

IJTIHAD

(Consensus)

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Question of the Controversy Regarding the Closing of the Gate of *ijtihad*

By the beginning of the tenth century, the Sunny legal schools (*madhhabs*) of Islam had reached a level of development where all essential questions on matters of positive law had been addressed. The detailed elaboration of the judicial system by this time represented a legal stability that was to continue meant the continuity and persistence of the legal tradition, where society accepted the broad lines of the law as laid down by the early masters. This essay is concerned with the question of the controversy regarding the closing of the gate of *Ijtihad* and its impact on the classical Islamic legal theory, assessing whether it was a fallacy or indeed historical fact? To do so I will try to define first the word "*Ijtihad*", its meaning and significance in Islamic law, then I will go back different stages of the classical period and their controversies and ways they have define the *Ijtihad*. I shall first demonstrate that *Ijtihad* was indispensable in legal theory because it constituted the only means by which jurists were able to discover the judicial judgements decreed by God.

The Definition of *Ijtihad*

In general usage, the Arabic word *ijtihad* is defined literally as "striving, exerting" and, in the jurisprudential sense, "the capacity for making deduction in matters of law in cases to which no express text or rule already determined by *Ijma* (consensus) is applicable".¹ However, it has also been described as "rethinking".² Commonly known as "independent reasoning."³ The opposite of *ijtihad* is *taqlid*, which Peters defines as "accepting an opinion concerning a legal rule without knowledge of its bases".⁴ Literature on *ijtihad*, displayed a similar plethora of definitions. Edward Sell defined *ijtihad* as "the attaining to cretin degree of authority in searching into the principles of jurisprudence".⁵ In its technical legal connotation, it denotes the through exertion of Jurist's mental faculty in finding a solution for a case of law. The term carried the connotation of exerting one's effort on behalf of the Muslim Community and its interests.⁶

Ijtihad in legal theory

During the first century of the *Hijrah* (seventh century c.e), when religious law was still being elaborated, and when the secular administrative and customary practice had not yet become integrated with the religious legal system, *Ijtihad* was closely associated with *ra'y*, expedient and free reasoning in the sphere of law. In formative period when complete islamization had not yet taken place, and so *ijtihad* linked with *ra'y* was still a legitimate activity; It was the founder of the Shaf'i school of law, Muhammad ibn idris al-Shaf'i (d.812), who first make a clean break from *ra'y* and to adopt *ijtihad* as a methodology synonymous with *qiyas*, an umbrella term encompassing a number of legal inferences.⁷ In the eight century *ijtihad* was also used in the sense of "technical estimate" or "fair judgment," particularly "an effort at setting the value of a thing," as in estimating due compensation or damages.⁸ In legal matters, by contrast, *ijtihad* was restricted to the realm of probability. Wherever the authentic texts were unambiguous with regard to a certain matter, *ijtihad* had no role to play, since God had made his decree clear. The province of *ijtihad* was furthest restricted to exclude those cases that had become subject to consensus (*ijma*), since the sanctioning authority of this instrument was thought to render the judgments of such cases certain, irrevocable, and thus not subject to juristic interpretation.

Islamic legal theory has stipulated the requirements a jurist must fulfil in order to qualify as a *mujtahid*. Proficient knowledge of theology was deemed a necessary condition since it provides the proofs for the authority of revealed texts that are the material sources of the law.

¹ Rahim,A, *The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki,Shafi and Hanabli School*. Madras, 1911.p.168-9.173.

² Rahman, Fazlur, "*Post-Formative Developments in Islam*" in *Islamic Studies*, Kaachi, 1,4 (1962)

³ Schacht,Joseph, *An Introduction to Islamic Law* (1964, p.69.

⁴ *ibid*

⁵ Sell, E *The Faith in Islamic Law*: London,1896),p.32

⁶ *The Oxford Encyclopaedia of the Modern Islamic World*, vol, 2. pp178.

⁷ *Ibid* p,179

⁸ *Ibid*

Controversy regarding the Ijtihad

Long before the fourth century and certainly before the final formation of the positive law of the Sunni law schools, the question of who could or could not practice *ijtihadh* came under discussion.⁹ Qualifications for *ijtihadh* has been stated in several works of early jurists, among them is *al-Mu'tamad fi Usul al-Fiqh*¹⁰ of Abu Husays al Basri (d.436/1044) Apart from a slight emphasis on a few matters of religion and belief with which the *mujtahid* must be acquainted, and additional prerequisite of familiarity with the circumstances under which the *Qur'an* was revealed (*asab al-nuzul*), Amidi (d.632/1234) adds nothing to what others had previously said.¹¹ Only space here prevents me from discussing later jurists' writings on this issue, but to be sure, the successors of Ghazali and Amidi, such as Baydawi (.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 Abd al-Shakur (d.1225/1810) did not depart significantly from the established Sunni legal doctrine propounded by Ghazali.¹²

Although the slight differences in the definitions of *ijtihadh* do not at first seem significant, the differences may have led to confusion regarding the concept of *ijtihadh* and thus to the arguments amongst medieval Islamic scholars regarding whether it should or should not be exercised. In attempting to answer the question, Joseph Schacht argued that by the beginning of the 4th/10th century, Islamic law had been elaborated in detail and thus Muslim scholars came to the conclusion that all essential questions had been thoroughly discussed and finally settled.¹³ Schacht believed, that the reason for raising the question of who was qualified to practice *ijtihadh* and who was not and, above all, the reason for the closure of the gate of *ijtihadh*.¹⁴ He thoroughly discussed this view that "there was never any question of denying to any scholar or specialist of the sacred Law the right to find his own solutions to legal problems. The sanction, which kept ignoramus at bay, was simply general disapproval by the recognized specialists. It was only after the formative period of Islamic Law had come to an end that the question of *ijtihadh* and of who was qualified to exercise it was raised."¹⁵ Schacht adds that around 900 A.D." the points had been reached when the scholars of all schools felt that all essential questions had been thoroughly when 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 and for all." Coulson, argues that the closer of the gate of *ijtihadh* " was probably the result not of external pressure but of internal causes, The point had been reached where the material sources of the divine will-their content now finally determined had fully been exploited."¹⁶ Interestingly, Ostrorog discusses not only the closing of the "door of interpretation", but also allots a metaphorical paragraph to each of the closing of the "doors" of allegorical exegesis, human reason, and religious criticism.¹⁷ The same definitive reference to the closure of the door of *Ijtihad* was used by Edwin Calver, when he wrote, " The Muslim authorities" we have seen have held that the four sources of law and doctrine are adequate for all Islam for all time. They have expressed this position by saying the door of *ijtihadh* or the right of personal judgment is closed".¹⁸ Gibb asserts that orthodox scholars limited *ijtihadh* because they "feared individual reinterpretation".¹⁹ As above I have mention that Schacht diverges for a moment, almost acknowledging a paradox, when he states later "whatever the theory might say on *ijtihadh* and *taklid*, the activity of later scholars, after the closing of the door of *ijtihadh*, was no less creative of later scholars than that of their predecessors".²⁰

Impact on the theory

If this is indeed so, one would imagine any development or growth in Islam, however insignificant, to be impossible, because, according to Schacht, the latitude of activity, of later scholars was overwhelmingly restricted. Astonishingly enough, a few paragraphs later, Schacht remarks that the "activity of the later scholars, after the 'closing of the door of *Ijtihad*' was no less creative, within the limits set to it by the nature of the *Shar'ia*, than that of their predecessors."²¹

⁹ Gate of *Ijtihad*. P130

¹⁰ See Muhammad b. Ali al-Basri, *al-Mu'tamad fi Usl a-Fiqh* , ed M. Hmaidullah, vol., 2. pp.85-86

¹¹ Amidi, *Ihkam*, 204-205

¹² Was the Gate of *ijtihadh* closed, p.7

¹³ Schacht, J. *An Introduction of Islamic Law* (Oxford: The Clarendon Press, 1964), pp.69-71.

¹⁴ *An Introduction of Islamic Law* , pp.69-71.

¹⁵ *Ibid*. p70

¹⁶ Coulson, N.J. *A History of Islamic Law*, Edinburgh University Press, 1964, p.81

¹⁷ Shaista P. Ali Karamali and Fiona Dunne, *The Ijtihad Controversy*, *Arab Law Quarterly*, 9/1994, p.242.

¹⁸ Brown, L.E., "The Development of Islam" *Muslim World*, 1934, p.174

¹⁹ Gibb, H.R. *Modern Trends*, p.13

²⁰ Schacht, J p.70

²¹ *Ibid* p-70-71

New sets of facts constantly arose in life, and they had to be mastered and moulded with the traditional tools provided by legal science." Finding answer for "new sets of facts" is in it a full process of *ijtihad*, which by far exceeds the limits allowed for mere "explanation, application and interpretation of the doctrine as it had been laid down once and for all." This apparent contradiction in Schacht's writings is but one sign of the uncertainty surrounding the entire issue of *ijtihad* and its gate, which in effect constitutes the most important aspect of the religious legal history of Islam after the second century. I will agree what Amidi have already said that 'blocking the gate of *ijtihad* would have meant for Muslims a partial and imperfect mastery of 'ilm and thus a deficient and incomplete.'²²

This confusion theory is one of the hypotheses that W. Montgomery Watt puts forth. Watt asserts that *ijtihad* functions at different levels, namely at: 1) a "basic" level which deals with basic matters that distinguish the different *madhabs*, or legal schools of thought; and 2) a "particular" level, which deals with specific matters within each particular *madhab*, or "School of law".²³ Watt states that although the "idea of closing the door" applies only to basic *ijtihad*, many of the later discussions, such as al-Taftazani's commentary on the creed of *al-Nasafi*, are about particular *ijtihad*.²⁴ Watt concludes from these discussions that confusions existed as to definitions and that, therefore, some of the arguments in the Muslim community regarding whether *ijtihad* was supposed to be closed were at "cross purpose" or based on misunderstanding.²⁵ Instead of decreasing with time, the degree of confusion regarding *ijtihad* increased steadily in legal literature as Shaista P. and Fiona Dune have concluded. However the information directly related to the controversy about the continuity of *ijtihad* appeared around 500 A.H. in the form of scholarly disputation between the Hanbali jurist Ibn 'Aqil (d.513/1119) and an anonymous scholar belonging to the Hanafi school of law. In this disputation Ibn 'Aqil refuted the argument of his adversary who maintained that the 'gate of judgeship' (*bab al-qada*) was closed because there no longer were any *mujtahids*.²⁶ Towards the end of the sixth/ twelfth century and the beginning of the seventh /thirteenth all comprehensive works on legal theory, *usul al-fiqh*, included a section devoted to discussing the controversy about whether or not it is possible for an age to be devoid of *mujtahids*. In this controversy the Hanaballis and a number of prominent Shafi is maintained, while adducing rational and scriptural evidence, that *mujtahids*, must exist at all times. On the other hand, the Hanafi's and Shafi's argued that the extinction of *mujtahids* was likely to occur.²⁷ Some, e.g. Watt, Coulson and Liebesny, use it to explain the immunity of *Shar'ia* against the interference of Islamic government, and others to illustrate the problem of decadence in Islamic institutions and culture.²⁸ Some, such as Coulson and Anderson, date the closure at the beginning of the fourth century while others, such as Ostrorog, advance it to the seventh,²⁹ depending on the facts and analyses involved in their respective studies. More astonishing is the fact although Orientlists have spoken untiringly of the closing of the gate and its consequences, no precise definition was given to the phrase itself in Arabic: *insidad bab al-ijtihad*), nor any attention has been given to the closure as a historical event.³⁰

Coupled with the current idea of the closure is the assumption that Muslim jurists reached a consensus to this effect. Our belief in the occurrence of this consensus encouraged most of us to believe that the gate was beyond doubt closed, since all questions decided by consensus in Islam are not only real but also irreversible. The new state of affairs sanctioned by consensus "about the end of the third century" was evident in the fact that fact itself was to be considered the closure of the gate of *ijtihad*. But for many others the closure meant in addition to this the absolute prohibition against deriving laws directly from the scripture, which implies the blind adherence of later Muslims to the doctrines of their predecessors.³¹ And because of this closure it was pronounced that " Islamic law and dogma developed but little" and Islam became devoid of almost all intellectual innovation between the tenth and eighteenth (4th-12th.H) centuries." We are even told that because Tabari (d.310) was the last to establish an intendment law school, and because there was a universal consensus on the established doctrines of the existing schools, "Muslim jurisprudence of the early tenth century (end of the third *Hijri* century) formally recognized that its creative force was now spent and exhausted in the doctrine known as "the closing of the door of *ijtihad*" The supposed historical events of the closure is thus made it fit in the most appropriate phase of Islamic history, namely, immediately following the maturation of the doctrines of the law schools. Another principle reason for the unconditional acceptance by scholars

²² Amidi, *al-Ihkam*, Vols,3.

²³ M.w.watt, " *The Closing of the Door of Ijithad*", 1 *Orientalia Hispanica* (Lieden 1974) ,p 678.

²⁴ *Ibid*.

²⁵ *Ibid*

²⁶ W.B.Hallaq, "Was the Gate of Ijithad closed ?" *International Journal of Middle eastern Studies*, 16,1(1984)

²⁷ Sayf al-Din al-Amidi, *al-Ihkam fi Usul al-Ahkam*, 3 Vols.Cairo: Muhammad Ali, Subayh,1968, p,253-254)

²⁸ See. Watt,M. *Islam and the Integration of Society* (Evanston: Northwestern University Press, 1961), pp. 206-207, 242-243; H.J.Lebesny, "Stability and Change in Islamic Law, " *The Middle East Journal* 21 (1967), 19. F.Rahman, *Islam* University of Chicago Press, 1966, pp 77-78.

. J.N.D. Anderson, *Law Reform in Muslim World* (London) p7.

²⁹Gate of Ijithad, p.5

³⁰ *Ibid*

³¹Coulson, *A History*, p.80, 84F.; Anderson , *Islamic Law*, pp.26-27

of the gate's closure lies in the uncritical reliance on, and the misconception of the nature of Muslim writings at different periods of history. I learn from study that the prospective conclusion that draws is that each historical phase must be first and foremost studied through its own works, and that any use of the works of later periods must be conducted with extreme caution. I also learn that there is no reliable source about the origins, development and the ramifications of closing the gate of *ijtihad*. The closure has often been taken for granted and upon its history was repeatedly reconstructed. It has thus been part of our common knowledge of Islam that, as Anderson states, "about the end of the century of the Muslim era, it was commonly accepted that the door of *ijtihad* had been closed."³² While a number of scholars, feeling that they lack the adequate knowledge to make general pronouncements, avoid discussing the closure of the gate, many others, such as Watt, often venture to declare that the Sunni scholars "fearing that to recognize the legitimacy of *ijtihad* might open the door to individual reinterpretation and schism, have always done their best to limit its scope."³³ More often they see the closure as a well-defined incident that has a definite starting point and motivated by legal or extra-legal incentives. Consider the following statement of Watt: Once the *Shari'ah* had been firmly established, however, the scholar-jurists were in a somewhat stronger position to resist unjust demands by the ruling institution, at least in those spheres where the *Shari'ah* was effective. There might still be pliant self-seeking individuals who were ready to twist the rules of the *Shari'ah* in the interest of the rulers; but unless this twisting was done skilfully, it would be difficult for such individuals to avoid being discredited by their fellows on the grounds that they were ignorant of the *Shari'ah*. It is conceivable that it was because of this situation that the scholar-jurists themselves introduced the doctrine that the 'gate of *ijtihad*' had been closed—that is, that they had no right of prorate judgement except in respect of the detailed application of the *Shar'ia* and was bound to follow the main principles of the rites to which they belonged. By thus restricting the right of judges to depart from precedent, they made it more difficult for rulers to influence their judgement improperly.³⁴

In order to regulate the practice of *ijtihad* a set of conditions were 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 that they facilitated rather than hindered the activity of *ijtihad*. Further, it will enhance to examine the relationship, in which *ijtihad* were 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*.³⁵

Analysing the relevant literature on the subject from the fourth / tenth century onwards, Hallaq makes it clear in his thesis '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 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.³⁶ In theory at least there is certainly nothing to indicate that *ijtihad* was put out of practice or abrogated. In due course clear that legal theory played a rather significant role in favour of *ijtihad*.³⁷ 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, to undertake this practice in one area of law or another. Removing the charge of sin from the *mujtahid* who commits an error and even made him entitled to one reward in heavens further facilitated the practice of *ijtihad*.

Conclusion

By concluding this essay I will sum up my word that, conception of this law as being rigid by nature has been based on our understanding of its historical development. According to this understanding, the era that followed the formative period of Islamic Law, i.e., after ca. 300, was one of increasing rigidity and finalization of legal doctrine. It is assumed that after the comprehensive elaboration of the positive doctrine of the major law schools, the deriving of new rulings from the sources through *ijtihad* had ceased. Hallaq, shows that *ijtihad* was an integral part of Islamic legal theory because it "constitute the only means by which jurists were able to reach the judicial judgments decreed by God"³⁸ He goes further to state that only *ijtihad* favoured by Sunni jurists, but those jurists and schools of thought which were opposed to the exercise of *ijtihad* were ostracised from Sunni jurisprudence and, indeed, from

³²Anderson, Law reform p,5

³³Gibb, *Modern Trends*, p.13

³⁴Watt, *M Islam and the Integration of society*, p.207

³⁵.Gate of *ijtihad*, p.4

³⁶ *ibid* ,p.10

³⁷ *Ibid* p,5.

³⁸Gate of *ijtihad*, p.4

Sunnism as a whole.³⁹ The example Hallaq gives is that of the *madhab* of Dawud al-Zahiri, Apparently, followers of this school rejected *qiyas* (or analogy) even when it was based solely on scripture.⁴⁰ In support his thesis, Hallaq, sets forth additional arguments.⁴¹ Keeping in mind that the very practice of *Ijtihad* is a religious duty, and a *mujtahid* who fails to fulfil it is thought to have sinned, To mistake the law as lodged in the mind of God, however, does not constitute a sin, because to demand that humans know with certainty what is concealed in the mind of God would amount to charging them with a responsibility for greater than they could assume. All aspects of life must be regulated by the *shari'ah*, and therefore *ijtihad* must be commensurate with the obligation and need to attempt to discover the law.

Since *ijtihad* and the qualifications required for its practice was a basic ingredient in this theory, *usul al-fiqh* borrowed only the question of the possible extinction of *mujtahids*, in isolation of its theological background, and proceeded on its own to construct argumentations and proceeded on its own mould.

³⁹ *ibid*

⁴⁰ *Ibid*, p.8

⁴¹ See Above Ref: 36

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