THE CONCEPT OF *TAQLĪD* IN THE REFORMIST'S POINT OF VIEW

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Abstract

Essentially this article attempts to reveal the reformists' point of view regarding the concept of taqlīd. Taqlīd itself had been regarded by most scholars as the main cause for the degeneration of the Muslim intellectual tradition. Therefore, in the reformists' point of view, any attempt to remove such negative attitude must be scheduled through the academic and intellectual means. For the specification purpose, the discussion is divided into two main issues pertaining to the concept of taqlīd, such as; definition and basic theoretical foundation of Islamic reformism, the reformist's criticism toward the concept of taqlīd and the summary and conclusion of study.

Basically this work tries to portray the reformist's point of view regarding the concept of *taqlīd*. For specification purpose, the discussion will be divided into several issues pertaining to the concept of *taqlīd*.

Definition and Basic Theoretical Foundation of Islamic Reformism

Most scholars had used the terms of Islamic reformism and Islamic modernism on one hand, and Islamic conservatism and Islamic traditionalism on the other synonymously. Based on

this premise, therefore, some scholars such as C.C. Adams[1] and Fazlur Rahman[2] have defined Islamic reformism and Islamic Modernism interchangeably.

Based on such connotations, we can assert that Islamic reformism or Islamic modernism is a modernist school of Islamic thought with three main characteristics: it is dominated by a theological factor,[3] it aims to free Islam from the rigidity of Islamic orthodoxy[4] and finally it intends to show that Islam is a religion capable of adapting to the demands of modern, present day life.[5]

Initially, Islamic modernism is a continuation and an extension of thought from the Islamic reformism of the early period. Islamic reformism has contributed some ideas to Islamic modernism in the twentieth century. In respect of this contribution, Esposito has said that "Pre-modern revival movements of the eighteenth and nineteenth centuries contributed to the pattern of Islamic politics and provided a legacy for twentieth century Islam."[6]

Considering the theoretical foundation of reformism, they believed Islam authorized them to reform Islamic teachings and to redress Muslim religious corruption and moral degeneration. Their ideas were basically founded on the Islamic concepts of

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1 Charles C. Adams (1968), *Islam and Modernism in Egypt*, New York, pp. 1.

2 Fazlur Rahman (1969), *Islam*, Chicago, pp. 222.

3 Anis Ahmad (1988), "The Reorientation of Islamic History: Some Methodological Issues", in *Islam: Source and Purpose of Knowledge*, Virginia, pp. 292-293.

4 Hisham Sharabi (1970), *Arab intellectuals and the West: the Formative Years, 1875-1914*, Baltimore, pp. 24.

5 Esposito (1984), *Islam and Politics*, New York, p. 45.

6 *Ibid*, pp. 30, 39.

tajdīd and *iṣlāḥ*.[7] *Tajdīd* is usually translated as renewal, and *iṣlāḥ* as reform. Together they reflect a continuing tradition of revitalizing Islamic faith and practice within the historic communities of Muslims. It provides a basis for the conviction that movements of renewal are an authentic part of the working out of the Islamic revelation in history.[8]

Iṣlāḥ has been the word usually used by Arab scholars to mean reform. It derives from the verb *aṣlaḥa*, which means to correct, to redress or to purify from corruption.[9] The concept of *iṣlāḥ* is based on the Quranic verses commanding Muslims to carry out *iṣlāḥ* among their people[10] and assuring God's reward to *al-Muslihūn*.[11]

Voll has identified three themes that persist in the tradition of *tajdīd-iṣlāḥ* in Islamic history. They are the returning to the Quran and Sunnah, performing *ijtihād* and reaffirming the uniqueness and authenticity of the Quranic message.[12]

The primary purpose of Islamic reformism is twofold. First, to define Islam by bringing out the fundamentals in a rational and liberal manner and emphasizing the basic ideals of Islamic brotherhood, tolerance and social justice. Second, to interpret the teachings of Islam in such a way as to utilise its dynamic character within the context of the intellectual and scientific progress of the modern world.[13]

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7 Hassan Saab (1963), "The Spirit of Reform in Islam", in *Islamic Studies*, 2, pp. 18.

8 John O. Voll (1983), "Renewal and Reform in Islamic History: *Tajdīd* and *Iṣlāḥ*", in *Voices of Resurgent Islam*, New York, pp. 32.

9 Hassan Saab, "The Spirit of Reform", pp. 15.

10 Quran, surah 4:14.

11 *Ibid*, surah 7:170.

12 Voll, "*Renewal and Reform*", pp. 35-42.

13 D. E. Smith (1966), "Emerging Patterns of Religion and Politics", in *South Asian Politic and Religion*, Princeton, pp. 32-33.

Initially, Muslim reformists intended to bridge the glaring disparity between Islamic idealism and the historical development of the Muslim community. In other words, they discerned the disparity between meta-Islam and historical Islam, and tried to defeat it. They strongly believed in the superiority of Islam over other religions. Also in the power of Islam to make Muslims once again superior compared to the adherents of other religions, just as Islam had done during period of the prophet and his pious caliphs.[14]

Muslim reformists considered that the solution to all Muslim problems was to accept and practice true Islamic teachings. Hence, they presented to Muslims what they considered as being true Islamic teachings, and they attacked what they judged to be religious innovations and deviations. Therefore, their movement can be characterised as a religious protest against the course that history was taking. Accordingly, they identified this course as a decline due to moral and religious laxity.[15]

Above all, Islamic reformists asserted the need to revive the Muslim community through a process of a re-interpretation or reformulation of Islamic heritage in the light of the contemporary world.[16] In doing this, they had endeavoured to discover the spirit of the revealed sources (Quran and Sunnah) rather than holding mechanically to its literal meanings.[17]

Based on this attitude, therefore, they had created positive links between the thought in the Quran and modern thoughts at certain key points, resulting in the integration of modern

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14 Fazlur Rahman, *Islam*, p. 210.

15 Jacques Waardenburg (1985), "Islam as a Vehicle of Protest", in *Islamic Dilemmas: Reformers, Nationalists and Industrialization*, Berlin, p. 30.

16 Esposito, *Islam and Politics*, p. 45.

17 Fazlur Rahman (1981), "Roots of Islamic Neo-Fundamentalism", in *Change and the Muslim World*, New York, p. 29.

institutions with the moral and social orientation of the Quran.[18] Their main purpose was to show the compatibility of Islam with modern ideas and institutions, whether they be reason, science or technology.[19]

The Reformist's Criticism Towards the Concept of *Taqlīd*

In the legal matter, the reformist had targetted much of their reformation effort into comprehending the concept of *uṣūl al-fiqh* and defaming the concept of *taqlīd*. By defaming *taqlīd*, their discourse can be further sorted into several different course, such as:

(1) Emphasizing the Valuable Nature of the Methodology of *Uṣūl al-Fiqh*.

Basically, the methodology of *uṣūl al-fiqh* is meant to regulate and to guide the jurists in their efforts at doing *ijtihād*, has been regarded by most of the modern scholars as capable of providing a solution to the reformation of Muslim law.[20] Shariah, being an eternal system contains an inbuilt mechanism for formulating new rules to meet new needs and to provide solutions for new problems. These mechanisms take the form of certain methodologies of *uṣūl al-fiqh* such as *ijmāᶜ*, *ijtihād*, *istiṣlāḥ*, *istidlāl*, *talfīq* and many others.[21]

However, before they can be useful instruments for the purpose of reformation, several outdated principles of *uṣūl al-*

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18 *Ibid*, pp. 27-28.

19 Esposito, *Islam and Politics*, p. 45.

20 J.L. Esposito (1974), "Muslim Family Law in Egpyt and Pakistan: A Critical Analysis of Legal Reform, Its Sources and Methodological Problems," unpublished Ph.D disertation for Temple University, USA, pp. 258-317.

21 Abdul Rahman Idoi (1988), "Muslim Personal Law Today", in *Journal of Islamic Studies*, no. 8, pp. 82-83.

fiqh must be revised[22], including the principle of considering the *ᶜilm uṣūl al-fiqh* as a way to justify and sometimes explain the static legal decisions that had already been taken by the recognized ancient jurists.[23]

It is clear that *ᶜilm uṣūl al-fiqh* against the classical concept can be transformed into a valuable source and method of research from which modern scholars can derive a solution to contemporary problems according to the principles of Islam.[24]

Considering the effectiveness of such concept of *uṣūl al-fiqh* has forced some Muslim scholars, such as S. Waqar Ahmed Husaini, to examine the planning of environmental engineering systems in Islamic society, by using the methodology of *uṣūl al-fiqh* in most of his basic framework.[25] Thus, most of the modern Muslim scholars have shown the intimate relationship between *ᶜilm uṣūl al-fiqh* and any contemporary subjects.[26]

(2) Revealing the Negative Effects of *Taqlīd*.

Generally, *taqlīd* connotes the denial of the notion of dynamism in Islamic law. The phenomenon of *taqlīd* has been considered by most scholars as a factor responsible for the belief in the immutability and rigidity of Islamic law. After all,

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22 Ṭāhā Jābīr al-ᶜAlwānī (1990), *Uṣūl al-Fiqh al-Islāmī: Sources Methodology in Islamic Jurisprudence*, Herndon, The International Institute of Islamic Thought, pp. 67-70.

23 Hallaq (1984), "Consideration on the Function and Character of Sunni Legal Theory", in *JAOS*, 104, pp. 681-683.

24 Ṭāhā Jābīr al-ᶜAlwānī, *Uṣūl al-Fiqh*, pp. 68.

25 See S. Waqar Ahmed Husaini (1980), *Islamic Environmental System Engineering*, London.

26 For instance, see ᶜAbd al-Ḥamīd Abū Sulaymān (1987), *The Islamic Thoery of International Relations: New Directions for Islamic Methodology and Thought*, London; Rayner (1991), *The Theory of Contracts in Islamic Law: a Comparative Analysis with Particular Reference to the Modern Legislation in Kuwait, Bahrain and the United Arab Emirates*, London.

in contrast to a view of the immutability of Islamic law, the adaptable scholar's view had admitted that after "the closing gate of *ijtihād*", Islamic law showed less and less adaptability to social changes.[27]

While explaining the state of stagnation and decline of Muslim law, Ṣūbḥī Maḥmaṣṣānī said that the real reason for the acceptance of *taqlīd* by the Muslim community lies in a misunderstanding of the distinction between the Shariah and *fiqh*. Most of the jurists followed the legal works of the past master as regards the basic obligation provisions, without any discrimination or examination in the light of the original principles and texts and without the criterion of reason and thought.[28]

The modern jurists maintain that the main reason for the decline of Muslims is the inhibition of independent, creative and critical analysis as well as the lack of vigorous discussion and debate about Islamic tradition and legal matters that resulted from the domination of *taqlīd*. On this matter, ᶜAbd al-Wahhāb Khallāf said that:

> "Islamic law is compared to a flooding stream. It stops when the dam is closed, and flows again when the dam is opened, bringing forth all kinds of fruits, vegetables and food grains necessary for the existence of human life. The permission of application of *ijtihād* within the framework of the Quran and sunnah must be allowed. Abū Ḥanīfah and other *Imām*; in their period were also discouraged from applying *ijtihād*, but they did not surrender and believed that they had a right to do so as

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27 Muḥammad Khālid Masᶜūd (1977), *Islamic Legal Philosophy, A Study of Abū al-Shaṭibi's Life and Thought*, Islamabad, pp. 9-10.

28 For, more information see Ṣūbḥī Maḥmaṣṣānī (1954), "Muslims: Decadence and Renaissance", in *Muslim World*, v. XL1V, pp. 186-201.

the earlier Muslims did. They said: they were men and we are also men."[29]

Therefore, to them, Islam is not a confining and inhibiting force but an inspiration and spur to progress. Indeed, dynamic change within Islam is not only a possiblity, it is based upon the authority of Shariah. Furthermore, Islamic law must be carefully revised to be flexible and adaptable enough to incorporate modern political, economic, social, cultural and legal conditions.[30]

Most of the reformists such as Jamāl al-Dīn al-Qāsimī held that *taqlīd* had two harmful effects on the Muslim community; First, it sowed dissent among Muslims, and secondly, it obstructed the disinterested search for truth. With respect to the former, al-Qāsimī viewed *taqlīd* as the underlying principle of legal school fanaticism *(al-taᶜāṣṣub li al-madhhab)*.[31]

Al-Qāsimī wrote that no *madhhabs* have existed before the fourth century, when the quality of the ruling Caliphs deteriorated and they could no longer distinguish between qualified and unqualified contenders for judicial posts. As incompetent men increasingly obtained such posts, frequently jurists could do no more than repeat what earlier authorities had written without understanding their reasoning. These developments led to the normalization of *taqlīd* and its institutionalization of the *imām*'s ruling certain *madhhab*. When the jurists choose to follow one or another *madhhab*, they preferred the rulings of their respective *madhhab* without a reasoned consideration of the merit of other *madhhab*. Fanaticism of *madhhab* became an ubiquitous feature of the jurist's discourses as they imparted their fanaticism to pupils.

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29 ᶜAbd al-Wahhāb Khallāf (1968), *Khulāṣah Tārīkh al-Tashrīᶜ al-Islāmī*, Cairo, pp. 102.

30 *Ibid.*

31 Jamāl al-Dīn al-Qāsimī (1935), *Qawāᶜid al-Taḥdīth min Funūn Muṣṭalah al-Ḥadīth*, Damascus, pp. 93, 323-336 and 364.

Violent manifestations of *madhhab* fanaticism flared up when jurist's of rival *madhhabs* vied for a ruler's favor, and incited rulers against opposing jurists. In the most extreme cases of *madhhab* fanaticism, the jurists excommunicated one another.[32]

Furthermore, Qāsimī believed that *taqlīd* divided Muslims into rival, sometimes hostile, *madhhab* because it disrupts rational discourse. In this regard he cited Ibn Qayyim saying "In *taqlīd* is the nullification of reason's useful purpose."[33] *Madhhab* fanaticism poses an obstacle between man and the truth because the partisans of *madhhab* believe only that which confirms their opinion. Qāsimī once lamented the spread of such prejudicial thinking in Muslim society;

> "The hearts of most people are confused with the disease of *taqlīd*, they believe something, then seek a proof for it. They do not want anything but what agrees with what they believe. When someone comes with what differs with their belief, they reject it, they would oppose it even if that led to negating reason entirely. Most people believe and then reason, you rarely find one who reasons and then believes."[34]

As a result of the *muqallid*'s unthinking adherence to his *madhhab*'s rulings, any debate with him is bound to be fruitless and therefore it is best to exclude him from rational discourse. In this matter, he cited al-Ghazālī's dictum, "the basic condition of the *muqallid* is that he is silent and not spoken of, because he is unable to follow the course of debate."[35]

In sum, the reformists held that *taqlīd* and *madhhab* partisanship, which most Muslims regarded as Islamic, were in fact irrational and un-Islamic.

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32 *Ibid*, pp. 194.

33 *Ibid*, pp. 357.

34 *Ibid*, pp. 357-358.

35 *Ibid*, pp. 390.

Furthermore, Ṭāhā Jābir al-ᶜAlwānī had stressed that *taqlīd* is prohibited in Islamic law due to several reasons,[36] i.e.:

"(i) *Taqlīd* robbed any chance to renew and reform the ummah through *ijtihād,* therefore blocking their progress.

(ii) *Taqlīd* causes the ummah to divide into many sects and subsects and they remain in fallacy and delusion.

(iii) *Taqlīd* represents a *bidᶜah,* a blameworthy innovation as well as a deviation from the straight path, and is an alien idea to the Islamic view.

(iv) *Taqlīd* requires the acceptance of an opinion without evidence. It is prohibited because Muslims cannot accept any view without evidence. All Muslims must use their intellectual capabilities awarded by God.

(v) The early generation of Islam considered *taqlīd* as one of the traits of hypocrites and non-Muslims. Therefore it is an evil and must be avoided."

(3) The Main Reasons of Accepting *Taqlīd* by Muslim Community.

According to reformists, the acceptance of *taqlīd* by most of Muslim community was mainly due to their misunderstanding of the concept of Shariah and *fiqh.* Having been impressed by the work of *fiqh* by the classical jurists, they maintained that the early jurists, i.e., the founder of the *taqlīd,* had honestly examined, compiled and interpreted the patterns and intricacies of Islam when it was still in its youth, thus providing a reliable guide, which needs no alteration.[37] Subsequently, they followed these works transmitted them as basic obligatory provision,

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[36] Ṭāhā Jābir al-ᶜAlwānī, "*Taqlīd* and the Stagnation of the Muslim Mind", in *The American Journal of Islamic Social Sciences,* v. 8, no. 3, 1991, pp. 513-520.

[37] Asghar Ali Engineer, "Tashrīᶜ (Process of Law-Making) in Islam", in *Religion, Law and Society,* Geneva, 1995, pp. 33.

without any discrimination or examination in the light of the Quran and Sunnah.[38]

Furthermore, they believed that the truth expressed in the teaching of the great Muslim jurists in the classical period that formed the religious knowledge was a matter of faith, infallible and not necessarily meant to be subject to the scrutiny of reason.[39] That truth, they argued, did not change and did not alter due to a change of time and conditions. It was as valid in modern times as when it was formulated. A reexamination of this work was not only unnecessary but also dangerous since it could lead to misinterpretation and error.[40]

Additionally, al-Shawkānī laments the common practice of *taqlīd* which according to him became the prevailing norm that was not to be violated. In consequence, any attempt to claim the right of *ijtihād* was inevitably met with resistance, condemnation and even public defamation. This is why, al-Shawkānī contends, *mujtahids* might appear to have vanished. It is not because they have really vanished, but their voices are not heard and their existence will be significantly endangered should they insist on claiming the right of *ijtihād* for themselves.[41]

To prove this kind of negative attitude among the Muslim masses toward the right of *ijtihād* claimed by the Muslim jurists, we can examine the historical events happening to al-Suyūṭī (d. 911/1505) at the end of the eighth/fourteenth century. Al-

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38 Ṣubḥī Maḥmaṣṣānī, "*Muslim: Decadence and Renaissance* ", pp. 190-192.

39 ᶜAbd al-Ghafūr Muslim, "Islamization of laws in Pakistan : Problems and Prospect ", in *Islamic Studies*, 26, 1987, pp. 266-267.

40 *Ibid*; Wālid Saif, " Shariah and Modernity ", in Tarek Mitri (ed), *Religion, Law and Society : A Christian-Muslim Discussion*, Geneva, 1995, pp. 14.

41 Al-Shawkānī, *al-Qawl al-Mufīd fi Adillat al-Ijtihād wa al-Taqlīd*, Cairo, 1974, pp. 21-24 and 31.

Suyūṭī had claimed for himself the rank of Mujtahid. In his polemical work *al-Radd ᶜala man Akhlada ilā al-Arḍ wa Jahila anna al-ijtihād fī kull ᶜAṣr Farḍ*, he argues that *ijtihād* is a *farḍ kifāyah* to be fulfilled by the Muslim community, and if there were no *mujtahid* it would mean that the community had agreed upon error, something that is of course impossible. Should all Muslim jurists become *muqallids*, *ijtihād* would cease, and in consequence Shariah would be demolished. Therefore, according to him, *ijtihād* is the backbone of Shariah and without it no legal decision can be reached.[42]

Because of his claim, al-Suyūṭī had put himself in a difficult position and was disdainfully resented.[43] In order to justify his claims, he argues that he was striving to fulfill the *farḍ kifāyah* of *ijtihād* to discharge this duty on behalf of his community. Unfortunately, although he insisted on undertaking the fulfillment of this duty, a number of his contemporaries denied him the right of *ijtihād*.[44]

(4) The Reasons of Repudiating the *Taqlīd*.

While rejecting *taqlīd*, they usually quoted several Quranic verses in supporting their demand. Simultaneously, they also retained that *taqlīd* is *ḥarām* (prohibited). This rule is applicable to all persons whether *mujtahid* or the *muqallid*. There are several Quranic verses that for this group could be understood as indication toward prohibiting *taqlīd*. Among those are;

> "When it is said to them, follow what Allah has revealed, they say on the contrary, we shall follow the

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42 E.M. Sartain (1975), *Jalāl al-Dīn al-Suyūṭī*, Cambridge, pp. 1 and 63.

43 *Ibid.*, pp. 1 and 61; Goldziher (1978), "On al-Suyūṭī", in *Muslim World*, 68, pp. 98.

44 *Ibid.*

> ways of our fathers. What though their fathers were without wisdom and guidance."[45]

For the jurists who invalidate the *taqlīd* this verse, and many others[46], clearly shows the Muslim that they should not behave like the non-Muslims who remained chained and enslaved.

Taqlīd is considered as the way to fatalism, tyranny, injustice and despotism. The evil of *taqlīd* can be seen in a verse where Allah says;

> "Thus did he (Pharaoh) make fools of his people and they obeyed him, and Pharaoh said: I but show you that I see myself nor do I guide you but to the path of right."[47]

There are many *ḥadīths* that categorically rejected *taqlīd*. Among those, while commenting on the verse 9:31, ᶜAdī b. Ḥātim (a convert Christian) said to the Prophet;

> "But we did not actually worship them, O the Messenger of Allah. The Prophet replied, but did they not make what was prohibited for you lawful and what was lawful for you prohibited, and did you not follow what they told you. ᶜAdi replied, yes, to which the Prophet said, this is how you worshipped them."[48]

Based on this *ḥadīth* and many others, the jurists who opposed *taqlīd* explained that the Prophet condemned *taqlīd* and recommended Muslims to use their faculties in exercising *ijtihād* to seek the truth in religious matters.

Initially, most of the Muslim reformists have strongly opposed the concept of *taqlīd*. For instance, after quoting the

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45 *Quran*, surah 2:170.

46 *Ibid*, surah 43:23 and surah 33:67.

47 *Ibid*, surah 40:29.

48 Al-Baydāwī (n.d.), *al-Taqlīd: al-Mashrūᶜ min-hā wa al-Mamnūᶜ*, Cairo, pp. 13.

saying of Abū Bakr that "follow me where I obey God, but if I disobey Him, you owe me no obedience", Ibn Taymiyyah commented that there is no human who is infallible in matters of religion and divine law except the Prophet, and no one has any obligation to follow anyone other than the Prophet, and by extension, those who obey his message.[49]

Therefore, all the Muslims must perform the duty to seek after authenticity in jurisprudence, which is most certainly assured in the texts. In this regard, the reformist usually quoted the view of the great jurists which explicitly discouraged *taqlīd*. Mālik, for example, has said, in effect, "I am human; I err, and I also speak rightly. Examine what I say against the Quran and Sunnah." Al-Shāfiᶜī also has said, "If you find a contending *ḥadīth* to be authentic, disregard what I say." Abū Ḥanīfah, too was known to have said on a given occasion, "this is my judgement, if there is a better opinion, I shall be the first to accept it."[50]

While Ibn Taymiyyah recommended general reliance on the Ḥanbalī's traditions because of its alleged conformity and proximity to the Quran and Sunnah[51], he was also careful to advise against uncritical dependence on a particular *madhhab* even if it were the Ḥanbalī's because, as he point out, our last reference must be not Ḥanbalism as such but the Quran and Sunnah. For this he warns that any one who dogmatically associates himself with a particular *imām* will be like those who are guided by their desires *(ahl al-ahwā')* and it is the same whether his dogmatism favours Mālik or Abū Ḥanīfah or Aḥmad.[52]

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49 Ibn Taymiyyah (1966), *al-Fatāwā al-Kubrā*, Cairo, v. 11, pp. 460.

50 *Ibid*, pp. 458.

51 Muḥammad Abū Zahrah (1952), *Ibn Taymiyyah*, Cairo, pp. 78.

52 *Ibid.*

Thus, for Ibn Taymiyyah, the only absolutely right *madhhab* is that of the Prophet Muḥammad, whereas the teachings of the other *madhhab* or authorities must be taken with a critical mind. Yet, there is nothing wrong with one affiliating himself with a certain *imām* or *madhhab* if one is incapable of knowing the Shariah. But it is one's duty, if one possesses the necessary knowledge, "to fear God as much as one can and search for the kind of knowledge determined by God and the Prophet and do what is commanded and avoid what is forbidden."[53]

Furthermore, Ibn Taymiyyah in doing his own *ijtihād*, had justified his independence from the *madhhab* of Ḥanbalī and the other *madhhabs*. Quoting Ibn Hanbal's words, he stated;

> "Imam Aḥmad used to say, do not imitate me or Mālik or al-Shāfiᶜī or al-Thawrī, but investigate as we have investigated. It is reprehensible for a man to be followed in his manner of religion. Therefore, do not let me imitate you in religion, for doubtless they would not escape error."[54]

Thus, the reformists had used the objects of *taqlīd*, i.e, the *imāms*, to ivalidate *taqlīd* by showing that it contradicts the *imām*'s explicit methods, principles and statement. Therefore, to them, the only correct way to follow the *imāms* would be to apply their methods, not to reiterate their substantive rulings.

Meanwhile, according to the reformists, there is a large difference between Shariah and *fiqh*. *Fiqh* is the legal science

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53 Ibn Taymiyyah (1963), *Majmūᶜ Fatāwā al-Shaykh al-Islām Aḥmad Ibn Taymiyyah*, Riyadh, v. 20, pp. 208-209.

54 *Ibid.*

55 Muhammad Hashim Kamali (1989), "Nature, Sources and Objectives of Shariah", in *The Islamic Quarterly*, v. xxxiii, p. 215.

and can sometimes be used as synonymous with Shariah.[55] The two are, however, different in that Shariah is closely identified with divine revelation, that knowledge that could not be obtained except from the Quran and Sunnah.[56] Shariah, being a divine law, implies that its tenets, principles and injunctions are determined independently by God who alone has the prerogative to determine the moral, legal and religious value that the Muslim must observe.[57]

Fiqh on the other hand has largely been developed by the jurists and consists of rules that are mainly founded on human reasoning and *ijtihād*.[58] Shariah is thus the wide circle and it embraces in its orbit all human actions, whereas *fiqh* is narrower in scope and addresses mainly what is called legal practice *(al-ahkām al-ᶜamaliyyah)*. The path of the Shariah is laid down by God and his Prophet; the edifice of *fiqh* is built by human endeavor.[59]

This classification used by the reformists is merely to establish the principle that juristic opinion and *ijtihād* are never to be equated with the authority of divine revelation. Because of the possibility of human error in this exercise, the rules derived do not command finality. *Fiqh* is therefore a human edifice and its rules have often been developed by individual jurists in response to particular issues. These rules may be changed and different solutions may be provided and if the various solutions all conform to the general guidance of the Shariah, then a

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56 Al-Maududi (1975), *The Islamic Law and Constitution*, Lahore, p. 69; Muhammad Asad (1961), *The Principle of State and Government in Islam*, Los Angeles, p. 13.

57 Al-Shawkānī (1909), *Irshād Fuhūl*, Cairo, p. 7.

58 ᶜAbd al-Salām Madkūr (1964), *Madkhal al-Fiqh al-Islāmī*, Cairo, pp. 17; N.P. Aghnides (n.d.), *Muhammadan Theories of Finance*, Lahore, p. 1.

59 J.S. Nielsen (1995), "Shariah, Change and Plural Societies", in *Religion, Law and Society*, Geneva, pp. 27-28; A.A.A. Fyzee (1974), *Outline of Muhammadan Law*, New Delhi, pp. 22.

plurality of rulings on the same issue may exist and the Shariah remains open to such possibilities.[60]

However the reformists, having said this, see the invaluable contribution of the great jurists of the past to the legal and intellectual heritage of Islam as undeniable and never to be taken lightly.[61] It does not necessarily imply rejection of all the achievements and experiences of classical jurisprudence. Their piety and logical consistency force Muslims to admire them even when we disagree with them. But the best tribute to the enduring quality of the classical is the reformists admission that contemporary transformation of Muslim societies requires a "change that starts precisely at the point where classical Islamic legal thought halted; which uses classical legal terminology, employs classical legal methodology and examines classical legal principles"[62] to re-understand the immutable Shariah sources for application as *fiqh* today.

(5) Challenging the Claim of the Cessation of the Right of *Ijtihād*.

Al-Shawkānī vehemently denies the claim that independent *mujtahid* have become extinct. To prove the contrary, he compiled a two-volume biographical work entitled *al-Badr al-Ṭāliᶜ bi Maḥāsin min baᶜd al-Qarn al-Sābiᶜ* in which he shows that after the seventh Century, *mujtahid* continues to exist.[63]

Furthermore, he argues that it is utter nonsense to say that God bestowed the capacity to knowledge and *ijtihād* on

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60 Muhammad Hashim Kamali (1994), "Shariah and the Challenge of Modernity", in *IKIM Journal*, v. 2, no. 1, pp. 2-3.

61 Muhammad Hashim Kamali, "*Nature Sources*", pp. 217.

62 K.A. Faruki (1962), *Islamic Jurisprudence*, Karachi, pp. 33.

63 W. Hallaq (1984), "Was the Gate of Ijtihad Closed", in *International Journal of Middle East Studies*, 16, pp. 32.

the bygone generations of *ᶜulamā'* but denied it to the latter generations.[64]

In the same case, Muḥammad ᶜAbduh said that all generations of Muslims had the right of *ijtihād* because he believed that Islam did not limit this right only to the early generations of Muslims. He argued that Islam attributed folly and levity to those who accept blindly the words of their predecessors. It called attention to the fact that precedence in point of time is not one of the signs of knowledge, nor a mark of superiority of intellect or intelligence but that the preceding generations and the later ones are on an equal level as far as critical acumen and natural abilities are concerned.[65]

Furthermore, he said that later generations of Muslims should be more knowledgeable than earlier generations because they had the capacity to find evidence from past circumstances, to reflect upon them and to use them for their benefit in the world in the light of present knowledge and circumstances.[66]

Abū Zahrah is equally critical of the alleged closure of the door of *ijtihād*. He said how could anyone be right in closing the door that God has opened for the exertion of human intellect. Anyone who has laid this claim can surely have no convincing argument to prove it. Furthermore, he expressed that the fact *ijtihād* has not been actively pursued has had the chilling effect of moving the people further away from the sources of Shariah. The tide of *taqlīd* has carried some as far as to say that there is no further need to interpret the Quran and Sunnah after the door of *ijtihād* was closed.[67]

In his conclusion to the study of the gate of *ijtihād*, Hallaq said that the alleged closure of *ijtihād* as has been proposed by

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64 Al-Shāwkanī, *Irshād*, pp. 254.

65 Adams, *Islam in Egypt*, pp. 132.

66 *Ibid.*

67 Abū Zahrah (1958), *Uṣūl al-Fiqh*, Cairo, pp. 318.

certain western scholars must be revised, based on several reason,[68] i.e:

"(1) The continual existence of renowned *mujtahid* up to the tenth Century. Although the number of *mujtahid*s drastically diminished after this period, the call for *ijtihād* was vigorously resumed by premodern reformists.

(2) The Muslim practice of choosing the *mujaddid* at the turn of each century. Although this practice may not have the full support of the entire Muslim jurists, it proved that at least one *mujtahid* was in existence each century.

(3) The opposition of the Ḥanbalī school supported by the Shafiᶜī jurists who, by their support, not only added substantial weight to the Ḥanbalī claim that *mujtahid* existed at all time but also weakened the coalition in which Ḥanafī and Mālikī took part."

The reformists, some educated in modern institutions, believe that the restrictions imposed on the Islamic law by closing the gate of *ijtihād* cannot be maintained anymore. On the contrary, they strongly believed that there is an urgent need in the Muslim intellectual community to revive and reopen the gate of *ijtihād*,[69] based on several reasons:

(1) The works of the past *fiqh* founded on the *ijtihād* activity by the classical jurists were mainly based on their own social, economic, educational and political backgrounds. On the other hand, the social, economic and political conditions of the

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[68] Hallaq, "Was the Gate of Ijtihad Closed", pp. 33-34.

[69] Especially in the economic and medical aspects, see Yūsuf al-Qaraḍāwī (1980), *al-Ijtihād fi Sharīᶜah al-Islāmiyyah Maᶜa Naẓaratayn Taḥlīliyyatayn fi al-Ijtihād al-Muᶜāṣir*, Kuwait, pp. 133-138. See also Khālid Ziadeh, "On the Urgency of Ijtihad", in *Religion, Law and Society*, pp. 48-50.

Muslim society today are entirely different from the circumstances of the earlier periods and require considerable changes in social, economic, political and legal codes to meet these requirements. In fact, the companions of the Prophet and the great *imāms* themselves had a rule to follow in this situation. It is said "the change of laws to accord with the change of time and age cannot be denied."[70] A further instance for this view can be seen from the discourse of *dār al-ḥarb wa dār al-Islām* which is prevalent in the classical *fiqh* heritage, has no origin in the Shariah but is purely the work of the *fuqahā'* in their descriptions of the political and life realities of their own times. This idiom is not applicable in the present Muslims state due to the changing situation of modern developments.[71]

In fact, the reformists such as ᶜAbduh who promoted the new type of *ijtihād* found practicing it when faced with the new raise problems. Three of his *fatwās* were particularly famous. In one *fatwā*, he made it permissible for Muslims to eat the flesh of animals slain by Jews and Christians because they were *Ahl al-Kitāb* (People of the Book). In another *fatwā*, he declared it is lawful for Muslims to deposit their money in the Postal Saving Banks where they would obtain interest. In the third of these *fatwās*, he noted that although the Quran permits a man to have as many as four wives, it does not enforce this practice. Further as the Quran specifically enjoins husbands to treat all wives equally, ᶜAbduh felt that this was a clear, although indirect, probihition of polygamy as it is impossible for any man to treat his all wives equally. Similarly, he strongly disapproved of the way *ṭalāq* (repudiation of marriage) was being arbitrarily and unilaterally misused by Muslim men. He forcefully argued that

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70 Walid Saif, "Shariah and Modernity", in *Religion, Law and Society*, pp. 12-13; Ṣubḥī Maḥmaṣṣānī, *Falsafat*, pp. 106-111.

71 See Mokhtar Ihsan Aziz, "Notes on Shariah, Fiqh and Ijtihad", in *Religion, Law and Society*, pp. 44-45.

the Quran orders the appointment of arbitrators upon discord between husband and wife. Since *ṭalāq* implies discord between the spouses, repudiation of marriage should not be allowed unless the court authorizes it.[72]

Furthermore, some contemporary reformist-Muftis such as Makhlūf, Shaltūt and Qaraḍāwī had comprehended ᶜAbduh's approaches that clearly describe their freedom from the constraints of the *madhhab*. For instead, they had referred directly to the textual sources (the Quran and Sunnah), without citing the position of the old school *(madhhab)*.[73]

(2) With modern facilities for study and research and exchange of information available, all the most valuable sources for Islamic law, such as the collection of the *ḥadīth* and others, had been well compiled. Therefore, this will ease the Muslim scholars go deeply into the letter and spirit of the revealed sources and precedent of the classical jurists, and to apply them to present-day situations.[74] In fact, in this case, al-Shawkānī clearly said that the activity of *ijtihād* in the later times was facilitated by the skillfully compiled manuals that make available to the jurists details and materials that were otherwise unattainable to the jurists of earlier centuries.[75]

(3) Against the statement that the qualifications required for the practices of *ijtihād* were made "so immaculate and rigorous and were set so high that they were humanly impossible of

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72 Futher information see M.K. Nawaz (1966), "Some Aspects of Modernization of Islamic Law", in *The Conflict of Traditionalism and Modernism in the Muslim Middle East*, Texas, pp. 74.

73 Makhlūf (1965), *Fatāwā Sharᶜiyyah wa Buḥūth Islamiyyah*, Cairo, v. 2, pp. 9; Shaltūt (1974), *al-Fatāwā*, Cairo, pp. 15; al-Qaraḍāwi (1982), *Min Hudā al-Islām: Fatāwā Muᶜāṣarah*, Kuwait, pp. 10-11.

74 ᶜAbd Wahāb Khallāf (1968), *Khulāṣah Tārīkh al-Tashrīᶜ al-Islāmī*, Beirut, pp. 102; Yūsuf al-Qaraḍāwī, *op.cit.*, pp. 144-145.

75 Al-Shawkānī, *Irshād*, pp. 236.

fulfilment"[76], Muhammad Hashim Kamali said that "is an implausible supposition since the total knowledge required on the part of the jurists enabled many to undertake *ijtihād* in one area of law or another. Their task was further eased by the legal theory, in particular the *ḥadīth* that absolved the *mujtahid* who committed an error from the charge of sin, and even entitled him to a spiritual reward. Furthermore, the recognition of the divisibility of *ijtihād* by most of the jurists will enable the specialist in particular areas of the Shariah to practice *ijtihād* even if he were not equally knowledge in all of its other disciplines".[77]

For the alternative, some modern Muslim scholars such as Muhammad Hashim Kamali and Sharaf al-Dīn al-Qarāfī clearly delineated that the activity of *ijtihād* in modern times can be operated in many capacities,[78] i.e.:

First, with regard to the textual rulings of the Quran and Sunnah which are open to interpretation and are speculative *(ẓannī)* in respect to either meaning *(dalālah)* or transmission *(riwāyah)* or both, the sphere of *ijtihād* is limited to finding the correct interpretation that is in harmony with the letter and objectives of the law. Should there be an apparent conflict between two textual rulings of this type, the *mujtahid* may select and prefer one to the other by the accepted rules that govern the conflict of evidence.

Second, with regard to the matters on which there is no *naṣṣ* or *ijmāᶜ*, *ijtihād* is to be guided by the general objectives of the

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76 Fazlur Rahman, *Islām*, pp. 78.

77 Muhammad Hashim Kamali (1989), *Principles of Islamic Jurisprudence*, Kuala Lumpur, pp. 477.

78 Muhammad Hashim Kamali, "Sources, Nature and Objectives", pp. 224-225; Sharaf al-Dīn al-Qarrāfī (1938), *al-Iḥkām fī Tamyīz al-Fatāwā ᶜan al-Aḥkām*, Cairo, pp. 67-68.

Shariah *(maqāsid al-sharīᶜah)*. This type of *ijtihād* is usually called *ijtihād bi ra'y*, or *ijtihād* founded on opinion.

Third, with regard to matters which have been regulated by the existing rules of *fiqh* that may originate in *qiyās, istiḥsān* and other varities of *ijtihād*, and the *mujtahid* reaches the conclusion that they no longer serve the objectives of Shariah owing to considerations of social change, he may attempt fresh *ijtihād*. In doing so, the *mujtahid* is again to be guided by the general principles and objectives of Shariah to construct a ruling that is best suited to the prevailing circumstances and which responds to the legitimate needs and interests of the people.

Fourth, *ijtihād* in the modern times needs to be a collective endeavor *(ijtihād jamāᶜī)* to combine the skill and contribution, not only of the scholars of Shariah, but of experts in various disciplines. This is because acquiring a total mastery of all relevant fields and skills that are important to contemporary society is difficult for any one individual to attain. Therefore, Muslim scholars need to combine *ijtihād* with the Quranic principle of consultation *(shāraᶜ)* and make *ijtihād* a consultative process.[79]

In explaining such collective *ijtihād* in the Pakistan case, Faruki had suggested that this *ijmāᶜ* Committee should be elected by an electoral college selected by popular vote. This committee would be charged with deciding the admissibility of legal drafts. The emphasis, therefore, would be shifted from the great *mujtahid* of a specific law of school to a collective *ijtihād* exercised not retrospectively but prospectively.[80]

When considering the scientific achievement attained by Muslim scientists in the modern world, for instance, ᶜAlī

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79 'Abd al-Ḥamīd Abū Sulayman, "Islamization of Knowledge: A New Approach Toward Reform", pp. 102-103; Yūsuf al-Qaraḍāwī, *op.cit.*, pp. 127-128; Kamal Faruki (1962), *Islamic Jurisprudence*, Karachi, pp. 87 and 163-164.

80 Faruki, *Islamic Jurisprudence*, pp. 83 and 153-165.

Manṣūr demands that against the traditional method to fix the exact dates of the month of *Ramaḍān* by the observation of the new moon by two for Muslims to witnesses[81], it is time apply modern astronomic calculations to this issue. He said that the reason the sages of the Shariah, in the classical *fiqh*, did not rely on astronomic calculation was the lack of scientific knowledge and the fact that they were not certain that such calculation would be exact. Therefore, he repeated emphatically that the tremendous development of science in the modern time permits exact calculations, and stresses the fact that modern radio communications could make it possible for all the Islamic people throughout the world to hold their festivals simultaneously and not at different dates, according to the observation of the new moon in various region.[82]

(6) The Approved Means of *Taqlīd* in Islam.

While accepting the kind of *taqlīd* that *uṣūl al-fiqh* allowed to the common people, al-Shawkānī abhors the *taqlīd* of the jurist, a *taqlīd* that requires the unquestionable acceptance of a given doctrine, without inquiring into the evidence that forms the basis of that doctrine. In all cases, the jurist who is asking the *fatwā* of another must also ask, though he may not be a *mujtahid*, about the textual evidence that lies in the *aṣl*.[83]

Therefore, *taqlīd* which is enjoined in Islam does not mean to surrender or submit. It is to open one's eyes and to keep them open to the *fatwā* issued by the *mujtahid*.[84] In this matter, Ṭāhā Jābir al-ᶜAlwānī had added several roles which had to be

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81 See P.E. Walker (1978), "Eternal Cosmos and the Womb of History; Time in Early Isma'ili Thought", in *IJMES*, v. 1X, pp. 355.

82 ᶜAlī Manṣūr, *al-Majallah*, March 1948, pp. 840-842.

83 Al-Shawkānī (1974), *al-Qawl al-Mufīd fī Adillah al-Ijtihād wa al-Taqlīd*, Cairo, pp. 7.

84 Shāh Walī Allāh (1965), *ᶜIqd al-Jīd*, Cairo, pp. 36.

played by the Muqallids in searching for the *mujtahid*'s *fatwā*, they were[85]:

(i) They must request a formal ruling not as a request for *taqlīd* in the sense of blind imitation, but rather for a learned opinion along with the relevant proof on a question of *fiqh*.

(ii) They must participate through his explanation of the issues in question. Thus his role in this matter is crucial, it may be considered an essential source for framing the question and putting the matter into the proper perspective.

(iii) They may contribute through his discriminating selection by means of comparison and careful deliberation of each one's qualifications of a *mujtahid*.

(iv) They may ask the *mujtahid* about how his *ijtihād* was performed. They must then weigh the evidence adduced in favour of the eventual decision. A *mujtahid* may not deny a *muqallid* access to this information. This questioning and answering may be seen as an educational aspect of *ijtihād*.

(v) The *muqallid* as a legally responsible Muslim is not excused from the duty to propagate and invite others to Islam to the best of his ability. Among the ways he may do this is to explain to others the evidence used to reach the ruling in question, and how the process of *ijtihād* was performed."

Nevertheless, when reviewing the legality of the practicing *taqlīd* among the Muslims, the jurists were divided into two groups, i.e., those who supported *taqlīd* and those who invalidated it. For the first group, it is compulsory for the layman to apply *taqlīd* to either a qualified jurist or one of the

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[85] Ṭāhā Jābīr al-ʿAlwānī (1992), "The Scope of Taqlid", in *The American Journal of Islamic Social Sciences*, v. 9, no. 3, pp. 384-385.

recognized schools of law. They based their view on several Quranic verses, such as;

> "If a contingent from every expedition remained behind they could denote themselves to the understanding of Din and admonish the people when they return to them, thus that they may guard themselves."[86]

According to Ghazālī, based on these verses and many other verses, such as (surah 4:57 and 16:43), the jurists had agreed that the application of *taqlīd* by a layman to the opinion of the scholars is obligatory.[87]

They also adduce many *ḥadīth* that enjoins Muslims to follow the jurists. The Prophet has given permission for *taqlīd* and it was not confined to any particular person but was generalized with the specification of righteousness and piety.[88] Therefore, the jurists allowed an ignorant person to follow a learned, pious and trustworthy person.

This kind of *taqlīd* will enable a person to follow those jurists who strictly adhere to the Quran and Sunnah. This is the correct sense of the term and true spirit of *taqlīd* which is not only permissive but enjoined on the Muslims.[89] In this matter, Shāh Walī Allāh said that;

"When we follow any *mujtahid* we actually follow him with an understanding that he is fully conversant with the Quran and Sunnah. His statement would base either on any Quranic verses or sunnah deduced from them through the analogical reasoning process."[90]

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86 Quran, surah 9:122.

87 Al-Ghazālī, *Mustaṣfā min ʿIlm Uṣūl al-Fiqh*, Cairo, 1937, v. 11, pp. 121-124.

88 See Imran Ahsan Nyazee, "The Scope of Taqlīd in Islamic Law", in *Islamic Studies*, v. XX11, 1983, pp. 43.

89 *Ibid.*

90 Shāh Walī Allāh, *ʿIqd al-Jīd*, pp. 69-70.

In his analysis, Shāh Walī Allāh classifies *taqlīd* into several modes. Out of these, he condemns the following;[91]

(i) *Taqlīd* when it is exercised by a *mujtahid.*

(ii) Persistence of a *muqallid* in the *taqlīd* of his imam even after knowing with full conviction that the provisions of law of his school or the opinion of his imam runs counter to the provision of the Quran and Sunnah.

(iii) The *taqlīd* of a *muqallid* with such a conviction that he would strictly follow his imam at all costs, even when his opinion is proved to be wrong by legal proofs.

Conclusion

The reformism movements in the Muslim tradition were not new phenomena. Based on the prescriptions of the textual sources, such effort has become a normal agenda within the historic communities of Muslims. It means that, from the beginning, Islam had authorized and encouraged the Muslim to reform Islamic teachings and to redress Muslim religio-moral corruption and degeneration. It provides a basis for the conviction that movements of renewal are an authentic part of the working out of the Islamic revelation in Muslim history.

Being disappointed with the state of political and intellectual stagnation in the Muslim world, the reformist movements were generated by some distinguished Muslim scholars. In most of their programmes, they had tried to interpret the teachings of Islam in such as way so as to bring

[91] Shāh Walī Allāh, *Ḥujjah Allāh al-Bālighah*, v. 1, pp. 155.

out its dynamic character in relation to the intellectual and scientific progress of the modern world.

Since the task of reviving true Islam is not an easy one and requires substantive changes in the traditional approach to doctrinal interpretation and analysis, fundamentally, they proposed that Muslims should liberate themselves from the bond of *taqlīd*. With such accomplishment, they concentrated much of their effort towards a restoration of the methodology of *uṣūl al-fiqh* contained within it various principles as well as the finest machinery that can be utilized for the renewal of Islamic law.