UNDERSTANDING THE FOUR MADHHABS

the problem with anti-madhhabism

[revised edition with footnotes]

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THE UMMAH'S GREATEST ACHIEVEMENT OVER THE PAST millennium has undoubtedly been its internal intellectual cohesion. From the fifth century of the Hijra almost to the present day, and despite the outward drama of the clash of dynasties, the Sunni Muslims have maintained an almost unfailing attitude of religious respect and brotherhood among themselves. It is a striking fact that virtually no religious wars, riots or persecutions divided them during this extended period, so difficult in other ways.

The history of religious movements suggests that this is an unusual outcome. The normal sociological view, as expounded by Max Weber and his disciples, is that religions enjoy an initial period of unity, and then descend into an increasingly bitter factionalism led by rival hierarchies. Christianity has furnished the most obvious example of this; but one could add many others, including secular faiths such as Marxism. On the face of it, Islam's ability to avoid this fate is astonishing, and demands careful analysis.

There is, of course, a straightforwardly religious explanation. Islam is the final religion, the last bus home, and as such has been divinely secured from the more terminal forms of decay. It is true that what Abdul Wadod Shalabi has termed 'spiritual entropy'[1] has been at work ever since Islam's inauguration, a fact which is well-supported by a number of *hadiths*. Nonetheless, Providence has not neglected the ummah. Earlier religions slide gently or painfully into schism and irrelevance; but Islamic piety, while fading in quality, has been given mechanisms which allow it to retain much of the sense of unity emphasised in its glory days. Wherever the antics of the emirs and politicians might lead, the brotherhood of

believers, a reality in the initial career of Christianity and some other faiths, continues, fourteen hundred years on, to be a compelling principle for most members of the final and definitive community of revelation in Islam. The reason is simple and unarguable: God has given us this religion as His last word, and it must therefore endure, with its essentials of *tawhid*, worship and ethics intact, until the Last Days.

Such an explanation has obvious merit. But we will still need to explain some painful exceptions to the rule in the earliest phase of our history. The Prophet himself (pbuh) had told his Companions, in a *hadith* narrated by Imam Tirmidhi, that "Whoever among you outlives me shall see a vast dispute". The initial schisms: the disastrous revolt against Uthman (r.a.)[2], the clash between Ali (r.a.) and Talha, and then with Mu`awiyah[3], the bloody scissions of the Kharijites[4] - all these drove knives of discord into the Muslim body politic almost from the outset. Only the inherent sanity and love of unity among scholars of the ummah assisted, no doubt, by Providence overcame the early spasms of factionalism, and created a strong and harmonious Sunnism which has, at least on the purely religious plane, united ninety percent of the ummah for ninety percent of its history.[5]

It will help us greatly to understand our modern, increasingly divided situation if we look closely at those forces which divided us in the distant past. There were many of these, some of them very eccentric; but only two took the form of mass popular movements, driven by religious ideology, and in active rebellion against majoritarian faith and scholarship. For good reasons, these two acquired the names of Kharijism and Shi'ism. Unlike Sunnism, both were highly productive of splinter groups and sub-movements; but they nonetheless remained as recognisable traditions of dissidence because of their ability to express the two great divergences from mainstream opinion on the key question of the source of religious authority in Islam.

Confronted with what they saw as moral slippage among early caliphs, posthumous partisans of Ali (r.a.) developed a theory of religious authority which departed from the older egalitarian assumptions by vesting it in a charismatic succession of Imams. We need not stop here to investigate the question of whether this idea was influenced by the Eastern Christian background of some

early converts, who had been nourished on the idea of the mystical apostolic succession to Christ, a gift which supposedly gave the Church the unique ability to read his mind for later generations. What needs to be appreciated is that Shi'ism, in its myriad forms, developed as a response to a widely-sensed lack of definitive religious authority in early Islamic society. As the age of the Righteous Caliphs came to a close, and the Umayyad rulers departed ever more conspicuously from the lifestyle expected of them as Commanders of the Faithful, the sharply-divergent and still nascent schools of *fiqh* seemed inadequate as sources of strong and unambiguous authority in religious matters. Hence the often irresistible seductiveness of the idea of an infallible Imam.[6]

This interpretation of the rise of Imamism also helps to explain the second great phase in Shi'i expansion. After the success of the fifth-century Sunni revival, when Sunnism seemed at last to have become a fully coherent system, Shi'ism went into a slow eclipse. Its extreme wing, as manifested in Ismailism, received a heavy blow at the hands of Imam al-Ghazali, whose book "*Scandals of the Batinites*" exposed and refuted their secret doctrines with devastating force.[7] This decline in Shi'i fortunes was only arrested after the mid-seventh century, once the Mongol hordes under Genghis Khan had invaded and obliterated the central lands of Islam. The onslaught was unimaginably harsh: we are told, for instance, that out of a hundred thousand former inhabitants of the city of Herat, only forty survivors crept out of the smoking ruins to survey the devastation.[8] In the wake of this tidal wave of mayhem, newly-converted Turcoman nomads moved in, who, with the Sunni ulama of the cities dead, and a general atmosphere of fear, turbulence, and Messianic expectation in the air, turned readily to extremist forms of Shi'i belief.[9] The triumph of Shi'ism in Iran, a country once loyal to Sunnism, dates back to that painful period.[10]

The other great dissident movement in early Islam was that of the Kharijites, literally, the seceders, so-called because they seceded from the army of the Caliph Ali when he agreed to settle his dispute with Muawiyah through arbitration. Calling out the Quranic slogan, "Judgement is only God's", they fought bitterly against Ali and his army which included many of the leading Companions, until, in the year 38, Imam Ali defeated them at the Battle of Nahrawan, where some ten thousand of them perished.[11]

Although the first Kharijites were destroyed, Kharijism itself lived on. As it formulated itself, it turned into the precise opposite of Shi'ism, rejecting any notion of inherited or charismatic leadership, and stressing that leadership of the community of believers should be decided by piety alone. This was assessed by very rudimentary criteria: the early Kharijites were known for extreme toughness in their devotions, and for the harsh doctrine that any Muslim who commits a major sin is an unbeliever. This notion of *takfir* (declaring Muslims to be outside Islam), permitted the Kharijite groups, camping out in remote mountain districts of Khuzestan, to raid Muslim settlements which had accepted Umayyad authority. Non-Kharijis were routinely slaughtered in these operations, which brought merciless reprisals from tough Umayyad generals such as al-Hajjaj ibn Yusuf. But despite the apparent hopelessness of their cause, the Kharijite attacks continued. The Caliph Ali (r.a.) was assassinated by Ibn Muljam, a survivor of Nahrawan, while the *hadith* scholar Imam al-Nasai, author of one of the most respected collections of *sunan*, was likewise murdered by Kharijite fanatics in Damascus in 303/915.[12]

Like Shi'ism, Kharijism caused much instability in Iraq and Central Asia, and on occasion elsewhere, until the fourth and fifth centuries of Islam. At that point, something of historic moment occurred. Sunnism managed to unite itself into a detailed system that was now so well worked-out, and so obviously the way of the great majority of *ulama*, that the attraction of the rival movements diminished sharply.

What happened was this. Sunni Islam, occupying the middle ground between the two extremes of egalitarian Kharijism and hierarchical Shi'ism, had long been preoccupied with disputes over its own concept of authority. For the Sunnis, authority was, by definition, vested in the Quran and Sunnah. But confronted with the enormous body of *hadiths*, which had been scattered in various forms and narrations throughout the length and breadth of the Islamic world following the migrations of the Companions and Followers, the Sunnah sometimes proved difficult to interpret. Even when the sound *hadiths* had been sifted out from this great body of material, which totalled several hundred thousand *hadith* reports, there were some *hadiths* which appeared to conflict with each other, or even with verses of the Quran. It was obvious that simplistic approaches such as that of the Kharijites, namely, establishing a small corpus of *hadiths* and deriving doctrines

and law from them directly, was not going to work. The internal contradictions were too numerous, and the interpretations placed on them too complex, for the *qadis* (judges) to be able to dish out judgements simply by opening the Quran and *hadith* collections to an appropriate page.

The reasons underlying cases of apparent conflict between various revealed texts were scrutinised closely by the early ulama, often amid sustained debate between brilliant minds backed up with the most perfect photographic memories. Much of the science of Islamic jurisprudence (*usul al-fiqh*) was developed in order to provide consistent mechanisms for resolving such conflicts in a way which ensured fidelity to the basic ethos of Islam. The term *taarud al-adilla* (mutual contradiction of proof-texts) is familiar to all students of Islamic jurisprudence as one of the most sensitive and complex of all Muslim legal concepts.[13] Early scholars such as Ibn Qutayba felt obliged to devote whole books to the subject.[14]

The ulama of *usul* recognised as their starting assumption that conflicts between the revealed texts were no more than conflicts of interpretation, and could not reflect inconsistencies in the Lawgiver's message as conveyed by the Prophet (pbuh). The message of Islam had been perfectly conveyed before his demise; and the function of subsequent scholars was exclusively one of interpretation, not of amendment.

Armed with this awareness, the Islamic scholar, when examining problematic texts, begins by attempting a series of preliminary academic tests and methods of resolution. The system developed by the early ulama was that if two Quranic or *hadith* texts appeared to contradict each other, then the scholar must first analyse the texts linguistically, to see if the contradiction arises from an error in interpreting the Arabic. If the contradiction cannot be resolved by this method, then he must attempt to determine, on the basis of a range of textual, legal and historiographic techniques, whether one of them is subject to *takhsis*, that is, concerns special circumstances only, and hence forms a specific exception to the more general principle enunciated in the other text.[15] The jurist must also assess the textual status of the reports, recalling the principle that a Quranic verse will overrule a *hadith* related by only one *isnad* (the type of *hadith* known as *ahad*), as will a *hadith* supplied by many *isnads* (*mutawatir* or *mashhur*).[16]

If, after applying all these mechanisms, the jurist finds that the conflict remains, he must then investigate the possibility that one of the texts was subject to formal abrogation (*naskh*) by the other.

This principle of *naskh* is an example of how, when dealing with the delicate matter of *taarud al-adilla*, the Sunni ulama founded their approach on textual policies which had already been recognised many times during the lifetime of the Prophet (pbuh). The Companions knew by *ijma* that over the years of the Prophets ministry, as he taught and nurtured them, and brought them from the wildness of paganism to the sober and compassionate path of monotheism, his teaching had been divinely shaped to keep pace with their development. The best-known instance of this was the progressive prohibition of wine, which had been discouraged by an early Quranic verse, then condemned, and finally prohibited.[17] Another example, touching an even more basic principle, was the canonical prayer, which the early ummah had been obliged to say only twice daily, but which, following the *Miraj*, was increased to five times a day.[18] *Mutah* (temporary marriage) had been permitted in the early days of Islam, but was subsequently prohibited as social conditions developed, respect for women grew, and morals became firmer.[19] There are several other instances of this, most being datable to the years immediately following the Hijra, when the circumstances of the young ummah changed in radical ways.

There are two types of *naskh*: explicit (*sarih*) or implicit (*dimni*).[20] The former is easily identified, for it involves texts which themselves specify that an earlier ruling is being changed. For instance, there is the verse in the Quran (2:142) which commands the Muslims to turn in prayer to the Kaba rather than to Jerusalem.[21] In the *hadith* literature this is even more frequently encountered; for example, in a *hadith* narrated by Imam Muslim we read: "I used to forbid you to visit graves; but you should now visit them."[22] Commenting on this, the ulama of *hadith* explain that in early Islam, when idolatrous practices were still fresh in peoples memories, visiting graves had been forbidden because of the fear that some new Muslims might commit shirk. As the Muslims grew stronger in their monotheism, however, this prohibition was discarded as no longer necessary, so that today it is a recommended practice for Muslims to go out to visit graves in order to pray for the dead and to be reminded of the *akhira*.[23]

The other type of *naskh* is more subtle, and often taxed the brilliance of the early ulama to the limit. It involves texts which cancel earlier ones, or modify them substantially, but without actually stating that this has taken place. The ulama have given many examples of this, including the two verses in *Surat al-Baqarah* which give differing instructions as to the period for which widows should be maintained out of an estate (2:240 and 234).[24] And in the *hadith* literature, there is the example of the incident in which the Prophet (pbuh) once told the Companions that when he prayed sitting because he was burdened by some illness, they should sit behind him. This *hadith* is given by Imam Muslim. And yet we find another *hadith*, also narrated by Muslim, which records an incident in which the Companions prayed standing while the Prophet (pbuh) was sitting. The apparent contradiction has been resolved by careful chronological analysis, which shows that the latter incident took place after the former, and therefore takes precedence over it.[25] This has duly been recorded in the *fiqh* of the great scholars.

The techniques of *naskh* identification have enabled the ulama to resolve most of the recognised cases of *taarud al-adilla*. They demand a rigorous and detailed knowledge not just of the *hadith* disciplines, but of history, *sirah*, and of the views held by the Companions and other scholars on the circumstances surrounding the genesis and exegesis of the *hadith* in question. In some cases, *hadith* scholars would travel throughout the Islamic world to locate the required information pertinent to a single *hadith*.[26]

In cases where in spite of all efforts, abrogation cannot be proven, then the ulama of the salaf recognised the need to apply further tests. Important among these is the analysis of the matn (the transmitted text rather than the isnad of the *hadith*).[27] Clear (*sarih*) statements are deemed to take precedence over allusive ones (*kinayah*), and definite (*muhkam*) words take precedence over words falling into more ambiguous categories, such as the interpreted (*mufassar*), the obscure (*khafi*) and the problematic (*mushkil*).[28] It may also be necessary to look at the position of the narrators of the conflicting *hadiths*, giving precedence to the report issuing from the individual who was more directly involved. A famous example of this is the *hadith* narrated by Maymunah which states that the Prophet (pbuh) married her when not in a state of consecration (*ihram*) for the pilgrimage. Because her report was that of an eyewitness, her *hadith* is given

precedence over the conflicting report from Ibn Abbas, related by a similarly sound *isnad*, which states that the Prophet was in fact in a state of *ihram* at the time.[29]

There are many other rules, such as that which states that 'prohibition takes precedence over permissibility.'[30] Similarly, conflicting *hadiths* may be resolved by utilising the *fatwa* of a Companion, after taking care that all the relevant *fatwa* are compared and assessed.[31] Finally, recourse may be had to *qiyas* (analogy).[32] An example of this is the various reports about the solar eclipse prayer (*salat al-kusuf*), which specify different numbers of bowings and prostrations. The ulama, having investigated the reports meticulously, and having been unable to resolve the contradiction by any of the mechanisms outlined above, have applied analogical reasoning by concluding that since the prayer in question is still called *salaat*, then the usual form of *salaat* should be followed, namely, one bowing and two prostrations. The other *hadiths* are to be abandoned.[33]

This careful articulation of the methods of resolving conflicting source-texts, so vital to the accurate derivation of the Shariah from the revealed sources, was primarily the work of Imam al-Shafi'i. Confronted by the confusion and disagreement among the jurists of his day, and determined to lay down a consistent methodology which would enable a *fiqh* to be established in which the possibility of error was excluded as far as was humanly possible, Shafi'i wrote his brilliant *Risala* (Treatise on Islamic jurisprudence). His ideas were soon taken up, in varying ways, by jurists of the other major traditions of law; and today they are fundamental to the formal application of the Shariah.[34]

Shafi'i's system of minimising mistakes in the derivation of Islamic rulings from the mass of evidence came to be known as *usul al-fiqh* (the roots of *fiqh*). Like most of the other formal academic disciplines of Islam, this was not an innovation in the negative sense, but a working-out of principles already discernible in the time of the earliest Muslims. In time, each of the great interpretative traditions of Sunni Islam codified its own variation on these roots, thereby yielding in some cases divergent branches (i.e. specific rulings on practice). Although the debates generated by these divergences could sometimes be energetic, nonetheless, they were insignificant when compared to the great

sectarian and legal disagreements which had arisen during the first two centuries of Islam before the science of *usul al-fiqh* had put a stop to such chaotic discord.

It hardly needs remarking that although the Four Imams, Abu Hanifa, Malik ibn Anas, al-Shafi'i and Ibn Hanbal, are regarded as the founders of these four great traditions, which, if we were asked to define them, we might sum up as sophisticated techniques for avoiding innovation, their traditions were fully systematised only by later generations of scholars. The Sunni ulama rapidly recognised the brilliance of the Four Imams, and after the late third century of Islam we find that hardly any scholars adhered to any other approach. The great *hadith* specialists, including al-Bukhari and Muslim, were all loyal adherents of one or another of the *madhhabs*, particularly that of Imam al-Shafi'i. But within each *madhhab*, leading scholars continued to improve and refine the roots and branches of their school. In some cases, historical conditions made this not only possible, but necessary. For instance, scholars of the school of Imam Abu Hanifah, which was built on the foundations of the early legal schools of Kufa and Basra, were wary of some *hadiths* in circulation in Iraq because of the prevalence of forgery engendered by the strong sectarian influences there. Later, however, once the canonical collections of Bukhari, Muslim and others became available, subsequent generations of Hanafi scholars took the entire corpus of *hadiths* into account in formulating and revising their *madhhab*. This type of process continued for two centuries, until the Schools reached a condition of maturity in the fourth and fifth centuries of the Hijra.[35]

It was at that time, too, that the attitude of toleration and good opinion between the Schools became universally accepted. This was formulated by Imam al-Ghazali, himself the author of four textbooks of Shafi'i *fiqh*,[36] and also of *Al-Mustasfa*, widely acclaimed as the most advanced and careful of all works on *usul, usul al-fiqh fil madhhab*. With his well-known concern for sincerity, and his dislike of ostentatious scholarly rivalry, he strongly condemned what he falled 'fanatical attachment to a madhhab'.[37] While it was necessary for the Muslim to follow a recognised madhhab in order to avert the lethal danger of misinterpreting the sources, he must never fall into the trap of considering his own school categorically superior to the others. With a few insignificant exceptions in the late Ottoman period, the great scholars of Sunni Islam have followed the ethos outlined by Imam al-Ghazali, and have been conspicuously

respectful of each others madhhab. Anyone who has studied under traditional ulama will be well-aware of this fact.[38]

The evolution of the Four Schools did not stifle, as some Orientalists have suggested,[39] the capacity for the refinement or extension of positive law.[40] On the contrary, sophisticated mechanisms were available which not only permitted qualified individuals to derive the Shariah from the Quran and Sunnah on their own authority, but actually obliged them to do this. According to most scholars, an expert who has fully mastered the sources and fulfilled a variety of necessary scholarly conditions is not permitted to follow the prevalent rulings of his School, but must derive the rulings himself from the revealed sources. Such an individual is known as a *mujtahid*,[41] a term derived from the famous *hadith* of Muadh ibn Jabal.[42]

Few would seriously deny that for a Muslim to venture beyond established expert opinion and have recourse directly to the Quran and Sunnah, he must be a scholar of great eminence. The danger of less-qualified individuals misunderstanding the sources and hence damaging the Shariah is a very real one, as was shown by the discord and strife which afflicted some early Muslims, and even some of the Companions themselves, in the period which preceded the establishment of the Orthodox Schools. Prior to Islam, entire religions had been subverted by inadequate scriptural scholarship, and it was vital that Islam should be secured from a comparable fate.

In order to protect the Shariah from the danger of innovation and distortion, the great scholars of usul laid down rigorous conditions which must be fulfilled by anyone wishing to claim the right of *ijtihad* for himself.[43] These conditions include:

(a) mastery of the Arabic language, to minimise the possibility of misinterpreting Revelation on purely linguistic grounds;

(b) a profound knowledge of the Quran and Sunnah and the circumstances surrounding the revelation of each verse and *hadith*, together with a full knowledge of the Quranic and *hadith* commentaries, and a control of all the interpretative techniques discussed above;

(c) knowledge of the specialised disciplines of *hadith*, such as the assessment of narrators and of the *matn* [text];

(d) knowledge of the views of the Companions, Followers and the great imams, and of the positions and reasoning expounded in the textbooks of *fiqh*, combined with the knowledge of cases where a consensus (*ijma*) has been reached;

(e) knowledge of the science of juridical analogy (*qiyas*), its types and conditions;

(f) knowledge of ones own society and of public interest (*maslahah*);

(g) knowing the general objectives (*maqasid*) of the Shariah;

(h) a high degree of intelligence and personal piety, combined with the Islamic virtues of compassion, courtesy, and modesty.

A scholar who has fulfilled these conditions can be considered a *mujtahid fil-shar*, and is not obliged, or even permitted, to follow an existing authoritative madhhab.[44] This is what some of the Imams were saying when they forbade their great disciples from imitating them uncritically. But for the much greater number of scholars whose expertise has not reached such dizzying heights, it may be possible to become a *mujtahid fi'l-madhhab*, that is, a scholar who remains broadly convinced of the doctrines of his school, but is qualified to differ from received opinion within it.[45] There have been a number of examples of such men, for instance Imam al-Nawawi among the Shafi'is, Qadi Ibn Abd al-Barr among the Malikis, Ibn Abidin among the Hanafis, and Ibn Qudama among the Hanbalis. All of these scholars considered themselves followers of the fundamental interpretative principles of their own madhhabs, but are on record as having exercised their own gifts of scholarship and judgement in reaching many new verdicts within them.[46] It is to these experts that the Mujtahid Imams directed their advice concerning ijtihad, such as Imam al-Shafi'i's instruction that 'if you find a *hadith* that contradicts my verdict, then follow the *hadith*'.[47] It is obvious that whatever some writers nowadays like to believe, such counsels were never intended for use by the Islamically-uneducated masses. Imam al-Shafi`i was not addressing a crowd of butchers, nightwatchman and donkey-drovers.

Other categories of *mujtahids* are listed by the usul scholars; but the distinctions between them are subtle and not relevant to our theme.[48] The remaining categories can in practice be reduced to two: the *muttabi* (follower), who follows his madhhab while being aware of the Quranic and *hadith* texts and the reasoning, underlying its positions,[49] and secondly the *muqallid* (emulator), who simply conforms to the madhhab because of his confidence in its scholars, and without necessarily knowing the detailed reasoning behind all its thousands of rulings.[50]

Clearly it is recommended for the *muqallid* to learn as much as he or she is able of the formal proofs of the madhhab. But it is equally clear that not every Muslim can be a scholar. Scholarship takes a lot of time, and for the ummah to function properly most people must have other employment: as accountants, soldiers, butchers, and so forth.[51] As such, they cannot reasonably be expected to become great *ulama* as well, even if we suppose that all of them have the requisite intelligence. The Holy Quran itself states that less well-informed believers should have recourse to qualified experts: *So ask the people of remembrance, if you do not know (16:43).*[52] (According to the *tafsir* experts, the people of remembrance are the ulama.) And in another verse, the Muslims are enjoined to create and maintain a group of specialists who provide authoritative guidance for non-specialists: *A band from each community should stay behind to gain instruction in religion and to warn the people when they return to them, so that they may take heed (9:122).* Given the depth of scholarship needed to understand the revealed texts accurately, and the extreme warnings we have been given against distorting the Revelation, it is obvious that ordinary Muslims are duty bound to follow expert opinion, rather than rely on their own reasoning and limited knowledge. This obvious duty was well-known to the early Muslims: the Caliph Umar (r.a.) followed certain rulings of Abu Bakr (r.a.), saying I would be ashamed before God to differ from the view of Abu Bakr. And Ibn Masud (r.a.), in turn, despite being a mujtahid in the fullest sense, used in certain issues to follow Umar (r.a.). According to al-Shabi: Six of the Companions of the Prophet (pbuh) used to give fatwas to the people: Ibn Masud, Umar ibn al-Khattab, Ali, Zayd ibn Thabit, Ubayy ibn Kab, and Abu Musa (al-Ashari). And out of these, three would abandon their own judgements in favour of the judgements of three others: Abdallah (ibn Masud) would abandon

his own judgement for the judgement of Umar, Abu Musa would abandon his own judgement for the judgement of Ali, and Zayd would abandon his own judgement for the judgement of Ubayy ibn Kab.[53]

This verdict, namely that one is well-advised to follow a great Imam as ones guide to the Sunnah, rather than relying on oneself, is particularly binding upon Muslims in countries such as Britain, among whom only a small percentage is even entitled to have a choice in this matter. This is for the simple reason that unless one knows Arabic,[54] then even if one wishes to read all the *hadith* determining a particular issue, one cannot. For various reasons, including their great length, no more than ten of the basic *hadith* collections have been translated into English. There remain well over three hundred others, including such seminal works as the Musnad of Imam Ahmad ibn Hanbal,[55] the Musannaf of Ibn Abi Shayba,[56] the Sahih of Ibn Khuzayma,[57] the Mustadrak of al-Hakim,[58] and many other multi-volume collections, which contain large numbers of sound *hadiths* which cannot be found in Bukhari, Muslim, and the other works that have so far been translated. Even if we assume that the existing translations are entirely accurate, it is obvious that a policy of trying to derive the Shariah directly from the Book and the Sunnah cannot be attempted by those who have no access to the Arabic. To attempt to discern the Shariah merely on the basis of the *hadiths* which have been translated will be to ignore and amputate much of the Sunnah, hence leading to serious distortions.[59]

Let me give just two examples of this. The Sunni Madhhabs, in their rules for the conduct of legal cases, lay down the principle that the canonical punishments (*hudud*) should not be applied in cases where there is the least ambiguity, and that the qadi should actively strive to prove that such ambiguities exist. An amateur reading in the Sound Six collections will find no confirmation of this.[60] But the madhhab ruling is based on a *hadith* narrated by a sound chain, and recorded in the*Musannaf* of Ibn Abi Shayba, the *Musnad* of al-Harithi, and the *Musnad* of Musaddad ibn Musarhad. The text is: "**Ward off the *hudud* by means of ambiguities.**"[61] Imam al-Sanani, in his book *Al-Ansab*, narrates the circumstances of this *hadith*: "A man was found drunk, and was brought to Umar, who ordered the *hadd* of eighty lashes to be applied. When this had been done, the man said: Umar, you have wronged me! I am a slave! (Slaves receive only half the punishment.) Umar was grief-stricken at this, and recited the

Prophetic *hadith*, Ward off the *hudud* by means of ambiguities."[62]

Another example is provided by the practice of *istighfar* for others during the Hajj. According to a hadith, 'Forgiveness is granted to the Hajji, and to those for whom the Hajji prays.' This hadith is not related in any of the collections so far translated into English; but it is narrated, by a sound *isnad*, in many other collections, including *al-Mu`jam al-Saghir* of al-Tabarani and the *Musnad* of al-Bazzar.[63]

Another example pertains to the important practice, recognised by the madhhabs, of performing sunnah prayers as soon as possible after the end of the Maghrib obligatory prayer. The *hadith* runs: Make haste to perform the two rakas after the Maghrib, for they are raised up (to Heaven) alongside the obligatory prayer. The *hadith* is narrated by Imam Razin in his *Jami*.

Because of the traditional pious fear of distorting the Law of Islam, the overwhelming majority of the great scholars of the past - certainly well over ninety-nine percent of them - have adhered loyally to a madhhab.[64] It is true that in the troubled fourteenth century a handful of dissenters appeared, such as Ibn Taymiyyah and Ibn al-Qayyim;[65] but even these individuals never recommended that semi-educated Muslims should attempt *ijtihad* without expert help. And in any case, although these authors have recently been resurrected and made prominent, their influence on the orthodox scholarship of classical Islam was negligible, as is suggested by the small number of manuscripts of their works preserved in the great libraries of the Islamic world.[66]

Nonetheless, social turbulences have in the past century thrown up a number of writers who have advocated the abandonment of authoritative scholarship. The most prominent figures in this campaign were Muhammad Abduh and his pupil Muhammad Rashid Rida.[67] Dazzled by the triumph of the West, and informed in subtle ways by their own well-documented commitment to Freemasonry, these men urged Muslims to throw off the shackles of taqlid, and to reject the authority of the Four Schools. Today in some Arab capitals, especially where the indigenous tradition of orthodox scholarship has been weakened, it is common to see young Arabs filling their homes with every *hadith* collection they can lay their hands upon, and poring over them in the apparent belief that they are less likely to

misinterpret this vast and complex literature than Imam al-Shafi'i, Imam Ahmad, and the other great Imams. This irresponsible approach, although still not widespread, is predictably opening the door to sharply divergent opinions, which have seriously damaged the unity, credibility and effectiveness of the Islamic movement, and provoked sharp arguments over issues settled by the great Imams over a thousand years ago.[68] It is common now to see young activists prowling the mosques, criticising other worshippers for what they believe to be defects in their worship, even when their victims are following the verdicts of some of the great Imams of Islam. The unpleasant, Pharisaic atmosphere generated by this activity has the effect of discouraging many less committed Muslims from attending the mosque at all. No-one now recalls the view of the early ulama, which was that Muslims should tolerate divergent interpretations of the Sunnah as long as these interpretations have been held by reputable scholars. As Sufyan al-Thawri said: 'If you see a man doing something over which there is a debate among the scholars, and which you yourself believe to be forbidden, you should not forbid him from doing it.'[69] The alternative to this policy is, of course, a disunity and rancour which will poison and cripple the Muslim community from within.[70]

In a Western-influenced global culture in which people are urged from early childhood to think for themselves and to challenge established authority, it can sometimes be difficult to muster enough humility to recognise ones own limitations.[71] We are all a little like Pharaoh: our egos are by nature resistant to the idea that anyone else might be much more intelligent or learned than ourselves. The belief that ordinary Muslims, even if they know Arabic, are qualified to derive rulings of the Shariah for themselves, is an example of this egotism running wild. To young people proud of their own judgement, and unfamiliar with the complexity of the sources and the brilliance of authentic scholarship, this can be an effective trap, which ends by luring them away from the orthodox path of Islam and into an unintentional agenda of provoking deep divisions among the Muslims. The fact that all the great scholars of the religion, including the *hadith* experts, themselves belonged to madhhabs, and required their students to belong to madhhabs, seems to have been forgotten. Self-esteem has won a major victory here over common sense and Islamic responsibility.[72]

The Holy Quran commands Muslims to use their minds and reflective capacities;

and the issue of following qualified scholarship is an area in which this faculty must be very carefully deployed. The basic point should be appreciated that no categoric difference exists between *usul al-fiqh* and any other specialised science requiring lengthy training. Shaykh Sa`id Ramadan al-Buti, who has articulated the orthodox response to the anti-Madhhab trend in his book: *Non-Madhhabism: The Greatest Bida Threatening the Islamic Shari`a*, likes to compare the science of deriving rulings to that of medicine. "If ones child is seriously ill", he asks, "does one look for oneself in the medical textbooks for the proper diagnosis and cure, or should one go to a trained medical practitioner?" Clearly, sanity dictates the latter option. And so it is in matters of religion, which are in reality even more important and potentially hazardous: we would be both foolish and irresponsible to try to look through the sources ourselves, and become our own muftis. Instead, we should recognise that those who have spent their entire lives studying the Sunnah and the principles of law are far less likely to be mistaken than we are.[73]

Another metaphor might be added to this, this time borrowed from astronomy. We might compare the Quranic verses and the *hadiths* to the stars. With the naked eye, we are unable to see many of them clearly; so we need a telescope. If we are foolish, or proud, we may try to build one ourselves. If we are sensible and modest, however, we will be happy to use one built for us by Imam al-Shafi'i or Ibn Hanbal, and refined, polished and improved by generations of great astronomers. A madhhab is, after all, nothing more than a piece of precision equipment enabling us to see Islam with the maximum clarity possible. If we use our own devices, our amateurish attempts will inevitably distort our vision.

A third image might also be deployed. An ancient building, for instance the Blue Mosque in Istanbul, might seem imperfect to some who worship in it. Young enthusiasts, burning with a desire to make the building still more exquisite and well-made (and no doubt more in conformity with their own time-bound preferences), might gain access to the crypts and basements which lie under the structure, and, on the basis of their own understanding of the principles of architecture, try to adjust the foundations and pillars which support the great edifice above them. They will not, of course, bother to consult professional architects, except perhaps one or two whose rhetoric pleases them nor will they be guided by the books and memoirs of those who have maintained the structure

over the centuries. Their zeal and pride leaves them with no time for that. Groping through the basements, they bring out their picks and drills, and set to work with their usual enthusiasm.

There is a real danger that Sunni Islam is being treated in a similar fashion. The edifice has stood for centuries, withstanding the most bitter blows of its enemies. Only from within can it be weakened. No doubt, Islam has its intelligent foes among whom this fact is well-known. The spectacle of the disunity and fitnas which divided the early Muslims despite their superior piety, and the solidity and cohesiveness of Sunnism after the final codification of the Shariah in the four Schools of the great Imams, must have put ideas into many a malevolent head. This is not to suggest in any way that those who attack the great madhhabs are the conscious tools of Islam's enemies. But it may go some way to explaining why they will continue to be well-publicised and well-funded, while the orthodox alternative is starved of resources. With every Muslim now a proud *mujtahid*, and with *taqlid* dismissed as a sin rather than a humble and necessary virtue, the divergent views which caused such pain in our early history will surely break surface again. Instead of four madhhabs in harmony, we will have a billion madhhabs in bitter and self-righteous conflict. No more brilliant scheme for the destruction of Islam could ever have been devised.[74]

Footnotes

[1] Abdul Wadod Shalabi, *Islam: Religion of Life* (2nd ed., Dorton, 1989), 10. This is the purport of the famous *hadith* : 'The best generation is my own, then that which follows them, then that which follows them'. (Muslim, Fada'il al-Sahaba, 210, 211, 212, 214)

[2] The Khalifa was killed by Muslim rebels from Egypt, whose grievances included his alleged 'innovation' of introducing a standard text of the Holy Koran. (Evidently the belief among some modern Muslims that there can be no such thing as a 'good innovation' (*bid`a hasana*) has a long history!) For the full story, see pages 63-71 of M.A. Shaban, *Islamic History AD 600-750 (AH 132): A New Interpretation* (Cambridge, 1971).

[3] Shaban, 73-7.

[4] For the Kharijtes see Imam al-Tabari, *History*, vol. XVIII, translated by M. Morony (New York, 1987), 21-31. Their monstrous joy at having assassinated the khalifa `Ali ibn Abi Talib is recorded on

[5] For an account of the historical development of the *fiqh*, see Ahmad Hasan, *The Early Development of Islamic Jurisprudence* (Islamabad, 1970); Hilmi Ziya Ulken, *Islam Dusuncesi* (Istanbul, 1946), 68-100; Omer Nasuhi Bilmen, *Hukuki Islamiyye ve Istalahati Fikhiyye Kamusu* (Istanbul, 1949-52), I, 311-338.

[6] For a brief account of Shi'ism, see C. Glasse, *The Concise Encyclopedia of Islam* (london, 1989), 364-70.

[7] *Fada'ih al-Batiniya*, ed. `Abd al-Rahman Badawi (Cairo, 1964).

[8] For a detailed but highly readable account of the Mongol onslaught, see B. Spuler, *History of the Mongols, based on Eastern and Western Accounts of the Thirteenth and Fourteenth Centuries* (London, 1972); the best-known account by a Muslim historian is `Ala' al-Din al-Juwayni, *Tarikh-i Jihangusha*, translated by J.A. Boyle as *The History of the World-Conqueror* (Manchester, 1958).

[9] For the slaughter of the ulema, see the dramatic account of Ahmad Aflaki, *Manaqib al-`Arifin*, ed. Tahsin Tazici (Ankara, 1959-61), I, 21, who states that 50,000 scholars were killed in the city of Balkh alone.

[10] The critical battle was fought in 873/1469, when the Mongol ruler of Iran was defeated by the Turkomans of the (Sunni) Ak Koyunlu dynasty, who were in turn defeated by Shah Isma`il, an extreme Shi`ite, in 906-7/1501, who inaugurated the Safavid rule which turned Iran into a Shi`i country. (*The Cambridge History of Iran,* VI, 174-5; 189-350; Sayyid Muhammad Sabzavari, tr. Sayyid Hasan Amin, *Islamic Political and Juridical Thought in Safavid Iran* [Tehran, 1989].)

[11] The Kharijites represent a tendency which has reappeared in some circles in recent years. Divided into many factions, their principles were never fully codified. They were textualist, puritanical and anti-intellectual, rejected the condition of Quraishite birth for their Imam, and declared everyone outside their grouping to be *kafir*. For some interesting accounts, see M. Kafafi, 'The Rise of Kharijism', *Bulletin of the Faculty of Arts of the University of Egypt*, XIV (1952), 29-48; Ibn Hazm, *al-Fisal fi'l-milal wa'l-nihal* (Cairo, 1320), IV, 188-92; Brahim Zerouki, *L'Imamat de Tahart: premier etat musulman du Maghreb* (Paris, 1987).

[12] Probably because he had written a book celebrating the virtues of the caliph `Ali. See Ibn Hajar al-`Asqalani, *Tahdhib al-Tahdhib* (Hyderabad, 1325), I, 36-40.

[13] See, for example, Imam al-Haramayn al-Juwayni, *al-Burhan fi usul al-fiqh* (Cairo, 1400), §§1189-1252.

[14] Ibn Qutayba, *Ta'wil Mukhtalif al-Hadith* (Cairo, 1326). Readers of French will benefit from the translation of G. Lecomte: *Le Traite des divergences du hadith d'Ibn Qutayba* (Damascus, 1962). There is also a useful study by Ishaq al-Husayni: *The Life and Works of Ibn Qutayba* (Beirut, 1950). Mention should also be made of a later and inmost respects similar work, by Imam al-Tahawi (d. 321): *Mushkil al-Athar* (Hyderabad, 1333), which is more widely used among the ulema.

[15] Imam Abu'l-Wahid al-Baji (d. 474), *Ihkam al-Fusul ila `Ilm al-Usul*, ed. A. Turki (Beirut, 1986/1407), §§184-207; Imam Abu Ishaq al-Sirazi (d. 476), *al-Luma` fi usual al-fiqh* (Cairo, 1377), 17-24; Juwayni, §§327-52, 1247; Imam al-Shafi`i, tr. Majid Khadduri, *Al-Shafi`i's Risala: Treatise on the Foundations of Islamic Jurisprudence* (Cambridge, 1987), 103-8. Shafi`i gives a number of well-known examples of Koranic texts being subject to *takhsis*. For instance, the verse *'As for the thief, male and female, cut of their hands as a retribution from Allah,'* (5:42) appears to be unconditional; however it is subject to *takhsis* by the *hadith* which reads 'Hands should not be cut off for fruits, nor the spadix of a palm tree, and that the hand should not be cut off unless the price of the thing stolen is a quarter of a dinar or more.' (Malik, *Muwatta'*, Abu Daud, *Sunan*; see Shafi`i, *Risala*, 105.)

[16] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge, 1991), 356-65. This excellent book by a prominent Afghan scholar is by far the best summary of the theory of Islamic law, and should be required reading for every Muslim who wishes to raise questions concerning the Shari`a disciples.

[17] The verses in question were: 2:219, 4:43, and 5:93. See Kamali, 16-17.

[18] Kamali, 150; Ibn Rushd, *The Distinguished Jurist's Primer*, tr. Imran Nyazee and Muhammad Abdul Rauf (Reading, 1994), 97. This new translation of the great classic *Bidayat al-Mujtahid*, only the first volume of which is available at present, is a fascinating explanation of the basic arguments over the proof texts (*adilla*) used by the scholars of the recognized *madhhabs*. Ibn Rushd was a Maliki *qadi*, but presents the views of other scholars with the usual respect and objectivity. The work is the best-known example of a book of the *Shari`a* science of `ilm al-khilaf (the 'Knowledge of Variant Rulings'; for a definition of this science see Imam Hujjat al-Islam al-Ghazali, *al-Mustasfa min `ilm al-usul*, [Cairo, 1324] I, 5).

[19] Kamali, 150 quoting Shatibi, *Muwafaqat*, III, 63.

[20] Kamali, 154-160; Baji, §§383-450; Shirazi, 30-5; Juwayni, §§1412-1454; Ghazali, *Mustasfa*, I, 107-129. The problem was first addressed systematically by Imam al-Shafi`i. 'There are certain *hadiths* which agree with one another, and others which are contradictory to one another; the abrogating and the abrogated *hadiths* are clearly distinguished [in some of them]; in others the *hadiths* which are abrogating and abrogated are not indicated.' (*Risala*, 179.) For cases in which the Holy Koran has abrogated a *hadith*, or (more rarely) a *hadith* has abrogated a Koranic verse, see Ghazali, *Mustasfa,* I, 124-6; Baji, §429-39; Juwayni, §1440-3. The *sunna* is able to abrogate the Koran because it too is a revelation (*wahy*); as Imam al-Baji explains it, 'The Blessed Prophet's own *sunnas* do not in reality abrogate anything themselves; they only state that Allah has cancelled the ruling of a Koranic passage. Hence the abrogation, in reality, is from Allah, whether theabrogating passage is in the Koran or the *Sunna*.' (Baji, §435.)

[21] For this as an instance of abrogation, see Shafi`i, *Risala* (Khadduri), 133.

[22] Muslim, Jana'iz, 100.

[23] Kamali, 154.

[24] Kamali, 155; see also Shafi`i, *Risala* (khadduri), 168.

[25] Sayf ad-Din Ahmed Ibn Muhammad, *Al-Albani Unveiled: An Exposition of His Errors and Other Important Issues* (London, 2nd ed., 1415), 49-51; Ibn Rushd, *The Distinguished Jurist's Primer*, 168-170; Shafi`i, *Risala* (Khadduri), 199-202.

[26] M.Z. Siddiqi, *Hadith Literature, its Origins, Development and Special Features* (Revised ed. Cambridge, 1993), 3, 40, 126.

[27] Defects in the *matn* can sometimes make a *hadith* weak even if its *isnad* is sound (Siddiqi, 113-6).

[28] Kamali, 361; Bilmen, I, 74-6, 82-4. The classification of revealed texts under these headings is one of the most sensitive areas of *usul al-fiqh*.

[29] Kamali, 361.

[30] Kamali, 362.

[31] Kamali, 235-44; Ghazali, *Mustasfa*, 1, 191,2; Juwayni, §343.

[32] For some expositions of the difficult topic of *qiyas*, see Kamali, 197-228; Shirazi, 53-63; Juwayni, §§676-95; Imam Sayf al-Din al-Amidi (*al-Ihkam fi Usul al-Ahkam*, Cairo, 1332/1914), III, 261-437,

IV, 1-161.

[33] Kamali, 363-4.

[34] The accessible English translation of his best-known work on legal theory has already been mentioned above in note 15.

[35] The question is often asked why only four schools should be followed today. The answer is straightforward: while in theory there is no reason whatsoever why the number has to be four, the historical fact is that only these four have sufficient detailed literature to support them. In connection with the hyper-literalist Zahiri *madhhab*, Ibn Khaldun writes: 'Worthless persons occasionally feel obliged to follow the Zahiri school and study these books in the desire to learn the Zahiri system of jurisprudence from them, but they get nowhere, and encounter the opposition and disapproval of the great mass of Muslims. In doing so they often are considered innovators, as they accept knowledge from books for which no key is provided by teachers.' (*Muqaddima*, tr. F. Rosenthal [Princeton, 1958], III, 6.)

[36] These are (in order of length, shortest first), *al-Khulasa, al-Wajiz, al-Wasit and Basit*. The great Imam penned over a hundred other books, earning him from a grateful Umma the title 'Hujjat al-Islam' (The Proof of Islam). It is hardly surprising that when the ulema quote the famous *sahih hadith* 'Allah shall raise up for this Umma at the beginning of each century someone who will renew for it its religion,' they cite Imam al-Ghazali as the renewer of the fifth century of Islam. See for instance Imam Muhammad al-Sakhawi (d. 902AH), *al-Maqasid al-Hasana fi bayan kathirin min al-ahadith al-mushtahira `ala al-alsina* (Beirut, 1405), 203-4, who lists the 'renewers' as follows: `Umar ibn `Abd al-`Aziz, al-Shafi`i, Ibn Surayj, Abu Hamid al-Isfaraini, Hujjut al-Islam al-Ghazali, Fakhr al-Din al-Razi, Ibn Daqaq al-`Id, al-Balqini. Imam Ibn `Asakir (d. 571AH), in his famous work *Tabyin Kadhib al-Muftari fima nusiba ila al-Imam Abi'l-Hasan al-Ash`ari*, ed. Imam Muhammad Zahid al-Kawthari (Damascus, 1347, reproduced Beirut, 1404), 52-4, has the following list: `Umar ibn `Abd al-`Aziz, al-Shafi`i, al-Ash`ari, al-Baqillani, al-Ghazali.

[37] Imam Abu Hamid al-Ghazali, *Ihya `Ulum al-Din* (Cairo: Mustafa al-Halibi, 1347), III, 65.

[38] 'The most characteristic qualities of the great ulema are dignity and serenity, respect for other scholars, compassionate concern for the Umma, and following the Prophet, upon whom be blessings and peace, whose view was always broad, his wisdom perfect, and his toleration superb.' Imam Yusuf al-Dajawi (d. 1365AH), *Maqalat wa-Fatawa* (Cairo: Majmu` al-Buhuth al-Islamiya, 1402), II, 583.

`True fairness is to regard all the Imams as worthy; whoever follows the *madhhab* of a *Mujtahid* because he has not attained the level of *Ijtihad*, is not harmed by the fact that other imams differ from his own.' (Shatibi, *I`tisam*, III, 260.) There are many examples cited by the scholars to show the respect of the *madhhabs* for each other. For instance, Shaykh Ibrahim al-Samadi (d. 1662), a pious scholar of Damascus, once prayed to be given four sons, so that each might follow one of the recognized *madhhabs*, thereby bringing a fourfold blessing to his house. (Muhammad al-Amin al-Muhibbi, *Khulasat al-atar fi a`yan al-qarn al-hadi `ashar* [Cairo, 1248], I, 48.) And it was not uncommon for scholars to be able to give *fatwas* in more than one *madhhab* (such a man was known technically as *mufti al-firaq*). (Ibn al-Qalanisi, *Dhayl Tarikh Dimasq* [Beirut, 1908], 311.) Hostility between the Madhhabs was rare, despite some abuse in the late Ottoman period. Al-Dhahabi counsels his readers as follows: 'Do not think that your madhhab is the best, and the one most beloved by Allah, for you have no proof of this. The Imams, may Allah be pleased with them, all follow great goodness; when they are right, they receive two rewards, and when they are wrong, they still receive one reward.' (al-Dhahabi, *Zaghal al-`Ilm wa'l-Talab*, 15, quoted in Sa`id Ramadan al-Buti, *Al-Lamadhhabiya Akhtar Bid`a tuhaddid al-Shari`a al-Islamiya*, 3rd edition, Beirut, 1404, 81.) The final words here ('right ... reward') are taken from a well-known *hadith* to this effect (Bukhari, I`tisam, 21.)

[39] Most notoriously N. Couson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago, 1969), 43, 50, 96; but also I. Goldziher, Louis Ardet and Montgomery Watt.

[40] It will be useful here to refute an accusation made by some Orientalists, and even by some modern Muslims, who suggest that the scholars were reluctant to challenge the *madhhab* system because if they did so they would be 'out of a job', and lucrative *qadi* positions, restricted to followers of the orthodox Schools, would be barred to them. This is a particularly distasteful example of the modern tendency to slander men whose moral integrity was no less impressive than their learning: to suggest that the great Ulema of Islam followed the interpretation of Islam that they did simply for financial reasons is insulting and a disgraceful form of *ghiba* (backbiting). In any case, it can be easily refuted. The great ulema of the past were in almost every case men of independent means, and did not need to earn from their scholarship. For instance, Imam Ibn Hajar had inherited a fortune from his mother (al-Sakhawi, *al-Daw' al-Lami` li-Ahl al-Qarn al-Tasi`* (Cairo, 1353-5), II, 36-40). Imam al-Suyuti came from a prominent and wealthy family of civil servants (see his own *Husn al-Muhadara fi akhbar Misr wa'l-Wahira* [Cairo, 1321], I, 153, 203). For examples of scholars who achieved financial independence see the editor's notes to Ibn Jam`a's *Tadhkirat al-Sami` fi Adab al-`Alim wa'l-Muta `allim* (Hyderabad, 1353), 210: Imam al-Baji was a craftsman who made gold leaf: 'his academic associates recall that he used to go out to see them with his hand sore from the effects of the

hammer' (Dhahabi, *Tadhkira*, III, 349-50); while the Khalil ibn Ishaq, also a Maliki, was a soldier who had taken part in the liberation of Alexandria from the Crusaders, and often gave his *fiqh* classes while still wearing his chain mail and helmet (Suyuti, *Husn al-Muhadara*, I, 217.) And it was typical for the great scholars to live lives of great frugality: Imam al-Nawawi, who died at the age of 44, is said to have damaged his health by his ascetic lifestyle: for instance, he declined to eat of the fruit of Damascus, where he taught, because it was grown on land whose legal status he regarded as suspect. (al-Yafi`I, *Mir'at al-Janan wa-`Ibrat al-Yaqzan* [Hyderabad, 1338], IV, 1385.) It is not easy to see how such men could have allowed motives of financial gain to dictate their approach to religion.

[41] A *mujtahid* is a scholar qualified to perform *ijtihad*, defined as 'personal effort to derive a *Shari`a* ruling of the *furu`* from the revealed sources.' (Bilmen, I, 247.) His chief task - the actual process of derivation - is called *istinbat*, originally signifying in Arabic 'bringing up water with difficulty from a well.' (Bilmen, I, 247.)

[42] 'When Allah's Messenger, upon him be blessings and peace, wished to send Mu`adh ibn Jabal to the Yemen, he asked him: 'How will you judge if an issue is presented to you for judgement?' 'By what is in Allah's Book,' he replied. 'And if you do not find it in Allah's Book?' 'Then by the *Sunna* of Allah's Messenger.' 'And if it is not in the *Sunna* of Allah's Messenger?' 'Then I shall strive in my own judgement' (*ajtahidu ra'yi*). (Abu Daud, Aqdiya, 11.)

[43] Kamali, 366-393, especially 374-7; see also Amidi, IV, 219-11; Shirazi, 71-2; Bilmen, I, 247, 250, 251-2.

[44] Kamali, 386-8. Examples of such men from the time of the Tabi`un onwards include 'Ibrahim al-Nakha`I, Ibn Abi Layla, Ibn Shubruma, Sufyan al-Thawri, al-Hasan ibn Salih, al-Awza`i, `Amr ibn al-Harith, al-Layth ibn Sa`d, `Abdullah ibn Abi Ja`far, Ishaq ibn Rahawayh, Abu `Ubayd al-Qasim ibn Salam, Abu Thawr, Ibn Khuzayma, Ibn Nasr al-Marwazi, Ibn Mundhir, Daud al-Zahiri, and Ibn Jarir al-Tabari, may Allah show them all His mercy.' (Bilmen, I, 324.) It should be noted that according to some scholars a concession (*rukhsa*) exists on the matter of the permissibility of *taqlid* for *mujtahid*: Imam al-Baji and Imam al-Haramayn, for instance, permit a *mujtahid* to follow another *mujtahid* in cases where his own research to establish a matter would result in dangerous delay to the performance of a religious duty. (Baji, §783; Juwayni, §1505.)

[45] **Kamali, 388; Bilmen, I, 248.**

[46] 'The major followers of the great Imams did not simply imitate them as some have claimed. We know, for instance, that Abu Yusuf and al-Shaybani frequently dissented from the position of Abu Hanifa. In fact, it is hard to find a single question of *fiqh* which is not surrounded by a debate, in

which the independent reasoning and *ijtihad* of the scholars, and their determination to locate the precise truth, are very conspicuous. In this way we find Imam al-Shafi`i determining, in his new *madhhab*, that the time for *Maghrib* does not extend into the late twilight (*shafaq*); while his followers departed from this position in order to follow a different proof-text (*dalil*). Similarly, Ibn `Abd al-Barr and Abu Bakr ibn al-`Arabi hold many divergent views in the *madhhab* of Imam Malik. And so on.' (Imam al-Dajawi, II, 584.)

[47] 'Whenever a *mujtahid* reaches a judgement in which he goes against *ijma`*, or the basaic principles, or an unambiguous text, or a clear *qiyas* (*al-qiyas al-jali*) free of any proof which contradicts it, his *muqallid* is not permitted to convey his view to the people or to give a *fatwa* in accordance with it ... however no-one can know whether this has occurred who has not mastered the principles of jurisprudence, clear *qiyas*, unambiguous texts, and anything that could intervene in these things; and to know this one is obliged to learned *usul al-fiqh* and immerse oneself in the ocean of *fiqh*.' (Imam Shihab al-Din al-Qarafi, *al-Furuq* (Cairo, 1346), II, 109.)

[48] The ulema usually recognize seven different degrees of Muslims from the point of view of their learning, and for those who are interested they are listed here, in order of scholarly status. (1,2) The *mujtahidun fi'l-shar`* (*Mujtahids* in the *Shari`a*) and the *mujtahidun fi'l-madhhab* (*Mujtahids* in the *Madhhab*) have already been mentioned. (3) *Mujtahidun fi'l-masa'il* (*Mujtahids* on Particular Issues) are scholars who remain within a school, but are competent to exercise *ijtihad* on certain aspects within it which they know thoroughly. (4) *Ashab al-Takhrij* (Resolvers of Ambiguity), who are competent to 'indicate which view was preferable in cases of ambiguity, or regarding suitability to prevailing conditions'. (5) *Ashab al-Tarjih* (People of Assessment) are 'those competent to make comparisons and distinguish the correct (*sahih*) and the preferred (*rajih, arjah*) and the agreed-upon (*mufta biha*) views from the weak ones' inside the *madhhab*. (6) *Ashab al-Tashih* (People of Correction): 'those who could distinguish between the manifest (*zahir al-riwaya*) and the rare and obscure (*nawadir*) views of the schools of their following.' (7) *Muqallidun*: the 'emulators', including all non-scholars. (Kamali, 387-9. See also Bilmen, I, 250-1, 324-6.) Of these seven categories, only the first three are considered to be *mujtahids*.

[49] This is explained by Imam al-Shatibi in the context of the following passage, all of which is quoted here to furnish a further summary of the orthodox position on *taqlid*. 'A person obliged to follow the rules of the *Shari`a* must fall into one of three categories. [I] He may be a *mujtahid*, in which case he will practice the legal conclusions to which his *ijtihad* leads him. [II] He may be a complete *muqallid*,

unappraised of the knowledge required. In his case, he must have a guide to lead him, and an arbitrator to give judgements for him, and a scholar to emulate. Obviously, he follows the guide only in his capacity as a man possessed of the requisite knowledge. The proof for this is that if he knows, or even suspects, that he does not in fact possess it, it is not permissible for him to follow him or to accept his judgement; in fact, no individual, whether educated or not, should think of following through *taqlid* someone who he knows is not qualified, in the way that a sick man should not put himself in the hands of someone whom he knows is not a doctor. [III] He may not have attained to the level of the *Mujtahids*, but he understands the *dalil* and its context, and is competent to understand it in order to prefer some rulings over others in certain questions. In his case, one must either recognize his preferences and views, or not. If they are recognized, then he becomes like a *mujtahid* on that issue; if they are not, then he must be classed alone with other ordinary non-specialist Muslims, who are obliged to follow *Mujtahids*. (*al-I`tisam* [Cairo, 1913-4] III, 251-3.)

An equivalent explanation of the status of the *muttabi`* is given by Amidi, IV, 306-7: 'If a non-scholar, not qualified to make *ijtihad*, has acquired some of the knowledge required for *ijtihad*, he must follow the verdicts of the *Mujtahids*. This is the view of the correct scholars, although it has been rejected by some of the Mu`tazilites in Baghdad, who state: "That is not allowable, unless he obtains a clear proof (*dalil*) of the correctness of the *ijtihad* he is following." But the correct view is that which we have stated, this being proved by the Koran, *Ijma`* and the intellect. The Koranic proof is Allah's statement, "Ask the people of remembrance if you do not know," which is a general (*`amm*) commandment to all. The proof by *Ijma`* is that ordinary Muslims in the time of the Companions and the Followers used to ask the *mujtahids*, and follow them in their *Shari`a* judgements, while the learned among them would answer their questions without indicating the *dalil*. They would not forbid them from doing this, and this therefore constitutes *Ijma`* on the absolute permissibility of an ordinary Muslim following the rulings of a *mujtahid*.' For Amidi's intellectual proof, see note 51 below.

[50] A *muqallid* is a Muslim who practices *taqlid*, which is the *Shari`a* term for 'the acceptance by an ordinary person of the judgement of a *mufti*.' (Juwayni, §1545.) The word '*mufti*' here means either a *mujtahid* or someone who authentically transmits the verdict of a *mujtahid*. 'As for the ordinary person [`ammi], it is obligatory [*wajib*] upon him to make *taqlid* of the ulema.' (Baji, §783.) The actual choice of which *mujtahid* an ordinary Muslim should follow is clearly a major responsibility. 'A *muqallid* may only make *taqlid* of another person after carefully examining his credentials, and

obtaining reliable third-party testimony as to his scholarly attainments' (Juwayni, §1511). (Imam Ibn Furak, however holds that a *mujtahid's* own self-testimony is sufficient.) Imam Juwayni goes on to observe (§1515) that is is necessary to follow the best *mujtahid* available; whichis also the positoin of Imam al-Baji (§794). See also Shirazi (p. 72): 'It is not permissible for someone asking for a *fatwa* to ask just anyone, lest he ask someone who has no knowledge of the *fiqh*. Instead it is obligatory (*wajib*) for him to ascertain the scholar's learning and trustworthiness.' And Qarafi (II, 110): 'The *Salaf*, may Allah be pleased with them, were intensely reluctant to give *fatwas*. Imam Malik said, "A scholar should not give *fatwas* until he is regarded as competent to do so both by himself and by others." In other words, the scholars must be satisfied of his qualifications. Imam Malik did not begin to give *fatwas* until he had been given permission (*ijaza*) to do so by forty turbaned ones [scholars].'

[51] 'The *dalil* for our position is Allah's commandment: *So ask the people of remembrance, if you do not know*. For if we forbade *taqlid*, everyone would need to become an advanced scholar, and no-one would be able [have time] to earn anything, and the earth would lie uncultivated.' (Shirazi, 71.) 'The intellectual proof [of the need for *taqlid*] is that if an issue of the *furu`* arises for someone who does not possess the qualifications for *ijtihad* then he will either not adopt an Islamic ruling at all, and this is a violation of the *Ijma`*, or, alternatively, he will adopt an Islamic ruling, either by investigating the proofs involved, or by *taqlid*. But an adequate investigation of the proofs is not possible for him, for it would oblige him, and all humanity, fully to investigate the *dalils* pertaining to the issues, thereby distracting them from their sources of income, and leading to the extinction of crafts and the ruin of the world.' (Amidi, *Ihkam*, IV, 307-8.) 'One of the *dalils* for the legitimacy of following the verdicts of the scholars is our knowledge that anyone who looks into these discussions and seeks to deduce rulings of the *Shari`a* will need to have the right tools, namely, the science of the rulings of the Koran and Sunna and *usul al-fiqh*, the principles of rhetoric and the Arabic language, and other sciences which are not easily acquired, and which most people cannot attain to. And even if some of them do attain to it, they only do so after long study, investigation and very great effort, which would require that they devote themselves entirely to this and do nothing else; and if ordinary people were under the obligation to do this, there would be no cultivation, commerce, or other employments which are essential for the continuance of humanity - and it is the *ijma`* of the Umma that this is something which Allah ta`ala has not obliged His slaves to do. ... There is therefore no alternative for them to following the ulema.' (Baji, §793.)

[52] 'There is *ijma`* among the scholars that this verse is a commandment to whoever does not know

a ruling or the *dalil* for it to follow someone who does. Almost all the scholars of *usul al-fiqh* have made this verse their principle *dalil* that it is obligatory for an ordinary person to follow a scholar who is a *mujtahid*.' (al-Buti, 71; translated also in Keller, 17.)

[53] See also Dajawi, II, 576: 'The Companions and Followers used to give *fatwas* on legal issues to those who asked for them. At times they would mention the source, if this was necessary, while at other times they would limit themselves to specifying the ruling.' Al-Ghazali (*Mustasfa*, II, 385) explains that the existence of *taqlid* and *fatwa* among the Companions is a *dalil* for the necessity of this fundamental distinction: 'The proof that *taqlid* is obligatory is the *ijma`* of the Companions. For they used to give *fatwas* to the ordinary people and did not command them to acquire the degree of *ijtihad* for themselves. This is known necessarily (*bi'l-darura*) and by parallel lines of transmission (*tawatur*) from both the scholars and the non-scholars among them.' See also Ibn Khaldun, *Muqaddima* (Bulaq ed., p. 216): 'Not all the Companions were qualified to give *fatwas*, and Islam was not taken from all of them. That privilege was held only by those who had learnt the Koran, knew what it contained by what of abrogated and abrogating passages, ambiguous (*mutashabih*) and perspicuous (*muhkam*) expressions, and its other special features.' And also Imam al-Baji (§793): 'Ordinary Muslims have no alternative but to follow the Ulema. One proof of this is the *ijma`* of the Companions, for those among them who had not attained the degree of *ijtihad* used to ask the ulema of the Companions for the correct ruling on something which happened to them. Not one of the Companions criticized them for so doing; on the contrary, they gave them *fatwas* on the issues they had asked about, without condemning them or telling them to derive the rulings themselves [from the Koran and Sunna].' See also Imam al-Amidi: in note 49 above.

A list of the *muftis* among the Companions is given by Juwayni (§§1494-9); they include the Four Khalifas, Talha ibn `Ubaydillah, `Abd al-Rahman ibn `Awf, and Sa`d ibn Abi Waqqas. Others were not *muftis*, such as Abu Hurayra, who despite his many narrations of hadiths was never known for his judgements (§1497). Shirazi (p. 52) confirms the obvious point that some Companions are considered more worthy of being followed in legal matters than others.

[54] As we have seen above, the ulema regard a mastery of the Arabic language as one of the essential qualifications for deriving the *Shari`a* directly from the Koran and Sunna. See Juwayni, §§70-216, where this is stressed. Juwayni records that Imam al-Shafi`i was so expert in the Arabic language,

grammar and rhetoric that at a very young age he was consulted by the great philologist al-Asma`i, who asked his help in editing some early and very difficult collections of Arabic poetry. (Juwayni, §1501.) We also learn that Imam `Ibn al-Mubarak, the famous traditionalist of Merv, spent more money on learning Arabic than on traditions [hadith], attaching more importance on the former than the latter, and asking the students of hadith to spent twice as long on Arabic than on hadith ... al-Asma`i held that someone who studied hadith without learning grammar was to be categorized with the forgers of hadith.' (Siddiqi, 84-5.)

[55] Published in 6 volumes in Cairo in 1313 AH. Another work by him, the *Kitab al-Zuhd* (Beirut, 1403), also contains many hadiths.

[56] Published in 13 volumes in Bombay between 1386 and 1390.

[57] Edited by M.M. al-A`zami, Beirut, 1391-97.

[58] This is an important collection of hadiths who accuracy Imam al-Hakim al-Nisaburi considered to meet the criteria of Imams al-Bukhari and Muslim, but which had not been included in their collections. Published in four large volumes in Hyderabad between 1334-1342.

[59] Needless to say, the amateurs who deny *taqlid* and try to derive the rulings for themselves are even more ignorant of the derivative sources of *Shari`a* than they are of the Koran and Sunna. These other sources do not only include the famous ones such as *ijma`* and *qiyas*. For instance, the *fatwas* of the Companions are considered by the ulema to be a further important source of legislation. 'Imam al-Shafi`i throughout his life taught that *diya* (bloodmoney) was increased in cases of crimes committed in the Haramayn or the Sacred Months, and he had no basis for this other than the statements of the Companions.' (Juwayni, §1001.)

[60] There is a version of this hadith in Tirmidhi (Hudu, 2), but attached to an isnad which includes Yazid ibn Ziyad, who is weak.

[61] Ibn Abi Shayba, *Musannaf*, XI, 70.

[62] Sakhawi, 74-5.

[63] Sakhawi, 742.

[64] For a complete list of the most famous scholars of Islam, and the *madhhabs* to which they belonged see Sayf al-Din Ahmad, *Al-Albani Unveiled*, 97-9.

[65] For these writers see Ahmad ibn al-Naqib al-Misri, tr. Nuh Keller, *Reliance of the Traveller* (Abu Dhabi, 1991), 1059-60, 1057-9. The attitude of Ibn al-Qayyim is not consistent on this issue. In some passages of his *I`lam al-Muwaqqi`in* he seems to suggest that any Muslim is qualified to derive rulings directly from the Koran and Sunna. But in other passages he takes a more intelligent view. For instance, he writes: 'Is it permissible for a mufti who adheres to the *madhhab* of his Imam to give a *fatwa* in accordance with a different *madhhab* if that is more correct in his view? [The answer is] if he is [simply] following the principles of that Imam in procedures of *ijtihad* and ascertaining the proof-texts [i.e. is a *mujtahid fi'l-madhhab*], then he is permitted to follow the view of another *mujtahid* which he considers correct.' (*I`lam al-Muwaqqi`in*, IV, 237.) This is a broad approach, but is nonetheless very far from the notion of simply following the '*dalil*' every time rather than following a qualified interpreter. This quote and several others are given by Shaykh al-Buti to show the various opinions held by Ibn al-Qayyim on this issue, which, according to the Shaykh, reveal 'remarkable contradictions'. (Al-Buti, 56-60.)

[66] Many of Ibn Taymiya's works exist only as single manuscripts; and even the others, when compared to the works of the great scholars such as al-Suyuti and al-Nawawi, seem to have been copied only very rarely. See the list of ancient manuscripts of his works given by C. Brockelmann, *Geschichte der arabischen Litteratur* (2nd. Ed. Leiden, 1943-9), II, 126-7, *Supplement*, II, 119-126.

[67] `Abduh, in turn, was influenced by his teacher and collaborator Jamal al-Din al-Afghani (1839-97). Afghani was associated with that transitional 'Young Ottoman' generation which created the likes of Namik Kemal and (somewhat later) Zia Gokalp and Sati` al-Husari: men deeply traumatized by the success of the Western powers and the spectacle of Ottoman military failure, and who sought a cultural renewal by jettisoning historic Muslim culture while maintaining authenticity by retaining a 'pristine essence'. In this they were inspired, consciously or otherwise, by the wider 19th century quest for authenticity: the nationalist philosophers Herder and Le Bon, who had outlined a similar revivalist-essentialist project for France and Germany based on the 'original sources' of their national cultures, had been translated and were widely read in the Muslim world at the time. Afghani was not a profound thinker, but his pamphlets and articles in the journal which he and `Abduh edited, *al-`Urwat al-Wuthqa*, were highly influential. Whether he believed in his own pan-Islamic ideology, or indeed in his attenuated and anti-historicist version of Islam, is unclear. When writing in contexts far from his Muslim readership he often showed an extreme

scepticism. For instance, in his debate with Renan concerning the decline of Arab civilization, he wrote of Islam: 'It is clear that where-ever it becomes established, this religion tried to stifle the sciences and it was marvellously served in its designs by despotism.' (Reply to Renan, translated by N. Keddie in *An Islamic Response to Imperialism: Political and Religious Writings of Sayyid Jamal al-Din 'al-Afghani'* (Berkeley and Los Angeles, 1968), 183, 187. It is hardly surprising that `Abduh should have worked so hard to suppress the Arabic translation of this work!

Afghani's reformist ideology led him to found a national political party in Egypt, al-Hizb al-Watani, including not only Muslims, but in which 'all Christians and Jews who lived in the land of Egypt were eligible for membership.' (Jamal Ahmed, *The Intellectual Origins of Egyptian Nationalism* (London, 1960), 16.) This departure from traditional Islamic notions of solidarity can be seen as a product of Afghani's specific attitude to *taqlid*. But his pupil's own *fatwas* were often far more radical, perhaps because `Abduh's 'partiality for the British authority which pursued similar lines of reform and gave him support' (Ahmed, 35). We are not surprised to learn that the British governor of Egypt, Lord Cromer, wrote: 'For many years I gave to Mohammed Abdu all the encouragement in my power' (Lord Cromer, *Modern Egypt* [New York, 1908], II, 180). An example is the declaration in `Abduh's *tafsir* (much of which is by Rida) that the erection of statues is *halal*. The same argument was being invoked by Ataturk, who, when asked why he was erecting a statue of himself in Ankara, claimed that 'the making of statues is not forbidden today as it was when Muslims were just out of idolatry, and that it is necessary for the Turks to practice this art, for it is one of the arts of civilization'. (C. Adams, *Islam and Modernism in Egypt* [London, 1933], 193-4.)

[68] A poorly-argued but well-financed example of a book in this category is a short text by the Saudi writer al-Khajnadi, of which an amended version exists in English. This text aroused considerable concern among the ulema when it first appeared in the 1960s, and Shaykh Sa`id Ramadan al-Buti's book was in fact written specifically in refutation of it. The second and subsequent editions of al-Buti's work, which shows how Khajnadi systematically misquoted and distorted the texts, contain a preface which includes an account of a meeting between al-Buti and the Albanian writer Nasir al-Din al-Albani, who was associated with Khajnadi's ideas. The three-hour meeting, which was taped, was curious inasmuch as al-Albani denied that Khajnadi was stating that all Muslims can derive rulings directly from the Koran and Sunna. For instance where Khajnadi makes the apparently misleading statement that 'As for the *Madhhabs*, these are the views and *ijtihads* of the ulema on certain issues; and neither Allah nor His messenger have compelled anyone to follow them,' Al-Albani explains that

'anyone' (*ahad*) here in fact refers to 'anyone qualified to make *ijtihad*'. (Al-Buti, 13.) Al-Albani went on to cite several other instances of how readers had unfortunately misunderstood Khajnadi's intention. Shaykh al-Buti, quite reasonably, replied to the Albanian writer: 'No scholar would ever use language in such a loose way and make such generalizations, and intend to say something so different to what he actually and clearly says; in fact, no-one would understand his words as you have interpreted them.' Albani's response was: 'The man was of Uzbek origin, and his Arabic was that of a foreigner, so he was not able to make himself as clear as an Arab would. He is dead now, and we should give him the benefit of the doubt and impose the best interpretation we can on his words!' (al-Buti, 14.) But al-Albani, despite his protestations, is reliably said to believe even now that *taqlid* is unacceptable. *Wa-la hawla wa-la quawwata illa bi'Llah.*

[69] The ulema also quote the following guiding principles of Islamic jurisprudence: 'That which is wrong (*munkar*) need not be condemned as [objectively] wrong unless all scholars agree (in *ijma`*) that it is so.' (Dajawi, II, 583.) Imam al-Dajawi (II, 575) also makes the following points: 'The differences of opinion among the ulema are a great mercy (*rahma*) upon this Umma. `Umar ibn `Abd al-`Aziz declared: "It would not please me if the Companions of Muhammad, upon whom be blessings and peace, had not disagreed, for had they not done so, no mercy would have come down." Yahya ibn Sa`id, one of the great hadith narrators among the Followers (*Tabi`un*), said: "The people of knowledge are a people of broadness (*ahl tawsi`a*). They continue to give *fatwas* which are different from each other, and no scholar reproaches another scholar for his opinion." However, if ordinary people took their rulings straight from the Koran and Sunna, as a certain faction desires, their opinions would be far more discordant than this, and the Four Schools would no longer be four, but thousands. Should that day come, it will bring disaster upon disaster for the Muslims - may we never live to see it!'

One could add that 'that day' seems already to be upon us, and that the resulting widening of the argument on even the most simple juridical matters is no longer tempered by the erstwhile principles of politeness and toleration. The fiercely insulting debate between Nasir al-Din al-Albani and the Saudi writer al-Tuwayjiri is a typical instance. The former writer, in his book *Hijab al-Mar'a al-Muslima*, uses the Koran and Sunna to defend his views that a woman may expose her face in public; while the latter, in his *al-Sarim al-Mashhur `ala Ahl al-Tabarruj wa'l- Sufur*, attacks Albani in the most vituperative terms for failing to draw from the revealed sources and supposedly obvious conclusion that women must always veil their faces from

non-*mahram* men. Other example of this bitter hatred generation by the non-*Madhhab* style of discord, based in attempts at direct *istinbat*, are unfortunately many. Hardly any mosque or Islamic organization nowadays seems to be free of them.

The solution is to recall the principle referred to above, namely that two *mujtahids* can hold differing opinions on the *furu`*, and still be rewarded by Allah, while both opinions will constitute legitimate *fiqh*. (Juwayni, §§1455-8; Bilmen, I, 249.) This is clearly indicated in the Koranic verses: *'And Daud and Sulayman, when they gave judgement concerning the field, when people's sheep had strayed and browsed therein by night; and We were witness to their judgement. We made Sulayman to understand [the case]; and unto each of them We gave judgement and knowledge.'* (21:78-9) The two Prophets, upon them be peace, had given different *fatwas*; and Sulayman's was the more correct, but as Prophets they were infallible (*ma`sum*), and hence Daud's judgement was acceptable also.

Understanding this is the key to recreating the spirit of tolerance among Muslims. Shaykh Omer Bilmen summarizes the jurists' position as follows: 'The fundamentals of the religion, namely basic doctrine, the obligatory status of the forms of worship, and the ethical virtues, are the subject of universal agreement, an agreement to which everyone is religiously obliged to subscribe. Those who diverge from the rulings accepted by the overwhelming majority of ordinary Muslims are considered to be the people of *bid`a* and misguidance, since the *dalils* (proof-texts) establishing them are clear. But it is not a violation of any Islamic obligation for differences of opinion to exist concerning the *furu`* (branches) and *juz'iyyat* (secondary issues) which devolve from these basic principles. In fact, such differences are a necessary expression of the Divine wisdom.' (Bilmen, I, 329.)

A further point needs elucidating. If the jurists may legitimately disagree, how should the Islamic state apply a unified legal code throughout its territories? Clearly, the law must be the same everywhere. Imam al-Qarafi states the answer clearly: 'The head of state gives a judgement concerning the [variant rulings which have been reached by] *ijtihad*, and this does away with the disagreement, and obliges those who follow *ijtihad* verdicts which conflict with the head of state's to adopt his verdict.' (Qarafi, II, 103; affirmed also in Amidi, IV, 273-4.) Obviously this is a counsel specifically for *qadis*, and applies only to questions of public law, not to rulings on worship.

[70] This was understood as early as the 18th century. Al-Buti quotes Shah Waliullah al-Dahlawi

(*Hujjat Allah al-Baligha*, I, 132) as observing: 'The Umma up to the present date ... has unanimously agreed that these four recorded *madhhabs* may be followed by way of *taqlid*. In this there are manifest benefits and advantages, especially in these days in which enthusiasm has dimmed greatly, and souls have been given to drink of their own passions, so that everyone with an opinion is delighted with his opinion.' This reminds us that Islam is not a totalitarian religion which denies the possibility and legitimacy of variant opinions. 'The Muslim scholars are agreed that the *mujtahid* cannot incur a sin in regard to his legitimate *ijtihad* exercised to derive judgements of *Shari`a*. [Only the likes of] Bishr al-Marisi, Ibn `Aliyya, Abu Bakr al-Asamm and the deniers of *qiyas*, such as the Mu`tazilites and the Twelver Shi`a, believe that there is only one true ruling in each legal issue, so that whoever does not attain to it is a sinner.' (Amidi, IV, 244.) This is of course an aspect of the Divine mercy, and a token of the sane and generous breadth of Islam. 'Allah desires ease for you, not difficulty.' (Koran, 2:185) 'I am sent to make things easy, not to make them more difficult.' (Bukhari, `Ilm, 12.) 'Never was Allah's Messenger, may blessings and peace be upon him, given the choice between two options but that he chose the easier of them, unless it was a sin.' (Bukhari, Manaqib, 23.) But the process lamented in Dahlawi's day, by which people simply ignored this Sunna principle, has nowadays become far more poisonous. What is particularly damaging is that egos have become so powerful that the old Muslim *adab* of polite tolerance during debate has been lost in some circles, as people find it hard to accept that other Muslims might hold opinions that differ from their own. It must be realized that if Allah tells Musa (upon him be peace) to speak 'gently' to Pharoah (20:43), and commands us 'not to debate with the People of the Book save in a most excellent way,' (29:46) then how much more important must it be to debate politely with people who are neither Pharoahs nor Christians, but are of our own religion?

[71] Probably because of an underlying insecurity, many young Muslim activists cannot bear to admit that they might not know something about their religion. And this despite the example of Imam Malik, who, when asked forty questions about *fiqh*, answered 'I do not know' (*la adri*) to thirty-six of them. (Amidi, IV, 221; Bilmen, I, 239.) How many egos nowadays can bear to admit ignorance even once? They should remember the saying: 'He who makes most haste to give a *fatwa*, makes most haste to the Fire.' (Bilmen, I, 255.) Imam al-Subki condemns 'those who make haste to give *fatwas*, relying on the apparent meaning of the [revealed] phrases without thinking deeply about them, thereby dragging other people into ignorance, and themselves into the agonies of the Fire.' (Taj al-Din al-Subki, *Mu`id al-Ni`am wa-Mubid al-Niqam* (Brill, 1908), 149. Even Imam al-Sha`bi (d.103), out of his modesty and *adab*, and his awareness of the great complexity of the *fiqh*, did not consider himself a *mufti*, only a *naqil* (transmitter of texts). (Bilmen, I, 256.)

[72] Cf. Imam al-Dajawi, II, 579: 'By Allah, this view (that ordinary people should not follow *madhhabs*) is nothing less than an attempt to fling the door wide open for people's individual preferences, thereby turning the Book and the Sunna into playthings to be manipulated by those deluded fools, driven by their compounded ignorance and their corrupt imaginings. It is obvious that personal preferences vary enormously, and that ignorant people will arrive at their conclusions on the basis of their own emotions and imaginings. So what will be the result if we put them in authority over the *Shari`a*, so that they are able to interpret it in the light of their own opinions, and play with it according to their preferences?'

[73] Buti, 107-8. The same image is used by Imran Nyazee: '*Taqlid*, as distinguished from blind conversatism, is the foundation of all relationships based on trust, like those between a patient and his doctor, a client and his lawyer, and a business and its accountant. It is a legal method for ensuring that judges who are not fully-qualified mujtahids may be able to decide cases in the light of precedents laid down by independent jurists ... The system of *taqlid* implies that as long as the layman does not get the training for becoming a doctor he cannot practice medicine, for example. In the case of medicine such a person may be termed a quack and may even be punished today, but in the case of Islamic law he is assuming a much graver responsibility: he is claiming that the opinion he is expressing is the law intended by Allah.' (Introduction to *The Distinguished Jurist's Primer*, xxxv.)

[74] It hardly needs adding, as a final observation, that nothing in all the above should be understood as an objection to the extension and development of the *fiqh* in response to modern conditions. Much serious *ijtihad* is called for; the point being made in this paper is simply that such *ijtihad* must be carried out by scholars qualified to do so.