

The Question of *Ijtihad*

A Thesis
Submitted to
the Temple University Graduate Board

In Partial Fulfillment
Of the Requirements for the Degree
MASTER OF ARTS

By
Ayesha W. Butt
August, 2010

Thesis Approval(s):

Dr. Khalid Blankinship, College of Liberal Arts
Dr. Limberis, Religious Studies Department

ABSTRACT

The question of whether the door of *ijtihad*, is open, closed, or ever did close, has been around for centuries. The answer to this question is crucial for our times. The research will present a chronological overview of the historical development of the concept of *ijtihad*, how it developed, became limited in certain circles, and if it ever ceased to be practiced. It can be concluded from the research that the doors of *ijtihad* were never closed, but were limited to a particular type of educational training. Those who completed this training proceeded on to become jurists. Those who could not, were requested to follow their leaders or engage in “*taqlid*.” This study will show that this question arose from a power struggle between modernists and traditionalists regarding who had the power to interpret and make rulings for the Muslim community. It will further show how traditionalists are trying to maintain their power in order to preserve traditional Islam and how the modernists are trying to solve contemporary problems by opening the doors to interpretation for those who are not classically trained.

ACKNOWLEDGEMENTS

This thesis would not have been completed without the thorough guidance of my advisor, Dr. Khalid Blankinship, who pushed me to read texts that were difficult to read, who encouraged me to challenge my ideas and ways, and who would not approve of a thesis if it did not do justice to the subject at hand. I am grateful for this knowledge and this experience. This has truly been a rewarding and enlightening journey.

I also find it imperative to recognize my husband, Moein Khawaja, who has supported me through my educational career. This is for his encouragement, optimism, empathy, mental and physical support, along with years of discourse on Islamic topics, and everything else that he has done to make this dream a reality. Without a partner who is so supportive, perhaps I would not have been able to come this far.

There are so many individuals that deserve recognition here. Along with these two individuals, I would like to acknowledge my parents, Mohammad and Attiya, and closest friends, Amina and Zuha for their hours and hours of discourse which has always been a learning experience. I thank all of these people for their unrelenting support and encouragement through this small journey.

To my husband, Moein Khawaja, and my parents,
Mohammad and Attiya Butt.

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CHAPTER 1

INTRODUCTION

There is an echo around the world that whispers the concerns of Muslims. From the court houses where Saudi jurists sit, to the academic institutions in America, there has been an interrogation of the mysterious word *ijtihad*. ‘The doors of *ijtihad* being closed’ is a position that has been discussed worldwide. This concept is one that has been discussed for centuries and continues to be extensively researched, with new opinions and discoveries being made continuously. Whether it is a discussion on the treatment of women or whether interest is prohibited when dealing with student loans or a mortgage, there is a dire need for answers to the unique problems that Muslims face in our times. Unfortunately, there is a difference of opinion amongst the followers of Islam on whether this is permissible and who has the authority to make the interpretations.

Just as curious as past scholars have been in exploring this subject, for my personal understanding and growth, I will examine this issue more in depth. This paper will discuss this controversy by breaking the issue up into topics. It will briefly introduce Islamic law; that discussion will be followed by the role *ijtihad* plays in Islamic law; the different definitions of *ijtihad*; both sides of the argument of whether ‘the doors of *ijtihad*’ were ever closed; and what modernists and traditionalists say about the issue and its applicability today. I will also prove that the issue today is not only about this concept, but it is rather a power struggle between the traditionalists and the modernists over who can interpret the texts. I will show that the term *taqlid* does not necessarily mean “blind following;” that ‘the doors of *ijtihad*’ were never closed; that *ijtihad* has

been practiced since the beginning of Islam; and that it is something that should continue to be exercised.

CHAPTER 2

INTRODUCTION TO ISLAMIC LAW

In order for one to understand *ijtihad* and this whole controversy, one must first understand the role *ijtihad* plays in Islamic law and what Islamic law precisely is. Many scholars have a variety of definitions for Islamic law. The Arabic word for Islamic Law that we so often hear is “*Shari’ah*.” The simplest way to define it, that of Knut Vikør in his book titled, *Between God and the Sultan*, is “no more than a body of sources of revelation and a methodology for making rules from these sources.”¹ More elaborately, Islamic law is more complex than what meets the eye. It is only after its thorough evaluation and a big effort that one can begin to understand how the laws actually come about.

As described in Vikør’s book, there are three levels involved. The first level includes the Qur’an and Sunnah, which are the two categories of revelation. Nothing at this level can be changed or altered. The Qur’an and Sunnah are first read correctly and only then can any law or legal rules be drafted through a process of interpretation, which is called *ijtihad*. But *ijtihad* is also complicated. *Ijtihad* includes *qiyas* and *ijma*.² *Qiyas* is at the second step and *ijma* is the third step. *Ijtihad* or interpretation can only come about through these two levels. In other, simpler terms, *ijtihad* is the interpretations, and *qiyas* and *’illa* are the methods of systemizing, deriving, and creating those rules. *Qiyas* is when one draws analogies from the rules. For example, wine is prohibited because it

¹ Knut Vikør, *Between God and the Sultan: A History of Islamic Law* (New York, 2006) (hereafter Vikør), p.1.

² Vikør, p.58.

intoxicates a person and thereby causes a person to lose control of himself or herself.

Analogically speaking, drugs must also be prohibited because they cause a person to lose control. Likewise, *qiyas* creates the analogy while *'illa* establishes the wisdom of reasoning behind prohibition. There are other terms used as well such as *ma'na* (meaning), *ba'ith* (motive), and *sabab* (reason), but those will not be discussed here.³

Ijma, on the other hand, is when a group of jurists reach a consensus and agree to a rule. Although *ijma* is a little more complex and something that isn't used as much, it is something that is claimed to be used in the establishment of laws. According to Vikør, this sometimes occurs with information that is absolutely obvious because there are always differences in opinion amongst scholars on issues, but is not limited to the obvious points. Just as there have been differences of opinion in *ijma* and hadith in Islamic history, there has also been a discussion of *ijtihad*. While there are numerous definitions of the word, which is a subject that will be discussed a little later in this paper, a brief classical definition can be found in Mohammad Hashim Kamali's writings. Kamali is a law professor who has taught *Shari'ah* since 1985. In his book titled, *Principles of Islamic Jurisprudence*, he states, "*Ijtihad* is the most important source of Islamic Law next to the Qur'an and the Sunnah".⁴ *Ijtihad* is the "total expenditure of effort made by a jurist in order to infer, with a degree of probability, the rules of *Shari'ah* from their detailed evidence in the sources."⁵ In other words, *ijtihad* is the probabilistic interpretation of the Qur'an and Sunnah made by a jurist after thoroughly evaluating the

³ Vikør, p.58.

⁴ Mohammad H. Kamali, *Principles of Islamic Jurisprudence*. 3rd ed. (Cambridge, UK: 2003) (hereafter Kamali) p.468.

⁵ Kamali, p.469.

evidence available pertaining to a matter. This is precisely the dilemma which will be discussed next.

CHAPTER 3

THE ROLE OF *IJTIHAD* IN ISLAMIC LAW

What precisely makes *ijtihad* so controversial is the fact that it is based on someone's interpretation. But before that is answered, the question of whether scholars, jurists, or *mujtahids* are allowed to reinterpret the primary texts for our times needs to be answered. Michael Mumisa, a modern scholar, in his book titled, *Islamic Law: Theory and Interpretation*, defines the problem today as the following: "how to make the Qur'anic and Prophetic text existentially meaningful to us here and now."⁶ He along with other scholars have recognized the situation as: a society that struggles to understand the meaning of the Qur'an and how it is relevant to our times. Just as each century after the Prophet's lifetime had interpretations of the Qur'an and Sunnah, in the same sense, the Muslim community is yearning for that same interpretation and understanding today. Muslims are actively searching for answers to their contemporary questions and problems, and to get answers requires one to interpret. The quest of scholars today is to keep the Qur'an relevant and allow it to answer the questions of the Muslims. The task is also to follow Islam in a manner that is permissible, to follow its guidelines and rules, but in a manner that fits our times.

Unfortunately though, there are a number of questions that have arisen in the past few years pertaining to this dilemma. One question is about whether "*ijtihad*" is something that is permissible to be practiced or whether it was something that the

⁶ Michael Mumîsa, *Islamic Law: Theory and Interpretation*. (Beltsville, MD, 2002) (*hereafter* Mumisa), p.2.

scholars agreed to cease practicing. The answer to this question can have a huge effect on the Muslim community today.

Ijtihad is practiced after a scholar is posed with a question. The scholar first searches the Qur'an, then the Sunnah, and the third step is to interpret or exercise *ijtihad*.⁷ If the question at hand is simple and clear cut, it is very likely the Qur'an and Sunnah will answer it. But if it is a situation that perhaps was non-existent during the prophet's time, *ijtihad* is utilized and one must use one's reasoning to come up with a solution. But before *ijtihad* is practiced, one needs to figure out precisely more in depth as to what *ijtihad* really is. Only then can we really understand the impact of this process.

⁷ Vikør, p.31

CHAPTER 4

DIFFERENT DEFINITIONS OF *IJTIHAD*

Some say that the myriad of definitions of the word *ijtihad* is what has created a controversy because people have different understandings of the word. An academic article by Shaista Ali-Karamali explores the controversy behind *ijtihad*. She states that her research suggests that the controversy over this has gained much attention through the years. She shows this controversy by presenting the different definitions of *ijtihad* through time. The following is a summary of her research:

“ In 1892- the Society of Bengal defined this term as “exerting one’s effort in order to derive from the basis of the law an opinion concerning a legal rule.

In 1896 - Edward Sell, who was an Anglican non-Muslim Orientalist scholar, says that *ijtihad* was “the attaining to certain degree of authority in searching into the principles of jurisprudence.”⁸

In 1914 - Sayf-al-din, Muslim member of Council of State, was quoted to have defined the term as “the total expenditure of effort in the search for an opinion as to any legal rule.”

In 1930 - Dr. Mohammad Iqbal, a liberal Muslim, defined *ijtihad* as “To exert with a view to form an independent judgment on a legal question.”⁹

In 1954 – Kemal Faruki, a modernist Muslim, once questioned a mufti, who stated that *ijtihad* was “disciplined judgment of individual jurists.”

In 1960’s – Fazlur Rahman, a Muslim historian, translated it to mean “rethinking.”

In 1964 - Ahmed Manzooruddin, a Pakistani Muslim modern scholar, thought of it as encompassing the entire area of social activity – political, economic and legal.”¹⁰

⁸ Shaista P Ali Karamali and Dunne Fiona, “The Ijtihad Controversy.” *Arab Law Quarterly*. 1994. (hereafter Karamali), p. 239.

⁹ Karamali, p. 239.

¹⁰ Karamali, p. 239

While some definitions define *ijtihad* as “rethinking”, others define it as encompassing a larger part of one’s life. Some bring politics and economics into it, while other definitions just consider it to generally mean rethinking. Many definitions are peculiarly similar to one another. These differences in definitions cause *ijtihad* to be applied in different ways and in different areas. Some may consider this to be something general, while others may limit it to particular fields. But clearly there is enough evidence to conclude that there are a number of variations in the definitions of *ijtihad*. But the definition I found to be the most interesting and correct was by Wael Hallaq in the introductory paragraph of his book:

“As conceived by classical Muslim jurists, *ijtihad* 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, *ijtihad* is the maximum effort expended by the jurist to master and apply the principles and rules of *usul al-fiqh* (legal theory) for the purpose of discovering God’s laws.”¹¹

The common phrase I have noticed in these definitions is the idea of exerting a maximum amount of effort. But perhaps what stands out most is that this is an activity that takes so much out of a person because the subject requires one to put all of their biases aside, and try to understand the rulings and laws of God. It requires one to be extremely disciplined, honest to themselves and just to the text.

This in particular is very interesting because *ijtihad* requires one to interpret. It is as though one is requested to think about it from their perspective but also be extremely disciplined because a perspective is formed by a number of issues that are relative. One takes into consideration their personal experience as well as what they have learned pertaining to the subject at hand. But at the same time, one must be honest with the text

¹¹ Wael Hallaq, “Was the Gate of *Ijtihad* Closed?” *IJMES* 16 (1984), p.1. (*hereafter* Hallaq), p.1.

so as not to impose their own biases on the interpretation. This seems to be something that one really has to struggle to come up with. The struggle is with one's inner self so as not to impose his or her ideas as the interpretation.

Another exceptional definition that directly relates to this is by Mohammad Taqi Amini, who is a Shi'a writer. He defines *ijtihad* in the following manner:

“An extreme intellectual effort employed by expert interpreters to have a correct and definite perception of the original basic maxims of Islamic law with a view to derive operative orders therefrom to provide the necessary legal solution of the problems and issues faced by an Islamic society at any stage of its development. The whole purpose of interpretive efforts is to provide that quality and quantity of legal rules which a society needs to meet an unending stream of new controversies, conflicts and disputations arising out of the eternal problem of conflicting interests, human and material.”¹²

Although in Shi'ism *ijtihad* is a little different because the high ranking scholars are called *mujtahids* based on their exclusive right to interpret, nonetheless, I found this particular definition or explanation to be quite interesting because its second half is relevant to our times and the topic under discussion. While the first part of the explanation seems a lot like the others, the latter part speaks of deriving laws for the new circumstances that arise in the community. It also speaks of how it is for the society to be able to have answers to the numerous and exhausting circumstances and questions that arise in society. This precisely relates to our times today because the Muslim community is desperately in need of answers, and the answers that are available do not always cater to the specific needs of people today. A common problem that many Muslim students face is whether they can take out student loans. A common problem Muslim adults face is whether they can buy a house because that consists of dealing with interest. These

¹² Mohammad Taqi Amini. *Fundamentals of Ijtihad* (IAD Religio-Philosophy (Orig.) Series No. 17). 1st edition. (Delhi,1986) p.1

types of problems are extremely relevant to our times, but have very few answers to the liking of those wishing to be consumers of such products. However, it is interesting to note that this kind of conflict and dilemma is not new—but one that is centuries old. This precise conflict of whether *ijtihad* is permissible toward what is usually forbidden has been under discussion for centuries. In the next section though, I will present the chronological development of *ijtihad*, which will prove that *ijtihad* has continued with only a brief discussion of its closure ever taking place. This timeline will present all sides of the arguments of whether *ijtihad* continued or ceased in a chronological format.

CHAPTER 5

TIMELINE OF IMPORTANT JURISTS, SCHOLARS, AND EVENTS

Dates AH/CE	Name	Description of Events
80-150/699-767	Abu Hanifa	First School of thought develops
93-179/712-795	Malik	Second School of thought develops
150-204/767-820	Shafi	Third School of thought develops
164-241/78-855	Ahmad ibn Hanbal	Fourth School of thought develops
194-256/810-870	Al-Bukhari	Al-Bukhari extensively compiles Hadith
202-278/817-888	Abu Dawud	Abu Dawud collects Hadith.
270/883	Dawud al-Zahiri	Strongly opposed the usage of <i>ijtihad</i> and firmly believed in the literal meaning of the Qur'an and Sunnah. Many people during his time rejected his literalism.
9 th century		Orientalists and Modernists make the claim that 'the doors of <i>ijtihad</i> ' closed at this point.
364-450/972-1058	Mawardi	Shafi'i jurist who discusses the importance of the ruler having the ability to practice <i>ijtihad</i> in order to be an effective ruler. ¹³

¹³ Hallaq, "Was the Gate of *Ijtihad* Closed?" p.5.

393-476/1001-1084	Shirazi	Shafi'i jurist who discusses the requirements of a <i>mutjahid</i> .
419-478/1027-1086	Juwayni	Shafi'i jurist who said that later <i>mujtahids</i> did not have to follow the <i>mujtahids</i> of the earlier times. This particularly referred to not having to follow a school of thought, but emphasized looking at the evidence behind previous rulings, at least for those scholars reaching the level of <i>mujtahid</i> .
432-511/1040-1119	Ibn Aqil	Hanbali jurist who asserted that legal opinions should be guided by evidence, not a school of thought.
450-505/1058-1111	Ghazali	Jurist, theologian, and mystic who initially followed the Shafi'i school. He further discussed the requirements of a <i>mujtahid</i> .
Died 478/1085	Al-Basri	Mu'tazili jurist who discussed the requirements of a <i>mujtahid</i> .
551-631/1156-1233	Amidi	Shafi'i jurist who discusses the divisibility of <i>ijtihad</i> and stated that all one needed to make a ruling were the materials that related to the subject at hand. This particularly referred to someone wanting to specialize in a field of Islamic law such as inheritance or marriage.
849-911/1445-1505	Suyuti	Initially started out in the <i>Shafi'i</i> school, but decided to create his own school of thought. He strongly stated that he was not bound by a <i>madhhab</i> . He wrote an incredible amount of books and wanted to "revive" Islam.

12 th cen./18 th cen.	Al-Khadimi	Turkish scholar who discusses the extinction of <i>ijtihad</i> in his book titled <i>al-Bariqah al-Mahmudiyyah fi-sharh al-Tariqah al-Muhammadiyah</i> ¹⁴
12 th cen./ 18 th cen.	Ibn Abd al-Shakur	Discussed the divisibility of <i>ijtihad</i> and the requirements of a <i>mujtahid</i> .
1423-1520	Abu Yahya Zakaria Ansari	Discussed the divisibility of <i>ijtihad</i> and the requirements of a <i>mujtahid</i> .
19 th century	Rise of Orientalists	These scholars are reputable for the scholarly study of Islam, which differed incredibly from the traditional method. This scholarly study largely portrayed Islam in a very negative light and tried to negate its history completely.
20 th century	Joseph Schacht	Orientalist scholar, that blatantly stated that ‘the doors of <i>ijtihad</i> ’ were closed.
20 th -21 st century	Rise of Modernists Scholars	These scholars largely favor re-interpretation of the primary texts for our times. These scholars state that ‘the doors of <i>ijtihad</i> ’ were closed and need to be re-opened.
20 th -21 st century	Rise of Traditionalist Scholars	These scholars focus on refuting the claims of modernist scholars and firmly believe that Islam needs to be preserved, and the four schools of thought are sufficient enough for our times. These scholars refuse to accept western methods of training in Islamic scholarship/jurisprudence.

¹⁴ Abu Sa’id Muhammad ibn Muhammad al-Khadimi, a; -Bariqah al-Mahmudiyyah, Cairo: Mustafa al-Babi al-Halabi, 1348/1930, Vol. 1, pp. 58, 254.

This particular timeline is important to follow while reading the remainder of the paper. One of the obvious points to note here is that the discussion of the requirements on how to become a *mujtahid* is one that occurred almost every century. A *mujtahid* is one who is capable of interpreting and engaging in *ijtihad*. Furthermore, it is essential to note any type of official statement of its closure did not occur until the Rise of Orientalism. The next section will further explain the timeline and how the discussion of how to become a *mujtahid* continued for centuries.

CHAPTER 6

THOSE WHO CLAIM ‘THE DOORS OF *IJTIHAD*’ WERE NEVER CLOSED

There seems to be a substantial amount of evidence to support the claim that ‘the doors of *ijtihad*’ were never closed. In fact it seems a bit historically incorrect to make a statement contrary to that. In the next few sections of the paper, I will present my research and for the purpose of making things more comprehensive, I will call those who defend this stand, ‘historians’ or researchers at times. I prefer to give this title to these individuals because they support their claim by thoroughly evaluating history and using history to defend their argument. But first, I will examine the primary texts that are used in defense of this claim, and will follow that by relating the history behind *ijtihad*.

Mandatory For The Knowledgeable To Practice *Ijtihad*

The following is a hadith, which is also the strongest evidence used from either of the two sides to defend their position:

“Some companions of Mu'adh ibn Jabal said: When the Apostle of Allah intended to send Mu'adh ibn Jabal to the Yemen, he asked: How will you judge when the occasion of deciding a case arises?

He replied: I shall judge in accordance with Allah's Book.

He asked: (What will you do) if you do not find any guidance in Allah's Book?

He replied: (I shall act) in accordance with the Sunnah of the Apostle of Allah

He asked: (What will you do) if you do not find any guidance in the Sunnah of the Apostle of Allah and in Allah's Book?

He replied: I shall do my best to form an opinion and I shall spare no effort.

The Apostle of Allah then patted him on the breast and said: Praise be to Allah Who has helped the messenger of the Apostle of Allah to find something which pleases the Apostle of Allah.”¹⁵

This particular hadith is the strongest point used in support of this position. It precisely shows how it was recommended for one to use their judgment and reason after consulting the two primary sources. It also shows the recommendation and encouragement from the Prophet Muhammad to practice *ijtihad*. This is the clearest evidence from both of the two sides. The next hadith is also in support of the practice of *ijtihad*.

‘Amr b. al-As reported that he heard Allah’s Messenger (may peace be upon him as saying) : When a judge gives a decision having tried his best to decide correctly and is right, there are two rewards for him; and if he gave a judgment after having tried his best (to arrive at a correct decision) but erred, there is one reward for him”.¹⁶

This particular hadith shows how it was encouraged for a person to exercise their judgment. It also shows how if one has made a mistake in their judgment, that God will not punish him or her. Lastly, considering there is twice a reward for one to judge a case, this becomes an incentive to actually become a judge. It also shows how it is encouraged for one to also become a judge or *mujtahid*. The following is also in support of *ijtihad* and shows how there is a punishment for those who conceal this information.

“Abu Huraira reported that Allah’s messenger said, “He who is asked for the knowledge that he knows and who conceals it, will be bridled with a bridle of fire on the Day of Ressurrection.”¹⁷

¹⁵ *Sunan Abu Dawud*. Translated by Ahmad Hasan Vol. 3. (Lahore, Pakistan.) p. 1019.

¹⁶ Dawud, p. 1019

¹⁷ Dawud, p. 1019

This particular hadith shows the importance of sharing one's knowledge.

Knowledge is something that is required highly for one to be a *mujtahid*, so this hadith is sometimes used as support for this claim. Also, knowledge is something that is not widespread, and is also something that is absolutely necessary in legal cases. In the event that one has knowledge and conceals it, this hadith makes it imperative and crucial for the person to share it and offer their insights. This particular hadith is very important because it also adds that there will be a punishment in the event that one does not offer his or her knowledge when needed, which further underscores the importance of offering ones judgment.

I think one of the most important points in this discussion is the fact that it has been stated that it is a religious obligation to perform *ijtihad* if one is knowledgeable enough to do so. Mohammad Kamali actually strongly corroborates this statement by saying that “the *Ulama* are in agreement that *ijtihad* is the collective obligation of all qualified jurists...”¹⁸ Furthermore Watt says, “In the discussion of the question both sides appear to have held that *ijtihad* is prescribed by the Sharia as a communal duty (*fard kifaya*.) This means that the duty is fulfilled if only some members of the community fulfill it, but that if nobody fulfills it the whole community is in sin and liable to punishment. It also appears that many held that when a man has all the qualifications for *ijtihad*, it is a duty for him to exercise this; that is to say, it is *fard ‘ayn* for him and not merely *fard kifaya*.”¹⁹ With this statement under consideration, to say that a whole community is liable to punishment is quite a harsh statement and it is

¹⁸ Kamali, p.471.

¹⁹ M.W. Watt, “The Closing of the Door of *Ijtihad*”, *Orientalia Hispanica* 1 (Lieden, 1974) (hereafter Watt, “*Ijtihad*”), p. 677.

more of an incentive to have someone in the community to volunteer to take on this task. In fact, it seems as if the person who is capable of performing *ijtihad* does not do it; this person will in fact be punished by God.

There are also verses that are used to support *ijtihad*:

34:46 Say: "I do admonish you on one point: that ye do stand up before Allah-- (it may be) in pairs, or (it may be) singly, and reflect (within yourselves): your Companion is not possessed: he is no less than a Warner to you in face of a terrible Penalty." ²⁰

This particular verse in the Qur'an, according to some scholars, is in reference to thinking and reflecting on the message. It also refers to the different ideas and sects people follow. In reference to the mention of "pairs", it shows that there will be "groups," which according to some refers to differences in opinion that will be existent in the Muslim community. These differences in opinion refer to the different interpretations which further support the idea that differences of opinion are inevitable. This particular point is important because instead of sticking to only four opinions, or four schools of thought, other opinions should also be heard and expressed.

Moreover, there are also several other verses in the Qur'an that request the person to think and reflect. Some scholars, as Kamali, have stated that this is in reference to one having the ability to think for themselves and to contemplate. Reflecting, thinking, and contemplating are all apart of *ijtihad*. These are crucial points, because, if *ijtihad* did cease, it would stop all thinking and reflecting from occurring, and the numerous verses of the Qur'an would not apply then to all times. But since the Qur'an is eternal, and it

²⁰ Yusuf Ali, *Holy Qur'an*. Riyadh-Saudi Arabia. 1996.

tells people to reflect, it is recommended to everyone to reflect at all times, and not just the jurists of the past.

For the Qur'an to be everlasting, reflecting, thinking, and understanding the wisdom behind God's laws is essential. Without the interpretation of the Qur'an in relevance to the society, the Qur'an cannot be everlasting. For it to be everlasting, one must actively interpret it for our times. But in order to interpret it properly and understand it clearly, one must understand the language and content of the Qur'an. It was for this reason that numerous jurists wrote of the requirements of a *mujtahid*. Through time, the requirements were indeed elaborated upon. The following section will discuss the requirements of a *mujtahid* and how these requirements have been written about throughout the centuries, which is evidence of there being the practice of *ijtihad* at all times.

Requirements Of A *Mujtahid*

While initially writing my thesis, I was under the impression that 'the doors of *ijtihad*' were closed. It wasn't until I started my research on the history of this issue that I fell upon an article by Wael Hallaq. The title of this article directly related to the subject at hand: "Was the Gate of *Ijtihad* Closed?" Hallaq's piece is one that is written a little differently than the rest of the pieces that I have read. He has a very peculiar writing style; he tends to phrase a question, state the assumption that the opposing side is making, and then prove the assumption wrong through his historical analysis.

He first presents the oppositions point that the practice of *ijtihad* was abandoned because the qualifications that were required for its practice were so difficult and rigorous

that it was humanly impossible for anyone to fulfill all of the requirements. To prove this point wrong, he cites Shirazi, one of the foremost Shafi'i jurists, (393-476/1003-1083) as not being as rigorous in his demands about the requirements of a *mujtahid*. Shirazi "limits the knowledge of the Qur'an and Sunnah to those provisions that have a direct relevance to *Shari'ah*, thus omitting irrelevant parts such as proverbs, tales, and etc. Principles of the Arabic language, points of agreement and disagreement among previous generations, and *qiyas* are all necessary usual requirements. The jurist must know the texts from which he can extract the *illa* and must possess the methods to do so."²¹ Lastly, importance is placed on the *mujtahid* possessing extensive knowledge of *'ilal*. This is stated to be essential because a *mujtahid* should be capable of prioritizing what *'illa* are more important than others.

Hallaq compares this to Abu Husayn al-Basri's (d. 478/1085) work titled, al-Mu'tamad fi usul al-fiqh. Al-Basri was a moderate Mu'tazili and in his work, Hallaq finds Basri's requirements for *ijtihad* to be the following:

- 1.) The *mujtahid* must encompass "knowledge of the Qur'an, the Sunna of the Prophet and the principles of inference (*istidlal*), and analogy (*qiyas*).
- 2.) The investigation of the ways of hadith transmission and the trustworthiness of transmitters is necessary for verifying the credibility of *akhbar* (prophetic reports)".²²
- 3.) Hallaq emphasizes that Basri puts a lot of importance on *qiyas* which he says involves the understanding and the ability to apply all the rules related to *illa*, *asl*, *far*, and *hukm*.

²¹ Hallaq, "Was the Gate of *Ijtihad* Closed?"p.6.

²² Hallaq, "Was the Gate of *Ijtihad* Closed?"p.5.

- 4.) The *mujtahid* should be able to differentiate the *illa* (wisdom) from the *asl* (legal part of the text).
- 5.) The *mujtahid* should be able to recognize the contradictions and linguistic legal complications
- 6.) The *mujtahid* must have knowledge related to the “principles of *majaz* (metaphors), particularization, and abrogation.”²³
- 7.) One must be familiar with the Arabic language, *khass* (particular) and *amm* (general).
- 8.) An interesting requirement is “familiarity with customary law (*urf*) as a qualification required for *ijtihad*, for it is essential, he argues, to determine God’s laws in the light of the exigencies of human life. Much the same, the jurist must acquaint himself with God’s attributes, which are the only guarantee for arriving at a correct understanding of His intentions as expressed in the scripture.”²⁴

After looking at the requirements of both al-Shirazi and al-Basri, it can very well be stated that they are not difficult. In fact, they are easy to attain. It seems as if these requirements were also feasible in regards to the time required to complete them. Here on after, it is imperative to pay special attention to the dates for these dates speak largely in favor of my position that the doors of *ijtihad* were not closed and *ijtihad* continued to be practiced.

It is also important to notice here that developments continued in this area. The requirements of these jurists were very precise and thorough. Perhaps the most extensive writings in this particular area, which came after Basri, are from Ghazali, a great jurist,

²³ Hallaq, “Was the Gate of *Ijtihad* Closed?”p.5.

²⁴ Hallaq, “Was the Gate of *Ijtihad* Closed?”p.5.

theologian, and mystic, (450-505/1058-1111). His requirements for a *mujtahid* are the following:²⁵

- 1.) A person must encompass knowledge pertaining to the 500 legal verses in the Qur'an but it is not absolutely essential for a person to have memorized those laws.
- 2.) Having a copy of Abu Dawud's or Bayhaqi's collection of hadith and knowing relevant hadith literature.
- 3.) The *mujtahid's* rulings should not contradict previous rulings. Therefore it is required for the person to have substantial knowledge pertaining to *furu'* and *ijma'*.
- 4.) The *mujtahid* should have extensive knowledge of the methodology of deriving legal evidence.
- 5.) Unlike Shirazi, Ghazali requires the person to have a thorough and complete understanding of Arabic. Both of these scholars are Shafi'is.
- 6.) A requirement to have knowledge about the "rules governing the doctrine of abrogation."
- 7.) A person should have the skill of knowing how to investigate the authenticity of hadith. A complete understanding of hadith criticism is not essential.
- 8.) For those who want to master a field of law, for example family law, Ghazali does not require that individual to meet all the requirements listed above. But he does require the person to know the methodology and have a sufficient understanding of the textual material to make a sound decision. In other words, the person must be advanced in the fields of *qiyas* and have substantial knowledge about the subject under discussion.

²⁵Hallaq, "Was the Gate of *Ijtihad* Closed?"p.5.

Ghazali seems to be quite precise about what a person should and should not have mastered. On the other hand, writing after Ghazali, Amidi (551-631/1156-1233), who was a prominent jurist and also a Shafi'i, holds the opinion that the most essential and paramount thing a *mujtahid* should have is knowledge of all materials pertaining to the subject at hand; a person can still make a judgment even without all the requirements set forth by Basri, Shirazi and Ghazali. This requirement is very similar to Ghazali's because both of them require knowledge of the particular matter. The biggest difference here is that while Ghazali is extremely precise about the requirements, Amidi reduced the number of requirements significantly. Ibn Abd al-Shakur and Ansari who were around the 12th and 13th century after *hijra* also had works that discussed the requirements of a *mujtahid*.²⁶ All this comes to show how the requirements changed in accordance with the time and the number of *mujtahids* existent. Hallaq also states that there was a reduction in the number of qualified jurists. But even at this point, there was absolutely no phrase that even implied the closing of 'the doors of *ijtihad*'.

Furthermore, the requirements of a *mujtahid* further decreased as the centuries went, by which is indicative of the fact that more people could reach those requirements and practice *ijtihad*. In fact, later scholars concurred that knowledge in one school of thought was sufficient enough.

What this means is that a person did not have to encompass knowledge of all schools of thought to make a decision. Rather, it was acceptable for a person to practice *ijtihad* in their particular school of thought after acquiring a sufficient amount of knowledge in it. Clearly it is easier to master a *madhhab* or school of thought than to

²⁶ Hallaq, "Was the Gate of *Ijtihad* Closed?"p.5.

master all of them. Thus, the limitation of *ijtihad* to *mujtahid fil madhab – ijtihad* within a school of thought – is an idea that arose gradually with the fixing of the *madhhabs*.²⁷ More people went into studying one school of thought and that is what solidified the *madhhabs*.

Solidification Of The *Madhhabs*, The Idea Of *Taqlid*, And The Different *Ijtihads*

Before we continue on with the discussion it is important to establish the two main types of *ijtihad*. Mohammad Kamali discusses two types of *ijtihad*: “*Ijtihad* that aims to deduce the law from evidence in the sources” and *ijtihad* that is mainly concerned and limited to a particular school of thought.²⁸ When the two are differentiated, that is when different levels, requirements, and capabilities are established. In the broader *ijtihad*, which is the first one Kamali discusses, one is not limited to the four *madhhabs*, and works directly with the primary texts. In order to do this, one must satisfy more requirements in terms of his or her education. In the smaller *ijtihad*, which means the jurist is confined to *ijtihad* within the *madhhabs* or schools, the requirements are not as extensive as the broader *ijtihad*. Both types of *ijtihad* can only be performed once one meets the criteria that have previously been mentioned. Both types of *ijtihad* are also performed only by jurists. The laymen, or one who is not thoroughly educated in the field, is to follow the jurists and not engage in the actual practice of *ijtihad*. For the laymen, it was advised to engage in *taqlid*.²⁹

²⁷ Rahim, Abdur. *Principles of Muhammadan Jurisprudence*. (Lahore: 1911) (*hereafter*, Rahim) p. 171.

²⁸ Kamali, *Principles of Islamic Jurisprudence*, p.469.

²⁹ N. Calder. *Taqlid. Encyclopedia of Islam*. Vol. 10. Leiden, The Netherlands: E.J. Brill, 2006. p.1-3.

It is important to understand what *taqlid* is because it is commonly referred to as “blind imitation or blind submission.” An example of this can be found in Michael Mumisa’s book titled *Islamic Law*. Michael Mumisa narrates three different definitions of *taqlid*. He describes them as the following:

- 1.) “*Taqlid* is acting on the statement of someone else without any proof.
- 2.) *Taqlid* is the acceptance of a statement of someone else rather than your own, and that too, without any proof.
- 3.) *Taqlid* is the acceptance of a statement without any proof in which mere good opinion about someone has been followed rather than accepting the statement on the basis of knowledge or tested principles or their derivatives.”³⁰

He then translates *taqlid* to “blind following.” His disapproval of *taqlid* is quite obvious in the tone of his book and his points are very similar to other scholars who vehemently opposed *taqlid*.

N. Calder refutes Mumisa’s statements. N. Calder is the author of “*Taklid*” in *The Encyclopedia of Islam* and defines *taqlid* after examining Islamic history. Calder says that, it is “invalid” to describe *taqlid* as “blind submission.” He says that there has been an incredible amount of negative assessment and commentary on this word “from the earlier to the most recent times.”³¹ He also states that *ijtihad fil madhhab* – which can be defined as “the law within the broad structures of the *madhhab*” was affiliated with *taqlid*. What this means is that the submission was to the authority of the *madhhabs* and not “blind submission” entirely. He also states that in juristic matters, *taqlid* was

³⁰ Mumîsa, p.148.

³¹ N. Calder. p.1-3.

acceptable, for people who were not scholars or jurists. Lastly, he states that all those who firmly state that *taklid* is “blind following” misrepresent and incorrectly define the term.

Sir Abdur Rahim also discusses this term further. Rahim was a barrister-at-law of one of the high courts of judicature at Madras and also wrote the book titled, *The Principles of Muhammadan Jurisprudence: According to the Hanafi, Maliki, Shafi, and Hanbali Schools*. In his book, he states that *taqlid* meant following the “the opinion of another person without knowledge of the authority for such opinion.”³² He also goes on to say that this definition applies only in “the case of those who do not possess the qualifications of a jurist.”³³

He explains that the layman was one who did not study the law or religion and “his duty is to follow the guidance of the learned.”³⁴ This is understandable because just as blue collar workers do not make laws, but are told to follow them, the same was requested for the laymen. Furthermore, just as a select few can go on to attain their Ph.D. in a society, only a few went on to become jurists, while the rest and the majority became commoners. For these commoners, *taqlid* was recommended and it therefore gained acceptance.

Since very few could actually go on to specialize in the *madhhabs*, there were many that simply conformed to the *madhhabs* and did not contemplate the laws on their own. Also, since the requirements to practice the broader *ijtihad* were a lot more than to specialize in a specific *madhhab*, people further developed the

³² Abdur Rahim. *Principles of Muhammadan Jurisprudence*. (Lahore: 1911) (hereafter, Rahim) p. 171.

³³ Rahim, p. 171.

³⁴ Rahim, p.172.

madhhabs instead of engaging in the broader *ijtihad*. This naturally caused the *madhhabs* to solidify and further become the norm to follow.

While significant work was done within the *madhhabs*, no one officially established their own school of thought. However, scholars continued finding solutions to the new problems that faced their society, and, even at this point, there was no utterance of “‘the doors of *ijtihad*’ being closed. *Ijtihad* continued, evolved, and great jurists arose and made significant contributions in catering to the unique challenges of their societies.

Ijtihad Continues And Evolves

In the fifth century, the majority of scholars agreed that there is an essential need to practice *ijtihad* at all times. A large number of these scholars also agreed that the solutions prescribed in books or the earlier schools of thought could not be the only solutions. Therefore, at this point, there were plenty of scholars that do not follow the schools of thought completely. Juwayni (419-478/1027-1086), who was a very reputable *mujtahid*, boldly states that “‘it is difficult to imagine that the *ijtihad* of later *mujtahids* must always correspond to that of the head of the school, because the ways of *ijtihad* and the methods of reasoning are numerous and thus the results of such *ijtihad* may differ.’”³⁵ Ghazali concurs with this statement.

Both of these scholars, along with Ibn Aqil (d. 1118), are documented to have used their reasoning and independent *ijtihad* at one point or another in their lives. They came up with their own creative solutions after looking thoroughly at the previous

³⁵ Hallaq, “Was the Gate of *Ijtihad* Closed?”p.14.

schools. This proves that while no further schools of thought were officially established, there was still independent work done in this field. Moreover, instead of following the schools of thought completely, the reputable jurist, Ibn Aqil announced and taught that legal opinions should be guided by evidence, not a school of thought. George Makdisi writes of Ibn Aqil in his book and provides the example of Ahmad Ibn Hanbal who “did not follow the method of glorifying men of the past”. He then goes on to say that this is something Ibn Aqil discouraged as well. “Ibn Aqil exhorts his colleagues to follow the spirit of Ahmad’s teachings, not the letter of his opinions, when the evidence points in another direction; for Ahmad, himself disagreed with others who came before him.”³⁶ What this meant was, just because the Hanbalis declared something earlier, it was not evidence. After all, this was a human’s interpretation of the laws, and one is supposed to look back at the primary texts for evidence to support their position. Furthermore, Ibn Aqil also seemed to insinuate the superiority of later *mujtahids* to those earlier scholars. This is an especially important statement, because people should look into the evidence of the schools of thought and not just simply imitate the rules already established. After all, it is an interpretation derived after evaluating the primary texts and derived by humans which makes them fallible.

A little later, Suyuti (849-911/1445-1505) is an excellent example of a person who actually claimed the title of “*mujtahid*” for himself. In fact, he arrogantly categorized himself at the highest degree, a title called “*mutlaq*.” *Mutlaq* can be defined to mean “absolute,” but what is implied here was that Suyuti was not bound by any

³⁶ Makdisi, George. *Ibn 'Aqil: Religion and Culture in Classical Islam*. (Edinburgh: 1997) p.68.

madhhab. He was very active in practicing *ijtihad* and opposed *taqlid*. He said that “*Ijtihad* is the backbone of *Shari’ah* and without it no legal decision can be reached.”³⁷

Along with being titled *mujtahid*, and possibly *mutlaq*, he also wanted to be titled reformer or *mujaddid* as well. A *mujaddid* is the single one person who appears in every century to revive Islam. But this title was something that was not possible considering his contemporaries vehemently opposed Suyuti for his boastful and arrogant personality. Furthermore, it was not agreed upon universally whether a person could even be given that title since it was a title that was incredibly grand. There was a continuous discussion as to who would be given the title of reformer throughout the centuries, and most of these discussions were long after the candidates had died and thus retrospective.

Ibn Aqil, Ghazali, Suyuti, and such scholars and their contributions are essential to this discussion because they show that even in history, numerous scholars encouraged digressing from following the four schools of thought and encouraged creating unique answers to the unique situations. In fact, asking the scholars to explore the evidence behind the interpretations indicates understanding the historical context of the rulings. Furthermore, this provides proof of how *ijtihad* evolved and offered solutions to the unique problems that the society faced. This directly relates to the problem in our society today, because, just as in previous centuries new solutions were offered, in our times we need solutions that cater to our specific problems in the West. These solutions are not openly being discussed today because it has been boldly yet incorrectly stated that “the way of *ijtihad* was closed.” This will now be discussed next.

³⁷ Hallaq, “Was the Gate of *Ijtihad* Closed?”p.27.

The Way Of *Ijtihad* Was Closed

One of the main arguments made is about this particular concept and how the way of *ijtihad* was closed. It is essential to discuss the historical background because we will understand whether or not this phrase was even used amongst the scholars. According to research, there are direct statements opposing the usage of this term. In fact, there is no evidence for this term, and the only usage of this term is when it is discussed centuries later, but even then there is no formal documentation of its finalization or any type of closure of *ijtihad*.

The argument made pertaining to this phrase is that since there is no evidence or documentation of its official closure, perhaps the other method of closing *ijtihad* is if the *mujtahids* all pass away. Ibn Kathir actually relates the following: “God does not remove knowledge suddenly from mankind (while alive) but removes it when scholars pass away. And when all scholars perish, there will remain only ignorant leaders, who when asked to decide cases, will give judgments without having the necessary knowledge, thereby falling in error and leading others astray.”³⁸ What one understands from this particular narration is that the only method to end the practice of *ijtihad* is to get rid of the person who actually practices it. This clearly has not occurred and *ijtihad* continues to this day. This was stated by Amidi who said, “though the extinction of *mujtahids* is possible, its actual occurrence has not been proven.”³⁹ While the discussion of “closing the door of *ijtihad*” began, it is quite evident that no actions were indeed taken actively for its official closure.

³⁸ Hallaq, “Was the Gate of *Ijtihad* Closed?”p.21.

³⁹ Hallaq, “Was the Gate of *Ijtihad* Closed?”p.23.

In fact, there is also evidence of the existence of *mujtahids* today because of the numerous *fatwas* we have. *Fatwas* are legal opinions, but are in theory and practice someone's interpretation of the law. While this is not always the case, a lot of time, that is what a fatwa does. In fact there are a large number of *fatwas* issued by Saudi Arabia and Al-Azhar quite frequently. Evidently, if there are fatwas, there are *mujtahids*, and therefore there is the practice of *ijtihad*. However, another way *ijtihad* could have ceased is if all the jurists of the schools of thought reached some sort of consensus about this closure. This will be discussed next.

No Consensus On Closing The Doors Of *Ijtihad*

While three schools of thought saw the wisdom in *taqlid*, or simply following the four schools of thought only, the Hanbali School strongly opposed the idea of any type of closure. Since the Hanbalis strongly disagreed with this idea and since an *ijma'* requires all schools to reach a consensus, there was no general *ijma'* reached. Consequently, no rule was established and no closure occurred. The idea of the four imams never reaching a consensus by an *ijma'* is further supported by Muhammad Iqbal and Shaista Karamali's research. With all of this evidence, it is hard to understand how people could have blatantly stated that there was any closure. In fact, there are numerous scholars that clearly state that 'the doors of *ijtihad*' were never closed. Imran Ahsan Khan Nyazee, who is an assistant professor at the International Islamic University and who has been awarded a gold medal for his performance in the *Shari'ah* program at the university, and who is the author of *Theories of Islamic Law: The Methodology of Ijtihad*, corroborates the idea of 'the doors of *ijtihad*' controversy being one that is unfounded. He says, "The

present day Muslim scholars have failed to study the evolutionary growth of their own legal system. The general trend has been to condemn *taqlid* and complain about the closing of the gate of *ijtihad*. Islamic law has never stopped growing, and the allegations of *taqlid* and the closing of the gate of *ijtihad*, against the jurists, are founded on a superficial understanding of the nature of this law.”⁴⁰

Corroborating this point, Muhammad Iqbal, in his book titled, *Reconstruction of Religious Thought In Islam* also plainly states that, “the closing of the door of *ijtihad* is pure fiction..”⁴¹ But while there seems to be a substantial amount of evidence to support those who oppose ‘the doors of *ijtihad* ’ being closed, nonetheless it is still essential to present the case for those who do think ‘the doors of *ijtihad* ’ were closed. The next section will present the side of those who believe that the ‘doors of *ijtihad*’ were in fact closed.

⁴⁰ Imran A Nyazee, *Theories of Islamic Law: the Methodology of Ijtihād*. 2nd ed. (Kuala Lumpur: 2002),p. 113.

⁴¹ Allama M Iqbal, *The Reconstruction of Religious Thought in Islam*. 2nd ed. (Lahore, Pakistan: 1989) p.141.

CHAPTER 7

THOSE WHO CLAIM ‘THE DOORS OF *IJTIHAD*’ WERE CLOSED

One of the most well-known, quoted Orientalist scholars, who openly discussed this closure is Joseph Schacht. In his book titled *Introduction to Islamic Law* he states the following:

“By the beginning of the fourth century of the *hijra* (about A.D. 900), however, the point had been reached when the scholars of all schools felt that all essential questions had been thoroughly discussed and finally settled, and a consensus gradually established itself to the effect that from that time onwards, no one might be deemed to have the necessary qualifications for independent reasoning in law, and that all future activity would have to be confined to the explanation, application, and, at the most, interpretation of the doctrine as it had been laid down once and for all. This ‘closing of the door of *ijtihad*,’ as it was called, amounted to the demand for *taklid*, a term which had originally denoted the kind of reference to Companions of the Prophet that had been customary in the ancient schools of law, and which now came to mean the unquestioning acceptance of the doctrines of established schools and authorities. A person entitled to *ijtihad* is called *mujtahid*, and a person bound to practice *taklid*, *mukallid*”⁴².

Joseph Schacht’s statement mentions that a closure took place; that no one could participate in independent reasoning after this point; that all questions were answered; everyone must follow the four schools of thought; and lastly, that this occurred in the fourth century after *hijra*. After presenting the research in the previous section, it is obvious to state that all of these points are incorrect. Nonetheless, it was after this point that more modern day scholars started supporting this claim. H.A.R. Gibb in his book, *Whither Islam* corroborates this position and states that “..the gate of *ijtihad*” was gradually narrowed down to minor points, until with the final settlement of these it

⁴² Schacht, J. *An Introduction to Islamic Law*. (Oxford:1964.) p 70-71.

was closed altogether.”⁴³ The idea of ‘the doors of *ijtihad*’ being closed or open has been discussed in a number of works. Muqtadar Khan, the author of *American Muslims: Bridging Faith and Freedom*, wrote an article titled “Reason and Individual Reasoning”, which is included in John Esposito’s book titled *Islam in Transition*. In this article Khan defends the use of reason after backing Joseph Schacht’s statement about ‘the doors of *ijtihad*’ being closed. He says, “the general rumor that the door of *Ijtihad* has been closed gained ground after the early scholars declared the process of *sharia* development complete, which meant that the text had now spoken on all issues possible and therefore *ijtihad* and reason were of no use to Muslims.”⁴⁴ Clearly, both Muqtadar Khan and Gibb corroborate Schacht’s unfounded claim.

This idea is further supported by Subhi Mahmasani who received his doctor en Droit degree from the University of Lyons and served as magistrate, president of the Appeals court, member of the parliament, and taught at various universities. His piece can also be found in John Esposito’s book, in which he discusses and supports the same idea of the closure of *ijtihad*. He says, “Arab civilization began to decline,” and that “this took place after Sunni jurists unanimously agreed to close the door of *ijtihad*.”⁴⁵ He said that “the result was that Islamic thought met a dead end, and imitation and stagnation in jurisprudence and other Arabic and Islamic learning became predominant.”⁴⁶ This is a completely false and unsupported claim, illustrating that a Muslim and non-Muslim could also entertain such views.

⁴³ Gibb, H. A. R., *Whither Islam? A Survey of Modern Movements in the Moslem World*. (New York:1973.) p. 67.

⁴⁴ Donohue, John, & Esposito, John. *Islam in transition*. (Oxford: 2007) p. 503.

⁴⁵ Donohue, p. 146.

⁴⁶ Donohue, p. 146.

It is imperative to note here that these quotes are by 19th and 20th century scholars, who came after Joseph Schacht, which shows that they went along with his position. Third, all of these opinions state that there was no development after the 4th century after hijra, which is also a completely false claim. These statements are historically incorrect – and that is a fact.

Also, one might consider how these statements are inherently problematic. First, no one's knowledge can be so extensive that they can predict what other scenarios might come up or exist in the future. Next, this is something that only God knows. Lastly, and most importantly, none of these scholars have provided any evidence that the law became rigid. There is indeed a lack of evidence to conclude that any sort of closure actually took place. There is no documentation pertaining to this closure. There are no historical documents presented, and no discussion of anything being finalized. To conclude that the law was closed is unsound and the claim is unsubstantiated. Furthermore, none of the scholars making such claims ever studied the books of Muslim law deeply, and especially not those of later date when the law is supposed to have taken its most rigid form. They condemned a whole literature without even looking at it.

Furthermore, it is my understanding that the formation of Islamic Law, or the law itself is derived from the Qur'an and the Sunnah, then *ijma*, and the actual interpretation is then called *ijtihad*. It seems a bit perplexing to understand how an *ijma* was reached when evidence seems to show that the Hanbali school supported *ijtihad* and never agreed to cease its practice. Therefore if there was no agreement through *ijma*, there was no rule to cease the practice of *ijtihad*, so that its practice continued. Next, there are a number of assumptions that are made by these modernists and others. One of these can be found in

Ghulam Nabi Falahi's, work titled, *Question of the Controversy Regarding the Closing of the Gate of Ijtihad*. In this piece, Falahi makes two extremely important arguments in which he lists the reasons why this "closure" was even deliberated. One of the reasons he states is that it was so that future generations would have fewer differences amongst them. Watt states that Sunni scholars feared that *ijtihad* would open the door to divisions in society so they therefore created the requirement of who could become a jurist.⁴⁷ Tying these ideas together with *taqlid*, I found this particular point to be important because perhaps the scholars saw that the potential existed for opinions to create animosity and tension between scholars. Therefore they put limits and placed restrictions on who could perform *ijtihad*. Furthermore, it is my assumption that perhaps the scholars started to see divisions in society and were afraid that the situation would increasingly get worse. Also, the scholars wished to be certain that only those having full religious training, education and a commitment born of longstanding study would be allowed to issue rulings. At the same time though, Falahi is incorrect in that there was no closure but perhaps limitations. This is wrong because these limitations in no way can be constructed as a "closure", but can rather be tied in with the previous section in which the requirements of a *mujtahid* are listed. This relates to the requirements because those requirements ensure that only the most learned can interpret the laws.

Another article states similar circumstances that took place in history which called for *taqlid* to be more preferred over *ijtihad*. Mohammad Fadel in his book titled, *The Social Logic of Taqlid and the Rise of the Mukhtasar*, concludes that *taqlid* "resulted

⁴⁷ Watt, M. *Islam and the Integration of Society*. (Evanston: 1961) p. 206-207

from the desire to have uniform rules rather than as a result of intellectual stagnation.”⁴⁸ He also states that *taqlid* was originally created to limit the discretionary power of legal officials, and that it was the result of “group interpretation that provided an objective basis upon which legal decisions and legal rulings could be described as being either substantively correct or incorrect.”⁴⁹ Fadel also states, “Because *taqlid* arose to satisfy a social need for uniformity in the law, it must be judged in light of its own social logic – its success in creating uniform rules. *Taqlid*, therefore, was an alternative method of deriving legal norms, a method that replaced the subjective conscience of the legal interpreter with the legal school.”⁵⁰ In other words, in his opinion the coming about of *taqlid* and this call for partial closure was a solution to the problems of that society and a preventative measure to ensure the inability of a ruler to corrupt the religious laws. It was at the same time a measure on behalf of the people so that they would know what the laws actually were and not be subject to the arbitrariness of judges. In this, Fadel strongly supports that a closure did take place by providing the social circumstances, but no evidence is provided.

Moreover, Wael Hallaq describes this historical situation more elaborately. His research suggests that the Muslim community on the whole and in urban areas was deficient of political or economic organization. The social milieu and the uniting agencies of those times were the religious institutions which were headed by the *ulama*. The *ulama* were a part of all levels and segments of society. They held

⁴⁸ Fadel, Mohammed. *The Social Logic of Taqlid and the Rise of the Mukhtasar*. Islamic Law and Society. 1996. p.193

⁴⁹ Fadel, p. 197.

⁵⁰ Fadel, p. 197.

numerous different positions and their sole purpose was to preserve Islam. The *ulama* were the ruling party. Several reports and documents suggest that the *ulama* “were deemed the heirs of the Prophet and the only trusted leaders of the umma.”⁵¹ This is also something that is based on a hadith. Therefore, the *ulama* had to be properly trained, and only they could be trusted to make the proper rules. By establishing limits and requirements, the abuse of the law would be prevented.

To a point, the assumptions and preventative methods of the ‘*ulama*’ were understandable and wise. This is because people are extremely sectarian about their *madhhabs*. In fact, this is an issue present in our society today. Trying to understand what problems and disunity they were trying to prevent, it is imaginable that such disunity would in fact be worse if perhaps there were hundreds of *madhhabs*. Thus, perhaps it was not such a bad idea to have limitations on who could practice *ijtihad* and to place restrictions so people did not abuse their power. Such a large number of schools of thought would probably create more problems because they might have made it impossible for people to pray together. To a degree, this measure was very practical. But this measure comes to support the idea of there being limitations on who could exercise *ijtihad* – not that any closure took place.

Further discussing why some believe *ijtihad* ceased, Falahi says that the rules to limit *ijtihad* were also established so that people did not make unjust claims and changes to the law for their own political gain. Falahi asserts that this was already a problem that

⁵¹ Wael Hallaq. On the Origins of the Controversy about the Existence of Mujtahid and the Gate of Ijtihad. *Studia Islamica* 63. (1986), p.135.

was seen to have had a high probability of occurring. M. Watt also makes a very similar claim in his book titled, *Islam and the Integration of Society*. He states:

“Once the *Shari’ah* had been firmly established, however, the scholar-jurists were in a somewhat stronger position to resist unjust demands by the ruling institution, at least in those spheres where the *Shari’ah* was effective. There might still be plaint self-seeking individuals who were ready to twist the rules of the *Shari’ah* in the interest of the rulers; but unless this twisting was done skillfully it would be difficult for such individuals to avoid being discredited by their fellows on the grounds that they were ignorant of the *Shari’ah*. It is conceivable that it was because of this situation that the scholar-jurists themselves introduced the doctrine that the ‘gate of *ijtihad*’ had been closed – that is, that they had no right to prorate judgment except in respect of the detailed application of the *Shari’ah* and were bound to follow the main principles of the rites to which they belonged. By thus restricting the right of judges to depart from precedent, they made it more difficult for rulers to influence their judgment improperly”⁵²

It is my understanding from this excerpt and other quotes that the ruling parties were the jurists and scholars. It is this power that has the potential to be abused. This power is one that requires the individual to be extremely disciplined and honest with the text. If the rulers in this case wanted to issue a law, they would have to consult the jurists and not simply go and exercise *ijtihad*. Formal training was required to do this. Also, the jurists did not have the power to abuse the law or issue a ruling contrary to the teaching of Islam for the pleasure of the ruling party. The establishment of certain laws, and the inability to influence those laws, prevented the abuse of Islamic law. In other words, this limitation greatly prevented the corruption of Islam and its laws.

The jurists saw a potential problem and to eliminate it, and to prevent themselves from making grave errors, they decided to create a law that would inhibit such abuses of the law. This caused unity, and was a preventative method. It also set a standard as to what is permissible and what is not. This prevented people from coming up with laws for convenience’s sake. This also prevented injustices from occurring. These are all my

⁵² Watt, *Islam and the Integration of Society*, p. 207

thoughts assuming in this case that some kind of *ijtihad* was limited, but not closed. It is still not sufficient enough to state that *ijtihad* came to an end—for there is no proof of this. But some sort of limitations were placed which caused some sort of order to prevail.

This directly relates to the facts in the previous section which mention that there were requirements that needed to be met in order for a person to be a *mujtahid* and make any kind of ruling. Those requirements are the “limitations” or “closure” that Falahi and Watt discuss, because, while there is not enough proof to assert that a closure did take place, there is enough to conclude that the requirements to become a *mujtahid* and exercise *ijtihad* prevented rulers from making outrageous rulings or laws. It is also important to note that this also prevented the emergence of any more schools of thought, though, which is a point that W. Montgomery Watt states to be proof of the closure of *ijtihad*.

Watt states that, for legal schools or *madhhabs*, perhaps this discussion of closure “may have discouraged further attempts to form new ones, and may thus have contributed to the process by which the four major *madhhabs* came to be generally recognized.”⁵³ My statements earlier discuss this thoroughly. My findings suggest that there were new developments by such individuals as Suyuti and Ibn Aqil, but these ideas were not solidified into new schools of thought. Furthermore, since the requirements were easier to meet, in order to practice *ijtihad* within a *madhhab*, that is what most people gravitated to.

From this information, what historians such as Watt are doing is assuming. The assumption is that since there is no evidence that any new schools of thought formed,

⁵³ Watt, M. “The Closing of the Door of Ijtihad” *Orientalia Hispanica* 1 (Lieden 1974), p 678.

thus ‘the doors of *ijtihad*’ were closed. In my opinion this is not a substantial position, and the evidence for it is in fact is non-existent. Just because we notice a trend in something does not allow one to state with conviction that ‘the doors of *ijtihad*’ were closed. This is merely an unsubstantiated and false assumption.

While it is understandable that there may have been a serious decrease in scholars claiming to be *mujtahids*, it seems a bit drastic and inaccurate to say it was because of a consensus that was reached in behalf of all the scholars that proposed and concluded the closing of ‘the doors of *ijtihad*’. As there was no such consensus, it seems a bit contradictory to the rules of *ijma*’. Furthermore, while this is something that was noticed by a number of scholars, the assumption tie in perfectly with the requirements that were listed for a *mujtahid* to acquire. This will be discussed further in depth next.

CHAPTER 8

ANALYSIS

There is an enormous amount of confusion in this area of discussion. The confusion exists in the discourse as to who can exercise *ijtihad*, and whether the idea of “closing the gates of *ijtihad*” was actually one that was in theory or practicality. It seems from my research that some modernist and Orientalist scholars concur that there was some sort of tacit agreement reached pertaining to this closure. Nevertheless, this claim is one that is unsubstantiated.

Scholarly opinions assert that the number of *mujtahids* that existed after the tenth century CE greatly decreased. They also assert that no new *madhhabs* formed, which is the proof they use to support their position. While it is understandable why the scholars claim this, it is not sufficient enough to declare that ‘the doors of *ijtihad*’ were in fact closed. Furthermore, it is harder to conclude this without actual documentation in writing that this actually occurred. There have been a variety of pre-modern writings discussing this particular issue and this is one that would have probably been publically addressed if any type of closure did take place. It is evident that documents pertaining to ‘the doors of *ijtihad*’ being closed are non-existent from that time period.

Something as dynamic and impacting as to whether or not one should and can practice *ijtihad*, is not a process that can be opposed without answering all the questions pertaining to the matter. Thus one cannot just state that ‘the doors of *ijtihad*’ were closed because there are consequences to such statements. In fact, there would have been no progress made at all in the law through the centuries, which is completely contradictory

to the historical unfolding of events. Therefore the historical record by itself shows the *ijtihad* was practiced continually. It merely seems as though Schacht made an unfounded statement and several modernists followed his claim.

It is interesting to note though that these claims only recently occurred. If one looks at the evidence and writings from the earlier time periods, one notices that the earlier texts do not explicitly refer to the “doors of *ijtihad*” actually being closed, although the subject was discussed but only as a hypothetical possibility. It was not until Orientalism and Modernism that this subject has gained attention and that modern day scholars more affirmatively asserted that ‘the doors of *ijtihad*’ were closed. Most of the early scholars are not clear at all on this issue nor do they use such words. Karamali, as stated above, actually quotes Mohammad Abduh (1849-1905) as saying that “many are explicitly dismissive of the notion that *ijtihad* ever came to an end at all.”⁵⁴ This particular statement can be found in a variety of early writings – all explicitly stating the same thing: that the evidence of ‘the doors of *ijtihad*’ being closed is indeed obscure.

Karamali, further discusses this new phenomenon when she illustrates the drastic change in the idea of *ijtihad*. One of her points compares The Encyclopedia of Islam in 1927 and in 1971. She shows the significant changes in the definition of *ijtihad* here. She asserts that *ijtihad* was stated in 1927 to be as a special right of certain individuals to form judgments and then for people to follow that person’s judgment.⁵⁵ She reminds her reader here that there is absolutely no mention of the closure of *ijtihad* or any such terminology. She then examines the definition in the article of 1971 in the second edition of The Encyclopedia of Islam which quotes Joseph Schacht’s views regarding *ijtihad*.

⁵⁴ Karamali, p.254.

⁵⁵ Karamali, p.255.

She quotes the encyclopedia as saying, “this ‘closing of the door of *ijtihad*,’ as it was called, amounted to a demand for *taqlid*...”⁵⁶ Furthermore, she makes an excellent observation of the famous “father of modern Islamic Law,” Ignaz Goldziher, never mentioned such a phrase in his writings. It can thus be concluded that this claim is not just unsubstantiated, but a recent discourse that has arisen in the past decades.

Karamali’s points are essential to understand in this discussion. Not only does she show that there was no utterance of this phrase, but she shows that this is indeed a recent development. This recent development initiated after Joseph Schacht stated a closure took place. After this, numerous modern day scholars reiterated this phrase.

But since the doors of *ijtihad* did not close, why was this phrase repeated by a number of modern day scholars? The important factor to examine here is that only modernists have claimed that this closure took place, while the traditionalists or classically trained scholars today have not uttered this. This is a crucial point in this discussion, and will be examined in the next section, where I will prove that the discourse is not about the actual “closure of *ijtihad*” but merely a power struggle between the traditionalists, who want to preserve their power; and the modernists who insist on having a say in the legal process which has been the hidden agenda behind this whole controversy.

⁵⁶ Karamali, p. 255

CHAPTER 9

THE OPINIONS OF CURRENT SCHOLARS

We have just examined scholarly pieces that stated the following: (1) opinions of those who thought that ‘the doors of *ijtihad*’ were closed and their assumptions; (2) opinions of those who think that that doors of *ijtihad* were never closed and their evidence. The next section is directly related to the previous section because it presents arguments of today’s scholars and the following: (1) what the modernists’ stand points are; (2) what the traditionalists’ standpoints are; (3) I will be engaging the two sides; (4) and lastly I will show that this discussion is more about who has the power to interpret today.

The Modernist Stand

It is important to define certain terms in order to proceed on to discussing this subject. I define modernists as those firmly believe that ‘the doors of *ijtihad*’ should remain open. They are people who believe in the evolution of laws and that engaging the text is something that is an absolute necessity to our society. They believe that our society and Islamic laws can be combined, and interpretations of those laws can be made in accordance with and in consideration of our times.

They also believe that there exists a dire need for the reinterpretation of some Islamic laws to help the *Ummah* adapt to the changing times. They believe that modern Muslim scholars should have the ability to interpret the primary texts to find solutions for the problems in their societies and the west. They believe that while certain laws do not

need to be interpreted for modern times, others need to be seriously and thoroughly evaluated and critically analyzed. Although rules and laws remain permanent, sound, and original, the interpretation of those laws evolve in accordance with the transition of time. Muhammad Sa'id Al-Ashmawi, the modernist Muslim and former chief justice of the High Court in Cairo, Egypt stated the following:

“Laws are like metals in the crucible of time and circumstance; they melt, they gradually solidify into different shapes; they re-melt and assume diverse forms. This process of evolution is coterminous with human society. Nothing is static except that which is dead and lifeless. Laws can never be static.”⁵⁷

This particular opinion portrays laws in a manner that is flexible in accordance to the situation. It also shows that societies are evolving and do not remain the same throughout time. They develop, inculcate other cultures and people, and continuously change. Just like societies change, the laws that govern the people also need to change. This is essential in this discussion because the modernists are asking for solutions to the problems in their communities. They assert that the answers prescribed by the four schools of thought do not offer them solutions. They seek the reinterpretation of certain laws, to aid to the problems of their society. But more importantly, in order for a person to find solutions to the problems such as women's rights, interest, loans and etc, according to traditional Islam, they must be classically trained. This is essentially the root of the problem because the modernists scholars are not classically trained, which disables them from becoming *mujtahids* or interpreting the text properly.

According to the traditionalists, this is an extremely important point that needs to be addressed when people engage in *ijtihad*, especially those who are not qualified to do

⁵⁷ Donohue, p.189

it. They believe it will rather create further divisions in society by allowing unknowledgeable people to make interpretations. This particular point is exactly what Watt and Fadel mentioned earlier. They stated that the jurists decided to “close the gates of *ijtihad*” – to eliminate the possibility of divisions occurring in society due to the myriad ways of practicing the religion. While this might create some divisions inevitably, in regards to the modernists versus the traditionalists, it might also bring each society together. It would unite because it would offer each individual society solutions to problems that are existent in their location. Furthermore, the Muslim community in the past, or at least the jurists from century to century, chose which points and interpretations were legitimate and which were not. In the same sense, the jurists today can agree to see what opinions and interpretations are legitimate and which ones are not. While there probably would not be a general consensus from all the Muslims in the world about who can and cannot interpret, at the same time, if there is someone reputable and qualified and they make sense, society naturally will listen to that person. Furthermore, the ones that make strange rulings or statements will be disregarded. This is not to say that the modernists scholars will completely come up with their own method on who can become a jurist. Indeed a formal training is required of all disciplines. Therefore, a formal training should be required for the one who interprets in the west – but it may differ from the traditional requirements.

This will prevent random, unqualified, uneducated and undisciplined people from coming up with rulings. Without any basis, just as there is a formal training requirement of lawyers or judges in our time, similarly, to be a jurist in Islam, a rigorous training should be required so that the jurist of the west is really qualified to take a stand on an

issue and offer a ruling that is in agreement with the laws of the Qur'an. This will eliminate the people who want to interpret texts for convenience sake or just because they want to have some say on the matter. While there will be a number of differences in opinion, those opinions too should not be perceived as a threat but merely a blessing.

Also, just because there is a possibility of division, we should still have people practice *ijtihad*. *Ijtihad* has been practiced since the beginning of Islam, and that can not cease from existence today simply because divisions may occur in society. In fact, there are already divisions, and some solutions might just bring large amounts of people together.

Furthermore, Taha Jabir al 'Alwani's book, entitled, *The Ethics of Disagreement in Islam* speaks of the differences of opinion during the Prophet's time. Alwani states:

“Differences in opinion on intellectual issues, and – by extension – on juristic ones as well, are natural on account of the inherent disparities in intelligence, understanding, and analytic capacity with which people are created.What is comforting to the believer is that the differences of opinion among the Companions did not spring from weakness in belief (aqidah) or any skepticism as to the truth of the Prophet's teachings. Instead, they resulted from a genuine desire to ascertain the truth through patient investigation and discover the purpose of the Lawgiver.we can say that the causes of differences of opinion in most cases hinged on the linguistic and juristic interpretation of Qur'anic texts and the interpretation of the Sunnah of the Prophet, peace be on him.”⁵⁸

I found this particular quote important, because not just does it defend how differences in opinion are natural but also the fact that they were even prevalent during the Prophet's time. People in fact misinterpreted or had a number of varying opinions as to what occurred or why he did something. The fact that these discussions were existent

⁵⁸ Tâhâ Jâbir al-'Alwânî, (b. 1354/1935). *The Ethics of Disagreement in Islam (Issues in Islamic Thought (5))*. Translated by Abdul Wahid Hamid. Edited by A. S. al Shaikh-Ali. Herndon, Virginia:1993.pp.79-80

during his time tells me that if the companions differed, causally centuries after his death people will also differ and contemplate various interpretations of his sayings and the texts. Furthermore, this particular point shows the humanness of people. It proves that it is acceptable to differ in opinion, and that, considering each human is created differently and thinks differently, such differences are something that is bound to occur.

It seems as though the discussion of the differences of opinion is one that is not new. It is one that has been existent since the Prophet's time. Hence we shouldn't be too alarmed that there is the same discussion present today that was present during the Prophet's time. There should be an understanding that differences have always been existent, and that it is alright to accept those differences.

Also in Alwani's quote, he mentions that the differences in opinion were not because someone didn't want to practice Islam or had ill intentions, but because a number of laws or actions can have a number of reasons. The search for the truth is an inquiry that the Companions were entangled in. This particular search is the same search Modern and Western Muslims are fighting to continue. While the traditionalists do not have to fight because they are the ones with the authority and power to interpret, they are largely in opposition to the modernists being able to interpret the texts. This will further be explored in the next section.

The Traditionalist Stand

Traditionalists are those who believe that the four schools of thought are sufficient the way they are; that free *ijtihad* is not something that should be practiced and; to refer back to these four schools is to be on the safe side and closer to the opinions of those who

came only a few centuries after the Prophet. They believe that as times progress, or evolve, things become more distant from the principles and society of the Prophet Muhammad. The Prophet's society is the purest society; the society was one that was an example for all of mankind. To imitate that will get us to purity. Perhaps the biggest difference between traditionalists and modernists is the strong opinion and preference they hold for following the four schools of thought, which as discussed before is the definition of *taqlid*.

Michael Mumisa says that the traditional standpoints derive from the following verses and narrations:

Qur'an (4:83) – If they had only referred it to the Apostle, or to those charged with authority among them, the proper investigators would have tested it for them.

This particular verse is used to support the claim that everything we need to know is already stated. Furthermore, this verse is also used to prove that only the classically and traditionally educated scholars can make the right rulings and to make a ruling is highly discouraged unless it is absolutely needed. In support of this claim, Shah Wali Allah Al-Dihlawi, states the following narrations:

“Ibn ‘Umar, (RA), said to Jabir b. Zaid “You belong to the Fuqaha’ of Basra, only give fatwa on the basis of clear (expression) of Qur’an and the established Sunnah, because if you do (something) other than that you will destroy yourself and (others).”⁵⁹

⁵⁹ Wali Dehlawi & Muhammad Wahhab. *Difference of opinion in fiqh*. p.43

Abu'l-Nasr says: "When Abu Salama came to Basra, Hasan (al-Basri) and I went to see him. He asked Hasan: "Are you Hasan? No one in Basra is dearer to me than seeing you, and that is because I have been told that you give fatwa on the basis of your own opinion. Don't give fatwa on the basis of your own ra'i. Give fatwa only if it is on the basis of the Sunnah of the Messenger of Allah (SAAS) or the Revealed Book."⁶⁰

From these few narrations, one can see it was discouraged for a person to practice their own unfettered opinion. It was encouraged to simply make or give quotes if a question was asked because if one asserted or presented their own opinion, they were attaching their own interpretation along with the answer. *Ijtihad* or giving ones own personal opinion was something that was discouraged if the Qur'an and Sunnah discussed something. It also seems as though it was considered dangerous. When Ibn Umar says "because if you do other than that, you will destroy yourself and others," he is being quite harsh or is vehemently opposing it because it can lead a person down the wrong path. To say that it will destroy him and others seems to be implying that there will be devastating results that may come out of this action. Also, the second narration seems to be quite clear in its assertion that one should avoid giving their own opinion on the matter. But at the same time, this could have been because Hasan Al-Basri was putting more emphasis on his own opinion than the actual texts. Or because an enormous amount of emphasis was placed on actually quoting the texts, thereby maintaining the texts because the Hadiths had

⁶⁰Dehlawi, p.43.

not been compiled yet. I think one would need to understand the historical circumstances of these quotes to fully understand why such statements were made. The general message here is to focus on the primary texts instead of one's interpretation. As stated earlier, if a clear answer can be found in the Qur'an and Sunnah, one does not need to start interpreting.

This is further supported by the traditionalist Sufi Shaykh Nazim al-Haqqani who has been quoted to have said the following:

“We are followers of the Prophet, *SAWS.*, according to our doctrines that come from the *Sahaba*, the Ash`aris and the Maturidis, and the Four *Madhhabs*: Hanafi, Maliki, Shafi`i, and Hanbali. We are "controlled" [*muqayyad*] by the Four *Madhhabs*. We have enough proofs. We are not such qualified people as to take [autonomously] what is necessary from the Holy Qur'an and Holy Hadith. We must follow Imams. We must follow Shaykhs. We must follow teachers.”⁶¹ He also stated that the religion is for the scholars to interpret, not the ignorant, that one must go through formal training to interpret, or otherwise engage in *taqlid*, if one is not learned or amongst the *ulama*. The category to practice *ijtihad* is one that is specifically for the inheritors of the Prophet, who are the *ulama*. It is not something for the “ignoramus” people. He also stated that there are enough *madhhabs* that provide enough guidance. There is no need for further *madhhabs*.⁶² In this, he supports *taqlid* over people engaging in the broader *ijtihad*. He also agrees that the person should be traditionally trained.

In other words, he encourages following the *madhhabs*, discourages engaging in the broader *ijtihad*, and in the event that one needs to interpret, one must be traditionally

⁶¹ www.sunnah.org/publication/encyclopedia/html/taqlid.htm

⁶² www.sunnah.org/publication/encyclopedia/html/taqlid.htm

trained. It is evident at this point to conclude that the western scholars or modernists do not fall into this category. The modernists recognize that the solutions offered by the *madhhabs* do not answer all of their questions; they recognize the dire need to come up with unique and new solutions which inevitably can be categorized under practicing the broader *ijtihad*; and lastly they do not believe one must go through the traditional training. Clearly, it is evident here that this is where the clash of the east and the west occurs. It is also evident that this is a power struggle between those who have the traditional training and oppose any other type of training – hence preserving the power to interpret to themselves, and between those who are considered the modernists who want to have their concerns heard and their solutions addressed. This will now be discussed more in depth next.

CHAPTER 10

ANALYSIS OF THE TWO SIDES

The traditionalists believe that it is safer to follow the four *madhhabs* because they are closer to the lifetime of the Prophet. As times progress, there is more corruption, so one is safer to follow those of the past. But following those of the past causes one to engage in “imitating” at times and not think about the laws. I strongly believe that the past schools did not answer all of the questions. I think there are questions today that desperately need answers. I think a lot of people are content with following the *madhhabs*, even if at times it does not make sense.

The modernist Mohammad Arkoun, in his book titled, *The Unthought in Contemporary Islamic Thought*, has stated that there is a disease of “not thinking” and “blindly following” in the *Ummah*. The traditionalists argue that the human intellect is limited and can only go so far and that the human mind cannot comprehend all of the wisdom behind God’s laws. However, I find this to be a flawed argument itself, because Islamic law and the four schools of thought were created by men and being human, they too are fallible. While the intellect can only comprehend so much, the four schools of thought and the Islamic laws that have developed through the centuries in a variety of countries are also fallible because they have been created by men. Their argument is one that can be used against them because the men of those centuries were limited by their experiences and intellect. This idea of humans being fallible is in fact an idea that is supported by those that actually came up with the law: “The conclusions provided by this interpretive science were admitted by the jurists themselves, however, to be only

probable.”⁶³ How then, is the argument made that those Islamic laws that were created by men, can exist and apply at all times? For the traditionalists to make this argument is undermining and inconsiderate of the historical development of *Shari’ah* itself.

Another argument that has been repetitively made by traditionalists, which is also made by Salafis and Hanbalis, is that the *Shari’ah* is the divine law. I personally find this statement to be the most fallible and authoritarian statement made by the traditionalists because *Shari’ah* was created by certain individuals in history, whether they were Hanafi or Shafi or someone else; it is the compilation of interpretation based on the Qur’an and Sunnah. The Qur’an is a book with divine law, because it is the word of God. The Sunnah is divine as well because it encompasses actions that explain and physically and verbally act out the rules and laws of the Qur’an. The two sources are indeed very authentic. On the other hand, *Shari’ah* is the compiled interpretation of the two – it is neither the Qur’an or Sunnah – but merely an interpretation of those two – which makes it vulnerable and more susceptible to human error. If one individual can interpret the two sources and come up with rulings, then an erudite western scholar of our time can do so as well while taking the tradition into consideration.

Clearly the scholars of that epoch used their reason and intellect to come up with the rulings. To say that they did not take their cultural and human experiences into consideration during the process of interpretation is rejecting the fact that every individual is shaped by a number of environmental and biological factors. To disregard the fact that any biases may have influenced a person in certain rulings or to disregard that a person holds certain biases when coming up with the law – is to defy natural

⁶³ Fadel, p.198

psychological processes that occur during the evolution of a person's lifetime. A person's opinion about prayer either causes them to pray or not to pray; in the same sense, a person's opinion about women and the historical culture/environment of that time period affects what kind of ruling the individual comes up with in regards to women. I use the example of women in this case because obvious prejudice and bias against women exists in numerous texts and can also be seen in some Qur'anic exegesis.

Nonetheless, to say it is the divine law is to assert that it does not change and should not be changed. It makes it seem unapproachable and makes it sound almost like a sin to do so. To define something as divine is to attribute it to a higher level – a level that is equivalent to the Qur'an or Sunnah. To give something such attributes is to put as much emphasis and weight on it. While it should have some weight, to give it such authority makes it a sin to approach it and alter it. Therefore, not just does it seem wrong and unreasonable to suddenly give something as much weight as the primary and secondary sources, but such a step makes its examination and analysis seem arrogant and sinful. If someone said that it was necessary to rephrase the Qur'an, they would be seen as deranged and would immediately be discredited. Therefore if something is seen as being as weighty as the Qur'an, and is seen as divine, to seek to rephrase it seems like seeking to rephrase the Qur'an, which is simply ridiculous.

Another traditionalist argument is that the Qur'an is for all times and cannot be changed. To change it is not Islamic and is going against the fundamental principles. In this case, the modernists concur. In no way do modernists intend to change the Qur'an, and they defend the fundamental idea that the Qur'an is there for all time. The modernists are just asking to apply the Qur'anic rules to an evolving society in order to

really make it for all times. The Qur'an is indeed for all of mankind – therefore the people need to be able to relate to it and its principles throughout time. The twenty-first century's culture is not like the seventh century or the tenth century, but the core principles and foundations, social problems and concepts do indeed overlap. Rules for dealing with social problems and injustices can be applied after the thorough evaluation of the situation in which those ideas came down and were revealed. Further, while the Qur'an is there for all times, its interpretation will continuously evolve in accordance with the cultural and historical situation of the evolving times. To hinder the interpretation of the Qur'an is to say the opposite – that the Qur'an is static and only pertaining to one century, society, and culture.

The Qur'an also uses vague terminology. In no way am I stating that the Qur'an is incomprehensible, but the vocabulary and linguistic choice of words have made certain words capable of being defined in a number of ways. In other words, some words in the Arabic language have a myriad of definitions and meanings. Each meaning can be applied to each society/culture. For example, verse 4:34, which in my opinion has been interpreted or translated in accordance with each exegete's time, has many ways of being interpreted which allows it to fit into a number of societies. For example, while some interpreters have given the meaning of the crucial word *fadribuhunna* as “beat” others would interpret that same word in a very different manner. The choice of interpreting and translating, the choice of words deeply reflects the culture, personal biases and norms of a society. An example of this can be seen in Qur'an 4:34 and its different interpretations.

(4:34):

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ
أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ
نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنِ اطَّعْنَكُمْ فَلَا
تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا (٣٤)

(1872 - 1953) YUSUF ALI: Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).

(1875 – 1936) PICKTHAL: Men are in charge of the affairs of women, because Allah hath made the one of them to excel the other, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them. Then if they obey you, seek not a way against them. Lo! Allah is ever High, Exalted, Great.

(1866-1939) SHAKIR: Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose

part you fear desertion, admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you, do not seek a way against them; surely Allah is High, Great.

(1952 –) Amina Wadud: “Men are [qawwamuna ‘ala] women, [on the basis] of what Allah has [preferred] (faddala) some of them over others, and [on the basis] of what they spend of their property (for the support of women). So good women are [qanitat], guarding in secret that which Allah has guarded. As for those whom you fear [nushuz], admonish them, banish them to beds apart, and scourge them. Then, if they obey you, seek not a way against them.

From just these four translations, one can see how the difference of opinion arises. There are four controversial issues in this one verse: 1.) what role or responsibility men have over women? 2.) what does obedience mean in this verse? 3.) what punitive measures a man can take against his wife? 4.) Are men superior to women? All four of these are contentious issues in our society today and have a variety of different interpretations and opinions. Furthermore, it shows that the difference of opinion from the 1900’s to a modern day interpretation are also visible. It also shows a significant difference when a woman translates the Qur’an versus when a man does. Lastly, I also think there is a lot of wisdom in there being differences of opinion in translating verses because no one’s translation will apply to a whole nation. Indeed there are numerous different kinds of ideas on any particular subject, so this difference in opinion is really a

blessing. The differences of opinion will further allow a number of different people to relate to the subjects at hand as well.

On the other hand, some say that these differences are what will change Islam. But preservation occurs when there is the threat of contamination. What can Islamic law be contaminated by? Mohammad Arkoun answers this by saying that, “The constant amalgam between the modern cognitive framework and the west depicted as a hostile, destructive force imposed on Muslim societies and culture is systematically used as a decisive argument in order to preserve ‘Islam’ from all the intellectual and scientific challenges”.⁶⁴ This is the essence of his argument. In summary, the west is affiliated with intellectual and scientific challenges, and to implement or use any research tool from the West is a threat to Islam. This argument is not just incorrect, but portrays Islam as something that is weak. Islam is not weak or malleable and it will not lose its values or conform to unislamic standards simply because western scientific methods are used. The bigger issue here seems to be this distrust of the West and that anything from the west is a compromise of Islam’s interest and will potentially desecrate the religion. While this is an exaggerated fear, it comes from the history of Muslims suffering from imperialism and European nationalism, which were all real threats to the Muslims in the past century.

The flaw I see with this particular reason or excuse not to implement or initiate the re-interpretation of Islamic law in the west is that modern methods will not taint a religion, for they explore it more deeply. I think the religion has challenged numerous ideas and thoughts in the past, so that further analysis and examination of the law will

⁶⁴ Mohammed Arkoun. *The Unthought in contemporary Islamic thought*. New York: Islamic Publications Ltd, 2002.

only fine tune it, and the threat should not be a fear of the west or modernity – especially since Islam has lasted and triumphed in the past in an extensive variety of cultures and empires. In fact, by further using other methods of analysis, one gains a deeper understanding of certain rules. For example, if one took a psychological look at why the two sexes should limit their interaction, numerous studies will show how people act differently in front of the other sex, that heart rates increase dramatically, and how hormonal levels also fluctuate to the point that there are biological changes that occur in the individual. Instead of seeing the west as a threat, these western discoveries should be seen as a proven methodology of scientific analysis which helps to further understand the wisdom behind God’s laws.

Further the traditionalists claim that there is an evident flaw with modernity because modernity explains everything with science and one’s own logic and intellect. They say that logic fails here because there will always be some aspects of an issue that perhaps goes unacknowledged. For example, it has not been until recently that studies were conducted which enabled people to understand why men and women should not intermingle. But even then, these studies may be missing something. One cannot assume an arrogant attitude and think that science and the human intellect will provide answers and reasons for everything. At times one must accept some rulings, and understand that the human intellect is limited and can only go so far. Michael Mumisa wrote, “The first and second world wars caused academia the world over to realize that rationalism alone does not and cannot provide the solutions to life’s problems and it is, perhaps, no accident that naziism and fascism emerged in a nation where reason was the dominant

source of knowledge.”⁶⁵ The arrogance that one’s intellect answers all questions is not just misleading, but is also extremely harmful and leads to a trail of troubles. While we may not be able to answer all questions, and we may not have all the answers, certainly there are issues in the past that do not address numerous questions pertaining to today’s society. To simply not think about an issue, out of fear of arrogance, is problematic and an obstacle against reforming the problems in our society.

Tariq Ramadan in his book titled, *Radical Reform*, makes a very important point about how the discourse of “reform” has been around for centuries. He defines “reform” in a manner that is very similar to what I define as the reinterpretation or the re-evaluation of certain Islamic texts. Tariq Ramadan states that the word “reform” is a threat for some people; that to them it implies changing Islam and perverting it to fit our times. Another threat some people see in reform is that they feel Islam will change and go through a similar evolution to what other religions have. This will consequently cause it to lose its identity. The way Ramadan has elucidated the subject of reform and renewal in his book really allows the opposition to understand where he too is coming from, while being empathetic to their concerns. He says that the intent of the reformer, whom I would categorize as the “modernist” in my paper, is to regenerate or renew the faith. This renewal process is more about offering a different perspective while primarily focusing on, and in no way altering, the scriptural sources, principles and fundamentals. Ramadan further states that those who are in opposition to this idea come with good

⁶⁵ Mumisa, p.1

intentions, but also come from “self-ignorance, nurtured by [a] fear of change, of losing oneself or more generally “fear of the other.”⁶⁶

These are all very important points that directly relate to the overall subject and what has previously been written about in this paper. The root of the problem is this fear of changing Islam, and the goal of preserving it. To preserve it requires those who are in charge to remain the same. This is precisely what the modernists are opposing because they would like a say on legal matters because they claim that only they understand their society best. The scholars of the east have a limited amount of knowledge pertaining to issues of the west. Western scholars understand their problems more. I agree with the modernists here and without the proper laws to guide us, this confusion in the Muslim community in the west will only get worse. There are so many unanswered questions that Muslims face. From the question of whether student loans and interest are prohibited, to the question of whether it is permissible to beat one’s wife, these are questions that are obstacles in our society today which are preventing us from moving forward.

The biggest obstacle is the question under discussion. The question of whether ‘the doors of *ijtihad*’ were closed is really not a question of *ijtihad* but rather a question of what enables this closure and what the modernists mean by this statement. The evidence shows that this closure actually refers to the closure of who can actually interpret and who has the power to interpret the texts. The issue also deals with one’s educational background because that is what traditionally allowed one to engage in *ijtihad*. By limiting the scope of who can interpret, traditional Islam causally allowed

⁶⁶ Tariq Ramadan. *Radical Reform*. (New York:2009) p.12

only the traditionally trained scholars to make rulings. This created an obvious split and has therefore created the controversy today. While the traditionalists would like to have this method of scholarship remain the same, the modernists would like to have a say in the matter. The scholars of the east have completely discredited the scholars of the west, and do not consider them educated enough to be *mujtahids*. On the other hand, some modernists have asked to start all over just to have their say on the matter. The modernists, although they request a say on the matter, are also asking for the former requirements to be discarded. This is simply an outrageous and ridiculous claim.

I am in complete opposition to the practice of *ijtihad* by those who are unqualified to do it. I do think the jurist needs to go through a formal training, as a professional does. I think this education requirement is absolutely crucial because one needs to be knowledgeable before he or she makes a ruling. But I also think we can combine the two worlds. I think the classical training is necessary, but I also think knowledge in the area of study is also crucial. For example, in the discussion of interest, which is a very controversial subject in our day, I think a qualified jurist needs to be knowledgeable in both Islam and Economics. I think there is a desperate need to combine the two subjects. This in no way is a threat, nor should it be perceived in such a manner. It is merely being more educated in the subject and understanding the economics in that particular location. While this is different from what has previously been done, the question then comes to: who is following the precedent.

Modernists think that they should turn straight to the Qur'an and Sunnah. They believe in taking the primary texts into consideration, but largely go straight to the text to interpret. They believe that any person can engage in *ijtihad* and should be able to. In

this particular point, they are not following the precedent. All former jurists have gone through some sort of formal training and made it a requirement to do so. When it comes to the discussion of *ijtihad* though, the previous jurists also believed in using reason, and looking at the evidence to conclude a ruling. This is very similar to what a lot of the previous jurists in Islamic history have taught and similar to what the modernists are saying in regards to using one's reason.

The traditionalists on the other hand believe in formal training and follow the four *madhhabs*. The traditionalists are closer to the precedent because they believe in the formal training of the *mujtahid*. They also believe in using reason, and advancing the *madhhabs*, but only by the means that have been prescribed in history. Historically speaking, it is a fact that the *madhhabs* continued to progress. It is also a fact that they solidified because numerous scholars conducted work in this area throughout Islamic history. The traditionalists are the followers and carriers of this classical training.

This is where the conversation gets convoluted because when it comes to formally being trained and one's education, the traditionalists are more similar to jurists of the past. But this does not exclude the dire need for answers to prominent questions in our society today. Surely, numerous jurists of the past recognized the need for the rules to fit society and firmly believed in the process of creating solutions for those problems. In the event that the four *madhhabs* do not answer certain questions, I think it is appropriate to create answers that will benefit and help the Muslim community. The scholars of the past have done this and I firmly believe they would have recommended this as well.

CHAPTER 11

CONCLUSION

There is a substantial amount of evidence to prove that the doors of *ijtihad* never closed. The scholars who assert this base it off of assumptions, which makes their claim one that is unsubstantiated. Through the examination of this phrase, and the historical developments of *ijtihad*, it is evident that the discussion of this phrase is not of its closure, but a restriction as to who can be a *mujtahid* and exercise *ijtihad*.

The history of Islam, like the human experience, involves numerous instances of power struggle, politics, and impassioned debate. Naturally, the history of *ijtihad* follows these trends as well. Ultimately, the authority to interpret brings the authority to influence the masses, and influence equals power. Like all power, attempts are made to harness it and prevent others from accessing it.

The emphasis on *taqlid* can be attributed to this phenomenon. By standardizing the four schools of thought, the traditional scholars of the *madhhabs* have kept the authority for themselves, so much so that not even another school was able to form. This was to foster and help unity. Shirazi's criterion to be a *mujtahid* came from a sincere desire to preserve power, thus the authenticity of Islam, for those who have demonstrated the will and time to thoroughly learn Islam, thus preventing an amateur intellectual from access. In today's conflict between the traditional *ulama* and western academics, the *ulama* favor the notion that there is no *ijtihad* unless they do it. That position arises from their desire to keep modernists from interpreting and gaining mass followings and from contaminating the religion.

Clearly, this discussion is really of modernism versus traditionalism. In many instances, the *ulama* still view academics and the west, even Muslim ones, as western Orientalists. When Islam was on the decline economically and culturally, western Orientalists dissected Islamic scholarship in a way that was never seen before. The *ulama*, alarmed by this, partially succeeded in delegitimizing the Orientalists by claiming that only they had the authority to interpret. This historical tension still exists, as modernists, Muslim and non-Muslim, react after the Orientalists' and traditionalists' uprising. Thus, today's *ulama* have projected those tensions onto the modernist and continually seek to delegitimize them by invoking the idea that *ijtihad* is closed, despite the irony that the term came from an Orientalist for an entirely different reason.

It's important to know that in this case, unlike corporate greed or war mongering, the quest for intellectual power is largely due to a sincere desire of preserving authentic Islam. This is why traditional *ulama* have constructed strict criteria on being a *mujtahid*. This lack of access keeps many modernists out, and it certainly keeps out the amateur modernists we see today on blogs. What the amateur modernist does however is not even recognize the traditional criteria and to make their own rules, attract a following, and use their newfound power to influence this new following. The unlimited reach of the internet has sharply accelerated this phenomenon, and only time will tell how traditionalists will react. Our situation today calls for us to undertake certain measures, and this is absolutely essential to understand. The current situation that the Muslims are facing will not disappear until active measures are taken.

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