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Source: *International Journal of Middle East Studies*, Mar., 1984, Vol. 16, No. 1 (Mar., 1984), pp. 3-41

Published by: Cambridge University Press

Stable URL: https://www.jstor.org/stable/162939

Int. J. Middle East Stud. **16** (1984), 3–41 *Printed in the United States of America*

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INTRODUCTION

As conceived by classical Muslim jurists, *ijtihād* is the exertion of mental energy in the search for a legal opinion to the extent that the faculties of the jurist become incapable of further effort. In other words, ijtihad is the maximum effort expended by the jurist to master and apply the principles and rules of *uṣūl al-fiqh* (legal theory) for the purpose of discovering God's law.[1] The activity of ijtihad is assumed by many a modern scholar to have ceased about the end of the third/ninth century, with the consent of the Muslim jurists themselves. This process, known as 'closing the gate of ijtihad' (in Arabic: '*insidād bāb al-ijtihād*'), was described by Joseph Schacht as follows:

> 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 *ijtihād*', as it was called, amounted to the demand for *taḳlīd*, 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 *ijtihād* is called *mujtahid*, and a person bound to practice *taḳlīd*, *muḳallid*.[2]

J. N. D. Anderson remarked, as did many others, that about the end of the third/ninth century it was commonly accepted that the gate of ijtihad had become closed.[3] And to confirm that this closure was a *fait accompli*, H. A. R. Gibb asserted that the early Muslim scholars held that the gate "was closed, never again to be reopened."[4] W. M. Watt seems to be aware of some inaccuracies in the standard account about this subject but has not formulated an alternative view.[5] Depending on the particular subject of their discussion, many scholars would have us believe that the closure of the gate had an impact on, or was influenced by, this or that element in Islamic history. Some use it to explain the immunity of the Shari^{c}a against the interference of government, and others to illustrate the problem of decadence in Islamic institutions and culture.[6] Some date the closure at the beginning of the fourth Islamic century and others advance

it to the seventh,[7] depending on the facts and analyses involved in each study. Thus, on the basis of this alleged closure, aspects of Islamic history were reconstructed and interpreted time after time.

A systematic and chronological study of the original legal sources reveals that these views on the history of ijtihad after the second/eighth century are entirely baseless and inaccurate. In the following pages, I shall try to show that the gate of ijtihad was not closed in theory nor in practice. To do so, I shall first demonstrate that ijtihad was indispensable in legal theory because it constituted the only means by which jurists were able to reach the judicial judgements decreed by God. In order to regulate the practice of ijtihad a set of conditions were required to be met by any jurist who wished to embark on such activity. An exposition of these conditions will prove that, unlike the often-held view, the demands of legal theory were relatively easy to meet and they facilitated rather than hindered the activity of ijtihad. Further, it will enhance our thesis to examine the relationship between this theory, in which ijtihad was deemed a perennial duty, and the actual practice of Muslim jurists. Such an inquiry will disclose that ijtihad was not only exercised in reality, but that all groups and individuals who opposed it were finally excluded from Sunnism.

By chronologically analyzing the relevant literature on the subject from the fourth/tenth century onwards, it will become clear that (1) jurists who were capable of ijtihad existed at nearly all times; (2) ijtihad was used in developing positive law after the formation of the schools; (3) up to *ca.* 500 A.H. there was no mention whatsoever of the phrase 'insidad bab al-ijtihad' or of any expression that may have alluded to the notion of the closure; (4) the controversy about the closure of the gate and the extinction of mujtahids prevented jurists from reaching a consensus to that effect.

Let us now turn to examine ijtihad in legal theory and the conditions that this theory required for its practice.

IJTIHAD IN LEGAL THEORY (*uṣūl al-fiqh*)

In Islamic legal theory, discovering the law of God was of crucial significance, for it was the law that informed man of the conduct acceptable to Allah. It is exactly for the purpose of finding the rulings decreed by God that the methodology of usul al-fiqh was established.

The Quran and the Sunna of the Prophet do not, as a rule, specify the law as it might be stated in specialized law manuals, but only contain some rulings (*aḥkām*; pl. of *ḥukm*) and indications (*dalālāt* or *amārāt*) that lead to the causes (*ʿilal*; pl. of *ʿilla*) of these rulings. On the basis of these indications and causes the mujtahid may attempt, by employing the procedure of *qiyās* (analogy) to discover the judgement (*ḥukm*) of an unprecedented case (*farʿ*; pl. of *furūʿ*). But before embarking on this original task, he must first search for the judgement in the works of renowned jurists. If he fails to find a precedent in these works he may look for a similar case in which legal acts are different but legal facts are the same. Failing this he must turn to the Quran, the Sunna, or *ijmaʿ* (consensus) for a precedent that has a ʿilla identical to that of the farʿ. When this is reached

he is to apply the principles of *qiyas* (analogy) in order to reach the ruling of the case in question. This ruling may be one of the following: the obligatory (*wājib*), the forbidden (*maḥẓūr*), the recommended (*mandūb*), the permissible (*mubāḥ*), or the disapproved (*makrūh*).[8]

The primary objective of legal theory, therefore, was to lay down a coherent system of principles through which a qualified jurist could extract rulings for novel cases. From the third/ninth century onwards this was universally recognized by jurists to be the sacred purpose of usul al-fiqh.[9]

Legal theory in all its parts is sanctioned by divine authority, that is, it derives its authority (*ḥujjiyya*) from revealed sources. It is partly for this reason and partly for the reason of man's duty to worship his Creator in accordance with divine law that the practice of ijtihad was declared to be a religious duty (*farḍ kifāya*) incumbent upon all qualified jurists whenever a new case should appear.[10] Until ijtihad is performed by at least one mujtahid, the Muslim community remains under the spell of this unfulfilled duty.

In theory at least there is certainly nothing to indicate that ijtihad was put out of practice or abrogated. In due course it will become clear that legal theory played a rather significant role in favor of ijtihad. Thus, if the practice of ijtihad was the primary objective of the methodology and theory of usul al-fiqh throughout Islamic history, the question that may be asked is in what way was the gate of ijtihad thought to have been closed? It has been assumed, among other things, that the practice of ijtihad was abandoned because the qualifications required for its practice "were made so immaculate and rigorous and were set so high that they were humanly impossible of fulfillment."[11] This supposition can be refuted through an examination of the writings of jurists on the subject.

The earliest complete published account[12] of usul al-fiqh in which the qualifications of mujtahids are stated is Abu Husayn al-Basri's (d. 436/1044) *al-Muᶜtamad fī Uṣūl al-Fiqh*.[13] Basri's first requirement for ijtihad entails a knowledge of the Quran, the Sunna of the Prophet and the principles of inference (*istidlāl*), and qiyas. The investigation of the ways of *ḥadīth* transmission and the trustworthiness of transmitters is necessary for verifying the credibility of *akhbār* (prophetic reports). The overall emphasis of Basri falls especially on qiyas as an indispensible tool in any undertaking of ijtihad, which in turn involves the practical knowledge of all rules related to ᶜilla, *aṣl* (the legal part in the texts), farᶜ, and hukm. In the process of deducing the ᶜilla from the aṣl, the text, with its inner contradictions and linguistic-legal complications, has to be analyzed. To solve these contradictions and to understand intricate exegetical matters the jurist must have a thorough knowledge of the principles of *majāz* (metaphors), particularization, and abrogation. Familiarity with the Arabic language, particularly with the *khāṣṣ* (particular) and the ᶜ*āmm* (general), is a prerequisite. Curiously, Basri regards familiarity with customary law (ᶜ*urf*) as a qualification required for ijtihad, for it is essential, he argues, to determine God's law 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 scripture. Equally important is the doctrine of the infallibility of the Muslim community to which the Prophet had attested. Al-

though Basri makes no demands on the mujtahid to know the positive rulings (*furūᶜ*) that had been subject to ijmaᶜ, he asserts that no jurist is allowed to reinvestigate a case the ruling of which has already been derived. This implies that whoever intends to practice ijtihad to solve a specific case must first be certain that it was not treated before, and this consequently requires of him to know the furuᶜ of at least his school.[14]

Finally, Basri mitigates the rigorousness of these requirements in the law of inheritance. Whenever a jurist is capable of practicing ijtihad in a single case of inheritance and has no access to the above-mentioned skills, he may still be allowed to do so. According to Basri, this is justified on the grounds that methodical principles and textual subject-matter related to inheritance are independent of, and unconnected with, other parts of the law. Otherwise, the jurist must not attempt ijtihad in any other area of law until he is well equipped with the necessary tools.[15]

Shirazi (d. 467/1083) limits the knowledge of the Quran and the Sunna to those provisions that have a direct relevance to Shariᶜa, thus omitting irrelevant parts such as proverbs, tales, etc.[16] Principles of the Arabic language, points of agreement and disagreement among previous generations, and qiyas are all necessary usul rudiments. The jurist must know the texts from which he can extract the ᶜilla and must possess the methods to do so. Given the fact that more then one ᶜilla may be deduced in a single case, he must be able to distinguish between a variety of ᶜilal and to determine which deserves to be advanced over the others.

When discussing the requirements of ijtihad, Ghazali (d. 505/1111) maintained that in order to reach the rank of mujtahid the jurist must:[17]

1. Know the 500 verses needed in law; committing them to memory is not a prerequisite.
2. Know the way to relevant hadith literature; he needs only to maintain a reliable copy of Abu Dawud's or Bayhaqi's collections rather than memorize their contents.
3. Know the substance of furuᶜ works and the points subject to ijmaᶜ, so that he does not deviate from the established laws. If he cannot meet this requirement he must ensure that the legal opinion he has arrived at does not contradict any opinion of a renowned jurist.
4. Know the methods by which legal evidence is derived from the texts.
5. Know the Arabic language; complete mastery of its principles is not a prerequisite.
6. Know the rules governing the doctrine of abrogation. However, the jurist need not be thoroughly familiar with the details of this doctrine; it suffices to show that the verse or the hadith in question had not been repealed.
7. Investigate the authenticity of hadith. If the hadith has been accepted by Muslims as reliable, it may not be questioned. If a transmitter was known for probity, all hadiths related through him are to be accepted. Full knowledge of the science of *al-taᶜdīl wal-tajrīḥ* (hadith criticism) is not required.

These qualifications, Ghazali remarks, are required from jurists who intend to embark on ijtihad in all areas of substantive law. Those who want to practice ijtihad in one area, e.g., family law, or only in a single case, say a case of divorce, need not fulfill all the conditions but are instead required to know the methodological principles and the textual material needed to solve that particular problem.[18] Accordingly, a jurist may practice ijtihad in the area of liquor drinking

(*muskirāt*) though his knowledge of hadith is limited. He must, however, be proficient in the procedure of qiyas and in the Quran, because muskirat cases depend heavily on the Quran and qiyas.

Apart from a slight emphasis on a few matters of religion and belief with which the mujtahid must be acquainted, and apart from the additional prerequisite of familiarity with the circumstances under which the Quran was revealed (*asbāb al-nuzūl*), Amidi (d. 632/1234) adds nothing to what others had previously said.[19] Noteworthy only is his emphasis that a less qualified mujtahid is allowed to solve a case without meeting the requirements set forth by Basri, Shirazi, Ghazali, and himself. All that he needs to know are the immediate tools to solve the issue in question.[20]

Only space here prevents us from discussing later jurists' writings on this issue, but to be sure, the successors of Ghazali and Amidi, such as Baydawi (d. 685/1286), Subki (d. 771/1369), Isnawi (d. 772/1370), Ibn al-Humam (d. 861/1456), Ibn Amir al-Hajj (d. 879/1474), Ansari (d. 1119/1707) and Ibn ᶜAbd al-Shakur (d. 1225/1810),[21] did not depart significantly from the established Sunni legal doctrine propounded by Ghazali. Some of these authors, such as Baydawi, demanded encompassing knowledge of the Quran and some others like Ibn al-Humam and Ibn Amir al-Hajj reduced the number of hadiths required to 1,200.[22] The more important point is that the divisibility (*tajziᵓa*) of ijtihad was recognized to be lawful in Sunni law and thus a limited knowledge of usul was sufficient to allow a jurist to practice ijtihad in an individual case.[23] Basri and Shirazi are nearly alone in not specifying that the divisibility of ijtihad is permissible in all areas of law.

It would therefore be implausible to maintain that the qualifications for ijtihad as set forth in Muslim legal writings made it impossible for jurists to practice ijtihad. The total knowledge required on the part of lawyers enabled many, as we shall see later, to undertake this practice in one area of law or another. The practice of ijtihad was further facilitated by removing the charge of sin from the mujtahid who commits an error and even made him entitled to one reward in heaven. In the case of a mujtahid whose ijtihad was sound, it was determined that he be doubly rewarded.[24] This being so, one can state with a fair amount of confidence that legal theory, including the qualifications required for the practice of ijtihad, can hardly be held responsible for narrowing the scope of ijtihad's activity, much less closing its gate. Further discussion of the role of ijtihad and mujtahids in Islamic legal history after the second/eighth century will show that ijtihad remained an integral part of the Sunni legal doctrine and that those who opposed it were finally excluded from Sunnism.

ANTI-IJTIHAD TRENDS AND THEIR EXCLUSION FROM SUNNISM

Throughout the third, fourth, and fifth Islamic centuries, ijtihad, the only channel of legal development, was rejected by various elements. Among these were extreme legal and theopolitical groups (or sects) that called for taqlid or condemned the principle of qiyas—a principle that constituted the backbone of ijtihad. These groups came mainly from the lines of the 'people of hadith', or

Traditionalists,[25] who were primarily concerned with the study of transmitted sources and their literal interpretation, while denying human reason any right to be exercised in ijtihad or in the process of legal reasoning. It is necessary to distinguish between types of hadith upholders, since within this vast heterogeneous body of Traditionalists there existed diverse groups ranging from those moderate scholars who were somewhat willing to co-exist with the 'people of *raʾy*' (who employed qiyas), to those extremists who rejected the strict procedure of qiyas even when based solely on scripture. To this last category belonged Dawud al-Zahiri (d. 270/883) and his school, the Hashwis, and other independent hadith scholars.[26]

Because of their inimical attitude towards ijtihad, these groups found no place inside the pale of Sunnism. Immediately after Dawud's death, a wave of writings in favor of qiyas was generated in response to Dawud's treatise which had attacked this analogical method. Qashani, himself one of the deserters of the Zahiri school, and the Jariri Nahrawani composed refutations against Dawud's treatise *Kitāb fī Ibṭāl al-Qiyās*.[27] More than two centuries later, when all legal schisms became well defined, the Shafiʿi jurist Mawardi (d. 450/1058) described the status of this extreme Traditionalist party vis-à-vis Sunnism as follows:

> There are two kinds of people who reject analogy. Some reject it, follow the text literally and are guided by the sayings of their ancestors if there is no contradiction to the text in question. They reject completely the independent *ijtihād* and turn away from individual contemplation and free investigation. No judgeships may be entrusted to such persons since they apply the methods of jurisprudence insufficiently. The other category of people does reject analogy, but still uses independent judgement in legal deduction through reliance on the meaning (spirit) of the words and the sense of the address. The *ahl al-Ẓāhir* belong to the latter. Al-Shafiʿi's followers are divided as to whether or not such theologians may be entrusted with a judgeship.[28]

Still later there seems to have prevailed a common idea that the Zahiri school must not be taken into consideraion whenever there is a discussion on legal matters in the Sunni community. This was clear in one of Ibn al-Salah's (d. 643/1245) influential *fatāwā* (legal opinions), which represented, to a great extent, the Sunni view on the illegitimacy of the school. Ibn al-Salah's main objection was to the attitude that the Zahiri school had adopted towards qiyas as a principle.[29]

Although Dawud disapproved of taqlid and claimed that one need not follow a human authority if he can use the legal sources,[30] his ijtihad was rejected by the Sunnis since he avoided the procedure of qiyas. Nevertheless, until the first half of the fourth century, Dawud's school remained as Sunni as any other major school. But when the legal theory was finally established and promulgated as the only Sunni doctrine, the Zahiri school gradually slipped outside the orb of Sunnism. This was manifest in the career of one of the most fervent advocates of Zahirism, the Andalusian Ibn Hazm, who was forced to flee his country because of his unorthodox beliefs.[31]

The fifth/eleventh century scholar Ghazali, when enumerating the Sunni schools of his time, counts only the schools of Abu Hanifa, Ibn Hanbal, Malik, Shafiʿi, and Sufyan al-Thawri.[32] The fourth- and fifth-century *ikhtilāf* works,

which dealt with differences in legal matters, excluded as a matter of principle the tenets of the Zahiris from consideration in determining the consensus.[33] In the eighth/fourteenth century, Ibn Khaldun remarked that "the Zahirite school has become extinct today as the result of the extinction of their religious leaders and disapproval of their adherents by the great mass of Muslims."[34] Thus it is clear that there was no school or a wing of a school inside the Sunni Muslim community that could have opposed ijtihad as a principle.[35]

This contention may invite some controversy, for it may be argued that the Hashwiyya, which is assumed to be an extreme Hanbali faction, rejected ijtihad in favor of taqlid.[36] Laoust considered the Hashwiyya a part of the Hanbali school.[37] In fact, the Hashwiyya was an ill-defined objectionable nickname indiscriminately applied against various groups who were thought to have possessed a weak apparatus of reasoning and have heavily relied on scripture.[38] The pieces of evidence that can be deduced from the fifth/eleventh century legal literature and thereafter indicate that the Hashwis were a radical non-Hanbali group of Traditionalists that possessed an incomplete legal doctrine. Their chief interest was theology (*uṣūl al-dīn*) rather than law;[39] they touched upon legal matters only when these had immediate relevance to theology. Sunni sources do not associate the Hashwiyya with any school of law. Ghazali condescendingly remarked that the Hashwis "believe that they are bound to a blind and routine submission to the criterion of human authority and to the literal meaning of the revealed books,"[40] and Subki clearly stated that they were a fanatic hadith group.[41] Such groups were impugned even by conservative Hanbalis like the historian-traditionalist Ibn al-Jawzi.[42] Moreover, the Hanbali Ibn ᶜAqil practically excluded the Hashwiyya from Sunnism when he declared that one of its main tenets was the rejection of human reason. "They believed," he remarked, "that there is something in human reason that contradicts the Shariᶜa."[43]

That the Hashwiyya could not have been a Hanbali faction is evident in the attitude of Hanbalism and Hashwism towards the issue of the necessity of ijtihad. While there is ample evidence to show that the Hanbali school had a consolidated posture towards the perpetual necessity for ijtihad and the existence of mujtahids,[44] the Hashwis persistently denied the Muslim jurists the right to practice ijtihad or any sort of human reasoning.

Although Halkin found the theological and political beliefs of the Hashwis and the Hanbalis to be identical,[45] it is certain that these theological similarities existed only in the third/ninth century. In that period the Hashwiyya may have been allied with the Hanbali Traditionalists. But since then Hanbalism, which was characterized by rigid views on legal theory, particularly on matters of qiyas, took a different road and pulled apart from the Hashwiyya as well as from other fanatic hadith groups. Until the end of the third/beginning of the tenth century, Hanbalism, generally speaking, was not credited with the status of a law school but was merely recognized as a hadith-theological faction. Tabari is known to have started a prolonged quarrel with the Hanbalis when he impugned Ibn Hanbal's juristic qualifications.[46] Thus, it was natural that in his *Ikhtilāf al-Fuqahāᵓ* Tabari did not consider the views of Ibn Hanbal. Many other scholars did not view Hanbalis as law experts.

From the very end of the third/beginning of the tenth century onwards, Hanbalism had started a process of acquiring a comprehensive juristic character alongside its theological one. The upsurge of Hanbalism as a law school coincided with, and was influenced by, the recently established legal theory of Sunnism, whose spearheads and representatives were mainly the Shafi^{c}is and the Hanafis. Hanbalism placed itself under the aegis of this theory, which obviously proved to be the theory most favored by the main body of Sunnism after long struggles between the 'people of ra$^{\supset}$y' and Traditionalists. As a consequence, Hanbalism had to adopt the main features of the legal theory which entailed the acceptance of qiyas as a source of law, almost equal in power to the Quran, the Sunna, and the ijma^{c}. It is worth remembering that Ibn Hanbal established no legal system of his own, but in his answers to his pupils' questions he made pronouncements on certain points of law. Ibn Hanbal made concessions to human reasoning only under pressure of sheer necessity and where possible derived every law from scripture.[47] Three centuries later, Ibn ^{c}Aqil accepted qiyas as readily as any Hanafi or Shafi^{c}i jurist, and the illustrious Hanbali Ibn Taymiyya not only endorsed qiyas but also defended sound *istiḥsān*.[48] In order to survive within Sunnism, Hanbalism had to go through a process of moderation and change from an extremist theological group to a peculiarly moderate law school while still maintaining certain theological inclinations. On the other hand, the Hashwiyya maintained its rigid attitude, which finally led to its exclusion from the Sunni community.[49]

That these groups failed to impair to the least degree the foundations of ijtihad was due mainly to the institutionalization of the science of usul al-fiqh, of which ijtihad was an indispensable ingredient. It is difficult to assume that at the time the theory of usul was finalized—about the beginning of the fourth/tenth century—Muslims had decided to 'close the gate of ijtihad'. In fact, an examination of the writings of jurists after the third/ninth century will demonstrate that ijtihad was exercised with no interruption.

IJTIHAD IN PRACTICE

Mujtahids in the Fourth/Tenth Century

During the third/ninth and fourth/tenth centuries mujtahids, whether independent or affiliated with legal schools, have expressed highly original views on law. Ibn Surayj (d. 306/918), Tabari (d. 310/922), Ibn Khuzayma (d. 311/923), and Ibn Mundhir (d. 316/928) are perfect examples of the independent type.[50] In the admission of the eighth/fourteenth-century lawyer Subki, these four mujtahids, though originally Shafi^{c}is, have diverged from the rulings of Shafi^{c}i,[51] and as is known, Tabari went further to establish his own school of law.[52] The scanty literature from the fourth/tenth century is insufficient to determine precisely what had occurred during this period, but it can be inferred from later sources that the scholars' activity, however creative, had to be contained in a certain school's doctrine, and in essence all teachings had to be attributed to one eponym or another. Like Abu Yusuf (d. 182/798), Shaybani (d. 189/804), and Muzani

(d. 264/877), creative scholars of the fourth/tenth century attributed their own doctrines to a great master. By so doing, they could avoid attacks that were the automatic reaction against fissiparous tendencies and could certainly earn immediate recognition once their opinions were put under the aegis of a great jurist such as Shafi^{c}i. The Hanbali experience is a perfect example of this trend. As previously mentioned, Ibn Hanbal established no legal system. Nevertheless, by the end of the fourth/tenth century an elaborate Hanbali doctrine could be discerned. It is therefore evident that the positive law of the Hanbali school was constructed after the death of Ibn Hanbal by later great men like Khallal, Kharaqi, and others who attributed their doctrines to him.

Yet, although joining a law school and attributing new ideas to older authorities became the prevailing norm, a number of scholars openly disagreed with the established doctrines of the schools. Consider the following:

1. Ibn Hasan al-Tanukhi (d. 318/930): A famous Hanafi jurist who diverged to a certain extent from the teachings of Abu Hanifa, Abu Yusuf, and Shaybani.[53]
2. ^{c}Ali b. al-Husayn Ibn Harbawayh (d. 319/931): A famous Shafi^{c}i jurist who, in a number of cases, disagreed with Shafi^{c}i.[54]
3. Abu Sa^{c}id al-Istakhri (d. 328/939): A Shafi^{c}i jurist who elaborated a number of furu^{c} cases that were at variance not only with Shafi^{c}i's doctrine but also with the entire doctrines of the other schools.[55]
4. Abu ^{c}Ali b. Abi Hurayra (d. 345/956): "One of the greatest Shafi^{c}is"[56] who formulated his own legal decisions concerning issues related to divorce, penal law, prayer, slavery, etc.
5. Ibn Haddad al-Misri (d. 345/956): Considered a prominent Shafi^{c}i mujtahid, Ibn Haddad had his own independent opinions as regards matters related to marriage, *li^{c}ān* (imprecation), *riḍā^{c}* (fosterage), etc.[57]
6. Abu Hasan al-Dariki (d. 375/985): Nawawi relates[58] that al-Dariki displayed the largest degree of independence from the Shafi^{c}i school. When asked for an opinion, "he would ponder at length, and would often make a decision not only contrary to Abu Hanifa's teachings but also to that of al-Shafi^{c}i. When called to account for this he would reply: Here is the tradition A on the authority of B on the authority of C . . . down to the Prophet; it is better to follow this tradition than to act according to what Abu Hanifa or Shafi^{c}i taught."[59]

It can be stated with certainty that from Tabari's time onwards an ijma^{c} on the validity of the existing Sunni schools had begun to be finalized (except the Zahiri school which was gradually excluded from the Sunni legal system) and it seems that in the last three or four decades of the fourth/tenth century a comprehensive but implicit agreement on the illegality of establishing new schools and of any 'separatist' tendencies was reached. Thus, we find that all jurists from the fifth/eleventh century onwards officially follow one school or another, and in no single case did any jurist attempt to establish his own school although the activity of deriving solutions for new problems continued indefinitely. It must be noted, however, that until the modern period Muslim jurists, generally speaking, did not try to explain the fact that new schools had not been established after the year 300/912; neither did they try to rationalize the implicit consensus on prohibiting the establishing of such schools. The one case known to me where this

phenomenon is explained can be found in Ibn Amir's *al-Taqrīr wal-Taḥbīr* and later in Ibn ᶜAbidin's *Rasāᵓil*. Ibn Amir, quoting a certain Ibn al-Munir, remarked that the existence of a new legal system, i.e., a system of usul and furuᶜ, within the general context of Muslim religion is hard to perceive because early scholars, by exhausting all methodological means and deriving all possible solutions, have left no room for an additional school of law.[60] It is rather significant that neither Ibn Amir nor Ibn ᶜAbidin claimed the existence of ijmaᶜ on prohibiting the founding of new schools. Equally significant is the fact that they did not use the closing of the gate of ijtihad to explain this phenomenon.

Ijtihad in Law and Government in the Fifth/Eleventh Century

The jurists of the fifth/eleventh century seem to have followed their predecessors in taking ijtihad for granted. This is quite evident in the writings of all lawyers of the period. ᶜAbd al-Jabbar (d. 415/1024) and his disciple, Abu Husayn al-Basri, deemed ijtihad to be an indispensable ingredient in law. They further viewed qiyas, which is in itself only a method of ijtihad, as an element without which law would be incapable of growth. For them taqlid is to be used only by the commoner (*ᶜāmmiyy*) and by those for whom the exercise of ijtihad is impossible.[61] The views of ᶜAbd al-Jabbar and Basri on ijtihad and taqlid, although essentially Muᶜtazili, express the standard doctrine of Sunni Islam. Ibn ᶜAbd al-Barr (d. 463/1070) devoted a whole chapter in refutation of taqlid. He maintained that on the basis of many Quranic verses an agreement among scholars has been reached on the nullity of taqlid.[62] Al-Khatib al-Baghdadi (d. 463/1070) and al-Mawardi (d. 450/1058) expressed similar views.[63] The works of these scholars reflect the conviction of Muslim lawyers with regard to matters of religious and legal practices. Ibn ᶜAbd al-Barr, for example, is well aware of the fact that furuᶜ and new cases are endless and the only way for a jurist to encompass all branches of law, including the cases which may or may not have been previously solved, is to master the science of usul.[64] It is significant that he mentions that Islamic law must and can deal with new issues. It is through qiyas and ijtihad, he argues, that Shariᶜa can cope with the needs of Muslim society.

The importance of ijtihad exceeded the domain of law to penetrate the political thought of medieval Islam. A discussion of the changing politics in relation to ijtihad in the fifth/eleventh century will show the extent to which ijtihad was indispensable to the political institution in which the ulama played a prominent role. Such a discussion will also demonstrate that whereas political theory (which was, in the final analysis, the product of juristic thought) recognized the failure of Caliphs to meet the requirements of Shariᶜa by their incompetence to practice ijtihad, it asserted the ulama's important function as law interpreters in default of a sovereign who is ideally supposed to be in charge of Shariᶜa. It is relevant to assert here that although political theory was an extension of the basic principles of Islamic law, it was not in reality speculative, but rather pragmatic: It is the depiction of the past in a normative form and its adaptation to the present conditions with the purpose of illustrating a system of morals, the applications of

which will maintain the unity and integrity of the Muslim community. Political theory then had to be practical, because its genesis and development were motivated by the ambition to restore the golden age of the Muslim Empire.[65]

In his discussion of the qualifications of the Imam, Baghdadi (d. 429/1037) considers the ability to practice ijtihad as one of the four conditions that the Imam (or Caliph) must satisfy in order to rule efficiently.[66] The same condition is required by Mawardi, who explains that ijtihad must be one of the Imam's skills because knowledge of law and of the means by which new problems (*nawāzil*) must be solved are an essential part of his duties.[67] The Imam is not the only individual who may practice ijtihad within the political institution; officials who are delegated by the head of the state may also practice it. The entire body of state officials is classified, according to Mawardi, into two categories; namely, executive (*ʿummāl al-tanfīdh*) and delegative (*ʿummāl al-tafwīḍ*). The latter are authorized to use their own reasoning—based on the principles of Shariʿa—to tackle any problem that may arise while at governmental service. Mawardi insists that delegated officials must apply the results of their own ijtihad even though it may disaccord with that of the Imam.[68] Using the overriding usulist principles in his century as a base, Mawardi demands that the mufti as well as the judge (*qāḍī*) must fulfill the requirements of ijtihad.[69] With this last demand Mawardi does not but describe what had prevailed in the golden age and what ought to prevail in the present and the future. He had in mind all the official judges that were mujtahids from the time of *qāḍī al-quḍāt* Abu Yusuf through his own time, including himself. Mawardi, who was considered a mujtahid, was appointed by the Caliph as qadi and was granted the title of *aqḍa al-qudāt* (the most qualified of qadis).[70] His political doctrine unfolds the conviction that the jurists and scholars of the time can fulfill the requirements of the theory. But Mawardi's insistence that the Caliph must be capable of ijtihad proves that he (as well as Baghdadi) still hoped to restore the strength of the institution of the Caliphate which had been in constant decline since the fourth/tenth century.

Motivated by the same ambition of prominent jurists to maintain the solidarity of the Caliphate, Juwayni (d. 478/1085) composed a treatise on political-legal conduct addressed to the vizier Nizam al-Mulk; most likely during the reign of Muqtadi.[71] Following Baghdadi and Mawardi, Juwayni deems the quality of ijtihad to be a prerequisite for the ideal imam and for the well-being of the community. Should the Imam be a muqallid, Juwayni contends, it would impell him to consult other eminent jurists, a course of action that would impair his power of decision making and expose him to contradictory opinions. The Imam's practice of taqlid therefore, does not befit his status as the head of the community. Nevertheless, Juwayni was realistic enough to realize the impotency of the Caliphate at the time and its need for support by a broad class of professionals, chief among whom were the jurists. Juwayni's suggested solution to the problem where the Imam cannot fulfill the requirements of ijtihad is that he must, although ideally inadvisable, consult the ulama because "they are the real sovereigns" and "the leaders and masters of the community."[72] "If the sovereign (*sulṭān*) does not reach the degree of ijtihad, then the jurists are to be followed and the sultan will provide them with help, power, and protection."[73] Thus, it is

clear that while trying to derive theory from the actual experience of the distant and near past, Juwayni puts the entire responsibility on the backs of the jurists.

But what if the Muslim jurists or Shari^{c}a become extinct? In trying to answer this question Juwayni mentions some facts that are of great significance to our inquiry. The following is indicative of the state of affairs prevalent at the second half of the fifth/eleventh century: "If an age becomes devoid of muftis who are mujtahids but is not devoid of transmitters of sound doctrines of the bygone eponyms—a description that almost fits this age and its people . . . "[74] But it does not quite fit. Elsewhere in the book when the author hypothetically assumes the extinction of muftis (who, in his definition, must be qualified mujtahids) and jurists, he bids his readers to try to envisage this *unreal* situation.[75] Needless to say, Juwayni, whose word in this case is definitely reliable, believed that mujtahids were extant at his time. This becomes wholly certain when we realize that Juwayni himself was not only a great theologian and poet but also a distinguished mujtahid.[76]

In the process of his discussion, Juwayni attempts to find solutions to a further hypothetical situation of decay. On the possible extinction of mujtahids he remarks:

> I have imagined the dissolution of Shari^{c}a, the extinction of those in charge of it and the disinterest of people in it . . . I have also seen that the great eponyms of the legal schools once defunct are not replaced and those who seek knowledge are satisfied with superficialities . . . Therefore, I know that should this state of affairs persist, the ulama of Shari^{c}a will soon become extinct and there will remain nothing after them but their books.[77]

The ulama, Juwayni contends, are in charge of affairs, especially when the Imam has no way to ijtihad, and their opinion is final and must be accepted even though it may contradict an opinion of a school's eponym. When speaking of past and present mujtahids, Juwayni argues 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.[78]

Ghazali, himself a student of Juwayni, argued (and his argument seems a natural sequence to Juwayni's thought and a further step towards accepting the political impotency of the institution of Caliphate) that ijtihad is not a requirement to be necessarily fulfilled by the Imam himself. It is a pure legal qualification required neither by Shar^{c} nor by public interest (*maṣlaḥa*).[79] If the purpose of the Caliphate is to comply with Shar^{c}, Ghazali contended, what difference does it make if the Imam reaches a legal opinion through his own interpretation or through the interpretation of a mujtahid? In order to justify this, Ghazali draws a parallel between the legal and the political situation. Thus, since the Caliph's political and military authority that is 'delegated' to the Sultan (*ṣāḥib al-shawka*) was accepted *de facto* as *de jure*, a legal authority that is also 'delegated' to the best qualified mujtahid must be equally justified.[80] That the mujtahid must be the best of jurists and the "most extensively learned" is an essential requirement of which one cannot dispose. Ghazali, trying to show that the

reliance on mujtahids is always possible, states that Baghdad is rarely devoid of a jurist whose knowledge of law is very advanced.[81] Although Ghazali does not mention here the term *mujtahid*, it can be safely stated, from the context and theme of his discussion, that he was speaking of one, for it is the issue of ijtihad which was after all the subject of the entire discussion.

The weakening of the Caliphate, which found its expression, *inter alia*, in the legal impotency of the Caliph, constituted for the ulama an urgent problem that was seriously treated, although ineffectively, in a mass of writings. The insistence of jurists on the requirement of ijtihad, whether fulfilled by the Caliph himself or by others, furthermore enhances the fact that inasmuch as ijtihad was indispensable in legal matters it was equally indispensable in political matters. Had the idea of ijtihad been slightly less important, Ghazali would have done away with it as a requirement to be met by the Caliph or his functionaries. This would have been gladly done in order to justify the long-established fact that Caliphs were not mujtahids. The political theory of Juwayni and Ghazali, let alone that of Mawardi, Baghdadi and others, leads to the conclusion that ijtihad was considered an essential element both in the political and the legal life of Islam up to at least the end of the fifth/eleventh century. And, as we shall see later, ijtihad remained so long afterwards.

Indeed, there is no reason to believe that the jurists could have avoided dealing with the problem of the closure of the gate of ijtihad or the question of the extinction of mujtahids when they had already dealt with a similar but less crucial problem, namely, the legal impotency of the Caliphate. That they did deal with the problem of the gate of ijtihad at a later period further affirms our conclusion that by the time of Ghazali this problem had not yet risen. For, if the discussion about the gate was not censored, and there is no evidence to show that it was, why should it not be discussed at the time when it supposedly appeared?

The Ijtihad of Juwayni, Ghazali, and Ibn ᶜAqil

The highly developed juristic thought of the fifth/eleventh century was the product of the legal activity of mujtahids. An examination of the careers of Juwayni, Ghazali, and Ibn ᶜAqil will show that these jurists, like many of their contemporaries, not only opposed taqlid in favor of ijtihad, but also presented themselves as qualified mujtahids and were accepted by others as such.

Juwayni must be credited with an extensive knowledge in several fields, particularly law, theology, and belles-lettres. His education under the guidance of his father and other eminent scholars seems to have given him the courage to express radical views in Shafiᶜi law and Ashᶜari *kalām*; the schools to which he adhered. In his usul work *al-Burhān*, he seems to have deviated from Shafiᶜi's usul doctrine and incorporated new ideas that stirred some opposition in later centuries.[82] Subki, one of the most thorough biographers, consistently elevates Juwayni to the rank of *mujtahid fī al-madhhab*, (mujtahid within the boundaries of the school) and advances him over his predecessors in the mastery of usul and furuᶜ.[83] Subki points out the special difficulty of *al-Burhān* and its uniqueness as

a book the theory of which, unlike others in the field, was not dictated by the doctrines of previous authorities.[84] Ibn Khallikan ascribes to his furuᶜ work, *al-Nihāya*, the same features, indicating that it is unprecedented in Islam.[85] Subki openly admits that in *al-Burhān* Juwayni is not guided by the principles of Shafiᶜi's doctrine but by his own reasoning and ijtihad.[86] This last makes Juwayni an independent mujtahid (*mujtahid muṭlaq*) since he had set up an independent system that seems to differ from Shafiᶜi's school at least as much as Tabari's system does. Therefore, Subki's statements that Juwayni was a highly original jurist and that he reached the degree of mujtahid fi al-madhhab contradict themselves, because Muslim jurists have always argued that the mujtahid fi al-madhhab must not exceed the limits of the school's teachings. In this light the views of Abu al-Fida (d. 732/1331) and al-Dhahabi (d. 748/1348) must be considered as a counterbalance to Subki's account of Juwayni. Abu al-Fida remarked that Juwayni claimed for himself the rank of independent mujtahid because he fulfilled the conditions required, but added that he, Juwayni, finally decided to abandon this position and follow Shafiᶜi.[87] This is in accord with Subki's remark that in his youth Juwayni refused to follow the doctrine of the Shafiᶜi school embodied in the teachings of his father and his father's contemporaries. It also accords with the fact that the principles of Shafiᶜi's usul have not served as a guide for Juwayni. Subki's teacher, al-Dhahabi, who was a fervent anti-kalam Traditionalist, also hinted that in his *al-Burhān* Juwayni deviated from the right path of the forefathers (salaf). Abu al-Fida and Dhahabi represented a trend which Subki covertly opposed in his biographical notice of Juwayni. He consistently upheld the orthodoxy of Juwayni and asserted that he persistently followed the path of the salaf[88] and remained a follower of Shafiᶜi throughout his life despite the fact that he had developed a set of nonconformist views. This in itself, namely, being nonconformist and a salaf follower, is again an obvious contradiction of which Subki could not rid himself.

That Juwayni was a mujtahid is unquestionable, but what kind of a mujtahid was he? Although Juwayni did not venture to establish a new school, he seemed to have claimed ijtihad mutlaq, at least for a period of time, as Abu al-Fida argued. Subki denied this in order to defend Ashᶜarism and Ashᶜaris against the Traditionalist attacks which aimed at placing Ashᶜarism outside the domain of Sunnism.[89] It follows that Subki's insistence that Juwayni was a mujtahid fi al-madhhab is particularly significant in the theological context but hardly so in the legal one. The fact remains that by the admission of every scholar, Juwayni was a remarkably creative jurist and a mujtahid of the highest caliber. It is only fair to say that part of Ghazali's much-lauded creativity may be attributed to his eminent teacher: It may well be true that a thorough study of Juwayni's legal and political works, when all these are published, will uncover certain aspects of his creativity that have been hitherto ascribed to Ghazali. This is certainly true, at least, of Ghazali's early legal theory found in *al-Mankhūl* and his political writings which seem to have been influenced by ideas expressed in Juwayni's *Ghiyāth* and in other works.

This need not necessarily imply that Ghazali's intellectual contribution to religious sciences was in any way less significant. Although biographical dictionaries do not emphasize Ghazali's quality of ijtihad, as is the case with Juwayni,

it is quite obvious that Ghazali reached the rank of mujtahid fi al-madhhab. Apart from his argument that he is a mujtahid who had abandoned the practice of taqlid,[90] he is the first scholar known to have claimed that he was chosen by God to revive the religion of Islam.[91] And because he lived during the first five years of the sixth Islamic century, jurists of the Shafiᶜi school as well as others looked upon him as the renovator (*mujaddid*) of the sixth/twelfth century. The fact that renovators had to be qualified mujtahids implies that even those biographers who made no explicit mention that Ghazali was a mujtahid nevertheless implicitly admitted that he was one. Ibn al-Najjar maintained that a universal consensus had taken place concerning the fact that Ghazali was the mujtahid of his time.[92] In a convincing manner, Subki also presented Ghazali as the renovator of the sixth/twelfth century who had perfected the science of legal theory, 'renewed' the fiqh (positive law) of the Shafiᶜi school, and molded the science of *khilāf* (legal differences).[93]

There was no doubt in Ghazali's mind that ijtihad is attainable through diligent study, intellectual exercise, and immersion in scholarly disputations (*munaẓarāt*).[94] He admitted the extinction of independent mujtahids who were able to establish their own school of law, but he certainly did not imply the same for those jurists who could lead the community and revive the Shariᶜa when this need arose.[95] Therefore, it is entirely inaccurate to say, as some later jurists did,[96] that Ghazali thought all mujtahids to be extinct; such a claim not only has no basis in Ghazali's writings but also sharply contradicts the several statements he made throughout his books.

To Ghazali, only two kinds of mujtahids were known, the independent (*muṭlaq*) and the limited (*muqayyad*).[97] The latter's activity remains within the limits of his school. Because Ghazali admitted the fact that the eponyms of the schools are defunct and irreplaceable, and because the task of *tajdīd* (renovation) requires a jurist of high caliber who does not practice taqlid, it can be safely said that Ghazali recognized the existence of mujtahids fi al-madhhab, especially that he himself was a mujtahid in the Shafiᶜi school.

Ghazali was not bold enough to attribute to himself and to his fellow scholars the supremacy of ijtihad over his predecessors. Unlike Ibn ᶜAqil, he was satisfied with a rank lower than that of Shafiᶜi. Ibn ᶜAqil refused to accept for himself and for his colleagues such a relatively modest role; he strongly argued that earlier lawyers have no superiority over their successors and that many later jurists surpassed in legal knowledge their older teachers.[98] He attacked and ridiculed the taqlid by his contemporaries of their forefathers and asserted that Ibn Hanbal himself went out against the blind following of earlier jurists and called for reasoning on the basis of the scripture. For this reason, Ibn ᶜAqil openly declared that any legal opinion must be guided by a textual *dalīl* (evidence) rather than by what Ibn Hanbal had said.[99] Given this, it is of no surprise that Ibn ᶜAqil, with his deep knowledge of usul and furuᶜ, had reinterpreted the doctrine of his school and that he came up with new opinions for many new and old problems. More than twenty of his unique legal opinions are recorded in Ibn Rajab's biographical work.[100] Many more of these singular problems appear in *al-Funūn*, his *magnum opus*, where he demonstrates not only his remarkable originality, but also his preference for the ijtihad of contemporaries over that of

the ancestors. In fact, the purpose of Ibn ᶜAqil in writing his *Kitāb al-Funūn*, which is replete with contemporary opinions and problems, seems to stem from his desire to prove the commensurability, if not the superiority, of later mujtahids to their predecessors.[101]

The desire of Juwayni, Ghazali, Ibn ᶜAqil, and other jurists to assert themselves vis-à-vis their precursors and their unceasing constructive criticism of their contemporaries was perhaps partially motivated by the general mood of the age; a mood which was to persist as a psychological factor in the attitude of Muslims for centuries afterwards. This mood was expressed in the general conviction that Muslims were experiencing bad times and that the more distant they were from the Golden Age of the Prophet and his Companions the worse the state of decline would be.[102] A keen search throughout the legal literature for the causes of such conviction yielded very little to show that the legal state of affairs was responsible for it. It is highly likely that the disintegration of the political institution was the main element that brought about the growth of this conviction.[103] The Shariᶜa had not been at the center of criticism as had been the political and socioeconomic situation as a whole. Ghazali's revivalism, for instance, was not addressed specifically to law. The 'weaknesses' of religion, Ghazali argued, were caused by the internal theopolitical conflicts and by religious malpractices. This is his main theme in his *Iḥyāʾ* and *Munqidh*. In the latter he also criticizes several institutions and groups such as the philosophers and the Shiᶜi Imamiyya, but nothing, except for a few passing remarks, was devoted to legal sciences or jurists. In fact, in Ghazali's doctrine jurists are instrumental in any attempt at religious revival.[104]

The Role of Ijtihad in Developing Positive Law

As far as the potential and ability of the legal system to provide solutions to all newly arising problems is concerned, it need not be reiterated that up to Ibn ᶜAqil's time, and for a long time afterwards, jurists had performed their task most appropriately. Therefore, the dissatisfaction of Muslims with the status quo could not have been the result of the impotency of lawyers to supply the required answers. Legal activity, whether in theory or practice, continued unceasingly. The vast bulk of *fatwas* (legal opinions) that appeared and continued to grow rapidly from the fourth/tenth century onwards is a telling example of the importance of fatwas as legal decisions and precedents. It is in this large body of material that one may look for positive legal developments. But the current state of scholarly research does not enable us to undertake the investigation of this important subject. When a record of consecutive collections of fatwas throughout a given period of time is made available, the growth of legal materials and of unprecedented decisions, which may be coupled with developments of technical legal thought, can be followed step by step. This does not mean that developments and new ideas cannot be found elsewhere. Subjects of interest and of vital importance were discussed in a variety of works such as, for example, the *Kitāb al-Funūn* of Ibn ᶜAqil and the *Iḥyāʾ* of Ghazali. These include numerous cases that were either raised to be decided for the first time or older problems that

were reinterpreted through fresh legal reasoning.[105] Subki also recorded in his *Ṭabaqāt* hundreds of new and unconventional legal opinions, the great majority of which belong to the fourth century and thereafter.

Although later positive developments were not usually incorporated in furuᶜ works, a clear development had taken place within this branch of legal literature. And although the main features of this development were manifest chiefly in the field of technical legal thought, it is nonetheless a development that at least signifies the extent to which jurists of later centuries were free to express views that diverged from the doctrines of their predecessors.

It is our common, but rather inaccurate, belief that during the first three centuries of Islam, the highest and final stage of legal thought had been reached. It may be astonishing, therefore, to realize that the sophistication of technical legal thought was in fact achieved after these centuries, particularly during the fifth/eleventh and sixth/twelfth centuries. The elaboration of the Hanbali positive doctrine, for instance, could not have possibly started before the end of the third/beginning of the tenth century and it could reach its utmost refinement only in the beginning of the seventh/thirteenth century—in Ibn Qudama's voluminous work, *al-Mughnī*.[106] Even much older systems, such as the Hanafi school, were, during the fifth/eleventh and sixth/twelfth centuries, subject to extensive refinement that did not exist before. We need not restate the detailed study of the late Chafik Chehata supplemented by that of Meron concerning the developments in the Hanafi legal texts.[107] It suffices to say that the furuᶜ works of Quduri (d. 428/1036) and Sarakhsi (d. 490/1096), let alone those of ᶜAlaᵓ al-Din al-Samarqandi (d. 539/1144) and Kasani (d. 587/1191), represented a great advance over earlier works of the school.[108]

Early Hanafi law, embodied in works such as those of Shaybani (d. 189/804), Tahawi (d. 321/933), and Abu al-Layth al-Samarqandi (d. 375/985),[109] does not present us with a sufficiently developed system of legal thought. The disorderly arrangement of subjects and the negligence to set forth the process of reasoning of each decision are sufficient indicators of the unclarity and the incomprehensiveness that characterized the writings of the early jurists.[110] Although Tahawi and Abu al-Layth al-Samarqandi wrote more than a century after Shaybani, they seem to have contributed very little to what had already been achieved by their older master.[111] It was only in the fifth/eleventh century that there was a significant change in the arrangement of material, terminology, and technical legal thought. Precise definition of terms, distinction between legal acts and legal facts, and reformulation of earlier doctrines are characteristic features in the works of Quduri and Sarakhsi; even more so in the works of the sixth/twelfth century ᶜAlaᵓ al-Din al-Samarqandi and Kasani.[112] Quduri is clearly superior to his predecessors in the arrangement of his legal data; his work "presents us with an effort at systematization which constitutes a foreward step in the history of fiqh."[113] Sarakhsi significantly improved on older Hanafi authorities; his concepts and notions of pure law are much more crystalized and well defined than those of Shaybani and Tahawi.[114] Thus, it would be implausible to say that "from the tenth century (i.e., the fourth Islamic century) onwards the role of jurists was that of commentators upon the works of the past masters," and that the authors

of commentaries, such as Quduri, Sarakhsi, ʿAlaʾ al-Din al-Samarqandi, and Kasani "betrayed a slavish adherence, not only to the substance but also the form and arrangement of the doctrine as recorded in the earlier writings."[115] The aforementioned studies of Chehata and Meron prove, once and for all, the invalidity of such statements.

From all this it becomes clear that in practice and in theory the activity of ijtihad during the period under discussion was uninterrupted. Furthermore, mujtahids proved to have existed at all times, a fact which finds full support in the ample material available from the period itself. It is no surprise then that in the fourth/tenth- and fifth/eleventh-century sources utilized in this study (except Ibn ʿAqil's *Funūn* which will be discussed later) there is no mention of the phrase 'insidad bab al-ijtihad' or of any expression that may allude to the notion of the closure.[116]

* * *

In the light of our preceding conclusion that during the first five Islamic centuries the activity of ijtihad remained uninterrupted on both the practical and theoretical levels and that the idea of the closure has not even occurred to Muslims, we shall now proceed to investigate the subsequent history of ijtihad in order to show that the notion of the closure had appeared for the first time as late as the end of the fifth/eleventh century (and more likely the beginning of the sixth/twelfth) and that disagreements on the closure and on the availability of mujtahids prevented Muslims from reaching a consensus to that effect. It will further become clear that ijtihad was exercised up to the premodern era and that claims for the right of ijtihad and its superiority over taqlid were voiced incessantly.

THE APPEARANCE OF THE EXPRESSION '*insidād bāb al-ijtihād*' AND ITS MEANING

As often used in legal discussions, the term '*bāb*' means 'way.' Thus, *saddu bābi al-ṭalāqi* may be rendered as 'closing the way of divorce' or 'making divorce infeasible'.[117] Similarly, *insadda bābu al-qiyāsi* may be translated 'the way of qiyas was closed' or 'the procedure of qiyas was suspended'. The seventh Arabic *maṣdar* form, *insidād*, and the verb form *insadda* do not denote the agent. Hence, *insadda bābu al-ijtihādi* conveys no idea as to who had actually closed the gate. This notion of the closure is in complete accord with the Islamic belief which asserts that no one at any time has demanded that the practice of ijtihad be suspended.[118] In theory, should this practice decline or stop permanently, the methodology of ijtihad is not to be blamed because this deficiency can only stem from fallible elements, namely, the mujtahids. Ijtihad may cease only when mujtahids either decline to perform it or when they become extinct. Since, as previously mentioned, ijtihad was considered a fard kifaya and thus incumbent upon mujtahids, the possibility of extinction remains as the only alternative. The dying out or the lack of well-learned jurists then can be the only reason for the closure of the gate of ijtihad. This was precisely how Muslims thought of this

issue. They believed that the disappearance of scholarship does not come about through its demise, but rather coincides with the dying out of the scholars. To maintain this posture, a prophetic report was adduced over and over again: "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."[119]

Thus, whether the gate has always been open or had at one point of time been closed is virtually determined by two elements that complete each other: (1) the existence or extinction of mujtahids, and (2) the jurist's consensus that the gate of ijtihad, for the reason of extinction, was, or was not, closed. In usul works, only the question of whether or not mujtahids can, by reason or by shar^{c}, become extinct was discussed and there had hardly been a direct reference to the concept of 'the gate of ijtihad'. This is perhaps due to the fact that the usulists, being the guardians of law, felt responsible for the continuity of ijtihad and saw in the whole idea of the gate a negation of the very *raison d'etre* of the divine methodology of usul al-fiqh.

We may assume that discussions concerning the existence of mujtahids had their origin in the Saljuk period, more specifically towards the very end of the fifth/eleventh century or the beginning of the sixth/twelfth. A thorough search in the fifth/eleventh century legal literature including the usul works of ^{c}Abd al-Jabbar, Abu Husayn al-Basri, Baghdadi, Shirazi, Juwayni, Sarakhsi, Pazdawi, and Ghazali did not lead to any information, related directly or indirectly to this subject. The author in whose works this discussion appears for the first time in Islamic history is the illustrious Hanbali jurist and theologian Ibn ^{c}Aqil. His notebook *al-Funūn* and the excerpts from *al-Wāḍiḥ fī Uṣūl al-Fiqh*, cited in the *Musawwada* of the Taymiyya family, afford us with a fairly satisfactory account of the beginning of this issue.

The discussion of the existence of mujtahids seems to have been first motivated by practical necessity rather than by mere intellectual curiosity. In order to ensure the continual functioning of law, usulists of the fifth/eleventh century, including Ibn ^{c}Aqil, maintained that at least one mujtahid at each age must 'sit' for *iftā'* (giving legal opinions) and be the guide for less qualified muftis. It was primarily for this reason that Ibn ^{c}Aqil insisted that a mujtahid must be in existence at all times to look after the interests and needs of the Muslim community and to solve its newly arising day to day problems.[120] This information, derived from his usul theory, fully corresponds to the details of a controversy that occurred between him and a Hanafi jurist in Baghdad.

The jurist that adhered to the school of Abu Hanifa said: "Where are the mujtahids? This issue closes the gate of judgeship" (*bāb al-qaḍā'*).

The Hanbali (Ibn ^{c}Aqil) swiftly responded with two decisive answers. First, he argued that "if the gate of judgeship is closed because it is required that the judge be a mujtahid, then the gate is (also) closed because you claim that the ruling (hukm) of the non-mujtahid judge is not valid until certified by a mujtahid. If you claim that mujtahids are not extant and if you need a mujtahid to guide judges and if you do not hold rulings to be

nowadays invalid . . . then the mujtahid whom you need to validate the ruling of the non-mujtahid disproves your claim concerning the inexistence of the mujtahid . . . "

"This claim of the Hanafi jurist is groundless for another reason. If you are asked: Can ijmaᶜ be suspended at a certain age? If you say yes, you would be nullifying one of Shariᶜa's sources and would be contending that God had removed an infallible source from amongst the sources of sharᶜ . . . On the other hand, if you say that ijmaᶜ is (always) valid, it would then be asked: Can the ijmaᶜ of the mujtahids be concluded in an age where there are no mujtahids? Therefore, your argument is null and void."[121]

Elsewhere, Ibn ᶜAqil made the following statement: "It is not possible for an age to be devoid of a mujtahid. This is contrary to the claim of some muhaddiths who argue that there remained no mujtahids at our age."[122]

Obviously, Ibn ᶜAqil uses in his arguments pure human reasoning and makes no reference whatsoever to the scripture. Compared with the more elaborate arguments that were developed in later works, it appears that Ibn ᶜAqil's disputation with his interlocutors was only the beginning of what was later to become an established usulist controversy. The characteristics of his responses indicate that the entire issue was not of great importance at that time, although it might have been so for Ibn ᶜAqil himself.

THE CONTROVERSY ABOUT THE EXISTENCE OF MUJTAHIDS

Amidi (d. 632/1234) was the first usulist known to us to have devoted a special section to the treatment of the issue of the existence of mujtahids.[123] The polemical character of his account, which contains arguments and counter-arguments, is a clear indication of the established controversy that had left its mark on the form of the discussion. It is highly probable that the entire debate on the existence of mujtahids had been inspired or perhaps provoked by the Hanbali insistence, which was initiated by Ibn ᶜAqil, that a mujtahid must exist at all times. This is why Amidi's account is more of a counter-attack, or rather an antithesis, than an ordinary discussion. This attitude became a common heritage for the majority of Hanafis, Malikis, and some Shafiᶜis, who together opposed the primarily Hanbali tendency. Amidi's account clearly sums up the entire controversy.[124] First, Amidi sets forth the postulations as advocated by the Hanbalis and a number of Shafiᶜis who maintained that mujtahids must exist at all times, and then goes on to refute them one by one. Hanbalis and others, Amidi remarked, presented two arguments to support their position; one is *sharᶜi* (related to divine texts) and the other *ᶜaqli* (related to human reason). In the sharᶜi argument, they adduced three prophetic reports, the theme and contents of which validate the view that at all times learned men will lead the community of Muhammad and that knowledge and sound judgement will accompany Muslims throughout all ages until the Day of Judgement. The ᶜaqli argument begins with the premise that the practice of ijtihad and the study of law are fard kifaya, i.e., a religious duty incumbent upon qualified jurists. Therefore, should this activity be abandoned, the Muslim community would inevitably be in error, something which cannot possibly happen. Moreover, the community would fall into anarchy and the edifice of Shariᶜa would be demolished should ijtihad cease to exist, because ijtihad is the only

means by which the believers can pursue the true path of God whenever a new case comes up.

In countering this argument, Amidi approaches the problem from the same angle. First, he introduces five different prophetic reports (the number of reports is important because five outnumber the three adduced by Hanbalis) which enhance the view that in the course of time the Shari^{c}a will deteriorate and lawyers will become extinct. Against the ^{c}aqli argument presented by Hanbalis, Amidi argues that ijtihad is not a fard kifaya when it is possible to rely on the laws of ancestors which have accumulated throughout centuries and which can be attained through the medium of an uninterrupted transmission. Amidi's position then is to recognize the possibility of the extinction of mujtahids at a certain period of time. The Hanbalis and a group of Shafi^{c}i scholars were the only ones who denied even the theoretical possibility of the mujtahids' extinction. In a briefer manner Ibn al-Hajib (d. 646/1248) repeats Amidi's argument without addition.[125]

The Hanbali dialogue quoted by Amidi differs entirely from that adduced by Ibn ^{c}Aqil a century before. As noted above, Ibn ^{c}Aqil uses no textual evidence to prove his point, neither does he use the rational argument produced by later Hanbalis. Had he known of any further argument he would have undoubtedly incorporated it into his controversy with his Hanafi adversary. The absence of hadith from Ibn ^{c}Aqil's response, coupled with the nature of his reasoning, is indicative of the embryonic character of this controversial issue at that time. Because this issue had just recently been raised, the time had not yet come to give it full attention or full elaboration, which, in part, means support by the Sunna and/or the Quran. Considering all this and considering the fact that besides Ibn ^{c}Aqil no fifth/eleventh century jurist made any mention of the phrase 'insidad bab al-ijtihad' or of the matter of the mujtahids' extinction, which became later a part of usul works, it must be concluded that the origin of this controversy lies at the very end of the fifth/eleventh century, and more likely at the very beginning of the sixth/twelfth. Nonetheless, this issue does not seem to have acquired immense importance even during the sixth/twelfth century. This is confirmed by Ibn Qudama's disinterest in this important matter. Had it been customary to discuss it in usul works in the fifth/eleventh and sixth/twelfth centuries, the Hanbali Ibn Qudama undoubtedly would not have missed such an occasion to deal with this subject (and he certainly would be inclined to do so because of the uniqueness of the Hanbali attitude towards it).

Over a century after the death of Amidi, the polemic as to whether or not an age can be devoid of mujtahids began to acquire wider dimensions, so much so that Amidi's basic premise and exposition became only the nucleus of a considerably complicated argument. Of particular interest to this study are those aspects of the argument that contribute to our understanding of the problem as hitherto outlined. Subki (d. 771/1369) has nothing original to say but confirms the postulations of Amidi and Ibn al-Hajib and asserts that though the extinction of mujtahids is possible its actual occurrence has not been proven.[126] While Isnawi (d. 772/1370) essentially accepts Amidi's theses, he disapproves of Baydawi's (d. 685/1286) statement that "at this time mujtahids do not exist." Isnawi

argues that since ijmaᶜ is concluded only by mujtahids, and since it would be impossible to live without ijmaᶜ's force, mujtahids must be extant at the present time at least.[127] Taftazani (d. 790/1388), a younger contemporary of Isnawi, contributes to the counter-argument of Amidi against the Hanbali proposition that ijtihad is an obligation imposed on the totality of Muslim scholars. He argues that ijtihad becomes a compelling obligation if there are qualified scholars still alive, but Muslims are absolved from this obligation once it is determined that scholars are defunct. Therefore, the Muslim community would not fall into error despite its inability to produce scholars who are potentially capable of ijtihad.[128]

Ibn Amir al-Hajj (d. 879/1474) adopts the argument of Amidi and Taftazani and goes further to suggest that one of the three hadiths adduced by the Hanbalis to enhance their position is dubious. Moreover, he dismisses Subki's statement that the nonexistence of mujtahids in an age has not actually been proven, by contending that al-Qaffal al-Shashi and Ghazali maintained that independent mujtahids are extinct.[129] It is worthwhile noting that Subki has not specified what rank of mujtahids he was contemplating, but it seems certain that he used the term 'ijtihad' generically to denote the activity itself, irrespective of whether it is independent or limited. An independent mujtahid, as it is used here, means a master architect of jurisprudence who can set up his own school of law. This is the kind of mujtahid that Qaffal and Ghazali were supposed to believe had become extinct.[130] A limited mujtahid—sometimes called 'mujtahid fi al-madhhab'—is a jurist who is well versed in one school's legal system and can discover the law of any case, of any kind, at any time in all domains of law within the framework of that school. The third rank of jurists may be subdivided into several categories ranging from those who are fairly creative to those who are mere muqallids.[131] We shall return to this later.

Since Ibn Amir was speculating upon the intentions of Subki, he seems to have failed in arguing against the contention that mujtahids were in existence up to the end of the eighth century at least. His calling upon Qaffal and Ghazali to testify on the extinction of mujtahids was equally ineffective because there was little new in maintaining that the phenomena of Abu Hanifa, Shafiᶜi, and other eponyms were unique and unreproducible, since this was not the case at issue. In short, Ibn Amir added in substance to Amidi's argument against the Hanbalis, but he was ineffective due to his indiscriminate approach to technical terms. It is significant, however, that elsewhere in his book Ibn Amir says that the gate of ijtihad would have been closed had mujtahids been required to know 500,000 hadiths as part of their qualifications for ijtihad.[132] Also significant, and rather explanatory, is his statement that the practice of ijtihad at his age is "more scarce than the great elixir and the red sulfur."[133]

That Qaffal and Ghazali had only the eponyms of the law schools in mind when they declared the extinction of mujtahids, and that these eponyms are an unreproducible phenomenon once they have vanished are crystal-clear facts in Siddiqi's (d. 971/1563) opinion. While he agrees that in theory mujtahids could disappear, he rejects the claim that they did in reality and his proof of this is shown in the list of jurists who were, beyond any doubt, great mujtahids.[134] Siddiqi's important contention is that although a great variety of opinions had

been expressed on this matter, no one has yet argued that mujtahids or ijtihad must cease to exist.[135]

A meticulous argument was presented by Ansari (d. 1119/1707) and his commentator, Ibn ᶜAbd al-Shakur (d. 1225/1810). Ansari is careful not to confuse ranks of mujtahids because any indifference to the type of mujtahids being discussed may lead to an undesirable disputation. Keeping this in mind, Ansari accepts the likelihood of the mujtahids' extinction. He is overwhelmingly convinced that the great jurists of the past, such as the four eponyms, are irreplaceable. If those who contend that mujtahids exist mean mujtahids of the caliber of Abu Hanifa, then mujtahids are nonexistent at present, Ansari and ᶜAbd al-Shakur argued. But if less qualified mujtahids are meant, then their existence is quite possible.[136]

One of the most important elements that largely contributed to the deepening of this controversy is the misuse or the misunderstanding of technical terms. This was due to the absence of a common technical dictionary to which jurists would conform. Although some lawyers tried to define the terms used in describing the ranks of mujtahids, the majority of scholars remained confused. In the course of time, the degree of confusion increased steadily in legal literature. The definition of the term 'mujtahid mutlaq' (absolute mujtahid) in Ghazali's time, for instance, differed from that given to it later. For Ghazali, a mujtahid mutlaq is a jurist who is capable of interpreting all branches of law within a given school, but this mujtahid cannot be the founder of the school.[137] For Majd al-Din Ibn Taymiyya (d. 652/1254) and Ibn al-Salah (d. 643/1245) the terms *muṭlaq* and *mustaqill* (independent) are synonymous. But unlike Ghazali, they give the title 'mujtahid mutlaq' or 'mustaqill' to the eponyms of the schools rather than to less qualified mujtahids. What Ghazali calls 'mutlaq' they call *muntasib* (affiliated).[138] Nawawi (d. 676/1277) follows the arrangement of Ibn Taymiyya and Ibn al-Salah.[139] Suyuti (d. 911/1505) uses 'mutlaq' for men like Shafiᶜi and Malik, and 'mustaqill' for mujtahids within the school, such as Ibn Surayj and himself.[140] By so doing, Suyuti differs from Ibn al-Salah and Ibn Taymiyya who, in turn, differ from Ghazali. Like Ibn al-Salah, Siddiqi means by 'mustaqill' the rank of a school founder.[141] He observes that some jurists consider muntasib a rank higher than mutlaq.[142] And Laknawi (d. 1304/1886) conferred the compound title 'mujtahid mutlaq-muntasib' upon a jurist who performs ijtihad within a school.[143] It is of no surprise then that a good deal of the disputation over the subject of mujtahids and ijtihad had been caused by such misunderstanding.[144]

It is now relevant to examine the controversy about the existence of mujtahids while paying special attention to the question of whether or not an ijmaᶜ had taken place on the closure of the gate. Without such an ijmaᶜ, the closure and its credibility cannot be ascertained. It must be remembered that, in theory, ijmaᶜ comes about when all mujtahids of an age agree, in one way or another, upon a certain matter. In reality, however, ijmaᶜ takes place when Muslim jurists look backward to the generations that preceded them and find that a certain doctrine or opinion had gained acceptance. The criterion for acceptance was decided by the absence of a dissenting voice among the scholars regarding that doctrine or that opinion. But whatever the case may be, any expressed objection especially when supported by major scholars, will remove that opinion from the domain of

ijmaᶜ to the domain of ikhtilaf. This means that this opinion is usually incorporated in the ikhtilaf literature (dealing with differences in legal matters). But in order to be established as an ikhtilaf matter, another tacit consensus is required. Otherwise, it becomes a matter having what may be termed 'unsettled status'.[145]

At the turn of the seventh/thirteenth century, the Shafiᶜi jurist al-Rafiᶜi (d. 623/1226) observed that "Muslims seem to agree that at present there are no mujtahids."[146] What he exactly meant by 'mujtahids' cannot be determined from the scanty information which reached us from him, but it is highly likely that he meant independent mujtahids who can found schools of law. It would be implausible to assume that Rafiᶜi meant limited mujtahids because such an assumption contradicts the reality of his time. During Rafiᶜi's lifetime and afterwards, many jurists, including himself, were recognized by their contemporaries and successors as mujtahids within their own schools. Rafiᶜi's student, Isfaraᵓini, thought of his master as a mujtahid.[147] Furthermore, Rafiᶜi was chosen by a host of scholars to be the mujaddid of the sixth/twelfth century.[148] Razi, Abu Shama, Ibn ᶜAbd al-Salam, Ibn Daqiq al-ᶜId, Ibn al-Imam, and Nasafi, to name but a few, were admittedly renowned mujtahids in their time.[149]

Rafiᶜi's aforementioned statement stunned Zarkashi (d. 795/1392), also a Shafiᶜi, who wondered how Rafiᶜi could maintain that an agreement on the mujtahids' extinction had been reached when it is "well known that this is a controversial (*khilāfī*) issue between us and the Hanbalis who were supported by some of our jurists."[150] Ibn ᶜAbd al-Salam, aware or not of Rafiᶜi's statement, remarked that Muslims "disagreed as regards the closure of the gate of ijtihad. They expressed different views to the effect of the closure . . . but these views are all void because if a new case comes up and no solution is found in the scripture, or when the case is a subject of khilaf among our forefathers, ijtihad is needed (to determine the ruling of the case)."[151] These statements, coupled with the circumstances under which Rafiᶜi wrote (especially the existence of many renowned mujtahids),[152] are enough evidence to prove that he was speaking of limited mujtahids. It is certain, however, that by that time, the absence of independent mujtahids had become a fact subject to universal consensus. It is to this kind of consensus that Rafiᶜi referred, but his statement seems to have been misinterpreted.

It must be noted that the great majority of the pronouncements on the issue of the closure did not venture to assume that there was an established consensus on the absence of mujtahids. The phrase that was often used by muqallids and supporters of taqlid was "Muslims seem to agree that mujtahids do not exist nowadays" (*al-nāsu kal-mujmi ᶜīna* [sometimes *kal-muttafiqīna*] *ᶜalā annahu lā mujtahida al-yawma*). The term "to agree" rarely appears without the preposition *ka* (as; like) which renders the agreement uncertain.[153] This particular usage is significant, since all matters subject to ijmaᶜ were unquestionable, and had the alleged absence of mujtahids been subjected to a definite ijmaᶜ, jurists would see to it that the preposition *ka* did not precede the active participle *mujmiᶜūn*. The failure of these jurists to reach an ijmaᶜ on the absence of mujtahids must be ascribed to the fact that a number of them were mujtahids themselves and practiced ijtihad without being in the least criticised.[154]

SUYUTI'S CLAIMS FOR IJTIHAD AND TAJDID

Up to the end of the eighth/fourteenth century, no voice, as far as I know, rose to condemn the claims of mujtahids to practice ijtihad in the context of their schools. But as time lapsed, the doctrine of taqlid was steadily gaining genuine support from the mass of jurists. The amassing of this support had created a powerful movement that was to express itself openly only a century and a half later.

The first incident in which muqallids openly contravened the claims of mujtahids occurred in Egypt, during the lifetime of Suyuti (849/1445–911/1505). The latter had conceitedly claimed for himself the rank of mujtahid. In his polemical work *al-Radd ᶜalā man Akhlada ilā al-Arḍ wa-Jahila anna al-Ijtihād fi kull ᶜAṣr Farḍ* he argues that ijtihad is a fard kifaya to be fulfilled by the Muslim community, and if there were no mujtahids it would mean that the community had agreed upon error, something that is of course impossible. Were all Muslim jurists to become muqallids, ijtihad would cease, and in consequence Shariᶜa would be demolished. Therefore, says Suyuti, ijtihad is the backbone of Shariᶜa and without it no legal decisions can be reached.[155]

The kind of ijtihad that Suyuti claimed to be able to practice is the highest degree within the Shafiᶜi school; a degree that he calls 'mutlaq'.[156] It will be recalled that for Suyuti, 'mustaqill' indicates the highest degree of ijtihad, which is that of the eponyms. But for a great segment of scholars mutlaq is the highest rank of ijtihad.[157] Because of this terminology, Suyuti had put himself in a difficult position and was encumbered in trying to explain that mustaqill is the rank that disappeared while mutlaq is yet attainable.[158] Speaking of himself he said: "God has bestowed on me alone and uniquely the duty of undertaking ijtihad in this age."[159] Suyuti's claim for superiority to his contemporaries was disdainfully resented.[160] To justify these claims he argued that he was striving to fulfill the fard kifaya of ijtihad in order to discharge this duty on behalf of his community. Although he insisted on undertaking the fulfillment of this duty, a number of Suyuti's contemporaries denied him the right of ijtihad.

We must not take the opposition to Suyuti to mean that the Muslim community of the ninth/fifteenth century went out unanimously against ijtihad and the existence of mujtahids. Suyuti's personality must be taken into account in evaluating the antagonistic attitude towards his claim. Opposition was mainly directed against "Suyuti's boastfulness" and against his "immense self-confidence": He was disliked because he praised himself while casually condemning his opponents and calling them "fools, if not worse."[161]

Why did Suyuti want to be a mujtahid? The answer to this question presents us with another matter, intimately related to the issue of the existence of mujtahids. The ultimate ambition of Suyuti was to become the mujaddid of the tenth/sixteenth century. By attaining the rank of ijtihad, which was considered a prerequisite to tajdid, Suyuti had hoped to be qualified for that position.[162]

The idea of tajdid had been predominant since at least the fifth/eleventh century; it was justified on the basis of the prophetic report: "God sends at the

turn of each century (*ʿalā raʾsi kulli māʾa*) a man who renovates for this community the matters of its religion."[163] It has been universally agreed that the first two mujaddids for the second and third Islamic centuries were the Caliph ʿUmar b. ʿAbd al-ʿAziz and Shafiʿi.[164] For the centuries that followed there was, at one time or another, a difference of opinion as to who the mujaddid was; but there certainly had always been at least one. Ibn Surayj and the theologian Ashʿari are mentioned for the fourth Islamic century. In this case Subki prefers Ibn Surayj because his death took place closer to the turn of the century than that of Ashʿari and because he renovated the positive law of Shariʿa while Ashʿari was mainly an advocate of usul al-din.[165] For the fifth century a choice was made between Abu Hamid al-Isfaraʾini and Abu Sahl al-Suʿluki.[166] Ghazali was the mujaddid of the sixth century, and Razi of the seventh. But for the latter century certain jurists designated Rafiʿi instead of Razi.[167] Ibn Daqiq al-ʿId was unanimously chosen for the eighth century.[168] In the ninth century, there was a competition between Siraj al-Din al-Bulqini and Nasir al-Din al-Shadhili.[169] Then came Suyuti, who was recognized as such by most later authors,[170] and after him Ahmad al-Sirhindi, who was given the title *mujaddid al-alf al-thānī*, since he appeared at the beginning of the second Islamic millenium.[171] Although after Sirhindi the practice of choosing a mujaddid seems to have lost some importance, it continued up to the past Islamic century, for which al-Maraghi al-Jurjawi was chosen.[172]

By the admission of Muslim scholars, therefore, mujaddids who were, *inter alia*, mujtahids, appeared at least once every century. Sometimes, as we have seen, there was more than one mujaddid for a single century. Now, one may ask, who are the jurists that held the extinction of mujtahids to be an established fact when it was clear that mujaddids were continuously present? At the time of Suyuti these were the Hanafis, the Malikis, and part of the Shafiʿi school. Most of the leading minds of the Shafiʿi school, however, rejected the theory of the possible extinction of mujtahids. In fact, almost all of the jurists who were given the task of tajdid were Shafiʿis.[173] It is evident that those who promoted the idea of mujaddids had also promoted ijtihad and supported mujtahids while denying the possibility of their extinction (some jurists, however, accepted this possibility in theory). Hanafis and Malikis, being consistent in their actions, did not even participate in the race for tajdid.

Even if it is assumed that by the time of Suyuti the extinction of mujtahids had been well established, why cannot Suyuti, or someone else for that matter, provided he is qualified, still become a mujtahid? Is he not only attempting the fulfillment of the fard kifaya which is a perennial duty? And, if for a period of time there were no mujtahids, is the community destined to live without them forever, even if they were to reappear? These questions, to the best of my knowledge, find no answers whatsoever in the legal literature of Medieval Islam.

IJTIHAD AFTER THE TENTH/SIXTEENTH CENTURY

Suyuti's relentless effort to attain the position of tajdid expressed the highest point to which the uninterrupted activity of ijtihad could reach. In other words,

Suyuti can be seen as the last major Sunni mujtahid in a nine-century chain of mujtahids. After his death there was a significant decrease in the number of eminent jurists who had the potential for ijtihad. Those who were known to be mujtahids were very few in number. And from the end of the tenth/sixteenth century, the jurists who claimed the right for ijtihad became even fewer. This fact was reflected clearly in the classification of jurists into ranks or degrees. Although the idea of classifying ijtihad proved to be more deluding in understanding the history of ijtihad than helpful, its external development serves as an indicator of the later Muslim conviction concerning the decline in the number of mujtahids.

Before the fifth/eleventh century no trace could be found of any attempt to classify ijtihad or mujtahids into categories of excellence (*ṭabaqāt*). This does not mean, however, that the concept of tabaqat had not yet been known, but its systematic application to mujtahids occurred only at a later period, perhaps during the fifth/eleventh century.[174] As previously noted, Ghazali distinguished between two ranks of mujtahids; the mutlaq and the muqayyad. It can generally be inferred that Ghazali, representing the fifth/eleventh century scholars, recognized three ranks of jurists, the first of which had become, with his frank admission, extinct. The second was the rank of mujtahids within the school and the third was that of muqallids.[175] About two centuries later the number of ranks reached five, the first of which was assumed to be extinct. The second and the third were ranks of mujtahids who could perform ijtihad on two different levels, the third being more limited in scope.[176] The fourth rank included jurists highly proficient in the doctrines of their school and in the evidence upon which these doctrines were based, although they were not fully qualified to practice ijtihad. The fifth rank consisted of various kinds of muqallids.

By the tenth/sixteenth century, seven ranks of jurists could be discerned.[177] The top three remained as they were on the previous scale of five, that is, they were ranks of mujtahids of various degrees. But the lower four were in reality a redivision of the lower two on the scale of five.[178] In the sixth/twelfth and seventh/thirteenth centuries, for example, the lowest (fifth) rank of jurists included muqallids who 'memorized' the doctrine of the school and understood its details but were incapable of mastering the methodology that their eponym and older teachers applied in order to reach their legal rulings.[179] On the other hand, the tenth/sixteenth century description of the lowest (seventh) rank was entirely different. This rank includes jurists who do not equal any of the jurists from the higher six ranks and who "cannot differentiate between the thin and the fat."[180] The absence of this description from the older five-rank scheme does not suggest that in earlier centuries incompetent jurists did not exist. But the ever-growing conviction that fewer and fewer scholars could perform ijtihad and that most jurists were mere muqallids seems to have had bearing on the increase in the number of ranks; an increase from three to five to seven. This conviction had chiefly contributed to the augmentation of new ranks of muqallids that in theory did not exist before, while maintaining at the same time the old ranks of mujtahids without change.

In a later period, these seven ranks were each applied to a specific group of jurists. The first rank thus was assigned to the fathers of the four schools (to the

exclusion of Shaybani and Abu Yusuf, the real founders of the Hanafi school). And although Ibn Hanbal was no jurist he was nevertheless included in this rank.[181] Shaybani, Khassaf, Muzani, and their equals were subsumed under the second rank. To the third, mujtahids like Karkhi, Tahawi, and Shams al-Din al-Sarakhsi belonged.[182] The fourth and fifth are the ranks of non-mujtahids like Marghinani and Razi,[183] while the sixth and seventh were specially designated for pure muqallids. From the end of the sixth/twelfth century onwards jurists are said to belong to the last two ranks.

This classification was promoted by later taqlid advocates who espoused the view that mujtahids had become extinct. This is evident in the seven-rank classification which does not accord with what the upholders of ijtihad maintained. For example, qualified jurists have generally agreed that Razi was a mujtahid as well as a mujaddid. Nevertheless, according to this system of categorization, he was subsumed under the fourth rank which is characterised by taqlid. In addition, the fact that a mujtahid (or, generally speaking, a mujaddid) must appear—and has indeed appeared—at the turn of each century until the Day of Judgement seems to contradict the claim that the jurists of the seventh/thirteenth century and their successors belonged to inferior ranks. This apparent contradiction can be explained by saying that the party which recognized Razi's ijtihad and the indispensable appearance of mujtahids each century was substantially different from the party that elaborated the ranks of jurists and applied them to specific groups. The first party, as is already clear, consisted primarily of Hanbalis and Shafiᶜis while the second was formed mainly of Hanafis who were supported to a greater or lesser extent by Malikis and a number of Shafiᶜis. It is not astonishing, therefore, to find that the Hanafis were the most concerned in classifying jurists into technical ranks, especially in the later period. This is also why the most complete and elaborate accounts of ranks of jurists (and not tabaqat in the biographical sense) are found in Hanafi works.

Convinced that mujtahids were extinct, Hanafis and their supporters not only denied the right of ijtihad to later scholars but also ignored ijtihad itself when this was exercised.[184] A fine expression of this attitude appears in Jabarti's *ᶜAjāᵓib al-Āthār*, written in the beginning of the thirteenth/nineteenth century. In the copious number of biographical notes of jurists who died during the twelfth/eighteenth century, Jabarti seems to have been careful not to confer the title of mujtahid on any of them, though he sometimes gives descriptions synonymous to ijtihad. Of Ibn al-Naqib (d. 1183/1769), Jabarti observes that "he used to derive rulings on account of his intelligence and excellent memory."[185] Indeed, what jurists need in order to perform ijtihad is the knowledge of the methods of qiyas, which requires intelligence as well as adept familiarity with the Quran and Sunna, which latter also requires a good memory. Of other jurists like al-ᶜIqdi (d. 1134/1721), al-Manufi (d. 1135/1722), and Ibn ᶜAli al-Bashbishi (d. 1134/1730), Jabarti remarks that they studied diligently, excelled in law, and became proficient jurists. Nonetheless, Jabarti does not see them as mujtahids, although he admits that Bashbishi expressed unconventional views in legal matters.[186] Moreover, Jabarti's father is said to have "abandoned the practice of taqlid" (*irtafaᶜa ᶜan haḍīḍi al-taqlīdi*) and to have excelled, among other things, in legal

sciences.[187] His unique scholarship and his capability to derive laws (*kāna yastanbiṭu al-fiqha*) earned him the title of a great scholar. Among his many specialized works is a treatise in which he dealt with the legality of newly invented tools and instruments.[188] Despite all this, Jabarti refrained from calling his father a mujtahid. It is not that all Jabarti's contemporaries were incapable of ijtihad and it is certainly not that he was unfamiliar with the term 'mujtahid', for he employed it to describe the eighth/fourteenth century Zaylaᶜi.[189] More probably, his conviction that mujtahids are not supposed to be extant at all made him hesitant to use the term. In this Jabarti reflects the general positive attitude of the community of jurists towards taqlid, which had become an overriding principle by this time.[190]

The drastic decline in the number of recognized mujtahids did not coincide with a parallel decline in the number and importance of newly arising problems that needed ijtihad in order to be solved. This period, that is, the tenth/sixteenth and eleventh/seventeenth centuries, produced a number of new legal questions that were crucial to economic and social life in the Ottoman Empire. These questions could have been solved only by the ulama. Among the critical issues that drew forceful arguments[191] were the waqf of movables, particularly the waqf of cash, coffee, drugs, tobacco, music, and other matters.[192] In fact, these matters were so important and controversial that Katib Chelebi found it compelling to write an entire treatise setting forth the outlines of these issues.[193]

These issues had been taken up by various jurists who were certainly not known as mujtahids. Moreover, legal reasoning based on scripture and analogical inference was employed by such jurists without the slightest hesitation. In the tenth/sixteenth century Ottoman Empire, an acute controversy broke out as to the validity of the waqf of cash. Since there was not textual evidence in the Quran that indicated its legality or illegality and since sound hadith lacked similar evidence,[194] Ottoman jurists had to seek the guidance of the already established doctrines of the very early jurists. Zufar, a student of Abu Hanifa, seems to have been the only early authority to permit cash waqf. But for reasons that cannot be discussed here, later Hanafi scholars had classified the doctrine of Zufar as less authoritative than those of Abu Yusuf and Shaybani. In consequence, Zufar's doctrine was abandoned and the act of constituting cash waqfs had always been associated with interest (*ribā*) and was therefore prohibited. The need to legitimize the Ottoman practice of this transaction drove Abu al-Saᶜud and Bali Efendi to revive Zufar's long-forgotten doctrine.[195] But to do so it was not sufficient to restate Zufar's argument on its own merits, because, for one, it was universally viewed as weak. The lack of textual evidence and ijmaᶜ on the validity of cash waqf left Abu al-Saᶜud and his partisans with qiyas as the only methodological alternative. And this they used, though somewhat crudely.[196] Abu al-Saᶜud's opponents used the same method, drawing support from the doctrines of Abu Hanifa and Shaybani as well as from hadith material.[197]

Genuine legal reasoning was formulated on many other issues, most conspicuous among which were drugs, coffee, and tobacco.[198] A fine typology of legal problems that needed the treatment of one kind of qiyas or the other can be found, as previously mentioned, in the bulk of fatwa literature. It is not within

the scope of our research to indulge in a study of these fatwas, for the aforementioned examples suffice to prove our point; that is, newly arising problems were inevitable even in a slowly developing society, and ijtihad (aside from the Ottoman Qanun) constituted the only method through which such problems were solved.

In practice, therefore, the methodology of ijtihad continued to be employed but mostly without being recognized under its proper name. Many jurists admitted that it was indispensable, and so it was, but they were convinced that no contemporary jurist possessed the qualification to practice it. Many others held the view that undertaking ijtihad in their age was heretical and that it was an art that was perfected only by the forefathers.[199] These views, however, provoked the advocates of ijtihad in the twelfth/eighteenth and thirteenth/nineteenth centuries to respond with a mass of writings in which the main subjects treated were taqlid, the evils that resulted therefrom, and ijtihad as a divinely prescribed legal principle. The authors of anti-taqlid works had increasingly mounted fierce attacks not only against those who claimed that mujtahids were extinct and that the gate of ijtihad was closed but also against the very essence of taqlid, the implementation of which had become a firmly rooted practice among the populace (including the great majority of its intellectuals). The most prominent of these authors were Shah Wali Allah (d. 1176/1762), San^{c}ani (d. 1182/1768), Ibn ^{c}Abd al-Wahhab (d. 1202/1787), Ibn Mu^{c}ammar (d. 1225/1810), Shawkani (d. 1255/1839), and Ibn ^{c}Ali al-Sanusi (d. 1313/1895).

It suffices for the purpose of this article to deal only with Shawkani, whose writings seem to represent not only the classical Sunni trend in favor of ijtihad but also the highest stage to which the controversy between the advocates of ijtihad and taqlid had reached. While accepting the kind of taqlid that usul al-fiqh permitted to the laity, Shawkani abhors the taqlid of the ulama, a taqlid which necessitates the unquestionable acceptance of a given doctrine, without inquiring into the evidence which forms the basis of that doctrine. In all cases, the jurist who is asking the legal opinion of another must also ask, even though he may not be a mujtahid, about the textual evidence that lies in the asl.[200] Shawkani laments the common practice of taqlid which, according to him, became the prevailing norm that was not to be violated. In consequence, any attempt to claim the right of ijtihad was inevitably met with resistance, condemnation, and even public defamation. This is why, Shawkani contends, mujtahids might appear to have vanished; it is not because they have really vanished that their voices are not heard, but because their existence will be significantly endangered should they insist on claiming the right of ijtihad for themselves.[201] The alleged closure of the gate of ijtihad, Shawkani argues, is but one indication of the insipience of these blind muqallids who claimed that after the sixth/twelfth or seventh/thirteenth century, mujtahids ceased to exist.[202] In order to prove the contrary, Shawkani compiled a two-volume biographical work entitled *al-Badr al-Ṭāli*^{c} *bi-Maḥāsin man ba*^{c}*d al-Qarn al-Sābi*^{c} in which he was able to show that after the seventh Islamic century, mujtahids continued to exist. He further argued that ijtihad at later times was facilitated by the skillfully compiled manuals that make available to the jurist details and materials that were otherwise unattainable to

jurists of earlier centuries. In fact, this was a counter-argument against the muqallids, who justified their taqlid on the grounds that it was extremely difficult and complex to undertake ijtihad which, of course, entails the study and analysis of the texts and the application of the methodological principles of usul.[203] Against the muqallids' view that ijma^{c} was reached on the closure of the gate and on the nonexistence of mujtahids, Shawkani explains that in ijma^{c} only the opinions of mujtahids count, and since it is clear that those who maintained the existence of ijma^{c} on the gate's closure consider themselves muqallids, it would seem absurd to claim that mujtahids reached an ijma^{c} on the nonexistence of mujtahids.

CONCLUSION

This study has shown that in Islamic legal theory ijtihad was reckoned indispensable in legal matters because it was the only means by which Muslims could determine to what degree their acts were acceptable to God. To facilitate the practice of ijtihad, minimal legal knowledge was required, and each mujtahid who exerted himself to formulate legal decisions was entitled to a heavenly reward irrespective of whether the result of his ijtihad was right or wrong.

The idea of closing the gate of ijtihad or the notion of the extinction of mujtahids did not appear during the first five Islamic centuries. This is entirely in consonance with the fact that the practical and theoretical importance of ijtihad had not declined throughout this period: Ijtihad and mujtahids were employed in the domain of law and were required in the higher ranks of government. That ijtihad constituted the backbone of the Sunni legal doctrine was manifest in the exclusion from Sunnism of all groups that spurned this legal principle.

It has also been shown that the controversy about ijtihad and the existence of mujtahids started, in its primitive form, only in the beginning of the sixth/twelfth century. Throughout the following centuries, differences among jurists, encouraged by ambiguities in legal terminology, made any consensus on the nonexistence of mujtahids and on the closure of the gate of ijtihad impossible to reach. Consensus was thwarted by three additional principal factors: First, and most important, is the continual existence of renowned mujtahids up to the tenth/sixteenth century. Though the number of mujtahids drastically diminished after this period, the call for ijtihad was vigorously resumed by premodern reformists. Second is the Muslim practice of choosing a mujaddid at the turn of each century. Though this practice may not have had the full support of the entire community of jurists, it proved that at least one mujtahid was in existence each century. Third, the opposition of the Hanbali school which was supported by influential Shafi^{c}i jurists who, by their support, not only added substantial weight to the Hanbali claim that mujtahids existed at all times but also weakened the coalition in which Hanafis and Malikis took part.

The conclusion that the gate of ijtihad was not closed entails a re-evaluation of what we have thus far considered to be the legal history of Islam. The continuity of ijtihad throughout Islamic history suggests that developments in positive law, legal theory, and the judiciary have indeed taken place, and only through a

chronological study of the jurists' writings is it possible to trace these developments and to reconstruct a more accurate picture of the legal history of Islam.

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NOTES

Author's note: I wish to thank Professors Farhat Ziadeh and Nicholas Heer for their valuable comments on the manuscript.

[1]ᶜAlī b. Abī ᶜAlī al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, 3 vols. (Cairo, 1968), III, 204; Tāj al-Dīn al-Subkī, *Jamᶜ al-Jawāmiᶜ*, with the commentary of Jalāl al-Dīn al-Maḥallī, 2 vols. (Bombay, 1970), II, 379–381; Muḥammad b. ᶜAlī al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Haqq min ᶜIlm al-Uṣūl* (Cairo, 1909), pp. 232–233. On the meaning of 'ijtihad', see M. M. Bravman, *The Spiritual Background of Early Islam* (Leiden, 1972), p. 189.

[2]J. Schacht, *An Introduction to Islamic Law* (Oxford, 1964), pp. 70–71.

[3]J. N. D. Anderson, *Law Reform in the Muslim World* (London, 1976), p. 7. Such statements on the closure of the gate can be easily multiplied. See, e.g., M. Khadduri, "From Religious to National Law," in J. H. Thompson and R. D. Reischauer, eds., *Modernization of the Arab World* (Toronto, 1966), p. 41; F. Rahman, *Islam* (Chicago, 1966), pp. 77–78; H. A. R. Gibb, *Mohammedanism* (New York, 1962), p. 104; A. S. Tritton, *Materials on Muslim Education in the Middle Ages* (London, 1957), p. 163; N. J. Coulson, *A History of Islamic Law* (Edinburgh, 1964), p. 81. See also the introduction of G. L. Lewis to Katib Chelebi's *The Balance of Truth* (London, 1957), pp. 18–19. For additional citations on this, see notes 6 and 7 below.

[4]H. A. R. Gibb, *Modern Trends in Islam* (Chicago, 1947), p. 13; idem., *Mohammedanism*, p. 98.

[5]See W. M. Watt, "The Closing of the Door of Igtihad," *Orientalia Hispanica*, I (Leiden, 1974), 675–678.

[6]W. M. Watt, *Islam and the Integration of Society* (Evanston, 1961), pp. 206–207, 242–243; H. Liebesny, "Stability and Change in Islamic Law," *Middle East Journal*, 21 (1967), 19; Coulson, *History*, pp. 80–81; Schacht, *Introduction*, p. 75; Rahman, *Islam*, pp. 77–78.

[7]Cf. C. L. Ostrorog, *The Angora Reform* (London, 1927), p. 31; Anderson, *Law Reform*, p. 7; C. Pellat, "Les Etapes de la decadence culturelle dans les pays Arabes d'Orient," in R. Brunschvig and G. von Grunebaum, eds., *Classicisme et declin culturel dans l'histoire de l'Islam* (Paris, 1957), p. 85.

[8]On the procedure of ijtihad, see Abu Ishaq al-Shirazi, *al-Lumaᶜ fī Uṣūl al-Fiqh* (Cairo, 1908), pp. 83–84; Shawkani, *Irshād*, p. 420; Ibn Habib al-Mawardi, *Adab al-Qāḍī*, ed. M. Sarhan, 2 vols. (Baghdad, 1971), I, 535–555; B. Weis, "Interpretation in Islamic Law: The Theory of Ijtihad," *The American Journal of Comparative Law*, 26, 2 (Spring, 1978), 209–210.

[9]See, e.g., Shirazi, *Lumaᶜ*, p. 4; Amidi, *Iḥkām*, I, 6; Abu Hamid al-Ghazali, *al-Mustaṣfā min ᶜIlm al-Uṣūl*, 2 vols. (Cairo, 1907), I, 5; Shawkani, *Irshād*, p. 3.

[10]Amidi, *Iḥkām*, III, 222; Saᶜd al-Din al-Taftazani, *Hāshiya ᶜalā Mukhtaṣar al-Muntahā*, 2 vols. (Cairo, 1974), II, 308; Ibn al-Humam, *al-Taḥrīr fī ᶜIlm al-Uṣūl*, with the commentary *al-Taqrīr wal-Taḥbīr* by Ibn Amir al-Hajj, 3 vols. (Cairo, 1898–1899), III, 292.

[11]Rahman, *Islam*, p. 78.

[12]Unfortunately, Volume 17 of ᶜAbd al-Jabbar's *al-Mughnī fī Abwāb al-Tawḥīd wal-ᶜAdl*, 20 vols. (Cairo, 1962–), which deals with usul al-fiqh has many lacunae, especially in the chapter on ijtihad.

[13]See Muhammad b. ᶜAli al-Basri, *al-Muᶜtamad fī Uṣūl al-Fiqh*, ed. M. Hamidullah, et al., 2 vols. (Damascus, 1964), II, 929–931.

[14]Ibid., II, 930, line 2 and 931, lines 9–10.

[15]Ibid., II, 932.

[16]Shirazi, *Lumaᶜ*, pp. 85–86.

[17]Ghazali, *Mustaṣfā*, II, 350–354; H. Laoust, *La politique de Gazali* (Paris, 1970), pp. 179–180.

[18]Ghazali, *Mustaṣfā*, II, 353–354.

[19]Amidi, *Iḥkām*, III, 204–205.

[20]Ibid., III, 205–206.

[21]For the requirements of Baydawi and Isnawi, see *Nihāyat al-Sūl fī Sharḥ Minhāj al-Wuṣūl*, 3 vols. (Cairo, 1899), III, 307–313. On Subki see *Jamᶜ*, II, 382–386, especially p. 383. For the requirements of Ibn al-Humam and Ibn al-Amir, see *Taqrīr*, III, 292–294. For those of Ansari and Ibn ᶜAbd al-Shakur, see *Sharḥ Musallam al-Thubūt fī Uṣūl al-Fiqh*, 2 vols. (Cairo, 1907), I, 363–364.

[22]Isnawi, *Nihāyat al-Sūl*, III, 308; Ibn al-Amir, *Taqrīr*, III, 292.

[23]The divisibility of ijtihad was recognized by the great majority of jurists. See Shawkani, *Irshād*, p. 237.

[24]Mawardi, *Adab*, I, 533 f.; Amidi, *Iḥkām*, III, 218.

[25]Shaᶜrani defined 'ahl al-hadith' as follows: "By *ahl al-hadīth* is meant that which comprises the traditionalist (ahl al-Sunna) among the juristconsults, even though they may not be tradition experts." Cited in G. Makdisi, "The Significance of the Schools of Law in Islamic Religious History," *The International Journal of Middle Eastern Studies*, 10 (1979), 4.

[26]I. Goldziher, *The Zahiris: Their Doctrine and their History*, trans. W. Behn (Leiden, 1971), pp. 34–36. On the Hashwiyya see *Shorter Encyclopaedia of Islam*, s.v. "Hashwiya."

[27]Ibn al-Nadim, *al-Fihrist*, ed. G. Flügel (Beirut, 1964), pp. 213, 236; Goldziher, *Zahiris*, p. 35.

[28]Quoted in Goldziher, *Zahiris*, p. 35.

[29]ᶜAbd al-Rahman Ibn al-Salah, *Fatāwā* (Beirut, 1970), pp. 32–33. Relating from Abu Ishaq al-Isfaraᵓini, Ibn al-Salah remarked that "the great majority of scholars believe that the adversaries of qiyas are not qualified to perform ijtihad and may not be entrusted with judgeship; thus, Dawud cannot take part in any ijmaᶜ." See also other similar opinions on the Zahiris recorded in this *Fatāwā*.

[30]Goldziher, *Zahiris*, p. 30.

[31]Ibid., pp. 156–157.

[32]Abu Hamid al-Ghazali, *Iḥyāᵓ ᶜUlūm al-Dīn*, 5 vols. (Cairo, 1967), I, 38.

[33]Goldziher, *Zahiris*, p. 36.

[34]Ibn Khaldun, *al-Muqaddima* (Beirut, n.d.), pp. 446–447 (F. Rosenthal's trans. III, 5–6).

[35]Yusuf Ibn ᶜAbd al-Barr, *Jāmiᶜ Bayān al-ᶜIlm* (Cairo, 1975), p. 323.

[36]On the fact that they rejected ijtihad, see Ghazali, *Mustaṣfa*, II, 387.

[37]Laoust, *La politique de Gazali*, p. 180.

[38]Al-Khatib al-Baghdadi, *al-Faqīh wal-Mutafaqqih*, 2 vols. (Beirut, 1975), II, 72, 76–77.

[39]See Maturidi, *Kitāb al-Tawḥīd*, ed. K. Fathallah (Beirut, 1970), pp. 10–11, 12, 14, 318, 331, 378, passim.

[40]Cited in A. S. Halkin, "The Hashwiyya," *Journal of the American Oriental Society*, 54, 1 (1934), 12.

[41]Ghazali, *Iḥyāᵓ*, I, 133; Taj al-Din al-Subki, *Ṭabaqāt al-Shāfiᶜiyya al-Kubrā*, 6 vols. (Cairo, 1906), II, 287.

[42]Ibn ᶜAli Ibn al-Jawzi, *al-Muntaẓam fī Tārīkh al-Mulūk wal-Umam*, 9 vols. (?) (Haidarabad, 1940), VIII, 268.

[43]Abu al-Wafaᵓ Ibn ᶜAqil, *Kitāb al-Funūn*, ed. G. Makdisi, 2 vols. (Beirut, 1970–1971), II, 510. See also a similar opinion expressed by Muhammad b. Ahmad Ibn Rushd, *Faṣl al-Maqāl*, ed. G. F. Hourani (Leiden, 1959), p. 8.

[44]Amidi, *Iḥkām*, III, 253–254.

[45]Halkin, "Hashwiyya," pp. 3–20. See the views of Hashwiyya and ahl al-hadith, including Ibn Hanbal, on matters of government in ᶜAbd Allah b. Muhammad al-Nashiᵓ al-Akbar, *Masāᵓil al-Imāma wa-Muqtaṭafāt min al-Kitāb al-Awsat fī al-Maqālāt*, ed. J. van Ess (Beirut-Wiesbaden, 1971), pp. 65–67.

[46]Makdisi, "The Significance of the Sunni Schools of Law," p. 6.

[47]*Shorter Encyclopaedia of Islam*, s.v. "Ahmad Ibn Hanbal," by I. Goldziher.

[48]Sound istihsan is the analogical inference of rulings based on sound usul methodology. See Ibn Taymiyya, "Masᵓalat al-Istihsan" in G. Makdisi, ed., *Arabic and Islamic Studies in Honor of Hamilton A. R. Gibb* (Massachusetts, 1965), pp. 454–479.

[49]See Subki, *Ṭabaqāt*, V, 34; Halkin, "Hashwiyya," p. 27.

[50]See Subki, *Ṭabaqāt*, I, 105, 244; II, 89, 96, 126, 131. See also Goldziher, *Zahiris*, p. 31.

[51]Subki, *Ṭabaqāt*, II, 126. Of Ibn al-Mundhir, Subki remarks that "he was a mujtahid that followed no one" (*wakāna mujahidan lā yuqallidu aḥadan*). Subki also considered Ibn Surayj as the

renovator of the fourth/tenth century, see ibid., I, p. 244. Undoubtedly, for later Shafiᶜis, Ibn Surayj was the first great representative of the Shafiᶜi school. He seems to have been the first to reproduce the totality of the Shafiᶜi law, while synthesizing the internal difference of doctrines, e.g., the differences between Shafiᶜi and Muzani. In fact, he composed a work entitled *Kitāb al-Taqrīb bayna al-Muzanī wal-Shāfiᶜī* (see Ibn al-Nadim, *Fihrist*, p. 213).

[52]See Ibn al-Nadim, who allots a separate section in his book for the Jariris; *Fihrist*, p. 234 ff.

[53]Ibn Abi al-Wafaᵓ al-Qarashi, *al-Jawāhir al-Mudīᵓa fī Ṭabaqāt al-Hanafiyya*, 2 vols. (Cairo, 1978), I, 137–138.

[54]Subki, *Ṭabaqāt*, II, 303–307. See some of his views in pp. 306 f.

[55]Ibid., II, 193–205; for his views see especially pp. 195 ff.

[56]Ibid., II, 206–210.

[57]Ibid., II, 112–125. See especially pp. 115 f., 118 f. Subki remarked: "As to his deep knowledge of precise concepts and his excellent ability to extract positive law, Muslims agreed that he was unique in (doing) this. No one from the following generations could equal him in his knowledge . . . He was remembered as a man of good reputation and ijtihad."

[58]See Goldziher, *Zahiris*, p. 26.

[59]Cited in ibid., p. 26. For a different version of this account see Subki, *Ṭabaqāt*, II, 240.

[60]Ibn Amir, *al-Taqrīr*, III, 345; Ibn ᶜAbidin, *al-Rasāᵓil*, 2 vols. (Lahore, 1976), I, 30.

[61]See Basri, *Muᶜtamad*, II, 934 ff.

[62]Ibn ᶜAbd al-Barr, *Jāmiᶜ*, pp. 384, 397.

[63]Baghdadi, *al-Faqīh*, II, 66–70; Mawardi, *Adab*, I, 269–273.

[64]Ibn ᶜAbd al-Barr, *Jāmiᶜ*, pp. 467–468.

[65]On the relationship between political theory and political practice in medieval Islam, see I. J. Rosenthal, "The Role of the State in Islam: Theory and Medieval Practice," *Der Islam*, 50, 1 (1973), 1–28.

[66]ᶜAbd al-Qahir al-Baghdadi, *Uṣūl al-Dīn* (Istanbul, 1928), p. 277. This Baghdadi is not to be confused with al-Khatib al-Baghdadi who died in 463/1070.

[67]ᶜAli b. Muhammad al-Mawardi, *al-Aḥkām al-Sulṭāniyya* (Cairo, 1960), p. 6. See also E. I. J. Rosenthal, *Political Thought in Medieval Islam* (Cambridge, 1958), p. 29.

[68]Mawardi, *Aḥkām*, p. 116.

[69]Ibid., p. 66. Cf. my article "Considerations on the Functions and Character of Islamic Legal Theory," (forthcoming).

[70]Subki, *Ṭabaqāt*, III, 303–305; H. A. R. Gibb, "Al-Mawardi's Theory of the Caliphate," in B. Shaw and W. Polk, eds., *Studies on the Civilization of Islam* (Boston, 1962), pp. 152, 164 n. 6, 165 n. 10.

[71]Muhammad al-Juwayni, *Ghiyāth al-Umam* (Iskandariyya, 1979).

[72]Ibid., p. 274.

[73]Ibid., p. 275; this idea is reiterated throughout the book. See, e.g., pp. 271, 282, 283 passim.

[74]Ibid., p. 300. Although the last phrase reads: "*watakādu hādhihi al-ṣūratu tuwāfiqu hādha lizamānin waᵓahlihi*," the last three words ought to be read as "*hādha al-zamāna waᵓahlahu*."

[75]Ibid., p. 309.

[76]See, e.g., the extensive account of Subki, *Ṭabaqāt*, III, 249–282. See also Abu al-Fida, *Tārīkh*, 4 vols. (Qustantiniyah, 1870), II, 206; Ibn al-Salah, *Fatāwā*, pp. 31–31; *Shorter Encyclopaedia of Islam*, s.v. "Taklid," by J. Schacht.

[77]Juwayni, *Ghiyāth*, p. 376.

[78]Ibid., pp. 397–398.

[79]Ghazali, *Faḍāᵓih al-Bāṭiniyya*, in I. Goldziher, ed., *Streitschrift des Gazali gegen die Batinijja-Sekte* (Leiden, 1956), p. 76.

[80]Ibid., p. 76.

[81]Ibid., p. 78.

[82]Subki, *Ṭabaqāt*, III, 264.

[83]Ibid., III, 251, 256.

[84]Ibid., III, 264; IV, 124.

[85]Ibn Khallikan, *Wafayāt al-Aᶜyān*, ed. Ihsan ᶜAbbas, 8 vols. (Beirut, 1968–1972), III, 168.

[86]Subki, *Ṭabaqāt*, III, 264.

[87]Abu al-Fida, *Tārīkh*, II, 206.

[88]Subki, *Ṭabaqāt*, III, 261–263. Before his death Juwayni is said to have remarked: "(I call upon you) to attest that I abandon any piece of writing that is inconsistent with the (doctrine of the) forefathers." Ibid., III, 263.

[89]On the purposes of Subki in writing his *Ṭabaqāt*, particularly his defense of Ashᶜarism, see G. Makdisi, "Ashᶜari and Ashᶜarites in Islamic Religious History," *Studia Islamica*, 17 (1962), 56–80.

[90]Ghazali, *al-Munqidh min al-Ḍalāl*, printed with ᶜAbd al-Halim Mahmud's *Abḥāth fī al-Taṣawwuf* ᶜan al-Imām al-Ghazālī (Cairo, 1965), p. 68. In several places throughout his books Ghazali conspicuously speaks as a mujtahid. See for instance his *Mustaṣfā*, II, 353, 372; idem, *Munqidh*, pp. 68, 71, 77, 141–142.

[91]Ghazali, *Munqidh*, pp. 141–142; *Iḥyāᵓ*, I, 110–111.

[92]Subki, *Ṭabaqāt*, IV, 112.

[93]Ibid., IV, 107.

[94]Ghazali, *Mustaṣfā*, II, 372.

[95]Ghazali, *Iḥyāᵓ*, I, 63; idem, *Munqidh*, p. 142.

[96]For these opinions see Shawkani, *Irshād*, p. 235.

[97]H. Laoust, "La pédagogie d'al-Gazali dans le Mustasfa," *Revue des Études Islamique*, 44 (1976), 77–78.

[98]Ibn ᶜAqil, *Funūn*, II, 649–650.

[99]Ibid., II, 606; ᶜAbd al-Rahman b. Shihab Ibn Rajab, *al-Dhayl ᶜalā Ṭabaqāt al-Ḥanābila*, ed. H. Laoust and S. Dahhan (Damascus, 1951), pp. 189–190.

[100]Ibn Rajab, *Dhayl*, pp. 190–194.

[101]Ibn ᶜAqil, *Funūn*, II, 602–607, 645–647, 649–650. See also the introduction of G. Makdisi to this book in Vol. I, xlix–l.

[102]This conviction is expressed in a prophetic report. See Abu al-Fida Ibn Kathir, *Nihāyat al-Bidāya wal-Nihāya*, 2 vols. (Riyad, 1968), I, 18.

[103]J. Schacht, "Classicisme, traditionalisme et ankylose dans la loi religieuse de l'Islam," in R. Brunschvig and G. vonGrunebaum, eds., *Classicisme et declin culturel dans l'histoire de l'Islam* (Paris, 1957), p. 148.

[104]Ghazali, *Iḥyāᵓ*, I, 44, 111.

[105]See, e.g., Ibn ᶜAqil, *Funūn*, I, 126–129, 349–350; II, 504, 524–525, 529 n. 463, 641–645, 745–747 passim.

[106]Published in 9 vols. (Cairo, 1968?).

[107]See his penetrating research in *Études de droit Musulman* (Paris, 1971). Chehata's results were supplemented and confirmed by Y. Meron's "The Development of Legal thought in Hanafi Texts," *Studia Islamica*, 30 (1969). The early sources that were used by Chehata and Meron are mentioned in the next two notes.

[108]Abu al-Hasan al-Quduri, *al-Mukhtaṣar*, printed with Ghunaymi's *al-Lubāb fī Sharḥ al-Kitāb* (Cairo, 1961–63); Shams al-Din al-Sarakhsi, *al-Mabsūṭ*, 30 vols. (Beirut, 197-); ᶜAlaᵓ al-Din al-Samarqandi, *Tuḥfat al-Fuqahāᵓ*, 3 vols. (Damascus, 1964); Abu Bakr al-Kasani, *Badāᵓiᶜ al-Ṣanāᵓiᶜ*, 7 vols. (Beirut, 1974).

[109]Muhammad b. Hasan al-Shaybani, *al-Aṣl, 4 vols. (Haidarabad, 1966–1973); Ahmad b. Muhammad al-Tahawi, al-Mukhtaṣar* (Cairo, 1954); Abu al-Layth al-Samarqandi, *Khizānat al-Fiqh*, ed. S. D. Nahi (Baghdad, 1965).

[110]See Chehata, *Études*, pp. 21–22. For a detailed discussion of the developments in the area of legal capacity, see ibid., pp. 93–106: For developments in the area of the wife's maintenance, see Meron, "Development of Legal Thought," pp. 74, 78–84.

[111]Meron, "The Development of Legal Thought," p. 74.

[112]Chehata, *Études*, pp. 98, 100, 105, 166–167; Meron, "The Development of Legal Thought," pp. 78–84.

[113]Chehata, *Études*, p. 166.

[114]Ibid., pp. 105, 170.

[115]Coulson, *A History of Islamic Law*, pp. 81, 84.

[116]Professor G. Makdisi remarked in his *The Rise of Colleges* (Edinburgh, 1981), p. 290, that he

has "not come across any statement to this effect (i.e., the closure) in any document of the Middle Ages . . . " If this remark was intended to apply to the period up to the end of the fifth/eleventh century, it does not but support our forementioned conclusion. Professor Nicholas Heer has also noted to me that he has not found in classical literature any piece of evidence contrary to my conclusion.

[117]This phrase appeared in a discussion in Muhyi al-Din al-Nawawi, *al-Majmūᶜ: Sharḥ al-Mudhahhab*, 18 vols. (Cairo, 1966–71), I, 76. For similar usages see Ghazali, *Mustaṣfā*, II, 315–316; Subki, *Ṭabaqāt*, III, 276–277; Ibn ᶜAqil, *Funūn*, I, 92.

[118]Muhammad Bakri al-Siddiqi, *al-Iqtiṣād fī Bayān Marātib al-Ijtihād* (MS) Princeton, Garrett Collection, Yahuda section 253, fol. 98b.

[119]Ibn Kathir, *Nihāya*, I, 30. Another version of the same hadith was translated by Goldziher, "On al-Suyuti," p. 85.

[120]See Majd al-Din, Shihab al-Din, and Taqi al-Din Ibn Taymiyya, *al-Musawwada fī Uṣūl al-Fiqh* (Cairo, 1964), pp. 472, 545.

[121]Ibn ᶜAqil, *Funūn*, I, 92–93.

[122]Ibn Taymiyya, *Musawwada*, pp. 472, 545.

[123]In fact, Razi (d. 606/1209) is said to have dealt with this problem. But the paucity of information about his views makes any evaluation of his doctrine impossible. See Shawkani, *Irshād*, p. 235.

[124]Amidi, *Iḥkām*, III, 253–254.

[125]Ibn al-Hajib, *Mukhtaṣar al-Muntahā* (Cairo, 1908), pp. 233–234.

[126]Subki, *Jamᶜ al-Jawāmiᶜ*, II, 398–399.

[127]Isnawi, *Nihāya*, III, 331, 349.

[128]Taftazani, *Hāshiya*, II, 307.

[129]Ibn al-Amir, *Taqrīr*, III, 339–340.

[130]Ghazali, *Iḥyāʾ*, I, 63.

[131]On the ranks of mujtahids and degrees of ijtihad see Mirza Kazim Beg, "Notice sur la march et les progrès de la jurisprudence," *Journal Asiatique* 15, ser. 4 (January 1850), 181–192, 204–214; Siddiqi, *Iqtiṣād*, fols. 98a–98b.

[132]Ibn al-Amir, *Taqrīr*, III, 293.

[133]Ibid., III, 346.

[134]Siddiqi's list includes Qaffal, Ghazali, Ibn ᶜAbd al-Salam, Ibn Daqiq al-ᶜId, Taqi al-Din al-Subki, Taj al-Din al-Subki, and Jalal al-Din al-Suyyuti; see *Iqtiṣād*, fols. 99a–99b.

[135]Ibid., fol. 98b.

[136]Ibn ᶜAbd al-Shakur, *Sharḥ*, II, 399–400.

[137]Laoust, "La Pédagogie," p. 77.

[138]Ibn Taymiyya, *Musawwada*, p. 546.

[139]Nawawi, *Majmūᶜ*, I, 71.

[140]E. M. Sartain, *Jalal al-Din al-Suyuti* (Cambridge, 1975), p. 65.

[141]Siddiqi, *Iqtiṣād*, fol. 97b.

[142]Ibid., fol. 97b.

[143]ᶜAbd al-Hayy al-Laknawi, *al-Fawāʾid al-Bahiyya fī Tarājim al-Hanafiyya* (Benares, 1967), p. 89.

[144]These misunderstandings can further be illustrated by an anecdote that took place at the time of Ibn ᶜAbd al-Salam. When the latter claimed the right of ijtihad for himself, the Sultan Musa b. Ayyub wrote to him: "If you claim to be a mujtahid you must prove it (in a convincing manner) that befits such a serious claim, in order that you become a head of a fifth school." Ibn ᶜAbd al-Salam replied: "As to what has been mentioned about ijtihad and the fifth school, (I say that) the usul of religion are not subject to differences (meaning that there is no place for a fifth school) . . . Differences are only in (matters of) furuᶜ." See Subki, *Ṭabaqāt*, V, 93, 95.

[145]Mawardi, *Adab*, I, 463. See examples in Ibn al-Amir, *Taqrīr*, III, 351 and Ghazali, *Mustaṣfā*, II, 384.

[146]Ibn al-Amir, *Taqrīr*, III, 340. Rafiᶜi remarked: "*wal-khalqu kal-muttafiqīna ᶜalā annahu lā mujtahida al-yawma.*"

[147]Subki, *Ṭabaqāt*, V, 120.

[148]Ibid., I, 106. It must be noted that a mujaddid had to qualify as a mujtahid.

[149]Ibn Kathir, *al-Bidāya wal-Nihāya*, 14 vols. (Cairo, 1932), XIII, 250; Ibn al-Amir, *Taqrīr*, III,

340; Subki, *Ṭabaqāt*, V, 18; S. Rizwan Ali, *Izz al-Din al-Sulami* (Islamabad, 1978?), p. 22; Ibn ᶜAbd al-Shakur, *Sharḥ*, II, 399; Suyyuti, *Ḥusn al-Muḥāḍara fī Akhbār Miṣr wal-Qāhira*, 2 vols. (Cairo, 1904), I, 141–147.

[150]Cited in Shawkani, *Irshād*, pp. 235–236.

[151]Cited in Zarqa, "Dawr al-Ijtihād wa-Majāl al-Tashrīᶜ fī al-Islām," *International Islamic Colloquium Papers* (London, 1960), p. 107.

[152]See n. 154 below.

[153]See, e.g., ᶜAbd Allah al-Samhudi, *al-ᶜIqd al-Farīd fī Aḥkām al-Taqlīd* (MS) Princeton, Garrett Collection, Yahuda Section 5183, fols. 177a, 177b; Ibn al-Amir, *Taqrīr*, III, 340; Shawkani, *Irshād*, pp. 235–236.

[154]Consider the following mujtahids: Subki maintained that the Muslim community had agreed that Ibn Daqiq al-ᶜId was a mujtahid as well as a mujaddid. Ibn Daqiq "was a mujtahid mutlaq with complete knowledge of legal sciences" (*Ṭabaqāt*, VI, 2, 3, 6). Ibn al-Rifᶜa, like Subki, professed that an ijmaᶜ had been reached concerning "Ibn Daqiq al-ᶜId and Ibn ᶜAbd al-Salam who reached the rank of ijtihad" (see Siddiqi, *Iqtiṣād*, fol. 99a). Yaᶜmuri described Ibn Daqiq as follows: "He was excellent in deriving rulings from the Sunna and the Quran" (Subki, *Ṭabaqāt*, VI, 2–3; Suyuti, *Ḥusn*, I, 143). Dhahabi and Ibn Nubata considered al-Qadi al-Zamalkani a mujtahid: For Dhahabi, Zamalkani was one of the remaining mujtahids and for Ibn Nubata he was a "mujtahid on whose opinion doubt must not be cast" (Subki, *Ṭabaqāt*, V, 251, 252; Suyuti, *Ḥusn*, I, 145). Subki maintained that Razi was chosen by his successors as the mujtahid and the mujaddid of the sixth/twelfth century (*Ṭabaqāt*, I, 106). Abu Shama was acclaimed as a mujtahid within the Shafiᶜi school (Subki, *Ṭabaqāt*, V, 61; Ibn Kathir, *Bidāya*, XIII, 250). Ibn ᶜAbd al-Salam openly declared himself a mujtahid within the Shafiᶜi school and his claim for the position did not provoke disavowal (Subki, *Ṭabaqāt*, V, 93, 95; see also n. 144 above). Although belonging to the Hanbali school, Ibn Taymiyya did not comply entirely with the Hanbali doctrine: He considered himself a mujtahid fi al-madhhab. In many legal cases (about twenty are known to us) Ibn Taymiyya has diverged from the doctrines of the four eponyms including Ibn Hanbal. See his *al-Fatāwa al-Kubrā*, 5 vols. (Cairo, 1966), III, 95–96. See also *Shorter Encyclopaedia of Islam*, s.v. "Ibn Taymiyya," by M. Cheneb; Ibn Qayyim al-Jawziyya, *Iᶜlām al-Muwaqqiᶜīn ᶜan Rabb al-ᶜĀlamīn*, 4 vols. (Cairo, 1969), II, 231. Cf. Laoust, "L'influence d'Ibn Taymiyya," pp. 17, 20. Taqi al-Din al-Subki, the father of Taj al-Din (the *Ṭabaqāt*'s author), was universally recognized as a mujtahid. For Taj al-Din he was "the best of mujtahids." In fact, Taj al-Din enumerates dozens of cases in which his father completely diverged from Shafiᶜi or rulings he had chosen to follow although they were disfavored in the Shafiᶜi school (see his *Ṭabaqāt*, VI, 113, 147, 182–196). Safadi and Suyuti also thought of Taqi al-Din al-Subki as a unique mujtahid (see Suyuti, *Ḥusn*, I, 145–146; idem., *al-Taḥadduth bi Niᶜmat Allāh*, ed. E. Sartain [Cambridge, 1975], p. 205). Taj al-Din al-Subki himself is supposed to have said: "Now, I am the mujtahid of the universe; I say this and I need not justify what I say." A century and a half later, Suyuti maintained that the statement of Subki was never contested (Siddiqi, *Iqtiṣād*, fol. 99b; Suyuti, *Ḥusn*, I, 150).

[155]Sartain, *Jalāl al-Dīn*, I, 63.

[156]Suyuti, *Taḥadduth*, p. 205.

[157]The ranks of mujtahids and the confusion about them misled even modern scholars. See, e.g., Snouck Hurgronje, *Selected Works*, ed. G. Bousquet and J. Schacht (Leiden, 1957), p. 282, who thought that Suyuti claimed for himself the highest degree of ijtihad, thus challenging the schools' eponyms.

[158]Sartain, *Jalāl al-Dīn*, I, 64, 65.

[159]Cited in Goldziher, "On al-Suyuti," *Muslim World*, 68, 2 (April 1978), 98.

[160]On this see Suyuti, *Taḥadduth*, pp. 193, 203; Sartain, *Jalāl al-Dīn*, I, 61; Goldziher, "On al-Suyuti," p. 98.

[161]Sartain, *Jalāl al-Dīn*, I, 61; Goldziher, "On al-Suyuti," pp. 98–99.

[162]See the chapter that he devoted to the discussion of this issue in *Taḥadduth*, pp. 215–227.

[163]Ibn Kathir, *Nihāya*, I, 30. Cf. another version of this hadith in Goldziher, "On al-Suyuti," p. 81; Subki, *Ṭabaqāt*, I, 104.

[164]Subki, *Ṭabaqāt*, I, 104; Goldziher, "On al-Suyuti," p. 81.

[165]Subki, *Ṭabaqāt*, I, 105; Goldziher, "On al-Suyuti," p. 82. Ibn ᶜAsakir, however, preferred Ashᶜari; see A. Khuli, *al-Mujaddidūn fī al-Islām*, 2 vols. (Cairo, 1965), I, 13.

[166]Subki, *Ṭabaqāt*, I, 105; Suyuti, *Taḥadduth*, p. 221.

[167]According to the sources that Goldziher used, the Hanbali al-Muqaddisi (d. 600/1203) and the Shafiᶜi Nawawi (d. 676/1277) were designated; see Goldziher, "On al-Suyuti," pp. 83–84. However, from the Shafiᶜi viewpoint, Subki chose Razi, favoring him over Rafiᶜi (see Subki, *Ṭabaqāt*, I, 106).

[168]Subki, *Ṭabaqāt*, I, 106; VI, 3; Suyuti, *Taḥadduth*, p. 220.

[169]Suyuti, *Taḥadduth*, pp. 207, 225; Goldziher, "On al-Suyuti," p. 84.

[170]Shawkani, *Irshād*, p. 236; Goldziher, "On al-Suyuti," p. 82.

[171]*Encyclopaedia of Islam*, 2nd ed., s.v. "Ahmad al-Sirhindi," by Sh. Inayatullah.

[172]Khuli, *al-Mujaddidūn*, p. 1. For further details on mujaddids see pp. 12–29.

[173]Up to the fifth/eleventh century mujaddids were only Shafiᶜis (see Subki, *Ṭabaqāt*, I, 104–106; Goldziher, "On al-Suyuti," pp. 82–83). The only uncertain exception was Ashᶜari who was claimed by Shafiᶜis as well as Hanafis (see Qarashi, *Jawāhir*, II, 544–545). From the sixth/twelfth century onward Shafiᶜi mujaddids remained the majority; the Hanbalis produced a few mujaddids and, as far as I know, there were no Hanafi or Maliki candidates for tajdid.

[174]The fifth/eleventh century tabaqat works seem to have been the earliest works that Subki could find as sources for his biographical dictionary; see his *Ṭabaqāt*, I, 114. See also I. Hafsi's bibliographical essay "Recherches sur le genre 'Tabaqat' dans la littérature Arabe," *Arabica*, 23, 3 (1976), 8–12, 17–18, 24.

[175]Laoust, "La pédagogie d'al-Gazali," p. 77.

[176]Kazem Beg, "Notice sur la marche," pp. 181–192, 204 ff.; Ibn Taymiyya, *Musawwada*, pp. 547–548.

[177]Ibn ᶜAbidin, *Hashiyat Radd al-Muhtar*, 8 vols. (Cairo, 1966), I, 77; idem, *Rasāᵓil*, I, 11–13; M. Suhrawardy, "The Waqf of Moveables" *Asiatic Society of Bangal*, 7 n.s. (1911), pp. 330–331; Laknawi, *Fawāᵓid*, pp. 89–90.

[178]Kazem Beg, "Notice sur la marche," pp. 206–214.

[179]Nawawi, *Majmūᶜ*, I, 73–74; Ibn Taymiyya, *Musawwada*, p. 549.

[180]Ibn ᶜAbidin, *Ḥāshiya*, I, 77.

[181]Ibn ᶜAbidin, *Rasāᵓil*, I, 11.

[182]Suhrawardy, "The Waqf," pp. 330–331.

[183]Ibn ᶜAbidin, *Rasāᵓil*, I, 12.

[184]This attitude seems to have started at an earlier period. When dealing with the four law schools as they have become established by the eighth/fourteenth century, the Maliki scholar Ibn Khaldun (d. 808/1405) observed that the complexity of the schools' legal doctrines had prevented people from attaining ijtihad and for this reason scholars made it an obligation for all Muslims to follow the established schools through the writings of renowned jurists. "Jurisprudence," Ibn Khaldun argues, "means this and nothing else. The person who would claim ijtihad nowadays would be frustrated and have no adherents" (Al-Muqaddima, p. 448 [Rosenthal's trans. III, 8–9). Undoubtedly, Ibn Khaldun had independent mujtahids in mind, because it was well known to him, as much as it was well known to all jurists, that a limited mujtahid or a mujtahid within the school, cannot have followers. From the general usages of ijtihad in the *Muqaddima*, it seems to me that, for Ibn Khaldun, ijtihad exclusively meant the kind of major legal activity undertaken during the first three centuries of Islam. Consider what he has to say elsewhere in his *Muqaddima*: "The school doctrine of each eponym became, among his adherents, a scholarly discipline in its own right. They were no longer in a position to apply ijtihad and qiyas. Therefore, they had to make reference to the established principles (*al-uṣūl al-muqarrara*) of their eponyms, in order to be able to solve (new) problems according to (old) similar ones and disentangle them when they got confused (*tanẓīru al-masāᵓili fil-ᵓilḥāqi wa-tafrīquhā ᶜinda al-ishtibāhi*). A firmly rooted faculty (of knowledge) was required to enable a person to undertake such (analogy) and disentanglement and to apply the school doctrine of his particular eponym to those (processes) according to the best of his ability. This (practice) of faculty is (what is meant) at this time by the science of jurisprudence" (*Al-Muqaddima*, p. 449). The sentence "*tanẓīru al-masāᵓili . . . ishtibāhi*" was translated by Rosenthal as "to analyze problems in their context and disentangle them when they got confused" (see III, 13). For Ibn Khaldun, therefore, ijtihad is the legal activity that leads to the construction of a new school which will eventually attract adherents. Although the processes of unraveling doctrinal problems and applying analogy to new cases within a school are considered part of the Sunni ijtihad methodology, Ibn Khaldun does not see them as

related to ijtihad. For him qiyas and ijtihad are much more than these processes. But whether he accepts the Sunni usulist terminology or not, this is nonetheless a limited form of ijtihad. One may find it striking that Ibn Khaldun insists on the inability of jurists to practice ijtihad at a time when he is familiar with the reputation and career of contemporary mujtahids such as Subki and Bulqini (d. 805/1403), both universally acknowledged as mujtahids fi al-madhhab. See *al-Muqaddima*, p. 449 (Rosenthal's trans., III, 12); for Subki and Bulqini see Subki, *Ṭabaqāt*, VI, 146–216; Suyuti, *Ḥusn*, I, 168 f.; Goldziher, "On al-Suyuti," p. 84. It is then clear that Ibn Khaldun's conception of this question is an excellent example of the general attitude of muqallids towards the issue of the existence of mujtahids. He knew that the eponyms and their equals were extinct; he also knew that the machine of legal interpretation was constantly at work, but he was still puzzled as to how to square these facts with the ever-growing idea of the extinction of mujtahids. It was, therefore, suitable as well as convenient for him to say that contemporary scholars were incapable of ijtihad, implying the extinction of mujtahids, and that the activity of jurists of his time had nothing to do with ijtihad, despite the fact that it entailed the use of analogy and types of legal interpretation.

[185]ᶜAbd al-Rahman al-Jabarti, *ᶜAjāʾib al-Āthār fī al-Tarājim wal-Akhbār*, 7 vols. (Cairo, 1958–67), III, 41–42.

[186]Ibid., I, 186, 218–219; II, 28.

[187]Ibid., III, 65–103, especially p. 65.

[188]Ibid., III, 88. On *istinbāṭ* see Ibn ᶜAbidin, *Rasāʾil*, I, 31.

[189]Jabarti, *ᶜAjāʾib*, III, 67.

[190]See Shawkani, *al-Qawl al-Mufīd fī Adillat al-Ijtihād wal-Taqlīd* (Cairo, 1974), passim; Muhammad b. Ismaᶜil al-Sanᶜani, *Irshād al-Nuqqād ilā Taysīr al-Ijtihād* (Beirut, 1970), passim; Shah Wali Allah, *ᶜIqd al-Jīd* (Cairo, 1965), passim; G. H. Jalbani, *Life of Shah Waliyullah* (Delhi, 1980), pp. 56–57; Ibn ᶜAbidin, *Rasāʾil*, I, 28.

[191]Chelebi, *Balance*, p. 129; J. E. Mandaville, "Usurious Piety: The Cash of Waqf Controversy in the Ottoman Empire," *International Journal of Middle East Studies* 10 (1979), 295–304.

[192]Husayn b. Iskandar al-Rumi, *Risāla fī al-Dukhān* (MS) Princeton, Garrett Collection, Yahuda Section 3854, fols. 2b–5a; Muhammad b. Mustafa al-Khadimi, *Risāla fī al-Qahwa wal-Dukhān* (MS) Princeton, Garrett Collection, Yahuda Section 3225, fols. 48b–49a. On these subjects see Chelebi, *Balance*, Chapters II, III, V, VII, XII, XX; Mandaville, "Usurious Piety."

[193]*The Balance of Truth.*

[194]J. Schacht, "Early Doctrines on Waqf," in *Mélange Fuad Köprülü* (Istanbul, 1953), 443.

[195]Mandaville, "Usurious Piety," pp. 299–304; Suhrawardy, "The Waqf," 388 ff.

[196]See, e.g., the argument of Bali Effendi in Mandaville, "Usurious Piety," pp. 301–303; Chelebi, *Balance*, p. 129.

[197]Chelebi, *Balance*, p. 129.

[198]See, e.g., the arguments concerning the legality of hashish in F. Rosenthal, *The Herb: Hashish versus Medieval Muslim Society* (Leiden, 1971), pp. 105–130.

[199]See, e.g., Ibn ᶜAbidin, *Rasāʾil*, I, 28; Ibn ᶜAbd al-Shakur, *Sharḥ*, II, 399; Sanᶜani, *Irshād*, pp. 2, 11–12; Samhudi, *al-ᶜIqd al-Farīd*, fol. 177b; Khadimi, *R. fi al-Qahwa*, fol. 48b.

[200]Shawkani, *al-Qawl*, p. 7.

[201]Ibid., pp. 21–24, 31.

[202]Shawkani, *al-Badr*, I, 2.

[203]Shawkani, *Irshād*, p. 236; idem, *al-Badr, I, 3.*