and The Rulings of the Shariʿah." In this conference, the Academy emphasized its previous definition of terrorism as "an outrageous attack carried out either by individuals, groups or states against the human being (his religion, life, intellect, property, and honor). It includes all forms of intimidation, harm threatening, and killing without a just cause and everything connected with any form of armed robbery, hence making pathways insecure, banditry, every act of violence or threatening with intention to fulfill a criminal scheme individually or collectively, so as to terrify and horrify people by hurting them or by exposing their lives, liberty, security or conditions to danger; it can also take the form of inflicting damage on the environment or on a public or private utility or exposing a national or natural resource to danger."[88]

It is clear from these conferences and resolutions that the issue of combating extremism with its various aspects has remarkably occupied the attention of Muslim scholars and fiqh academies. This attention is not limited to violent extremism only; rather it touches on all aspects and manifestations of fanaticism, radicalism and extremism. The ideological and doctrinal deviance is indeed a form of this extremism. Revealing the reality of deviant doctrines and ideologies has been a main focus area for the institutions of collective ijtihad.

The collective effort of Muslim scholars through this consultative

mode of reasoning functions like the symbolic glue that holds the diverse Muslim nation together, despite its varied ethnicities, nationalities, and political entities. This contributes to increasing credibility, reliability and potentiality of collective ijtihad in addressing the contemporary needs of Muslims all over the world based on mutual consultation and deliberative reasoning.

Collective Ijtihad and Application of *Shūrā*

Shūrā is basically a collective endeavor and a decision-making process based on mutual consultation. This notion of consultation has always been of paramount importance for the human being throughout history. Its importance is further accentuated in the present-day world. The underlying philosophy behind consultation is the oft-repeated motto of "two heads are better than one." History is replete with instances of employing this notion. It was a practice adhered to regularly by the prophets. For instance, Ibrāhīm received a categorical command from God to sacrifice his son. The issue is settled by this Divine command, nevertheless, he did not refrain from consulting his son about this matter. This idea is highlighted by Badr al-Dīn b. Jamāᶜah (d. 733/1333) who commented that consultation has been a common practice of the prophets. Although the Prophet Ibrāhīm was given a strict command to sacrifice his son, he consulted with him despite his young age.[89]

In Pre-Islamic Arabia, *shūrā* was a common practice. The tribes had their own councils of consultation wherein the tribal affairs were deliberated over and settled by mutual consultation. Every clan or tribe was ruled by its own elder shaykh who was bound to discuss all important affairs with a council of the elders. The same thing applies to the pre-Islamic society of Makkah. The people of Quraysh used to gather in Dār al-Nadwah to regulate their religious, political, economic and social life.[90] One of the prominent examples of *shūrā* before Islam was the consultation among the Makkans in response to a scandal when a visiting businessman was cheated of his assets, which led to the formation of the pact known as *Ḥilf al-Fuḍūl*. The goal of those forming this alliance was to ensure fair-trade practices. Before assuming the office of prophethood, Prophet Muḥammad witnessed this incidence and

participated in it. Later on, he recalled this pact and cherished both the substance of that consultation as well as his participation in it.[91]

Islam is no exception in employing the institution of *shūrā* (consultation). Realizing the importance of this consultative mechanism, the Islamic religion has declared it as a basic principle and normative procedure of decision-making for the Muslim Ummah. Unlike the consultative mechanism in the pre-Islamic era, *shūrā* was recognized by Islam on the basis of religious affiliation instead of the foundation of kith, kin or social status. The concept of *shūrā* is mentioned several times in the Qur'an; one of its chapters is named *al-Shūrā*, emphasizing the great significance of consultation within the Islamic tradition. In this chapter we read the following verses (42:36–9):

> What you have been given is only the fleeting enjoyment of this world. Far better and more lasting is what God will give to those who believe and trust in their Lord; who shun great sins and gross indecencies; who forgive when they are angry; respond to their Lord; keep up the prayer; conduct their affairs by mutual consultation; give to others out of what We have provided for them; and defend themselves when they are oppressed.

These Qur'anic verses list some fundamental characteristics of good believers; they are described as those who confer with one another in all matters of common concern. *Shūrā* is mentioned on the same footing as establishing prayer and paying *zakah*. Based on this, Muslim scholars lay great emphasis upon the institution of *shūrā* as an essential element and entrenched value in Islam. By way of commenting on this verse, Abū Bakr al-Jaṣṣaṣ construes this as a proof of the vital importance and obligation of consultation since it is mentioned along with faith and observing ritual prayer.[92] Accordingly, it may be concluded that *shūrā* is placed at the same level as ritual prayer to teach Muslims to organize themselves and conduct all their mundane affairs through consultation as they do the same five times daily in collective worship.[93]

Shūrā is emphasized in another Qur'anic verse (3:159) which reads as follows:

> By an act of mercy from God, you [Prophet] were gentle in your dealings with them– had you been harsh, or hard-hearted, they would have dispersed and left you– so pardon them and ask forgiveness for them. Consult with them about matters, then, when you have decided on a course of action, put your trust in God: God loves those who put their trust in Him.

This verse praises the conduct of Prophet Muhammad as a mercy of God and positively highlights the qualities of leadership, including compassion, forgiveness, and consultative decision making. The exegetes explained that this verse was revealed after the battle of Uhud. The Prophet consulted with his Companions whether to go out for fighting or to stay in Madinah. Although the Prophet initially wanted to stay in Madinah and defend the city, he adopted the view of the majority and went to fight in the open field based on consultation. Muqātil, Qatādah and al-Rabīᶜ said that it was strongly rooted in the Arabic traditions that their chiefs were consulted in all important affairs. They used to feel offended when they were left without consultation. In line with this tradition, God ordered His messenger to consult his Companions.[94] The Prophet was ordered to conduct his affairs by consultation although he was guided by revelation. However, this was construed as a practical way to provide an opportunity for everyone to exercise their opinions to the best of their knowledge and tackle their problems in the best possible way. Accordingly, when the Companions tried to collectively find the suitable solution to their problems, this purified their hearts and made them united in pursuit of their objective. This is the basic purpose of *shūrā* as well as the congregational prayer and it is for this reason that observing prayer in congregation is better than individually.[95]

Furthermore, the Islamic Shariᶜah encourages consultation in familial affairs such as the duration of breastfeeding. The Qur'an (2:233) reads:

> If, by mutual consent and consultation, the couple wish to wean [the child], they will not be blamed, nor will there be any blame if you wish to engage a wet nurse, provided you pay as agreed in a fair manner. Be mindful of God, knowing that He sees everything you do.

This verse encourages married couples to decide the policies of child-rearing through mutual consultation and consent. It affirms the shared responsibility of managing the affairs of children and the whole family based on mutual consultation to best serve their interests.

In addition to these Qur'anic verses, *shūrā* is also established by prophetic traditions and practices.[96] There are many reports that not only underscore its significance but also elucidate its usage within the Islamic ethos. The most quoted tradition in this regard is the report that ʿAlī b. Abū Ṭālib once asked the Prophet how to decide upon matters for which neither the Qur'an nor the Sunnah has provided a ruling. The Prophet clarified that they should convene the learned and upright ones among them and make decisions on the basis of mutual consultation, not by the opinion of any individual.[97] This report is understood by some scholars to stipulate an important principle that ijtihad in juridical matters must be conducted through consultation, and a resulting ruling of that ijtihad is not to be imposed on people without a degree of their participation in it.[98] The Prophet exhorted Muslims to apply mutual consultation in deciding on their affairs. He is thus reported to have said: "When your leaders are the best among you, your rich men are the most generous and your affairs are settled through mutual consultation, the surface of earth is better for you than its bottom."[99] In addition, Ibn ʿAbbās is reported to have said that upon the revelation of the Qur'anic verse "Consult with them about matters," the Prophet said, "Certainly God and His Messenger did not stand in need of the advice of anybody, but God has made it (i.e. consultation) a source of mercy for men. Those who seek consultation will not stray away from the path of rectitude, while those who do not are liable to do so."[100]

Shūrā is also established by the practice of the Prophet, that he consulted his Companions in conformity with the Qur'anic injunction, whether in military or non-military affairs. For instance, the Prophet decided the case of prisoners after the battle of Badr by consultation, and dug out the trenches in the battle of Aḥzāb, as advised by Salmān al-Fārisī. He preferred to consult the well-known devotees to Islam like the first four caliphs and Ubayy b. Kaʿb, Muʿādh b. Jabal, Abū ʿUbaydah, as well as the chiefs of clans and prominent Companions.[101] Similarly, the Prophet consulted his Companions over the best way to

call Muslims for prayer and to set up a pulpit.[102] By this consultative practice, the Prophet sought to encourage Muslims to follow his example and consult each other on matters of common concern.[103] Despite having the ultimate power of decision, the Prophet sought consultation with his Companions over a wide range of issues, from day-to-day life to war and peace. Consultation was a general practice and custom of the Prophet and his Companions. Abū Hurayrah said about the Prophet: I did not see anyone who consults his Companions more than the Prophet.[104]

Following the example of the Prophet, the Companions used to decide on important issues by mutual consultation. *Saqīfat Banū Sāʿidah* witnessed a very critical stage in the history of Islam and a prominent example of consultation to elect the ruler of the Muslim Ummah after the demise of the Prophet. The mechanism of consultation was increasingly required after the era of the Prophet to decide the legal rulings for new issues. Whenever Abū Bakr and ʿUmar encountered an issue, they would first look into the Qur'an for a specific guidance. If they found a basis for a judgment there, they would accordingly issue a ruling. If not, they would turn to the Sunnah. If they still did not find a ruling, they would summon the Muslim leaders and scholars and seek their counsel. Emphasizing the importance of consultation ʿUmar once stated that the opinion of one man is like the cloth woven of one thread; the opinion of two like the cloth made of twisted thread while the opinion of three (or more) is like a piece of cloth woven of several threads together that can hardly be torn into pieces.[105] When ʿUmar appointed Shurayḥ as a judge, he instructed him to abide by the directives of the Qur'an and the Sunnah and by the decisions of the righteous people. ʿUmar instructed him to exercise his own reason in cases where the first three sources were of no avail and consult with the learned believers.[106] These reports prove the great significance of *Shūrā* in Islam. Muslim scholars are in agreement on the importance of *Shūrā* as one of the basic precepts and values of the Islamic faith. However, they hold different views concerning the legal ruling of *shūrā*, whether it is obligatory or desirable, and whether the consultative decision is binding or not.

Legal Ruling and Significance of Shūrā

The Qur'anic and prophetic teachings on *shūrā* have differently been interpreted by the classical scholars. Some have expressed the view that the Prophet was directed to consult with his Companions in matters relating to war and peace only in order to ensure their loyalty and secure their willing cooperation. Others, on the other hand, held the view that *shūrā* is to be observed in all matters where there are no direct revelations. The disparity in views led to different positions concerning the legal ruling and binding nature of *shūrā*. However, it is held to be either recommendable or obligatory.

Generally speaking, two views exist on the legal ruling of *shūrā*. A group of classical jurists and the majority of contemporary scholars view it is as obligatory, while others maintain its desirability. Another view distinguishes between those in authority and others, or between public affairs and private ones. The view of obligation construes the Qur'anic teachings as indicating obligation. According to this view, the Qur'anic injunction "And consult with them about matters" is expressed in the form of a categorical order which denotes obligation. Moreover, *shūrā* is mentioned on the same footing as establishing prayer and paying *zakah* which indicates obligation. Abū Bakr al-Jaṣṣaṣ understands this as a proof of obligation. Based on this, Ibn ʿAṭiyya states that *shūrā* is a basis of the Shariʿah and a fundamental principle of legislation; consequently, those in authority who do not consult the people of knowledge and religion, have no right to rule and should be removed from office. There is no disagreement on this point.[107] Similarly, Abū Bakr al-Jaṣṣaṣ cites the Qur'anic verse of *Surat al-Shūrā* (42:38) where God praises believers as a proof of the obligatoriness of consultation. According to him this verse indicates that the believers are commanded to engage in consultation.[108] Al-Rāzī also states that the Messenger was required to exercise ijtihad when there was no revelation. Exercising ijtihad is strengthened by investigation and deliberation, thus he was commanded to seek consultation with his Companions. He already did so in the case of the Badr prisoners, which is a religious issue.[109] Al-Qurṭubī cites Ibn Khuwaiz Mindād (d. ca. 390) as saying, "It is incumbent upon those in authority to consult with the

scholars in religious issues and areas which they do not know."[110] The proponents of this view argue that as the Messenger is commanded to observe consultation despite his prophetic status, it follows that its necessity for others is more emphasized.[111] That is why the rightly guided caliphs adhered to *shūrā* to the extent that it was their common practice.[112]

On the other hand, the majority of classical jurists have held the view of *shūrā* as being desirable[113] considering seeking consultation as a recommended act. The Qur'anic injunction "And consult with them about matters" is construed to denote mere recommendation rather than obligation. It is established that the imperative form indicates a demand and obligation when there is no other indication. However, in this case, the imperative form in their opinion indicates recommendation as the Prophet, being guided by revelation, was in no need of consultation. Seeking consultation with others was meant only to conciliate them, secure their loyalty and win their hearts.[114] Al-Qurṭubī states that such a view is held by Qatādah, al-Rabīᶜ and al-Shāfᶜī.[115] Similarly, Ibn Ḥazm construes this Qur'anic injunction as an indication of recommendation.[116] When discussing the issue of consultation, the classical jurists included it in the chapter of professional etiquette of the judge. For them, the judge is not obliged to consult others. The proponents of the obligation view however disagreed with the idea that seeking consultation with others is intended only for the sake of conciliating them and winning their hearts. They argued that if people know that the result of consultation will not be regarded, this would offend and dishearten them.[117] Based on this, some contemporary scholars and researchers give preponderance to the view of obligatoriness. Moreover, some of them claim this obligatoriness to be the majority opinion.[118]

Based on the foregoing, *shūrā* is either recommendable or obligatory. In all cases, the act of consultation with others is legitimate, praiseworthy and a means of following the example of the Prophet. Indeed, consulting with others has many benefits and al-Jaṣṣaṣ lists the following main ones: *shūrā* helps provide clear rulings on situations not elucidated in the holy texts through independent reasoning; it highlights the dignified standing of the Prophet's Companions, who were qualified to engage in independent reasoning and whose views were

worthy of being adopted and emulated; and it justifies the use of human reasoning to arrive at judgments when there are no explicit texts.[119]

Furthermore, by virtue of consultation, it is possible to prevent an individual or a group of individuals from imposing their will upon others, thus releasing them from the tyranny of subjectivity and selfish whims. It helps determine the most correct course of action and promotes an atmosphere of freedom. It sustains a high degree of social cohesion based on mutual confidence, respect, trust and a sense of belonging and responsibility. *Shūrā* furthers the concept of shared responsibility and togetherness and strengthens cordial ties between individuals. In the sphere of juridical reasoning, *shūrā* has greater significance as a means for effectuating the mechanism of collective ijtihad.

Applying Shūrā in Ijtihad

Islam does not prescribe hard and fast methods for *shūrā*. Rather, the number of the consulted persons and the form of consultation are left to the discretion of the leaders of every age and every country. The Qur'an only lays down the general principle of *shūrā* and emphasizes its importance to guide the process of communal decision making.[120] Accordingly, consultation can take any practical shape provided that freedom, especially freedom of thought and expression, is ensured. An area in which consultation is more essential is the process of deciding legal rulings based on juridical independent reasoning. Muslim jurists took upon themselves the burden of expounding the legal rulings for the Muslim laity. To do so required of them is a thorough study of the scriptural texts of the Qur'an and the Sunnah, and exertion of utmost intellectual effort to derive juridical rulings on given issues from these sources. If no text on a given issue existed, then there was need to exercise one's own reasoning to reach legal rulings based on understanding of the general guidelines and principles of the Islamic Shari^{c}ah.

The mechanism of *shūrā* can be instrumental in the process of ijtihad. Even in the case of a definitive text, ijtihad still has a certain role to play, in the form of applying the connotation of the text to the particularities of given issues. If the text is speculative, the role of ijtihad is even greater. In both cases, consultation is applicable and even essential for

discovering the truth. To decide legal rulings on certain issues for which there exists no specific textual evidence, a jurist needs to employ the means of analogical deduction, juristic preference, or any other established methods of juridical inference. Facing the same situation, it was the general practice of the Companions to consult the learned individuals around them and collectively decide on the best legal ruling. Such a practice laid the foundation of collective ijtihad and represented an early form of this deliberative and consultative mode of reasoning. As stated at the outset of this study, collective ijtihad is the total expenditure of effort by a group of jurisprudents to reach a probable knowledge of a legal ruling based on mutual consultation. So *shūrā*, or mutual consultation, is a basic component of this process.

Collective ijtihad is collaborative in nature and thus is not based on one single jurist but a group of individuals who mutually manage the whole process. In this endeavor, *shūrā* can take the form of consulting non-fiqh specialists, like physicians, economists, sociologists or scientists, in order to improve the perception of the issue under discussion or consulting other religious scholars to make sure that the right juridical methodology has been employed and the resulting fatwa is not flawed.[121] Similarly, the jurist who examines a highly technical economic issue can consult an economist to ensure proper understanding of the reality of this issue. It would be inconvenient, even impractical, for the jurist to search for a trustworthy expert in a specific discipline whenever a special case is brought under juristic scrutiny. It would be more reasonable, therefore, for the experts of various fields to sit together in a council or an academy and share each other's expertise in the conduct of ijtihad.[122]

In this way, the principle of *shūrā* can be put into practice and help meet the critical need for complementarity between non-fiqh specialists and jurists in an interdisciplinary and multidisciplinary approach that can effectively find the best possible and most reliable solutions for different juridical issues in all fields. Actually, this philosophy was the underlying rationale behind the establishment of fiqh councils and Shariʿah boards in the twentieth century. This makes *shūrā* an integral part of ijtihad, helps narrow the scope of juristic disagreement, promotes rapprochement between different views, prevents extremist and radical

positions, ensures credibility and reliability of the resulting rulings and lends them much credence. By applying consultative ijtihad in its collective mode, it is possible to revive the principle of *ijmāᶜ* and avoid the arguments leveled against it and its feasibility. In so doing, the essence of *ijmāᶜ* could be realized and the vitality of ijtihad ensured. This view echoes that of ᶜAllal al-Faṣi (d. 1974) who maintained that *ijmāᶜ* is the agreement reached by *mujtahid*s present at the time of inquiry over a matter with no explicit text in the Qur'an or Sunnah. This agreement must be based on the type of consultation spoken of in Qur'an 3:159. For al-Faṣi, this consensus is not understood as the agreement of all jurists or the consultation of each single *mujtahid* across the Muslim world. Rather, it is a kind of majority agreement based on mutual consultation. Unfortunately, al-Fasi argues, Muslims could not organize *ijmāᶜ* on the basis of the principle of consultation.[123]

Evidently, collective ijtihad is a crystal-clear manifestation of this consultative *ijmāᶜ*. A lot of Muslim intellectuals have called for institutionalizing ijtihad to valorize the mechanism of *ijmāᶜ*. Muhammad Iqbal (d. 1938), for instance, made quite a strong case for the transfer of the power of ijtihad from individual representatives of schools to a Muslim legislative assembly as the only possible form *ijmāᶜ* can take in modern times. According to his point of view, this will secure contributions to legal discussion from laymen who happen to possess a keen insight into affairs and in this way alone can we stir into activity the dormant spirit of life in our legal system, and give it an evolutionary outlook.[124] In fact, contemporary Fiqh academies epitomize the organizational form within which the process of ijtihad should be framed. However, certain conditions have to be met to reap the fruits of *shūrā* in the realm of collective ijtihad. These conditions relate to both jurists and experts. As for jurists, the general qualifications of ijtihad, as discussed above, have to be fulfilled. *Shūrā* does not serve as a substitute for established requirements and qualifications. In terms of experts, scientific achievement and scholarly contribution should be given priority in choosing the best candidates in each discipline. They must be given a full chance to participate in any deliberations without restrictions.

Conclusion

The foregoing analysis has provided much insight on the reformative role of collective ijtihad in promoting unity between Muslims, eliminating disagreement and controversy, bringing different jurisprudential schools closer together and establishing rapprochement among them, combating all manifestations of extremism and terrorism, and applying the Islamic principle of mutual consultation. Another important role that merits special attention is the potential to address the problematic issues of fatwa and rationalize its issuance. The following chapter is dedicated to examining this specific role of collective ijtihad.

CHAPTER 3

Collective Ijtihad and Rationalizing Fatwa

Overview

THIS chapter investigates problematic issues concerning fatwa and the role of collective ijtihad in controlling the chaotic status perceived in the field of contemporary *iftā'*. To that end, it analyses various problems of individual fatwa including the issuance of fatwa by unqualified persons, politicization of fatwa, the problem of live fatwa on satellite channels, and the problematic approaches of extreme leniency and overstrictness in *iftā'*. Also highlighted is the role of a collective mode of reasoning and group ijtihad in solving such problems.

[3.1] PROBLEMATIC ISSUES OF INDIVIDUAL *IFTĀ'*

This section attempts to analyze a wide spectrum of issues related to contemporary fatwa in light of the explosion in self-declared experts in Islamic law that has led many people to appoint themselves as muftis and proceed to issue bizarre fatwas. For all their merits, great advances in the field of communications have brought about collateral damage in certain fields. In relation to Muslims this is easily discernible in the sphere of fatwa where we now witness complete chaos. The advent of

the Internet opened the doors to many fatwas being issued by people including specialists in disciplines such as medicine, engineering, and computer science, rather than Islamic scholars. This jurisprudential chaos is confusing and even torturous to the conscientious Muslim.[1] Against this backdrop, a proliferation of voices has called for urgent measures to regulate the process of fatwa issuance. As such discussed next are the various aspects of the problematic issues relating to contemporary individual *iftā'*.

Unqualified Self-Declared Muftis

The institution of fatwa has always been crucial and continues to gain more significance in the modern period. Given the high sensitivity of *muftiship*, Muslims of all ages were keen to stipulate certain qualifications and requirements necessary for those assuming this office. The literature of *Uṣūl al-Fiqh* provides a standard discussion of the requirements and status of the mufti. Ibn al-Qayyim (d. 751/1350) goes so far in identifying the mufti as "the heir of the prophets" and "the signatory for God Almighty."[2] Abū Isḥāq al-Shāṭibī regards the mufti as a legislator (*shāriʿ*), a title otherwise reserved for the Prophet.[3] Actually, such designations are debatable because the most that human beings can claim on any specific juridical problem, after a conscientious and diligent search, is a probability of belief that they have succeeded in finding the legal ruling.[4] However, this should not in any sense encourage unqualified persons to declare themselves as muftis. Muslim scholars sternly warn against issuing legal verdicts without being well-qualified.

Clarifying the qualifications and traits of the mufti, al-Shāfiʿī explains that no one is permitted to issue fatwa except a man who is knowledgeable of the Book of God, including its abrogating and abrogated texts, its precise and broadly indicative texts, its connotations and occasions of revelation, its Makkan and Madinan verses, and the objectives and noble purposes of revelation. After that, the mufti should be well versed in the prophetic traditions with their abrogating and abrogated texts. Moreover, he should have a good command of Arabic and Arabic poetry, and possess the necessary sciences to understand the Qur'an.

The mufti should be fair-minded, avoid unnecessary talk, know the different opinions of scholars and show a formidable talent. If the mufti possesses these qualities, he shall be entitled to speak on religious matters and give fatwa to expound on what is lawful and unlawful. Otherwise, he must not speak on religious matters or give fatwa.[5] Many scholars equate between the mufti and *mujtahid*, maintaining that the qualified mufti has to be a practitioner of ijtihad who has the legal capacity to derive legal opinions directly from the sources of the law.[6] Accordingly, the same classification of absolute and non-absolute mufti is adopted. According to some classification, muftis are of two main types. The first category is a *mujtahid* who does not follow an established *madhhab* and is capable of independently formulating his own legal opinions. It is completely legitimate for lay persons to follow such a mufti-*mujtahid*, if he exists, instead of following an established doctrine of a legal school of a past mufti-*mujtahid*. The second type of mufti is one who is not completely independent of the established doctrines of the legal schools and issues fatwa within the bounds of a particular *madhhab* to which he conforms. The latter type includes two sub-types: a mufti who is capable of dealing with legal cases that are not explicitly dealt with in the legal doctrine of the *madhhab* by inferring their solutions from cases that have been determined in the doctrine, while the other mufti is only able to issue legal opinions that transmit the explicitly-stated doctrines of the school and cannot render legal decisions based on new cases.[7]

To avoid limiting fatwa issuance to those who meet the conditions of ijtihad, some scholars allowed the possibility of giving fatwa in a given area of Islamic scholarship based on the principle of divisibility of ijtihad as enunciated by the majority scholars of *usūl*.[8] In this sense, al-Zarkashī (d. 794/1392) quoted Ibn Daqīq al-ʿĪd (d. 702/1302) as saying: "Limiting the issuance of fatwa to the practitioner of ijtihad either entails great hardship or encourages people to follow their own whims and desires. So, it suffices to have a scholar who compiles fatwas from the early imams provided that he is trustworthy and fully understands the words of those imams."[9] As a general rule, the mufti should preferably be a practitioner of ijtihad, but this rule may be tolerated on condition that such a mufti possesses the qualifications and legal tools

of juridical reasoning and inference and has already studied Shariʿah sciences.

Meeting the minimum qualifications and requirements is indispensable for issuing fatwa, as *iftā'* or ijtihad is of two categories; a reliable ijtihad practiced by those who have equipped themselves with the necessary knowledge, and another form practiced by those lacking the adequate qualifications. The second ijtihad has no significance because it is a worthless opinion based on one's desires and interests, and following unguided directions and personal whims.[10] Unfortunately, given the proliferation of self-declared *muftis*, the spread of mass media and the absence of a formal credible entity that can discredit or vouch for the qualifications of fatwa issuers, there is complete chaos in the world of Islamic law. The present age witnesses a number of people intruding into the domain of fatwa without being properly qualified on the pretext that there is no priesthood or monopoly of knowledge in Islam. Such people are very far from Shariʿah sciences, yet, they do not refrain from deciding lawful and unlawful matters. The Prophet warned against such people. ʿAbd Allah b. ʿAmr b. al-ʿĀs said that I heard the Messenger of God saying: "Verily, God does not take away knowledge by snatching it from the people, but He takes it away by taking away (the lives of) the religious scholars till none of the competent scholars stays alive. Then the people will take ignorant ones as their leaders, who, when asked to deliver religious verdicts, will issue them without knowledge, the result being that they will go astray and will lead others astray."[11]

Fatwa issuance is not an easy undertaking and the technical rulings of Islamic law cannot be known intuitively, neither can any conceited person with a delusional sense of jurisprudential acumen pontificate as to the details of the law.[12] Bearing this in mind, the righteous predecessors approached fatwa cautiously and hesitatingly. The early Muslims were reluctant to issue fatwas even if they were qualified to do so. Whenever an emergent issue was brought to them to decide the legal ruling thereof, the rightly guided caliphs, despite their breadth of knowledge and high virtue, would assemble the knowledgeable people among the Companions to consult them. That is because they felt the great responsibility and possible consequences of fatwa. Ibn Abū Laylā

said: "I met one hundred and twenty of the Companions of the Messenger of God. When anyone of them was asked a question, he would refer it to his friend, and his friend would in turn refer it to another and so on until it goes back to the first one." ʿAbd Allāh b. Masʿūd said: "Surely insane is the one who hastens to issue fatwas whenever asked to do so." Abū Ḥuṣayn al-Asadī said: "One of you dares to issue fatwa on a particular question that had it been presented to ʿUmar b. al-Khaṭṭāb, he would have gathered for it the people of Badr."[13] When a man saw Rabīʿah b. ʿAbd al-Raḥmān weeping, he asked: "What makes you weep?" He replied: "Unknowledgeable people are asked to give fatwa, and this poses a danger to Islam." He added: "Some people who give fatwa are more entitled to be imprisoned than thieves." Ibn Ḥamdān (died 695 AH) comments: "What would he say if he lived in our present time and saw fatwa issuers who are very ignorant, have no expertise, and known for their evil conduct and intentions?"[14]

As noted earlier, the pre-modern scholars were sometimes reluctant to issue fatwas and used to question their own qualifications. Unfortunately, the process of *iftā'* is nowadays approached by some individuals who lack the minimum qualifications. A variety of reasons may drive them to have the audacity to issue fatwa without requisite knowledge. Generally speaking, weak religiosity and following one's desires account for such intrusion into the process of fatwa issuance. Similarly, showing off and pretentiousness are serious defects and maladies that drive some people to break into the field of *iftā'*, in quest of fame and honor. Some individuals are reluctant to say "I do not know" for fear that people may hold them in low esteem. However, the reliable scholars are always alert to this trap. Once al-Shaʿbī was asked about something, so he said "I do not know." A person censured him: "Do you not feel ashamed of saying so and you are the renowned jurist of the people of Iraq?" He replied: "But the angels did not feel ashamed when they said [to their Lord], 'we have no knowledge except what You have taught us.'"[15] Moreover, non-fiqh specialists sometimes issue fatwa on the pretext that there is no monopoly or priesthood in Islam. Showing no respect for specialization is another reason behind this phenomenon. Specialty must be respected in every

discipline which needs to be practiced by its competent people only.[16]

In addition, there are certain things that render any fiqh specialist unqualified for issuing legal verdicts. Ignorance of Shariʿah objectives constitutes one of the most prominent matters that hinder man's capacity for *iftā'*. Al-Shāṭibī considers understanding higher objectives of the Islamic Shariʿah among the reasons qualifying the mufti to act as a deputy of the Prophet in teaching, issuing fatwa, and judging.[17] Knowing these objectives helps the jurists understand the texts and apply them to the reality in a proper way. This is part of the duty of the practitioner of ijtihad. Therefore, a person who is not well aware of the Shariʿah objectives should not issue fatwa; otherwise, his fatwa will sound strange and inconsistent with the purpose of the Lawgiver. For example, some scholars issued a fatwa that did not recognize paper currency in Shariʿah – recognized money on which *zakāt* is obligatory and to which *ribā* rulings apply.[18] According to this understanding, a Muslim who owns billions of these banknotes is not required to pay *zakāt* because only gold and silver represent *zakātable* money recognized by the Shariʿah.

Similarly, ignorance of people's reality and conditions is another main reason leading to error in fatwa. Passing a judgment on something is dependent on having a proper conception thereof. Such a perception cannot be correct unless one truly understands the reality or status quo. It is a necessary skill for ijtihad, which jurists have called '*fiqh al-wāqiʿ*' (understanding the *status quo*). Ibn al-Qayyim clarifies that a mufti or a judge cannot issue a legal verdict without two things; understanding people's reality and understanding the Shariʿah ruling concerning this reality.[19] Before getting into the process of formulating an answer, the mufti has to fully comprehend the question. Crucial to this comprehension is knowledge of local customs and prevailing conditions. Among the most prominent examples of fatwas that overlook the conditions of people in our contemporary reality, from my point of view, is the oft-repeated legal verdict cited every year in the month of Ramadan regarding the possibility of giving money in *zakāt al-fiṭr*. Some contemporary scholars insist that it is not permissible to give money for this act of worship based on the opinion of the majority of pre-modern scholars, including the Mālikīs,[20]

Shāfiʿīs,[21] Ḥanbalīs[22] and Ibn Ḥazm,[23] that paying money is not acceptable in *zakāt al-fiṭr*. Against this view, the Ḥanafīs,[24] al-Thawrī, al-Ḥasan al-Basrī, and ʿUmar b. ʿAbd al-ʿAzīz,[25] Ashhab and Ibn al-Qāsim[26] held that it is permissible to pay an estimated value in *zakāt al-fiṭr*. As the issue is debatable among the classical jurists, the contemporary mufti is supposed to adopt the view which is more congruent with our contemporary reality taking into consideration the interests of the poor.

It should be noted that a person can be a fiqh specialist, with adequate knowledge of Shariʿah sciences and its higher objectives, in addition to good familiarity with people's conditions and reality, yet still lack the qualifications required to issue fatwas in a specific discipline. For instance, a mufti cannot issue legal verdicts on stock markets or shares and bonds without having a correct perception of those things. This actually does not mean that a practitioner of ijtihad should master all the sciences and knowledge, for such a person does not exist. At least, the mufti should fully grasp the field in which he gives a fatwa by mutual consultation with the technical experts. Al-Shāṭibī pointed out this matter after elaborating on the conditions of ijtihad. He states: "It could be concluded that the practitioner of ijtihad in the Shariʿah rulings does need to be perfect in every science related to ijtihad in general. However, when there is a science without which the essence of ijtihad cannot be fulfilled, the mufti must acquire it; while other sciences are not necessary to be mastered."[27]

Another aspect that merits attention pertains to the *mustaftī* (i.e. the recipient of fatwa). Such a person has a significant role in this process. Although each fatwa reflects the opinion of a learned person about what God desires or wills, it is up to the recipients of the fatwa not to follow it blindly or unthinkingly. According to Islamic law, practicing Muslims must exert a degree of due diligence in researching the qualifications of the jurist issuing the fatwa, and if possible, the evidentiary basis for the jurist's opinion, before deciding to follow or reject any particular fatwa.[28]

Consequences of Issuing Fatwa by Unqualified People

One of the outcomes of fatwa producing by unqualified persons is the proliferation of contradictory fatwas which could lead to anarchy. Being legitimately unqualified to give fatwas, legal opinions expressed could create chaos. Conflicting fatwas not only pose a theological or legal problem, but also a political-ideological dilemma. While contradictory fatwas existed in the past, their inaccessibility to most Muslims ensured that they were content with following their local imams. Now the spread of mass media has made these contradictions immediately visible and accessible to unprecedented audiences, they are charged with leading to confusion and uncertainty.[29] Today, fatwas are regularly broadcast on radio and television, and reproduced on audio and CDs. In this case, literacy is not a requirement for listeners and viewers.[30] For this reason, the broadcast media has enabled fatwas to reach and affect a broader audience.

The scope of disagreement has widened in this age as a result of issuance of abnormal legal verdicts by unqualified people. This is running rampant in our world because of irresponsible handling of religious issues incautiously, in pursuit of fame, showing-off, power or money, or for supporting deviant doctrines or extremist ideologies. Such abnormal fatwas cast shadows of doubt on the whole process of *iftā'* and have far-reaching negative effects on the credibility of scholars. Eventually, they may undermine trust in the institution of fatwa and discredit *mufttīs*. When people lose confidence in fatwas, they stop paying heed to the legal advice of scholars; this may be conducive to permitting the unlawful, forbidding the lawful, and tarnishing the pure image of Shariʿah. Fatwa is a demonstration of the Shariʿah rule, and this cannot be achieved by non-specialists. As a consequence, fatwa fails to fulfil its very function; rather than settling an unresolved question, it may elicit further debate and controversy.

The opinions of jurists carry persuasive authority, but they are not mandatory or binding. A fatwa may be authoritative for some Muslims but not for others. The final decision to accept or reject a fatwa is up to each individual Muslim based on the level of religiosity. One group of Muslims may defer to one jurist and abide by his fatwa because they

respect his learning and judgment, while another group may completely ignore it because, for whatever reason, they do not believe his fatwa to be correct.[31] Now, when abnormal legal verdicts permeate the domain of fatwa, this gives room for divergent stances and fissiparous tendencies endangering the fabric of a united society. Moreover, assumption of the critical office of *iftā'* by unqualified people reduces the solemnity of scholars in people's hearts. Accordingly, the influence of scholars weakens and people lose confidence in them and refuse to accept their opinions anymore. In this case, knowledge will decrease, ignorance will spread, and rights and duties will be neglected.

Consider, for example, some of these strange fatwas like the one which employed the principle of analogy to permit *ribā* between people and the government on the ground that *ribā* is not constituted between father and son. Another fatwa permits a little *ribā*, to the exclusion of the great amount, while a third one denies *zakatability* of paper money and commercial commodities. There are other strange fatwas that reveal total ignorance of the Shari^{c}ah objectives and Islamic rulings, such as those stating invalidity of the marriage contract if the spouses strip off their clothes in the marital bed.[32] Some people exploit such bizarre opinions to defame the jurists and religious scholars. They lump together all parties, being qualified or unqualified, only to raise doubts, challenge the Shari^{c}ah rulings, and delude people into stopping seeking fatwas since they are not issued by true scholars.[33] The consequences have been exacerbated by providing those unqualified people the opportunity to appear on satellite channels and the media to reach broader audiences.

Live Fatwas: Advantages and Disadvantages

In very recent years, fatwa has become a worldwide media phenomenon. Adapting to changing times and also to a novel medium, the institution of *iftā'* has gained greater significance in the media age. The modern world has witnessed a real boom in telecommunications that have supplied humanity with amazing capabilities of communication. This great advance in mass communication technologies has had far-reaching effects on the processes of production, reception, and

adaptation through which fatwas are formed, published, received, and reproduced. This not only applies to the production of knowledge on satellite channels but also through newspapers, radio, and internet. Today mass media fatwas are a vital communication tool with which various people can articulate a specific worldview. Instead of individualized communication, the new fatwas are broadcast messages for a mass audience.[34]

Satellite TV and Internet technologies take religious discourse and fatwa into unprecedented spaces beyond the geographical areas. Across the world, religious TV channels and websites have taken up the roles of traditional religious institutions. Producing fatwa through TV programs and online platforms has become instrumental in shaping religious public awareness. Satellite channels are in fact a double-edged sword, as they can be used for good and bad purposes, or to guide and misguide people. Given the rapid spread of fatwa issued through media, the large number of viewers, the diversity of their backgrounds, and the immediate answer to various questions in all areas, this relatively new genre of fatwa necessitates special attention and cautiousness. Live fatwa is a free journey that nothing restricts. The media mufti may receive questions relating to a wide variety of issues including the most intricate and recent matters in the financial, medical, social, political or any other field. These issues may represent a public concern that has a bearing on the whole society.

The popularity of satellite TV fatwa programs has revealed various concerns in terms of the qualification of individuals issuing fatwas from one part of the world to another that they know little about. Consequently, the importance of the context when delivering a fatwa and the understanding of the sociocultural specificities of countries that fatwa addresses has become one of the growing problems attached to who should give a fatwa and what criteria they should fulfil before voicing scholarly opinion to avoid chaos or disorder.[35] Based on this, the idea of chaos is perhaps most commonly seen in relation to the impact of new media. The new media are not only often seen as more than simple instruments from which good and evil alike can be derived; rather, they are understood as having changed the kinds of questions that are being asked, as well as the competencies required. New criteria for issuing

fatwas on media came to exist. Charisma and fame, rather than knowledge and piety, have thus become for some among the main criteria in the new media world.[36] Accordingly, it has become a necessity to lay down regulations for these channels and programs to reap their benefits and avoid their harms.

Advantages of Live Fatwa

Live fatwas on radio and TV represent one of the topics that evidently instigate debate and controversy given their various pros and cons. Such fatwas have some advantages emanating from the nature of these channels and the wide range of possibilities they provide. The live fatwa has the potential to address all groups and communities regardless of their different cultures and backgrounds. Several communities, who are unable to attend the session of the muftis, can benefit from such fatwa programs. Sometimes, translation into different languages or sign language is available, making fatwa more accessible. Such fatwa programs can reach all parts of the globe without encountering any political or geographical limits. This great advantage has a special impact in the dissemination of Islamic teachings in both Muslim-majority societies and Muslim-minority communities.[37]

This institution of live *iftā'* helps disseminate religious awareness and explain the Shari^{c}ah rulings on the issues and incidents various people are facing, which is the very function of fatwa. Giving fatwa through satellite channels contributes to fulfilling people's need for religious guidance because the questioner can easily reach the mufti through such channels. It also contributes to the spread of Islamic and jurisprudential culture and works to correct many of the common misconceptions held by Muslims, especially those who lack the religious knowledge.[38] In such a way, contemporary fatwa programs on satellite channels have become a basic instrument of education and learning in the present time. They contribute to correcting individuals' behavior and guiding their intellectual and cultural attitudes towards the right direction approved by the Shari^{c}ah.[39] However, this does not mean that these programs do not have certain negative effects on the sphere of contemporary fatwa.

Shortcomings of Live Fatwa

Preparing a fatwa to be heard on a radio broadcast or TV channel is absolutely different from writing one for an individual to read. The media audience consists of the public at large and a person might hear the broadcast for example, in a restaurant or while riding in a taxi. As a consequence, the media mufti has to be relatively expansive, using examples, repetition and reference to related questions to convey his ideas.[40] At the same time, he has to be concise and quickly summarize the issues. The mufti sometimes will not have enough time to properly think of an issue, recall scholars' opinions, or obtain more detail from the questioner due to strict program time limits and the large number of callers. This disrupts the mufti and obliges him to reduce the normal stages of fatwa issuance. By doing so, he is more liable to err. Thus, the nature of fatwa programs with their limited time frames demands hurried legal verdicts to be issued, with the mufti under pressure to answer as quickly as possible. To do this, the mufti is required to rapidly recall jurisprudential rulings as well as their evidence driving some muftis to even interrupt the questioner before he/she finishes the question. Such haste contradicts the deliberateness required for *iftā'*. It even contradicts the nature of the questioning itself, which needs a careful elaboration. Some fatwas issued on satellite channels require the attendance of another party, such as fatwas concerning financial transactions or divorce issues. But the mufti hears only from one party, and in some cases, the questioners are not able to detail their questions due to time restrictions.

Among the problematic features of live fatwa programs is giving room for unqualified persons. Some satellite channels have devoted large spaces to religious programs, chiefly fatwa programs, while other channels have fully specialized output to religious affair. So far, this is something good, however, some programs invite guests who have never practiced fatwa issuance with its established rules, or those who specialize in an irrelevant branch of Islamic scholarship. Some preachers and imams are invited to participate in fatwa programs while they are not eligible to do so, and the viewers are deceived into listening to their words. By doing so, perhaps, the owners of these channels do not

distinguish between fatwa and religious discourse in general or try to host famous faces even if they are not knowledgeable. The criteria for choosing a guest have become fame, charisma, good looks, good style, and smartness even if a more knowledgeable and more religious prudent scholar is available. To compound the problem, no regulatory body exists to control the quality of fatwa disseminated on such programs.

Another important aspect that merits attention is the fact that answers are always present for any question in whichever discipline. Rarely does a mufti say "I do not know" or refer the question to others. In addition, the mufti ordinarily needs to take account of the circumstances of a questioner as well as the difference in their customs when giving fatwa. The audience can vary considerably in terms of culture, language and social conditions. People are different in habits and living conditions. Some people do well when given fatwa based on legal concession; others do well when fatwa is given according to the original rule. Given the fact that questioners in fatwa programs come from different countries, the mufti cannot grasp all their circumstances and issue a proper ruling that fits their reality. Moreover, some fatwa issuers on satellite channels do not tolerate other opinions. Conflict between fatwas often occurs because each channel adopts a particular school of fiqh or a specific jurisprudential opinion. When a questioner calls one satellite channel to ask about the ruling on a given issue, the mufti may give him a fatwa, for example, according to the Ḥanbalī *madhhab* without mentioning the other views. The same questioner may call another channel and receive a fatwa contrary to the one previously obtained.

And even if there happens to be a qualified mufti whose fatwas are well suited to reception and adoption by many people from different countries, it is still necessary for such a person to be alert to any attempts on the part of the questioner to elicit a pre-determined fatwa. Some satellite channels choose the mufti according to their own tendencies in order to use the fatwa to support a stance or justify it. The mufti may fall in this trap and issue ungrounded politicized fatwa that serve a specific national or international body. In our contemporary context, in which distances have shrunk because of modern means of communication, it may appear at first glance, that the task of religious guidance

has been achieved by the abundance of religious programs available on satellite TV and radio stations.[41] However, given the very nature of these media, the mufti has to pay utmost attention to his answer because any mistake will not affect the questioner alone, but also extend to all the viewers who may number in the millions. For this reason, many scholars have voiced their concern and criticism of live fatwa calling for its prevention or at least setting strict measures to regulate it in order to put an end to 'fatwa chaos' and 'fatwa politicization'.

Fatwa Politicization

Fatwa plays a crucial role embracing all aspects of Muslim life. It carries emotional, sociological and political weight. Fatwa in this sense is not only a legal tool, it also serves as a social instrument, a political discourse, a doctrinal-reform device, and a means of mass mobilization. Being fully aware of the rich variety of the functions of fatwa, the political authorities have always been attempting to employ it for their best interests. This attempt of politicization and manipulation of fatwa may be traced back to the era beginning with the murder of ʿUthmān. Fatwa was blatantly manipulated by different regimes since the Umayyad dynasty where the rulers legitimized their actions by made-to-measure and tailored fatwas against opponents. In view of the increasing importance of fatwa as a mechanism of religious legitimization, it is perhaps not surprising that central governments sought to establish a measure of control over this activity. To this end, caliphs (and, later, sultans) began to designate jurists who were deemed qualified to serve the government in an official or semiofficial capacity.[42] This gave room to manipulation of fatwa and the emergence of 'palace fatwa'. By manipulation and politicization, I mean the process of producing a made-to-measure fatwa to support or to justify a given stance. In this situation, the mufti amasses the proofs, twists and decontextualizes them in support of a certain and pre-stated political stance. Moreover, the authority interferes in formulating the fatwa by exerting pressure directly or indirectly. Instead of being a demonstration of God's ruling and wisdom, fatwa becomes a signature on behalf of the rulers and an expression of their whims and desires.

Fatwa has continued to figure at key historical junctures as an appropriate vehicle for expounding Shariʿah rulings of major political events. There is nothing wrong in this because it is a basic function of *iftā'*. However, when issued at the behest of governments to fulfil a predetermined objective, such a context raises weighty doubts concerning these fatwas and the whole process of *iftā'*. Manipulation can take various shapes; it occurs as a result of classifying the issue under juristic discussion in contradistinction with its legal reality, then giving it a new ruling compatible with such untrue classification. Similarly, declining to deal with issues opposing the official stance represents another manifestation of fatwa politicization and manipulation. It sometimes happens that one issue involves multifaceted aspects, but the mufti handles only the aspect in harmony with the political stance declining to express his opinion on the other aspects. By employing this fragmented and reductionist mode of juridical reasoning, the mufti is purposefully violating the established norms of *iftā'* in order to gain certain benefits.

By the same token, marginalizing the debatable fatwa on the pretext of consensus constitutes an act of manipulation. If an issue is originally debatable among jurists, the different views have to be stated. Conversely, influenced by politicization, the mufti presents the given issue as a matter of unanimous agreement while blotting out the competing opinions. This matter is considered "one of the problematic issues that surround the fatwa and clothe it in a political fashion. It is to favorably receive a particular fatwa and marginalize another one as long as the former comes in harmony with the interests of a country or is congruent with the approved policy or stance of an official regime. This undermines the whole process of *iftā'* due to the politicization of fatwa."[43] Politicizing legal rulings exacerbates the chaotic status of fatwa. It is employed by different parties, not only the official muftis. The rise of violent and radical movements acting in the name of religion and legitimizing their actions through fatwas has provided a further impetus to this phenomenon. When analysts speak of the phenomenon of political fatwas and the politicization of the fatwa, they often posit the second Gulf war and the post 9/11 "war on terror" as two pivotal moments. The Iraqi invasion of Kuwait prompted a war of fatwas for and against the American-led military operations in the Gulf.[44]

Gulf War Fatwas

The Gulf war broke out in 1990 when the Iraqi regime invaded Kuwait. This war precipitated a sharp and profound division in the Arab and Muslim world. Fatwa became entangled in this crisis, oscillating between support for and condemnation of seeking military help from US-led coalition forces during this war. There was considerable disagreement regarding the introduction of American troops into the Arabian Peninsula. Both conflicting parties sought sanction of their stance through fatwa. The juridical arena witnessed a proliferation of fatwas and counter-fatwas which revolved around the question of whether it was Islamically legitimate to seek military help from non-Muslims, form a coalition against other Muslims, and whether the presence of non-Muslim troops in Saudi Arabia constituted defilement of the holy places.[45]

The Gulf war unleashed a concomitant war of fatwa where official muftis representing various governments issued fatwas validating and justifying the policies advocated by their respective political leaders, buttressing them with reference to Qur'anic and prophetic textual evidence. On the other side, such fatwas were refuted by counter declarations and fatwas. In addition, some independent ad hoc bodies convened for the specific purpose of providing the Islamic view on this crisis; there were also numerous statements by individuals, including various notable Islamists, commentators, and opinion makers.[46] Each party attempted to secure legal sanction for their stance. In support for the Saudi stand, ʿAbd al-ʿAziz b. Baz, the then Chairman of the Departments of Scholarly Research, Iftā', Daʿwah, and Guidance, maintained that it was permissible for the Kingdom of Saudi Arabia to seek military help from Western coalition forces to protect itself from an expected Iraqi aggression. He based this view on the principle of necessity as it was necessary to defend Muslims and their country and this act by the Kingdom of Saudi Arabia was deemed excusable and even commendable.[47] This fatwa came in contradistinction with an earlier view expressed by Ibn Baz before the outbreak of the war. As for this first fatwa, Ibn Baz wrote a book titled: "*Naqd al-Qawmīyya al-Arabiyya ʿala Ḍawa' al-Islam wa al Wāqīʿ*" wherein he held the view

that it was not permissible for Muslims to patronize the non-Muslims or seek their help against an enemy. And he based this view on a hadith narrated on the authority of ʿĀ'ishah that the Messenger of God set out for Badr. When he reached Ḥarrat-al-Wabara (a place four miles from Madinah) a man met him who was known for his valor and courage. The Companions were pleased to see him. "He said: I have come so that I may follow you and get a share from the booty. The Messenger of God said to him: Do you believe in God and His Apostle? He said: No. Thereupon, the Messenger said: Go back, I will not seek help from a disbeliever. He went on until we reached Shajara, where the same man met him again. Again, the Messenger asked him the same question and got the same answer. He said: Go back. I will not seek help from a disbeliever. The man returned and overtook him at Baidā'. He asked him as he had asked previously: Do you believe in God and His Apostle? The man said: Yes. The Messenger of God said to him: Then come along with us."[48] Based on this hadith, Ibn Baz maintained that it is not acceptable for Muslims to include non-Muslims in their army or to seek their help as they are disbelievers and are not reliable.[49] This clear contradiction in the two fatwas issued by Ibn Baz is construed by some people as an act of politicization or at least an influence of pressure exerted on the mufti.[50]

To counter this, another international Islamic body convoked in Iraq in December 1990 and issued a declaration supporting the Iraqi position, urging Muslims to undertake jihad and revolution against the Arab Muslim leaders who had joined the coalition forces under American leadership. The statement declared those leaders as traitors. Additionally, independent fatwas condemning the alliance with coalition forces were subsequently issued by some countries, organizations, and individuals.[51]

On the other hand, a counter-congress meeting was convened during the same month. The participants here justified seeking the military help of non-Muslims and issued some fatwas confirming its validity on the basis of necessity. The pro-coalition fatwas condemned the Iraqi invasion of a fellow Muslim nation, for the redress of which it was necessary to seek outside help. Iraq's behavior was illegal in terms of both Islamic law and international law. This aggression

necessitated seeking help from any friendly country, Muslim or non-Muslim. On the other hand, the opposing fatwas maintained that seeking military help from non-Muslims was not permissible especially when it was sought against a Muslim nation and would lead to defilement of the holy places and catastrophic consequences in the future. The response to this was fatwas retorting that the temporary presence of foreign non-Muslim forces in parts of the country did not threaten, harm, or defile the holy places. They legitimated the act of seeking aid from foreign forces, based on the fact that one fundamental objective of the Shari'ah is to preserve life, honor, and property. For them, seeking aid was a necessity and the question of the defilement of the holy places did not arise as the coalition forces were engaged about 1500 kms from Makkah and Madinah. Moreover, maintaining stability in the Gulf region, at both the international and local levels, was superior to the negatives of a temporary presence of foreign military forces, because it ensured the safety of the people, their honor, and properties. The opposing party acknowledged the preservation of life as a main objective of the Shari'ah while arguing that seeking help from non-Muslims in a battle in which Muslims might be killed could not be justified under any pretext, especially when there existed other possible ways to settle the issue. They cited further the example of Andalusia, where the various Muslim factions had sought the help of Christian princes in fighting one another and finally lost the land. According to them, the American intervention changed the conflict from an inter-Arab dispute over borders and resources to one in which Arab and Muslim rulers, in coalition with Western forces under American leadership, were seeking the disempowerment of an Arab and Muslim country with this alliance eventually opening the way to destruction and weakening of Muslims.[52]

As can be seen competing fatwas talk in the name of Shari'ah. Both parties claim their stance to be in accordance with orthodox Islamic teaching. The two views cite the Qur'an and the Sunnah to support their stand. This highlights how the textual evidence can be manipulated to serve certain aims. The primacy of the Qur'an and the Sunnah is not a point of contention between the issuers of fatwas; the question is rather how the text may be interpreted and the influence of political agendas

on this interpretation. The evident biases of fatwas supporting various Muslim leaders undermine public confidence in the institution of fatwa. When scholars manipulate legal rulings, craft fatwas to accord with the political stance of various regimes, and veer according to the wishes of rulers, surely they are then in danger of losing their credibility leading people to search for another frame of reference.

Fatwa between Extreme Leniency and Overstrictness

The Islamic Shariʿah is a moderate approach of legislation that seeks balance between two extremes; namely, extreme leniency and extreme strictness. Bringing ease and removal of hardship from people are among the higher objectives of this Shariʿah. Reflecting over the texts of the Shariʿah demonstrates that it is ordained to uplift hardship from people and make things easy for them so that their interests are accomplished in this life and in the Hereafter. But a problem occurs when facilitation reaches the point of leniency, negligence, laxity and twisting texts to find an easy way out to escape religious duties. On the other hand, it is unacceptable behavior for a person to become extremely strict, making life difficult for people, particularly in the field of fatwa. Strictness here is synonymous with extremism and signifies "reluctance to moderation, a balanced approach and easiness."[53] Both laxity and extremism are discouraged in the process of formulating legal rulings. The qualified mufti should exercise this process in a justly balanced approach that avoids both leniency and overstrictness.

Leniency in Iftā'

By leniency, I mean the issuance of fatwas according to the easiest and most lenient opinion all the time and in all cases even if it goes against reliable evidence.[54] This approach has dominated the field of *iftā'*, especially in our contemporary life to the extent that some muftis have become known for their lenient approach in fatwa so that biased questioners often consult them. Excessive leniency appears in the intentional failure to verify legal evidence, in circumventing the texts and persistent following of concessions and exceptions, or in attempts to

justify the reality even if this conflicts with established rulings. Some muftis, in their attempt to depart from strict adherence to literal meanings at the expense of the spirit of the law, fall into the trap of laxity. Early jurists are reported to strongly blame the too lenient muftis and forbid consulting them for fatwa. For example, al-Nawawī states:

> Excessive leniency is forbidden in fatwa; consequently, it is not allowed to consult a *muftī* who is known for this trait. Such leniency applies when the *muftī* does not verify the evidence and issues a fatwa before giving the case its due study and scrutiny. However, if the case in question was previously brought to investigation, there shall be no harm in quickly answering it … Another manifestation of leniency lies in the recourse to forbidden or reprehensible tricks to fulfil ill-intended purposes. The *muftī* does so in quest of granting concessions to people he wants to benefit or burdening people he wants to harm. It is, however, praiseworthy when the *muftī* attempts with good intention to find a legally acceptable way out to rid the questioner of the predicament of a broken oath or the like.[55]

The approach of laxity and leniency is exemplified by those who give preference to *maslahah* (public interest) over the text or justify corrupt reality based on baseless interpretations. Proponents of this trend incline to excessive facilitation and easement without regarding the objectives of the Shari^{c}ah, and give precedence to *maslahah* over the text. This approach has its origins in the legal theory set forth by Najm al-Dīn al-Tūfī (d. 716/1316) who argued for the priority of *maslahah* among legal indicants by listing nineteen indicants that jurists use to derive rulings. Strongest legal weight is given to textual indicants, i.e. Qur'anic verses and prophetic dicta, and pronouncements of *ijmā*^{c}. According to al-Tūfī their rulings either conform to safeguarding *maslahah* or diverge from it. In the first case, all is well since it means that three legal indicants, text, *ijmā*^{c}, and safeguarding *maslahahs*, agree on the ruling. When, however, a textual ruling runs contrary to *maslahah*, it is obligatory, according to al-Tūfī, to give priority to safeguarding *maslahahs* over the ruling indicated by either textual evidence or *ijmā*^{c} in the sense of restricting and explaining them, not overriding or canceling them, exactly as the Sunnah is sometimes given precedence

to the Qur'an in the sense that the former explains the latter.[56] This lenient approach is concerned with justifying a given reality through a deceptive method of *talfīq*[57] without attempting to find out the possible and acceptable means to change this reality. The contemporary followers of this approach maintain the permissibility of alcohol under the pretext of considering the *maslahah* of countries in attracting tourists. Some fatwas issued on the basis of this approach call for giving equal shares of inheritance to males and females.[58] Persistent tendency to issue fatwas based on concessions is undoubtedly beyond moderation, exactly like excessive strictness. The Islamic Shariᶜah commands moderateness, not absolute leniency. Otherwise, there will be no need for the religious *taklīf* (legal responsibility), which involves a sting of hardship and disobedience of personal whims. The successful mufti should use caution against this trap into which one can slip.[59]

The approach of laxity in *iftā'* is known for some specific characteristics. The first and foremost of these is going so far in considering *maslahah* to the extent of taking it as a fundamental source of legislation. Admittedly, the Islamic Shariᶜah aims at the realization of *maslahah* of people in this life and in the Hereafter. Many proofs support this fact. Ibn al-Qayyim states that:

> Islamic Law is based on wisdom and achieving people's welfare in this life and the afterlife. Islamic Law is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Islamic Law, even if it is claimed to be so according to some interpretation.[60]

However, consideration of *maslahah* is not an independent source evidence like the Qur'an or the Sunnah, to be a basis from which detailed rulings are to be derived. Rather, it is a universal concept deduced from a total range of particulars.[61] A type of *maslahah* considered by the Shariᶜah is the one which is consistent with the Shariᶜah higher objectives, genuine not fancied; not contradictory to a recognized legal source. Based on this, *maslahah* has become a basis for issuing fatwa and practicing ijtihad. Some scholars, however,

stipulated *maslahah* as a criterion for the Shariʿah texts in the name of facilitating matters for people. They excessively employed the concept of *maslahah* even if it went against the established evidence.

Similarly, excessive reliance on the Shariʿah objectives at the expense of textual evidence represents another characteristic of laxity in *iftā'*. This takes place particularly when leniency is decorated by the so-called adherence to the objectives of Shariʿah, the realization of *maslahah*, and quest for the spirit of the law. Sometimes, the mufti suspends the texts themselves for the sake of unreal *maslahah*. Objectives of the Shariʿah are impossible to suspend the texts since the former is founded on these texts.[62] Another aspect that is closely related to this point is giving fatwa on the basis of necessity in improper situations and using it broadly without taking into account its necessary regulations. Such regulations mainly include the seriousness and immediacy of necessity and the absence of any other way out.[63] So, excessive employment of *maslahah*, overriding the texts under the pretext of observing Shariʿah objectives, and unwarranted consideration of necessity are all features of leniency in issuance of fatwa and the mufti should be keen to avoid them. It is important to note that necessity suspends the application of the general legal rules in specific limited cases, but claims that all laws could be altered to serve a general public interest render the Islamic law subject to an overarching and overriding utilitarian commitment. This is exactly why some modern muftis who have relied on the concept of public interest as the save-all measure for Islamic legal reform, have tended to create an unprincipled legal system that defeats the real intents of Islamic legislation.[64]

Among the characteristic features of laxity in giving fatwa is the unjustified quest of concessions and *talfīq* between the opposing opinions. This does not include the mere issuance of fatwa based on Shariʿah-approved concessions stated in the Qur'an and Sunnah. The blameworthy approach seeks controversial concessions found in different schools of fiqh and chooses the easiest opinion in every issue by desire and whims without giving much attention to the juridical evidence. It is the deliberate shopping around for easy ways insofar as one takes from every school what is the least burdensome solution

without having any necessity or excuse to do so. Jurists have clarified that it is not permissible to pursue the concessions of the different schools of law and the lapses of the *mujtahids* and take the weakest opinion from every school. This practice turns out to be a habitual methodology for some muftis. It is well known that there is hardly any detailed issue but it has a given concession adopted by one scholar or another. So, if a mufti were to track these concessions and search for the mistakes of early scholars, such an act would eventually be a frivolous activity, rather than Shariʿah-based reasoning. It would end up as a sort of *talfīq*.[65]

Talfīq is to bring forward a fashion [of a rule of law] that no qualified legal jurist adopts. It takes place when a number of opinions of different schools are considered together and then pieces from each of these are lumped to form a new opinion not held by any of the schools individually. Such a piecing together is not only carried out with the doctrines of the four Sunni schools but also with minor or marginal doctrines within or outside the realm of these four. This behavior destroys the rules, has a negative impact on people, tears down tradition and gives way to unlawful innovations. Undoubtedly, the Shariʿah does maintain some latitude to ease matters but it can never tolerate that its laws degenerate.[66] It was reported from Ismāʿīl b. Isḥāq al-Qāḍī that he said: "Once I entered upon al-Muʿtaḍid, he handed me a book where all concessions and lapses of scholars were compiled along with their relevant proofs. I said: O Commander of the believers! The author of this book is a wicked man. He said: 'Are these hadiths not authentic?' I said: They are authentic, but the one who permitted intoxicants did not permit *mutʿah* (time-fixed) marriage, and the one who permitted *mutʿah* marriage did not permit singing and intoxicants. There is no scholar but expressed a mistaken opinion, and whoever compiles the mistakes of scholars, and applies them, he shall lose his religion. Consequently, al-Muʿtaḍid ordered the book to be burnt."[67] Muslim scholars have warned against this course of action and prohibited seeking fatwa from those known for leniency and tracking the concessions based on personal desires and whims. Al-Shāṭibī mentioned some of these evils, such as "Wearing off people's faith by neglecting the evidence and pursuing the dispute, disregarding the religion, and violating

the law of Shariʿah policy."[68] Some scholars considered stopping tracking concessions and avoiding being lenient as a requisite qualification for practitioners of ijtihad. Talking about the qualifications of the person entitled to issue fatwa, Ibn al-Samʿānī stated: "He is the one who satisfies three conditions: acquiring the rank of ijtihad, being honest, and avoiding shopping around for concessions or being lenient. There are two cases for the lenient mufti: one neglecting scrutinization of evidence and methods guiding to the rulings, and deciding the issue with superficial studies and examination – this mufti falls short of ijtihad and it is not permissible for him to issue fatwas. The second case is the one who persistently quests concessions and interprets the Sunnah indulgently – this mufti is a transgressor in his religion and more sinful than the first."[69]

Thus the field of contemporary fatwa is dominated by some muftis adopting the approach of leniency, shopping around for baseless concessions and making *talfīq* between the different opinions. This appears clearly in the field of financial transactions, where some financial institutions are keen to formulate new contracts compliant with the Shariʿah, but which are in fact a product of *talfīq*, as in some forms of the contemporary *al-ʿayyinah* sales. Circumventing Shariʿah commands to justify a given reality represents another manifestation of blameworthy leniency in *iftā'* where some muftis resort to legal stratagems (*ḥiyal*).[70] Ibn al-Qayyim states: "It is not permissible for the mufti to follow forbidden or reprehensible stratagems, or track concessions for the sake of a questioner whom he wants to benefit. A mufti who does so is wicked, and is not permissible to be consulted for fatwa."[71] Based on personal arbitrariness and self-designed liberties, this approach turns into a means to manipulate religion. Some muftis may exert their utmost efforts to find a trick or a way out for a friend or a relative, but if another questioner approaches them, they give a strict and tough fatwa. Abū al-Walīd al-Bājī once reported that one of his contemporary muftis said: "When a fatwa is required for my friend, it is my duty to give him a made-to-measure one that suits him." Al-Bājī mentioned that a trustworthy person narrated to him an incident that involved a group of *muftis*. Those muftis issued a strict fatwa that burdened this person while he was

absent. When he arrived and asked them personally, they changed the fatwa and told him that they did not know the previous one was required for him.[72] This type of mufti is called *al-Muftī al-Majin*, that is a trickster or fraudulent jurisconsult who does just that, either to please his client or follow self-seeking interests.[73] Abū Hanifah held that the legal competence of this type of mufti should be limited. This is a sort of enjoining good and forbidding evil because such a mufti spoils the religion of people.[74]

In some cases, a mufti may issue a fatwa based on tricks in order to justify a status quo or reality and confer legitimacy upon it. If it is incumbent on the mufti to be aware of the conditions and reality of people, paying attention to this reality has to be in conformity with the Shariᶜah texts and its general rules, while observing the changeability and unchangeability aspects of such rules. If the rules are unchangeable, there is no way to adapt or change them even if they conflict with reality. That is because reality in this case is corrupt and must be changed, instead of twisting the texts to justify it. Simply put, Shariᶜah texts are not to be overruled by reality or the status quo. This justificatory trend in giving fatwas is one of the deviations that contributes to chaos in contemporary *iftā'*. Such a deviation lies in coping with and accepting existing circumstances and giving fatwas in support of their legitimacy although they are violating the Shariᶜah rule.[75]

Overstrictness in Iftā'

The other extreme is found in the approach of overstrictness in giving fatwas. Restricting *iftā'* to the strictest possible rulings defeats the well-known general purpose of facilitation and goes against the nature of *taklīf* (legal responsibility), which takes into consideration the capacity of the lay persons. Islam does not charge any person beyond their capabilities. Fatwas should rather vary according to the different circumstances of the people involved and their specific cases. Taking into consideration the various conditions of people, each legally responsible Muslim has to be addressed in proportion to his ability, either in terms of facilitation, moderation or strictness, based on his strength and

weakness. The different categories of laity have to be treated differently. Each of them is given legal advice according to what befits his situation. A strong person may be counseled with the strict rulings, opting for piety and perfection. On the other hand, the people who most deserve leniency are those who are physically weak, like those afflicted by illnesses, or those who perform toilsome work including soldiers or construction workers. The reason for this special treatment of the weak is the fear they might break down because of their duties or might flee them. Otherwise, they might not be able to cope with their duties. The duties have to be modified according to their different capability and willingness.[76]

The wise mufti takes into consideration this important criterion before issuing a fatwa. Failing to observe it represents one of the deviations afflicting contemporary *iftā'*. This is spelled out by many classical and contemporary scholars. Al-Shāṭibī emphasizes this criterion, warning against going to the extremes as violating the core principle of justice. Either extreme does not help in achieving people's interests. The extreme of strictness is fatal. So is the extreme of leniency. That is because if a questioner is taken to the side of hardship and distress, he will feel averse to the religion, causing him to quit his path to the Hereafter. Similarly, if a questioner is taken to the side of liberation from rules, he will most probably be accused of following his whim and desire. However, the Shariᶜah was ordained to forbid following of whims as this is pernicious."[77]

Followers of this approach stick to stringent and cautious opinions, which they believe to be the truth confirmed by reliable proofs. This trend represents the literal school of thought known as literalism or stagnation. Literalists are usually described as considering the literal meanings of the texts and totally ignoring their underlying purposes. For this trend, "the literal meaning is not merely the fundamental starting point for all textual understanding; its ontological priority is such that, even in the face of indisputable evidence of the literal meanings' incoherence or irrationality, these literalists refuse to abandon the "literal meaning"."[78] The early literalists employed advocacy of the literal meaning, holding to the Book and the Sunnah and nullifying all else by way of *raᶜy* (opinion) and *qiyās*.[79] Similarly, the new literalists hardly

care about objectives of the Shariᶜah and the effective causes of the rulings. Declaring things as forbidden is easy for the followers of this approach, even without providing conclusive evidence from texts or rules of the Shariᶜah. They sometimes do so in good faith in order to block the means leading to any purposeful negligence of legal duties; however, they burden people with irksome hardship, which may eventually make them staunchly averse to the legal rulings.[80] When the mufti implements this approach all the time, forcing the most burdensome solutions and refusing to adopt acceptable legal concessions, he definitely contradicts the well-established principles of the Shariᶜah, namely, the principles of tolerance, moderation and facilitation.

The approach of over-strictness in *iftā'* is characterized by several things, including exaggeration in blocking the means and adopting the most burdensome opinion in any disagreement, in addition to blind and strict conformity to certain juridical opinions.[81] Actually, blocking the means is the most telling sign of overstrictness and ultraconservatism. This approach finds its origin in the stance of those scholars who prohibited the cultivation of grapes for fear of turning them into wine, or banned the building of houses next to each other for fear of committing adultery.[82] In the name of blocking the means, women have been prohibited from 'driving cars,' 'traveling alone,' 'working in radio or television stations,' 'serving as representatives,' and even 'walking in the middle of the road.'[83] To illustrate one such mis-application of 'blocking the means,' the following was a fatwa issued by the Saudi High Council of Fatwa regarding women driving cars.[84]

> **Question:** Under circumstances of necessity is it permissible for a woman to drive an automobile by herself, without the presence of a legal guardian, instead of riding in a car with a non-*maḥram* man [stranger]?
>
> ***Fatwa*:** It is impermissible for a woman to drive an automobile, for that will entail unveiling her face or part of it. Additionally, if her automobile were to break down on the road, if she were in an accident, or if she were issued a traffic violation, she would be forced to co-mingle with men. Furthermore, driving would enable a woman to travel far from her home and away from the supervision of her legal guardian. Women

> are weak and prone to succumb to their emotions and to immoral inclinations. If they are allowed to drive, then they will be freed from appropriate oversight, supervision, and from the authority of the men of their households. Also, to receive driving privileges they would have to apply for a license and get their picture taken. Photographing women, even in this situation, is prohibited because it entails *fitnah* [mischief] and great perils.

This approach in *iftā'* has resulted in many bizarre legal verdicts on the basis of the principle of blocking the means to evil. A telling example is the fatwa preventing women from working even if they abide by the Shariᶜah rules and urgently need to work due to the lack of breadwinners. There is no doubt that the texts of Shariᶜah necessitate blocking the means leading to unfavorable results. But the problem lies in the excessive application of this principle in a way that cancels substantial *maslahah* on the account of less unsubstantial evils. This imbalance is contrary to the Islamic approach in giving juridical rulings on issues where *maslahah* and evils are intermixed. Therefore, the mufti adopting the most burdensome rulings should be alert to this principle.[85]

Rigidity and blind *taqlīd* represent another manifestation of this approach. Technically, the meaning of *taqlīd*[86] is acting upon the word of another without proof. This is interpreted to mean the following of the opinion of another without knowledge of the authority for such opinion.[87] Al-Ghazālī asserts that the very definition of *taqlīd* is to adopt another's view without assessing his evidence. This chimes with what Joseph Schacht had proposed later when he equated *taqlīd* with the complete absence of independent reasoning, describing it as the unquestioning acceptance of the doctrines of the established schools and authorities.[88] Such a type of imitation is reprehensible because an individual remains responsible for his own decisions. While the layperson cannot dedicate himself to the evaluation and weighing of the legal evidence of juridical matters, the laity must diligently select a knowledgeable jurist to follow. This is not considered a form of reprehensible imitation because legal opinions must be based on the evidence, otherwise they should not be followed.[89] The blind imitation could be one of the characteristics of overstrictness in *iftā'*. It is in this sense a type of

strict and blind conformity on the part of the mufti and sticking to certain old juridical opinions, without taking into consideration their proof or the perceived changes of time, place and different conditions. Decontextualization of fatwas and blindly applying them to our present-day era without paying due attention to its circumstances may lead to erroneous legal verdicts or at least burdensome ones. In such cases, the mufti holds fast to a particular opinion neglecting other points of view in sheer exclusivity, rigidity and intolerance. Such intolerance triggers the mufti not only to smear his opponents but also to impose a certain perspective on others. It is known that truth is not always on one side, and it is not suitable for the mufti to compel people to accept his chosen opinion blindly and unthinkingly. Intolerance results in a sort of intellectual inertia where old fatwas are reiterated even though they are no longer appropriate today. Some of these fatwas might have been formulated on the basis of a given custom that no longer exists or on a *maslahah* that became outdated. This eventually leads to an intellectual catalepsy extinguishing any dynamism in the field of juridical reasoning. Some followers of this approach call in good faith to apply the ijtihad of the righteous predecessors to our present state of affairs.[90] They want to lead life in the same fashion adopted by the earlier predecessors, both in appearance and content, claiming it to be the only actual measure of commitment to Islam. As a result, many permissible transactions have been declared forbidden because they did not exist in the era of the early Muslims. This obviously involves hardship and complicates daily life.[91] In fact, this call defeats the idea of Shariʿah flexibility and applicability to all generations and times. Being suitable for all times and places, the Shariʿah is characterized by broadness and flexibility, and contains both changeable and unchangeable rules – a unique feature that ensures its viability. It is improper to restrict or reduce it to the views of the early Muslims without distinction between the fixed and the variable, and what works for our time and what does not. It is well known that "blindly restricting oneself to the transmitted traditions and precedents of jurists forever is tantamount to misguidance in Islam and ignorance of the objectives of Muslim scholars and the righteous predecessors."[92] Moreover, the fatwa that was built on custom or *maslahah* can change according to the subsequent change in

circumstances, conditions, places, and times.[93] This approach may amount to a certain intellectual timidity, rigidity or depletion of creative and interpretive energies.

Evidently, interpreting the textual evidence is part and parcel of the process of *itjihād*. Adherence to the Shariᶜah texts is indisputably appreciated and praiseworthy. However, a problematic issue surfaces when the mufti holds fast to the apparent literalist meaning of the texts without understanding the intent of the Shariᶜah in these texts or while ignoring the wisdom and causes behind them. This phenomenon is known as literalism or stagnation, usually described as considering the literal meanings of the texts and ignoring their purposes.[94] Followers of the overstrictness approach understand and interpret the texts literally and give fatwa according to this literalist understanding and interpretation without pondering the causes and objectives behind legal texts. By turning a blind eye to the rationale and effective cause of the text and its underlying intention, this approach is inclined toward literalism.[95] The followers of this approach are sometimes dubbed as the new Zahirites. Neo-literalism is a literalist school that generally pursues a puritanical approach in issuing the rulings. If there are two legally equivalent views, with one burdensome and the other moderate, this school always chooses the burdensome.[96]

Another feature of this approach lies in ignoring the necessities and considerable needs the Shariᶜah came to observe and for which legal concessions and exceptions were ordained. There are circumstances and situations, which if not taken into account when issuing fatwas, will lead to a more harmful outcome occuring. Indeed, giving fatwa is meant in general to facilitate people's affairs.[97] Accordingly, non-observance of the serious necessities and considerable needs of people while insisting on the apparent literalist meaning of the text and neglecting the conditions of application of rulings with their resulting consequences – all this is a type of strictness and puritanism that the Shariᶜah principles and rules do not endorse. One of the forms of non-observance of people's considerable needs in our contemporary era is to forbid the down payment sale (ᶜ*urbūn*). While the majority of scholars declared it impermissible, the Ḥanbalī jurists maintained its permissibility. In contrast to the majority of jurists of his time, Aḥmed b. Ḥanbal

deemed the practice of down-payment sales permissible.[98] Given the rampant manipulation in our present time, the view of permissibility may be given priority. It is a recurrent complaint that a trader may agree with the seller to buy an item, thereupon the seller keeps this item for him. Sometimes the buyer changes his mind and refuses to buy the item; as a result, the seller incurs loss. Taking this into consideration, the International Islamic Fiqh Academy (IIFA) voiced the legality of down payment sale to block the means leading to manipulation and to protect people's rights.[99]

As a religion of moderation, Islam takes the middle course between extreme puritanism and extreme laxity. As Islam is committed to establishing a system of truth and justice that shuns laxity on one side and extremism on the other,[100] the institution of *iftā'* and ijtihad has to reflect this middle course. The persistent application of either one of the two extremes contributes to chaos in the field of *iftā'* and exacerbation of the phenomenon of competing individual fatwas. Given the problematic issues of this individual *iftā'*, many voices have been calling for regulating the production of fatwas. The optimal way to do so is to practice juridical reasoning collectively and no longer on an individual basis especially in intricate issues which necessitate the input of technical experts and a multidisciplinary approach. It is to that subject that we now turn.

[3.2]
THE ROLE OF COLLECTIVE IJTIHAD IN REGULATING FATWA

The field of contemporary fatwa is afflicted by a chaotic situation where practically any person can declare himself a mufti and proceed to spew out abnormal legal verdicts that perplex the laity and contribute to the phenomenon of competing fatwas especially in the open space era of today's media-saturated world. Rather than being a tool of religious guidance, fatwa has become a source of perplexity among believers and has constituted one of the major quandaries facing the Muslim community. Bearing this in mind, many scholars have voiced

their concern and expressed a critical need for regulating the process of producing fatwas especially when they touch very technical issues that require specific qualifications. In line with these calls, this study suggests employing the mechanism of collective ijtihad in regulating fatwa issuance.

Collective ijtihad is generally characterized by having the potential to address intricate technicalities of complex novel issues which are characteristic of our age. Being a mechanism of collective reasoning, this mode of ijtihad is less prone to error in comparison with the individual endeavor. The collaborative nature and involvement of many jurists and technical experts, rather than one single jurist, enables conducting a rigorous and multi-layered examination before construing a legal ruling so that the possibility of reaching erroneous decisions can be kept to the minimum. The need for such a mode of juridical reasoning is further accentuated when a fatwa is required in a novel issue of a medical or financial nature. A group of scholars can collaboratively investigate a given issue to exchange ideas and expertise and manage the whole process of formulating a legal ruling. This collaboration can take the form of consulting non-fiqh specialists, like physicians, economists, sociologists, or any other scientists specialists. Together, in this manner religious scholars and professional scientists/specialists can reach a proper thorough perception of the issue under discussion so that Shariʿah scholars can construe the required legal ruling. By adopting this collaborative mode of legal reasoning, the problem of legal verdicts being issued by unqualified persons can be efficiently handled. The same holds true for when fatwas are politicized or given adopting an extremely lax or over-strict approach.

This section discusses the potential of collective ijtihad to address the aforementioned problematic issues of individual *iftā'*, with special reference to bioethics and financial issues. Before delving into detailed analysis, it is worth noting that the call to adopt the mechanism of collective ijtihad is in no way an invitation to close the gate of individual reasoning. Surely, the individual mode of reasoning will continue to assume its role in addressing legal issues. Still, individual ijtihad represents the foundation for the collective one. Papers and studies prepared for fiqh academies and councils are the basis on which the collective

decision is taken. Accordingly, the individual mode of reasoning cannot be terminated by the collective form because the two modes are not necessarily mutually exclusive to each other; rather, they are complementary and both are desperately needed. The scope of each form could be somewhat different; that is to say the collective mode is more suitable for issues of a public nature that concern the whole community. It is not practical that whenever a questioner needs a fatwa in a given private affair, he is told to wait until one of the fiqh academies convokes and discusses the issue.

Bioethics between Individual *Iftā'* and Collective Ijtihad

The interplay between medicine and juridical reasoning is not a modern phenomenon. The classical jurists premised a lot of legal rulings on the opinion of Muslim physicians. Some jurists were themselves well versed in medicine such as Averroes (Ibn Rushd, d. 595/1198), who wrote the medical encyclopedia "*al-Kulliyyāt*," Ibn al-Kutubī (d. 754/1353) who wrote a comprehensive pharmacology titled "*Ma lā Yasaʿu al-Tabība Jahluhu*" (What a Physician Cannot Afford to Ignore), and ʿAbd al-Wahhāb b. Aḥmed b. Sahnūn (d. 694/1295). The classical jurists were encyclopedic and erudite who mastered various disciplines.

In pre-modern times, the consultation of such experts was usually occasional in nature. However, the spectacular increase in scientific knowledge and technological advances from the twentieth century onwards caused a significant shift in this regard. Contemporary scientific discoveries became so innovative and groundbreaking and also so full of ramifications that it became almost impossible for Shariʿah scholars to individually handle them. The great number of questions raised by these advancements and their intricate character demanded a well-orchestrated collaboration between scientists and Muslim religious scholars. This collaboration was systematized and realized by a number of Islamic transnational institutions which adopted the mechanism of collective ijtihad. Such institutions acknowledge the potential of collective ijtihad as a recognized and credible mechanism for tackling modern scientific questions, especially in the financial and medical fields. This mechanism is indispensable to properly address the complex

issues brought about by astounding advances, which have transformed the nature of many aspects of people's lives.[101]

As far as biomedical ethics are concerned, the overwhelming majority of contemporary Muslim religious scholars are trained neither in biomedical sciences nor in the Western languages in which the latest scientific studies are available. Bearing this in mind, these scholars admitted the necessity of collaborating with biomedical scientists. Consequently, collective ijtihad in the field of biomedical ethics assumed a clear institutionalized form through a number of collective ijtihad institutions.[102] Two of the most influential bodies of Islamic bioethical-legal deliberation are the OIC-affiliated International Islamic Fiqh Academy and the Islamic Organization for Medical Sciences (IOMS). Both organizations bring together scholars of Shari'ah and those specialized in medicine for Islamic ethico-legal deliberation concerning bioethical challenges in the Muslim and non-Muslim world. The verdicts issued by these organizations carry significant weight in medical and legal circles, as these organizations are recognized as being at the forefront of collective Muslim efforts to address ethico-legal challenges brought forth by modern technological advances.[103] Established in 1984, the Kuwait-based Islamic Organization for Medical Sciences has been the most active in this field. It organized many symposia which were exclusively occupied with investigating bioethical issues. In some occasions, a number of symposia were organized in cooperation with OIC-IIFA. The early symposia held by the IOMS focused on the series of Islam and Contemporary Medical issues which incorporated a long list of publications on various topics including the beginning and end of human life, abortion, definition of death, organ transplantation, AIDS, cloning, genetic engineering and Genome, assisted reproductive technologies, Islamic ethical code for medical and health ethics, ethical implications of modern research in Genetics, biobanks, In Vitro Fertilization and frozen embryos, etc.

The publications of the IOMS and the IIFA contain, among other things, the expert studies presented at the respective sessions as well as the transcripts of the public discussions surrounding these studies.[104] The proceedings of the IOMS symposium held in 1985 represent one of the early chapters in the book of contemporary Islamic bioethics where

both jurists and scientists started to collectively deliberate over bioethical issues. The proceedings and final recommendations of this symposium proved to be seminal on two levels: shaping the Islamic perspective on different bioethical issues and delineating the main characteristics of contemporary independent ijtihad on a collective basis. Both Shariʿah scholars and scientists agreed on the necessity of practicing ijtihad collectively rather than individually in order to be able to tackle such complicated issues. Additionally, the proceedings of this symposium revealed that the conclusions reached at the end of the ijtihad process are not solely based on how to approach the scriptural texts or the opinions of classical jurists. In fact, modern scientific knowledge proved to be one of the quintessential tools in this process and some classical interpretations and contentions were crossed out because of their incompatibility with modern science.[105] In addition to the published papers, the proceedings of the collective meetings and deliberations include a script of the oral discussions among the participants. These sources offer an opportunity to analyze the role of collective ijtihad in rationalizing and correcting individual fatwas as explained in the following example.

Transplantation of Genital Organs between Individual and Collective Ijtihad

The Islamic Shariʿah seeks to fulfill some sublime objectives, namely, preservation of one's faith, soul, wealth, mind, and progeny. These five objectives represent the category of necessities in the traditional classifications of *maqāṣid*. The sanctity of human life and protecting it from all kinds of detriment are categorically required by the Shariʿah. Integral to the preservation of one's life is the emphasis on human body sanctity. The human body, living or dead, should be venerated. This philosophy is the underlying rationale behind many legal rulings in the field of biomedical ethics.

In this vein, the issue of organ transplantation and donation has been investigated in the juristic tradition. Organ donation is the donation of biological tissue or an organ of the human body, from a living or dead person to a living recipient in need of a transplantation.

It encompasses the donation and transplantation of the heart, intestines, kidneys, liver, lungs, and pancreas. It also involves corneas, bones, skin, joints, blood, etc. There are two types of transplanting; autograft which represents the transplantation of organs or tissues from one part of the body to another in the same individual; and allograft which refers to a transplant of an organ or tissue between two genetically non-identical members of the same species. Most human tissue and organ transplants are allografts.[106]

Muslim scholars have held different views on organ transplantation. The classical jurists tackled the issue of taking an organ from animals to be transplanted in a human being. They allowed this provided that the animal was pure; in case of impurity, it is exceptionally allowed when a dire need arises.[107] Similarly, contemporary jurists permitted autograft. As for the allograft where an organ is taken from another person; different views are held. Some scholars totally forbade it, while others differentiated between taking it from a dead or alive person; still, a third group permitted both cases. Generally speaking, the opponents of transplants mainly base their arguments on the following reasons: the sanctity of the body and human life; our bodies are given to us in trusteeship; the body is reduced to an object-material end; explantation from a living individual still harms the donor; explantation from a corpse is the equivalent of mutilation therefore it is prohibited by the Shari^{c}ah.[108] On the other hand, those who have permitted transplantation base their ruling on the principle of necessity, the obligation to preserve human life and seek medication, and the principle of warding off greater harm by tolerating a lesser one.

The issue of transplanting testicles and reproductive glands is also a point of contention among those permitting organ transplantation. This specific issue has sparked heated debate given that it relates to the necessity of preservation of progeny. Many pro-transplantation fatwas have emphasized the potential effect of transplanting reproductive parts on preserving progeny. As earlier mentioned, the Islamic Research Academy of Egypt examined the issue of organ transplantation in its eighth meeting of the thirty third session in April 1997 where it went for permissibility on the basis of necessity and warding off greater harm. The council decided that it is also forbidden to retrieve organs or parts

thereof that are associated with reproduction lest the genetic materials be mixed and the purity of the lineage of a person be potentially compromised. In support of its stance, the council cited many previous fatwas issued by renowned scholars including Shaykh Hassan Ma'moun in 1959, Ahmed Haridi in 1966, Jad al-Haqq ʿAli Jad al-Haqq in 1979, in addition to a fatwa issued by Al-Azhar Fatwa Committee in 1981.[109]

Among the earliest collective fatwas on organ transplantation are those issued by the International Islamic Conference held in Malaysia in 1969, the Algiers Supreme Islamic Council in 1972, the Jordanian Fatwa Council in 1977, the Kuwaiti Ministry of Endowment in 1979, the Saudi Grand Ulemā' in 1982, the MWL Fiqh Council in 1985, the OIC International Islamic Fiqh Academy in 1988, the Indian Fiqh Academy in 1989, the Egyptian Dār al-Iftā' and the Islamic Research Academy in 1997.[110]

As an illustrative example of these fatwas, the one issued by the IIFA is quoted verbatim here. This fatwa was adopted as a point of departure and basis for later fatwas dealing with specific kinds of transplants including transplantation of the nerve tissue as a method for treating Parkinsonism or other ailments, transplantation from anencephalic newborns; transplantation of tissues from embryos aborted spontaneously, medically or electively; leftover pre-embryos in in vitro fertilization projects; and transplantation of genital organs. This fatwa is presented in Resolution no. 26 (1/4) which reads as follows:[111]

> The Council of the Islamic Fiqh Academy, holding its fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumāda al-Thānī 1408 AH (February, 6 to 11, 1988),
>
> ***Having considered*** the Fiqh and medical research papers forwarded to the Academy on "Organ transplant from the body (dead or alive) of a human being onto the body of another human being";
>
> ***In the light*** of the deliberations, the timeliness of this issue became evident, due to scientific and technological progress. Despite its proven effectiveness and positive results, some harmful psychological and social effects have also come to light in some cases, because neither the guidelines prescribed by Shariʿah, nor its objectives, which aim at ensuring

the well-being and dignity of individuals and groups, and calls for compassion and altruism, have been adhered to;

Having summed up the points relating to this topic in its various aspects, forms and cases, each of which calls for a specific ruling;

RESOLVES

Definition and classification:

First: The organ shall mean any part of the human body: tissue, cells, blood, etc. such as the cornea, whether still part of the body or removed from it.

Second: Usefulness, which is the core of the matter, is the benefit accruing to the beneficiary, which enables him to remain alive, or to have a basic function of his body restored, whether it is eyesight or otherwise, provided the beneficiary enjoys a respected life by the Shariᶜah point of view.

Third: The form of transplanting may be divided as follows:

- Transplanting an organ from the body of a living person;
- Transplanting an organ from the body of a dead person;
- Transplanting an organ from a fetus.

First Form: Transplanting an organ from the body of a living person, under following conditions:

a) Transplanting the organ from one part of the body to another part of the same body, such as grafting skin, cartilage, bones, veins or blood vessels, etc.

b) Transplanting the organ from the body of a living person to another. In this case, the organ may be classified as essential for life or otherwise. If it is, it could be a single organ, e.g. the heart or liver, or pair of organs, e.g.; kidneys or lungs. As for those organs upon which life does not depend, they could be organs performing a basic function in the body or otherwise, or an organ which is automatically renewed, such as blood, or is not renewed, and some have effect on the lineage, inheritance and general personality, such as testicles, ovary, or cells of the nervous system, or have no bearing whatsoever.

Second Form: Transplanting the organ from the body of a dead person:

It is to be noted that death may take two forms:

1. When all functions of the brain come to a complete stop and no medical cure can reverse the situation.

2. When the heart and respiratory system come to a complete stop and no medical cure can reverse the situation.

In both cases, due consideration has been given to the ruling of the Council of the Academy at its 3rd session.

Third Form: Transplanting from a fetus:

Transplanting from a fetus may be performed in three cases:

- Spontaneous abortion
- Medically induced or criminal abortion
- In vitro fertilization

THE COUNCIL RESOLVES

First: An organ may be transplanted from one part of the body to another part of the same body, provided it is ascertained that the benefits accruing from this operation outweigh the harmful effects caused thereby; provided also that its purpose is to replace a lost organ, reshape it, restore its function, correct a defect or remove a malformation which is a source of mental anguish or physical pain.

Second: An organ may be transplanted from the body of one person to the body of another person, if such organ is automatically regenerated, such as blood and skin. It is stipulated in this case that the donor must be legally competent, and that due account must be taken of the conditions set by Shari'ah in this matter.

Third: It is allowed to transplant from a body part of an organ which has been removed because of a medical deficiency, such as the cornea, if, due to a disease, the eye had to be removed.

Fourth: It is forbidden to transplant from a living person to another, a vital organ, such as the heart, without which the donor cannot remain alive.

Fifth: It is forbidden to transplant from a living person to another an organ such as the cornea of the two eyes, whose absence deprives the donor of a basic function of his body. However, if it effects only part of the basic function, then it is a matter still under consideration, as explained in Paragraph 8 below.

Sixth: It is allowed to transplant an organ from the body of a dead person, if it is essential to keep the beneficiary alive, or if it restores a basic function of his body, provided it has been authorized by the deceased before his death or by his heirs after his death or with the permission of concerned authorities if the deceased has not been identified or has no heirs.

> **Seventh:** It must be noted that the permission, in the preceding cases, for performing organ transplant, is conditional that it is not done on commercial grounds (selling of an organ), because under no circumstances, should the organ of a person be sold. However, incurring expenses by a person in search for an organ or voluntary compensation as a token of appreciation, is a matter still under consideration and ijtihad.
>
> **Eighth:** All cases and forms other than those referred to above, which are relevant to the issue, are still under consideration and research. They must be submitted and considered at a following session, in the light of medical data and Shariᶜah rules. Verily Allah is All-Knowing!

Like the pro-transplantation fatwas, the above-mentioned resolution by the IIFA permitted organ transplants in case of necessity for non-commercial purposes. A key conclusion is the acceptance of brain death as legal death in the Islamic tradition. The issue of brain death has been and continues to be very controversial especially in the course of determining the beginning and the end of human life and the consequent legal rulings based on such determination. Additionally, the resolution kept silent concerning various kinds of organ transplants pending further discussions and investigations. In later sessions, the same Academy discussed different forms of organ transplantations including that of genital organs.

The specific issue of transplantation of reproductive glands was considered in two special events. The first event was organized by the Islamic Organization for Medical Sciences (IOMS) in its sixth Juristic-medical seminar in Kuwait during October 1989. The IOMS seminars are attended by distinguished jurists, Shariᶜah experts, medical practitioners, scientists, and specialists in other human sciences. The second event was held by the sixth session of the OIC International Islamic Fiqh Academy (IIFA) held in Saudi Arabia in March 1990. In its resolution (no. 6/8/57) on transplant of genital organs the IIFA decided that the transplant of genital glands (ovaries and testicles) is prohibited as the glands continue to produce gametes which then transmit the genetic heritage of the donor, even after their transfer to another person. Moreover, the transplant of the external genital parts, except the male

and female sexual organs, is permissible in the case of a legitimate necessity and in accordance with the Shariʿah norms and criteria outlined in the IIFA resolution no. 1 of the fourth session quoted above.[112]

The aforementioned collective fatwas were reached after lengthy discussions and deliberations between Shariʿah scholars, physicians and biomedical scientists. The script of some of these discussions reveals the important role of the mechanism of collective ijtihad in correcting misperceptions and individual fatwas. The discussions show that formulating a proper perception of the biomedical issues and the resulting legal rulings would not have been possible without resorting to physicians whose expertise falls outside the scope of Shariʿah specialists.

Collective Ijtihad and Correcting Misperception

The role of collective ijtihad is crystal clear when it comes to the Islamic ethico-legal deliberations which have taken place concerning bioethical challenges and novel issues. Such deliberations brought together Shariʿah scholars and scientists to collaboratively discuss given questions, and what became clear during these consultations, was that those issues were too complex to be addressed by those specialized in either religious sciences or biomedical sciences alone. Moreover, scientists played a very important role in providing scientific information needed for the development of a sound understanding and perception of the issues at hand. In some occasions, the scientific information led certain scholars of Shariʿah to change their previously chosen opinion and change their ijtihad. Sometimes, the scientists helped correct wrong perceptions upon which the individual legal ruling was based. This was remarkably evident during some IOMS seminars.

In another seminar jointly organized by IIFA and IOMS to discuss the transplantation of genital organs, among other biomedical issues, Muhammed al-Ashqar presented a paper in which he permitted transplanting testicles.[113] The opponents of this form of transplantation based their refusal on the principle of preserving progeny. According to them, transplanting genital organs will lead to the mixing of lineage which is categorically forbidden. Based on this argument, they did not allow the transplantation of gonads, as the sperm resulting from the

transplanted testicles carries the genetic traits of the donor and not the recipient. The wife of the recipient will actually be impregnated by the sperm of the donor's testicle which will eventually lead to the confusion of lineage.

In his counter-argument al-Ashqar highlighted that the decisive question in this regard was the source of the spermatozoa, whether they come from the donor or the recipient. In other words, does the transplanted testicle belong to the donor or the recipient? In answering this question, he claimed it to exclusively belong to the recipient as it is physically attached to his body and follows the orders issued by the recipient's mind. Sometimes, the testicle, he argued, is taken from a dead person. Consequently, it cannot be claimed that a woman is impregnated by a dead donor. Moreover, the spermatozoa produced by the transplanted testicles originate in the recipient's body and not anywhere else.[114]

During the discussions, a group of biomedical scientists proved this argument wrong from a scientific perspective. In order to correct this faulty perception, which led to an erroneous conclusion and a flawed legal ruling, they engaged in a lengthy discussion with al-Ashqar. The scientists and physicians explained that the sperm producing organ and spermatogenic cells are formed early in the fourth or sixth week of the gestational development of the fetus. By this early time, the formation of such cells will have been completed and what happens subsequently is only a process of maturation and development. Given this fact, the transplanted testicles will continue producing the donor's sperm. Al-Ashqar asked about the possibility of emptying the testicles of any sperm before the process of transplantation. The biomedical scientists answered that, even if this was possible, nothing would in fact change, because any resulting sperm after transplantation would be produced by the donor's spermatogenic cells, which had been formed in the testicles since the fourth or sixth week of gestation. Based on the scientific knowledge, the biomedical scientists stressed that the sperm produced by the transplanted testicles cannot be that of the recipient and would always remain the donor's.[115]

In this specific case, the biomedical scientists assumed a crucial role in formulating the correct perception. They managed to convince all

the participating religious scholars, that what they presented was the correct perception and accurate understanding of testicle transplantation. Due to the updated scientific information provided by the scientists, al-Ashqar appended a postscript to his original paper in which he retracted and revoked his previous opinion permitting the transplantation of testicles on the basis that the resulting child will not be produced by the recipient's sperm.[116] Dr. Ahmed al-Jundi, one of the participating biomedical scientists, in his final briefing of the papers and discussions on the transplantation of testicles clarified that al-Ashqar had based his initial decision of permissibility on an erroneous perception but during the deliberations this perception was scientifically corrected and he became convinced of impermissibility.[117]

In the same seminar jointly held by IIFA and IOMS the issue of transplantation from anencephalic newborns was discussed. Among the papers presented was one written by Shaykh Bakr Abu Zayd, the then head of IIFA. In this paper he concluded that the anencephalic newborn is a living being even if his life will soon come to an end. Consequently, it is not permissible to procure organs from him. Moreover, he used this issue as an indicator that brain death is not a real death. The physicians stress, Abu Zayd argued, that such a newborn can live for hours, days, or even weeks after birth; so technically such a person is still alive. If this is the case for a baby without the major portion of the brain, what about the one whose brain stem only died while the remaining parts of the head and all other organs still function. This anencephalic newborn is surely alive.[118] Based on this analogy Abu Zayd called for reconsideration of the reliance on brainstem death as a sign of definitive death.

Many scientists found Abu Zayd's paper confusing in terms of brain death. They emphasized the important need for a clear distinction between three possible types of death; namely, brain death, brain stem death and the case of the anencephalic fetus. Dr Muhammad Ali al-Bar, an internist with a solid background in Shari^{c}ah known for his regular participation and influential contribution to the collective ijtihad discussions on biomedical ethics, highlighted the misconception on the part of contemporary jurists. Al-Bar explained that many jurists confuse the two Arabic words, namely, *dimāgh* and *mukhkh*. The

English equivalent for *dimāgh* is brain, also sometimes called encephalon, while the equivalent of *mukhkh* is cerebrum which consists of two lobes, the two cerebral hemispheres. Another physician pointed out that it is possible to have a situation where the two cerebral hemispheres are damaged but the brainstem remains functioning. In this case, the person is not dead due to the fact that the still functioning brainstem will facilitate breathing. In the case of anencephalic newborns, what are missing are the two cerebral hemispheres but not the brainstem and that is why they are considered living newborns.[119]

The scientific clarification provided by these physicians proved the analogy employed by Abu Zayd flawed. This highlights the inability of many contemporary Muslim jurists to exercise ijtihad in these novel and intricate issues by themselves due to the difficulty of grasping the technicalities of scientific information, the nature of educational background of these jurists, the inaccessibility to primary sources on such issues because of language barriers. For all these reasons, the need to rely on physicians becomes more demanding. This need for a systematic integration of the contributions made by the physicians in the process of formulating legal rulings is even accentuated in the more complex issues of human genome, genetic engineering, cloning, stem cell, gene therapy, resuscitation, etc.

By the same token, the collective mode of reasoning is urgently required in other fields which necessitate the input of technical experts for the purpose of formulating a proper perception in order to rationalize fatwa and minimize erroneous legal verdicts. The financial field represents one of these domains where the mechanism of collective ijtihad has special significance and a crucial role. This role can be fulfilled by the different councils of fiqh and, most importantly, by the specialized Shariᶜah boards in the Islamic financial institutions.

Shariᶜah Boards as Means of Regulating Financial Fatwa

Islamic finance gains traction globally as an alternative to interest-bearing conventional models. Taking the Shariᶜah as its basis, Islamic finance revolves around the mechanism of producing, consuming, distributing and circulating wealth in a way that conforms to the principles

and objectives of the Shariᶜah. The preservation of wealth is one of the higher objectives and basic necessities of this Shariᶜah. To protect wealth, Islam legislated a number of rulings such as the prohibition of theft, monopoly, squandering, contractual uncertainty and taking peoples' wealth unjustly. In line with this philosophy, Islam stood and has remained firm against all kinds of transactions that involve *ribā*. In addition to imposing restrictions on interest-bearing transactions, Islamic finance considers the ethical aspects of trading and invests in projects and products that contribute to the welfare of the public. The business of the Islamic model of finance is expected to be completely compliant with the Shariᶜah. This could not be possible without a Shariᶜah framework that offers universal guidance and supervision to ensure this compliance. Such a framework is represented by the services of Shariᶜah boards.

With the emergence of Islamic finance, the financial institutions had to rely heavily on the ijtihad of Shariᶜah scholars, particularly in terms of their new products of conventional origins and structures according to the Islamic model of business. In an attempt to collectively handle the emerging issues pertaining to Islamic finance, fiqh academies and councils assumed a crucial role in providing legal guidance for the Islamic financial institutions. Other attempts to set criteria and standards in Islamic banking and finance were first introduced by the Auditing and Accounting Organization for Islamic Financial Institutions (AAOIFI). Given the nature of new transactions and financial products, the resolutions of these academies sometimes considerably diverge in a way irksome to Islamic institutions and lay persons. Although the resolutions have attempted to take into consideration certain constraints and challenges facing implementation of such resolutions in many jurisdictions that have yet to pave the way for Islamic finance to be the mainstream choice of the Muslim laity, however, some of the resolutions issued by fiqh academies have overlooked the specificities and the regulatory framework of certain countries.[120] This state of affairs has revealed that the world fiqh academies may not be enough and there is a dire need for a Shariᶜah framework at the national level. Here comes the role of Shariᶜah supervisory boards as institutions of collective ijtihad specifically dedicated to Islamic financial organizations.

The institution of Shariᶜah Supervisory Board is one of the most important components of Shariᶜah governance of Islamic financial institutions. It is sometimes called the Sharīᶜ Board, Shariᶜah Committee, Shariᶜah Advisory Committee, Shariᶜah Council, Shariᶜah Control Committee or simply the Religious Board. This board is entrusted with the task of supervising the business of a given Islamic financial institution to ensure its compliance with the decisions and fatwas issued regarding all its activities. Supervision in this sense includes following up on the institution's activities, explaining the legal rulings on its transactions and contracts, highlighting violations if found, and introducing appropriate suggestions and solutions in the light of the rulings of Islamic Shariᶜah. According to the AAOIFI the Shariᶜah Supervisory Board (SSB) is an independent body of specialized jurists in *fiqh al-muᶜāmalā* (Islamic law of transactions). However, the SSB may include a member(s) other than those specialized in *fiqh al-muᶜāmalā*, called an expert member(s) who is (are) expert in areas such as banking, finance, economics, accounting, law, etc. and has knowledge of *fiqh al-muᶜāmalā*. The SSB is entrusted with the duty of directing, reviewing and supervising the activities of the Islamic financial institution to ensure that it is in compliance with Shariᶜah rules and principles. The fatwas and rulings of the board shall be binding on the Islamic financial institution.[121]

Two key reservations are expressed by some researchers regarding this definition. First, it assigns the SSB responsibility for "directing" activities of the Islamic financial institution, which is an executive, rather than advisory, function. The second reservation is that it opens the door for a non-fiqh expert to assist in the formulation of an Islamic legal ruling, despite lack of sufficient juristic capabilities. While the individual's expertise in accounting, economics, etc. is definitely welcomed, and their detailed analysis is worthy of study and consideration by other SSB members, the expert should not be asked to participate in issuing or certifying Islamic legal rulings without possessing the requisite qualifications.[122] However, the second reservation leaves this line of argument assailable on the basis that the participation of those experts does not necessarily mean issuance of legal rulings by unqualified persons. The scope of participation could

be limited to an informative role to provide the necessary technical and economic information to the jurist in order to ensure proper perception of the issue under discussion. When it comes to business and legal issues, Shariʿah scholars tend to have a lesser understanding. They lack the understanding of financial technicalities, time-value, risk management, the urgency of how the business world works and so forth. Because of having juristic rather than accountancy qualifications, they may not be able to fully understand the accounting procedures. Thus, a kind of complementarity of Shariʿah and financial experts is necessary for these supervisory boards to fulfil their mission in ensuring compliance with Shariʿah rulings in all the transactions and products of Islamic financial institutions.

SSB: Historical Background

When Islamic finance took its early steps into the financial market, there existed no special body responsible to advise, supervise or guide the Islamic financial institutions on issues relating to Shariʿah. The establishment of the first modern Islamic banks (Mit Ghamr in 1963, the Nasser Social Bank in Egypt in 1972) was done without the setting up of any Shariʿah body as part of the internal corporate governance structure. Similarly, the inauguration of the Dubai Islamic Bank and the Islamic Development Bank in 1975, was done so without either having any permanent Shariʿah department.[123] Rather these institutions would consult many contemporary scholars, seeking their fatwas for specific transactions, services, or products.

The first Shariʿah committee emerged after the establishment of the Faisal Islamic Bank of Egypt in 1976. This bank was the first Islamic financial institution to create an internal Shariʿah board comprising scholars specialized in *fiqh al-muʿāmalā*. It charted the course for other institutions to follow; consequently, internal Shariʿah boards were established by the Jordan Islamic Bank and the Faisal Islamic Bank of Sudan in 1978, the Kuwait Finance House in 1979, and the Bank Islam Malaysia Berhad in 1983. Likewise, the International Association of Islamic banks (IAIB) also set up its own Shariʿah board.[124]

To support the Islamic financial institutions in conforming to the

rulings of Shariᶜah, some international institutions took upon themselves the burden of issuing regulations and governance standards to guide the financial institutions in their business. In 1999 the Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) published and adopted the first Shariᶜah governance standard for the Islamic financial institutions (Standard 1) related to the SSB: appointment, composition and report.[125] Similarly, the Islamic Financial Service Board (IFSB) developed Guiding Principles to help strengthen governance structures and processes in various segments of the Islamic financial services industry to promote soundness and stability of the Islamic financial system.[126] The efforts of these institutions reflect the great significance attached to Shariᶜah boards as a pivotal mainstay on which Islamic financial institutions are established. Metaphorically speaking, the Shariᶜah supervisory board serves as the artery that gives life to the institution, the compass that guards it against deviating from the correct course, or the life jacket that stops it from sinking into the sea of legal violations.

SSB: Significance and Roles

The OIC International Fiqh Academy tackled the issue of SSB and its significance for regulating the operations of Islamic banks in its nineteenth session in 2009. The Academy defined the SSB as a group of scholars, no less than three, specialized in the field of Islamic fiqh, with special focus on the law of transactions, and chosen from among those who have the aptitude and knowledge with regard to practical reality, to issue legal verdicts and ensure that all transactions conducted by the Islamic financial institutions comply with the rulings and fundamentals of the Shariᶜah. The decisions of this board are binding. The Academy laid stress on the necessity of practicing collective ijtihad for such boards and called them to adopt the fatwas issued by fiqh academies and institutions of collective ijtihad.[127]

The formation of the SSB is crucial for the establishment of an Islamic banking institution and distinguishing it from a conventional counterpart. The main differentiating characteristic of Islamic financial institutions is that they are developed to be Shariᶜah-compliant. To

accomplish this goal, the expertise of Shariᶜah jurists is required. Actually, banking transactions witness a continuous development concurrently accompanying developments in the field of economy and financial services. Due to these developments, several new incidents emerge on a regular basis requiring the expertise of competent jurists in Shariᶜah sciences along with that of specialists in transactions and economics. Given the evolving nature of banking transactions, the presence of Shariᶜah supervisory committees is vital to decide the juridical ruling of these transactions. Moreover, the presence of such boards secures the trust of the shareholders and customers who choose to deal with the Islamic financial institution. Those who deal with an Islamic financial institution want to be assured that it is operating within the bounds of Islamic law.[128]

Shariᶜah boards are the backbone of the Islamic financial industry, without which the integrity of this industry will be at stake. They assume a variety of roles including supervisory and advisory ones. Such boards are responsible for ex-ante Shariᶜah audit through issuing fatwas to certify the permissibility of instruments or products in addition to the ex-post Shariᶜah audit through verification of compliance with the given fatwas. In addition, they are entrusted with the task of calculating zakah, disposal of non-Shariᶜah compliant earnings, providing legal advice on the distribution of income or expenses among the shareholders.[129] In addition to issuing legal verdicts for the Islamic financial institution, the board participates in the preparation of drafts of decrees, decisions and orders presented by the bank; prepares studies and research to direct the zakah resources towards deserving parties; and formulates new contracts and Islamic alternatives to the conventional models. In fulfilling its advisory role, the Shariᶜah board advises the board of directors and management on policy and procedures related to Shariᶜah matters and conducts seminars and trainings for the staff of the Islamic financial institutions. The various roles assumed by these boards could be corrective, preventive, directive or innovative. The corrective role is fulfilled by reviewing the existing products and transactions to ensure compliance with the Islamic Shariᶜah, while the preventive one lies in reviewing the daily operations to prevent any possible occurrence of non-compliance. Similarly, the directive role lies

in providing advice and suggestions to enhance the model of business adopted by the Islamic financial institution and finally the innovative role is achieved by developing new products to meet the different needs of customers.[130]

To sum up, the Shariᶜah board performs a range of responsibilities which include issuing fatwas, participation in product development and structuring activities, reviewing and approving matters related to Shariᶜah, practicing Shariᶜah auditing and ensuring the proper applications of legal controls, issuance of an annual certification of Shariᶜah compliance and giving customized training for the staff of the institutions. The variety of its roles may raise a question concerning its legal nature and origin (*al-takyif al-sharᶜi*).

Classifying Legal Origin of Shariᶜah Boards

The variation of duties and responsibilities of Shariᶜah boards in financial institutions has resulted in various classifications of the legal nature and origin of these boards. In their attempt to decide the legal origin of this institution, some scholars mainly take into consideration the duty of issuing fatwas, and therefore, classify it as an institution of *iftā'*. On the other hand, some scholars give weighty consideration to the supervisory role, holding it to be a mechanism of *ḥisbah*.[131] A third group classifies it as a sort of *wakālah* (paid commissioning agency) or *ijārah* (hiring) on the basis of the relationship between the financial institution and the board in addition to the financial aspect. All these classifications are partially objected, and a definitive classification of Shariᶜah boards remains debatable so far.

SSB as an Institution of Iftā'

Some scholars classify the function of Shariᶜah supervisory boards in financial institutions as a sort of fatwa provider. This is evident from the name given to such boards in some financial institutions where they are dubbed as "fatwa and Shariᶜah Supervisory boards." Additionally, it is the duty of the committee to answer the inquiries and questions received from the financial institution or the customers and to issue

fatwas on the products offered by this institution. However, this classification is argued because the legal opinion of this board shall be binding on the financial institution which comes in contradistinction with the concept of fatwa as an act of expounding the Shariᶜah ruling without making it binding. Moreover, the SSB function is not limited to a mere issuance of fatwa.[132]

SSB as an Institution of Ḥisbah

Some researchers[133] understand Shariᶜah supervision as a sort of *ḥisbah* dedicated to Islamic banks where the SSB plays a supervisory role in the financial institutions' activities. However, it could be argued that this classification differs from the mechanism of *ḥisbah* in several aspects. *Ḥisbah* is a position that deduces its authority from the ruler's decree of recruitment, so that the *ḥisbah* practitioner (*muḥtasib*) acts as a deputy or representative of the ruler in the latter's duty of enjoining good and forbidding evil, thus enjoying the role of establishing control and discipline. Shariᶜah supervision, however, deduces its authority from the contract concluded between the committee board and the financial institution. Moreover, the position of *ḥisbah* is exclusive to removing apparent evil acts or violations, a task that does not need a thorough study or ijtihad. If a given issue requires ijtihad, it no longer falls into the scope or duty of a *ḥisbah* practitioner. It must be referred to specialist scholars. In Shariᶜah supervision, however, the duty of the committee board entails the highest level of ijtihad and specialization in jurisprudence of transactions.

In addition, the scope of the two positions is markedly different; it is general and broad in the case of *ḥisbah*, but specific and limited in the case of the Shariᶜah supervisory committee. To clarify, the role of *ḥisbah* is not limited to the area of financial transactions, but it involves all apparent evil acts. On the other side, the Shariᶜah supervisory board is concerned with the financial transactions in addition to other specific and well-known duties.[134]

SSB as a Contract of Ijārah

Given the relationship between the financial institution and the Shariᶜah board and the remuneration paid to the latter's members, a group of researchers classifies the function of this board as a sort of *ijārah* (hiring). Again, this classification is also debatable. In the contract of *ijārah*, the employee's opinion is not binding, while this binding nature is required in the case of the Shariᶜah supervisory committee where most of the financial institutions' regulations state that the SSB decisions are binding. Moreover, one of the main criteria in hiring the members of the Shariᶜah supervisory board is their good reputation and fame among the Muslim laity. By hiring those renowned scholars, the institution attempts to secure credibility and good reputation among the public. Public confidence is a vital element of any financial institution profile.[135]

SSB as a Contract of Wakālah

This classification is based on the fact that the shareholders in the financial institutions or board of directors assign the SSB to act on their behalf and ensure compliance of the institution's practices with the Shariᶜah rules. In addition, the institution pays a fixed salary for the committee, so the contract is described as a paid *wakālah* (commissioning agency). However, it is a condition for the validity of *wakālah* that the authorizing party has the ability to fulfill the duties in which they give authorization. If not, then *wakālah* is not valid. Evidently, the shareholders of the financial institutions or their board of directors are not able to give fatwa on the financial transactions and banking practices. Moreover, contracts in Islamic law are either binding or non-binding. The contract of a binding nature cannot be terminated by a solitary action, while the termination of a contractual relationship in a non-binding contract can be unilaterally decided. *Wakālah* belongs to the category of non-binding contract. As for the case of SSB, there are certain procedures to be adopted to terminate the appointment of an SSB member. The termination of SSB members is a sensitive matter that could lead to public non-trust of the Islamic financial institution and its

Shariᶜah compliance procedures. Therefore, some researchers call for certain measures to protect the SSB against disciplinary action. AAOIFI states that the dismissal of an SSB member shall require a recommendation by the board of directors and be subject to the approval of shareholders in a general meeting.[136]

As criticism has been leveled at the previous attempts of legal classification, some researchers[137] have held that the function of the SSB is a mixture of all these classifications. Still other researchers[138] do not find any necessity to apply old juridical classifications to the board's function. According to them, it is a new pattern of supervision and novel post which has its own features and characteristics. However, classifying the SSB as a contract of *ijārah* can still apply. The financial institution employs this board to provide a specific service in return for an often fixed salary. Giving a salary, in fact, does not affect the binding nature of their decisions since the institutions commit themselves to abide by such decisions to attract customers who search for an Islamic alternative to the conventional models. So, it is a matter of self-declared commitment. Moreover, the authority of decisions, whether it is binding or not, is a point of contention and varies widely from one institution to another.

Regardless of the legal nature and origin of these boards, their presence is indispensable for any serious Islamic financial institution. The establishment of SSBs in Islamic financial institutions is an example of applying the mechanism of collective ijtihad in the specific field of Islamic finance. The board is comprised of a group of Shariᶜah scholars, mainly specialized in fiqh of transactions, who are responsible for making ijtihad on new problems faced by the industry. This specialized collective ijtihad is of paramount significance in controlling and regulating the Islamic financial industry. Given the relatively recent emergence of Islamic banking and finance, most active players in this industry come from the conventional sector. They do not have a suitable Shariᶜah background that enables them to realize the legal rulings of transactions. On the other hand, the educational background of the overwhelming majority of members of Shariᶜah boards is almost exclusively jurisprudential in nature and due to the peculiar and sophisticated character of novel financial issues, a critical need arises to seek

help from economic experts. Against this backdrop, both parties, i.e. Shariʿah scholars and economic experts, need each other. The mutually beneficial cooperation and deliberation enable both parties to fulfil their mission. To reap the fruits of collective ijtihad, these Shariʿah boards have to include a non-jurist expert of economics to provide the necessary technical information and explain any ambiguous aspects of any contract or transaction so that the board can have the proper perception to construe a reliable legal ruling. It is important for these Shariʿah boards to make use of other institutions of collective ijtihad such as the highly acclaimed fiqh academies and liaise with other members of SSBs to eliminate controversy and narrow the scope of disagreement in contemporary Islamic finance. In this way, the SSBs as a mechanism of specialized collective ijtihad can contribute to solving the problematic issues of contemporary fatwa, especially issues of a financial nature. It should be also noted here that some Shariʿah boards consist of one jurist only or take decisions on an individual basis by the senior scholar of this board. In such cases, the board has nothing to do with collective ijtihad.

Conclusion

In view of the foregoing analysis the study has highlighted the role of collective ijtihad in addressing the problems of individual *iftā'*, with special reference to the medical and financial aspects. It is apparent that this collective mechanism has the potential to address many problematic aspects in the field of *iftā'* including the issuance of legal verdicts by unqualified persons, the adoption of extreme approaches of laxity or overstrictness, in addition to countering the phenomenon of competing fatwas. However, this potential can be maximized if certain obstacles and challenges are adequately addressed to ensure smooth and ideal application of collective ijtihad. The following chapter briefly highlights these obstacles and the possible means to overcome them.

CHAPTER 4

Challenges Facing Collective Ijtihad

Overview

COLLECTIVE ijtihad could be a viable means to address the issues and challenges facing the institution of contemporary fatwa. Through this deliberative and collective mode of legal reasoning, it is possible to recover effectiveness, vitality, and continuity of ijtihad and ensure flexibility of the Islamic Shariʿah and its applicability to all generations and times. However, there are certain challenges that raise weighty doubts on these potentials and which could hinder the effective application of collective ijtihad. These challenges may negatively affect the credibility of the institutions of collective ijtihad and eventually render them useless and ineffective. This takes place when the institution of collective ijtihad is influenced by any kind of pressure that prevents it from exercising its function impartially and in complete freedom. Such pressure arises from the fact that almost all fiqh academies are affiliated either to a given country or organization, which may possibly intervene in the process of taking the legal decision. This affiliation casts doubts on the independence of these institutions and challenges their credibility. In addition to the issue of affiliation, another challenge may undermine the efficiency of collective ijtihad. Actually, ijtihad in its collective mode overarches all individual views by virtue of its twin qualities, namely agreement of competent jurists and complementarity

between non-fiqh experts and Shariᶜah scholars. However, there is sort of debate concerning the supposed role of non-fiqh experts in the process of ijtihad. Some Shariᶜah scholars are still reluctant to accept an increasingly effective role by technical experts. This chapter attempts to highlight these challenges and obstacles. In addressing them, special reference will be given to the case of Shariᶜah supervisory boards as the problem of affiliation is more evident in such boards, while the role of experts can be tackled in light of ijtihad in biomedical issues.

[4.1] AFFILIATION AND LACK OF INDEPENDENCE

Independence is the state of being free from an external control so that the independent entity will not be subject to control by others or affiliated with a larger controlling unit.[1] This independence is a prerequisite for exercising a reliable ijtihad, without which the practice of ijtihad could be treading a delicate path of politicization and surrender to the whims of one party or another. Affiliation with political regimes or organizations is the basic reason behind lacking independence. This affiliation could manifest itself in the form of financing or appointing. When the members of an academy or a Shariᶜah board are chosen or appointed by a certain entity, this could jeopardize their objectivity and independence.

For example, as provided by the governing statute of one Fiqh academy, its members are appointed by the member states where every state nominates a scholar to represent it.[2] This act of nomination makes them political appointees representing the member states. The observations and suggestions made by various member states on the statute of this academy and later approved by the general constitutive conference reveals a clear intervention in the mechanism of appointment. A specific article of the governing statute was amended to stipulate that the academy members are to be appointed by the respective member states.[3]

It is argued that some governments were enthusiastic about participation in those academies only to keep Shariᶜah scholars under control.

In support of this argument, a special reference is given to some governments which initially refused to join the organization of Islamic Cooperation but later insisted on appointing some members to represent them in the International Fiqh Academy.[4] This affiliation leads in some cases to terminating the membership of certain scholars on the basis of their dissenting political views. The governmental intervention in appointing the members of collective ijtihad institutions goes in conflict with the requisite independence and poses a threat of membership politicization. The same thing holds true in case of financing. Actually, almost all fiqh academies are financed by certain organizations. The effect of such finance is reflected in intervention and imposing the agenda of juristic discussion to avoid sensitive or political issues. Adhering to the imposed agenda and avoiding specific issues of a political nature taint the reputation and credibility of those institutions. Moreover, this gives room to other individuals, who may lack the required qualifications, to tackle such issues; a thing which eventually contributes to anarchy and confusion.[5]

An illustrative case often posited to prove the possibility of politicizing fatwa and ijtihad is that of the second Gulf war. The Iraqi invasion of Kuwait prompted a war of fatwas for and against the American-led military operations in the Gulf. From the outset, official muftis issued fatwas providing Islamic sanction and justification of the policies advocated by their respective political leaders, buttressing them with reference to Qur'anic text and prophetic traditions. These fatwas were refuted, supplemented, or reiterated by various statements issued by special conferences convened by both Iraq and Saudi Arabia.[6] Against this backdrop, the collective ijtihad institution was a venue for politicization. Given the underlying political reasons fueling the fatwas of each party, the Shari'ah was employed as a slogan and rallying cry not for God, but for a specific political cause. 'In many ways, Islamic law became the playing field for shabby scholarship, political sloganism, and ideological demagogues.'[7]

The influence of politicizing institutions of collective fatwa is easily perceived in another sensitive issue, namely that of equal shares of inheritance for males and females. The law of inheritance in Islam is one of the most important areas regulated by some definitive and certain

scriptural texts. They are not speculative texts liable to different interpretations and juridical differences. However, we then have the case of late Tunisian president Beji Caid Essebsi controversially calling for a law establishing equal inheritance between men and women with the Tunisian official fatwa institution issuing a statement in support for this call. They even hailed Essebsi's proposal for supporting the status of women and promoting the principle of equality between men and women in rights and duties. Such equality, they argued, is encouraged by Islam, as well as international conventions. This politicized statement by the Tunisian official fatwa institution was seen as controversial because of it being regarded as in stark contrast with the firmly established rulings and principles of the Islamic Shariʿah.

The above-mentioned examples give weight to suspicions concerning lack of independence in many institutions of fatwa and ijtihad due to administrative or financial dependence and affiliation. The two elements of this affiliation, namely, financial dependence and appointment, pose serious threats to the institutions of collective ijtihad and could undermine their credibility. This is more evident in the case of Shariʿah supervisory boards as explained in the following section.

[4.2]
LACK OF INDEPENDENCE IN SSBs

There exists healthy debate amongst Muslim scholars concerning the independency of Shariʿah supervisory boards and their ability to fulfil their function objectively and in complete freedom. The debate arises from the fact that members of those boards have a dual relationship with the Islamic financial institution as providers of remunerated services and as controllers of the nature of operations.[8] Being responsible for ensuring compliance of the Islamic financial institution to the Shariʿah, the SSB members should enjoy full independence to form unbiased juridical opinions. The power of any SSB depends on its autonomy from any decision-making authority within the financial institution, in addition to its position within the institution's organizational structure. Several factors could affect the independence of SSB

jurists. These include the administrative affiliation whose impact appears in the legal effect and binding nature of their decision. Additionally, the financial affiliation could raise doubts about the credibility and objectivity of the board.

To ensure independence, the SSB members cannot be employees of the Islamic financial institution to avoid a conflict of interests. Similarly, the mechanism of appointment and remuneration has an important bearing on the issue of independency. Their financial independence is achieved when their fees are not determined by the number of products or contracts they have approved, or linked with the content of their compliance reports. The fact that the financial institution board or management can appoint, dismiss or fix the remuneration of the SSB members leaves the door open for the management to use such leverage to influence the decisions of the Shariᶜah board. For instance, the board of directors may try to use covert means or even overt pressure to obtain the approval of SSB members for a certain product or service to maximize their profit regardless of its compliance with Shariᶜah principles. They might sometimes threaten SSB members with termination of their contracts in order to prevent them from reporting non-Shariᶜah-compliant activities.[9] Given this scenario, the approach of appointment and remuneration has to be fully delineated to ensure greater independency.

Lack of Administrative Independence

Appointing members of Shariᶜah boards plays a vital role in determining effectiveness and autonomy. The financial Islamic institutions adopt various ways of appointment. Many of these institutions do not cite in their regulations the procedure of choosing members of the boards, or the body responsible for their appointment. Generally, SSB Members can be appointed either directly by the board of directors or management, in the annual general assembly of shareholders, or by a state-affiliated body.

The board of directors in the financial institutions undertakes the appointment of members of SSB or just employs a single Shariᶜah advisor.[10] This way of appointment is criticized for the potential domination of the committee by the board of directors. Such a method is

associated with two issues. First, the board of directors may use its authority to influence SSB decisions. Given the fact that the board of directors usually represents major shareholders in the Islamic financial institution, such possible pressure is likely to be used in order to protect their financial interests. The danger is greater in cases where there is only a single Shariʿah advisor in the institution. As for the second issue, it is the lack of objectivity in selecting SSB members. The board of directors tends to choose scholars with whom they have personal or friendly relations. Such relationships can be an impediment for SSBs when endeavoring to perform their task in a professional manner.[11] That is why the Islamic Financial Services Board (IFSB) advises:

> A Shariʿah board can only be deemed "independent" when none of its members has a blood or intimate relationship with the IIFS,[12] its related companies or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of independent judgment in the best interests of the IIFS by the Shariʿah board. In the case of Shariʿah advisory firms, it can only be deemed independent from the IIFS if they are not related parties, such as in terms of having common shareholders or common directors.[13]

The IFSB gives examples of relationships that would deem an SSB member as lacking independence. These include a member of the Shariʿah board being under full-time employment by the IIFS or any of its related companies for the current or during the last financial year; or having an immediate family member such as a spouse, children or siblings employed by the IIFS or any of its related companies as a senior executive officer; a member of the Shariʿah board, or his or her immediate family member, accepting any compensation or financing from the IIFS or any of its subsidiaries other than compensation for service on the Shariʿah board; or being a substantial shareholder of or a partner in (with a stake of 5% or more), or an executive officer of, or a director of any for-profit business organization to which the IIFS or any of its subsidiaries made, or from which the IIFS or any of its subsidiaries received, significant payments in the current or immediate past financial year.[14]

Actually, there is a great interest for the board of directors in their capacity as top shareholders to circumvent Shariʿah supervision in order to maximize profits. Moreover, this method of appointment can open the door to choosing SSB members on the basis of family relations or mutual interests at the exclusion of necessary qualifications and ethical, educational and technical requirements. To avoid this situation, the approval of the shareholders is required in the general assembly. The IFSB states that it is envisaged that the board of directors (BOD) shall appoint the Shariʿah board but the appointment shall require approvals from the shareholders in a general meeting, similar to the appointment of an external auditor. The BOD may wish to delegate the power to another party – for example, the Nomination Committee or the CEO. However, the BOD must remain ultimately responsible with regard to the appointment of the Shariʿah board. This is to ensure that the independence of the Shariʿah board, especially from the influence of the management of the IIFS, is not compromised.[15]

Additionally, the SSB members could be appointed by the general assembly of shareholders. This way of appointment is adopted by some Islamic banks, such as Faisal Islamic Bank of Sudan and Egypt.[16] This method is characterized by allowing a greatest range of the members' autonomy and their feeling of freedom to express their opinions and criticisms, unlike the case where they are chosen by the board of directors. The governance standards for the financial institutions stated by AAOIFI stipulate that every Islamic financial institution shall have a Shariʿah supervisory board to be appointed by the shareholders in their annual general meeting upon the recommendation of the board of directors, taking into consideration the local legislation and regulations.[17] This approach of appointment is also criticized because not all members of the general assembly are aware of the criteria and conditions to be met by the SSB members.[18] Although such a method is thought to boost the SSB independence and is supported by AAOIFI standards, it is still flawed. This is because the board of directors recommends the appointment of certain individuals at their general meetings and this is usually approved without any serious objection. These recommendations tend to be influenced by management views. Accordingly, it is unlikely to assume that IIFS

management will have no power over the selection of SSBs. Still, the decisions of the annual general assembly in terms of appointing SSB members can be influenced by a few individuals who control the majority of a company's shares.[19] To avoid these flaws, a suggestion is made to entrust a regulatory body with the task of overseeing the selection of SSB members in the annual general assembly. But the problem persists given the controversy regarding this regulatory entity.

A third method of appointing SSB members is applied in some countries where laws require a supreme supervisory body to supervise all Shariᶜah bodies in different Islamic financial institutions. These laws oblige the Islamic financial institutions to state in their articles of incorporation the formation of an internal Shariᶜah supervisory committee. The Islamic institutions are required to submit the names of the SSB members for final approval by this supreme body. This mode is applied in UAE where the federal law No. 6 of 1985 stipulates the formation of a supreme supervisory body by a decision of the Council of Ministers and that this body consists of Shariᶜah, legal and banking cadres.[20] In some cases, appointment is decided by an official body affiliated to the state like the minister of justice, as in the Islamic Bank of Bahrain or the Central Bank.[21] This pattern of appointment has many benefits; it provides another layer to protect SSB independence from BOD influence; ensures a greater objectivity in selecting the members; and eliminates favoritism or selection on the basis of unprofessional considerations. Moreover, this pattern plays a major role in preventing conflict of fatwas between the different Shariᶜah supervisory committees through a common referential authority represented in the Supreme Body formed by the state. A number of researchers[22] prefer the last pattern in which the SSB members are appointed by the state to ensure greater independency. If not possible, the general assembly of the shareholders is to undertake the duty of choosing members of these committees. In this way, it is possible to minimize the impacts of administrative affiliation to the board of directors or management of the financial institution, which relegates the supervisory board into another department of the institution controlled by its administrative management.

Lack of Financial Independence

Another element that could jeopardize SSB independence pertains to the remuneration received by its members. In principle, there is nothing wrong in receiving money for giving a professional service. However, in the context of the SSB, there is a threat of conflict of interests especially when the members of the board receive lucrative compensations. The financial incentives may be attractive enough to affect the SSB members' behavior to some extent. Therefore, Shariᶜah scholars might surrender to pressures exerted by the management to show some sort of leniency in relation to Shariᶜah compliance. One reason some Shariᶜah advisors are tempted to be lenient is their job, compensation, promotion and other perks which are determined by the management.[23] Indeed, money can be a motivation for some people to turn a blind eye and deaf ear to the truth. The financial effect should not be overlooked; consequently, adequate measures have to be put in effect to avoid any negative influence.

The classical jurists debated whether it is permissible for the mufti to receive money in return for giving fatwa. They opined that it is better for the mufti to give fatwa for free without any compensation in return. The Ḥanafī,[24] Shāfiᶜī,[25] and Ḥanbalī scholars[26] are of the opinion that it is not permissible to take money for giving fatwa. On the other hand, the Mālikī scholars[27] have said it is permissible only when giving fatwa is not an individual obligation on the mufti. Some of the Ḥanbalī scholars have said it is permissible to take money when the mufti lives below the subsistence level.[28] Proponents of prohibition based their view on the basis that allowing such a practice would endanger the scholar's autonomy. Consequently, as with judges and governors, the remuneration of scholars who provide fatwa for the public should be paid by the Islamic state like any other public service.

However, this debate is not applicable to the SSB members because their work is not limited to merely giving fatwa, and they do not receive money from those to whom fatwa is issued. There is a major difference between answering general questions of the public, which are discussed in classic literature, and ensuring Shariᶜah compliance in a private Islamic financial institution. The latter takes greater effort and more

time, requiring scholars to carefully review product documents and develop a proper perception of complex financial instruments. Hence, most contemporary jurists hold the view that it is permissible for Shari'ah scholars to accept remuneration in exchange for their time and effort provided.[29] Moreover, some classical jurists, including those who forbade taking payment for giving fatwa, have held that if people of a given locality agree to allocate payment entitlements for a mufti in return for devoting himself for this post, this will be permissible.[30] Based on the forgoing, there is no problem in paying SSB members as compensation for their professional services. Such compensation is permissible as the SSB members are dedicating their time to issuing fatwa and fulfilling all other duties. This compensation also encourages the SSB members, who are often quite busy, to honor contractual commitments.

Nonetheless, there are some factors which ensure a greater level of financial independence for SSBs and remove any clouds of suspicion. Such suspicion may arise from certain methods adopted in fixing the financial rewards or the remuneration received by SSB members. Some of these methods give a pretext to question the integrity and independence of the committee's members, particularly when the board of directors determines their rewards based on the profits rate, or if the rewards are much higher than the compensation paid by other institutions for the same work. In the eyes of the critics, the financial institutions are using their clients' money to pay a high remuneration to SSB members in exchange for rulings with doubtful religious validity.[31] Given this state of affairs, it is necessary to address who should determine the renumerations of SSB members and the basis of such renumeration.

Generally speaking, there are different methods for determining renumerations of SSB members. One method is to determine a specific percentage of the profit, where the general assembly of the bank specifies a proportion that does not exceed ten percent of the profits. However, this pattern is criticized for casting suspicions on the validity of SSB decisions. It can severely endanger SSB independence and raise a serious conflict of interests given the fact that whenever the institution gains higher profits, generous remunerations are given to SSB members. In light of the high net profit of these financial institutions, the remuneration can be millions.[32] This mechanism elicits another discussion

concerning the permissibility of receiving a percentage of product revenue, approved by the SSB. Some scholars argue this is prohibited as it may cast suspicions over the validity of the fatwas. They base this prohibition on the principle that a testimony is not accepted when the witness is directly benefiting from it. In our context, the financial institution uses SSB judgement as a testimony to endorse the compliance of a certain product with the Shari'ah. There is a considerable benefit for both parties to approve more products to achieve more profit.[33]

Another method of determining renumerations of SSB members is fixing a monthly salary, as in the case of Tadamon Islamic Bank of Sudan, where the Shari'ah supervisory board is considered a department of the bank. A third mechanism is to determine fixed remunerations at the time of appointment, as is the case with Faisal Islamic Bank of Sudan, where the general assembly appoints members of the Shari'ah supervisory board and determines their salaries. It is worth mentioning that some SSB members refuse to take any financial compensation as is the case with Dubai Islamic Bank[34] and Al-Rajhi Bank.[35]

These are the different mechanisms used in determining the compensation of SSB members. To avoid any suspicions, it is better to fix remunerations from the budget of the institution at the time of appointment by the general assembly. Given the incontrovertible importance of determining the appropriate mechanism of financial compensation to ensure the greatest possible financial independence, it is of paramount importance to determine which party compensates SSB for its services. In fact, these departments are numerous. AAOIFI states that the shareholders may authorize the board of directors to fix the remuneration of the SSB.[36] However, there is no standard practice in this regard. In some financial institutions, SSB remuneration is decided by shareholders in the annual general assembly, or by the board of directors or even the management of the institution. Some voices call for setting this remuneration by a regulatory authority such as the Central Bank or an international body such as the General Council for Islamic Banks and Financial Institutions so that the SSB members may not be pressurized or controlled by the BOD or Management to adopt lenient positions.

The controlling strategies adopted by the institution management

vary and start from the time of hiring of Shariʿah scholars where the management prefers to hire lenient scholars and limit their authority to product approval only or tempt them by financial incentives and high remunerations. By ensuring financial independence and determining the mechanism of appointment, such a controlling influence can be minimized. However, there is still another aspect that raises doubts on the work of SSBs. It is the legal status of their decisions. Actually, the problematic administrative affiliation can have a serious bearing on the legal status of the SSB decisions and bring into question their real effect and binding nature.

Legal Status of SSB Decisions

It has become clear that the financial independence of members of the Shariʿah supervisory board is a necessity which can be met by determining the mechanism of appointment and remuneration by the general assembly or by a neutral party to ensure greater independence and integrity of its members and avoid negative effects of administrative and financial affiliation. Moreover, the SSB needs to be placed at the top levels of the administrative structure to reduce the influence of administrative affiliation and give its decisions due effect.

The legal status of the SSB decisions means whether this decision is deemed binding or merely advisory. Although by default a fatwa is generally non-binding, the case can be different in the context of SSBs where *iftāʾ* is not the sole duty. Moreover, there are certain cases when fatwas are given a binding legal force. For instance, a government may choose to put a certain fatwa into practice by sanctioning and granting it a special legal status.[37] In the context of SSBs, these boards can draw their legal authority from different sources. For example, in countries such as the United Arab Emirates, Kuwait, Jordan, Lebanon, Malaysia, and Pakistan, the national regulations require establishing an SSB before approving the establishment of the Islamic financial institution. In addition, the articles of association of the financial institution have to include provisions for setting up an SSB and defining its power. A lower ground of SSB authority can be based on the terms of the contract signed between the BOD, on behalf of shareholders, and the SSB.[38] The

SSBs derive their legitimacy from the fact that the financial institution commits itself to abiding by the Shariᶜah rules. Additionally, there is a sort of in-effect *wakālah* (agency and representation) on behalf of the institution's customers, especially the depositors who resort to the financial institution because of its declaration of commitment to the Shariᶜah rules.

Nevertheless, even in cases where legal grounds are found for establishing an SSB, the legal effect of its decisions, whether they are binding or not, is still unclear. If the SSB decision is merely advisory, then the primary motivation of ensuring Shariᶜah compliance by setting up SSBs has not been achieved. In this case, the role of the SSB is reduced to a mere marketing tool as its decisions are not enforced in reality unless the administration of the financial institution decides to do so. It cannot be acceptable that the board serves only the role of Shariᶜah consultant or a consulting body with no implementation authority given to its decisions.[39] Implementation here means that the board has the authority to force the financial institution to implement the decisions and fatwas issued.[40] To limit the role of SSBs to expressing an advisory opinion or giving legal advice goes in contradistinction with the objective for which these boards are originally established.

Taking this into consideration, the AAOIFI Shariᶜah governance standards and the OIC international fiqh academy resolutions state that SSB pronouncements shall be binding and fully implemented.[41] However, even where such standards are adopted, or where articles of association have stipulated the mandatory nature of SSB decisions, the problem still persists. This is because SSBs only take decisions on cases brought to them by the management. A possible scenario can arise when directors think the SSB will not approve a particular transaction; in this case they may avoid the issue by not referring the whole matter to the board. Bearing this in mind, some regulators and academic researchers suggest appointing one of the SSB members as a non-executive director on the board of the financial institution.[42] For the same reason, some have voiced their concern in regard to the SSB location within the organizational chart.

By reflecting on the realities of Shariᶜah supervisory boards, it is easily apparent that they often lack the legal status that entitles them to

enforce their decisions. Generally speaking, there is almost no legal code giving the board's decisions the necessary binding nature. This lack of legal status contributes to reducing the strength and efficiency of the fatwa issued by the SSB when compared to the administrative decision issued by the IIFS administration. Therefore, the efficiency of SSB efforts will be contingent on the administration's willingness to put the committee's decision into action. Even when the administration reacts positively, this still proves dependence and affiliation of the SSB to the administrative decision. This affiliation could be exploited by some managers to circumvent the Shariᶜah controls. It is reported that some managers have blatantly threatened SSB members to approve certain products. One member of a Shariᶜah supervisory board has admitted that the managers threaten them. According to this person the bank once asked him to consider a structure which he found non-compliant with Islamic Shariᶜah. When the Shariᶜah advisor rejected the product, the manager of the institution asked him to approve it or he would take action against him.[43]

To avoid such problems, the charter of the financial institution should include a default clause to identify the relationship between the board of directors and the Shariᶜah supervisory board in addition to the applicable procedure in case of conflict. Additionally, the conflict between the two bodies can be further minimized by characterizing the financial institution in the articles of association as an entity that fully complies with Shariᶜah rulings. For instance, in Saudi Arabia, where there is no legal framework for Shariᶜah governance in the financial sector, Al-Rajhi Bank has stated its policy towards the power of the SSB; it regards their decisions as obligatory for the departments and management of the institution. Moreover, the executive directors on all levels of the institution are responsible for implementing SSB resolutions. Any violation of SSB pronouncements while offering products or services, without seeking prior authorization from the board, is firmly outlawed, and disciplinary measures are to be taken against violators.[44]

For SSBs to fulfil their mission, they need to enjoy complete independence, to be free from any kind of pressure. To ensure such independence, the mechanism of appointment, termination and remuneration has to be addressed in the contractual agreement. These issues can be

fixed by a state-affiliated regulatory entity such as the Central Bank, or referred to an international body funded by charity and comprising globally recognized scholars provided that its advice is put into practice by the legal mandate of the Central Bank.

[4.3] CONTROVERSIAL ROLE OF NON-FIQH EXPERTS

The mechanism of collective ijtihad has become in vogue after taking an institutional form in the second half of the twentieth century with the establishment of Al-Azhar affiliated Islamic Research Academy. Various academies were later established including the MWL Islamic Fiqh Council, OIC International Islamic Fiqh Academy, the Academy of India and that of Sudan. Setting up those academies transformed ijtihad from being an individual endeavor to a collective one bringing together a group of high level scholars of Shariʿah to deliberate over complex questions in different fields. Together those scholars can achieve what each scholar cannot do alone. Although ijtihad has become a collective practice, it has been seen as an exclusive task of Shariʿah scholars.

With time, new intricate issues came to exist and Shariʿah scholars found themselves incapable of understanding the reality of certain issues, let alone deciding the legal rulings thereof. Giving a ruling on any matter depends on a thorough perception of this matter; consequently, a lack of proper understanding of the issue in question naturally leads to incorrect conclusions. The soundness of ijtihad is therefore dependent on an initial step of formulating a proper perception and understanding of the reality of a given issue under juristic discussion. The scholars cannot escape their duty to provide religious guidance for people and expound the legal rulings. Facing this formidable challenge, they followed in the footsteps of the classical jurists who used to consult the technical experts and specialists to reach a proper understanding of the issue under investigation. Muslim scholars in the past used to approach experts in science, architecture, medicine, veterinary, and other disciplines in order to grasp the various technical dimensions of

such cases before issuing a legal verdict. Consulting with specialists, even if they were not physically present, was deemed a suitable solution to address the initial problem of construing the proper perception even in the course of individual ijtihad. Those experts would be responsible for developing the right conception by explaining the scientific reality to the religious scholars. In turn, Shariʿah scholars would make use of this scientific explanation in order to construe the religious perspectives.

As a consequence of breathtaking advancements in all spheres of life, issues have grown in complexity and ramification. Thus, a dire need arises to bring Shariʿah scholars and technical experts together to collaboratively deliberate on complex multidisciplinary issues to ensure epistemological complementarity. The necessity of this collaborative approach is acknowledged by both Shariʿah scholars and scientists. For instance, during the period January 15–17, 1985, the Islamic Organization for Medical Sciences (IOMS) held a symposium in Kuwait in which around 80 biomedical scientists and religious scholars participated to discuss the issue of "Human Life: Its Beginning and Its End from an Islamic Perspective." The participants from both parties emphasized the need to employ the mechanism of collective ijtihad in addressing this issue. The scientists justified the necessity of adopting this collective approach by arguing that contemporary scientific discoveries had become so innovative and groundbreaking and also so full of ramifications that it was inevitable for both scientists and religious scholars to collaborate together in order to handle the intricate aspects of these discoveries from an Islamic perspective.[45]

On the other side, a group of Shariʿah scholars shared the same view. The last session was inaugurated by underlying the necessity of collaboration between scientists and religious scholars. Shariʿah scholars admitted that some of the classical jurists could master both Islamic law and medicine such as Averroes, but this had become unattainable in the present day where having a minor specialization is the norm. Given the nature of the modern educational system which has fragmented sciences into various disciplines and created multiple specializations and subdivisions within each discipline, it has become almost impossible for contemporary Shariʿah scholars to grasp their new techniques and subtleties. Accordingly, Shariʿah scholars urgently need scientists in

order to understand the reality upon which they are to draw their conclusions. The mechanism of collective ijtihad is emphasized for its potential of unifying the efforts of both scientists and religious scholars.[46]

Having established the necessity of involving experts and scientists in the process of ijtihad via the mechanism of collective ijtihad, it is important to address the nature and scope of this involvement and the challenges faced which could problematize the whole deliberative process. Although this will be tackled with special reference to biomedical issues, it still holds true for all fields of collective ijtihad.

Roles of Experts

The rapid and complex evolution of biomedical sciences over recent decades has seen the emergence of a large number of techniques in the field such as organ transplantation, resuscitation, assisted reproductive techniques, genetics, genetic engineering, cloning, stem cell research, gene therapy, human genome and genomics, etc. which pose new juridical dilemmas as well as serious challenges for religious scholars practicing ijtihad in the field of bioethics. A major issue in grasping the technicalities of scientific information has been lack of knowledge access due to the language barrier, which sees much information available in English but not many contemporary Muslim scholars master of it.[47] All these problematics have magnified the need for biomedical specialists to play a role in aiding contemporary Shariʿah scholars to fulfill their duty through providing legal guidance allowing for correct Islamic perspectives to be formulated on emergent issues.

A variety of roles can be played by non-fiqh specialists in the deliberative process of juridical reasoning. The first step towards construing a legal ruling is to develop a correct perception of the issue at hand and to verify its underlying basis or character. Specialists can assume an informative role which entails providing technical and scientific information for Shariʿah scholars to help them develop this proper understanding of the reality of issues under juristic discussions. In the context of biomedical sciences, it is not easy for Shariʿah scholars to deal with some modern questions of an intricate nature.

To provide an accurate Islamic perspective on biomedical matters necessitates a clear understanding of the special nature of the given issue in order to verify its effective rationale and apply the suitable tools of juridical reasoning. Biomedical scientists are responsible for presenting biomedical information, and some of that information will be indispensable for without it Shariʿah scholars will not be able to develop a proper perception of specific bioethical questions. Through this interdisciplinary approach, Shariʿah scholars will be able to develop a kind of scientific literacy gaining scientific information that they otherwise would not have access to. For instance, without sufficient information on the nature of gene therapy, its techniques, its potentials, and its benefits and risks, Shariʿah scholars cannot embark on drafting the broad lines of an Islamic perspective on this particular issue. Similarly, sufficient information on cutting-edge technologies like those of the human genome project and genetics are necessary for Muslim scholars to weigh benefits against risks and finally decide on a reliable legal ruling.

This holds true for a wide variety of biomedical issues. As far as the issue of cloning is concerned, Muslim scientists and Shariʿah scholars from across the Muslim world held a large-scale conference, in Casablanca, Morocco in 1997. The conference was organized by IOMS in cooperation with IIFA, the Islamic Educational, Scientific and Cultural Organization (ISESCO), the Regional Office for the Eastern Mediterranean of the World Health Organization, and Al-Ḥasan II Institute for Scientific and Medical Research. Participants viewed the issue of cloning and its ethical complications as a serious challenge necessitating collaboration between specialists in the biomedical sciences and those in the Islamic sciences. In his inaugural speech, the secretary general of the IIFA, elaborated on this fact arguing that the main task of specialists in the Islamic sciences is to search the main sources of Islam, the general maxims in Islamic religious law, the spirit of the Shariʿah, and the juridical views of early Muslim scholars, keeping in mind the public interests recognized by the Shariʿah. On the other hand, specialists in the biomedical sciences are entrusted with explaining the scientific and technical aspects of these issues to Shariʿah scholars. With this help from scientists,

religious scholars are able to reflect upon the nature of these issues and come up with Shariʿah-conforming conclusions.[48]

Even the seemingly simple issue of when human life actually begins has attracted much attention from both classical and contemporary scholars, and the informative role of biomedical scientists is markedly evident. During the scientific symposium held in 1985 by IOMS in Kuwait to discuss the issue of human life, its beginning and its end from an Islamic perspective, most of the biomedical scientists came up with their own vision about the beginning of human life from both a scientific and religious perspective and also presented their own interpretations for the relevant scriptural texts. Some biomedical scientists criticized the opinion held by certain classical jurists that it is permissible to get rid of the embryo before ensoulment, that is the breathing of the soul into it. This opinion, they argued, is built on a belief that the embryo before the soul-breathing stage is not living. In the light of modern medical knowledge, such an opinion cannot be accepted anymore.[49] However, the issue of what constitutes the beginning of human life remains open to debate. Like Shariʿah scholars, the scientists are also in disagreement on this issue, with some maintaining that life begins early with inception, while others recognize the soul-breathing as the starting point of human life. The proponents of the soul-breathing position disagree on how to scientifically measure this stage and also on the supposed date on which it takes place. In spite of the controversy, the proceedings of these deliberations emphasized the fact that the process of juridical reasoning is no longer solely based on the way of interpreting scriptural texts or analyzing classical juristic opinions. Modern scientific knowledge has proved to be one of the main tools for contemporary ijtihad in fields like bioethics where some classical interpretations have been found to be incompatible with new scientific information.

Going Beyond the Informative Role

The establishment of collective reasoning institutions like OIC-IIFA, MWL-IFC and other specialized institutions such as IOMS grew out of the need to bring together scholars from different Islamic and scientific

fields to perform collective ijtihad, or Islamic ethico-legal deliberation, as it was felt that on certain issues it was no longer possible for a single Islamic scholar to have a comprehensive knowledge, or sufficient mastery of all disciplines relevant to the issue at hand, to perform an accurate assessment.[50] A key role assumed by non-fiqh specialists is to provide relevant scientific information to help Shariʿah scholars construe a proper perception of issues under discussion.

Integral to this informative role is that of setting the discussion agenda and deciding which topics need to be discussed first and which ethical dilemmas such topics raise. The technical experts can sometimes propose specific issues to be included in the agenda of discussions even if Shariʿah scholars are reluctant to discuss them. One indicative example in this regard is that of human cloning. When scientists announced the first successful cloning of a mammal from an adult cell, Dolly the sheep in 1997, many questions were raised on the possibility of applying this to human beings and the ethical dilemmas raised. A heated global debate ignited with scientific circles within the Muslim world no exception in this regard. However, Shariʿah scholars preferred not to address an issue that had not yet materialized arguing that to hypothesize on non-existent problems and then try to formulate Islamic perspectives on them was as an abhorrent practice by many scholars. Soon this controversy found its way to the deliberations of fiqh academies. Biomedical scientists wanted to put human cloning on the agenda of the collective bioethical deliberations of the IOMS and OIC-IIFA. This suggestion was refused by Shariʿah scholars on the basis that such a practice was a waste of precious time which should be used to discuss already existing problems. Some efforts were exerted by biomedical scientists in a bid to convince Shariʿah scholars of the relevance and significance of discussing the ethical aspects of human cloning, even if the technology had not yet been realized. They argued that what many imagined as a pipe dream would soon be a part of reality and that Muslims should not lag far behind the rest of the world on this issue.[51]

In addition to setting the agenda of discussion and providing relevant biomedical information, the informative role contributes to correcting misconceptions as in the previously discussed cases of Muhammed al-

Ashqar and Bakr Abu Zayd and their stances on transplanting testicles and procuring organs from anencephalic newborns respectively. Such cases reveal the significant role assumed by technical experts and scientists in collective deliberations over new and complex issues. However, a problem arises when scientists go beyond this informative role. A clear disagreement on the limit of the scientists' role can be easily perceived during the collective deliberations that brought together Shariᶜah scholars and biomedical scientists. Whether their roles should be limited to providing scientific information only or whether they can go beyond this restricted informative role was a frequently raised question. The possibility of disagreement between both groups raises another question of authority and the party whose opinion should be given priority in the case of disagreement. Different positions were held in this regard with many Shariᶜah scholars uneasy about extending the role of scientists beyond that of the informative. A conventional position inclines to restriction on the basis of lack of necessary qualifications to exercise ijtihad. Accordingly, the duty of experts is to help Shariᶜah scholars but not to issue fatwas or interfere in the process of formulating the juridical ruling. After all, they are not Shariᶜah scholars.

The same tendency is found in the practices of fiqh academies where the collective deliberations are divided into two stages: during the first stage the biomedical scientists explain the scientific aspects to the jurists and together they discuss related issues. But the second stage of discussing and voting on the final recommendations and resolutions is generally attended only by the Shariᶜah scholars. Many Shariᶜah scholars express strong reservations against involving scientists in this second stage. For them the technical experts can assume the role of translation and simplification of scientific terminology; providing consultation for the purpose of construing proper perceptions; giving their testimony; and depending on their scientific decision in their respective specialization when required. Although it is permissible to involve experts in devising a correct perception of issues or refining and classifying their underlying reality, it is not acceptable to permit experts to practice ijtihad as some economists, astronomers and physicians do.[52]

Such reservations were present even in the meetings organized by the IOMS which engages biomedical scientists in all stages, including

that of drafting the final recommendations. The critique was directed at physicians crossing the boundaries of their specialization and role to argue with respect to religious rulings that should otherwise be left to the jurists. For instance, during one particular symposium organized by the IOMS on what constitutes the beginning and end of human life, one of the jurists took the physicians to task, requesting them to stick to their specialization and not delve into matters pertaining to interpretation of Prophetic traditions, attempting to join jurist discussions on what is in fact an exclusive task of Shariʿah scholars. To this critique, some physicians commented that the process of ijtihad should be a shared task between jurists and physicians, and that neither party can accomplish the task alone.[53]

Clearly, the biomedical scientists were not content with acting the role of mere informants only, limited to explaining or simplifying specific scientific information. Rather, they wanted to participate in their capacity as equal partners in the process of ijtihad with jurists. In their view neither the religious scholar nor the physician has the capacity to examine issues of such complexity alone, both parties need to engage in mutual discussions. Deliberations on these issues, physicians argue, should remain interdisciplinary by facilitating communication between specialists in biomedicine on the one hand and jurists on the other. To this Shariʿah scholars responded that while scientists are encouraged to actively participate in deliberations, the final word at the stage of drafting juridical conclusions rests with jurists only.[54] Nevertheless, the biomedical scientists in various meetings refused to restrict themselves to the role of informants and attempted to participate in the juridical reasoning process itself and even interfered in the drafting of the final resolutions and recommendations.[55] Attempts to separate biomedical scientists and religious scholars as two distinct groups with two distinctive roles have always failed. The overlapping nature of modern scholarship makes it almost impossible to clearly draw the lines of demarcation between the two parties. Things become more complicated due to the absence of a shared methodological platform, which is able to calibrate between scientific and religious knowledge in the collective ijtihad process. Lacking such a methodology undermines the hoped-for epistemological complementarity.

[4.4]
MISCELLANEOUS CHALLENGES TO COLLECTIVE IJTIHAD

The group deliberations facilitated by the mechanism of collective ijtihad as practiced by some fiqh academies and specialized institutions led to a well-orchestrated collaboration between jurists and scientists in different disciplines through a multidisciplinary and interdisciplinary approach. However, this mechanism has its difficulties and challenges. In many cases, involving such experts is usually occasional. A lot of fatwa institutions seek help of technical experts only when they desperately need specialists. In this case, specialists are only invited for consultation about certain aspects, without having permanent membership of such institutions or the right to vote when taking a decision on the issue.

Absence of Important Disciplines

Another aspect that merits attention is the absence of some important disciplines. Examination of *iftā'* institutions engaging specialists of non-Shariʿah sciences, reveals that they have not included all different disciplines. Only two groups seem to dominate the interdisciplinary deliberations, namely biomedical specialists and economists. However, the complex and multifaceted nature of novel dilemmas presenting themselves in the modern context necessitates utilising various groups with far more diversified backgrounds. Yet, unfortunately, institutions are almost devoid of using the services of specialists in other fields of science and knowledge, especially the humanities and social sciences. The structure of membership of the International Islamic Fiqh Academy, as shown on its website, includes a group of permanent members of Shariʿah scholars, along with many experts from various Muslim countries. Exploring the latter's areas of specialization it becomes clear that they are limited to economic and medical sciences only, although new incidents to be juridically discussed do not exclusively fall into these two fields alone. It would seem that experts in other sciences and disciplines still remain outside the realm of collective ijtihad although

many issues require their input and involvement. These include in particular those of a complicated social nature such as bullying, sexual harassment, and suicide, problems of global significance and impact, which only a multidisciplinary approach can adequately deal with. Sociologists for instance are indispensable for a proper treatment of such issues. Thus, there is an increasing need to expand the pool of expert participation.

Undoubtedly interdisciplinary discussions would be far more enriched when the pool of participants is progressively diversified through addition of specialists from other related fields relevant to the topics under examination, e.g. those from the social sciences, medical anthropology, secular bioethics, Jewish and Christian bioethics, medical law, etc.[56]

Absence of Female Members

The same holds true with regards to the involvement of women in these institutions. The absence of female members in fiqh academies makes them patriarchal institutions, which represents another serious challenge to be addressed in order to ensure efficiency of the mechanism of collective ijtihad. Admittedly, the Muslim world has many distinguished women who have achieved a high rank in scholarship, whether in the Shariʿah sciences or other disciplines. Indeed, throughout Muslim history, women have played a crucial role in the Islamic renaissance in all walks of life. Their contribution to Islamic scholarship is testified by the large number of women authorities who are reported as playing a major role in the early development of the legal system in addition to their great prominence in transmitting the Hadith.

Female authorities such as the Prophet's wives, Umm Salama and ʿĀ'ishah are reported to have played a foundational role in early legal adjudications, and were often the center of legal controversies implicating the position of women in society. Many biographical and historical sources list the names of hundreds of women transmitters and narrators of Prophetic traditions who lived particularly between the twelfth and fifteenth centuries. It appears that certain families from Damascus, Cairo, and Baghdad made a virtual tradition of training

female transmitters and narrators, and that these female scholars regularly trained and certified male and female jurists and therefore played a major contributing role in the preservation and transmission of Islamic traditions.[57] In addition to their role in transmitting the Hadith, some biographical dictionaries reveal a large number of women who are described as jurists and are asserted to have attained a level of competence that qualified them to issue fatwas. Among the earliest prominent female jurists is Hujayma al-Awṣabīyah (d. 81/700), described as one of the most notable jurists of Damascus, who is said to have taught numerous men, and who enjoyed the confidence of the Caliph ʿAbd al-Malik b. Marwān.[58]

Another renowned female jurist is ʿAmrah bt ʿAbd al-Raḥmān al-Anṣāriyyah (d. 98 AH) who was described by Shams al-Dīn al-Dhahabī (d. 748/1348) as a scholar, jurist, authoritative, and very knowledgeable. She was a student of ʿĀ'ishah. ʿAmrah's position as a Muslim jurist and traditionist derives directly from her close relationship with ʿĀ'ishah who raised her. Ibn Saʿd includes ʿAmrah among those prominent individuals who issued legal opinions in Madinah after the Prophet's Companions.[59]

In fact, Islamic history is replete with examples of prominent female jurists. These include the Ḥanafī jurist Khadijah bt. Muḥammad al-Juzjānī (d. 372 AH), Amat al-Wāḥid bt. al-Qāḍī Abū ʿAbd-Allah al-Ḥusayn b. Ismāʿīl al-Maḥāmilī (d. 377/987), Fāṭimah bt. Muḥammad al-Samarqandī (d. 581 AH), Fāṭimah bt. ʿAbbās al-Baghdādīyah (d. 714 AH), the Ḥanbalī jurist Khadijah bt. al-Qayyim al-Baghdādīyah (d. 699 AH); the Hanbalī jurist Fāṭimah bt. ʿAlī, known as Sitt al-Mulk (d. 710/1310); the Shāfiʿī jurist Bāyy Khātun bt. Ibrāhīm al-Halabiyah (d. 942/1535), the Ḥanafī jurist Khadijah bt. Muḥammad al-Baylūnī (d. 930 AH).[60] These women, in their capacity as jurists assumed an essential role in the legal circles and were central to the development of Islamic scholarship. The role of female jurists is more indispensable in our present-day world which witnesses issues pertinent to women including equal opportunities for education and acquiring the highest degrees of knowledge.[61]

Unfortunately, modern religious authority in most places was reshaped to include men only. Indeed, women, too, could become muftis

and exercise ijtihad. However, the exclusion and absence of the voices of women in legal discourse is remarkable in fiqh academies and fatwa institutions. This adamant insistence on excluding women from participation in the collective institutions of ijtihad is unfathomable. Argument if any to support this policy of exclusion would not be well constructed and only depend on ungrounded sociological considerations. Fiqh academies do need female members to represent Muslim women in discussing juridical cases especially those relating to family issues.

Membership Politicization

Participation in fatwa institutions and fiqh academies is sometimes subject to political considerations. Most fiqh academies are affiliated either to a given country or organization. This entails a kind of direct or indirect intervention in nominating the members of those academies. It is almost impossible for candidates whose political orientation and juridical opinions are inconsistent with the whim of these countries to join such academies. Accordingly, these institutions are deprived of particular cadres who may be more efficient both at the level of jurists and scientific experts.

The state-affiliated office of *iftā'* dates back to the era of the Ottoman Empire when Sultan Murad II appointed the first *Shaikh-al-Islām* (Grand Imam) in 828/1425. S*haikh-al-Islām* was responsible for appointing muftis in the Ottoman States. Later on this duty was extended to include supervision of all Shari'ah schools, scholars, teachers, preachers, and even the appointment of chief Judge. During the reign of Sultan Muhammad al-Fatih, the responsibility of public *iftā'* in the Ottoman Empire and management of the central system of *iftā'* throughout the capital of the Ottoman Caliphate were assigned to *Shaikh-al-Islām*.[62] The Egyptian Dār al-Iftā', established on 21 November 1895, is the first official institution of fatwa. On this day begins the first of fatwa records where questions and fatwas have been registered. This is the date of the inauguration of the fatwa administration, rather than the office of state mufti which had in practice been operating for some time. It coincides with the taking office of Hassuna al-Nawawi, officially the first mufti of the Egyptian lands.[63]

Of course, the establishment of an official institution for issuing fatwa was a noteworthy step marking an important shift in the course of institutionalizing *iftā'*. It represented a significant modern organizational development which brought about specialized committees charged with collective fatwa issuance. Institutions with titles such as *Dār al-Iftā'* have appeared in many countries. Grand muftis and muftis of the republic are currently found in a variety of nation-states, with the incumbents usually serving under government appointments and with their activity regulated by legislation.[64,65]

Membership of such institutions is not generally independent of any state control. While scholarly accomplishment should be the main criterion in granting membership, favoritism and politics play a decisive role in deciding the appointment of scholars in such institutions. Sometimes, membership is terminated on the basis of political considerations. This state of affairs may raise clouds of suspicion on the integrity and independence of these institutions and deprive them of some competent jurists. These doubts led some to refuse the idea of an official institutionalization of ijtihad, albeit their support of collectivization of the practice of legal reasoning. If a certain country wishes to establish an official entity entrusted with the task of ijtihad, there are certain conditions to be taken into consideration, namely, autonomy and complete freedom in exercising its function in addition to choosing the members of such an entity on the basis of scholarly competence without any political or regional reservations.[66]

Lack of Liaison Between Different Academies

The twentieth century has witnessed the birth of an institutionalized form of collective ijtihad through a plethora of fiqh academies, fatwa institutions, and Shari^{c}ah boards. Today, there exist many fiqh councils in different parts of the world. The multiplicity of these academies can be a double-edged sword given the possibility of competing resolutions and fatwas resulting on the same issue. In this case, the mechanism of collective ijtihad practiced by those academies, rather than addressing the issue of contradictory fatwas, may exacerbate it. This contradiction is a natural consequence of non-liaison between these institutions.

A quick review of scores of resolutions and recommendations issued by these academies suggests a particular focus on the same issues. The problem arises when different academies discuss the same question but issue two different resolutions. Which resolution will be given priority and on which basis? An indicative example is the issue of conventional banking interests, whether or not they represent a form of *ribā*. For instance, in its second congress held in May 1965 the Islamic Research Academy of Al-Azhar, deliberated over the issue of conventional banking services and decided that all kinds of interest-based loans are forbidden, with no distinction between consumer loans or productive ones. Similarly, interest-based credits, interest-earning term accounts and all forms of interest-based lending are forbidden *ribā*.[67] The same ruling was issued by the OIC-IIFA in its second session held in December 1985 in which the academy warned against negative impacts of such interest based transactions and decided that any increase or interest on a debt which has matured, in return for an extension of the maturity date, in case the borrower is unable to pay and the increase (or interest) on the loan at the inception of its agreement, are both forms of *ribā* which is prohibited under Shariʿah.[68] Adopting the same view, the MWL Islamic Fiqh Council in its tenth session held in 1987 severely criticized a paper which claimed to come up with a new ijtihad on this issue permitting interest-based loans with banks on the basis of necessity and *maslahah*. The paper made the claim that no bank could operate or even exist without inclusion of interest. The fiqh council refuted the allegations and emphasized the impermissibility of such loans.[69]

However, the same issue was discussed again by another academy and a different resolution was passed. That academy received a letter from one bank asking for the legal ruling of predetermined interest on saving accounts. In responding to this query, it was stated that predefined fixed profit on savings deposited to the bank is permissible without any suspicion as there is no canonical text in the Qur'an or the Sunnah forbidding such a transaction in which profits or returns are pre-determined.[70] This answer kindled heated debate and controversy among Muslim scholars and fiqh academies. Such a controversy still echoes into the present day. Discussing the legal foundations of

different resolutions is beyond the scope of this study. However, one may ask about the resolution to be adopted in case of contradiction or various competing resolutions by different academies.

Another important example of competing resolutions by fiqh academies is the unification of the beginning of lunar months, especially that of Ramadan. While the fatwas given by Dār al-Iftā' of Egypt,[71] the Islamic Research Academy,[72] the OIC-IIFA[73] called for unification and ignoring geographical differences, the MWL-IFC held a different view. The MWL Islamic Fiqh Council during its fourth session in 1979 discussed this issue and decided that there is no need to call for a unification of crescent sighting and religious feasts in the Muslim world, because such unification is not going to ensure their unity, as suggested by many of those who insist on such unification.[74] The first party saw in unifying the Muslim calendar and lunar months a manifestation of Muslim unity while the MWL fiqh council held an opposing view.

It is clear that the lack of coordination between these fiqh academies and collective fatwa institutions has brought about some competing fatwas where a resolution issued by one academy is at variance with another from a second academy. While this phenomenon is conceivable in the course of individual ijtihad, the case is different in terms of the collective one which is meant to collaboratively address legal questions and issue a collective opinion that could be a feasible alternative to classical consensus.

Having highlighted the different challenges that could hinder the institution of collective ijtihad, it is time to present some suggested solutions to ensure viability and greater efficiency of this collective mode of reasoning.

[4.5]
SUGGESTIONS FOR GREATER EFFICIENCY OF COLLECIVE IJTIHAD

Many scholars and researchers have proposed suggestions to overcome the obstacles and challenges facing collective ijtihad in the present world.[75] The differing suggestions agree on one pivotal element which

is ensuring the independence of collective ijtihad institutions. To ensure this independence, the majority of suggestions call for the establishment of a central fiqh academy transcending geographical boundaries and precluding any governmental influence. One particular suggestion states the necessity to establish three different kinds of fiqh academies, that is a national one that handles the juridical issues of a certain nation or a country; a regional one entrusted with the task of ijtihad in a given region or province; and a world central academy that dedicates its efforts to addressing special issues of paramount importance for the entire Muslim world.[76] This central academy is to undertake the responsibility of liaising between different academies to ensure consistency and eliminate the emergence of competing resolutions and contradictory fatwaṣ. However, other researchers give priority to addressing the problems of already existing academies.

All proposed solutions and suggestions, whether those calling for establishing a central academy or reforming current ones, are in agreement on the necessity of addressing the problem of independence to enable the collective ijtihad institution to fulfil its mission impartially without any control. In order to eliminate any restrictions or imposed limitations, the mechanism of public funding through Zakah or endowments is suggested to ensure financial independence.[77] Similarly, the members of those academies may be chosen by means of free direct elections by the scholars themselves in an international Islamic conference. By adopting this mechanism of electing members and financing the institutions through Islamic public charity, the academies can be protected from the influence of financial and administrative affiliation. In the case of establishing this international central academy funded by charity, it can be responsible for nominating members of Shariʿah supervisory boards. The following discussion highlights a detailed plan proposed to establish such an international academy, whether it is necessary and feasible, and the available alternatives.

Central World Fiqh Academy: Necessity and Independence

As stated earlier, the establishment of a central world fiqh academy is proposed as a solution to the problem of affiliation and lack of

independence. The proponents of this suggestion argue that given the multiplicity of fiqh academies and their distant locations across a wide geographical area, it is necessary to have a central body that unifies those institutions and coordinates between them. This central academy may serve the role of a controlling unit that nominates members for regional academies, decides their remuneration, ensures consistency of resolutions and eliminates the possibility of contradiction. It can also oversee setting the agenda of discussions and juridical issues to be deliberated by the regional academies taking into consideration the specific circumstances and status quo of each academy. In fact, certain issues can be so entangled with the particularities of certain communities that only people of any given community can fully understand their underlying reality. For example, the complicated issues of Muslim minorities in western countries are best not discussed by a Middle Eastern academy without engaging some scholars of these communities. Still, it is better to refer such issues to a suitable regional academy, such as the Assembly of Muslim Jurists of America (AMJA) or any other European institution comprising of competent scholars.

Additionally, in cases of potential sensitivity identified in discussing a particular issue having political or social implications, the issue can be referred to the central academy to freely examine. Based on the status quo of the existing academies, it is acknowledged that certain issues are purposefully avoided, such as questions of political freedom, human rights, good governance, etc. These reasons represent the crux of the argument raised by the proponents of establishing a central world academy as a necessary means to organize the practice of all other academies and promote unity among them.

This central world fiqh academy is expected to assume numerous roles and fulfil many objectives. The first and foremost of these is to collectively decide upon juridical rulings for novel issues that concern the entire Ummah and publish them in major world languages. This proves the flexibility and applicability of Islamic law to all generations, highlighting the superiority of Islamic law compared to all positive laws, eliminating any possible disagreement and controversy. Establishing rapprochement among jurists and scholars with a view to consolidating solidarity, reducing the extent of disagreement and

narrowing down its gap as much as possible is another main role to be assumed by this academy. This specific role can contribute to establishing channels of communication and cooperation among the different institutions of ijtihad all over the world in order to promote intellectual unity. Among the primary objectives is to renew Islamic culture and free it from intrusion, vestiges and traces of political and ideological fanaticism, in order to reveal it in its unblemished essence.[78]

For this academy to achieve its expected objectives, certain measures have to be taken to ensure its independency. The first element to be taken into consideration is the mechanism of choosing its members. The common suggestion in terms of membership is to convoke a world conference where eminent jurists and Shariʿah scholars can attend to elect the best candidates in free direct elections. To be an eligible candidate, a person needs to be a specialist of Shariʿah with outstanding scholarly accomplishments or have assumed a position of *iftā'*. A committee of senior scholars can set certain conditions and qualifications for membership for both Shariʿah scholars and non-Shariʿah specialists.[79] As for choosing technical experts, the academy can select a group of experts in all non-fiqh disciplines based on scholarly accomplishments and significant contributions to the specific field of specialization. One of the qualifications of eligible experts is to have published a number of works in peer-reviewed scientific journals. It is important to include some representatives of other regional academies, expand the pool of participation with regard to the technical experts and scientists and engage female jurists as full members.

The second element of independence relates to funding. The central academy will require considerable financial resources to finance infrastructure and any future expenditures including remuneration of members. To ensure financial independence, a suggestion is made to depend on public charity, zakah and endowment.[80] Based on the fact that zakah is to be given to eight categories of beneficiaries, some scholars call for expanding the scope of the category of "serving the cause of God" to include financing fiqh academies. Mustafa al-Zarqa proposes that depending on non-governmental financing is the best choice. A committee of reliable scholars can undertake the responsibility of raising funds for the academy, calling people to dedicate a

portion of zakah or endowments towards its functioning. Al-Zarqa argues that a group of classical jurists interpret the category of "serving the cause of God" to include any good deed based on the all-encompassing concept of virtue (*birr*).[81] This kind of financing removes any suspicions of governmental intervention and ensures greater independence whether in terms of choosing members, discussing any issues or taking any resolutions. However, some researchers see no problem in accepting governmental partial financing provided that it will not entail any official intervention or taking possession of the academy.[82]

Central World Fiqh Academy: Feasibility and Alternatives

Establishing a central academy fully independent of any government may be feasible in theory, but almost impossible in practice. Even when governments have nothing to do with financing the academy or appointing its members, governmental influence will still persist. Governments will not allow the establishment of such a central world academy on their lands without some special privileges. Moreover, the host state can impose restrictions on the academy, cancel its conferences or prevent certain members from attending its meetings. Other governments may intervene by preventing their nationals from joining the academy. In addition, any resolutions taken by this academy will remain ineffective unless the respective governments decide to abide by them. For these reasons, the existence of a fully independent academy is only a theoretical assumption which cannot be realized in the real world.

Given the unfeasibility of establishing a central world academy fully independent of any governmental influence, one viable alternative is to attempt to make use of already existing academies by capitalizing on their strengths while minimizing their weaknesses. In an attempt to do so, one suggestion calls for the establishment of a coordinating body to liaise between the different academies.[83] This body is to be elected from the members of all present academies. It is to shoulder the responsibility of coordinating discussions so as not to simultaneously discuss the same issues by more than one academy. Moreover, it should arrange

for the participation of representatives of other academies during annual conferences. In this way, the possibility of issuing contradictory resolutions can be kept to a minimum.[84] This coordinating body can hold an international conference to be attended by representatives of all academies across the world to discuss any issues that necessitate the input of all academies.

To ensure greater independence of the present academies, the issue of terminating membership shall be an exclusive right of the respective academy and is to be decided by majority vote. An alternative mechanism of financing is also necessary where the suggestion presented by al-Zarqa could be put into practice to finance these academies through zakah or endowments. In so doing, the required independence can be fulfilled without having to establish a central world academy. In fact, the present academies do a great job in tackling very complicated issues, and challenging some of the most deeply embedded practices in different parts of the world. However, to improve their efficacy and ability to provide religious guidance for issues born out of the particularities of a very complex modern life, some weaknesses have to be dealt with. The engagement of female members is indispensable exactly as the expansion of the pool of experts. Similarly, making use of modern technologies especially in disseminating the vast bulk of resolutions and recommendations of those academies and attempting to codify the juridical rulings to find their way into governmental legislations are recommended measures that can contribute to greater efficiency. The results of collective deliberations have to be included in the academic curricula at the university level based on the relevant disciplines and specializations. For example, the bioethical resolutions are to be taught for both students of Shariʿah sciences and medicine. The same holds true for the juridical resolutions in financial issues where both students of commerce and Shariʿah need to learn them. In this manner, we can ensure epistemological complementarity between various disciplines and one day can possibly have professional bankers with a solid background in Shariʿah aspects or competent physicians well versed in ethico-juridical issues. This could eventually contribute to fulfilling the need for both jurists and experts to be multidisciplinary in both religious and scientific knowledge as much as possible. Such

multidisciplinarity is an important requirement to ensure effective communication between the two parties in resolving any issue and to avoid misunderstanding. The project of "Islamization of Knowledge" could play a critical role in ensuring this complementarity by bridging the gap between scientific and Islamic knowledge. It is "a cultural and intellectual project aspiring to correct the processes of thinking within the Muslim mind so that it can produce Islamic, social, and humanistic knowledge based on the two sources Muslims accept as the established sources for knowing the truth: *waḥy* (Divine revelation) and *wujūd* (existence)."[85] This project envisages the integration of all branches of knowledge within a comprehensive framework that can deal more equitably with human and natural phenomena. Consequently, this makes it a prerequisite as a foundation for erecting the superstructure of the Ummah, for forming its individual and collective outlook on life, and for developing both its ideological and practical aspects.[86] In this way, the 'Islamization of knowledge' project may serve as a form of collective ijtihad, even though at a more philosophical level. Nonetheless, this might resolve the issue of conflicts between jurists and experts in respective fatwa institutions.

To conclude, it is more practical to reform the status quo of the existing academies rather than establishing a central world one which may eventually end up as another copy with the same shortcomings. Fiqh academies, albeit their imperfection, have proven to be a necessity for contemporary religious discourse. The mechanism of collective ijtihad facilitated by these academies testifies that Islamic law, by virtue of ijtihad, moves through time with notable ease and smoothness due to its inherent fluidity and evolutionary nature, transcending the spatio-temporal boundaries and ensuring its viability and applicability to all generations and times.

CONCLUSION

IT HAS been the contention of this study that collective ijtihad is a viable mechanism that has the potential to address the various problems of the individual process of *iftā'*. Collective ijtihad is defined as the total expenditure of effort by a group of jurisprudents to reach a probable knowledge of a legal ruling based on mutual consultation. Chapter one presented a historical survey of this collective mode of ijtihad highlighting its presence in early legal practice although no mention of the technical term itself existed. It underwent two main stages: one in which it thrived during the time of the Companions, and the era of decline during the time of the *Tābiᶜun* and the formative period of Islamic schools of fiqh. Islamic history subsequently witnessed occasional attempts to revive this collective form of reasoning with such attempts eventually being successfully realized in the modern age in the form of certain academies and ijtihad institutions established. *Al-Fatāwā al-ᶜĀlamgīriyyah* represents a prominent example of collective ijtihad operating in the post-formative period. The work was discussed as a comprehensive legal text of Ḥanafī fiqh, compiled by a selected board of eminent jurists, muftis and judges who extracted and collated rulings from a wide range of extant authoritative manuals. The compendium represents an early attempt at semi-codification of Islamic law since it was not compiled in the form of law articles as compared to the *Mecelle* or *Majallat al-Aḥkām al-ᶜAdlīyah* (also discussed) which exemplifies collective ijtihad in codifying Islamic law.

As pointed out, the Ottoman *Mecelle* marked an outstanding stage in the development of legal tradition being the earliest attempt by an Islamic state to codify Islamic fiqh and enact it as the law of the state. The *Mecelle* proved the possibility of systemizing Shariᶜah and its compilation was clear evidence of the flexibility and viability of Islamic

law; a fact that has proven remarkably true throughout the years. Both the *al-Fatāwā al-ʿĀlamgīriyyah* and *Mecelle* were undoubtedly inspirational for jurists of following generations profoundly impacting a revival movement in codifying Islamic law and realizing collective ijtihad.

The call rang true and has yielded tremendous results in terms of the institutionalizing of ijtihad through establishment of various academies and institutions. These latter function to ensure collaboration between Shariʿah scholars and oversee integration of the services of scientists and technical experts in various specialized disciplines. Chapter one singled out three academies for analysis due to their seminal contribution to the field of institutional collective ijtihad. The first to be established was the Islamic Research Academy, affiliated to Al-Azhar, in 1961. Two transnational bodies, MWL Islamic Fiqh Council and the OIC-International Islamic Fiqh Academy, both sponsored by Saudi Arabia and each part of a pan-Islamic organization, were subsequently established in 1977 and 1984 respectively. The chapter highlighted the methodology applied by these academies and reviewed examples of their collective ijtihad.

Chapter two discussed the authority of this collective mode of reasoning whose basic foundation is agreement by the majority. *Uṣūli* literature was examined in the course of discussing the authority of *ijmāʿ* and whether it can be constituted by majority view or only through unanimous agreement. It was shown that different positions are held with regards to the legal authority of majority opinion. According to the orthodox mainstream view, majority opinion does not constitute *ijmāʿ* and disagreement of even a single competent jurist will invalidate it. A counter view maintains the validity of *ijmāʿ* by majority opinion, while a middle position has been taken by some scholars who maintain that majority opinion yields authority but does not constitute *ijmāʿ*.

Because collective ijtihad deduces its authority from that of majority opinion, the same disagreement on the authoritativeness of majority opinion echoes in discussion on the legal effect of collective ijtihad. A group of contemporary scholars are of the view that collective ijtihad, being an opinion of the majority, is feasible *ijmāʿ*. For them, total

consensus on juridical issues subject to ijtihad is not possible and this kind of deliberative and collective reasoning is the viable alternative to *ijmāʿ*. Another group maintains that collective ijtihad is a middle approach between *ijmāʿ* and individual ijtihad. It constitutes a speculative authority weightier than the individual ijtihad and should be given priority. Some researchers conclude that it is considered to be on par with tacit *ijmāʿ*.

Taking into consideration the weight of the majority view in the sphere of collective ijtihad especially when it is issued by a group of high-caliber jurists based on mutual consultation with each other and with technical experts, this study has argued that the collective mode of ijtihad is even more superior than the majority opinion formed by the totality of individual views and may be elevated to a status near *ijmāʿ*. For this reason, the study presented collective ijtihad as a viable alternative to the controversial classical *ijmāʿ*. Even if we assume, for the sake of argument, that *ijmāʿ* was feasible in the past, it is not conceivable that it can be established in the modern context given the great advances that have taken place in all spheres of life where ijtihad has to tread unprecedented paths and reach new horizons that require interdisciplinary and multidisciplinary knowledge unattainable by individual scholars to decide on novel issues born out of the particularities of a complicated life.

Given the fact that collective ijtihad is generally practiced by jurists even if they are assisted by technical experts, a similar level of qualifications spelled out by the classical jurists for those undertaking ijtihad is still required. However, some flexibility can be maintained in setting the qualifications for collective ijtihad. The principle of divisibility of ijtihad as enunciated by the majority scholars of *uṣūl* is instrumental in relaxing the strict conditions set by early scholars. However, the study suggests an additional condition to ensure greater efficiency of collective ijtihad especially when grappling with issues of a multidisciplinary nature. This condition is reflected in the necessity of collaboration between jurists and experts. The educational background of the overwhelming majority of religious scholars is almost exclusively theological and religious in nature. Consequently, there is a noticeable difficulty in them grasping the technicalities of scientific

information, especially in complex issues like genetics, genetic engineering, genomics, multi-level marketing, devaluation and its effect on loans, new mortgage solutions, modern banking services, etc. Consequently, it is a necessity to refer to non-fiqh experts and specialists to ensure a proper perception of issues under juristic discussion.

Having established the legal authority of collective ijtihad and its viability as a feasible alternative to *ijmāʿ*, the second chapter concluded with highlighting the reformative role of collective ijtihad in uniting Muslims, eliminating controversy, standing against deviation and extremism, countering aggression and promoting the sublime value of *Shūrā*. It was contended that an ideal collective ijtihad can serve as a vehicle for Muslim unity especially in the legislative domain. If the way to geographic unity is hampered by territorial boundaries, the mechanism of collective ijtihad with its global presence surpasses any geographical barriers and transcends the spatiotemporal constraints of nation states. The possibility of Islamic unity could be further enhanced through the effect of collective ijtihad in bringing different jurisprudential schools closer together and establishing rapprochement among them. This desired rapprochement means to widen the scope of interaction and tolerance among all *madhāhib* so as to overcome any intellectual factionalism, political fanaticism, and social vandalism. Religious extremism, including religiously motivated terrorism, has been instrumental in destroying the achievements of great civilizations. The issue of combating extremism with its various aspects has remarkably occupied the attention of Muslim scholars and fiqh academies. They have been fighting an uphill battle with extremism and its figures. Taken into consideration the very nature of this mechanism where the opinion of the majority carries more weight and credibility in addition to the referential authority it represents as being issued by a group of high-caliber jurists, collective ijtihad has the potential to address some of the root causes of extremism. This fact was the underlying momentum in establishing or reforming some of the institutions of collective ijtihad. In addition, the study emphasizes the principle of *shūrā* as an integral part of ijtihad. It helps narrow the scope of juristic disagreement, promotes rapprochement between different views, prevents extremist and radical positions, ensures

credibility and reliability of the resulting rulings and lends them much credence.

The third chapter focused on another important role that merits special attention; this is the potential to address problematic issues concerning fatwa issuance and rationalizing its production. The chapter highlighted various problems of individual *iftā'* including the issuance of fatwa by unqualified persons, politicization of fatwa, the problem of live fatwa on satellite channels, and the problematic approaches of extreme leniency and overstrictness in *iftā'*. Fatwa is demonstration of a Shariᶜah rule, and this cannot be achieved by non-specialists. When issued by unqualified persons, fatwa is expected to fail in fulfilling its very function; rather than settling an unresolved question, it may elicit further debate and controversy and lead to confusion. Unfortunately, given the proliferation of self-declared *muftis*, the spread of mass media and the absence of a formal credible entity that can discredit or vouch for the qualifications of fatwa issuers, there is complete chaos in the world of Islamic law. The study emphasized a set of qualifications required for those undertaking the responsibility of *iftā'*. It also stated some disqualifiers that render fiqh-specialists unfit for issuing legal verdicts. Ignorance of Shariᶜah objectives constitutes one of the most prominent matters that hinder man's capacity of *iftā'*. Similarly, ignorance of people's reality and conditions is another disqualifier.

In addition, the study acknowledged the importance of technology and its profound effects on religious discourse. Satellite TV and Internet technologies take religious discourse and fatwa into unprecedented spaces beyond geographical areas. However, Satellite channels are in fact a double-edged sword, as they can be used to guide or misguide people. There are many concerns in terms of the qualification of individuals issuing fatwas from one part of the world to another that they know little about. The importance of the context when delivering a fatwa and the understanding of the sociocultural specificities of countries that fatwa addresses has become one of the growing problems attached to who should give a fatwa and what criteria they should fulfil before voicing scholarly opinion to avoid chaos or disorder. Among the problematic issues of live fatwa programs is haste

on the part of a mufti to answer questions due to pressure of the program's limited time and a large number of callers. Such haste contradicts the deliberateness required for *iftā'*. The phenomenon of conflict between fatwas is exacerbated due to a proliferation of fatwa programs and lack of any coordination. To compound the problem, no regulatory body exists to control the quality of fatwa disseminated on such programs. To keep the negative aspects of live fatwa to a minimum, the study recommended establishing a regulatory body including a group of prominent scholars of Shariᶜah to oversee the whole process of *iftā'* on such programs. This regulatory body can choose persons suitable to issue fatwa and set a general framework to ensure consistency and coordination and minimize anarchy and chaos.

Politicizing legal rulings exacerbates the chaotic status of fatwa. It is employed by different parties, not only the official muftis. The rise of violent and radical movements acting in the name of religion and legitimizing their actions through fatwas provides a further impetus to this phenomenon. As fatwa plays a crucial role embracing all aspects of a Muslim's life, political authorities have always been attempting to employ it for their best interests by exerting covert or overt pressures on a mufti to produce made-to-measure fatwas to support or justify a given stance. Another aspect of fatwa-related issues lies in going beyond the moderate approach to one of two extremes; extreme leniency and extreme strictness. The Shariᶜah is a moderate system of legislation that seeks balance between these two extremes. The problem occurs when a mufti exaggerates facilitation to the point of leniency, negligence, laxity and twisting of texts to find an easy way out to escape religious duties. Similarly, a persistent application of an overly strict approach problematizes the issuance of fatwa. Thus, excessive employment of *maslahah*, overriding the texts under pretext of observing Shariᶜah objectives, unwarranted consideration of necessity, unjustified quest of concessions and *talfīq* between opposing opinions, are all features of extreme leniency in issuance of fatwa. On the other hand, the approach of over-strictness in *iftā'* is characterized by several things, including exaggeration in blocking the means, adopting the most burdensome opinion in any disagreement, applying literal meanings of the texts while defeating their underlying purposes,

and ignoring the necessities and considerable needs the Shariᶜah came to observe and for which legal concessions and exceptions were ordained. Literalism, rigidity, blind and strict conformity to decontextualized controversial opinions are characteristic of the approach of over-strictness in giving fatwa.

As a religion of moderation, Islam takes the middle course between extreme puritanism and extreme laxity. Islam is committed to establishing a system of truth and justice that shuns laxity on one side and extremism on the other, consequently, the institution of *iftā'* and ijtihad need to reflect this middle course. Persistent application of either one of the two extremes contributes to chaos in the field of *iftā'* and exacerbation of the phenomenon of competing individual fatwas. The qualified mufti should exercise this process in a justly balanced approach that avoids leniency and overstrictness.

To overcome these challenges, the study suggested employment of the mechanism of collective ijtihad in regulating fatwa issuance. By adopting this collaborative mode of legal reasoning, the problem of issuing legal verdicts by unqualified persons can be efficiently handled. The same holds true for the issue of politicizing fatwa or adopting an extreme laxity or over-strict approach in giving fatwas. Being a mechanism of collective reasoning, this mode of ijtihad is less prone to error in comparison with the individual endeavor. The collaborative nature and involvement of many jurists and technical experts, rather than one single jurist, enables the conducting of a rigorous and multilayered examination before construing a legal ruling so that the possibility of reaching erroneous decisions can be kept to a minimum. The study discussed the potential of collective ijtihad to address the aforementioned problematic issues of individual *iftā'*, with special reference to bioethics and financial issues.

Contemporary scientific discoveries have become so innovative and groundbreaking and also so full of ramifications that it has become almost impossible for Shariᶜah scholars to individually handle them. The mechanism of collective ijtihad is indispensable to properly address the complex issues arising from astounding advances, which have transformed the nature of many people's lives. The role of collective ijtihad has been made crystal clear in the Islamic ethico-legal

deliberations conducted by fiqh academies to face bioethical challenges and novel issues. During these deliberations, it was easily apparent that the issues were too complex to be addressed by those specialized in either Shariᶜah sciences or biomedical sciences alone. There are many reasons contributing to the inability of contemporary Muslim jurists to exercise ijtihad in these novel and intricate issues by themselves. These include the difficulty of grasping the technicalities of scientific information, the nature of the educational background of jurists, and the inaccessibility to primary sources on such issues because of language barriers. Scientists have played a very important role in providing scientific information needed for the development of a sound understanding and perception of the issues at hand. In some occasions, the scientific information helped to correct certain wrong perceptions upon which an individual legal ruling was based leading some scholars of Shariᶜah to change their previously chosen opinion and their ijtihad.

By the same token, the collective mode of reasoning is urgently required in other fields which necessitate the input of technical experts for the purpose of formulating a proper perception in order to rationalize fatwa and minimize erroneous legal verdicts. The financial field represents one of these domains where the mechanism of collective ijtihad has special significance and a crucial role to play. This role can be fulfilled by the different councils of fiqh and, most importantly, by the specialized Shariᶜah boards in the Islamic financial institutions. Shariᶜah supervisory boards serve as institutions of collective ijtihad specifically dedicated to Islamic financial institutions. The Shariᶜah board performs a range of responsibilities which include issuing fatwas, participation in product development and structuring activities, reviewing and approving matters related to Shariᶜah, practicing Shariᶜah auditing and ensuring the proper applications of legal controls, issuance of an annual certification of Shariᶜah compliance and providing customized training for staff of the institutions. To reap the benefits of collective ijtihad, the study argued that these Shariᶜah boards have to include a non-jurist expert of economics to provide the necessary technical information and explain any ambiguous aspects of any contract or transaction so the board can have the proper perception to construe a reliable legal ruling.

To further enhance the potential of collective ijtihad and maximize its effects in rationalizing the process of fatwa production, chapter four highlighted some obstacles and challenges that need to be adequately addressed to reap the benefits of this collective mode of ijtihad. Such challenges include affiliation and lack of independence, the controversial role of technical experts and its scope, the limited pool of participant non-fiqh experts, the absence of female members in fiqh academies, the politicization of academy membership, multiplicity of fiqh academies and lack of liaison between them. The study gave special reference to the case of Shariʿah supervisory boards as the problem of affiliation is more evident in such boards, while the controversial role of experts is tackled in light of ijtihad in biomedical issues.

Having highlighted the different challenges potentially hindering the institution of collective ijtihad, the study recommended some solutions to ensure viability and greater efficiency of this collective mode of reasoning. A solution presented by many researchers suggests establishing a central academy in order to serve the role of a controlling unit that coordinates between different regional academies, nominates their members, decides their remuneration, sets the agenda of discussions, ensures consistency of resolutions and eliminates the possibility of contradiction. To address the problem of financial independence, the recommendation is to employ the mechanism of public funding through zakah or endowments. In addition, members of this institution can be chosen by means of free direct elections by the scholars themselves in an international Islamic conference. This independent institution can be responsible for nominating members of Shariʿah supervisory boards.

However, the study also pointed out that the establishment of a central academy fully independent of any government is feasible in theory, but almost impossible to realise in practice. Governments will not allow the establishment of such a central world academy on their lands without some special privileges. The host state can impose restrictions on this academy, cancel its conferences or prevent certain members from attending its meetings. Other governments may intervene by preventing their nationals from joining the academy. In addition, any resolutions taken by this academy will remain ineffective

unless the respective governments decide to put them into force. Bearing this in mind, the study concluded that it will be more practical to reform the status quo of existing academies rather than establishing a central world one which may eventually end up as another copy suffering the same shortcomings.

A possible solution, the study put forward, is to attempt to make use of the already existing academies by capitalizing on their strengths while minimizing their weaknesses. Accordingly, the study recommended the establishment of a coordinating body to liaise between the different academies. This body can be elected from the members of all present academies. To ensure independency, the study recommended dependence on public charity, zakah and endowment to finance fiqh academies. Moreover, the issue of terminating membership shall be an exclusive right of the respective academy and be decided by majority vote. The study concluded by emphasizing the necessity of engaging female members in fiqh academies and expanding the pool of experts to represent all disciplines. In addition, employing modern technologies to disseminate the vast bulk of resolutions and recommendations of those academies; attempting to codify the juridical rulings to find their way into the governmental legislations and including the results of collective ijtihad in the academic curricula at the university level are recommended.

With this conclusion, the work provides another perspective for addressing the question of full independence of collective ijtihad institutions, which requires further investigation. Similarly, the role of this collective mechanism in addressing the issues of Muslim minorities is another scope for future research. Such a study will enrich our understanding of the institution of collective ijtihad in a minority context.

NOTES

INTRODUCTION

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CHAPTER 1

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41 For example, Qutb Mustafa Sanu and Khalid Hussein al-Khalid affirm that collective ijtihad was practiced at the time of the Prophet. See Qutb Mustafa Sanu, *Al-Ijtihād al-Jamāᶜī al-Manshūd*, op. cit., p. 84 ff.; Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, p. 125. In addition, ᶜAbd al-Nasir Tawfiq al-ᶜAttar in his paper titled, "Al-Taᶜrīf bi al-Ijtihād al-Jamāᶜī" opines that individual ijtihad emerged during the era of the Prophet while the collective one was firstly practiced in the era of Abū Bakr. In response to this, Khalifah Ba Bakr al-Hasan denies any practice of ijtihad as there was no need for it during the lifetime of the Prophet. See Papers of the *Conference on al-Ijtihād al-Jamāᶜī fī al-ᶜĀlam al-Islāmī*, op. cit., vol. 1,

pp. 32, 117. On the other hand, ʿAbd al-Majod al-Sharafi dates collective ijtihad back to the era of the rightly-guided caliphs. See *Al-Ijtihād al-Jamāʿī fī al-Tashrīʿ al-Islāmī*, op. cit., p. 48.

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52 Al-Rāzī, *Al-Maḥṣūl fī ʿIlm al-Uṣūl*, ed. Taha Jabir Alalwani (Mu'assasat al-Risāla, n.d.), vol. 6, p. 9.

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58 See Ibn Kathīr, *The Life of The Prophet Muḥammad*, op. cit., vol. 2, p. 221; See Shaban Muhammad, *Al-Ijtihād al-Jamāʿī wa Dawr al-Majāmiʿ al-Fiqhīyah fī Taṭbiqih*, op. cit., p. 78.

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69 See Shaban Muhammad, *Al-Ijtihād al-Jamāʿī wa Dawr al-Majāmiʿ al-Fiqhīyah fī Taṭbiqih*, op. cit., p. 92; Al-Ṭabarī, *The History of al-Ṭabarī*, vol. 15, *The Crisis of the Early Caliphate*, p. 28.

70 See Ahmed al-Raysuni, "*Al-Ijtihād al-Jamāʿī*," Conference on Fatwa, p. 8.

71 See ʿAbd Allah al-Zubayr, *Al-Ijtihād al-Jamāʿī: Ususuhu wa Ḍawābiṭuh*, op. cit., p. 37.

72 Hussein al-Mallah, *Al-Fatwā: Nashaʿtuhā wa Taṭawwuruha Uṣūluhā wa Taṭbiqātuhā* (Beirut: Al-Maktabah al-ʿAṣrīyah, 1430 AH), p. 779.

73 See ʻAbd al-Wahhab Khallaf, *ʿIlm Uṣūl al-Fiqh*, p. 149; ʿAbd al-Majid al-Sharafi, *Al-Ijtihād al-Jamāʿī fī al-Tashrīʿ al-Islāmī*, op. cit., p. 52.

74 See Muhammad Taqi al-Usmani, "Al-Ijtihād al-Jamāʿī," op. cit., p. 9.

75 See Zayn R. Kassam, Yudit Kornberg Greenberg, and Jehan Bagli (eds.), *Islam, Judaism, and Zoroastrianism. Encyclopedia of Indian Religions* (Dordrecht: Springer, 2018), p. 229; Khalfaoui, Mouez, "Al-Fatāwā l-ʿĀlamgīriyya," in: *Encyclopedia of Islam* 3, eds. Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson. Consulted online on 08 January 2019 at http://0-dx.doi.org.library.qnl.qa/10.1163/1573-3912_ei3_COM_27028; Zafarul Islam, "Origin and Development of Fatāwāi-Compilation in Medieval India," *Hamdard Islamicus* 20, no. 1 (1977), p. 8.

76 See Khalfaoui, Mouez, "Al-Fatāwā l-ʿĀlamgīriyya," op. cit.

77 Muhammad Khalid Masud, Brinkley Messick, and David Stephan Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas* (Cambridge, MA: Harvard University Press, 1996), p. 14.

78 See Ian Copland, Ian Mabbett, Asim Roy, Kate Brittlebank, and Adam Bowles, *A History of State and Religion in India* (London: Routledge, 2012), pp. 92, 115.

79 Anwar Ahmad Qadri, "The Fatāwā-i-ʻAlamgīri," *Journal of the Pakistan Historical Society* 14, pt. 3 (July 1966), pp. 188–199.

80 Zayn R. Kassam, et al., *Islam, Judaism, and Zoroastrianism. Encyclopedia of Indian Religions*, op. cit., p. 230.

81 See Alan M. Guenther, "Ḥanafī Fiqh in Mughal India. The Fatawa-i ʿAlamgiri," in Richard M. Eaton (ed.), *India's Islamic traditions 711–1750* (New Delhi 2003), pp. 209–30.

82 Ibid.

83 Qadri, "The Fatāwā-i-ʻAlamgīri," op. cit., p. 188.

84 See Khalfaoui, Mouez, "al-Fatāwā l-ʿĀlamgīriyya," op. cit.

85 See Qadri, "The Fatāwā-i-ʻAlamgīri," op. cit., p. 189; Mustafa al-Zarqa, *Al-Madkhal al-Fiqhi al-ʿĀm*, op. cit., vol. 1, pp. 236–37.

86 See Khalfaoui, Mouez, "al-Fatāwā l-ʿĀlamgīriyya," in *Encyclopedia of Islam*, op. cit.

87 See Alan M. Guenther, "Ḥanafī Fiqh in Mughal India. The Fatawa-i ʿAlamgiri," op. cit., p. 215.

88 See Ian Copland, et al, *A History of State and Religion in India*, op. cit., pp. 115–16.

89 See Khalfaoui, Mouez, "al-Fatāwā l-ʿĀlamgīriyya," in *Encyclopedia of Islam*, op. cit.

90 It is worth mentioning that this compendium helps rebut some allegations of discrimination within Islamic law with regard to non-Muslims. Although Mouez Khalfaoui states that greater discrimination within Islamic law with regard to non-Muslims was expected in seventeenth-century South Asia,

this work, he concedes, presents another conception of communal life that emphasizes the possibility of a communal co-existence between Muslims and non-Muslims on the condition that the groups respect certain norms of geographical and social demarcation. See Mouez Khalfaoui, "Together but Separate: How Muslim Scholars Conceived of Religious Plurality in South Asia in the Seventeenth Century" in *Bulletin of the School of Oriental and African Studies*, University of London, 2011, vol. 74, no. 1 (2011), pp. 87–96.

91 See Alan M. Guenther, "Ḥanafī Fiqh in Mughal India. The Fatawa-i ʿAlamgiri," op. cit., p. 215.

92 Ibid.

93 See Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāʿī fī al-Fiqh al-Islāmī*, op. cit., p. 166.

94 See Mouez Khalfaoui, "Al-Fatāwā l-ʿĀlamgīriyya," in *Encyclopedia of Islam*, op. cit.

95 See Qadri, "The Fatāwā-i-'Alamgīri," op. cit., p. 192.

96 See Davison, R.H., "Tanẓīmāt," in *Encyclopedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Consulted online on 08 February 2019; "Tanzimat," *Britannica Academic*, Encyclopedia Britannica, 3 Dec. 2018. 0-academic-eb-com.library.qnl.qa/levels/collegiate/article/Tanzimat/71216. Accessed 8 Feb. 2019.

97 See Gábor Ágoston and Bruce Masters, *Encyclopedia of the Ottoman Empire* (New York: Facts on File, 2009), p. 161.

98 Ibid, p. 163.

99 See Gábor Ágoston and Bruce Masters, *Encyclopedia of the Ottoman Empire*, pp. 413–14.

100 See Dora Glidewell Nadolski, "Ottoman and Secular Civil Law" in *International Journal of Middle East Studies*, vol. 8, no. 4 (Oct., 1977), pp. 517–543 at 524.

101 For more information on Ottoman Nizāmiye courts, see Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 29.

102 See Samy Ayoub, "The Mecelle, Sharia, and the Ottoman State: Fashioning and Refashioning of Islamic Law in the Nineteenth and Twentieth Centuries" in *Journal of the Ottoman and Turkish Studies Association*, vol. 2, no. 1, Law and Legality in the Ottoman Empire and Republic of Turkey (Spring 2015), pp. 121–146 at 124, henceforth *The Mecelle*; Findley, C.V., "Medjelle," in *Encyclopedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Consulted online on 25 January 2019, http://0-dx.doi.org.library.qnl.qa/10.1163/1573-3912_islam_SIM_5107.

103 See Samy Ayoub, "The Mecelle," op. cit., p. 127.

104 See Necmettin Kızılkaya, "From Legal Maxims to Codification: *Mecelle-i Ahkām Adliye*" in idem, *Legal Maxims in Islamic Law: Concept, History and Application of Axioms of Juristic Accumulation* (Leiden: Brill, 2021), pp. 176–77.

105 See Samy Ayoub, "The Mecelle," op. cit., pp. 130–31.

106 See M. Habibur Rahman and Noor Mohammad Osmani, "An Appraisal of Majallat al-Ahkam al-Adliyyah: A Legal Code of Islamic Civil Transactions by the Ottoman," in *International Journal of Academic Research in Business and Social Sciences* 8 (9), pp. 1381–1383; Samy Ayoub, "The Mecelle," op. cit., pp. 128–9; Mustafa al-Zarqa, *Al-Madkhal al-Fiqhi al-ʿĀm*, op. cit., vol. 1, p. 238.

107 Samy Ayoub, "The Ottoman Rationale for Codification: The *Mecelle*" in idem, *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence* (Oxford: Oxford Islamic Legal Studies, 2020), p. 138.

108 See Findley, C.V., "Medjelle," in *Encyclopedia of Islam*, op. cit.; Gábor Ágoston and Bruce Masters, *Encyclopedia of the Ottoman Empire*, op. cit., p. 355.

109 See Habibur Rahman and Noor Mohammad Osmani, "An Appraisal of Majallat al-Ahkam al-Adliyyah, op. cit., p. 1387.

110 Gábor Ágoston and Bruce Masters, *Encyclopedia of the Ottoman Empire*, op. cit., p. 355.

111 See Murteza Bedir, "Fikih to Law: Secularization through Curriculum" in *Islamic Law and Society*, vol. 11, no. 3 (2004), pp. 378–401, at 387; Findley, C.V., "Medjelle," in *Encyclopedia of Islam*, op. cit.; Gábor Ágoston and Bruce Masters, *Encyclopedia of the Ottoman Empire*, op. cit., p. 356.

112 Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), p. 411.

113 See Gábor Ágoston and Bruce Masters, *Encyclopedia of the Ottoman Empire*, op. cit., p. 356; Findley, C.V., "Medjelle," in *Encyclopedia of Islam*, op. cit.

114 See Iza Hussin, "Textual Trajectories Re-reading the Constitution and Majalah in 1890s Johor," in *Indonesia and the Malay World*, 2013, vol. 41, no. 120, pp. 1–18.

115 Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity*, op. cit., p. 31.

116 Gábor Ágoston and Bruce Masters, *Encyclopedia of the Ottoman Empire*, op. cit., p. 357.

117 See Aznan Hasan, "An Introduction to Collective Ijtihad: Concept and Application," op., cit., pp. 30–32.

118 See Samy Ayoub, "The Mecelle," op. cit., p. 130.

119 See Mustafa al-Zarqa, *Al-Madkhal al-Fiqhi al-ʿĀm*, op. cit., vol. 1, p. 240.

120 Samy Ayoub, "The Mecelle," op. cit., p. 139.

121 Al-Hajwi, *Al-Fikr al-Sāmī fī Tārīkh al-Fiqh al-Islāmī* (Beirut: Dār al-Kutub al-ʿIlmīyah, 1995), vol. 2, p. 470.

122 See Muhammad b. Al Hadi Abu Al Ajfan, "Al-Ijtihād al-Jamāʿī fī Tunis wa al-Maghrib wa al-Andalus," *Conference on al-Ijtihād al-Jamāʿī fī al-ʿĀlam al-Islāmī*, vol. 1, p. 539.

123 See al-Tahir Ibn ʿAshur, *Maqāṣid al-Sharīʿah al-Islāmīyah*, ed. al-Tahir al-Mesawī (Jordan: Dār al-Nafāʿis, 2nd edn., 2001), p. 409.

124 See al-Zarqa, "Al-Ijtihād Wa Dawr al-Fiqh fī Ḥall al-Mushkilāt" in *Journal of Islamic University*, vol 20, no. 4 (1985), pp. 41–55.

125 Said Shabbar, *Ijtihad and Renewal*, trans. Nancy Roberts (Herndon, USA: International Institute of Islamic Thought, 2017), pp. 28–9.

126 See ʿAbd al-Majid al-Sharafi, *Al-Ijtihād al-Jamāʿī fī al-Tashrī' al-Islāmī*, op. cit., p. 56ff.

127 Mohammad Hashim Kamali, "The Shari'a: Law as the Way of God" in *Voices of Islam*, vol. 1: *Voices of Tradition*, edited by Vincent J. Cornell (Westport: Praeger Publishers, 2007), p. 179.

128 For more information about the Council of Senior Scholars, see Zawat Irfan al-Maghribi, *Hay'at Kibār al-ʿUlamāi'* (Cairo: al-Hay'ah al-Miṣrīyah al-ʿĀmmah lil Kitāb, 2012). This council was re-established in 2012.

129 See ʿAbd al-Rahman al-ʿAsili, Maher al-Hadad, *Majmaʿ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyatuh* (Cairo: Majmaʿ Maṭābiʿ al-Azhar, 1429/2008), vol. 1, p. 11; Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā'* (Leiden: Brill Academic Publishers, 1997), p. 187.

130 See ʿAbd al-Fattah Barakah, "Al-Ijtihād al-Jamāʿī fī Miṣr: Majmaʿ al-Buḥūth al-Islāmīyah," *Conference on al-Ijtihād al-Jamāʿī fī al-ʿĀlam al-Islāmī*, vol. 1, p. 195ff; ʿAbd al-Rahman al-ʿAsili, Maher al-Hadad, *Majmaʿ al-Buḥūth al-Islāmīyah*, pp. 11–22.

131 Ibid. See also the website of Al-Azhar at the following link http://www.azhar.eg/magmaa-en/AboutUs. Accessed March 2019.

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133 Ibid, pp. 35, 47 and 57. See also ʿAbd al-Fattah Barakah, "Al-Ijtihād al-Jamāʿī fī Miṣr: Majmaʿ al-Buḥūth al-Islāmīyah," vol. 1, p. 198.

134 Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā'*, op. cit., p. 187.

135 See al-ʿAsili and al-Hadad, *Qarārāt wa Tawṣiyyāt Majmaʿ al-Buḥūth al-Islāmīyah*, pp. 17–18.

136 Ibid, p. 113.

137 Ibid, p. 58.

138 Al-ʿAsili and al-Hadad, *Majmaʿ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyātuh*, op. cit., vol. 2, pp. 308–10.

139 Al-ᶜAsili and al-Hadad, *Majmaᶜ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyātuh*, pp. 33–4.

140 Ibid, p. 131.

141 Narrated by al-Bukhārī in his *Ṣaḥīḥ*, "Book of al-Ṭibb," chapter of the taking of poison and treating with it, no. 5778.

142 Narrated by al-Bukhārī, "Book of al-Ṭibb," Chapter: There is no disease except its treatment, no. 5678.

143 Al-ᶜAsili and al-Hadad, *Majmaᶜ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyātuh*, op. cit., vol. 1, pp. 132–37.

144 Ibid, p. 137ff.

145 Due to the problematic issue in translating the word *ribā* into usury or interest, the Arabic word is kept here. For more information about the problems of translating this concept and the difference between it and the suggested English alternatives, see Ugi Suharto, "*Ribā* and Interest in Islamic Finance: Semantic and Terminological Issue," *International Journal of Islamic and Middle Eastern Finance and Management*, vol. 11, issue 1 (2018), pp. 131–138.

146 Al-ᶜAsili and al-Hadad, *Majmaᶜ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyātuh*, pp. 27–9.

147 See Mohammad Hashim Kamalī, *The Shari'a: Law as the Way of God*, op. cit., p. 179.

148 See Shaban Muhammad, *Al-Ijtihād al-Jamāᶜī wa Dawr al-Majāmiᶜ al-Fiqhīyah fī Taṭbiqih*, op. cit., p. 175; Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, op. cit., p. 294; ᶜAbd al-Majid al-Sharafi, *Al-Ijtihād al-Jamāᶜī fī al-Tashrīᶜ al-Islāmī*, op. cit., p. 139.

149 See Jamal al-Din Mahmud, "Al-Ijtihād al-Jamāᶜī fī al-Mamlakah ᶜArabīyah al-Saᶜūdīyah," *Conference on al-Ijtihād al-Jamāᶜī fī al-ᶜĀlam al-Islāmī*, vol. 1, pp. 402–3.

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151 Muslim World League, *Resolutions of the Islamic Fiqh Council*, Proceedings of the 8th Session (Makkah al-Mukarramah: MWL, n.d.), pp. 18–32.

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153 Mohammed Ali Al-Bar and Hassan Chamsi-Pasha, *Contemporary Bioethics Islamic Perspective* (Dordrecht: Springer, 2015), p. 174.

154 Aref Abu-Rabia, "Infertility and Surrogacy in Islamic Society: Socio-Cultural, Psychological, Ethical, and Religious Dilemmas" in *The Open Psychology Journal* 6, 2013, pp. 54–60.

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156 Muslim World League, *Resolutions of the Islamic Fiqh Council*, Proceedings of the 5th Session, Resolution 4, pp. 97–8.

157 Ibid, Proceedings of the 7th Session, Resolution 5, pp. 148–53.

158 The same four cases are also prohibited in the resolution issued by the OIC International Islamic Fiqh Academy in its third session held in Jordan in 1986. Actually, this resolution prohibited five cases, while the MWL Islamic Fiqh Council permitted the fifth case of a surrogate mother if she is a co-wife. See Mahdi Zahraa and Shaniza Shafie, "An Islamic Perspective on IVF and PGD, with Particular Reference to Zain Hashmi, and Other Similar Cases" in *Arab Law Quarterly*, vol. 20, no. 2 (2006), pp. 152–180. It should be noted that "Islamic Fiqh Council" in Mahdi Zahraa and Shaniza Shafie's paper refers to the academy affiliated to the Organization of Islamic Cooperation, not the Islamic Fiqh council of the Muslim World League.

159 Mohammed Ali Al-Bar and Hassan Chamsi-Pasha, *Contemporary Bioethics Islamic Perspective*, op. cit., p. 177.

160 See Omer Awass, "Fatwa, Discursivity, and the Production of Sharia," in Timothy P. Daniels (ed.), *Sharia Dynamics: Islamic Law and Sociopolitical Processes* (UK: Palgrave Macmillan, 2017), pp. 31–62 at 45; Hussein al-Mallah, *Al-Fatwā: Nashaᶜtuhā wa Taṭawwuruha Uṣūluhā wa Taṭbiqātuhā*, op. cit., p. 783.

161 See al-Shawi, *Fiqh al-Shūrā wa al-Istishārah*, op. cit., vol. 2, pp. 753–4.

162 See T.J. Gunn and A. Lagresa, "The Organisation of Islamic Cooperation: Universal Human Rights, Islamic Values, or Raisons d'état?" in *Journal of Human Rights and International Legal Discourse*, vol. 10, no. 2, 2016; Shaban Muhammad, *Al-Ijtihād al-Jamāᶜī wa Dawr al-Majāmiᶜ al-Fiqhīyah fī Taṭbiqih*, op. cit., p. 197; Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, op. cit., p. 300; Jamal al-Din Mahmud, "Al-Ijtihād al-Jamāᶜī fī al-Mamlakah ᶜArabīyah al-Saᶜūdīyah," *Conference on al-Ijtihād al-Jamāᶜī fī al-ᶜĀlam al-Islāmī*, vol. 1, pp. 408–13; Omer Awass, "Fatwa, Discursivity, and the Production of Sharia," in Timothy P. Daniels (ed.), *Sharia Dynamics: Islamic Law and Sociopolitical Processes*, op. cit., pp. 31–62 at 45; See also the first issue of the *Journal of International Islamic Fiqh Academy* (Jeddah: OIC, 1986), p. 59ff.

163 Ibid.

164 See the first issue of the *Journal of International Islamic Fiqh Academy*, op. cit., pp. 137–42; Shaban Muhammad, *Al-Ijtihād al-Jamāᶜī wa Dawr al-Majāmiᶜ al-Fiqhīyah fī Taṭbiqih*, op. cit., pp. 201–6; Jamal al-Din Mahmud, "Al-Ijtihād al-Jamāᶜī fī al-Mamlakah ᶜArabīyah al-Saᶜūdīyah," *Conference on al-Ijtihād al-Jamāᶜī fī al-ᶜĀlam al-Islāmī*, vol. 1, pp. 412–14; Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, op. cit., pp. 300–3.

165 See Khalid Al-Muzainī, *Al-Futyā al-Muᶜāṣira: Dirāsah Ta'ṣīliyyah fī Ḍawaᶜ al-Siyāsah al-Sharᶜīyah* (Riyadh: Dār Ibn al-Jawzī, 1st edn., 1430 AH), p. 832;

Abd al-Qahir Qamar, "Al-Ijtihād wa al-Iftā' fī Majmaᶜ al-Fiqh al-Islāmī al-Duwalī" in *Al-Iftā' fī ᶜĀlam Maftūḥ: Al-Wāqiᶜ al-Māthil wa al-Amal al-Murtaja*, papers and proceedings of the conference held in Kuwait, 9, 11 Jumādā al-Ūlā 1428 AH, 26–28 May 2007 (Kuwait: al-Markaz al-ᶜĀlamī lil Wasaṭīyah, 1st edn., 2007), vol. 2, pp. 55–7.

166 Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985–2000 (Jeddah: Islamic Development Bank, 2000), p. 8.

167 The first session was dedicated to examination of governing statute and structure, reports submitted by some divisions such as the Fatwa division and that of Planning and Follow-up, in addition to some regulatory decisions.

168 See Mohammed Ghaly, *Islam and Disability: Perspectives in Theory and Jurisprudence* (New York: Routledge, 2010), p. 7; Sarah Albrecht, *Dār al-Islām Revisited. Territoriality in Contemporary Islamic Legal Discourse on Muslims in the West* (Leiden: Brill, 2018), p. 134.

169 Mohammed Ghaly, "Sharia Scholars and Modern Biomedical Advancements: What Role for Religious Ethics in the Genomic Era?" in Mohammed Ghaly (ed.), *Islamic Ethics and the Genome Question* (Leiden: Koninklijke Brill NV, 2019), p. 24; Idem, "Biomedical Scientists as Co-Muftis: Their Contribution to Contemporary Islamic Bioethics," in *Die Welt des Islams*, vol. 55, issue 3/4, Special Theme Issue: The Social Politics of Islamic Bioethics (2015), pp. 286–311.

170 See Hans Visser, *Islamic Finance: Principles and Practice* (UK: Edward Elgar Publishing Limited, 2009), p. 95.

171 Ibid, p. 12.

CHAPTER 2

1 See Ahmed Hasan, "The Classical Definition of Ijmāᶜ: The Nature of Consensus," op. cit., p. 264.

2 See Al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, op. cit., vol. 1, p. 311; Wahbah al-Zuhayli, *Uṣūl al-Fiqh al-Islāmī* (Damascus: Dār al-Fikr, 1406 AH), vol. 1, p. 518ff.; Mahmud Abu Layl, "Al-Ijtihad al-Jamāᶜī: Ḍarūratuh w-Ḥujjīyatuh," *Conference on al-Ijtihād al-Jamāᶜī fī al-ᶜĀlam al-Islāmī*, vol. 2, p. 983; Ahmed Hasan, "The Classical Definition of Ijmāᶜ: The Nature of Consensus," op. cit., p. 264.

3 See Yasin Dutton, ""Sunnah," Ḥadīth," and Madinan "ᶜAmal"" in *Journal of Islamic Studies*, vol. 4, no. 1 (January 1993), pp. 1–31, at 11, note 33.

4 Al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, op. cit., vol. 1, p. 311; Wahbah al-Zuhayli, *Uṣūl al-Fiqh al-Islāmī*, vol. 1, p. 518ff.; Mahmud Abū Layl, "Al-Ijtihād al-Jamāᶜī: Ḍarūratuh wa Ḥujjīyatuh," *Conference on al-Ijtihād*

al-Jamāʿī fī al-ʿĀlam al-Islāmī, vol. 2, p. 983; Ahmed Hasan, "The Classical Definition of Ijmāʿ: The Nature of Consensus," op. cit., p. 264., Mustafa Shalabi, *Uṣūl al-Fiqh al-Islāmī* (Beirut: Dār al-Nahḍat al-ʿArabīyyah, n.d.), p. 152.

5 Al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 1, p. 312; Ahmed Hasan, "The Classical Definition of Ijmāʿ: The Nature of Consensus," p. 265.

6 Ahmed Hammad, *Abū Ḥamid al-Ghazālī's Juristic Doctrine in Al-Mustaṣfā min ʿIlm al-Uṣūl with Translation of Volume One*, op. cit., p. 116.

7 Al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 1, pp. 312–3; Ahmed Hasan, "The Classical Definition of Ijmāʿ: The Nature of Consensus," pp. 266–7.

8 See Al-Āmidī, *Al-Iḥkām*, op. cit., vol. 1, pp. 314–6; al-Ghazālī, *Al-Mustaṣfā*, cited in Ahmed Hammad, *Abū Ḥamid al-Ghazālī's Juristic Doctrine in Al-Mustaṣfā min ʿIlm al-Uṣūl with Translation of Volume One*, p. 700; Wahbah al-Zuhayli, *Uṣūl al-Fiqh al-Islāmī*, vol. 1, p. 520; Mahmud Abu Layl; Ahmed Hasan, "The Classical Definition of Ijmāʿ: The Nature of Consensus," op. cit., p. 267 ff.,

9 See Al-Jaṣṣāṣ, *Uṣūl al-Jaṣṣāṣ, al-Musammā, al-Fuṣūl fī al-Uṣūl*, ed. ʿUjayl Jasim al-Nashami (Kuwait: Ministry of Awqaf and Islamic Affairs, 2nd edn., 1994), vol. 3, pp. 315–6.

10 Wahbah al-Zuhayli, *Uṣūl al-Fiqh al-Islāmī*, vol. 1, p. 522.

11 See Mahmud Shaltut, *Al-Islam ʿAqīdah wa Sharīʿah* (Cairo: Dār al-Shurūq, 14th edn., 1987), p. 545.

12 See Abd al-Wahhab, Khallaf, *ʿIlm Uṣūl al-Fiqh*, pp. 149.

13 See Khalid al-Muzaini, *Al-Futyā al-Muʿāṣirah: Dirāsah Taʾṣīliyyah fī Ḍawaʾ al-Siyāsah al-Sharʿīyah*, op. cit., p. 786.

14 Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāʿī fī al-Fiqh al-Islāmī*, op. cit., p. 233.

15 Mahmud Abu Layl, "Al-Ijtihād al-Jamāʿī: Ḍarūratuh wa Ḥujjīyatuh," *Conference on al-Ijtihād al-Jamāʿī fī al-ʿĀlam al-Islāmī*, vol. 2, p. 990.

16 Al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 4, p. 247.

17 See Qutb Mustafa Sanu, *Ijtihād al-Jamāʿī al-Manshūd*, op. cit., pp. 132–135.

18 Ibid, pp. 140–41. See also: Mahmud Abu Layl, "Al-Ijtihād al-Jamāʿī: Ḍarūratuh wa Ḥujjīyatuh," *Conference on al-Ijtihād al-Jamāʿī fī al-ʿĀlam al-Islāmī*, vol. 2, pp. 990–93.

19 Al-Abd Khalil, "Al-Ijtihād al-Jamāʿī wa Ahamīyatuh fī al-ʿAṣr al-Ḥadīth" in *Journal of Dirasat: Human and Social Sciences* (Jordan: University of Jordan), vol. 14, no. 10 (1987), pp. 209–225.

20 See Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, p. 120ff; p. 193. George F. Hourani, "The Basis of Authority of Consensus in Sunnite Islam," in idem, *Reason and Tradition in Islamic Ethics* (Cambridge: Cambridge University Press, 2007), p. 193.

21 Ahmad Atif, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Islamic Jurisprudence* (Leiden: Brill, 2006), p. 136.

22 Ibn Ḥazm, *Marātib al-Ijmāʿ*, ed. Hasan Ahmad (Beirut: Dār Ibn Ḥazm, 1st edn., 1998), p. 27.

23 Muḥammad al-Kulinī, *Uṣūl al-Kafi*, ed. Ali Akbar al-Ghiffari, vol.1, pp. 178–79, p. 83, as cited in Jasser Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach*, pp. 109–12.

24 See Ibn Ḥazm, *Marātib al-Ijmāʿ*, op. cit., pp. 26–7; Jamal b. ʿAmmar al-Ahmar, *Ijmāʿ Ahl al-Madīnah* (Cairo: Mufakrūn, 2018), p. 49; Jasser Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law*, op. cit., pp. 109–112.

25 See al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ʿIlm al-Uṣūl*, op. cit., vol. 1, p. 350; Al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, op. cit., vol. 1, p. 263; Wahbah al-Zuhayli, *Uṣūl al-Fiqh al-Islāmī*, vol. 1, p. 569.

26 Ibid.

27 Mohammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Oxford: Oxford University Press, 1934), p. 165.

28 See Abu Zahrah, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-ʿArabī, n.d.), p. 202.

29 Muhammad al-Khudarīī, *Uṣūl al-Fiqh* (Cairo: Dār al-Ḥadīth, n.d.), p. 329.

30 Abd al-Wahhab, Khallaf, *ʿIlm Uṣūl al-Fiqh*, op. cit., p. 148.

31 Ibid, pp. 148–50.

32 Wael B. Hallaq, "On the Authoritativeness of Sunni Consensus" in *International Journal of Middle East Studies*, vol. 18, no. 4 (Nov., 1986), pp. 427–454 at 440. See al-Juwaynī, *Ghiyāth al-Umam fī Iltiyāth al-Zulam*, ed. Fuad ʿAbd al-Munim Ahmad, Mustafa Hilmi (Alexandria: Dār al-Daʿwah, 1979), pp. 40–43.

33 Zain al-Dīn Ibn Nujaym, *Al-Baḥr al-Rā'iq, Sharḥ Kanz al-Daqā'iq*, op. cit., vol. 6, p. 446.

34 Al-Juwaynī, *Al-Waraqāt fī Uṣūl al-Fiqh* (Riyadh: Dār al-Ṣumayʿī lil Nashr wa al-Tawzīʿ, 1996), p. 17.

35 Al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ʿIlm al-Uṣūl*, op. cit., vol. 2, pp. 1027–35. See Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations*, pp. 110–11. Hallaq's claim that a *mujtahid* is not required to be of just character cannot be taken for granted. He writes (p. 11), "However, he is not required to know all rulings of fiqh, although this is recommended – especially those cases subject to disagreement. Nor is he required to be of just character, even though the absence of the quality of rectitude does have an effect on the authoritativeness of his opinions, for judges and laymen are perfectly entitled to ignore them." By this decisive statement, he ignores the view held by the majority of scholars of *Uṣūl* stipulating that a *mujtahid* has to be a trustworthy person of noble character as lacking rectitude renders their ijtihad as ineffective. See Al-Zarkashi, *Al-*

Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh, ed. Muhammad Muhammad Tamir (Beirut: Dār al-Kutub al-ʿIlmīyah, 2000), vol. 3, p. 517.

36 Abū al-Ḥusayn al-Baṣrī, *Kitāb al-Muʿtamad fī Uṣūl al-Fiqh*, op. cit., vol. 2, pp. 357–9.

37 Abū Ḥāmid al-Ghazālī, *Al-Mustaṣfā min ʿIlm al-Uṣūl*, ed. Muhammad ʿAbd al-Salam ʿAbd al-Shafi (Beirut: Dār al-Kutub al-ʿIlmīyah, 1413 AH), pp. 342–5; Wael B. Hallaq, "Was the Gate of Ijtihad Closed?" in *International Journal of Middle East Studies*, vol. 16, no. 1 (Mar., 1984), pp. 3–41 at 6.

38 Ibn al-ʿArabī, *Al-Maḥṣūl fī ʿIlm al-Uṣūl*, ed. Hussayn ʿAli (Jordan: Dār al-Biyārq, 1420 AH), p. 135.

39 Al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ʿIlm al-Uṣūl*, op. cit., vol. 2, p. 1029.

40 Ibid, p. 1030.

41 Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, ed. Muhammad ʿAbd Allah Daraz (Cairo: Dār al-Fikr al-ʿArabī, n.d.), vol. 4, p. 105.

42 Al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ʿIlm al-Uṣūl*, op. cit., vol. 2, p. 1042.

43 Khallaf, *Maṣādir al-Tashrīʿ al-Islāmī fīmā lā Naṣṣ Fīh* (Kuwait: Dār al-Qalam, 6th edn., 1993), p. 13; Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), p. 223.

44 Al-Qurṭubī narrates in his *Tafsīr* on the authority of Ibn ʿAbbās that *ahl al-dhikr* "are people of the Qur'ān, and it is said they are people of knowledge. Both meanings are close." See Al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qur'ān*, ed. ʿAbd Allah b. ʿAbd al-Muhsin al-Turki (Beirut: Mu'assasat al-Risālah, 1st edn., 1427 AH), vol. 12, p. 329. Abū al-Suʿūd explains in his *Tafsīr* that this phrase refers to people of the scripture, history, and every person known for specific knowledge or discipline. Al-Zajjāj held they are all those known for specific knowledge or discipline." See Abū al-Suʿūd, *Irshād al-ʿAql al-Salīm ila Mazāyā al-Kitāb al-Karīm* (Riyadh: Maktabat al-Riyadh al-Ḥadīthah), vol. 3, p. 366.

45 Al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, op. cit., vol. 4, p. 278. Also see Fawwaz al-Sadiq, "Qawl Ahl al-Khibrah fī al-Fiqh al-Islāmī," MA dissertation submitted to the Faculty of Sharīʿah and Islamic Studies, Umm Al-Qurā University, Makkah; Ismail Hassan Hafiane, *Mu'assasat al-Ijtihād wa Waẓīfat al-Sulṭah al-Tashrīʿyyah* (Herndon, USA: IIIT, 1st edn., 2015), pp. 350–4.

46 Al-Sarakhsī, *Al-Mabsūṭ*, ed. Khalil al-Mees (Beirut: Dār al-Fikr, 1st edn., 1421 AH), vol. 13, p. 200.

47 Abū al-Suʿūd, *Irshād al-ʿAql al-Salīm ila Mazāyā al-Kitāb al-Karīm*, vol. 1, p. 746; Abd al-Nasir Shanyur, "Al-Kibrah Wasilat Ithbāt fī al-Qaḍā' al-Islāmī," MA dissertation submitted to the Faculty of Sharīʿah, Najah National University.

48 Narrated by al-Bukhārī, in his *Ṣaḥīḥ*, "Book of Farā'id," chapter of Al-Qā'if (8/175) no. 6771; Muslim in his *Ṣaḥīḥ*, "Book of Riḍāʿ," chapter of Al-ʿAmal bi-Ilḥāq al-Qa'if al-Walad (2/1081) no. 1459.

49 Narrated by Abū Dāwūd in his *Sunan*, "Book al-Buyūʿ," chapter of Al-Kharṣ (2/284) no. 3413.

50 Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿAẓīm*, ed. Mustafa al-Sayyid Muhammad (Jīzah: Mu'assasat Qurṭubah, 2000), vol. 5, p. 359.

51 See ʿAbd al-Razzāq al-Ṣanʿānī, *Al-Mūṣanaf*, ed. Habib al-Rahman al-Azami (Beirut: al-Maktab al-Islāmī, 2nd edn., 1403 AH), vol. 7, pp. 360–1.

52 Narrated by Mālik in *Al-Muwaṭṭa'*, "Book of al-Sariqah," chapter of Mā Yajibū fihī al-Qaṭʿ, no. 688.

53 Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, op. cit., vol. 4, p. 107, adapted.

54 Ibn Qudāmah, *al-Mughnī* (Riyadh: ʿAlām al-Kutub, 3rd edn., 1417 AH), vol. 8, p. 490.

55 Ibn Taymīyah, *Majmūʿ al-Fatāwa* (Mansura: Dār al-Wafā', 3rd edn., 1426 AH), vol. 29, p. 492.

56 For a detailed analysis of the expert witness, especially in the realm of judiciary, see, Ron Shaham, *The Expert Witness in Islamic Courts: Medicine and Crafts in the Service of Law* (Chicago: University of Chicago Press, 1st edn., 2010), p. 27.

57 Miller, Susan Gilson, "Sleeping Fetus: Overview," in *Encyclopedia of Women and Islamic Cultures*, general editor Suad Joseph. Consulted online on 6 September 2022 http://dx.doi.org/10.1163/1872-5309_ewic_EWICCOM_0205 first published online 2009.

58 Mohammed Ghaly, "Biomedical Scientists as Co-Muftis: Their Contribution to Contemporary Islamic Bioethics," in *Die Welt des Islams*, vol. 55, issue 3/4, Special Theme Issue: The Social Politics of Islamic Bioethics (2015), pp. 286–311 at 289.

59 Ibn Sīnā states in *al-Shifāʿ* that he came to know from a trustworthy source that a woman gave birth to a baby after four years of pregnancy. See Ibn Sīnā, *Al-Shifāʿ, al-Ṭabīʿīyāt*, vol. 8: *Al-Ḥayawān*, ed. I. Madkour, S. Zayed, et al. (Cairo: al-Maṭbaʿa al-Amīriyya), p. 180.

60 Mohammed Ghaly, "Biomedical Scientists as Co-Muftis: Their Contribution to Contemporary Islamic Bioethics," op. cit., pp. 291–5.

61 See Khalid al-Muzaini, *Al-Futyā al-Muʿāṣirah: Dirāsah Ta'ṣīliyyah fī Ḍawa' al-Siyāsah al-Sharʿīyah*, op. cit., p. 779.

62 T.J. Gunn and A. Lagresa, "The Organisation of Islamic Cooperation: Universal Human Rights, Islamic Values, or Raisons d'état?" op. cit., p. 249.

63 Mohammad Hashim Kamali, "Law and Society: The Interplay of Revelation

and Reason in The Sharīʿa" in *The Oxford History of Islam*, ed. John L. Esposito (New York: Oxford University Press, 1999), p. 150.

64 Reported by Ibn Mājah in his *Sunan*, vol. 3, book 21, no. 2683.

65 Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985–2000, op. cit., resolution no. 98 (1/11) on Islamic Unity, pp. 225–9, with slight modification.

66 Ibid.

67 See al-Asili and al-Hadad, *Majmaʿ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyatuh*, pp. 92–3.

68 Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā'*, op. cit., pp. 270–3.

69 Ibid.

70 See See al-Asili and al-Hadad, *Majmaʿ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyatuh*, pp. 44–5; here quoted from Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State*, op. cit., p. 272.

71 Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985–2000, op. cit., pp. 17, 31.

72 See ISESCO, *Strategy for Bringing Muslim Madhāhib Closer Together* (Morocco: Publications of the Islamic Educational, Scientific and Cultural Organization-ISESCO, 1431/2010), p. 30.

73 Ibid, pp. 126–8.

74 Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State*, op. cit., p. 187.

75 The "Amman Message" was pronounced in one of the mosques of Amman as an initiative by the ruler of Jordan King Abdullah II and in the presence of a large number of notable Arab and Muslim scholars in 2004. The purpose of the Message was to clarify which actions represented Islam, and also to elucidate the reality of Islam and its values which were rooted in noble intentions, moderation, and peace. This Message came as an emphasis on the recognized and prevalent principles of traditional and moderate Islam to which belong the majority of Muslims in the world, who numbered 1.4 billion Muslims. This message was formulated with a view to bring closer together Islamic schools of law and thought. See Jamal al-Shalabi and Menawer Bayan Alrajehi, "The Amman Message: Arab Diplomacy in the Dialogue of Civilizations" in *Journal of US-China Public Administration*, ISSN 1548–6591, December 2011, vol. 8, no. 12, 1375–1392.

76 Proceedings of the 17th session of the OIC International Fiqh Academy; The Amman Message, published by The Royal Aal al-Bayt Institute for Islamic Thought, Jordan, 2009.

77 Leonard Weinberg and Ami Pedahzur (eds.), *Religious Fundamentalism and Political Extremism: Cass Series – Totalitarian Movements and Political Religions* (London: Frank Cass Publishers, 2004), p. 41; Douglas Pratt,

Religion and Extremism: Rejecting Diversity (UK: Bloomsbury Academic, 2018), p. 2, adapted.

78 See Fadi Farasin, Cihat Battaloglu and Adam Atauallah Bensaid, "What is Causing Radicalism in the MENA?" (Doha: Arab Center for Research & Policy Studies, 2017), p. 21.

79 See Khaled Abou El-Fadl, *The Great Theft: Wrestling Islam From the Extremists* (San Francisco: HarperOne, 2005), p. 26.

80 See Daniel Crecelius, "Al-Azhar in the Revolution" in *Middle East Journal*, op. cit., p. 45; al-Asili and al-Hadad, *Majmaᶜ al-Buḥūth al-Islāmīyah: Qarārātuh wa Tawṣiyyatuh*, op. cit., vol. 1, p. 11; Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā'*, op. cit., p. 187.

81 See T.J. Gunn and A. Lagresa, "The Organisation of Islamic Cooperation: Universal Human Rights, Islamic Values, or Raisons d'état?," op. cit., p. 265.

82 See Ekmeleddin Ihsanoglu, *The Islamic World in the New Century: The Organisation of the Islamic Conference* (London: Hurst Publishers, 2010), p. 92.

83 Ibid, pp. 90–1.

84 Proceedings of the 17th session of the OIC International Fiqh Academy, resolution no. 154 (3/17 available at the academy website: http://www.iifa-aifi.org/2206.html. Accessed March 2019.

85 Ibid.

86 Proceedings of the 23rd session of the OIC International Fiqh Academy, resolution no. 221 (5/23) available at the academy website http://www.iifa-aifi.org/4883.html. Accessed March 2019.

87 Muslim World League, *Resolutions of the Islamic Fiqh Council*, Proceedings of the 17th Session, op. cit., p. 17.

88 Quoted in Meshack M. Sagini, *Globalization: The Paradox of Organizational Behavior: Terrorism, Foreign Policy, and Governance* (Lanham: University Press of America, 2014), p. 88.

89 See Ahmed al-Raysuni, *Al-Shūrā: The Qur'anic Principle of Consultation*, trans. Nancy Roberts (Herndon, USA: International Institute of Islamic Thought, 2011), p. 3.

90 See Muhammad Nazeer, "The Conceptual and Institutional Development of Shūrā in Early Islam" in *Islamic Studies*, vol. 19, no. 4 (Winter 1980), pp. 271–282.

91 Muqtedar Khan, M.A., "Consultation," in ed. R.C. Martin, *Encyclopedia of Islam and the Muslim World*. (Farmington, MI: Gale, 2016). Retrieved from: http://osearch.credoreference.com.library.qnl.qa/content/entry/gale islam/consultation/0?institutionId=1705. Accessed March 2019.

92 See Abu Bakr al-Jassas, *Aḥkām al-Qur'ān*, ed. Muhammad al-Sadiq

Qamhawi (Beirut: Dār Iḥyā' al-Turāth al-ᶜArabī, 1985), vol. 5, p. 263.

93 See Muhammad Shafiq, "The Role and Place of Shūrā in the Islamic Polity," in *Islamic Studies*, vol. 23, no. 4 (Winter 1984), pp. 419–441.

94 See Al-Qurṭubī, *Al-Jāmiᶜ li Aḥkām al-Qur'ān*, op. cit., vol. 5, p. 381.

95 See Muhammad Jamal al-Din al-Qasimi, *Tafsīr al-Qāsimī*, or *Maḥāsin al-Ta'wīl*, ed. Muhammad Fuad ᶜAbd al-Baqi (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1376 AH), vol. 5, p. 1021.

96 Muhammad ibn Ahmad ibn Salih al-Salih in his book titled *Al-Shūrā fī al-Kitāb wa al-Sunnah wa ᶜinda ᶜUlamāᶜ al-Muslimīn* listed twenty traditions in support of *shūrā* in addition to many situations in which the Prophet practiced consultation with his Companions. The scope of this consultation was not limited to military affairs. See al-Salih, *Al-Shūrā fī al-Kitāb wa al-Sunnah* (Riyadh: M.b.A.b.S al-Salih, 1999), pp. 56–60.

97 Reported by al-Ṭabarānī in *al-Muᶜjam al-Awsaṭ*; its narrators are trustworthy as stated by al-Haythamī in *Majmaᶜ al-Zawā'id*.

98 Mohammad Hashim Kamali, "Issues in the Understanding of Jihād and Ijtihād" in *Islamic Studies*, vol. 41, no. 4 (Winter 2002), pp. 617–634.

99 Reported by Al-Tirmidhī, *Al-Jāmiᶜ*, Book 78, Ḥadīth no. 2266.

100 Reported by al-Baihaqī, *Shu'ab al-Īmān*, chapter of al-Ḥukm bayn al-Nās, Hadith no. 7163.

101 See M. Saghir Hasan Masumi, "Ijtihād through Fourteen Centuries" in *Islamic Studies*, vol. 21, no. 4 (Winter 1982), pp. 39–70.

102 See al-Salih, *Al-Shūrā fī al-Kitāb wa al-Sunnah*, op. cit., pp. 61–72.

103 See Ana Belén Soage, "Shūrā and Democracy: Two Sides of the Same Coin?" in *Religion Compass* 8/3 (2014), pp. 90–103.

104 Reported by AI-Tirmidhī, Al-Jāmiᶜ, Book no. 34 on Jihād, Hadith no. 1714.

105 Muhammad Nazeer, "The Conceptual and Institutional Development of Shūrā in Early Islam," op. cit., p. 279.

106 See Abdul-Allah Al-Mashadd, *Maṣādir al-Tashrīᶜ al-Islāmī* (UAE: Muslim Council of Elders, 1st edn., 2019), p. 100.

107 See Ibn ᶜAṭiyya, *Al-Muḥarrar al-Wagīz fī Tafsīr al-Kitāb al-ᶜAzīz*, ed. ᶜAbd al-Salam ᶜAbd al-Shafi (Beirut: Dār al-Kutub al-ᶜIlmīyah, 1st edn., 2001), vol. 1, p. 534.

108 See Abu Bakr al-Jassas, *Aḥkām al-Qur'ān*, op. cit., vol. 5, p. 263.

109 Al-Rāzī, *Mafātiḥ al-Ghayb* (Beirut: Dār al-Kutub al-ᶜIlmīyah, 1st edn., 2000), vol. 9, p. 55.

110 Al-Qurṭubī, *Al-Jāmiᶜ li Aḥkām al-Qur'ān*, op. cit., vol. 5, p. 380.

111 See al-Salih, *Al-Shūrā fī al-Kitāb wa al-Sunnah*, op. cit., pp. 24–33.

112 For a detailed discussion of the legal ruling of *shūrā* and the proofs cited by each group in support of their view, see Abd al-Hamid Ismail al-Ansari, *Al-Shūrā wa Atharuhā fī al-Dīmuqrātīyah* (Beirut: al-Maktabah al-ᶜAṣrīyah, 3rd edn., n.d.), pp. 49–109.

113 Ibid, p. 98.

114 See al-Salih, *Al-Shūrā fī al-Kitāb wa al-Sunnah*, op. cit., pp. 24–8.

115 Al-Qurṭubī, *Al-Jāmiᶜ li Aḥkām al-Qur'ān*, op. cit., vol. 5, p. 381.

116 Ibn Ḥazm, *Mulakhkhaṣ Ibṭāl al-Qiyās wa al-Ra'y wa al-Istiḥsān wa al-Taqlīd wa al-Taᶜlīl*, ed. Said al-Afghani (Damascus: Maṭbaᶜat Jāmiᶜat Dimashq, 1960), p. 13.

117 Abu Bakr al-Jassas, *Aḥkām al-Qur'ān*, op. cit., vol. 2, p. 330.

118 For example, al-Shāwī states that in addition to the Qur'anic and Prophetic traditions, Muslims of all ages unanimously agreed on the obligatoriness of *shūrā*. The unanimity is not unique to the present age, rather, it is the first principle agreed upon by the companions after the demise of the Prophet. See al-Shāwī, *Fiqh al-Shurā wa al-Istisharah*, op. cit., vol. 1, pp. 76–7. Likewise, Farid ᶜAbd al-Khaliq puts it clearly that the majority of jurists maintain that *shūrā is* obligatory. See ᶜAbd al-Khāliq, *Fī al-Fiqh al-Siyāsī al-Islāmī: Mabādiᶜ Dustūrīyah: al-Shūrā, al-ᶜAdl, al-Musāwāh* (Cairo: Dār al-Shurūq, 2nd edn., 2007), p. 60.

119 Abu Bakr al-Jassas, *Aḥkām al-Qur'ān*, op. cit., vol. 2, p. 329. See also Ahmed al-Raysuni, *Al-Shūrā: The Qur'anic Principle of Consultation*, trans. Nancy Roberts, p. 25.

120 See John Esposito, John Voll, *Islam and Democracy* (New York: Oxford University Press, 1996), p. 27.

121 See Mohammed Ghaly, "Islamic Ethics and Genomics: Mapping the Collective Deliberations of Muslim Religious Scholars and Biomedical Scientists" in ed. Mohammed Ghaly, *Islamic Ethics and the Genome Question* (Leiden: Koninklijke Brill NV, 2019), p. 49.

122 See Mohammad Hashim Kamali, "Issues in the Understanding of Jihād and Ijtihād," op. cit., p. 627; al-Shāwī, *Fiqh al-Shurā wa al-Istisharah*, op. cit., vol. 1, pp. 189, 225, and 239.

123 See ᶜAllal al-Fasi, *Maqāṣid al-Sharīᶜah al-Islāmiyah wa Makārimuhā* (Beirut: Dār al-Gharb al-Islāmī, 1993), p. 121; Said Shabbar, *Ijtihad and Renewal*, op. cit., p. 24.

124 Mohammad Iqbal, *The Reconstruction of Religious Thought in Islam* (London: Oxford University Press, 1934), p. 165.

CHAPTER 3

1 See Khaled Abou El-Fadl, *The Great Theft: Wrestling Islam from the Extremists*, op. cit., p. 29.

2 Ibn al-Qayyim entitled one of his works *Iᶜlām al-Muwaqqiᶜīn ᶜan Rabb al-ᶜĀlamīn* (Advice for the Signatories on Behalf of the Lord of the Worlds).

3 Muhammad Khalid Masud, Brinkley Messick, and David Stephan Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas*, op. cit., p. 16.

4 Al-Juwaynī, *Al-Ijtihād min Kitāb al-Talkhīs*, ed. ʿAbd al-Hamid ʿAli Abu Zunayd (Damascus: Dār al-Qalam; Beirut: Dārat al-ʿUlūm wa al-Thaqāfah, 1987), p. 50.

5 Al-Khaṭīb al-Baghdādī, *Al-Faqīh wa al-Mutafaqqih*, ed. ʿAdil ibn Yusuf al-ʿAzzazi (KSA: Dār Ibn al-Jawzī, 1st edn., 1427 AH), vol. 2, p. 332.

6 Ibn Nujaym, for example, states that: "It is established for the scholars of Islamic jurisprudence that *muftī* is the *mujtahid*." Talking about the qualifications of a mufti, al-Juwaynī observes that the mufti should have an all-embracing knowledge and tools of ijtihad. See Zain al-Dīn Ibn Nujaym, *Al-Baḥr al-Rā'iq, Sharḥ Kanz al-Daqā'iq*, op. cit., vol. 6, p. 446; al-Juwaynī, *Al-Waraqāt fī Uṣūl al-Fiqh*, p. 17.

7 See Omer Awass, "Fatwa: The Evolution of an Islamic Legal Practice and Its Influence on Muslim Society" (PhD dissertation, Temple University, 2014), p. 243.

8 Al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ʿIlm al-Uṣūl*, op. cit., vol. 2, p. 1042.

9 Al-Zarkashi, *Al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, ed. ʿAbd al-Sattar Abu Ghuddah (Kuwait: Ministry of Awaqaf, 2nd edn., 1992), vol. 6, p. 306.

10 See Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, vol. 4, p. 167.

11 Narrated by al-Bukhārī, in his *Ṣaḥīḥ*, "Book of Knowledge."

12 Khaled Abou El Fadl, "Qurʿanic Ethics and Islamic Law" in *Journal of Islamic Ethics*, 1 (2017), pp. 7–28.

13 See Ibn Ḥamdān, *Ṣifat al-Fatwā wa al-Muftī wa al-Mustaftī*, op. cit., p. 7.

14 Ibid, pp. 11–12.

15 Ibid, p. 9.

16 See ʿUmar Husayn Ghazzay, *Asbāb* a*l-Khaṭaʿ fī Fatāwā al-Muʿāṣirīn* (Jordan: Dār al-Nafā'is, 2018), p. 37.

17 Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, vol. 4, pp. 106–107.

18 See Ahmad Mohammad Helil, *Al-Fatāwā al-Shādhdha*, a paper submitted to the International Conference on Fatwa, organized by Islamic Fiqh Academy in Mecca, 2009, p. 41.

19 Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn*, vol. 2, pp. 165–166.

20 Ibn al-Jallāb says: "It is not permissible to pay an estimated value instead of food in *zakāt al-fiṭr*," *Al-Tafrīʿ*, ed. Husayn ibn Salim Dahmani (Beriut: Dār al-Gharb al-Islāmī, 1st edn, 1987), vol. 1, p. 297.

21 Al-Nawawī says: "Paying an estimated value in *zakāt al-fiṭr* is not valid in our view and this is the same view of Mālik, Aḥmed and Ibn Al-Munzir," *Al-Majmūʿ*, ed. Muhammad Bakhit al-Mutie'i (Beirut: Dār Iḥyāʿ al-Turāth al-ʿArabī, 2nd edn., 1392 AH), vol. 6, p. 112.

22 Ibn Qudāma says: "The apparent opinion (of Aḥmed) is that it is not valid to pay an estimated value in anything of *zakāt*. This is also held by Mālik and Shāfiʿī," *Al-Mughnī* (Riyadh: ʿĀlam al-Kutub, 3rd edn., 1417 AH), vol. 2, p. 661.

23 Ibn Ḥazm says: "An estimated value is not acceptable also as this is different from what the Prophet has ordained," A*l-Muḥallā bi'l Athār* (Cairo: al-Maṭbaʿah al-Muneerīyah, 1352 AH), vol. 6, p. 137.

24 Al-Kāsānī says: "The obligation of things mentioned in texts is based on the fact that those are valuable money...so it is permissible to pay an estimated value, be dirhams, dinars, or whatever. This is our view." *Badāʿ al-Ṣanāʿ* (Beirut: Dār al-Kutub al-ʿIlmīyah), vol. 2, p. 543.

25 Ibn Qudāma says: "Al-Thawrī and Abū Ḥanifā said it is permissible and it was reported that this is the same view of ʿUmar b. ʿAbd al-ʿAzīz and al-Ḥasan," *Al-Mughnī*, vol. 2, p. 662.

26 Ibn Nājī says: "It is said that to give an estimated value is absolutely permissible. This is maintained by Ashhab and Ibn Al-Qāsim in Alʿutbīyah and the contrary is also said," refer to *Sharḥ Zarook and Ibn Nājī ʿala Al-Risāla* (Damascus: Dār al-Fikr, 1982), vol. 1, p. 340.

27 Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, vol. 4, p. 108.

28 Khaled Abou El-Fadl, *The Great Theft: Wrestling Islam From the Extremists*, op. cit., p. 29.

29 Alexandre Caeiro, "Ordering Religion, Organizing Politics: The Regulation of the Fatwa in Contemporary Islam" in ed. Zulfiqar Ali Shah, *Iftā' and Fatwa in the Muslim World and the West* (London and Washington: International Institute of Islamic Thought, 2014), pp. 73–88.

30 Muḥammad Khalid Masud, Brinkley Messick, and David Stephan Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas*, op. cit., p. 31.

31 Khaled Abou El-Fadl, *The Great Theft: Wrestling Islam From the Extremists*, op. cit., p. 29.

32 See ʿUmar Hussein Ghazzay, *Asbāb al-Khaṭaʿ fī Fatāwā al-Muʿāṣirīn*, op. cit., pp. 283–6; Ahmad Mohammad Helil, *Al-Fatāwā al-Shādhdha*, a paper submitted to the International Conference on Fatwa, organized by the Islamic Fiqh Academy in Makkah, 2009, p. 41.

33 Ibid.

34 See Bettina Graf, "Media Fatwas and Fatwa Editors" in Leila Hudson, Adel Iskandar, and Mimi Kirk (eds.), *Media Evolution on The Eve of The Arab Spring* (New York: Palgrave Macmillan, 2014), p. 143; Brinkley Messick, "Media Muftis: Radio Fatwas in Yemen" in Muhammad Khalid Masud, Brinkley Messick, and David Stephan Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas*, op. cit., p. 320.

35 Noureddine Miladi, Saleh Karim and Mahroof Athambawa, "Fatwa on

Satellite TV and the Development of Islamic Religious Discourse" in *Journal of Arab & Muslim Media Research*, vol. 10, no. 2, pp. 129–52.

36 Alexandre Caeiro, "Ordering Religion, Organizing Politics: The Regulation of the Fatwa in Contemporary Islam," op. cit., pp. 73–88.

37 Khalid al-Muzaini, *Al-Futyā al-Muᶜāṣirah: Dirāsah Ta'ṣīliyyah fī Ḍawa' al-Siyāsah al-Sharᶜīyah*, op., cit., p. 621

38 See ᶜAbd al-Nasir Ibn Musa, "Ḍawābiṭ al-Iftā' ᶜAbra Aal-Faḍā'iyyāt," a paper submitted to the International Conference on Fatwa; also see al-Burayk, "Fatāwā al-Faḍā'iyyāt: al-Ḍawābiṭ wa al-Athār," a paper presented to the same conference.

39 See Nasir Abd al-Rahman Al-Hazzani, *Al-Fatwā fī al-Qanawāt al-Faḍā'iyya Al-ᶜArabīyah, Dirāsah fī al-Tᶜarruḍ wa al-Mushāhadah* (Beirut: Dār Ibn Ḥazm, 1st edn., 1432/2011), p. 198.

40 Brinkley Messick, "Media Muftis: Radio Fatwas in Yemen," op. cit., p. 316.

41 Noureddine Miladi, Saleh Karim and Mahroof Athambawa, "Fatwa on Satellite TV and the Development of Islamic Religious Discourse," op. cit., p. 150.

42 Muhammad Khalid Masud, Brinkley Messick, and David Stephan Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas*, op. cit., p. 14.

43 See Sayf al-Din ᶜAbd al-Fattah, "Madkhal li Fahm Fatāwā al-Ummah," in: *Ummatī fī al-ᶜĀlam: Ḥawliyyat Qaḍāyā al-ᶜĀlam al-Islāmi* (Cairo: Civilization Center for Political Studies, 2003), issue no. 5, vol. 1, p. 553.

44 See Alexandre Caeiro, "Ordering Religion, Organizing Politics: The Regulation of the Fatwa in Contemporary Islam" op. cit., pp. 73–88.

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47 ᶜUmar Husayn Ghazzay, *Asbāb al-Khaṭaᶜ fī Fatāwā al-Muᶜāṣirīn*, op. cit., pp. 203–4.

48 Muslim in his *Ṣaḥīḥ*, book of *Jihād*, chapter of disapproval of seeking help from a disbeliever on a military campaign, (3/1449 AH), Number 4472.

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52 See Yvonne Yazbeck Haddad, "Operation Desert Storm and the War of Fatwas," op. cit., p. 301; Nasim Mitha, "Fatwā: Its Role in Sharīʿa and Contemporary Society with South African Case Studies," op. cit., pp. 234–8.

53 Khalid al-Muzaini, *Al-Futyā al-Muʿāṣirah: Dirāsah Taʾṣīliyyah fī Ḍawaʾ al-Siyāsah al-Sharʿīyah*, op. cit., p. 451.

54 Ibid, p. 496.

55 Al-Nawawī, *Adab al-Fatwā wa al-Muftī wa al-Mustaftī*, ed. Bassam ʿAbd al-Wahhab al-Jabi (Damascus: Dār al-Fikr, 1st edn., 1988), p. 37.

56 See al-Ṭūfī, *Risālah fī Riʿāyat al-Maṣlaḥa*, ed. Ahmad ʿAbd al-Rahim al-Sayih (Cairo: al-Dār al-Miṣrīyah al-Lubnānīyah, 1st edn., 1413 AH), p. 23; Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Brill, 2010), p. 204.

57 *Talfīq* is the juristic practice of combining differing legal opinions to resolve a new issue and thereby produce an unprecedented unacceptable ruling.

58 See Musfir al-Qaḥṭānī, *Manāhij al-Futyā fī al-Nawāzil al-Fiqhīyah al-Muʿāṣirah* (Beirut: Dār Ibn Ḥazm, 2010), p. 47; Muhammad ʿUthman Shabbir, *Manāhij al-Fuqahāʾ fī Istinbāṭ al-Aḥkām* (Jordan: Dār al-Nafāʾis, 2016), p. 544.

59 See Al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, op. cit., vol. 4, p. 260.

60 Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn*, op. cit., vol. 3, p. 3; Jasser Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach*, p. 185.

61 See Muhammad Said Ramadan al-Buti, *Ḍawābiṭ al-Maṣlaḥah fī al-Sharīʿah al-Islāmīyah* (Beirut: Mu;assasat al-Risāla, 2nd edn., 1973), p. 115.

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63 See Wahbah al-Zuhayli, *Naẓarīyat al-Ḍarūrah al-Sharʿīyah: Muqāranah maʿa al-Qānūn al-Waḍʿī* (Beirut: Muʾassasat al-Risāla, 4th edn., 1987), p. 230.

64 Khaled Abou El Fadl, "Qurʿanic Ethics and Islamic Law" in J*ournal of Islamic Ethics* 1 (2017), pp. 7–28, adapted.

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66 See Birgit Krawietz, "Cut and Paste in Legal Rules: Designing Islamic Norms with Talfiq" in *Die Welt des Islams*, New Series, vol. 42, issue 1 (2002), pp. 3–40.

67 Reported by al-Baihaqī in his *Sunan Al-Kubrā*, chapter: Mā Tajuzū bihi Shahādatu Ahli al-Ahwā,' no. (207/10) and (211/10) ed. Muhammad ʿAbd al-Qadir ʿAta (Makkah: Maktabat Dār al-Bāz, 1414 AH).

68 Al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, op. cit., vol. 4, pp. 147–8.

69 See Muḥammad b. Ḥusayn Al-Mālikī, *Tahdhīb al-Furūq wa al-Qawāʿid al-Saniyah fī al-Asrār al-Fiqhīyah*, it is a marginal annotation on the book: *Anwār al-Burūq fī Anwā' al-Furūq* (Beirut: Dār al-Kutub al-ʿIlmīyah, 1st edn., 1418 AH), vol. 2, p. 183.

70 Usama ʿUmar Sulayman al-Ashqar, *Manhaj al-Iftā' ʿinda al-Imām Ibn al-Qayyim* (Jordan: Dār al-Nafā'is, 2004), p. 382.

71 Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn*, vol. 4, p. 222.

72 Ibid, vol. 4, p. 211.

73 See Mohammad Hashim Kamali, *Shariah Law: Questions & Answers* (London: Oneworld Publications, 2017), Q: 176.

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75 Muhammad al-Ashqar, *Al-Futyā wa Manāhij al-Iftā'* (Kuwait: Maktabat al-Manār al-Islāmīya, 1st edn., 1396 AH), pp. 84–5.

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78 Robert Gleave, *Islam and Literalism: Literal Meaning and Interpretation in Islamic Legal Theory* (Edinburgh: Edinburgh University Press, 2012), p. 146.

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81 See Musfir al-Qahtani, *Manāhij al-Futyā fī al-Nawāzil al-Fiqhīyah al-Muʿāṣirah*, op. cit., p. 40; Khalid al-Muzaini, *Al-Futyā al-Muʿāṣirah: Dirāsah Taʾṣīliyyah fī Ḍawa' al-Siyāsah al-Sharʿīyah*, op. cit., p. 462.

82 See Al-Qarāfī, *Anwār al-Burūq fī Anwā' al-Furūq*, op. cit., vol. 2, p. 450.

83 Jasser Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach*, p. 167; *Wajanāt Maymanī, Qāʿidat al-Dharā'iʿ* (Jeddah: Dār al-Mujtamaʿ, 1st edn., 2000), p. 608.

84 Khalid Abou El-Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (London: Oneworld Publications, 2000), p. 551.

85 Musfir al-Qahtani, *Manāhij al-Futyā fī al-Nawāzil al-Fiqhīyah al-Mu'āṣirah*, op. cit., pp. 41–3.

86 Wael Hallaq explains that *taqlīd* as a term denoting the acceptance of legal authority has had a complex history. It originally meant the acceptance of the Companions' legal teachings as well as those of the *Tābiʿun*. Later on it acquired a new connotation of following the authority of the *mujtahid* without questioning his evidence or the line of argument and reasoning. See Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), p. 86.

87 Imran Ahsan Nyazee, "The Scope of Taqlid in Islamic Law" in *Islamic Studies*, vol. 22, no. 4 (Winter 1983), pp. 1–29.

88 See Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1982), p. 71; Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb Al-Dīn Al-Qarāfī* (Leiden: Brill, 1996), p. 127.

89 Khalid Abou El-Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, op. cit., p. 185; Abū Ḥāmid al-Ghazālī, *Al-Musṭaṣfā fī ʿIlm al-Uṣūl*, op. cit., vol. 2, p. 462.

90 Usama ʿUmar Sulayman al-Ashqar, *Manhaj al-Iftā' ʿinda al-Imām Ibn al-Qayyim*, op. cit., pp. 309–10.

91 See Usama ʿUmar Sulayman al-Ashqar, *Fawḍā al-Iftā'*, p. 64.

92 Al-Qarāfī, *Anwār al-Burūq fī Anwā' al-Furūq*, op. cit., vol. 1, p. 450.

93 For further details, see Jamāl Karkār, *Athar al-ʿUrf fī Taghayyur al-Fatwā* (Beirut: Dār Ibn Ḥazm, 1st edn., 2009), p. 145.

94 See Jasser Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach*, p. 151.

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96 See Muhammad ʿUthman Shabbir, *Manāhij al-Fuqahā' fī Istinbāṭ al-Aḥkām*, p. 538; Musfir al-Qahtani, *Manāhij al-Futyā fī al-Nawāzil al-Fiqhīyah al-Mu'āṣirah*, op. cit., pp. 38–40; ʿUmar Husayn Ghazzay, *Asbāb al-Khaṭaʿ fī Fatāwā al-Muʿāṣirīn*, op. cit., p. 79.

97 Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa" in *American Ethnologist*, vol. 37, no. 1 (Feb., 2010), pp. 2–18.

98 See Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (New York: Cambridge University Press, 2006), p. 92.

99 Khalid al-Muzaini, *Al-Futyā al-Muʿāṣirah: Dirāsah Ta'ṣīliyyah fī Ḍawa' al-Siyāsah al-Sharʿīyah*, op., cit., p. 482.

100 Mohammad Hashim Kamali, "The Middle Grounds of Islamic Civilization: The Qur'ānic Principle of Wasaṭiyyah," in *IAIS Journal of Civilization Studies* 1 (2008), pp. 7–41.

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103 Mohammed Ali Al-Bar and Hassan Chamsi-Pasha, *Contemporary Bioethics Islamic Perspective*, op. cit., p. 234; Aasim I. Padela, Ahsan Arozullah and Ebrahim Moosa, "Brain death in Islamic Ethico-legal Deliberation: Challenges for Applied Islamic Bioethics," *Bioethics ISSN 0269-9702*, vol. 27, no. 3, 2013, pp. 132–139.

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105 Ghaly, "The Beginning of Human Life: Islamic Bioethical Perspectives," op. cit., pp. 208–9.

106 Mohammed Ali Al-Bar and Hassan Chamsi-Pasha, *Contemporary Bioethics Islamic Perspective*, op. cit., p. 209.

107 See Ali Muhi al-Din al-Qarah'daghi, ʿAli al-Muhammadi, *Fiqh al-Qaḍāyā al-Ṭibbīyah al-Muʿāṣirah* (Beirut: Dār al-Bashā'ir al-Islāmīyah, 2nd edn., 2008), p. 488.

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114 Ghaly, "Biomedical Scientists as Co-Muftis: Their Contribution to Contemporary Islamic Bioethics," op. cit., pp. 291–5; ʿAbd al-Rahman al-Awadi, *Ru'yah Islāmīyah Li-zirāʿat Baʿḍ al-Aʿḍā' al-Basharīyah* (Kuwait: IOMS, 1999), pp. 479–98.

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124 Ibid.

125 Ibid.

126 IFSB, Guiding Principles on Sharīᶜah Governance Systems for Institutions Offering Islamic Financial Services, December 2009.

127 Proceedings of the 19th session of the OIC International Islamic Fiqh Academy, held in UAE in 2009, Resolution no. 177 (3/19).

128 For more elaboration on the significant role of these boards, See Hamzah ᶜAbd al-Karim Muhammad Hammad, *Al-Raqābah al-Sharᶜīyah fī al-Maṣārif al-Islāmīyah* (Jordan: Dār al-Nafā'is lil Nashr wa al-Tawzīᶜ, 1st edn., 2006), pp. 36–37; Muhammad Amin al-Qattan, *Al-Raqābah al-Sharᶜīyah fī Mu'assasāt Ṣināᶜat al-Khidmāt al-Mālīyah al-Islāmīyah* (Cairo: Dār al-Nahḍah al-ᶜArabīyah, 1st edn., 2004), pp. 7–10; ᶜIzz al-Din Zughaybah, "Hay'at al-Fatwa wa al-Raqābah al-Sharᶜīyah fī al-Mu'assasāt al-Mālīyah al-Islāmīyah," a paper submitted to the Conference on Islamic Banks: Reality and Hopes, under supervision of the Islamic Affairs and Charitable Activities Department in Dubai from 31 May to 3 June, 2009; "Al-Raqābah al-Sharᶜīyah ᶜala ᶜAmal al-Maṣārif al-Islāmīyah," MA dissertation prepared

by Ahmed Mustafa al-ʿUlayyat, al-Najah National University, Nablus, Palestine, 1426/2006.

129 Karim Ginena, Azhar Hamid, *Foundations of Sharīʿah Governance of Islamic Banks*, op. cit., p. 255.

130 Syeda Fahmida Habib, *Fundamentals of Islamic Finance and Banking*, op. cit., p. 37; Karim Ginena, Azhar Hamid, *Foundations of Sharīʿah Governance of Islamic Banks*, op. cit., p. 255.

131 The word *ḥisbah* could be defined as "an institution governed by public authorities and later entrusted to an official called *muḥtasib* to supervise matters mostly related to economic activities in the market, but also concerned with moral and religious behavior, as well as the health and administration of the city. The aim of this supervision is to bring these matters into conformity with the applications of Islamic law and punish those who violate them." Ahmad bin Che Yaacob, "The Development of the Theory of the Institution of Ḥisbah in Medieval Islam," PhD thesis submitted to the university of Edinburgh, 1996.

132 See ʿAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharʿīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," a paper presented to the Conference on Islamic Financial Institutions: Features of the Reality and Prospects for the Future, the annual 14th Conference organized by the Faculty of Sharīʿa at the University of United Arab Emirates, p. 252; Ahmed Mustafa al-ʿUlayyat, "Al-Raqābah al-Sharʿīyah ʿala ʿAmal al-Maṣārif al-Islāmīyah," op. cit.; Ibrahim ʿAbd al-Latif al-Ubaydi, "Dirasah li Hay'āt al-Fatwa wa al-Raqābah al-Sharʿīyah fī al-Mu'assasāt al-Mālīyah al-Islāmīyah," a paper submitted to the Conference on Islamic Banks: Reality and Hopes, under supervision of the Islamic Affairs and Charitable Activities Department in Dubai, p. 21.

133 Hamzah ʿAbd al-Karim Hammad states: "Sharīʿa supervision is generally an extension to the job of the *muḥtasib* (inspector) in the Muslim State, which is represented in enjoining what is right when it is found to be neglected and forbidding what is wrong when it is found to be practiced." See idem, *Al-Raqābah al-Sharʿīyah fī al-Maṣārif al-Islāmīyah* op. cit., p. 34; see also: ʿAbd Allah Mabruk al-Najjar, "Muftaraḍāt al-Mas'ūlīya fī Niṭāq al-Raqābah al-Sharʿīyah fī Mu'assasāt al-Mālīyah al-Islāmīyah," a paper presented to the conference of the International Islamic Fiqh Academy of Organization of the Islamic Conference at the 19th session held in Sharjah, UAE, p. 10.

134 ʿAbd Allah Mabruk al-Najjar, "Muftaraḍāt al-Mas'ūlīya fī Niṭāq al-Raqābah al-Sharʿīyah fī Mu'assasāt al-Mālīyah al-Islāmīyah," op. cit., p. 12.

135 Ibrahim ʿAbd al-Latif al-Ubaydi, "Dirasah li Hay'āt al-Fatwa wa al-Raqābah al-Sharʿīyah fī al-Mu'assasāt al-Mālīyah al-Islāmīyah," op. cit., p. 23.

136 See Karim Ginena, Azhar Hamid, *Foundations of Sharīʿah Governance of*

Islamic Banks, op. cit., pp. 309–10; ᶜAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharᶜīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," op. cit., p. 254.

137 Ibrahim ᶜAbd al-Latif al-Ubaydi, "Dirasah li Hay'āt al-Fatwa wa al-Raqābah al-Sharᶜīyah fī al-Mu'assasāt al-Mālīyah al-Islāmīyah," op. cit., Ahmed Mustafa al-ᶜUlayyat, "al-Raqābah al-Sharᶜīyah ᶜala ᶜAmal al-Maṣārif al-Islāmīyah," op. cit., p. 64.

138 ᶜAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharᶜīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," op. cit., p. 255; ᶜAbd Allah Mabruk al-Najjar, "Muftaraḍāt al-Mas'ūlīya fī Niṭāq al-Raqābah al-Sharᶜīyah fī Mu'assasāt al-Mālīyah al-Islāmīyah," op. cit., p. 24.

CHAPTER 4

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2 T.J. Gunn and A. Lagresa, "The Organisation of Islamic Cooperation: Universal Human Rights, Islamic Values, or Raisons d'état?," op. cit., p. 264.

3 Al-Shawi, *Fiqh al-Shūrā wa al-Istishārah*, op. cit., vol. 2, pp. 753–4.

4 Ibid, p. 755.

5 See Ahmed al-Raysuni, "Al-Ijtihād al-Jamāᶜī," a paper submitted to the International Conference on Fatwa, organized by the Islamic Fiqh Academy in Makkah, 2009.

6 Yvonne Yazbeck Haddad, "Operation Desert Storm and the War of Fatwas" in Muhammad Khalid Masud, Brinkley Messick, and David Stephan Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas*, op. cit., p. 300.

7 Khalid Abu El-Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, op. cit., p. 39.

8 See Rihab Grassa, "Shariᶜah Governance System in Islamic Financial Institutions: New Issues and Challenges," op. cit., p. 179.

9 See Ahmed Alkhamees, "The Impact of Sharīᶜa Governance Practices on Sharīᶜa Compliance in Contemporary Islamic Finance," *Journal of Banking Regulation* (2013), 14, pp. 134–63.

10 See ᶜAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharᶜīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," op. cit., p. 259; Muhammad Amin al-Qattan, *Al-Raqābah al-Sharᶜīyah fī Mu'assasāt Ṣināᶜat al-Khidmāt al-Mālīyah al-Islāmīyah*, op. cit., p. 17.

11 Ahmed Alkhamees, "The Impact of Sharīᶜa Governance Practices on Sharīᶜa Compliance in Contemporary Islamic Finance," op. cit., p. 146.

12 IIFS stand for Institution offering Islamic Financial Services.

13 IFSB, Guiding Principles on Sharīᶜah Governance Systems for Institutions Offering Islamic Financial Services, December 2009, p. 15.

14 Ibid.

15 Karim Ginena, Azhar Hamid, *Foundations of Sharīᶜah Governance of Islamic Banks*, op. cit., p. 301; IFSB, Guiding Principles on Sharīᶜah Governance Systems for Institutions Offering Islamic Financial Services, December 2009, p. 23.

16 Hamzah ᶜAbd al-Karim Muhammad Hammad, *Al-Raqābah al-Sharᶜīyah fī al-Maṣārif al-Islāmīyah*, op. cit., p. 41; Muhammad Amin al-Qattan, "Al-Raqābah al-Sharᶜīyah al-Faᶜālah fī al-Maṣārif al-Islāmīyah," a paper submitted to the third international conference on Islamic Finance.

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18 ᶜAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharᶜīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," op. cit., p. 261.

19 Ahmed Alkhamees, "The Impact of Sharīᶜa Governance Practices on Sharīᶜa Compliance in Contemporary Islamic Finance," op. cit., p. 146.

20 ᶜAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharᶜīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," op. cit., p. 258.

21 Muhammad Amin al-Qattan, *Al-Raqābah al-Sharᶜīyah fī Mu'assasāt Ṣināᶜat al-Khidmāt al-Mālīyah al-Islāmīyah*, op. cit., p. 17ff.

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23 See Shakir Ullah, Ian A. Harwood, Dima Jamali, "Fatwa Repositioning: The Hidden Struggle for Shari'a Compliance within Islamic Financial Institutions" in *Journal of Business Ethics* (2018), 149, pp. 895–917.

24 Ibn ᶜĀbidīn says: "Taking money for expounding the Sharīᶜah ruling is not permissible according to the Ḥanafī school of Fiqh; however, it becomes permissible in case of writing because it is not obligatory on him." See *Radd al-Muḥtār, on al-Ḥaṣkafī's al-Durr al-Mukhtār* (Riyadh: ᶜĀlam al-Kutub, 1423 AH), vol. 8, p. 50.

25 Al-Nawawī says: "The approved opinion on the one giving fatwa is that he does it for free, and it is permissible for him to take a compensation from the treasury. However, when it becomes an individual obligation and he has enough sources of income, taking money will be prohibited according to the preponderant opinion. If the mufti earns a fixed income, he is not permitted to take money; if he does not earn a fixed income, he is not permitted to take money from the individuals requesting fatwa as the case with the ruler. This is the preponderant opinion on the issue." See *Al-Majmūᶜ*, op. cit., vol. 1, p. 80.

26 Ibn al-Qayyim says: "Taking money (for giving fatwa) is not permissible,

because *iftā'* is a position where the mufti conveys the ruling of God and His Messenger. So, it is not permissible to take compensation for it." See *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn*, op. cit., vol. 6, p. 158.

27 In his *Hāshiyat*, the eminent scholar Aḥmad al-Ṣawī says: "It is not permissible to take money for giving fatwa, which is an individual obligation on a scholar. Al-Lakhmī said: 'It is permissible to assign a fixed reward for the mufti from the treasury.'" See *al-Sharḥ al-Saghīr and Ḥāshiyat al-ʿAllāmah al-Ṣāwī* (Cairo: Dār al-Maʿārif, n.d.), vol. 4, p. 10.

28 Ibn al-Najjār says: "It is permissible for the appointed mufti, who does not have enough livings, to take compensation from the questioner, according to the preponderant opinion. That is because if he does not take a compensation, this will entail harm or hardship on his family, if any, and this is not acceptable in the Sharīʿah. Moreover, if he declined to give fatwa, the questioner would suffer hardship. So, taking money for giving fatwa becomes permissible. If people allocate a compensation for the mufti to be fully dedicated to this task, it will be permissible, according to the preponderant opinion." See *Sharḥ al-Kawkab al-Munīr*, ed. Muhammad al-Zuhayli and Nazih Hammad (Riyadh: Obeikan, 1413 AH), vol. 4, p. 548.

29 Ahmed Alkhamees, "The Impact of Sharīʿa Governance Practices on Sharīʿa Compliance in Contemporary Islamic Finance," op. cit., p. 147.

30 See Al-Nawawī, *Al-Majmūʿ*, op. cit., vol. 1, pp. 80–1; Ibn al-Najjār, *Sharḥ al-Kawkab al-Munīr*, op. cit., vol. 4, p. 548.

31 Ahmed Alkhamees, "The Impact of Sharīʿa Governance Practices on Sharīʿa Compliance in Contemporary Islamic Finance," p. 147.

32 ʿAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharʿīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," op. cit., pp. 264–5; Imad al-Zayyat, "Istiqlālīyat Hay'at al-Raqābah al-Sharʿīyah wa Ilzāmīyat Fatwāhā wa Qarārātumuhā fī al-Mu'assasāt al-Mālīyah al-Islāmīyah" in *Al-Najāḥ University Journal for Research* – (Humanities), vol. 25 (7), 2011, p. 1879.

33 Ahmed Alkhamees, "The Impact of Sharīʿa Governance Practices on Sharīʿa Compliance in Contemporary Islamic Finance," p. 147.

34 See Muhammad Amin al-Qattan, *Al-Raqābah al-Sharʿīyah fī Mu'assasāt Ṣināʿat al-Khidmāt al-Mālīyah al-Islāmīyah*, op. cit., p. 29.

35 ʿAbd al-Majid al-Salihin, "Hay'at al-Fatwa wa al-Raqābah al-Sharʿīyah wa Dawruhuā fī al-Maṣārif al-Islāmīyah," op. cit., p. 265.

36 Karim Ginena, Azhar Hamid, *Foundations of Sharīʿah Governance of Islamic Banks*, op. cit., p. 307.

37 See Ann Black, Hossein Esmaeili and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (UK: Edward Elgar Publishing Limited, 2013), p. 85.

38 Ahmed Alkhamees, "The Impact of Sharīʿa Governance Practices on Sharīʿa Compliance in Contemporary Islamic Finance," p. 140.

39 See Walid Awajan, "Al-Raqābah al-Qānūnīyah ʿalā al-Maṣārif al-Islāmīyah:

Raqāba al-Bank al-Markazī wa al-Raqābah al-Sharʿīyah" a paper submitted to the Conference on Islamic Banks: Reality and Hopes, under supervision of the Islamic Affairs and Charitable Activities Department in Dubai from 31 May to 3 June, 2009, p. 65.

40 Imad al-Zayyat, "Istiqlālīyat Hay'at al-Raqābah al-Sharʿīyah wa Ilzāmīyat Fatwāhā wa Qarārātumuhā fī al-Mu'assasāt al-Mālīyah al-Islāmīyah," op. cit., p. 1881.

41 Proceedings of the 19th session of the OIC International Islamic Fiqh Academy, held in UAE in 2009, Resolution no. 177 (3/19); AAIOIFI Governance Standard for Islamic Financial Institutions, no. 1.

42 Ahmed Alkhamees, "The Impact of Sharīʿa Governance Practices on Sharīʿa Compliance in Contemporary Islamic Finance," p. 140.

43 See Shakir Ullah, Ian A. Harwood, Dima Jamali, "Fatwa Repositioning: The Hidden Struggle for Shari'a Compliance within Islamic Financial Institutions," op. cit., p. 908.

44 Ahmed Alkhamees, "The Impact of Sharīʿa Governance Practices on Sharīʿa Compliance in Contemporary Islamic Finance," p. 141.

45 See Mohammed Ghaly, "The Beginning of Human Life: Islamic Bioethical Perspectives," op. cit., p. 177.

46 Ghaly, "Sharia Scholars and Modern Biomedical Advancements: What Role for Religious Ethics in the Genomic Era?" op. cit., pp. 22–3; Idem, "The Beginning of Human Life: Islamic Bioethical Perspectives," op. cit., p. 178.

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53 Ghaly, "Sharia Scholars and Modern Biomedical Advancements: What Role for Religious Ethics in the Genomic Era?" op. cit., p. 42.

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57 Khaled Abou El Fadl, "Legal and Jurisprudential Literature: 9th to 15th Century," *Encyclopedia of Women & Islamic Cultures: Methodologies, Paradigms and Sources*, General Editor Suad Joseph (Leiden: Brill, 2003), vol. 1, p. 37.

58 Ibid, p. 40.

59 See Mona Hassan, "Relations, Narrations, and Judgments: The Scholarly Networks and Contributions of an Early Female Muslim Jurist," *Islamic Law and Society* 22 (2015), pp. 323–351.

60 See Khaled Abou El Fadl, "Legal and Jurisprudential Literature: 9th to 15th Century," op. cit., p. 40; Saadia Yacoob, "Women and Education in the Pre-modern Middle East: Reconstructing the Lives of Two Female Jurists," MA thesis, Institute of Islamic Studies, McGill University, 2006, pp. 56, 62.

61 For more information on prominent female jurists and scholars, see Muhammad Khayr Yusuf, *Faqihāt ʿĀlimāt* (Dār Ṭuwayq, 1st edn., 1414 AH).

62 See Muhammad Saleem al-Awwa, "Madā Jawāz Ḥaṣr al-Iftā' fī Jihat Mu'ayyanah fī Kulli Dawlah," papers and proceedings of the conference held in Kuwait, 9, 11 Jumādā al-Ūlā 1428 AH, 26-28 May 2007 (Kuwait: al-Markaz al-ʿĀlamī lil Wasaṭīyah, 1st edn., 2007), vol. 2, p. 159.

63 Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā'*, op. cit., p. 103.

64 Muhammad Khalid Masud, Brinkley Messick, and David Stephan Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas*, op. cit., p. 28.

65 See Muhammad Qasim Zaman, *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism* (New York: Cambridge University Press, 2012), pp. 93–4.

66 Muhammad Taqi al-Usmani, "Manhajīyat al-Ijtihād fī al-ʿAṣr al-Ḥāḍir" in the *Journal of Islamic Studies, Islamic Research Institute*, International Islamic University, Islamabad, vol. 19, no 5, pp. 27–57.

67 Al-ʿAsili and al-Hadad, *Qarārāt wa Tawṣiyyāt Majmaʿ al-Buḥūth al-Islāmīyah*, pp. 27–9.

68 Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985–2000, op. cit., p. 15.

69 Muslim World League, *Resolutions of the Islamic Fiqh Council*, Proceedings of the 10th Session, Resolution 5, the Arabic version, p. 222.

70 See Al-ʿAsili and al-Hadad, *Qarārāt wa Tawṣiyyāt Majmaʿ al-Buḥūth al-Islāmīyah*, op. cit., vol. 2, pp. 224ff.

71 Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis*

and Fatwas of the Dār al-Iftā', op. cit., pp. 270–3.

72 Al-ᶜAsili and al-Hadad, *Qarārāt wa Tawṣiyyāt Majmaᶜ al-Buḥūth al-Islāmīyah*, pp. 44–5.

73 Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985–2000, op. cit., pp. 17, 31.

74 Muslim World League, Resolutions of the Islamic Fiqh Council, Proceedings of the 4th Session, p. 109.

75 For example, Al-ᶜAbd Khalil proposed a plan for organizing collective ijtihad through a World Islamic Fiqh Academy. He made use of many suggestions presented by some contemporary scholars and researchers including Mustafa al-Zarqa, Ahmad Muhammad Shakir, Zakariya al-Barri, and Nadiyah Sharif ᶜUmari. See Al-ᶜAbd Khalil, "Al-Ijtihād al-Jamāᶜī wa Ahamīyatuh fī al-ᶜAṣr al-Ḥadīth," op. cit., pp. 232ff. Similarly, Qutb Mustafa Sanu proposed another plan to establish fiqh academies at the national, regional and international levels. See Qutb Mustafa Sanu, *Ijtihād al-Jamāᶜī al-Manshūd, fī Ḍaw' al-Wāqiᶜ al-Muᶜāṣir: Mafhūmuhu, Anwāᶜuhu, Ḥukmuhu, Majālātuhu, Adawātuhu, Wasā'iluhu*, op. cit., pp. 271ff. Khalid Hussein al-Khalid summarized all these suggested plans and presented a comprehensive one for establishing the World Academy for Islamic Fiqh and suggested that its headquarters be in Madinah, KSA. See Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, op. cit., pp. 399ff.

76 Qutb Mustafa Sanu, *Al-Ijtihād al-Jamāᶜī al-Manshūd fī Ḍaw' al-Wāqiᶜ al-Muᶜāṣir: Mafhūmuhu, Anwāᶜuhu, Ḥukmuhu, Majālātuhu, Adawātuhu, Wasā'iluhu*, op. cit., pp. 271ff.

77 Hussein al-Mallah, *Al-Fatwā: Nashaᶜtuhā wa Taṭawwuruha Uṣūluhā wa Taṭbiqātuhā*, op. cit., p. 785.

78 Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, op. cit., pp. 424–5; ᶜAbd al-Majid al-Sharafi, *Al-Ijtihād al-Jamāᶜī fī al-Tashrīᶜ Al-Islāmī*, op. cit., p. 141; Al-ᶜAbd Khalil, "Al-Ijtihād al-Jamāᶜī wa Ahamīyatuh fī al-ᶜAṣr al-Ḥadīth," op. cit., p. 233.

79 Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, op. cit., pp. 428–9.

80 Al-ᶜAbd Khalil, "Al-Ijtihād al-Jamāᶜī wa Ahamīyatuh fī al-ᶜAṣr al-Ḥadīth," op. cit., p. 235.

81 See al-Zarqa, "Al-Ijtihād Wa Dawr al-Fiqh fī Ḥall al-Mushkilāt," op. cit., pp. 52–3.

82 Khalid Hussein al-Khalid, *Al-Ijtihād al-Jamāᶜī fī al-Fiqh al-Islāmī*, op. cit., p. 433.

83 ᶜAli Mansur Habib, "Al-Majāmiᶜ al-Fiqhīyah wa Dawruhā fī Ḍabṭ al-Khilāf al-Fiqhī fī al-Mustajiddāt al-Muᶜāṣirah," a paper submitted to the *First International conference on Sharīᶜa Sciences: Challenges of the Present and*

Future Horizons, organized by Oman College of Sharīʿa Sciences, December 2018, pp. 348–77.

84 See Yusuf Mahmud Qasim, "Ḥujjīyat al-Ijtihād al-Jamāʿī wa al-Ḥulūl al-Muqtaraḥah ʿinda Taʿaddud al-Ijtihādāt fī al-Mawḍūʿ al-Wāḥid," *Conference on al-Ijtihād al-Jamāʿī fī al-ʿĀlam al-Islāmī*, op. cit., vol. 2, p. 920.

85 Taha Jabir Al-Alwani, *Issues in Contemporary Islamic Thought* (Virginia: International Institute of Islamic Thought, 2005), p. 36.

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THE CONTEMPORARY postnormal world is posing for Muslims ever strange ethical, financial, and medical dilemmas for which modern jurists are expected to provide a suitable theological response. Yet even with an encyclopedic knowledge of Islamic law, the task facing them is daunting. In the real world this level of complexity has led to chaos in fatwa issuance with many scholars voicing concern at the direction to which things are moving and calling for the process to be regulated. This book critiques fatwa issuance in the modern context and calls for application of a synthesized approach using the mechanism of collective ijtihad to formulate rulings and overcome current weaknesses. It carefully examines central juristic concepts and puts forward consultative ijtihad as a viable alternative to the controversial classical *ijmā'* approach which may be difficult to realize in the contemporary world. The author argues that fatwas become questionable when jurists, out of their depth, fail to grasp concepts which only engagement with specialists can fully elucidate, or give way to top down financial and/or political pressure from the executives of institutions employing them. Matters are compounded by the face of fatwas having undergone a radical transformation in modern times with online programs and social media often a go-to source for Muslims. The author exposes the world of modern fatwa pronouncements – packaged, supplied and broadcast in a matter of minutes, under a mentality of one-fatwa-fits-all. In a bid for much needed reform he calls for a reassessment of current institutional practices contending that Muslim societies need not be vulnerable to the demands of a media driven, technocratic age, with rapid shifts in ethical norms, but that, in the interests of a healthy functioning society, issue fatwas cognizant of the wider modern context, specialist knowledge, as well as the cultural diversity that exists in the common Ummatic identity.

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