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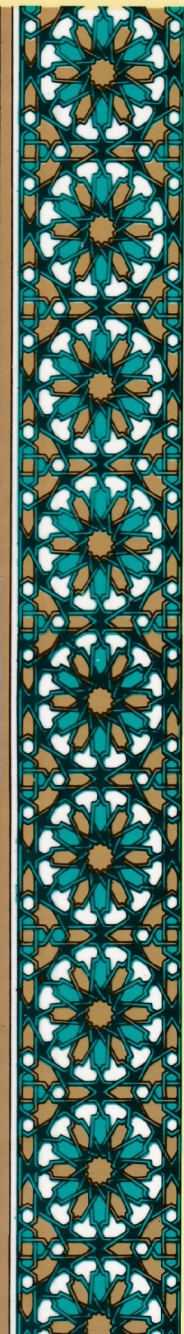
OCCASIONAL PAPERS

4

Ijtihad

Ṭahā Jābir al ‘Alwānī

INTERNATIONAL INSTITUTE of ISLAMIC THOUGHT



Ijtihad

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**INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT
Hemdon, Virginia
London**

Published 1993 by IIIT
International Institute of Islamic Thought
Headquarters:
555 Grove Street
Herndon, VA. 22070, USA

London Office:
P.O. Box 126
Richmond, Surrey, TW9 2UD, UK

© IIIT
British Library Cataloguing in Publication Data
Al 'Alwānī, Ṭāhā Jābir
Ijihad
I. Title II. Al Shaikh-Ali, Anas
III. Messaoudi, Rashid
303.6
ISBN 1-565664-051-9

Occasional Papers Series' Editors
Dr A S al Shaikh-Ali
Rashid Messaoudi

Design by Zafar 'Abbas Malik

Printed by:
Percetakan Zafar Sdn Bhd (Co.No. 97878-H)
Batu Caves, Kuala Lumpur
Tel: 03-6875725 Fax: 03-6875823

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The Occasional Papers Series

The publication program of the International Institute of Islamic Thought (IIIT) has already addressed important issues in the field of Islamic thought and the Islamization of knowledge. In this respect a number of books have already appeared in several languages under twelve main series: *Dissertations; Human Development; Indices; Islamic Methodology; Islamization of Culture; Islamization of Knowledge; Issues in Islamic Thought; Lectures; Occasional Papers; Perspectives on Islamic Thought; Research Monographs; and Studies in the Islamization of Knowledge.*

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This paper was originally an Arabic lecture delivered at the Summer School on Islamic Thought jointly organized by the IIIT London Office and the Oxford Centre for Islamic Studies in Oxford in Dhu al Hijja 1410/July 1990.

The use of Islamic terminology in transliteration is a policy of the IIIT. Some of the terms used are untranslatable, while others are so important that the Institute felt that familiarity with them is necessary for a better understanding of Islamic issues. These terms have been footnoted once or sometimes explained briefly between brackets. All those which have not yet been accepted in English dictionaries are in italic. As many of these occur more than once the readers are advised to refer to the footnotes whenever necessary.

When mentioning dates the Islamic one comes first separated from the Gregorian one by a slash. When an Islamic date is mentioned alone, it is followed by AH.

The translation of the Qur'an used in this series is that of Yusuf Ali (Amana Corporation, revised, 1989). However we made changes to verses quoted from it whenever we deemed it necessary for the sake of elucidation and precision of meaning.

IIIT, London
1413/1993

Preface

Ijtihad, for long codified and confined to history, needs to be redeemed and put to effective use. The challenges of the present demand it. The very inception of ijtihad and its release by Prophet Muhammad (SAAS) as a great rationalistic and innovative force ought to have guaranteed it a lasting presence and influence in the life of the Ummah at various levels. Indeed, its illustrious advocates and practitioners during the early age of the Ummah, following the Prophet's death, were but imbued with and guided by the active spirit of the Sunnah; they were testifying and paying tribute to Islam's rationality and fairness, as well as suitability for all ages and localities. Their practice was a daily acknowledgement of and contribution to the dynamism and vitality of an Ummah cognizant of its responsibilities to the rest of the world and of the honor and respect Islam gives to Man's reason and role on earth.

Consigning the salubrious factor to the annals of history is a denial of the rationalistic, egalitarian, and humane aspects of a realistic and durable Faith. The act would also be a repudiation of the requisites of changing times and of the clamouring need to rid the Ummah of its present baggage of malaise and miseries and enable it to forge ahead, inspiring other nations and communities.

The courage that needs to accompany such a mission is tremendous, the methodology massive and meticulous. With this work, Dr al'Alwani has contributed to the debate on this vital issue. The very way he tackled it—sometimes with boldness, sometimes with caution—shows that the debate is not an open-and-shut issue, and that it needs to widen quickly in view of the urgency of a solution for the civilizational future of the Muslim world.

The Editors

Introduction

One of the most important issues which has faced and continues to face Muslim minds today and which will undoubtedly continue to pose a real challenge to the Ummah in the future is that of *ijtihād*. Considering that the accepted juridical sources of Islam are valid for all times and places, *ijtihād* may be described as a **creative but disciplined intellectual effort to derive legal rulings from those sources while taking into consideration the variables imposed by the fluctuating circumstances of Muslim society**. What, then, is the nature of this subject? What are its origins and its relationship with other disciplines and themes of Islamic thought? Why has it assumed such a critical importance in Islamic scholarship?¹

Since the revelation of the Qur'an, the Prophet Muhammad's chief objective had been to change the mental and psychological environment of the contemporaneous Arab society and that of other human groups who would come into contact with it. In those days, the accepted norm was to follow the beliefs and ideas of preceding generations and to resist change. The Prophet's task, therefore, was to overcome that resistance and create in society a frame of mind receptive to the new religion. In doing so, the Prophet (SAAS)² was aware that the prevalent culture had produced a mentality neither willing nor able to accept Islam or assimilate its tenets and deal with its issues.

The process began with the first Qur'anic *āyah*³: "*iqra'*" ('read'); from then on, literacy was to be the new vocation. Reading was a novel and unfamiliar method to the Arabs. Even more difficult to grasp was the process of intellectual investigation of natural and universal phenomena in quest of truth and knowledge. Thus, the pursuit of knowledge and the application of reason in understanding natural phenomena were to form the basic foundation of Qur'an-based

1. See also: Ṭāhā J. al 'Alwānī, "*Taqlīd and Ijtihād*", *AJISS*, XIII, 1, pp. 129-142; "The Crisis in Fiqh and the Methodology of Ijtihād", XIII, 2, pp. 317-337; "*Taqlīd and the Stagnation of Muslim Mind*", XIII, 3, pp. 513-524.
2. SAAS—'*Ṣalla Allāhu 'Alayhi wa Sallam*': May the praise and blessings of Allah (SWT) be upon him; said whenever the name of the Prophet Muhammad is mentioned or whenever he is referred to as the Prophet of Allah. SWT—'*Subhānahu wa Ta'āla*': May He be praised and may His transcendence be affirmed. Said when referring to Allah.
3. *āyah* (pl. *āyāt*): A phenomenon pointing to the Creator; a verse in the Qur'an.

knowledge. Blind following and tradition were being replaced with rational study and with a new spirit of enquiry and understanding that were to become the bed-rock of Islamic thought and methodology.

From then on, no thesis or proposition were to be accepted at face value; reason and rigor were to be applied to determine their origins and validity. This new methodology brought about what is now referred to as the scientific mind which rejects mythology and rests on analysis, reasoning and proof at every step.

Thus with a single word, *iqra'*, Islam began to nurture an inquiring mind which, by reading the Qur'an and other literature and examining nature, would formulate ideas and arrive at conclusions that would help man understand himself and the world around him. The Qur'an says:

Do they not travel through the land, so that their hearts [and minds] may thus learn wisdom...(22:46).

Say: "Travel through the earth and see how God did originate Creation..." (29:20).

It also provides important lessons for man through the histories of earlier generations:

Many were the ways of life that have passed away before you: travel through the earth, and see what was the end of those who rejected Truth (3:137).

The establishment of this new method of enquiry and analysis produced a different way of thinking based on *tawhīd*⁴ whereby, for example, people no longer ascribed divine attributes to stars, stones, rivers, etc. This was to lead to the belief in creation as the origin of the universe and of life, and to the belief that the world was created for the

4. *tawhīd*: The act of affirming that Allah (SWT) is the One, the Absolute, transcendent Creator, the Lord and Master of all that is. Traditionally and simply expressed, *tawhīd* is the conviction and witnessing that "there is no god but God." *Tawhīd* is the essence of Islam. It is also that which gives Islamic civilization its identity, which binds all its constituents together and thus makes of them an integral, organic body which we call civilization. For excellent and thorough works on the subject see: Ismā'īl R. al Fārūqī, *Al Tawhīd: Its Implications for Thought and Life*, International Institute of Islamic Thought, Herndon, Virginia, 1991 and Ismā'īl R. al Fārūqī and Lois Lamya al Fārūqī, "The Essence of Islamic Civilization", *The Cultural Atlas of Islam*, pp. 73-91, Macmillan, New York, 1986.

grace and benefit of mankind. Fresh interpretations were ascribed to time and space, challenging Persian and Greek thinking the influence of which was widespread at the time. Almost every facet of previous human knowledge was thrashed out and reformulated in accordance with the new cosmic vision of Islam.

The Prophet's approach was to establish the '*aqidah*'⁵ as a strong spiritual base for mankind before turning his attention to the organisation of human relationships in social patterns that were to shape man's culture and civilisation. This action of his was guided throughout by Allah's teachings.

I. Ijtihad at the Prophet and the *Khulafā*'s⁶ Time.

Establishing a new faith and developing a new way of life on the basis of a new conception of man, life and the universe could not have been possible without an epistemological break between the *jāhiliyah*⁷ Arabs' knowledge and conceptions, and the knowledge and conceptions Islam wanted to evolve. When Islam's world-view was firmly established, *ijtihād* was born as an essential and necessary by-product of this whole complicated and wide-ranging task. The Prophet (SAAS) himself began to train and educate his Companions in *ijtihād* and would, on occasions, encourage them to practise it in his own presence. On other occasions, he would provide examples on how it would be exercised.

Ijtihad meant that teachings, ideas and judgements should not be taken at face value, nor adhered to blindly, but ought to be scrutinized and understood within a proper perspective. *Ijtihad*

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5. '*aqidah*': At the very centre of the Qur'anic edifice of ideas stands God, the Absolute, the One, the Transcendent, the Creator, the Cause and Judge of all. His existence, His nature, His will and His creation, His purpose for humanity and His conveyance of that purpose and will through all the prophets including Muhammad (SAAS), the last of the prophets, constitute the content of the Faith, the '*aqidah*' of Islam.
 6. *Khulafā*' (sing. *khalīfah*): The *khalīfah* is Allah's vicegerent in space-time. *Al Khulafā' al Rāshidūn*: The four rightly-guided *khulafā*' who ruled in succession after the Prophet's passing—Abu Bakr, 'Umar, 'Uthman, and 'Ali. *Khilāfah* is the institution of man as vicegerent of Allah (SWT); the institution of government as continuation of the worldly government of the Prophet (SAAS).
 7. *jāhiliyah*: The order or regime in which the law of Allah (SWT) is not in force. Also, the pre-Islamic period in Arabia, considered a time of ignorance or *jahl* (hence *jāhiliyah*).

began to develop as a science in its own right offering a new methodology based on the observation of the objective world. Accordingly, knowledge related to the two main sources of Islam, the Qur'an and the Sunnah⁸, the sources of *'aqidah* and *aḥkām*⁹. The new Faith encouraged the use of the intellect in the study and application of these two sources as human behavior was to be judged and regulated along the new Islamic legislation.

As part of this process, and in order to achieve the required transformation in the human intellect and remove any impediment or restriction which would hamper its development, not only did the Prophet (ṢAAS) encourage his Companions to exercise *ijtihād* but would tolerate from them naive interpretations while wisely and patiently improving their ability in this regard. Here are two typical cases:

There was the case of 'Uday ibn Ḥātim al Ṭā'i who, as a new convert to Islam, stuck to the literal meaning of the Qur'anic verse: "...eat and drink [during Ramadhan] until you are able to distinguish between the white and the black lines" (2:187). He understood "lines" to mean strings when the reference was, in fact, to rays of light separating night from day. In this case the Prophet (ṢAAS) reacted with diligence, indicating tactfully to 'Uday that he did not grasp the meaning of the verse.

Another instance involved 'Ammar ibn Yasser's interpretation of the verse about *wuḍū'*¹⁰: "...and [when] you find no water, then take for yourselves clean sand or earth and rub therewith your faces and hands" (4:43). 'Ammar, having no access to water—for a full bath—rolled himself over in the sand to cleanse himself of *janāba*¹¹. The Prophet (ṢAAS) reacted in the same way as he did with 'Uday. He said: "Suffice it for you to have rubbed your face and your hands once."

8. Sunnah: The path and example of the Prophet (ṢAAS), consisting of all that he said, did, approved or condemned. Also, with small s, the term refers to the pattern of Allah (SWT) in ordering creation or any part or aspect of it. It is generally used in the plural *sunan* to mean the cosmic laws governing life, the universe.

9. *aḥkām*: Prescriptions directly taken from the Qur'an and the Sunnah.

10. *wuḍū'*: Ritual ablution preceding *ṣalāh*.

11. *janāba*: Any act which breaks the ritual purity of the Muslim; the state of such impurity. *Ghusl*: Total self-cleaning of the body or ritual purification to remove *janāba* in preparation for *ṣalāh* or burial or the reading of the Qur'an.

However, the Prophet (ṢAAS) did intervene when a serious breach of the methodology took place. When one unfortunate man who had suffered a deep cut in the head was obliged to take *ghusl*, some of the Prophet's followers not qualified to exercise *ijtihad* in such a serious matter advised him to use water. The man did so, had an infection and died. The Prophet (ṢAAS) strongly condemned their action and accused them of being indirectly responsible for the man's death: "They killed him. May God kill them. Should they not have asked if they did not know?"¹² Obviously they should have enquired about this matter before pronouncing on it.

These examples indicate that, regardless of any methodological training, not everyone is sufficiently equipped to practise *ijtihad*. Some people need to take advice, carry out research work and learn more before they could practice *ijtihad*. Investigating, reasoning, questioning and correcting are all part of a methodology capable of leading to answers to all matters within the spirit and the teachings of Islam.

The first generation of Muslims, the Prophet's contemporaries, absorbed his teachings extremely well and emulated him as best as they could. When in the wake of the passing of the Prophet (ṢAAS) Abu Bakr was chosen to take over, the number of people qualified to practise *ijtihad*¹³ did not exceed a hundred and sixty men and women. Whenever a particular question came up, the matter would be discussed openly in the mosque in the presence of the *khalīfah* and some of those individuals would present their views, guided all the time by the Companions who had memorized the Qur'an. The matter would then be settled by the *khalīfah*—himself a *mujtahid* trained by the Prophet (ṢAAS)—who, as the executive authority, would choose the ruling he thought most appropriate for implementation, taking into consideration the time-space factor. The other views, however, would not be suppressed but remain in circulation for their intellectual interest or for later consideration if the need should arise. If the *khalīfah* later discovered that there was a flaw in the decision made, he would re-consider the matter on the basis of these views. Thus, while the executive and political leadership was setting up precedents and implementing policies based on religious principles, a healthy intellectual environment was also being created in which

12. Abu Dawud, *Sunan*, hadith 336. Also Ibn Majah, hadith 572; see *Nayl al Awṭār*.

13. Those who practise *ijtihad* are known as *mujtahidūn*, (sing. *mujtahid*).

Islamic scholarship would provide the rich and varied body of knowledge on which those in charge could draw.

One of the most interesting features of that era, however, was that each of the first four *khulafā'* was vested with both political and religious authority. Abu Bakr, 'Umar, 'Uthman and 'Ali were both political leaders and *fuqahā'*¹⁴ in their own right, capable of interpreting Qur'anic rules and passing judgement. Their successors, however, were not of the same calibre and the phenomenon was not to recur again in Islamic history.

II. Separation of Religious and Political Authorities and Its Consequences

1) Separation

Religious and political leadership can be considered as characteristic of both Abu Bakr's and 'Umar's *khilāfah*, and the first six years of 'Uthman's. However, the latter part of 'Uthman's rule and all that of 'Ali's—until the event known in Islamic history as *'ām al jamā'ah*¹⁵, the year al Ḥasan ('Ali's son) relinquished the *khilāfah* to Mu'awiyah—was characterized by turmoil and civil war. It is, therefore, difficult to make a comprehensive and thorough judgement on this second period. The third period began with *'ām al jamā'ah* which marks the beginning of the Umayyūn¹⁶ dynasty.

This period was characterized from the beginning by the unfortunate separation between political and religious authority. For the first time the Muslim community had a political leadership that was not entitled to or capable of exercising religious authority. Conversely, there was a large number of intellectuals and religious scholars who were practising *ijtihād* but had no political authority to enforce it. This dichotomy had a drastic effect on *ijtihād* as a discipline and on the intellectual and psychological environment of the Muslim

14. *fuqahā'* (sing. *faqīh*): Specialists in Islamic jurisprudence (*fiqh*). *Faqīh* can also be a synonym for *'ālim* (pl. *ulama*) meaning Islamic scholar.

15. The year 40-41AH witnessed the martyrdom of the fourth *khalīfah*, 'Ali, as well as the relinquishing of *khilāfah* by his son, al Ḥassan, to Mu'awiyah. This took place in Kufah and was witnessed by al Ḥusain, 'Ali's second son, and the people of Kufah.

16. Umayyūn: Umayyad (or Omayyad) dynasty (661-750 CE) whose capital was Damascus.

community. Two divergent forces were at work: on the one hand, the rulers whose chief concern was to strengthen their powers and maintain control over the people and the intelligentsia; on the other hand, the *fuqahā'* who sought to preserve the integrity of the Faith and the efficacy of *ijtihād* as a source of legislation and protection against abuse by the rulers.

Thus, for the first time since the passing of the Prophet (ṢAAS), a government system with its own vested interests emerged which fostered the development of interest groups. This led to the emergence of a strong body of radical scholars, jealously guarding the tenets of the Faith. Conflict between the two groups was almost inevitable, with the rulers trying to subjugate the *ulama* and render them subservient to their wishes, while the latter strived to assert their jurisprudential authority and independence.

2) Question of Legitimacy

A major question which came up as a result of this turmoil is that of legitimacy. Which of the two groups, the politicians or the *ulama*, had legitimate authority to legislate and interpret the law? There was no question in the *ulama's* mind that they had the undisputed right to that authority, while the politicians found themselves obliged to appease and attract some of them in order to gain support for their policies and give themselves the legitimacy they needed to preserve the loyalty of their subjects. This struggle had a serious negative influence in changing the sound psychological and rational environment created by the Prophet (ṢAAS) and which had dominated earlier periods.

This situation continued throughout the period of Mu'awiyah's reign (41-61/661-680) and up to the rule of 'Umar ibn 'Abd al 'Aziz (99-102/717-720). Being aware of the negative effects of the separation between the religious and the secular, and the chaos it created, 'Umar ibn 'Abd al 'Aziz made an earnest effort to redeem the situation, bridge the gap between the ruler and the *ulama*, and restore legitimacy to the political leadership in the eyes of the *ulama*. His effort was to have far-reaching consequences on Islamic thought for years to come. By that time two schools of thought, *ahl al ra'i* and

*ahl al hadith*¹⁷ had emerged which divided the *fuqahā'* at the level of the Ummah and contributed to place the Muslim lands in a near-chaotic state. In addition to several political reforms, the new *khalifah* undertook to compile the Hadith¹⁸ as well as the legacy of the Prophet's followers. By so doing, he hoped to settle most of the arguments and disputes amongst the rival ulama and the nascent schools of thought, and bring calm and harmony to the disrupted state. As his effort restored legitimacy to the ruler and united the Ummah his *khilāfah* is seen as an extension of the era of *al Khulafā' al Rāshidūn*. This gave him his rightful place in Islamic history as a great *mujtahid* and reformer.

The compilation of the hadith, a commendable achievement though it was, was not sufficient on its own to bring about the total coalescence of the political and religious authorities. Divisions were deepened further by political infighting, while counter efforts were being made to distort or even invent *ahādīth* and other literature in support of vested interests or political tendencies. A consistent propaganda war broke out amongst the numerous rival groups and individuals, with professional hadith inventors on all sides ready to produce sayings, pronouncements and other material to be attributed to the Prophet (ṢAAS) and his Companions in order to serve certain political ambitions, trends or schools of thought.¹⁹

This struggle was to lead to another important development in the history of the Shari'ah²⁰. That was the codification of fiqh²¹ (Islamic jurisprudence) and the adoption by the ruler of one specific opinion in fiqh. This was tantamount to adopting one particular school of thought to the detriment of all dissenting views so as to make the elected opinion the official law of the state. This tendency was more evident during the

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17. *ahl al ra'i wa ahl al hadīth*: The school of opinion and the school of Hadith.
 18. Hadith (pl. *ahādīth*): The verbalized form of a tradition of the Prophet (ṢAAS) constitutive of his Sunnah. Also a collective term for all the *ahādīth*. With capital H it applies to the sciences dealing with the Prophet's tradition in all its aspects.
 19. A case in point—among many others—is that of al Mukhtar al Thaqafi who commissioned a professional inventor to forge a 'hadith' which would support his claim to the political leadership in return for a large sum of money. The inventor, who—it seems—still had a shred of morals, offered to take half the amount if he were to attribute the 'hadith' to anyone else but the Prophet (ṢAAS).
 20. Shari'ah: The collective name for all the laws of Islam, including Islam's whole religious and liturgical, ethical and jurisprudential systems.
 21. fiqh: Knowledge of Islam through its laws; science of the laws of Islam.

rule of the 'Abbasiyūn²² dynasty than during the Umawiyūn because the former standardized the laws derived from the Qur'an and the Sunnah in order to strengthen their hold on the reins of power. Although during the Umawi reign there were differences between the religious leadership (Imam²³ Malik ibn Anas²⁴ and Imam Abū Ḥanifah) on the one hand and many Umawiyūn rulers on the other, this gap became wider and the conflict more serious during the era of the 'Abbasiyūn. Not allowed to share in the political authority, the ulama began to associate themselves more and more with the masses, confining themselves to the mosques where they could lecture freely and express their views which would spread to various parts of the Ummah. Opinions and *fatāwā*²⁵ on all subjects proliferated, accompanied, not unnaturally, by differences and disagreement, and quite often created serious problems for their authors. Imam Malik—after issuing a fatwah that a divorce is nullified if a man takes his decision under coercion—was arrested and so harshly beaten that one of his arms became permanently paralysed. Although his fatwah was based on a hadith as well as a specific verse in the Qur'an (16:106) it was given political connotation and seen as a direct challenge to an innovation introduced into the oath of *bay'ah*²⁶ by the *Khalīfah* al Manṣūr. Under the amended declaration of allegiance a man would give an oath to divorce his wife if he ever decided to withdraw his allegiance.

3) Codification of the Sharī'ah

Those *fuqahā'* favored by the authorities assumed the official garb of the rulers and eventually political *fatāwā*, or political fiqh, came to being. One such favored person was the Persian writer Ibn al

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22. 'Abbasiyūn: The Abbasid dynasty, claiming descent from the Prophet's uncle 'Abbas, ruled Muslim lands from its capital Baghdad (750-1258 CE).
 23. imam (pl. *a 'immah*): The imam is the community of Muslims' leader in religious as well as in lay matters, deriving legitimacy from commitment to and knowledge of Islam. He is also an interpreter of Islamic law. In a restrictive sense the term refers to anyone leading the faithful in *ṣalāh* in a mosque or elsewhere.
 24. Imam Malik Ibn Anas: Founder of the Maliki *madhhab* or school of Islamic jurisprudence in Madinah. He was preceded by Abu Hanifah (hanafi *madhhab*) and followed by al Shafi'i (Shafi'i *madhhab*) and Ibn Ḥanbal (Ḥanbali *madhhab*).
 25. fatwah (pl. *fatāwā*): A juristic opinion given by an 'ālim, mufti, or *mujtahid* on any matter pertinent to Islamic law.
 26. *bay'ah*: The nomination of the *Khalīfah* by the leaders of the Ummah, or the seconding of that nomination by the members of the Ummah at large; the covenant the first Muslims of Madinah entered into with the Prophet (ṢAAS), giving him their obedience, allegiance and protection.

Muqaffa'. A recent convert to Islam, whose sincerity was doubted by many at the time, he was the first to suggest to al Mansur the idea of codifying the laws of Islam, a concept unfamiliar to the Muslims of that time. The *khalifah* turned to Imam Malik to persuade him to allow his great compendium *al Muwatta'* to be adopted as the official book of fiqh, thus shunning other views and fiqh schools. Later on, in a similar attempt to adopt the Ḥanafī²⁷ school of thought, *Khalifah* Harun al Rashid (170-194/786-809) reached a tacit agreement with the famous Ḥanafī judge and scholar Abu Yusuf to adopt the Ḥanafī school without having to publicly declare that. This almost succeeded as judges from the Ḥanafī school only were appointed to the official courts.

But this did not prove enough to put an end to the intellectual anarchy which had spread up and down the lands of Islam. The main confusion related to areas of pure intellectual research and study, and to areas of political and executive authority. Those in authority could not afford the intellectual luxury of having several interpretations or opinions on the same matter for the concerned party to choose from; they were obliged to exercise their own judgements and, accordingly, issue specific instructions in order to maintain control over law and order in society.

These are important details since they highlight the fact that the healthy intellectual and psychological environment created by the Prophet (SAAS) during the early years of Islam was changed quite radically and that very serious problems began to surface. For example, controversies erupted between the school of '*aql*' and the school of '*naql*'²⁸. One of the serious questions raised was to decide which of the two schools should take precedence, which one carried more authority and according to what methodology should the transmitted knowledge be verified, authenticated and interpreted.

4) Persecution of the Ulama

This psychological change and intellectual turmoil resulted in intolerance against and outrageous treatment meted out to some

27. Ḥanafī: See note 24.

28. The school of '*aql*' emphasises the use of reason in interpreting the Qur'an and the Sunnah. The school of '*naql*' relies on transmitted knowledge in its approach to sacred texts.

prominent ulama. Apart from Imam Malik, mentioned earlier, Imam Abu Hanifa died in prison; Imam al Shafi'i was taken in chains from Yemen to Baghdad and Imam Ahmad ibn Hanbal was jailed for disagreeing with the rulers. Numerous scholars—among them al Bukhari—suffered all kinds of maltreatment and persecution.

The conflict intensified during the rule of the 'Abbasi *khalifah* al Ma'mun who openly and publicly gave patronage to the rationalist school and advocated the supremacy of the intellect over the inherited tradition. His efforts were met with strong opposition from those *fuqahā'* who defended the authority of the hadith and went on to discredit reason altogether. But this reaction proved to be a serious mistake on their part and was to tarnish the reputation of the *fuqahā'* for a long time to come.

However, other *fuqahā'* took a much more objective approach to the problem and worked towards the establishment of principles and methodology of fiqh (*uṣūl al fiqh*) within which the debate over legitimacy could still be conducted without compromising the basic principles of Islam.

One of the damaging consequences of this struggle over legitimacy was the introduction into the Muslim mind of nonsensical hypotheses and issues not known earlier. Islamic literature of that period is full of debates over such ludicrous and absurd issues as the position of Islamic law with regard to the period before Islam; the nature of things before the prophets came with their messages; how to deal with all aspects of life if no prophets were sent. The new psychological and intellectual environment influenced negatively the Muslim mind which had been trained on the methodology set out by the Qur'an and the Sunnah. This change made it more receptive to such polemics and non-issues.

Attempting a diversion in order to secure legitimacy for his rule, al Ma'mun decided to promote the translation into Arabic of non-Muslim works of philosophy. Such a move can only be seen and correctly evaluated within the framework of the struggle for legitimacy between the political and religious leadership which led—among other things—to the canonization (*taqnīn*) of fiqh by the rulers and the restrictions on *ijtihad* by the *fuqahā'*.

5) Conflict Over Legitimacy

The scene had therefore been set. The rulers strived to have the school of reason prevail, gave it priority over sacred texts or at least considered it a key to interpreting the texts; they saw in it a means which would give them freedom to legislate according to their political ambitions. Meanwhile, the ulama were keen to deny them that very freedom and the subsequent legitimacy in order to preserve for themselves the monopoly of interpretation.²⁹

Against this background, ulama like Imam al Shafi'i, Imam Aḥmad ibn Ḥanbal, 'Abd al Rahman ibn al Mahdi and many others pioneered—while identifying clearly its principles—the discipline *uṣūl al fiqh*³⁰ as a methodology which controls and guides the practice of ijtihad. Their efforts aimed to minimise, if not eliminate, the possibility of abuse by the rulers.

By the time of the last of these four *a'immaḥ*, at least thirteen other *mujtahidūn* could be identified, although their works had not been widely spread or recognised as authoritative. One possible reason for this seems that the community gave more recognition to those ulama who combined a life of study and research with that of brave and unrelenting opposition to the rulers' trespassing on the Shar'iah.

6) Intellectual Confusion

The development of writing marked a turning point in the history of Islam with long-lasting effects on later generations up to the present. Systematic recording of Muslim sciences emerged in an environment fraught with confusion and conflicts as a result of the intellectual anarchy already described. The methodology set by the Prophet (SAAS) suffered for decades as a result of the psychological and intellectual environment created by conflicts. There were differences in interpretations of the basic texts, the Qur'an and Hadith,

29. An example of that is Imam al Karkhi who said: "Any Qur'anic verse or hadith not in agreement with our school is either false or has been abrogated (*mansukh*)."³⁰ This is quoted in Mohammad Rashid Rida's Introduction to Ibn Qudama's *Al Mughni*. *Mansukh* is a verse the content of which was revoked by another verse which therefore is called *nāsikh*.

30. The sources of Islamic law; Science of Islamic jurisprudence, or the methodology of deriving laws from the sources of Islam and of establishing their justice or constitutional validity. See on this subject Tāhā J. al 'Alwānī, *Uṣūl al Fiqh al Islāmi: Source Methodology in Islamic Jurisprudence*, English edition by Yusuf Talal DeLorenzo and A.S. al Shaikh-Ali, IIIT, Herndon, Virginia, 1990.

as well as in methodology. This led to the distortion of issues, the spread of spurious material and the appearance of bogus ulama. Therefore, the need for order and rationalisation became more pressing. The standardisation of methodologies and sciences became more urgent as the need was felt to define the criteria and the framework for study and research.

Several new sciences and schools of thought emerged. The polemicist school of *'ilm al kalām* (scholastic philosophy), was devoted to the defence of the purity of the Faith; Sufism endeavored to bridge the gap between theory and practice and to promote an Islamic theory of education and discipline; fiqh regulated the communal affairs and dealings of everyday life; *uṣūl al fiqh* sought to establish a comprehensive Islamic methodology. Other sciences and disciplines also flourished including linguistics, Arabic language studies and the Hadith sciences dealing with both criticism of *aḥādīth* and methods of their reporting.

These vigorous intellectual efforts, which came in response to the intellectual anarchy that had engulfed the Muslim world, failed to achieve their primary objective—to eliminate schism and unite the community. In fact, the new solutions put forward by the various schools became themselves a subject of debate and argument, and led to more problems. For example, *'ilm al kalām*, which was perceived as a powerful tool to protect the Faith, was used for sectarian purposes by Muslim groups against each other, while *uṣūl al fiqh* became bogged down in futile arguments and abstract issues which were of little or no benefit to the community or the state. The most important argument related to *shar'* (law) and *'aql* (intellect); the conflict between them, the precedence of one over the other and the question to know which was more reliable. Consequently, this discipline was split into two different branches. One dealt with the two main sources of Islamic law, the Qur'an and Sunnah, the second was concerned with the other sources which were a matter of disagreement: *ijma'*³¹ and *qiyās*³² as well as related sources like *al*

31. *ijma'*: Consensus among the ulama as a source of Islamic law.

32. *qiyās*: Logical deduction from the Qur'an and Sunnah as sources of Islamic law.

*maṣāliḥ al mursalah*³³, *al istiḥsān*³⁴, *al 'ādah*³⁵, *al 'urf*³⁶ and the possibility to choose the easiest of two options. As an expression of 'aql, these came to be seen by some as the fourth guide after the Qur'an, the Sunnah and ijma'. Some ulama declared that the sources of law are: the Qur'an, the Sunnah, ijma' and the intellect. Others avoided the term 'aql using *qiyās* instead. Other ulama used the term to include all the various aspects of the functions of the intellect when dealing with temporal activities. Of course, the second branch allows for a wider role for interpretation and thinking.

Qiyās in itself was a matter of disagreement. Was it simply the implementation of methodological analogy or was there more to it than that? Was it to be used in all areas of thinking and behavior? How reliable and sound a method was it, and could it be distinguished from *ijtihād*? Imam al Shafi'i thought that they were one and the same. Others declared that the evidence of 'aql is simply *qiyās*, and since *qiyās* is an intellectual theoretical exercise it will always remain a minor rather than comprehensive exercise. The debate became so involved and increasingly complex as new issues cropped up and as the *fiqh* practitioners became increasingly convinced of the limits of *qiyās*. As a result, the methods of *ijtihād* had to be extended to include the *qiyās*-related sources mentioned above. Consequently, the Muslim mind was unable to function unless 'adjusted' and 'directed' by the *faqīh* who, as the process of *ijtihād* grew more technical, assumed a more central role as the expert, although his lack of any working knowledge of social and other human sciences proved a drawback. Were there to be more scholars of the calibre of Ibn Khaldun, Muslim thought would have been spared the negative effects of the restrictions imposed on it by the *fuqahā'*.

7) Termination of Ijtihad

Deviation, distortion and confusion affected all sciences and disciplines. Sufism, for example, deviated from its original objectives of

33. *al maṣāliḥ al mursalah*: Public welfare neither commanded nor prohibited in any Islamic source, as source of Islamic law.
34. *istiḥsān*: As a source of Islamic law, the acceptance of a rule because of its superior equity in comparison with an already established law.
35. *'ādah*: A given community's customs not going against the basic principles of Islam.
36. *'urf*: Source of Islamic law. In the absence of anything to the contrary, derivation of the law from the common and approved mores of a people.

education and spiritual refinement in order to delve into metaphysics, philosophy of the abstract and mysticism, resulting in complete denial of human will and the value of any action. The issue of cause-effect relationship as taught to and understood by the Muslim mind at the beginning of the Revelation was lost in a metaphysical maze. Fiqh lost most of its comprehensive approach, endeavor and quality and became more and more concerned with trivial and secondary issues. Muslim thought became disoriented and Muslim intellect lost its enthusiasm for innovation or new thinking and tended to find solace in turning back to following the already established schools.

The call by some rulers for *taqnīn* (codification) was seen as a direct interference with the process of *ijtihād*. Some ulama, therefore, openly called for the termination of *ijtihād*. This call actually reflected the depressing intellectual and psychological state of the Ummah at the time. It was justified on the basis that the scholarship accumulated by the four schools was sufficient to understand and implement the Shari'ah for all generations to come, and thus no further need for *ijtihād* was necessary. It could also be understood as another outcome of the struggle for legitimacy between the rulers and the ulama. The fact that such a call was supported by such prominent ulama as Imam al Juwaini (also known as Imam al Haramain and teacher of Imam al Ghazali) and several others who came after him is a clear evidence of a desire to impose this idea.

Such a step could only have been taken in an atmosphere of strife and despondency. For the need for widening the scope of *ijtihād* was even more evident and more pressing at the time, especially since the principles governing the practise of *ijtihād* and the basis upon which it had been set up had already been firmly established with such commendable proficiency and expertise.

By the sixth hijri century the deterioration went a stage further with the Muslim mind not only conditioned and ready to see the 'benefits' of freezing *ijtihād*, but also acquiescent enough to accept its banning altogether as a harmful practice, and to advocate *taqlīd*³⁷ as a necessity. The schism was thus finally set between the people and the repositories of their guidance: the Qur'an and the Sunnah. The Muslim mind went into a long voluntary retirement, depriving itself of the use of investigation and reasoning. The scholars' main function

37. *ṭaqlīd*: Blind imitation. See note 1 above.

was to read old texts to their public, give simple explanations, summarise long discussions and make minimum commentary. Some eighth and ninth hijri centuries scholars were condemned for practising *ijtihad*; were banned from issuing *fatāwā* and had their works confiscated.

8) Effects of the Termination of *Ijtihad*

Some attempts at reform were made, but they were not sufficient to stem the negative effects of the termination of *ijtihad*. This was probably due to the fact that essential reform was needed in many other areas which had been neglected for so long. Political reform, restoration of *shūrā*³⁸ and the replacement of dynastic or one-man rule by collective and participatory government, together with the establishment of institutions of learning and scientific research, were only some of the areas that were in urgent need of attention. There was also a need to bridge the gap between political, religious and intellectual leadership, and to end the conflict over legitimacy. Developing strong foundations of broader social science disciplines on the basis of the Qur'an and Sunnah was equally necessary. Furthermore, equally urgent was the provision of the necessary environment for free and open debate, and the proposal of new ideas and solutions to remedy the situation. Were any of these fundamental reforms undertaken at the time, the retrogressive tendencies to put an end to *ijtihad* might never have occurred. Most of the problems and ills suffered by later generations could be traced to that period.

One notable attempt was made during the Ottoman rule: The Ḥanafī school of jurisprudence was adopted as the official *madhhab*³⁹ and its founder Abu Hanifa was considered the Grand Imam. In the meantime, Malik's, al Shafi'i's and Ibn Hanbal's schools remained as different legal opinions which could be studied and circulated but not applied; furthermore, scholars belonging to these schools did not enjoy State financial support or *awqāf*⁴⁰ allocations. Worth noting is that

38. *shūrā*: Decision-making through consultation or the consultative/representational form of government in time-space, ordered by Allah (SWT) (Qur'an 3:159; 42:38), and practised by the Prophet (ṢAAS) and al *Khulafā' al Rāshidūn* after him.

39. *madhhab*: See note 24.

40. *awqāf*: The institution of endowment. For more information see: *Islamization of Knowledge: General Principles and Workplan*, International Institute of Islamic Thought, 1989, pp. 97–99.

even within the Ḥanafī school only certain works were to be used and within certain restrictions. But despite this commendable effort, and despite the Ottomans' brilliant military conquests and administrative genius, malice lingered on and the Muslim mind continued to suffer from confusion until it was suddenly confronted by the European renaissance in the later years of the Ottoman Empire.

III. Ijtihad: an Absolute Necessity

The rise of European power caught the Muslim Ummah in a state of total slumber. Those who used to approach Muslim rulers for favors and appeasement came this time to conquer, occupy, and subjugate. The onslaught was massive and all-embracing: intellectual, cultural, legal, political as well as military, while Muslims were busy debating the hereafter and 'the devils who hid inside the new machines and contraptions' Europeans had brought along. Ijtihad again became a serious issue.

It was proposed that, in the light of the new European challenge, ijtihad was a necessary and sufficient condition for reform: there would be no reform without ijtihad, no revival without reform and freedom from foreign domination and no salvation without genuine revival. The Muslim intellect was again being put to the test, and its ability to face the new threat was being challenged. Ijtihad was being understood in various ways:

1. There were those who, in the name of modernism, rendered ijtihad a means to appease the colonialists by advocating subservience to their way of life. This meant forfeiting a great deal of the legacy of Islam, abandoning the past and adopting the occupiers' ways with a gradual, but fatal, drift away from the basic sources of Islam.
2. As a counter-reaction to the preceding trend, some intellectuals rejected ijtihad in all its forms and stripped it of all legitimacy, completely denying the need for it. The exponents of this attitude were trained to consider *taqlīd* an important principle.
3. A third category permitted the practice of ijtihad within certain restricted areas relating to new or unprecedented events, situations or issues. For such thinkers, where a previous opinion or judgement had been made, no ijtihad was necessary; prece-

dence and established opinion would overrule; any wisdom already perceived would be given preference over all new ideas. This meant applying old and outdated judgements to contemporary situations, which often resulted in absurd and ludicrous proposals. Today, when the *faqih* has assumed the unworthy role of an official of the state and a mere clerk in anti-Islamic governmental departments, such examples of this trend include the ridiculous *fatāwā* regarding test-tube babies and sperm banks.

4. Finally, other scholars found in *ijtihād* a justification for the new colonial order. It was an easy way for them to relax and bend all rules to accommodate the new circumstances. Those who defended rigor and authenticity were branded "strict", "prejudiced" and "extremist". These scholars sought to assimilate any novel ways and ideas into the fold of Islam by means of applying *ijtihād*, thereby giving them legitimacy. This also led to a free-for-all state of affairs and *ijtihād* became an end in itself, a kind of leisurely activity that was open for all.

There was severe tension and largely futile debate amongst these rival groups, leading to acrimony and a great deal of confusion.

Apart from the above four trends of *ijtihād*, a fifth one, albeit less vociferous, can also be traced. It advocates the revival of Muslim thought along the Prophet's original methodology and calls for a fresh look at Islam's basic sources in the light of modern changes and for adjustment in Islamic thought accordingly. The exponents of this school consider *ijtihād* a reflection of the contemporary intellectual and psychological state of the Ummah. For them, whenever the right prerequisites for *ijtihād* exist, then it becomes incumbent upon the ulama to practise *ijtihād* and respond to the needs of the time. They also contend that *fiqh* is but one area in need for *ijtihād* in order to deal with the affairs of the Ummah. The school propounds what could be called *macro-fiqh* which deals with the totality of the concerns of the Ummah—as opposed to *micro-fiqh* which deals with specific issues—and is therefore subject to local conditions and influences. To avoid putting the cart before the horse, it would be essential to give more attention to *macro* rather than *micro-fiqh*.

Proponents of this trend of *ijtihad* believe that the Ummah is mature and capable enough to face new situations and deal with them according to an authentic Muslim approach. A review of the methodology itself and the whole cultural environment would, therefore, be required so as to prevent abuse and exploitation of this approach for partisan or sectarian ends. The resulting intellectual transformation, in turn, would entail a rejuvenation of the way the Qur'an and Sunnah would be read and interpreted in order to form the foundation upon which Islamic social and human sciences could be established with the Qur'an and the Sunnah as the major sources of all knowledge. The human mind is the only instrument, a responsible and accountable one, needed to know the Creator, comprehend well His Revelation, and understand human nature and cosmic laws. With its intellect, it is also entrusted with facilitating the implementation of the Revelation in real-life situations and with articulating man's understanding of his own existence as well as that of the Unknown. This will enable man to formulate ideas, discover guidance, propose solutions for the world's welfare, bring about enlightenment and prove his worth.

Revelation and the objective world are essential sources of global knowledge. Moreover reason is a tool for understanding them and thus for promoting civilizational progress. The two are closely connected. Resorting to them is a prerequisite for creating the right environment within which *ijtihad* will become a natural activity and the reforming of the Muslim mind a likely endeavor. This is the fundamental condition for the promotion of an integrated culture in which the various sciences and arts could flourish on the basis of a truly Islamic vision and a correct understanding of man and his world. Only then can man's relationship with the Creator and with nature be properly organised. Such a proper relationship will facilitate the setting up of religious life on such sound foundations as would enable Muslim society to build its own institutions, systems of education and family life, and play its rightful role in the world. Islamic history and cultural legacy could be studied closely to free the contemporary and future Muslim generations from the failures and constraints of the past, and enable them to understand their past correctly while differentiating between its positive and negative legacies.

1) Reason Versus *Taqlīd*

Uṣūl al fiqh experts decided that both '*aql* and *naql*⁴¹ are bases for Islamic law, and that they should be used jointly to mutually reinforce one another. The idea that the Muslim mind should only be allowed to function through the rigors of *qiyās* and *istihsān*, and their derivatives—which would deny it a central role in facing the new challenges and in preparing a blueprint for the implementation of the Islamic world-view in daily life—was a symptom of the conflict over legitimacy between the ulama and the rulers. It resulted from the former's will to protect Islam against abuse by the rulers who would use *ijtihād* as a tool to further their own political ends.

If the Muslim mind today could be freed from those restrictions, and *ijtihād* is restored as a constructive methodology to reform Islamic thought, the fundamental principles of Islam would regain their rightful role in shaping human thought in general. They would again be used as the fountain of Islamic thinking and the reference for understanding life, man and the world. They would be taken into account in determining the objectives of the laws and teachings of Islam. It would again be possible to reach practical solutions to life's problems, set up workable, educational, moral and social systems for society, eliminate the dichotomy between theory and practice and break the vicious circle in which Islamic thinking finds itself today.

2) *Talfīq*

As new issues and unprecedented situations arose for which no solutions were to be found in the inherited literature, some ulama resorted to a new method known as *talfīq*. This is not very different from what is called syncretism in Western thought. It consists in reconciling different or opposite views. The scholar's main effort goes into combining those parts of already existing views in order to make them fit into the solution for a particular question. For example, since a person being led in *ṣalāh*⁴² is not permitted to read the *fātiḥah*⁴³, or any other Qur'anic verses, according to the Ḥanafī school, but that he is according to the Shafī'i school, the *talfīq* approach would consist in not allowing the worshipper to read anything during

41. See note 28.

42. *ṣalāh* (pl: *ṣalawāt*): Supreme act of worship in Islam.

43. *Fātiḥah*: The opening *surah* of the Qur'an.

ṣalāh when the imam himself reads in a loud voice, but to allow him to read during those *ṣalawāt* when the imam reads in a soft voice.

The main feature of this method is that it is not derived from any direct evidence from the Qur'an or the Sunnah, or is based on any independent reasoning as such, but is arrived at by a deliberate and conscious effort in order to combine opposite views.

IV. Importance of the Time-Space Factor

This, however, was not the way the Prophet (ṢAAS) trained his Companions to deal with new issues and circumstances. A good guiding example was set when the Messenger of Allah appointed Mu'adh ibn Jabal as a judge to the Yemen. When on the eve of his departure the Prophet (ṢAAS) asked him what he would refer to when seeking solutions to the problems he would encounter, Mu'adh answered that he would refer to the Qur'an; but if he could not find an answer he would refer to the Sunnah, and if he still found no answer, he would ultimately have recourse to his own rational judgement. The Prophet (ṢAAS) was reported to have been very happy with that answer and expressed total approval of Mu'adh's approach. This was a typical case of *ijtihād*. People such as Mu'adh did not need to resort to *talfīq*; they were able to tackle every new issue, no matter how difficult and complicated, by resorting to the methodology taught by the Prophet (ṢAAS). They had the knowledge, the confidence and the will to do so.

The fact is that today Islamic thought and the prevailing intellectual environment are clearly disoriented, stagnant and completely non-productive, while division is all-embracing. An illustration of the negative debate within contemporary Muslim thought is the argument about the nature, role and authority of Makkah and Madinah-revealed verses of the Qur'an in Islamic jurisprudence, and about whether the present phase of Muslim society is akin to the Makkan or Madinan periods. In some cases this debate has gone far beyond the realms of logic and reality, and led to a certain doctrinaire attitude which, evading the real issue of the time factor, insists that one has either to "take Islam as a whole, or leave it as a whole".

In fact such a debate is an expedient for the incapacity of Muslim thought—as opposed to the Divine Message which is perfect—to meet the challenges of our time. Muslim scholars should realize that time

constantly travels forward, making it impossible for situations or events to recur in exactly the same way. It just is not possible today to impose proposals and ideas put forward in Madinah by Imam Malik and his contemporaries fourteen hundred years ago. Similarly, it is not possible to ignore or discount the developments and achievements made during all the intervening generations in the field of human sciences. In economics, for instance, how would it be possible to follow the Madinan market mentality in reference to contemporary economic issues. To apply the Madinan market model to contemporary financial and economic situations will result in poverty and prevent the Ummah from meeting the people's basic requirements. It will neither be possible to have any dealings with today's complex world economic systems nor for any Muslim state to build a strong economy capable of meeting the challenges of the present time. Muslims can, no doubt, learn from their predecessors by incorporating the latter's ideas into their own.

Therefore, instead of engaging in a debate necessarily harmful, because it is backward-looking, Muslim scholars ought to be concerned with developing a new approach capable of restoring Islamic consciousness into Muslim society. Islam is indeed a global response to man's needs, a universal message capable of offering solutions to man's contemporary problems, but Muslims do have to determine what the Prophet's methodology was in dealing with new issues and situations, and what the Shari'ah's aims actually are.

Islam's world-view will have to be articulated as a value-system and translated into programs that can be implemented in contemporary society. For merely stating that Islamic teachings are 'valid for all time and space' does not make them adaptable to our needs without our own effort. There is simply no alternative to intellectual exertion, that is *ijtihad*, for fresh interpretation and application of Islam within the framework of the Prophet's methodology.

In 1989, in the United States, on the eve of '*Īd al Fitr*'⁴⁴, I was asked about the value of *zakāt al fīr*⁴⁵. I answered that it is equal to a measure

44. *Īd al Fitr*: Muslim festival day celebrating the end of the fasting month of Ramaḍan.

45. *zakāh*: Usually rendered as the 'poor-due' or legal charity, *zakāh* is the obligatory sharing of wealth with the poor and the community at the annual rate of 2.5% of appropriated wealth above a certain minimum. *Zakāt al fīr* is another kind of obligatory poor-due a Muslim gives at the end of the fasting of Ramaḍan, shortly before the celebration of the festival of '*īd al fīr*'.

of dates, barley, corn or rice or whatever the staple diet of the community is, but specified immediately that if one cannot give out of these items then this *zakāh* could be given in the form of money. I explained to the audience that my opinion in this matter is based on a hadith: "Save them [the poor and the needy] having to beg or look for these goods on this ['īd] day"⁴⁶. This means that the purpose of giving *zakāt al fiṭr* would be to allow the poor to enjoy the 'īd with their families instead of having to go out and beg or work to obtain food for them. I also added that it could, therefore, be paid in cash equivalent in accordance with today's living standards. My explanation made some people extremely angry and one 'faqīh' came the next day to the mosque with quantities of barley and corn and a measuring cup, and started giving out to people in an effort to prove that you can literally implement the Prophet's instructions today.

The point is not to say that people should not give out *zakāh* in the form of grains. All that is asked is that common sense should prevail in this matter. Barley is not, today, a commodity of daily retail marketing, in its raw form, as it used to be at the time of the Prophet (ṢAAS). There is a need to adapt to situations! One does not offer corn and barley to those sleeping rough in the Western capital cities, with nowhere to go, no means to grind these grains and no means to cook them. In one Middle Eastern capital, we saw a rather dubious barley and corn distribution: those selling these goods would offer to distribute them among the poor on behalf of the buyers. But instead, they would sell them again to someone else, and so on until they had sold the same goods several times over. The Legislator never intended for such a trivial matter of secondary importance to be carried out in this diabolical fashion.

Recently we learnt about another dubious subterfuge in fiqh known as "legal stratagems". This has produced a plethora of deceitful practices by which one could find ways round various Islamic obligations such as for instance *zakāh* and divorce regulations. It is very clear that this method aims to distort the Sharī'ah rules and behind it the very spirit of Islam. Ultimately such deviousness is intended to

46. This hadith is reported in Ibn Hajar, *al-Talkhīṣ*, 2:831; *Irwā' al Ghalīl*, 3:332. Also in *Naṣb al Rāyah*, 2:431. See also *Sunan al Bayhaqi*, 4:175.

render Islam a meaningless collection of rules of little use to anyone, as witnessed by our present-day situation.

The same applies to the sighting of the new moon as an indication of the starting of Ramaḍan. Although the Prophet (ṢAAS) recommended to accept a fellow Muslim's report that he had sighted the new moon, and thus to begin the fast, every year some people insist on going by the literal meaning of a hadith in this respect. They claim that the beginning and the end of Ramaḍan could only be determined by seeing the new moon with the naked eye. Yet today, in the United States, NASA scientists, who landed man on the moon, have been able to determine not only the movement of the moon every second but also that of the sun and the earth. Some Muslims would stubbornly indulge in other non-issues: how was the moon seen? Where was its position in relation to the sun?, etc... It could never have been the Prophet's intention to make life so difficult when he established that rule. He was, at that time, addressing illiterate people, and the best they could do to establish the beginning of the month was to see the moon with the naked eye. They had no other means and Allah (SWT) did not wish to make matters difficult or impossible for them. But when there exist more accurate instruments to determine the same fact, it would be totally unacceptable, and indeed backward-looking, if insistence is on using out-dated and inadequate methods. The message of Islam is intended for all people in all ages; it was never restricted to the first *hijri* century Arabs of Makkah. Therefore, to stick to the literal meaning irrespective of the time factor is a benighted approach which is conducive neither to enlightenment nor to progress.

Similarly, a very well-respected scholar was once asked about the concepts of *dār al Islam* and *dār al ḥarb*⁴⁷. The question was to know which country would Muslims today possibly declare war on first: Russia, America, China or Japan. The scholar very naively replied that since the Russians were atheists and they were at war

47. *dār al Islam*: Territories and societies in which Muslims are free and secure. *dār al ḥarb*: Non-Muslim territories hostile to Muslims. For further information see 'AbdulḤamīd A. AbūSulaymān, *The Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought*, IIIT, 1987.

with the Muslims in Afghanistan, then we should start with them first. He added, however, that the Americans had done far more harm to the Muslims by supporting Israel, and so perhaps we should start with them...

This is a typical example of the erroneous approaches adopted by contemporary ulama. It is a non-issue of the kind which generate exhausting heated arguments and controversies, and can cause endless confusion. Concepts such as *dār al Islam* and *dār al ḥarb* are plainly anachronistic. Millions of Muslims have, willingly or unwillingly, emigrated from their motherland, the traditional *dār al Islam*, to settle in the Western non-Muslim countries—traditionally *dār al ḥarb*—while hundreds of thousands of Muslim children are being born in non-Muslim countries every year. The two concepts were perfectly logical and practical when the Muslims were the foremost power in the world. They can no longer have any relevance when the bulk of Muslim countries are desperately struggling with underdevelopment, poverty, famine, backwardness, illiteracy and are almost completely dependent on non-Muslim countries, not only in their technology and defence, but also in their food, health and education.

A large number of Muslim countries live on western products and American food aid. If the Americans were to stop sending bread and other food supplies to Muslim countries three-quarters of the world Muslim population would experience famine and death. Egyptians, for example, are being fed American poultry that passed its 'sell by' dates and which is, in some cases, two years overdue; but their country has no alternative. How, under such conditions, can one think of fighting those who produce one's daily necessities of life? According to statistics, no less than 150 people die of nothing else but hunger everyday in Muslim lands such as Bangladesh, Ethiopia and other African countries. No other people in the world today, except the Muslims, die of starvation! Moreover, with what weapons are Muslims going to fight the so-called *dār al ḥarb* countries when the shoes and the clothes they wear—let alone arms—come from them? Such arms producing countries have been supplying Muslim countries with inadequate military equipment and can withhold certain parts or devices that would render the weapons bought by Muslims completely useless. More than this: the collapse of the Soviet Union as a superpower has left helpless and vulnerable those Muslim countries which have depended on it for their arms. Overnight they

found themselves with heaps of weapons which they might not be able to maintain for long.

Therefore, is it appropriate, in the Ummah's present situation of almost total dependency on others, to talk of *dār al Islam* and *dār al ḥarb*? In fact are Muslim countries today lands of peace? Most of the Muslims who settled in the West did so because, in their own countries, they were deprived of their civil liberties and freedoms, security and human rights. People could not—and cannot—, in certain cases, even organise congregational *ṣalāh*. And it often happens that when two or a group of people sit together in a mosque to read some Qur'an they are accused of belonging to a clandestine movement and would be sentenced to death.

How can any sane person justify going today into the details of such non-issues as *zakāh* distribution in the form of barley, the actual sighting of the moon for Ramadhan or *dār al Islam/dār al ḥarb*, when fundamental ethical, political and economic issues in the Ummah have not been dealt with? Such backward thinking would not enable the Muslims to rebuild the Muslim Ummah afresh.

This shortsighted approach to the teachings of Islam calls for more enlightenment and more profound education in the Ummah, and a reform of Islamic thought so that Muslim people would be more thoughtful and more responsible in dealing with their problems.

One of the issues which contemporary Islamic thought has to deal with is that of history, of the division in the Ummah into Shi'a and Sunni, *Salafi*, Sufi, etc. In Afghanistan where, for over ten years, a most laudable struggle—a real jihad, with great sacrifices— took place, disagreement and conflict cropped up among the *mujahidīn* as soon as they had the opportunity to take control of the affairs of the state. Serious differences occurred over the status and role of women, electoral processes, the form and scope of *shūrā* and over which fiqh school to follow. These great warriors who confronted and defeated one superpower, and who were a major factor in its collapse, have failed to prove their ability to come up with the Islamic alternative on behalf of which they had fought communism. Worse than that, they started fighting each other in the center of the capital city.

It is only by preparing a blueprint of an Islamic alternative that the

Ummah can demonstrate to mankind the validity of Islam as a civilizational project. That Islam will prevail in the world one must be thoroughly convinced, because the Qur'an specifically asserts that it will, but the time this will take will depend entirely on the intellectual, social and religious environment Muslims will create.

Muslim people should be able to understand the Qur'an and the Sunnah without distortion. The intellect needs to be reoriented so as to fall in line with these two main sources. It needs to consider them as repositories of the overall, comprehensive Islamic teachings and then endeavor to the best of its ability to translate those teachings into reality away from intellectual puritanism and without resorting to *taqlid* or to the adoption of alien values and methods. Such extremes could only result in Islamic thought becoming isolated geographically, historically and culturally, which would drive the Ummah into even deeper malaise.

If today's ulama prove incapable of pioneering a comprehensive and realistic understanding of Islam and society, then the least they can do is to refrain from imposing narrow interpretations of the texts and inadequate traditions and values on the present generation who might assume that what they are being presented with is the real Islam which they are obliged to follow in total obedience and submission. They should instead act as faithful transmitters of Islam's 'raw material' in its pristine form so that others might understand it better. The Prophet (ṢAAS) said: "Pass on what you learn from me, even if it is just one *āyah*, for many a listener is more perceptive than the transmitter".⁴⁸ Today's ulama must make conscientious efforts to understand and interpret the Qur'an and Sunnah in the light of today's life. The Ummah has to deal and interact with contemporary ideas and standards, some of which—like banking and finance systems—are relatively new. Muslim thinkers have to work within the mental, psychological, social and cultural framework and needs of their societies, keeping in mind that the Qur'an contains all the fundamental, vital principles and the guidance necessary for success. If, however, Islam were to be presented to the world through our predecessors' own views, then this would be tantamount to betraying the basic principles of Islam.

48. Reported by Bukhari.

V. Conclusion

Islamic influence on the Renaissance and on the great religious, intellectual and scientific reforms in Europe has been widely acknowledged—albeit sometimes grudgingly in the West. As early as the Middle Ages, when European thinkers and scientists started looking for knowledge and answers to the issues they were faced with, they turned to centres of knowledge and universities of the Muslim world, including Muslim Spain, and to the great works of Muslim philosophers and scientists.

Today, the tide has turned: the Ummah is in a deplorable state. It cannot nowadays claim to have a unique culture, system of values, personality or anything else which make it a civilisation distinct from all others. This is because large-scale borrowing at all levels from the West has undermined and distorted all of its specific features. It is now a travesty of its former self, and can only manage to perpetuate itself through the production of religious specialists whose academic background is limited to Islam's personal law alone.

For all that, there are now signs that the process of change is activated. The ensuing transformation will raise the Ummah's consciousness and outline its specific features afresh, by bringing together its past and present so that it can intelligently chart its future course.

The basic principles laid down by Islam and pioneered by Muslim thinkers and scientists for the progress of human thought have been preserved. Muslim thinkers and scientists today should resort to them in order to revitalise contemporary Islamic thought and sciences, in a renewed effort to organise contemporary life in accordance with the teachings of Islam.

An indispensable tool in this task is *ijtihad*. It can be proved historically that the Ummah only entered its current crisis after *ijtihad* fell into disuse and was gradually replaced by *taqlid*. *Ijtihad* needs to be studied as a distinct Islamic methodology which will produce a comprehensive and uniquely Islamic understanding of sociological phenomena, their agents, essential elements and relationships along with their governing laws and principles. It is only through *ijtihad* that Muslims will be able to construct a new specific methodological infrastructure capable of addressing the crisis of Islamic thought and so, propose alternatives for the many problems of the contemporary world.

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For ten years (from 1395/1975 to 1405/1985) Dr al 'Alwānī was a Professor of Fiqh and *Uṣūl al Fiqh* at Imam Muhammad ibn Sa'ud University in Riyadh.

Dr al 'Alwānī participated in the founding of the International Institute of Islamic Thought in the USA in 1401/1981, and is now the Institute's President and a member of its Board of Trustees.

He is a founder-member of the Council of the Muslim World League in Makkah; a member of the OIC Islamic Fiqh Academy in Jeddah since 1407/1987; and President of the Fiqh Council of North America since 1408/1988.

Among his works on Islamic Jurisprudence are:

- Edition of *Al Maḥṣūl fī 'Ilm al Fiqh* (The Sum and Substance of *Uṣūl al Fiqh*) by al Imam Fakhr al Dīn al Rāzī, in six volumes.
- *Al Ijtihad wa al Taqlīd fī al Islam* (Ijtihad and *Taqlīd* in Islam).
- *Ḥuqūq al Muttaham fī al Islam* (Rights of the Accused in Islam).
- *Adab al Ikhtilāf fī al Islam* (The Ethics of Disagreement in Islam).
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The International Institute of Islamic Thought (IIIT) is a cultural and intellectual foundation. The Institute was established and registered in the United States of America at the beginning of the fifteenth *Hijrah* century (1401/1981) with the following objectives:

- to provide a comprehensive Islamic outlook through elucidating the principles of Islam and relating them to relevant issues of contemporary thought;
- to regain the intellectual, cultural, and civilizational identity of the Ummah through the Islamization of knowledge;
- to rectify the methodology of contemporary Islamic thought in order to enable it to resume its contribution to the progress of human civilization and give it meaning and direction in line with the values and objectives of Islam.

The Institute strives to achieve its objectives by:

- holding specialized academic conferences and seminars;
- supporting and selectively publishing works of scholars and researchers in universities and academic research centers in the Muslim World and the West;
- seeking to direct graduate studies toward furthering work on issues related to Islamic thought and the Islamization of knowledge.

The Institute has a number of overseas offices and academic advisors for the purpose of coordinating and promoting its various activities. The Institute has also entered into joint cooperation agreements with several universities and research centers.

On This Book

Considering that the accepted juridical sources of Islam are valid for all times and places, *ijtihad* may be described as a creative but disciplined intellectual effort to derive legal rulings from those sources while taking into consideration the variables imposed by the fluctuating circumstances of Muslim society. Consigning *ijtihad* to the annals of history is a denial of the rationalistic, egalitarian, and humane aspects of a realistic and durable Faith. The act would be a repudiation of the requisites of changing times and of the clamouring need to rid the Ummah of its present baggage of malaise and enable it to forge ahead, inspiring other nations and communities. It can be proved historically that the Ummah only entered its current crisis after *ijtihad* fell into disuse and was gradually replaced by *taqlīd*.

It is only through *ijtihad* that Muslims will be able to construct a new specific methodological infrastructure capable of addressing the crisis of Islamic thought and so, propose alternatives for the many problems of the contemporary world.

The courage that needs to accompany such a mission is tremendous, the methodology massive and meticulous. With this work, Dr al 'Alwani has contributed to the debate on this vital issue. The very way he tackled it—sometimes with boldness, sometimes with caution—shows that the debate is not an open-and-shut issue, and that it needs to widen quickly in view of the urgency of the situation.

ISBN: 978-1-56564-051-1

