

AGAINST IJTIHAD

I have not confined myself to any single madhhab that prevails in the Muslim world because the truth is indeed not restricted to any single school of law. Also, the eponyms of the respective schools made no claims to being infallible. They were simply striving to arrive at the truth; if they erred they were nonetheless promised a reward and if they were correct in their endeavors they were entitled to a double reward. -Yusuf al-Qaradawi(FN1)

Now, along comes a group of reformers ill disposed to the sanctity of this heritage, and starts to advocate the abandonment of the madhahib in favor of a new ijtiihad. To them I have but this to say: you ought to have your head examined by a physician of the shariaah (Islamic law). Such people have taken leave of their senses or are in the employ of the enemies of Islam. The righteous believer will have no dealings with such rabble-rousers for he is deeply aware of the debt Islam owes the eponyms of these schools. They call themselves Muslims but are in fact false pretenders who have unfortunately, succeeded in infiltrating even the ranks of the ùlama'. Zahid al-Kawthari(FN2)

For several centuries, the operative principle in Islamic law, we are told, was taqlid: the unquestioning obeisance to one of the eponyms of the four madhahib or schools of Sunni jurisprudence.(FN3) The ùlama' of the tenth century, C.E., anxious to avoid a repeat of the confusion engendered by the untrammelled speculation of the independent jurists of the seventh and eighth centuries, "promulgated moral and spiritual qualifications for ijtiihad so immaculate and rigorous and set standards so high that they were almost impossible to fulfill."(FN4) The law, the ùlama' maintained, had already been adequately expounded by the eponyms; what remained was simply to follow the school of one's choice while scholars calibrated the rulings of its eponyms, providing commentary where needed, or glossing over an occasional inconsistency. But the challenges of the nineteenth and early twentieth centuries, particularly in the guise of European colonialism, threatened to disestablish the sacred law. The Islamic world's leading intellectuals sought to remedy this by suggesting novel solutions which, in recent times, have received considerable attention. David Commins, for example, in his study of late Ottoman Syria, shows the usage of ijtiihad by these intellectuals as a resuscitative measure even in pre-colonial times,(FN5) while in *Islam in Modern History*, Wilfred Cantwell Smith does the same, but in the post-colonial context of the Arab world, Turkey, and Pakistan.(FN6) In an attempt to shift emphasis from the purely ideological to the social and the political, from thought, that is, to action, Daniel Crecelius concentrated on "the nonideological responses of the ùlama' to modernization."(FN7) Mine is, admittedly, an inquiry that is best characterized as ideological as well, but while the previous emphasis was on certain personalities and their partiality to ijtiihad, this study focuses more on the defense of taqlid. It is, therefore, a study of the ideology of the Islamic religious establishment itself, the ideology of the ùlama', of course, and of the Sufi orders, but it is also a study of the recently formed states' manipulation of religious institutions. There are three areas on which I wish to focus: Egypt, which represents the Islamic core; Muslim India, where, notwithstanding its relative proximity to the Middle East, the influence of the latter was minimal; and Indonesia, where that same influence was much more pervasive. Indonesia may represent the periphery of the Muslim world, but it also represents the kind of symbiosis between core and periphery that is emblematic of many Islamic societies. The movement against taqlid was spirited in all three of these locations, but the factors that drove both sides of this argument in all three areas were as varied as the areas themselves.

To undo the corrosive effects of European colonialism on their civil societies, Muslim reformists turned to their past, to what they believed was the catalyst that spawned early Islam's intellectual efflorescence: for many, *ijtihād* was that impulse, the single element from the sacred heritage with the potential to restore the sacred law to Muslim society. But no such efflorescence could be hoped for without the removal of the regimen of *taqlid*, described by reformists as the slavish emulation of the *madhāhib*. Whereas *ijtihād* was prescribed by the Prophet himself, *taqlid* was an egregious heresy (*bid'ah*) foisted upon Muslim society by flaccid scholars too indecisive to keep apace of evolving exigencies. *Ijtihād*, by nature, is dynamic and vibrant, whereas *taqlid* is spirit-less, they argued; the former engenders unity, and facilitates the formation of a single, cohesive community conjoined in spirit to the sacred law, while the latter creates divisive socio-legal complexities. In the Middle East, calls for a return to *ijtihād* met lesser resistance than was the case in India: the *ūlama'* of the subcontinent, driven by spiritual concerns usually associated with Sufi brotherhoods, sanctified the regimen of *taqlid* and thus branded as heretical all efforts to reinstate *ijtihād*.

The largely positive response to reform in the Middle East was, in some measure, due to the efforts of the indefatigable reformist of that era, Jamal al-Din Afghani (d.1897), a traditional scholar himself, who nonetheless remained a strident critic of classical Islamic thought, and particularly, of *taqlid*. But for Afghani, *ijtihād* was less a legal tool and more the key to an Islamic *weltanschauung* based on rational thought. It was however, Muhammad *Abduh*, Afghani's disciple and one time grand mufti of Egypt who, in comparing the regimen of *taqlid* to pre-Islamic heresies, theologized what until then had been essentially an issue of law.(FN8)

Unlike the Indian *ūlama'* who also invoked transcendence but in defense of *taqlid*, *Abduh* did so to discredit the practice by comparing it to deviant faiths excoriated in the Qur'an.(FN9) Together with Hassunah al-Nawawi, the then Shaykh al-Azhar, he attempted to dismantle the Azhar's *taqlid*-based educational system and, ultimately, that of Egypt itself: this called for the establishment of a more thorough bureaucracy and inculcating a modernistic spirit into its syllabus. In an effort to broaden the influence of these concepts, he successfully championed for the Azhar to be recognized as the epistemological center of Egypt and its head, the Shaykh al-Azhar, as chief of all Egyptian *ūlama'*. Thus, the aspirations of Afghani reached fruition through the efforts of his protege. *Crecius*, however, calls their efforts a failure, and perhaps that is the case in the short term, and with respect to the package in toto. In the long term, however, at least with regard to the law, their legacy is evident. Legal pronouncements no longer bear the imprint of a particular school of law.(FN10) Works that deal with the *madhāhib* eclectically, and prioritize *ijtihād* qua textual literalism over legal rationalism are increasingly popular, one example being the *Fiqh al-Sunna* of Syed Sabiq, a multi-volume effort widely circulated among educated Middle Easterners.(FN11) But it took a while before the reformists institutionalized this eclectic approach to the law, hampered as they were by remnants of the legal system established by the Ottomans in the provinces, and based almost entirely on just one school of law: the Hanafi.

The system itself may be traced to the Ottoman sultan Mahmoud II (1807-39) and his efforts to subdue an increasingly restless empire by positing himself as the "custodian of the shari'ah." Through the establishment of a religious unit, the *ilmiye*, his office controlled the judges, mosque leaders, and preachers in the outlying provinces. Members of the

ilmiye were under the authority of the shaykh al-Islam, the powerful mufti of Istanbul, religious adviser to the Sultan, and "the most exalted personage in the whole religious order; it was a sign of his freedom of judgement and his power to curb and rebuke the holders of power that he was not a member of the Sultan's divan or council of high officials."(FN12) Two military judges (kadiasker), however, who belonged to the Sultan's retinue of high officials, controlled the entire judiciary by dividing each province into juridical districts (qada) where local judges applied Hanafi law on all persons, without regard for their madhhab affiliations. The ùlama' who belonged to the Hanafi schools also enjoyed other privileges: Hanafis received a monthly stipend of 300 dirhems, for instance, while Shafi`is and Hanbalis received 100 dirhems each and Malikis, 50 dirhems. Furthermore, the position of grand mufti was generally held by a Hanafi, which was ironic in the case of Àbduh, a strong critic of taqlid who nonetheless was forced to serve as a Hanafi grand mufti.(FN13)

The Ottoman reforms of the nineteenth century had little impact on these structures, for they addressed the challenge of European expansionism and not the discontent of the local citizenry. The Mejelle, the new civil code that the Ottomans introduced in 1870, for example, was aimed first at restricting the authority of the sultan and second at addressing the demands of religious minorities in the empire; as for the internal dynamics of the law, they remained unchanged.(FN14) The same can be said for the Young Ottoman reforms of the early twentieth century. They too dwelt on outside challenges such as harmonizing a constitutional form of government with the caliphal system(FN15) But such cannot be said for the Sultan's religious plenipotentiaries who served outside Istanbul, particularly in the Arab Middle East, where, despite the protestations of the locals, the Hanafi school was applied indiscriminately.

The Azhar in Egypt is a case in point: many of this university's leading academics perpetuated the Ottoman system of education long after the latter had been politically eclipsed by the Mamluks. In stark contrast, scholars such as Muhammad Àbduh demanded that taqlid--in essence, the exclusive application of Hanafi law--be replaced with ijtiħad, and that the curriculum include not just a study of "the classical Arabic works of dogmatic theology for the defense of the Faith, but also the modern sciences and the history and religion of Europe."(FN16) The reformists, however, were not without friends within the Azhar itself: Mustafa al-Maraghi, an Àbduh protégé who held office as head of the Azhar (Shaykh al-Azhar), actively promoted reform by publicly appealing to Fu'ad, king of Egypt, to implement a package of educational reforms prepared by Maraghi himself, and published in August of 1928 in the Egyptian daily, Al-Ahram. This two-part article called for, among other things, reforms to the teaching and administration at the university and the opening of the doors of ijtiħad.(FN17)

Maraghi's appeal triggered a particularly strong rejoinder from the preeminent Hanafi scholar at the time, Àbd al-Rahman Àlish, who, spurred by the fear that the foregoing reforms posed a grave danger to the Azhar, its branches, and ultimately to Islam itself, launched a vigorous counterattack.(FN18) He was perturbed by Maraghi's call for ijtiħad, particularly because it was buttressed by arguments that denigrated the ùlama' and their devotion to what Maraghi called "lifeless books." "Were they not devoted to the Qur'an," he asks, "to the sunna of the Messenger of God, to the Muwatta' of Malik (b. Anas), and his al-Mudawwana(FN19), to the (Kitab) al-Umm(FN20) of Shafi`i, and to the primary sources of the schools of Abu Hanifa and Ahmad b. Hanbal?"(FN21) As to the charge

that the *ùlama'* lacked a proper understanding of the sources, *Àlish* responds: "How else did the scholars who closed the doors of *ijtihadh* these past ten centuries understand the faith?" The truth is that "all the *ùlama'* of Islam, the eponyms (*mujtahidun*) from among them as well as the emulators (*muqallidun*), understood Islam correctly from its original sources; the *mujtahidun* did so by way of their *ijtihadh* and the *muqallidun* through their emulation of the former."(FN22)

While the critics of *taqlid* tediously accused the practice of sowing disunity and called for its replacement with the kind of *ijtihadh* that gave prominence to the letter of the sacred scriptures over antiquated juridical pronouncements, their opponents validated *taqlid* through the law itself. *Taqlid*, they argued, was the collective will of the people, the *ijmaðr* consensus of the Muslim community, and by extension, the will of God Himself. *Àlish* and others also argued that a return to the sacred sources would not produce the changes envisioned by the opposition--they insisted nothing short of a thorough overhaul of the entire legal edifice would suffice. But the cost would be prohibitive, to say the least. Among other things, it would render the law captive to capricious interpretations based on the whims of mortals, and not on divine intent. It is this fear of social chaos, this fixation on moral laxity that best characterizes the arguments of the proponents of *taqlid*. But *Àlish*, et al. had professional misgivings as well: substituting *taqlid* for *ijtihadh* would ultimately render the old establishment powerless. The authority and prestige that the *ùlama'*, in general, wielded would obviously be seriously jeopardized if, as the reformists demanded, *ijtihadh* became a duty of every individual Muslim rather than the exclusive preserve of trained professionals. The institution of legal counseling, the *ifta'*, central to Muslim communal life, would be seriously compromised, as would the vocations of its functionaries, the *muftis*. Institutions such as the *Azhar*, where the training imparted was inextricably tied to the *madhahib*, and whose syllabi and prescribed texts addressed the needs of a *taqlid* based legal system, would effectively lose social significance.

Sufism also played a significant role in this debate, for those who defended *taqlid* invariably belonged to Sufi circles. Together with the *ùlama'* and the political leaders of the Empire, they represented the institutionalized Islam that reformists were attempting to change. Functions often overlapped in the Empire, and it was not unknown for a single person to hold more than one position of authority. *Abu al-Huda al-Sayyadi*, for example, served as special adviser to the Sultan and head of the *Rifa`iyyah* Sufi order, while *Àrif al-Munayyar* was both the *Shafi`i* imam of the Umayyad mosque in Damascus and leader of the *Rifa`iyyah* order.(FN23) Also around this time, works combining mysticism and Islamic law, either in defense of or in opposition to *taqlid* and *Sufism*, began appearing. For example, *Àbd al-Hamid al-Zahrawi's* (d.1916) *Al-Fiqh wa al-Tasawwuf*(FN24) is a critique of both *taqlid* and *Sufism*: the former he calls "a tendency among the masses to attribute sanctity to things ancient, and to surrender legislative authority to famous men, an authority that God granted to no man." As for *Sufism*, while its votaries preach frugality and abstemiousness, Islam encourages full participation in the material world. *Taqlid* and *Sufism*, however, are equally irrational, irreligious, and socially destructive, and both thus warrant treatment together, in a single volume.(FN25)

The opposition was no less bellicose. *Yusuf al-Nabahani* (d.1932), the nineteenth century Damascene judge in the Ottoman courts and a protégé of the Sultan, used his considerable writing talents with telling effect to refute the foregoing arguments.(FN26) Another scholar, *Muhammad Zahid al-Kawthari* (d.1950), head of the Council of Muslim

Scholars in Turkey and, subsequent to the Kemalist revolution, a senior member of the faculty at the Azhar, provides what is arguably the more thorough refutation of reformist arguments.(FN27) In a short article in defense of the madhahib, he calls the assault on taqlid a "bridge to irreligiosity (al-lamadhhabiyya qantar al-laduniyya)."(FN28) Every discipline known to man, he says, spawns a circle of experts who best articulate the wisdom of their discipline, and Islamic law is no different. It too is explained by scholars well aware of their calling, as heirs to the Prophets, to preserve the sacred heritage.(FN29) Kawthari seems more concerned, however, with deflecting criticism against the old order than with the emergence of radical ideas in the guise of ijihad: he thus makes no mention of Abduh's Syrian protégé, Rashid Rida's novel approach to ijihad and the caliphate,(FN30) or the theologian, Àli Àbd al-Raziq's radical views on Islam and secularism.(FN31) In the words of Ahmad Khayri, his biographer, Kawthari was primarily defending Abu Hanifa against the scurrilous charges leveled against him by his critics. In so doing, he also succeeded in reviving interest in the school itself.(FN32)

Hanafis, however, were not alone in their rejection of ijihad. At the turn of the last century, the ùlama' of Indonesia, a predominantly Shafi`i country, also resisted calls for reform of the madhahib, albeit for somewhat different reasons. The influence of Middle Eastern Islam on South East Asia is certainly significant, although the actual moment of contact is in dispute. According to Gullick, the role of Islam itself was relatively insignificant until the nineteenth century. There were, he maintains, no judges until the era of British occupation, and "no evidence exists that Islamic legal doctrine was effective law."(FN33) In contrast, Milner argues that Gullick's is too narrow a definition of Islam, and one that is based entirely on the political impact of Islam on South East Asia. In his study of the congruencies between the archipelago and the Muslim heartlands, he argues that based on indigenous written material neglected by scholars such as Gullick, elements of Islamic law existed prior to colonialism in several regions.(FN34) In the fourteenth and fifteenth centuries, many traditional leaders of South East Asia, perceiving their political cultures as compatible in important aspects with the prevailing political culture of medieval Islam, embraced Islam in the belief that it would promote their political interests, as well.(FN35) For others, it was a means of facilitating commerce with the increasingly important Muslim merchants and allowing such rulers to describe their ancient functions in terms which Muslim traders--potential subjects of the polity--could understand.(FN36)

By the nineteenth century, however, thanks in large measure to trade with Arabia, the exposure of pilgrims to the reformist teachings of neo-Sufism and Wahhabism in Mecca, and the training of locals in Islamic theology and sharià studies, classical Islamic doctrine and law came to occupy an increasingly significant position in the archipelago. The debate on ijihad, it seems, was introduced to South East Asia by a number of Indonesian reformers and religious scholars trained abroad, particularly in Mecca and Cairo. But the Meccan graduates who, in some cases pioneered the reform efforts in Indonesia, were not overly concerned with the reform of the madhahib as was the case with the Egyptians. This, in the view of historian Deliar Noer, was because many had been students in Mecca of Ahmad Khatib, a Shafi`i who actively promoted his school and strongly criticized those who called for ijihad.(FN37) As in the Middle East, where a correlation of sorts existed between the regimen of taqlid and institutionalized Sufism, so too in Indonesia

one finds certain similarities. The adherents of the Shafi'i school, for instance, also "venerated keramat (shrines, graves of saints) gave offerings to spirits, held slametain or kenduri (feasts) as offerings, and used azimat or charms to protect themselves from evil genie or bad luck."(FN38) More importantly, however, in both fiqh and Sufism it was the teacher who was regarded as infallible; this of course, meant that the authority to interpret remained the prerogative of the kijahi or sjech.(FN39)

Consequently, Indonesian modernists who were, in the main, disciples of Àbduh and Rida, opposed the regimen of taqlid and eschewed Sufi superstitions as much as they did blind obedience to any single scholar. Islam for them was a religion of reason and rational thought, but unlike their more liberal counterparts elsewhere in the Muslim world, they held reason accountable to religion. The former, they maintained, could lead to good as well as evil, and religion therefore needed to direct the power of reasoning along the path of righteousness.(FN40) They recognized the authority of the sacred sources alone, maintained that the doors of ijtiħad were open, and rejected the idea of taqlid. But in sharp contrast to Àbduh and Maraghi, they were, in principle, not opposed to the schools of law.(FN41) This ambivalence to taqlid was found in other organizations as well. The Muhammadiyah, the preeminent reform movement of the early twentieth century, called for a reevaluation of the madhahib rather than its outright rejection.(FN42) The ùlama', for their part, were also less truculent in their opposition to reform. In a circular of 1935, Kijahi Mahfuz Siddiq, the leader of their official body the Nahda al-Ùlama', brought his organization closer to the reformist position on the question of ijtiħad.(FN43) This was accomplished more easily in Indonesia than in the Middle East largely because of two factors: firstly, Indonesia was spared the madhhab rivalries endemic to the Middle East, and secondly, unlike in India, reformists were not regarded as lackeys of the colonialist powers.(FN44) One can also add that the more traditional movements such as the Wahhabi and Ahl-e-Hadith reform movements of Arabia and India, respectively, were insignificant to South East Asia in general.(FN45) The Nahda al-Ùlama' in fact, was in part established in opposition to the Wahhabi movement in Arabia.(FN46) In India, however, calls for ijtiħad triggered a response so sharp that the conflict itself ultimately became emblematic of Islam in that region.

Taqlid was defended unapologetically by scholars belonging to the Deobandi and the Bareilwi schools. These schools--in almost every other way implacable enemies of each other--found a common adversary in modernists such as Muhammad Iqbal and Sir Syed Ahmed Khan and the more traditional Ahl-e-Hadith movement.(FN47) Both schools are staunchly Hanafi, and both maintain that the doors of ijtiħad remain closed while all Muslims restrict themselves to following a single scholar, a concept better known as taqlid shakhsi. The ethics of an austere Sufism is also in evidence in such arguments, offered particularly by advocates of the Deobandi school. Ashraf Àli Thanwi, a prominent Deobandi polemicist whose work, Taqlid-o-Ijtiħad, I examine hereunder, is one such example.(FN48) This work, Thanwi explains, was compiled for the laity and the less knowledgeable (àwam aur kam ailm) who, driven by calls for legal reform, have come to view with skepticism the verities of taqlid. It is a rejoinder to two interrelated views on ijtiħad and taqlid: one calling for the empowerment of all Muslims, not just the ùlama', in the performance of ijtiħad, and the other postulating that the perpetuation of the historically exclusive taqlid based jurisprudence further promotes the evil of personality cults.

Taqlid as defined by Thanwi is the act of accepting, bona fide, the utterance of a scholar without inquiry into his source of reference. It is based on an implicit faith in his knowledge and credibility.(FN49) That it is, in fact, consonant with textual Islam is proven by several traditions, one of which has Abu Ayyub al-Ansari, a companion of the Prophet, practicing taqlid while on pilgrimage. Abu Ayyub committed himself to the ihram, or the state of ritual sanctity, outside Mecca, but was delayed along the way and only reached the city one day after the hajj. Not knowing quite how to remove the restrictions of the ihram, he solicited a ruling from `Umar, the second caliph, who instructed him without citing sources. Thanwi's view is that Abu Ayyub, in accepting `Umar's ruling without question, practiced taqlid. But what if he did so, as his detractors claim, on the understanding that `Umar always grounds his fatwa in sacred sources! This, however, is Thanwi's argument: there is, he states, always an implicit understanding that the scholar responds by basing his fatwa on sacred sources, and not on personal opinions.(FN50)

That Thanwi's critique of legal reform is a great deal more systematic than those previously examined is clear in his treatment of what is perhaps the most intractable problem in Hanafi law: the apparent conflict between a fatwa and an explicit text (nass). This issue, palpably the most significant in the polemics against taqlid, is the consequence of two, interrelated principles salient to Hanafi legal philosophy. Firstly, a preference for hadith traditions that support the social practices of Iraq, Iran and Transoxania, and secondly, in the absence of such traditions, a preference for analogical deduction (qiyas) over all but the soundest traditions.(FN51) Thanwi begins by pointing out that scholars of all schools, based on the jurisprudential methodology to which they subscribe, are sometimes compelled to abandon sound prophetic traditions. This is a consequence of their ijtihad, and, as Thanwi claims, the only legitimate form thereof vis-a-vis prophetic traditions. The scholar thus involved attempts to determine not just the applicability of a prophetic tradition to a particular context, but also to isolate, from the traditions themselves, the `illa, i.e. the ratio decidendi or the ratio legis that prompted the tradition in the first place. The purpose in the latter case would be to establish a hukm waḍ'ī or a "non- normative categorization" and not the establishment of a ruling per se. It also sometimes happens that a hadith is abandoned not because of a defect in its chain of transmission, but because it is abrogated by another hadith through the process known as naskh, or is interpreted in conjunction with a similar hadith having similar postulates (jam`bayna hadithayn). This is so in cases where an expression is said to be ostensibly zahir, that is, having but one literal meaning only, "such that one may ab initio regard that meaning as the probable intended meaning."(FN52) But the Prophet may have used the same word differently in several contexts intending a non-zahir meaning in some cases but not in others; determining the true intent of the Prophet's statement in any given context is the task that the mujtahid sets himself, a task that eludes the novice who is unfamiliar with the principles of jurisprudence. The expert's treatment may vary. He may, for instance, search for a contextual clue (qarina) in the text, or failing that, cross-reference prophetic traditions, and thus resolve this conflict of source materials.

This entire discussion on methodology serves to underscore the complexity of jurisprudence and to emphasize that it is indeed outside the scope of even the average scholar. To call, therefore, as reformists have, for the opening of the doors of ijtihad to all and sundry, Thanwi adds, is both irresponsible and dangerous. After all, the Prophet

himself chastised some Muslims for wrongly ordering their companion who was hurt in battle to take a bath because of ritual impurity. These companions, Thanwi maintains, had a limited understanding of the sources, were unqualified to exercise *ijtihad*, and thus contributed to the loss of that life.(FN53) Such occurrences can be minimized by way of *taqlid shakhsi*, as evidenced in the case of Mu'adh b. Jabal, the Prophet's emissary to Yemen. Whilst Mu'adh was sent with instructions to follow the sacred sources when judging, no mention was made about an equal duty on the part of Yemeni people to scrutinize his judgments; they were simply obliged to emulate Mu'adh.

But is *taqlid shakhsi* binding? For Thanwi it certainly is, because *wujub* or peremptoriness is established in not one, but two ways. First, there is *wujub bi al-dhat*, where an act's necessity is established through textual evidence, as is the case with *salat*, the daily prayer, for instance. But there are other acts which, while having no explicit sanction from the sources, are nonetheless peremptory because no reasonable person would think otherwise. This, in fact, is the case with early efforts to collect and redact prophetic traditions. Scholars undertook this unprecedented task not because the texts so demanded but because its peremptoriness was self evident. Their collective experience told them that the written word is by far the greater safeguard against loss and distortion of memory. The same is applicable to *taqlid shakhsi*; its peremptoriness is established not by scriptural evidence as such, but by two concerns. First, a concern about what becomes one's criterion of choice if one abandons the judgment of a pious, qualified master and uses personal judgment instead, and second, what cumulative effects such personal judgments are bound to have on the status of the law in Muslim society.

As for the first, Thanwi stresses that the tendency in recent generations has been for people to defer to their personal whims and eccentricities instead of to the dictates of religion, whereas Islam demands that the converse apply: (*khwahishe nafsani ko din ki tabi' banana*). (FN54) Personal rulings of this nature destroy the synthesizing effects of *ijma`* and thus the very unity that the proponents of *ijtihad* so desire. The example that he discusses, the practice of *muta`*, or temporary marriage, is particularly suited to his argument for historically, it has served to distinguish Shi'ites, who condone the practice, from Sunnis, who do not. (FN55) Sunni sources, however, provide conflicting evidence on its permissibility. That is, in some hadiths it is permissible while in others it is not. Sunnis concede this much, but add that its prohibition was first established by 'Umar, the second caliph, following which a broad consensus was reached through *ijma`* totally abolishing the practice. Such a ruling clearly violates the jurisprudential methodology of Thanwi's adversaries, the Ahl-e-Hadith, in two ways: first, it is not, as required by the latter, categorically based on scriptural evidence and second, it appeals to the kind of *ijma`* that the Ahle-Hadith, following Ibn Taymiyya and Ibn Qayyim, reject. (FN56) Companions of the caliber of 'Abd Allah b. 'Abbas have condoned *mutaa*, thus nullifying the *ijma`* that allegedly forbade the practice. Thanwi is concerned about the pernicious effects of such traditions on a Muslim psyche already bombarded by immorality. (FN57) *Taqlid shakhsi*, if practiced correctly, protects the average Muslim's moral well being. (FN58)

Only the four historical schools of law are legitimate because they alone have thoroughly explored all legal contingencies. Those who choose some other school will in time refer to these four because of unanswered questions. But, in making a choice they would again be driven by human caprices. (FN59) Finally, because of its predominance,

Muslims of India are obliged to follow the school of Abu Hanifa; several commentaries exist to explain the minutiae of this school as do scholars qualified to interpret and explain such works.(FN60)

Clearly, the Indian responses to *ijtihad* differed in some ways from those in the Middle East. There was, for instance, no political link to speak of between the regimen of *taqlid* and the religious bureaucracy of the state, as was the case in the Ottoman nexus. But while political agendas may have differed, sectarian sentiments based on a shared historical reality vis-a-vis *madhhab* loyalties evoked responses that were not dissimilar; both remained fiercely loyal to their school and stubbornly resisted criticisms against Hanafi rationalism. This, no doubt, is one important reason why Hanafis in India, as elsewhere, seemed to play a more substantial role in defending the regimen of *taqlid*, more by far than members of the other schools of law. Furthermore, the influence of Sufi pietism, particularly in South Asia, together with a phobia for legal anarchy led to what was the most strident opposition to *ijtihad* and defense of *taqlid*. Not surprisingly, the subcontinent remains to this day the only part of the Muslim world where *taqlid shakhsi* is religiously observed.

ADDED MATERIAL

Muneer Fareed

Wayne State University Detroit, Michigan

FOOTNOTES

1. Yusuf Qaradawi, *Al-Halal wa al-Haram fi al-Islam* (Stuttgart: Ernst Klett Printers, 1978).
2. Muhammad Z. Kauthari, *Maqalat al-Kauthari* (Cairo: Matba'at al-Anwar, 1953).
3. These include Abu Hanifa (d.767), Malik (d.795), Shafi'i (d.819), and Ahmad Ibn Hanbal (d.855). For more information see N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964); and J. Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950).
4. Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1979), 78.
5. See in this regard, his dissertation, *The Salafi Reform Movement in Damascus, 1885-1914: Religious Intellectuals, Politics, and Social Change in Late Ottoman Syria* (Ann Arbor: University of Michigan, 1985). This is particularly true in the case of Jamal al-Din Qasimi (d.1914) a leading proponent of Salafi thought, who in his various publications, wrote extensively about "reforming the *ùlama's* practices by reviving *ijtihad* and abandoning emulation of the legal school's authorities."
6. Wilfred C. Smith, *Islam in Modern History* (Princeton: Princeton University Press, 1957). Another useful study on this topic is: Charles C. Adams, *Islam and Modernism in Egypt* (London: Oxford University Press, 1933).
7. Daniel Crecelius, "Nonideological Responses of the Egyptian *ùlama'to* Modernization," in *Scholars, Saints, and Sufis: Muslim Religious Institutions in the Middle East since 1500*, 167-209 (Berkeley: University of California Press: 1972). There now exist several useful studies on the Azhar, including *Àbd al-Muta'al al-Sa`idi, Tarikh al-Islah fi al-Azhar* (Cairo, 1950); and Crecelius, "The Emergence of the Shaikh al-Azhar as the Preeminent Religious Leader in Egypt," in *International Colloquium on the History of Cairo* (Cairo, 1969).
8. In Albert Hourani, *Arabic Thought in the Liberal Age. 1798-1939* (London: 1962), 140-41. For more information on Afghani see: Muammad Ìmara, *Al-A`mal al-Kamila li*

Jamal al-Dina al-Afghani (Cairo: Dar al-Kutub al-Àrabi, n.d.); and Mahmud Abu Rayyah Jamal al-Din al-Afghani: Tarikhuhu wa risalatuhu wa mabadiùhu (Cairo: Al-Majlis al-A`la li al-Shu'un al-Islamiyya, 1966). The former work also contains what is the only exhaustive work that Afghani ever undertook: the *Risala al-Radd àla al-Dahriyyin*. For a political biography in English see N. Keddie, *Sayyid Jamal `l-Din al-Afghani* (Berkeley: University of California Press, 1972). For Àbduh's biography see Rashid Rida, *Tarikh al-Ustadh al-Imam al-Shaykh Muhammad Àbduh* (Cairo: Al-Manar, 1931); Muhammad Ìmarah Al-Imam Muhammad Àbduh, *mujadid al-dunya bi tajdid al-din* (Beirut: Dar al-Wahdah, 1985); and Taqi al-Din al-Sayyid Muhammad Abduh: *adiban wa naqidan* (Cairo: Nahdat, 1989). For an analysis of their philosophical perspectives, see Afghani and Àbduh: *an essay on religious unbelief and political activism in modern Islam* (Portland: Frank Cass, 1997). As for Rida's life and works, see Shakib Arslan Rashid Rida wa Ikha' Arba`in Sana (Damascus: Matbaàt Ibn Zaydun, 1937).

9. Crecelius, "Nonideological Responses of the Egyptian ùlama' to Modernization," 167.

10. This statement is based not on the development of the process but rather on the actual pace of its development in relation to other areas of the Muslim world. I am aware of the dissatisfaction shown by some scholars even with regard to that pace, as is evident from the spate of recent articles that have appeared in this regard. One such article by Taha Jabir al-Àlawan, "The Closing of The Doors of Ijtihad and the Application of the Law," in *The American Journal of Islamic Social Sciences* 10 (1993), 396; says "... we are calling for a new type of ijtiihad. Rather than the ijtiihad specified by the scholars of usul ... we speak of an ijtiihad that is more of a methodology for thought ... The umma must understand that ijtiihad provides it with the fundamental means to recover its identity and to reestablish its place in world civilization. Without ijtiihad, the Muslim mind will never rise to the levels envisioned for it by Islam, and the umma will not take its rightful place in the world." That ijtiihad today is still an unrealized dream for Àlawan is clear from the following: he says, "unless the call to ijtiihad becomes a widespread intellectual trend, there is little hope that the umma will be able to make any useful contribution to world civilization or correct its direction, build its own culture, or reform its society."

11. Sayyid Sabiq, *Fiqh al-Sunna* (Beirut: Dar al-Fikr, 1977), 7.

12. A Hourani, *Arabic Thought*, 224, 227.

13. See in this regard Afaf L. A. Marsot, "Ùlama' of Cairo," in *Scholars, Sufis and Saints: Muslim Religious Institutions in the Middle East since 1500* (Berkeley: University of California Press, 1972).

14. The following are some of the more comprehensive studies on the reforms in the Ottoman empire: R. H. Davison, *Reform in the Ottoman Empire, 1856-1876* (Princeton: Princeton University Press, 1963); B. Lewis. *The Emergence of Modern Turkey* (London: Oxford University Press, 1968) and S. Mardin, "Power, Civil Society and Culture in the Ottoman Empire," *Comparative Studies in Society and History*, xi (1969): 258-81.

15. As Lapidus, *A History of Islamic Societies*, explains: "In the name of a synthesis of Ottoman tradition and Ottoman reform, Young Ottomans such as Namik Kemal (1840-88), Ibrahim Shinasi (1826-71), and Ziya Pasha (1825-80) were committed as one to the continuity of the Ottoman regime, the revitalization of Islam, and to modernization along European lines." See, in this regard Lewis, *The Emergence of Modern Turkey* (London: Oxford University Press. 1968).

16. Of particular importance are his ideas that appear in *al-Ùrwah al-Wuthqa*, the Collected Edition of Muhammad Jamal (Beirut: 1933), 3rd ed. Also see, H. Gibb, *Modern Trends in Islam* (Chicago: University of Chicago Press, 1954), 39.
17. *Al-Ahram Daily* (Cairo: 1928), No. 15709.
18. Àbdul Rahman, Àlish, *Bayan li al-Nas wa Taqrir Haqa'iq bi al-Burhan* (Cairo: Matba` al-Sabih, 1928?). Rashid Rida, in his biography of Àbduh, often writes of altercations that took place between the latter and Àlish, including one which occurred when Àbduh was yet a student at the Azhar. See for instance, *Tarikh al-Ustadh al-Imam* (Cairo: Matba` al-Manar, n.d.) vol. 1, 146 of the biography for an account of this particular incident which focused on the permissibility of accepting taqlid in matters of doctrine. Seeing that Maraghi was a disciple of Àbduh it is likely that Àlish's opposition to his reform proposals was as much a personal vendetta as it was an academic dispute.
19. See in this regard, Malik b. Anas, *Al-Muwatta'*, Fu'ad Àbd al-Baqi, 2 vols., ed. Muhammad (Cairo: Bab al-Halabi, 1951).
20. Muhammad b. Idri al-Shafi`i, *Kitab al-Umm*. (Beirut: Dar Qutayba, 1996).
21. Àlish, *Bayan li al-Nas*, 6.
22. *Ibid.*, 8.
23. Al-Sayyadi was indeed an influential man with access to funds from the imperial and provincial treasuries which he used for the construction and maintenance of the Sufi lodges. It was probably through his influence that members of the order were granted a royal exemption from military service. See in this regard, David Commins, *Politics and Social Change in Late Ottoman Syria* (New York: Oxford University Press, 1990) 105-108.
24. Àbd al-Hamid al-Zahrawi, *Al-Fiqh wa al-Tasawwuf* (Cairo: Al-Ummiya Press, 1901).
25. Commins, *Politics and Social Change*, 57.
26. Nabahani has also written popular works in veneration of the Prophet such as *Al-Majma` al-Nabahani ya fi al-Mada'ih al-Nabawiyya* (Beirut: Al-Matba` al-Adabiyya, 1903) 4 vols.; and *Wasa'il al-Wusul ila Shama'il al-Rusul* (Beirut: Dar Maktabat al-Hayat, 1970).
27. The cultural revolution inaugurated by Ataturk sought to disestablish Islam and replace it with the symbols of an indigenous Turkish culture. With that in mind the sultanate was abolished in 1923, the caliphate in 1924, and the Sufi orders in 1928. For the formative period in republican Turkey see R.D. Robinson, *The First Turkish Republic* (Cambridge: Harvard University Press, 1965).
28. Kauthari, *Maqalat*, 129.
29. *Ibid.*, 132. To the charge that the imams could have erred in their pronouncements Kauthari cites the historian, Khatib al-Baghdadi (d. 1071) who relates that in response to charges that Abu Hanifa had erred Waki`, the celebrated traditionist, provided the following response: "How could Abu Hanifa have erred given that he had as disciples such experts as Abu Yusuf and Zufr in analogical deduction (qiyas), Ibn Abu Zaida, Ibn Hibban and Ibn Mundal, in hadith studies, Qasim b. Ma`n in the Arabic language, and Da`ud al-Tay and Fuzail b. Àyadh in piety. If he ever erred surely they would have rectified him "See Kawthari, *Maqalat*, 132.
30. Muhammad R. Rida, *Al-Khilafa au al-Imama al-Ùzma* (Cairo: Matba` al-Manar, 1922).

31. For a critique of `Abd al-Raziq's thoughts see Muhammad `Imara, *Ma`rakat al-Islam wa Usul al-Hukm* (Cairo: Dar al-Shuruq, 1989).
32. Khairi gives the example of Imam al-Haramayn al-Juwaini, a prominent Shafi`i scholar with strong anti-Hanafi sentiments who provides the following description of his nemesis: Abu Hanifa was seen in a dream dressed in the skin of a dog and performing the ablution with wine (nahidh) and he (Juwayni, I presume) said 'this alludes to the prayer (salat) of the Hanafis.' See, in this regard, Al-Juwayni, `Abd Al-Malik, Mugith Al-Khalq (Cairo: 1930), 56-58.
33. J.M. Gullick, *Independent Political Systems of Western Malaysia* (London: 1965) in A.C. Milner, *Islam and the Muslim State in Islam in South East Asia*, M.B. Hooker (Leiden: 1983), 23. For a history of Islamic law in Indonesia see John P. Ball, *Indonesian Legal History* (Sydney: Oughtershaw Press, 1982).
34. Snouck Hurgronje, perhaps the preeminent expert on South East Asian Islam, was, according to Milner especially wary of a dependence on indigenous sources, and advised that to become acquainted with the institutions of Aceh it was necessary to study Achnese political and judicial systems and family life as they subsist at the present time. See Milner, 24.
35. *Ibid.*, 44.
36. *Ibid.*, 45.
37. Delia Noer, *The Modernist Movement in Indonesia, 1900-1942* (Singapore: Oxford University Press, 1973), 297.
38. *Ibid.*, 301.
39. *Ibid.*
40. *Ibid.*, 304.
41. Quoted in Noer, *The Modernist Movement*, 99.
42. Mukti A, `Ali. *The Muhammadiyah Movement, a Bibliographical Introduction*, M.A. Thesis (Montreal: McGill University, 1957), 52.
43. Noer, *The Modernist Movement*, 317.
44. For an account of the history and nature of Islamic law in South East Asia see M.B. Hooker, "Muhammadan Law and Islamic Law," in *Islam in South East Asia*, ed. M.B. Hooker (Leiden: E.J. Brill, 1983), 160-82.
45. See, in this regard, *Islamic Revival in British India*, 264-314.
46. According to Noer, *Ibid.*, 223 the Muslims from Java, in response to an invitation by the Sa`udi regime in Arabia, resolved to send a delegation to a conference in Mecca in which an appeal was to be made to the King for the preservation and continuation of "traditional practices, such as the erection of tombs on graves, the reading of certain prayers and the teaching of the madhahib. "... But there was no unanimity with regard to this appeal, and so, members of the various `ulama' fraternities of Indonesia banded together to form the Nahdatul `Ulama' "at a meeting in (the city of) Surabaya on 31 January 1926, with the main concern still being the Hijaz question."
47. The Brelwis, who take their name from Bareilly, a city in the state of Uttar Pradesh, India, began as a spontaneous reaction to the reform efforts of the Ahle-Hadith and the Deobandi movements. In time, they assumed a coherent philosophy and a character distinct from the other groups, and, thanks to the efforts of their spiritual and intellectual master, Ahmad Reza Khan (d. 1921), successfully launched a counter offensive to the criticisms that the reformists had leveled against Sufi practices and taqlid. With regard to

the former, Reza Khan counted as his adversaries liberals such as the members of the Aligarh movement of Sayyid Ahmad Khan, anti-taqlid conservatives such as those in the Ahle-Hadith group of Siddiq Hassan Khan, and fellow Hanafites of the Deobandi school of thought. On the life and teachings of Ahmed Reza Khan see Nasim Bastavi A`la Hazrat Barelvi: Hayat-i Mujaddid (Lahore: Maktaba-i Nabaviyyah, 1976). A more recent contribution to this topic is that of Usha Sanyal, Devotional Islam and Politics in British India: Ahmed Reza Khan Brelwi and his Movement, 1870-1920 (Delhi: Oxford University Press, 1996).

48. Barbara Metcalf, Islamic Revival in British India: Deoband, 1860-1900 (Princeton: Princeton University Press, 1969), 157.

49. In Thanwi's words "it is the act of accepting, bona fide, the ruling of one based on an implicit trust in his veracity (kisika qaul mehez is husne zann par man lena keh yeh dalil ke muuafiq batla dega)." Ashraf A. Thanwi, Taqlid-o-Ijtihad (Karachi: n.d.), 9.

50. In fact Muhammad A. al-Shaukani, in the work Al-Qawl al-Mufid fi Adillat al-Ijtihad wa al-Taqlid (Cairo, Dar al-Kitab al-Misri, 1991), uses this very argument with abandon when faced with examples from the salaf who purportedly sought fatawa without scrutinizing the sources.

51. Ignaz Goldziher cites as proof Abu Hanifa's rejection of hadith evidence supporting the practice of sharecropping "of what little regard he had for the explicit words of the traditions when his notions of social ethics inspired him with something different." See The Zahiris: Their Doctrine and Their History (Leiden: E.J. Brill, 1971), 53. With regard to his pioneering role in qiyas, we learn from the same source that Abu Hanifa's, was indeed, the first attempt to "codify Islamic jurisprudence on the basis of qiyas." Not many of his contemporaries however, expected his methodology to spread, as attested to by Ibn `Uyaynah who said, "There are two things which I did not expect to spread beyond the bridge in Kufa: Hamzah's way of reciting the Qur'an and Abu Hanifa's jurisprudence; indeed, both spread all over the world." The Zahiris, 13.

52. Bernard Weiss, The Search for God's Law (Salt Lake City: University of Utah Press, 1992), 138.

53. Thanwi, Taqlid, 20-21.

54. Ibid., 34.

55. By far the most detailed analysis of this practice is that of Shahla Haeri, Law of Desire: Temporary Marriage in Shii Iran (Syracuse: Syracuse University Press, 1989). For an analysis of the textual arguments on this topic see Arthur Gribetz, Strange Bedfellows: Mutat al-Nisa and Mutat al-Hajj: a study based on Sunni and Shi`i sources of Tafsir, Hadith, and Fiqh (Berlin: K. Schwartz, 1994).

56. The ijma` that the Ahl-e-Hadith subscribe to is not unlike that of the Hanbali school. For a detailed discussion on ijma` in general and the Hanbalite perspective in particular see Muhammad Abu Zahra, Ibn Hanbal: Hayatuhu wa `Asruhu, Ara'uhu wa Fiqhuhu (Cairo: Dar al-Fikr al-`Arabi, 1965), 259.

57. A recent publication, that of Salih Wardani, Zawaj al-Mutah Halal `inda Ahl al-Sunna (Cairo: Madbuli al-Saghir, 1997) seems to confirm Thanwi's worst fears.

58. Ibid., 35.

59. Ibid., 50.

60. Ibid., 51.