

Ijtihad

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The Principle of *Ijtihad* in Islam

Murtada Mutahhari
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The article hereunder translated into English, first appeared in the collection "*Bahthi dar barayi Marja'iyat wa Ruhaniyat*" [1], which was reviewed by Lambton [2]. This volume contained essays by figures who were then prominent in the *anjumanhayi islami*, an organization of groups with a religiously educated leadership concerned to initiate public debate of, and interest in, Islamic solutions to contemporary political, economic and social problems. The occasion for the publication of this volume was the death of the *marja`altaqlid* of his time, Ayatullah Burujirdi, in 1961, and the discussions contained therein dealt with various aspects of *taqlid* and the religious institutions. Summaries and discussion of the articles will be found in Lambton.

Most of the authors subsequently became leading names in the 1979 Iranian Revolution. Mahdi Bazargan, who had had both a religious and a

secular education and had been influential among the younger generation as a professor at the University of Tehran and later as a politician, became the first Prime Minister of the new Islamic Republic's provisional government. Ayatullah Taliqani was an active revolutionary figure who had spent much time in SAVAK prisons. He was particularly well known in Tehran where he commanded much respect. He died in the early morning of 10 September 1979 [3]. Sayyid Muhammad Bihishti became the first head of the Islamic Republican Party, as well as Chief Justice of the postrevolutionary High Court; he held both posts until his assassination in the bombing of the Party headquarters on 29 June 1981. Sayyid Muhammad Husayn Tabataba'i was much weakened by illness by the time of the revolution, but was held in universal esteem for his piety and learning. He died on 15 November 1981. All these figures, except `Allama Tabataba'i were also important members of the Revolutionary Council, which had been set up by Ayatullah Khomeini during his stay in Paris. The author of the present article, Murtada Mutahhari, had been appointed head of this Council by Ayatullah Khomeini, and it was he who had first convened it. After the victory of the revolution, the Council continued to play an extremely important role in the course of events, even after the setting up of the provisional

government, indeed right up to the formation of the new Majlis.

Murtada Mutahhari was born in a village some forty kilometres from Mashhad in 1338/1919. After a primary education mostly at the hands of his father, he entered, still a child, the *hawzayi`ilmiya*, the traditional educational establishment, of Mashhad, but he soon left for Qum, the centre for religious education in Iran. Even during the time of his elementary studies there he was greatly affected by the lessons in *akhlaq* (Islamic ethics) given by Ayatullah Khumayni, which Mutahhari himself described as being in reality lessons in *ma`arif wa sayrusuluk* (the theoretical and practical approaches to mysticism) [4], and he later studied metaphysics (*falsafa*) with him as well as jurisprudence (*usul al-fiqh*). He was especially attracted by *falsafa*, theoretical mysticism (*irfan*) and theology (*kalam*), the "intellectual sciences", and he also studied these subjects with `Allama Tabataba'i. His teachers in law (*fiqh*) were all the important figures of the time, but especially Ayatullah Burujirdi, who became the *marja`altaqlid*, and also head of the *hawzayi`ilmiya* of Qum, in 1945. Murtada Mutahhari studied both *fiqh* and *usul alfiqh* in the classes of Ayatullah Burujirdi for ten years. He was also deeply affected at about this time by lessons on "*Nahj al-Balagha*" [5] given by Mirza `Ali Aqa Shirazi Isfahani, whom he had met in Isfahan. He later said that, although he had been reading this

work since his childhood, he now felt that he had discovered a "new world".^[6] Subsequently, Mutahhari became a well known teacher in Qum, first in Arabic language and literature, and later in logic (*mantiq*), *usul alfiqh*, and *falsafa*.

In 1952, Murtada Mutahhari moved to Tehran, where, two years later, he began teaching in the Theology Faculty of the University. Not only did he make a strong impression on students, but his move to Tehran also meant that he could become involved with such organizations as the *anjuman hayi islami*. These Islamic Associations were groups of students, engineers, doctors, merchants, etc., set up during the fifties and sixties; they formed the nucleus of the movement that was to become, eventually, the revolution. He was also a founder member of the Husayniyayi Irshad, which played a central role in the religious life of the capital during the four years of its existence until its closure by the authorities in 1973 ^[7]. At the same time he maintained his contact with traditional religious activities, teaching first in the Madrasayi Marvi in Tehran, and later back in Qum, and also preaching in mosques in Tehran and elsewhere in the country. Through his lectures and writings - articles and books - he became a famous and muchrespected figure throughout Iran, but it was mainly among the students and teachers of the schools and universities that he was most influential, setting an example and inspiring them as a committed and

socially aware Muslim with a traditional education who could make an intellectually appropriate and exciting response to modern secularizing tendencies. His wideranging knowledge and scholarship are reflected in the scope of his writings, which cover the fields of law, philosophy, theology, history and literature.^[8] He was also one of the few highranking *'ulama'* to be in continuous contact with Ayatullah Khumayni during the fifteen or so years in which the movement which led to the revolution was developing. He was actively engaged in all the stages of this movement.

His life came to an abrupt and untimely end when he was shot in the street by an assassin after a meeting of the Revolutionary Council on the evening of 1 May 1979. Animated mourning accompanied his funeral cortege from Tehran to Qum, where he was buried near the shrine of the sister of the eighth Shi`i Imam.

The discussion of *taqlid* had been important in the wake of Ayatullah Burujirdi's death for the reasons given by Lambton. A solution to the problems posed in those articles was never achieved, and events subsequently altered the whole structure of the discussion, but the issues raised did open important new areas for thought. As a result of the revolution, the question of *wilayat alfaqih* came to the fore, and *taqlid* became the subject of even greater public concern. As long as *taqlid* had been restricted in the common understanding as applying only to

matters which belonged to the rubrics of the collections of *fatwas* issued by the *marja`s*, the only real debate took place within the legal classroom; but during the seventies, and hand in hand with the reawakening of political sensibilities, the boundaries of *fiqh* were seen by the public to expand and encompass new territory. The definition of these new frontiers was a source of some confusion, and hence of heightened interest, and, in the great postrevolutionary surge of printing, the Burujirdi volume was reissued.

Taqlid had long been a socially important element in Iranian society, and in Shi`i society in general, for it united people, at least as inhabitants of the same universe of duties and obligations, under their *marja`s*, but the events leading up to the revolution demonstrated the power that the *marja`s* could command through, among other means, their issuing of proclamations (*ilamiyas*); this was reminiscent of the mobilization of the Iranian people during the tobacco protest of 1891-2, and during the Constitutional Revolution of 1906-11.

The following article is presented as a description of *taqlid* and *ijtihad* by a leading contemporary Shi`i *mujtahid* who strove to make Islam comprehensible to the modern Iranian and to find answers to the problems of his time within the Islamic framework. The text has been left in its entirety; there were no footnotes in the original.

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُوا كَآفَّةً فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ
مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا
إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

It is not for the believers to go forth all together; but why should not a party of every section of them go forth, to become learned in religion, and to warn their people when they return to them, that they may beware. (9:122) [\[9\]](#)

What is *Ijtihad*?

The question of *ijtihad* is a very topical one these days.[\[10\]](#) Many people ask, either aloud or to themselves, what form *ijtihad* takes in Islam, and from where Islam got the concept. Why should one practice *taqlid*? What are the conditions for *ijtihad*? What are the duties of a *mujtahid*?

Broadly speaking, *ijtihad* has the meaning of being an authority in the matters of Islam; but there are two ways of being an authority and deriving opinions in the matters of Islam in the eyes of us Shi`i Muslims: one which is in accordance with the *shari`a*, and one which is forbidden by it. Similarly, *taqlid* is of two kinds: one which is in accordance with the *shari`a*, and one which is forbidden.

The Kind of *Ijtihad* Which is Forbidden by the *Shari'a*.

Now, the kind of *ijtihad* which, in our opinion, is forbidden is that which means "legislating" or "enacting the law", by which we mean that the *mujtahid* passes a judgement which is not in the Book (the Qur'an) or the Sunna, according to his own thought and his own opinion - this is technically called *ijtihad alra'y*. According to Shi'i Islam, this kind of *ijtihad* is forbidden, but in Sunni Islam it is permitted. In the latter the sources of legislation, and the valid proofs for determining the *shari'a*, are given as the Book, the Sunna and *ijtihad*. The Sunnis place *ijtihad*, which is the *ijtihad alra'y* explained above, on the same level as the Book and the Sunna.

This difference takes its origin in the fact that Sunni Muslims say that the commands which are given in the *shari'a* from the Book and the Sunna are limited and finite, whereas circumstances and events which occur are not, so another source in addition to the Book and the Sunna must be appointed for the legislation of Divine commands - and that source is the very same as we have defined as *ijtihad alra'y*. Concerning this matter, they have also narrated *hadiths* from the Prophet, and one of them is that when the Prophet sent Mu'adh b. Jabal to the Yemen, he asked him how he would issue commands there. He replied: "In conformity with the Book." "And if it is not to be found in the book?"

"I will make use of the Sunna of the Prophet." "And if it is not to be found in the Sunna of the Prophet?" "*Ajtahidu ra' yi*, " he replied, which means: I will employ my own thought, ability and tact. They also narrate other *hadiths* in connection with this matter.

There is a difference of view among Sunni Muslims as to what *ijtihad al-ra'y* is, and as to how it is to be conceived. In his famous book, the "*Risala*" [11] which was the first book to be written on the principles of Islamic jurisprudence (*usul alfiqh*), (...) alShafi'i insists that the only valid *ijtihad* according to *hadith* is *qiyas* [reasoning by analogy]. *Qiyas*, briefly, is the taking into account of similar cases, and ruling in a case from one's own opinion by comparing it with these other similar cases.

But some other Sunni *fuqaha* [experts in *fiqh*, sing.: *faqih*] did not recognize *ijtihad al-ra'y* as being exclusively *qiyas*; they also counted *istihsan* ["finding the good" by one's own deliberations] as valid. *Istihsan* means to see, quite independently, without taking similar cases into account, what is nearest to the truth and to justice, and to give one's opinion according as one's inclination and intellect approve. Similarly with *istislah* [determining what is in the interests of human welfare by one's own deliberations], which means the seeming of one thing as more expedient than another, and *ta'awwul* in which, although a ruling may have been reached in one of the *nusus* [the textual bases for a

precept of the *shari`a* sing.: *nass*], in a verse from the Qur'an or in a *hadith* from the Prophet, one still has the right, for some reason, to dispense with the contents of the *nass* and to give priority to one's own independent opinion (*ijtihad alra'y*). Each of these requires explanation and a detailed account, and the Shi`iSunni debate is relevant to such an account. Many books have been written both for and against this idea, viz., that *ijtihad* is on a par with textual evidence, and the best of them is the treatise written recently by the late `Allama, the Sayyid Sharaf alDin, called "*alNass wa Ijtihad*".[\[12\]](#)

Now, according to Shi`i Muslims, such a kind of *ijtihad* is not permitted by the *shari`a*. In the view of Shi`i Muslims and their Imams, the first basic principle of this matter, i.e., that the rulings of the Book and the Sunna are not adequate and that it is therefore necessary to practice *ijtihad alra'y*, is not correct. There are many *hadiths* relevant to this discussion, and, in general, [they tell us that] there exist rulings for every eventuality in the Book and the Sunna. In "*alKafi*" [\[13\]](#), after the chapter on *bid`a* [innovation] and *maqa'is* [measurements], there is a chapter with the title: "Chapter on referring to the Book and the Sunna - and there is no *halal* [permitted thing] or *haram* [forbidden thing] or anything which the people need which does not come in the Book or the Sunna." The Imams of the *ahl albayt* have been known since the earliest days as opponents of *qiyas* and *ra'y*.

Of course, the acceptance or nonacceptance of *qiyas* and *ijtihad al-ra'y* can be studied from two angles. Firstly, from the aspect from which I have looked at it; that is to say, we count *qiyas* and *ijtihad al-ra'y* as one of the sources of Islamic legislation, and place it alongside the Book and the Sunna, and say that there are cases which have not been ruled upon by revelation and which *mujtahids* must explain using their own opinion. Or alternatively, [we can study it] from the aspect that (. . .) *qiyas* and *ijtihad al-ra'y* [are] a means for deriving the real rulings, just as we use the other ways and means such as *khobar alwahid*.^[14] In other words, it is possible to perceive *qiyas* as either a substantive (*mawdu'iyah*) [element in law], or a methodological (*tariqiyah*) [principle].

In Shi'i *fiqh*, *qiyas* and *ra'y* are invalid in both of the above senses. In the first sense, the reason is that we have no ruling which is not given in the Book and the Sunna; and in the second case, the reason is that *qiyas* and *ra'y* are kinds of surmise and conjecture which lead to many errors. The fundamental opposition of Shi'i and Sunni legists in the matter of *qiyas* is in the first sense, although the second aspect has become more famous among the scholars of *usul* (the principles and methodology of *fiqh*).

The right of *ijtihad* did not last for long among the Sunnis. Perhaps the cause of this was the difficulty which occurred in practice: for if such a right were

to continue [for any great length of time], especially if *ta`awwul* and the precedence of something over the texts were to be permitted, and everyone were permitted to change or interpret according to his own opinion, nothing would remain of the way of Islam (*din alislam*). Perhaps it is for this reason that the right of independent *ijtihad* was gradually withdrawn, and the view of the Sunni `ulama became that they instructed people to practice *taqlid* of only the four *mujtahids*, the four famous Imams - Abu Hanifa [d.150/767], alShafi'i; [d.204/820], Malik b. Anas [d.179/795] and Ahmad b. Hanbal [d.241/855] - and forbade people to follow anyone apart from these four persons. This measure was first taken in Egypt in the seventh *hijri* century, and then taken up in the rest of the lands of Islam.

Ijtihad Permitted by the Shari'a

The word *ijtihad* was used until the fifth *hijri* century with this particular meaning, i.e., with the meaning of *qiyas* and *ijtihad alra'y*, a kind of *ijtihad* which is prohibited in the eyes of the Shi'a. Up to that time, the Shi'i `ulama included a chapter on *ijtihad* in their books only because they wanted to refute it, to emphasize that it was null and void, and to proscribe it, as did the Shaykh alTusi in some of his works. But the meaning of this word gradually extended beyond this specific meaning, and the Sunni `ulama themselves began not to use '*ijtihad*' in the specific sense of *ijtihad alra'y*, [as a source]

which was on the same level as the Book and the Sunna. [Such a shift in the meaning of the word can be seen with] Ibn Hajib [15] in his "*Mukhtasar al-usul*", on which `Adud alDin alIjzi wrote a commentary known as *al`Adudi*, and which has been till recently, and maybe still is, the authoritatively approved book on [Sunni] *usul*, and before him with alGhazali [16] in his famous work "*alMustasfa*". It then became used rather in the unqualified sense of effort or exertion to arrive at the rulings of the *shari`a*, and was defined as "the maximum employment of effort and exertion in deducing the rulings of the *shari`a* from the valid proofs (*adilla*, sing. *dalil*, see below). However, it is another matter to decide what the valid proofs of the *shari`a* are: whether *qiyas*, *istihsan*, and so forth, are among them or not.

From this time onwards, the Shi`i `ulama also adopted this word because they accepted this [general] meaning. This kind of *ijtihad* was a kind approved by the *shari`a*. Although the word had originally been one to be avoided among the Shi`a, after its meaning and the concept it denoted had undergone this change, their `ulama, discarded their prejudice and subsequently had no reservations about using it. It seems that in many instances the Shi`i `ulama, were careful to consider unity of method and conformity among Muslims as a whole. For example, the Sunnis came to recognize *ijma`* (consensus of opinion among the `ulama) as a

proof leading to certainty, and, in practice, they also held it to be fundamental and substantive (*mawdu'i*) just like *qiyas*, whereas the Shi'a did not accept it. However, to protect the unity of method, they gave the name *ijma`* to a principle which they did accept [17]. The Sunnis said that the valid proofs were four in number: the Book, the Sunna, *ijma`* and *ijtihad (qiyas)*; the Shi'a said the valid proofs were four: the Book, the Sunna, *ijma`* and *`aql* (reason). They merely substituted *`aql* for *qiyas*.

At any rate, '*ijtihad*' gradually found a wider meaning, i.e., the employment of careful consideration and reasoning in reaching an understanding of the valid proofs of the *shari`a*. This, of course needs a series of sciences as a suitable preliminary basis on which to develop the ability to consider and reason correctly and systematically. The *`ulama* of Islam gradually realized that the deduction and derivation of the precepts from the combined valid proofs of the *shari`a* necessitated [the learning] of a series of preparatory sciences and studies such as the sciences of literature, logic, the Qur'anic sciences and *tafsir* (Qur'anic exegesis), the science of *hadith* and the narrators of *hadith (rijal alhadith)*, the science of the methodology of *usul alfiqh*, and even a knowledge of the *fiqh* of the other sects of Islam. A *mujtahid* was someone who was a master of all these sciences.

I think it extremely likely, though I cannot state this categorically, that the first person among the Shi`a to use the words *ijtihad* and *mujtahid* [positively] was the `Allama alHilli.[\[18\]](#) In his work "*Tahdhib al-usul*", he puts the chapter on *ijtihad* after the chapter on *qiyas*, and there he uses the word in the same sense in which it is used today.

[We can therefore say that] the *ijtihad* which is forbidden and rejected in the eyes of the Shi`a is *ra'y* and *qiyas*, which were originally called *ijtihad*, whether this is counted as a source of the *shari`a* and as an independent basis for legislation, or taken as a means for deriving and deducing true precepts; whereas the *ijtihad* which they deem correct according to the *shari`a* is that which means effort and exertion based on expert technical knowledge.

In answer to the question: what is the meaning, the use and the place of *ijtihad* in Islam, it can thus be said that it is *ijtihad* in the meaning that it is used today, i.e., competence and expert technical knowledge. It is obvious that someone who wants to refer to the Qur'an and *hadith* must know how to explain the meaning of the Qur'an, he must know the meaning of the verses, which verses abrogate which verses, which ones have clear meanings and which ones ambiguous meanings [\[19\]](#) - and he must be able to distinguish which *hadith* is valid and authoritative and which not. In addition, he must understand, on the basis of correct rational principles, incompatibilities between *hadiths* to the

extent that it is possible for him to resolve them, and he must be able to distinguish the cases in which the *`ulama* of the Shi`a sect have consensus (*ijma`*). In the verses of the Qur'an themselves, and similarly in the *hadith*, a series of general principles [for verification and interpretation] are laid down, and the use and exercise of these principles need training and practice, just as in the case of all other basic principles in every science. Like the skilled technician who knows which material to choose from all the materials available to him, the *mujtahid* must have proficiency and ability. In *hadith*, especially, there is a great deal of fabrication, the true and the false are mixed together; the expert must have the power to distinguish between them. In short, he must have enough preliminary knowledge so that he can exercise competence, authority and technical expertise.

The appearance of the Akhbaris in Shi'i Islam

Here we must mention an important and perilous current which first appeared around four centuries ago in the Shi`i world over the question of *ijtihad* - Akhbarism. If a group of the *`ulama* had not been forthright and challenged it, and had not taken a stand against this current and destroyed it, there is no knowing in what position we should be today.

The actual school of the Akhbaris is no more than four centuries old. Its founder was a man by the

name of Mulla Muhammad Amin alAstarabadi [d. 1033/1624], who was, personally, a gifted man who found many followers among the *'ulama'*. The Akhbaris themselves claimed that the original Shi'is, up to the time of the Shaykh alSaduq [20], were all followers of the Akhbari doctrine, but the truth is that Akhbarism as a school with basic postulates did not exist more than four centuries ago. These postulates were: the denial of the possibility of arriving at certainty through exercising reason (*'aql*); the denial of the validity and the proof (*dalil*) of the Qur'an on the pretext that the understanding of the Qur'an lay exclusively in the hands of the Prophet's *ahl albayt*, and that our duty is to consult the *hadith* of the *ahl albayt* [for its interpretation and understanding]; the assertion that *ijma`* was the innovation of the Sunnis; the assertion that, of the four valid proofs (*adilla*), i.e., the Book, the Sunna, *ijma`* and *'aql*, only the Sunna is able to lead to certainty, the assertion that all the *hadith* that appear in the "four books" are true and valid, and of categorical provenance [from the Imams] (*qat'i alsudur*).

In his book, "*Uddat alUsul*", the Shaykh alTusi mentions a group of former Shi'i scholars under the name of the "Muqallida", and adversely criticises them; but they had no school of their own, and the reason that the Shaykh called them "Muqallida" was that even in the fundamentals of dogmatics

(*usul aldin*) they constructed their proofs with *hadith*.

At any rate, the school of the Akhbaris took its stand against the school of *ijtihad* and *taqlid*. They denied the legal competence, jurisdiction and technical expertise that the *mujtahids* believed in; they considered *taqlid* of anyone else than the *ma`sumin* [22] to be illegal. According to them, only the *hadith* are authoritative, and since there is no right of *ijtihad* or deriving of opinions, people must necessarily have recourse directly to the texts of the traditions and act upon them, no scholar calling himself a *mujtahid* or a *marja`altaqlid* [23] can act as an intermediary.

Mulla Amin alAstarabadi, the founder of this school, and personally a very gifted man, learned and well-travelled, wrote a book called "*al-Fawa'id al-Madaniya*" in which he went to war with the *mujtahids* with astonishing stubbornness. He particularly tried to refute the principle of the authority of *`aql*. He claimed that it was only a proof in matters which had their origin in the senses, or which were related to sensory objects (such as in mathematics), and that in matters other than these it was inadmissible as a proof. [24]

It so happens that this idea was practically contemporary with the appearance of empirical philosophy in Europe. The latter denied the validity of pure reason, and alAstarabadi denied its validity

in religion. Now where did he get this idea? Was it his own original idea, or did he get it from elsewhere? We cannot say.

I remember that in the summer of 1322 [Sh./1943] I went to Burujird, and at that time the late Ayatullah Burujirdi was still living there, not yet having come to Qum. One day, the talk was of this idea of the Akhbaris, and he criticised it, saying that the appearance of this idea among them was the effect of the wave of empiricism that had arisen in Europe. I heard this from him at that time. Afterwards, when he came to Qum, and his lessons in *usul alfiqh* reached this topic, i.e., the validity of certainty as a proof (*hujjat al qat`*), I was waiting to hear this opinion again from him, but unfortunately he did not say anything about it. Now, I cannot say if this had only been a conjecture which he had voiced, or whether he had evidence, but I, myself, have not till now found any evidence for it, and I feel it is extremely unlikely that empirical thinking had then reached the East from the West. However, against this is the fact that Ayatullah Burujirdi never spoke without evidence. I now regret that I never asked him for an explanation at the time.

The Struggle With Akhbarism

In brief, Akhbarism was a movement in opposition to *`aql*. An amazing ossification and inflexibility ruled in their doctrine. Fortunately, some discerning individuals like Wahid Bihbihani [\[25\]](#), famous as

"Aqa", whose descendants are even now known as "Ali Aqa (Family of Aqa)", and his pupils, and afterwards the late Shaykh Murtada alAnsari [26], took a stand and fought against this doctrine.

Wahid Bihbihani lived in Karbala.[27] At that time, the author of the "*Hada'iq*"[28] an erudite Akhbari, was also in Karbala, and both of them had a following of students. Wahid was a follower of the doctrine of *ijtihad*, and the author of the "*Hada'iq*" of the Akhbari doctrine, and occasionally there were bitter disputes. In the end, Wahid Bihbihani defeated the author of the "*Hada'iq*", and it is said that the outstanding pupils of Aqa Wahid, such as Kashif alGhita', Bahr al'Ulum and the Sayyid Mahdi Shahrastani [29], had first of all been pupils of the author of the "*Hada'iq*" and had afterwards left him and joined the lessons of Wahid Bihbihani.

Of course, the author of the "*Hada'iq*" was a moderate Akhbari; he claimed that his doctrine was identical with that of Muhammad Baqir al-Majlisi [30], half way between Akhbari and Usuli. Moreover, he was a pious and godfearing man of faith, and although Wahid Bihbihani fought against him vociferously and forbade congregational prayers behind him, he, quite the contrary, said that congregational prayers behind Aqa Wahid were valid. It is said that at the time of his death he left in his will that Wahid Bihbihani should recite his funerary prayer.

The struggle of the Shaykh alAnsari was such that he managed to build a solid foundation for the science of *usul alfiqh*; and it is said that he maintained that if Amin alAstarabadi had been alive he would have accepted his *usul*.

Naturally, the Akhbari school was defeated as a result of this opposition, and now it has no following except here and there. However, not all the ideas of Akhbarism, which penetrated people's minds so quickly and securely after the appearance of Mulla Amin, and which held sway for more or less two hundred years, have disappeared. Even now we see many who do not recognize the permissibility of an exegesis of the Qur'an unless a *hadith* is quoted. The inflexibility of Akhbarism still reigns in many of the matters of *akhlaq* (ethics) and in social problems, even in some parts of *fiqh*. But now is not the time for me to expand on this.

One thing which is a cause of the popularity of the Akhbari way of thinking is their selfrighteousness, which is pleasing to ordinary people, because their ideas are formulated in such a way that they seem to be claiming: "we are not saying anything we have invented ourselves, we are people of obedience and submission; we say nothing except what the Imam alBaqir (or the Imam alSadiq, etc.) said; we do not speak ourselves, we only say what the *ma`sumin* said."

In the chapter on *ihtiyat* and *bara'a* (precaution and exemption from obligation) in his "*Fara' id alUsul*" the Shaykh alAnsari quotes from Ni`mat Allah al-Jaza'iri [31], who maintained the doctrine of the Akhbaris:

Can any rational person conceive the possibility that on the day of Resurrection they will bring forth one of the slaves of Allah (i.e., the Akhbaris) and ask him how he acted, and that when he says that he acted according to what the *ma`sumin* ordered and that everywhere there was no word from the *ma`sumin* he desisted as a precaution, they will take such a person to Hell, while they will lead a thoughtless person who was inattentive to the words of the *ma`sumin* (i.e., an Usuli who follows the doctrine of *ijtihad*), who rejects every *hadith* on the slightest pretext, to heaven? It is not possible!

The answer which the *mujtahids* give is that this kind of obedience and submission is not submission to the words of the *ma`sumin*, but submission to ignorance. If it is really certain that the *ma`sumin* said something, then we must submit; but these people wanted to submit ignorantly to everything they heard.

I will give as an example something which I have recently come across, so that the difference between the rigid Akhbari way of thinking and the *ijtihadi* way of thinking can be seen.

A Sample Of The Two Ways Of Thinking

It has been commanded in many *hadiths* that the end of the turban should always hang down and pass round the neck, not only at the time of prayer, but at all times. One of these *hadiths* is as follows:

The difference between a Muslim and an unbeliever is the passing of the end of the turban round his neck (*altalahhi*).

A number of Akhbaris have seized upon this *hadith* and those like it, and said that the end of the turban must always hang down. But Mulla Muhsin Fayd [32], although he did not think very highly of *ijtihad*, did in fact act in accordance with *ijtihad* in his chapter on apparel and adornment (*alziy wa I-tajammul*) in his "*Kitab alWafi*": and say that in former times the unbelievers had a slogan to the effect that the end of the turban should be tucked in on top, and they called this act *iqti`at*. If someone did this, it implied that he was one of them, and this *hadith* ordered that this slogan should be challenged and not followed. However this slogan has for a long time ceased to be current, and thus the subject of the *hadith* is no longer a matter of concern; on the contrary, since everyone tucks the end of his turban in on top, it is forbidden for someone to drape it round his neck, for it would be dressing in a way which drew attention to oneself, and this is unlawful.

Here the ossified doctrine of Akhbarism ruled that the text of the *hadith* ordered that the end of the turban must hang down, and it is an interference with it for us to add our words to it and give our own opinion and practice *ijtihad*. But the thinking of *ijtihad* is that we have two commands: one is the command to keep clear of the slogan of the unbelievers, which is the spirit of the subject of this *hadith*; and the other is the command to avoid ostentatious dress. In the days when this slogan had currency, and Muslims were trying to avoid appearing to comply with it, it became an obligation on everybody to keep the ends of their turbans hanging down; but now that this state of affairs no longer pertains and the slogan has fallen into oblivion, and now that ordinarily noone lets the end of his turban hang down, if someone were to do this, it would be an instance of ostentatious clothing, and this is illicit. This is just one example which I wanted to give you: there are many like it.

It is narrated from Wahid Bihbihani that he said:

Once, the new moon of Shawwal [the month following Ramadan] had been established because it had been sighted by many people (*tawatur*). So many people came and said that they had seen the new moon that certainty had been obtained in the matter for me [33], so I gave the order that that day was the `Id alFitr [the feast marking the end of Ramadan]. One of the Akhbaris protested to me that I had not seen it myself, and that it had not

been witnessed by people who had been proven to be *`adil* [to always act in accordance with the *shari`a*], and that I should therefore not have given the ruling. I said that it was *mutawatir*, and that this was a source of certainty for me. He then asked me in what *hadith* it had been narrated that *tawatur* was a valid proof leading to certainty.

It is also well known that some of the Akhbaris gave the command that the testimony of belief should always be written on the shroud of the corpse in this way:

Isma`il yashhadu an la ilaha illa Allah (Isma`il testifies that there is no god but Allah).

Now the reason [they say] that the testimony is to be written in the name of Isma`il is that it is narrated in a *hadith* that the Imam alSadiq wrote in this way on the shroud of his son Isma`il. The Akhbaris had never stopped to think that it was written thus on his shroud because his name was Isma`il; and that now, for example, that Hasan has died, they should say: "We should write his own name on the shroud, not that of Isma`il." Instead they argued: "This would be *ijtihad*, resorting to one's own opinion and relying on *`aql*. We are the people of obedience and submission to the words of the Imams alBaqir and alSadiq, and we, for our part, will not interfere."

The Kind Of *Taqlid* That Is Forbidden By The *Shari`A*.

Let us now turn to *taqlid*. It is [as was said before] of two kinds: licit and illicit [in terms of the *shari`a*]. There is a kind of *taqlid* which is the blind following of one's surroundings and of habit, which is, of course, forbidden, and it is this which is condemned in the Qur'an when those who say:

Behold, we found our forefathers agreed on what to believe - and verily, it is but in their footsteps that we follow. (42:23)

are condemned. We have said that *taqlid* is of two kinds: licit and illicit. What we meant by illicit *taqlid* is not confined solely to the kind of *taqlid* which is the blind imitation of one's surroundings, of habit, of one's parents or ancestors, but we wanted also to say that *taqlid* between those who do not have [the necessary] knowledge (*al-jahil*) and those who do (*al`alim*), the consultation of *the faqih* by the ordinary person, is of two kinds: licit and illicit.

We occasionally hear these days from some people who are looking for a *marja` altaqlid*, that they are looking to find someone to whom they can give unqualified allegiance. We want to say that the *taqlid* which Islam has commanded is not "unqualified allegiance"; it is the opening, and keeping open, of one's eyes, of awareness. If *taqlid* takes on an aspect of devotion, thousands of evil affects will come about.

Now there is a wellknown and detailed *hadith* on this subject which I shall quote for you:

Whichever of the *fuqaha* can protect his self [34], who can preserve his religion, who fights his desires and is obedient to the commands of his Master, should be followed by the people in *taqlid*.

This is one of the textual proofs for *taqlid* and *ijtihad*. The Shaykh alAnsari said about this *hadith* that the signs of truth are evident in it.

It is an appendage to the following verse from the Qur'an:

وَمِنْهُمْ أُمِّيُونَ لَا يِعْلَمُونَ الْكِتَابَ إِلَّا أَمَانِيٍّ وَإِنْ هُمْ إِلَّا
يَظُنُّونَ

And there are among them unlettered people who have no real knowledge of the divine Book, only wishful beliefs, and they depend on nothing but conjecture.(2:78)

This verse comes in condemnation of the ignorant and illiterate Jews who followed, and practiced *taqlid* of, their religious scholars and leaders, and it comes after some verses which mention the unattractive behaviour of the Jewish religious scholars. It points out that a group of them were such ignorant and illiterate people that they knew nothing of the divine Book except a string of imaginary beliefs [about it] and such things as they

wished to believe, and that they had gone after surmise and illusion.

The *Hadith* Of The Sixth Imam Concerning The Kind Of *Taqlid* Which Is Illicit

The following *hadith* is connected to the previous verse. Someone said to the Imam alSadiq that the ordinary, illiterate Jews had no other alternative but to take in everything they heard from their religious scholars and to follow them. If there is any blame, it should be directed towards the Jewish scholars themselves. Why should the Qur'an censure helpless ordinary people who knew nothing and were only following their scholars? What difference is there between the common Jew and the common Muslim? If *taqlid* by ordinary people and their following of the learned is forbidden, we Muslims, who follow our scholars, this person reasoned, must also be the objects of reprehension and censure. If the former should not have accepted what their scholars said, then the latter should not accept what their scholars say.

The Imam said:

In one respect there is a difference between the ordinary Jew and the Jewish scholars, and the ordinary Muslim and the Muslim scholars, and in another respect there is a similarity. In so far as there is a similarity, God has commanded the ordinary Muslim also not to practice that kind of

taqlid of scholars, but in so far as there is a difference, He has not.

The person who had asked the Imam then said: O son of the Messenger of Allah, please explain what you mean.

Then Imam said:

The ordinary Jews could see from their scholars and the way that they behaved that they were quite clearly lying: they did not refrain from accepting bribes, they changed the laws and the rulings of the courts in exchange for favours. They knew that they displayed partiality to certain individuals. They indulged their personal likes and dislikes, they would give one man's right to someone else. .. On account of natural, common sense, which God has created in everyone, we all know that we must not accept the speech of people who behave in such a way as this; we must not accept the word of God and the prophets from the tongues of such people as this.

What the Imam meant here was that no one can say that the ordinary Jewish people did not know that they should not act in accordance with what had been said by those of their scholars who acted contrary to the divine commands of their religion. This is not something that someone might not know. Knowledge of this kind is put by God into every person's nature, and everyone's reason acknowledges it. In the terminology of logic, it is a

'inborn' proposition; its proof is contained within itself. According to the dictate of every intellect, one must not pay any attention to the utterance of someone whose philosophy of life is purity and the rejection of the human passions but who pursues what his desires tell him to. Then the Imam continued:

It is the same thing for our people: they too, if they understand or see with their own eyes that there is behaviour contrary to the *shari`a* on the part of their scholars, strong prejudices, a scramble after the ephemera of this world, preference for their own supporters however irreligious they may be, and judgement against their opponents even when they deserve verdicts in their favour, if they perceive such behaviour among them and then follow them, they are just the same as the Jewish people and should be reprimanded and censured.

So it is clear that unquestioning allegiance and shutting one's eyes to the truth is not the kind of *taqlid* which is encouraged or permitted by the *shari`a*. Licit *taqlid* means having one's eyes open and being observant and alert; otherwise it is accepting responsibility for, and being an accomplice to, an illicit act.

Regarding The Popular Belief That The `Ulama Cannot Be Tainted By Immorality

Some people imagine that the effect of sin on individuals is not of only one kind: that sin has an

effect on ordinary people which annuls their piety and right behaviour, but that it has no effect on the *'ulama'* who have some kind of immunity. It is like the difference between a little water and a lot which, if it is more than one *kurr* [35], cannot be tainted by any unclean thing. Now, in fact, Islam does not consider anyone to be untaintable, not even the Prophet. For why then should God have said:

[O Prophet] say: 'I also, if I commit a sin, fear punishment on the Great Day.'

Why should He have said:

If any kind of attributing godhood to other than Allah (shirk) enters your actions, your work will be spoilt?

All this is to show that there is no kind of partiality or discrimination, there is no immunity from sin for anyone.

The story of Moses and God's righteous servants, which is in the Qur'an, is a wonderful story. One moral which can be drawn from it is that the follower should surrender to the one he is following up to the point where basic principles and the law are not contravened. If it is seen that the leader does something against these principles, one must not remain silent. It is true that the fact that in the story the things which the servant of God does are not, in his view, against these basic principles, since

he sees a wider horizon and can see into the heart of the matter; they were, rather, his very duty and responsibility. But the question here is why Moses was not patient, and why he gave vent to his criticisms, despite the fact that he had promised [the servant of God] and himself that he would not make any objection? Why, then, did he protest and criticise? The defect in Moses' actions was not his protesting and criticising, but the fact that he was not aware of the undivulged aspect of the matter, the inward and secret side of the events. Of course, if he had been aware of the hidden reasons for what happened, he would not have objected, and he would have wanted to discover the secret of the affair; but as long as his actions were, from his own point of view, against basic principles and the divine Law, his faith would not allow him to remain silent. There are those who have said that if the actions of that servant of God were to be repeated on the Day of the Resurrection, Moses would still object to them and criticise them, unless, by that time, he were to become aware of the hidden reasons behind them. Moses said to the servant of God:

"Shall I follow you so that you may teach me, of what you have been taught, right judgement."

"Assuredly you will not be able to bear with me patiently."

Then he explained the reason very clearly:

"And how should you bear patiently what you have never encompassed in your knowledge?"

Moses said:

"Yet you will find me, if Allah will, patient, and I shall not rebel against you in anything."

Moses did not say that he would be patient whether he discovered the secret of the matter or not. He merely said that he hoped he would have that patience. Of course, this patience did exist within Moses as long as he understood the reason for things.

Then the servant of God wanted to have something more definite from him; that, even if he did not discover the reason for what had happened, he would remain silent and not protest until the time came for him to explain.

"Then, if you follow me, do not question me on anything until I myself introduce the mention of it to you." (117:6670)

Here, the verse does not say if Moses accepted; it only says that after this they both set out together and continued till the end of the story which we all know.

At any rate, I wanted to show that the ignorant person's *taqlid* of the learned should not be blind allegiance. The unlawful kind of *taqlid* between one who is ignorant and one who has knowledge is that kind in which unquestioning obedience exists,

which takes some such form as: "an ignorant person cannot quarrel with a learned person; we don't understand, perhaps the duties imposed by the *shari`a* necessitate its being like this."

I have mentioned this story as evidence and corroboration for what was in the *hadith* of the Imam alSadiq.

Taqlid Permitted By The Shari`a

After what I have narrated concerning the kind of *taqlid* forbidden by the *shari`a*, the Imam went on to explain the kind of *taqlid* permitted by the *shari`a* the kind which is to be praised, in these words:

Whichever of *the fuqaha'* can protect his self, who can preserve his religion, who fights his desires and is obedient to the commands of his Master, then he should be followed by the people in *taqlid*.

Of course, it is clear that the struggle of a spiritual *`alim* with his weaker desires is very different from the struggle of an ordinary person, because the desires of each individual are associated with specific activities. The desires of a youth are one thing, the desires of an old man another; everyone, in whatever position, degree, stage or age he may be, has a particular kind of desire. The standard for subservience to inferior desires for a spiritual *`alim* is not what we see: for example, whether he drinks alcohol or not, whether he has stopped praying and

fasting or not, whether he gambles or not.^[37] The standard for the subservience to inferior desires for such a person is whether he desires position, to have his hand kissed, to become famous and popular and have people walk behind him, to use the wealth of the Muslims to lord over others, to allow his friends and relatives, especially his sons, to benefit from the wealth of the Muslims. Then the Imam said:

Only some of the *Shi`i fuqaha* have these great qualities and traits of character, not all of them.

This *hadith*, on account of its final phrases, is one of the pieces of evidence in the question of *ijtihad* and *taqlid*.

So it is clear that both *ijtihad* and *taqlid* can be divided into two kinds: that which is permitted by the *shari`a* and that which is not.

Why Is Taqlid Of A Dead Person Not Permitted

We have a principle in *fiqh*, which is one of the indisputable points of our *fiqh*, that *taqlid* of a dead person in the first instance is not permitted. If *taqlid* of a dead person is permitted, it is only when *taqlid* is carried on from someone who was followed [by the same person] while he was alive and is now dead.^[38] Moreover, the carrying on of the *taqlid* of a dead person must also be with the permission of a living *mujtahid*. I am not concerned here with the

reasons *in fiqh* for this principle, so I will only say that it is a very basic idea, but only on the condition that the aim of the principle is clearly understood.

The first purpose of this principle is that it should be a means for the survival of the traditional centres of learning of the Islamic sciences, so that there should be continuity, and that the Islamic sciences should be preserved - not only preserved, but that they should advance day by day and be perfected, and that those matters which had not previously been solved should be solved.

It is not the case that all our problems have been solved in the past by our *'ulama'*, and that now we have no more problems and no more work. We have thousands of riddles and difficulties in *kalam* (theology), Qur'anic exegesis, *fiqh* and the other Islamic sciences, many of which have been solved by the great *'ulama'* of the past, but many of which remain, and it is the duty of those who follow on to solve them and to gradually write better and more complete texts in each subject, to continue each subject and develop it, just as in the past, too, exegesis, theology and law were gradually developed. The caravan must not be brought to a halt in midjourney. So people's *taqlid* of living *mujtahids*, and their heeding them, is a means to the continuance and development of the Islamic sciences.

Another reason is that every day Muslims are faced with new problems in their lives, and they do not know what their duty is in these matters. It is necessary to have living *fuqaha'*, aware of the contemporary situation, to respond to this great need. It is narrated in one *hadith* concerning *ijtihad* and *taqlid*:

As for *alhawadith alwaqi`a*, refer concerning them to the narrators of *our hadith*.

These *hawadith alwaqi`a* are exactly these new problems which arise as time passes. Study and research into the books of *fiqh* from different epochs and centuries shows that gradually, according to the needs of the people, new problems arise in *fiqh*, and that the *fuqaha'* set out to answer them. It is for this reason that the dimensions of *fiqh* have increased.

If a researcher were to make a tally, he could discover, for example, in what century, in what place and for what reason, such and such a problem arose in *fiqh*. If it were not necessary for a living *mujtahid* to give answers to these problems, what difference would there be between *taqlid* of a living person and *taqlid* of a dead person? It would be better to follow in *taqlid* some of the dead *mujtahids* like the Shaykh alAnsari, who, on the admission of the now-living *mujtahids* themselves, was the most knowledgeable and learned.

Basically, the 'secret' of *ijtihad* lies in applying general principles to new problems and changed circumstances. The real *mujtahid* is one who has mastered this 'secret', who has observed how things change, and subsequently how the rulings on them have changed. For there is no skill in only thinking about things which are in the past and have already been thought about; or, at the most, changing an *`ala laqwa* into an *`ala lahwat*.[\[39\]](#) or *vice versa*; there is no need to make a song and dance about any of this.

Of course, *ijtihad* has many preconditions and prerequisites; a *mujtahid* must have acquired the various [preliminary] sciences. It is necessary that he should have applied himself to the study of Arabic language and literature, to logic, to the study of *usul* (jurisprudence), even to the history of Islam and the *fiqh* of the other sects, so that he might become a true and thorough *faqih*. No one can ordinarily lay claim to *ijtihad* just by reading a few books on Arabic grammar, or rhetoric and logic, then three or four of the set books for the intermediate stage, such as the "*Fara'id*", the "*Makasib*" or the "*Kifaya*"[\[40\]](#), and then spending a few hours in the *darsi kharij*.[\[41\]](#) He does not then become qualified to sit with the "*Wasa'il*" and "*Jawahir*"[\[42\]](#), in front of him and issue legal opinions. He must be completely knowledgeable in exegesis and *hadith*, that is to say in the several thousands of *hadith* which appeared in the two and

a half centuries from the time of the Prophet to the time of the Imam alHasan al'Askari, and of the circumstances in which they appeared; he must also know Islamic history and the *fiqh* of other Islamic sects, and the narrators of traditions and their biographies and reliability.

Ayatullah Burujirdi was a true *faqih*. It is not my habit to mention people by name, and while he was alive I never mentioned him in my lectures. But now that he has died and there can be no ulterior motive, I can say that this man was truly a distinguished and outstanding *faqih*. He was conversant with, and proficient in, all these sciences, in exegesis, *hadith*, knowledge of the narrators of *hadith*, in the sciences of the evaluation of *hadith* (*'ilm al-daraya*), and in the *fiqh* of the other sects of Islam.

How The *Faqih's* Outlook On The World Affects The Legal Opinions He Issues

The work of a *faqih* and *mujtahid* is the deduction and derivation of the precepts [of the *shari`a*]; but his knowledge and understanding of all things, in other words, his worldview, has a great influence on the decisions he makes. The *faqih* must have all the information on matters upon which he is going to issue a *fatwa*. If we imagine a *faqih* who is always sitting in the corner of his house or his *madrassa*, and compare him with a *faqih* who is conversant with the currents of life, both of them refer back to

the valid proofs of the *shari`a*, but each one of them will derive his legal rulings in a particular way, using a particular method.

Let me give an example. Suppose that someone who grew up in Tehran, or in a big town like Tehran, where running water is in plentiful supply and there are reservoirs and tanks and gutters, becomes a *faqih* and wishes to issue a *fatwa* concerning the precepts about what is pure and what is impure. When he refers to the *hadiths* on purity and impurity, such a person will, owing to his own previous experience, make a deduction in a way which will be extremely circumspect and will necessitate the avoidance of many things. But the same person, once he has been to the House of God [the Ka`aba] and seen the conditions of purity and impurity and the lack of water in that place, will find himself changing his outlook regarding the subject of purity and impurity. After such a journey, if he consults the *hadiths* on this matter, he will see them in a different light.

If someone compares the *fatwas* of the *fuqaha'* with each other, and then pays attention to the individual circumstances and each of these scholars' ways of thinking about living problems, he will see how the mental environment of a *faqih* and the information he has concerning the outside world influence his legal rulings in such a way that the legal rulings of an *Arab faqih* have an Arabic flavour, those of an Iranian have an Iranian flavour, and

those of a countrydweller have a rustic flavour as opposed to the urban feel of those of a citydweller.

This religion is the final religion; it is not exclusive to a particular time or place; it is relevant to all times and places. It is a religion which came to establish order and progress in the life of man, so how could a *faqih* who is uninformed of the natural arrangement and movement of things and who does not believe in a progression towards perfection in life, deduce the high and truly progressive laws of this upright (*hanif*) religion in a way which is in perfect accordance with the truth? For this religion came to give order to this natural arrangement, movement and development, and it guarantees its guidance.

The Understanding Of Necessities

At the present time, we have some cases in our *fiqh* where our *fuqaha'* have given a definite ruling on the requirement of something only because they have seen the necessity and importance of the matter. In other words, since there is no transmitted evidence from the verses of the Qur'an or from *hadith* which is explicit and sufficient, and since there is also no valid consensus in the matter, they have used the fourth basic principle of derivation, i.e., the principle of independent reasoning (*`aql*). In this kind of instance, *the fuqaha'* become certain that the command of God in such and such a case is suchandsuch, because of the

importance of the matter and their knowledge of the spirit of Islam which leaves no important matter in abeyance. For example, in the case of the legal ruling given by the *fuqaha'* concerning the guardianship (*wilaya*) of the ruler and the subsidiary problems connected with it, if the importance of this matter had not been realised, no legal rulings would have been issued. The *fuqaha'* have only issued them to the extent which they understand to be necessary. Other instances similar to this can be found where the reason that a legal ruling has not been given is the fact that the importance and necessity of the matter has not been fully realised.

An Important Recommendation

Here I have a recommendation which could be most useful for the advancement and development of our *fiqh*. It was previously put forward by the late Shaykh `Abd alKarim alYazdi[43], and I am here only reiterating his proposal.

He asked what it was that required people to follow only one person in *taqlid* in all matters. Would it not be better if specialised divisions were established *in fiqh*? That is to say, there would be groups who, after having completed the general study of *fiqh* and become experts in it, would specialise in one particular section, and then people would follow them in that particular section. For example, some would take as their specialisation *`ibadat* (the rites of Islam), and others *mu`amilat* (transactions),

some *siyasat* (politics), and other *ahkam* (criminal law); this is exactly what has been done in medicine where specialised branches have been created, and doctors divided into groups for each speciality, some being heart specialists, some eye specialists, some ear, nose and throat specialists, and others specialists in other branches. If this were done, each person could study his own branch more thoroughly. I believe that there is a discussion of this matter in the book "*alKalam Yajurru lKalam*" by the Sayyid Ahmad al-Zanjani.[\[44\]](#)

This recommendation is a very good one, and I will add only that the need to divide *fiqh* up and to create specialised branches arose a hundred years ago, and in present circumstances the *fuqaha* of today will impede the forward development of *fiqh* and stunt its growth unless they heed this recommendation.

The Division Of The Sciences Into Specialised Branches

The division of the sciences is the result of their development, but also its cause. For a science gradually progresses until it reaches the point where it is no longer possible for a single person to investigate all the problems it raises. It must then necessarily be divided up into branches of specialisation. Thus the division of a science and the creation of branches within it is the result and the effect of the development of that science, while, at

the same time, more progress is made when these branches are created, and thought can be concentrated on the special problems in each branch.

In all the world's sciences - medicine, mathematics, law, literature and philosophy - branches of specialisation have been created, and for that very reason progress has been accelerated in each of these branches.

The Progress Made In *Fiqh* During The Last Thousand Years

There was a time when *fiqh* was a very limited science. When we refer back to the texts before the time of the Shaykh alTusi, we see how restricted it was. By writing his "*alMabsut*", alTusi took *fiqh* into new realms and enlarged its scope, and in the course of time, as a result of the efforts of the '*ulama*' and *fuqaha*, and because of the creation of new problems and the initiation of new investigations to answer them, *fiqh* progressed even further, to the point where, about a hundred years ago, when the author of the "*Jawahir*" wrote his complete compendium of *fiqh*, he was only just able to finish it. It is said that he started his task when he was about twenty years old, and that, thanks to his extraordinary genius, continual work and a long life, he was able to write the last pages right at the very end of his life. The "*Jawahir*" was printed in six very bulky [lithographed] volumes, while the whole of al-

Tusi's "*alMabsut*", which was in his time the example of a comprehensive work on *fiqh*, is probably less than half of one of these six volumes. After the author of the "*Jawahir*" died, the foundations of a new *fiqh* were laid by the Shaykh Murtada alAnsari, and the epitome of this new *fiqh* was that great man's "*alMakasib*" and "*al-Tahara*".[\[45\]](#) Since his time, no one could even conceive of teaching a complete cycle of *fiqh* with such thorough explanation and research.

At the present time, after this advance in the development of our *fiqh*, which occurred in the same way as similar advances in other sciences all over the world, and which has been the result of the efforts of the '*ulama*' and '*fuqaha*' of the past, the scholars of today will find themselves faced with the choice of either curbing any further progress in *fiqh* or putting this sensible and progressive recommendation into practice and creating branches of specialization, as a result of which people will come to discriminate in their *taqlid*, in the same way as they discriminate in referring to a doctor.

A Council Of *Fuqaha*'

There is another recommendation which I wish to make, and the more fully I explain what I have in mind the better it will be. At the present time, when branches of specialization exist in every science, resulting in breathtaking advances in these

sciences, there is another practice which, in its turn, has acted as a contributing factor, and this is practical and theoretical cooperation between first rank scientists and specialists in all the branches of science. Now, solitary theorising or experiment no longer has any value, nothing is to be achieved from going one's own way. In every branch, scholars and scientists are constantly engaged in exchanging ideas; they put the results of their thinking at the disposal of other specialists, and the scientists of one continent cooperate with those of another. The result of this theoretical and experimental cooperation between first rank scientists is that if a useful and valid theory is put forward, it can be published and establish itself more quickly, whereas, if a theory is weak, its failing can be discovered and it can be eliminated sooner, so that in the future the pupils of the authorities who developed these theories will be saved from these errors.

Unfortunately, we still have not created any division of labour or specialization among ourselves, no practical or theoretical cooperation, and it is clear that as long as this is delayed, progress and the solution of difficulties cannot be achieved. There is no need for a proof of the need for scientific cooperation and the exchange of ideas since it is so selfevident, but so that it may not be doubted, I shall show, by quotations from the Qur'an and

"*Nahj alBalagha*", that this recommendation, this progressive order, is to be found within Islam itself.

In the Qur'an, in the *sura* called *alShura* (Counsel), it is said:

And those who answer their Lord, and perform the prayer, their affair being counsel between them, and expend of that We have provided them with. (42:38)

This verse describes the true believers and followers of Islam in this way: they reply to the call of God, they establish prayer, they do their work in consultation with each other, and they dispose of that which God has bestowed on them. So, in the view of Islam, consultation and the exchange of ideas is one of the basic principles of life for people of faith, the true followers of Islam.

In "*Nahj alBalaqha*" it is said:

Know that a group of the slaves of Allah with whom knowledge of Allah was entrusted keep His secret; they cause His springs to flow (i.e., they open the springs of knowledge for the people), they have friendly relations with one another and feelings of affection, they meet each other with warmth and cheerfulness and love, they quench each other's thirst from the cup of their acquired knowledge, and they emerge with their thirsts quenched.

If scientific consultation were to come into existence in the science of *fiqh*, and the principle of

the exchange of ideas were to be thoroughly practiced, many of the differences between legal opinions would be resolved, quite apart from the advances that would be made in the science as such. There is no alternative: if we maintain that our *fiqh* is also one of the world's genuine sciences, we must make use of the methods used in the other sciences. If we do not, the result will be that it will no longer be considered a science.

I have other useful and urgent recommendations, but my time is running out and I cannot mention them now, for it would take almost another three quarters of an hour, and I know that some people have a long way to go to reach their homes.

The verse of the Qur'an which I quoted at the beginning was:

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنْفِرُوا كَافَّةً فَلَوْلَا نَفَرَ مِنْ كُلِّ فِرْقَةٍ
مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا
إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

It is not for the believers to go forth all together; but why should not a party of every section of them go forth, to become learned (yatafaqqahu) in the religion, and to warn their people when they return to them, that they may beware. (9:122)

This verse explicitly instructs that a group of the Muslims should study (*tafaqquh*) their religion and

let others benefit from what they have studied. *Tafaqquh* is from the root *fqh*. The meaning of *fiqh* is not mere understanding: rather, it is deep understanding of, and perfect insight into, the truth of something. In his "*Mufradat*", Raghib [46], says:

Fiqh is the reaching for hidden knowledge by means of manifest knowledge.

Taffaqquh is defined as:

Going after something and becoming expert in it.

The above verse is addressed to Muslims whose understanding of Islam is not superficial, telling them to think deeply and discover the meaning and the spirit of the rules of Islam. This verse is the evidence for *ijtihad* and the study of *fiqh*, and it is also the evidence for our recommendations. Just as this verse lays the foundation for *ijtihad* and *tafaqquh* in Islam, so also it advocates that these two things should be more widely practiced. More attention should be paid to what is required, the *'ulama'* should start to sit in *fiqh* counsels, the individualistic approach should be discouraged, and branches of specialization should be created, so that our *fiqh* may continue on its path of perfection.

Footnotes

1. Tehran, 1962.
2. Lambton, A.K.S., 'A reconsideration of the position of the marja` taqlid and the religious

institution., *Studia Islamica*, XX (1964), 115135.
(See also, *alSerat*, Vol VII, No. 1 (1981), p. 1227)

3. For further information on these two persons, refer to the section by Yann Richard on 'Contemporary Shi'i Thought' in: Keddie, N.R., *Roots of Revolution: an Interpretative History of Modern Iran*, New Haven, 1981.
4. See the author's introduction to the new edition of: Mutahhari, M., *"IlalGirayish bi Maddigari"* Qum, 1980, pp. 89.
5. The collection of orations, homilies and letters of the first Shi'i Imam, `Ali b. Abi Talib, compiled by the Sharif alRadi (d. 406/1015).
6. For these and many other details of Mutahhari's life and times, reference should be made to the article 'Sayri dar zindigiyi `ilmi va inqilabiyi ustad shahid Murtada Mutahhari', in: `Abd alKarim Surush (ed.), *Yadnamayi Ustad Shahid Murtada Mutahhari*, Tehran, 1981, pp. 319380.
7. It was reopened after the revolution.
8. For a complete list of his published and unpublished works, refer to: `Abd alKarim Surush, *op. cit.*, 436556.
9. The translation of Qur'anic verses and *hadiths* has been made in accordance with the author's own Persian translation except where this is more an interpretation than a translation, in

which case a more literal English translation is given.

10. This address was given on 1 Urdibihisht 1340 Sh. (21 April 1961), three weeks after the death of Ayatullah Burujirdi.
11. (Cairo, 1940) The main work in jurisprudence by Abu `Abdillah Muhammad b. Idris al-Shafi`i (150/767 204/820), the founder of the Shafi`iya legal school. He laid the foundations for the systematic treatment of *qiyas*.
12. The Sayyid `Abd alHusayn alMusawi Sharaf alDin (1290/18734 1377/19578), born in Kazimayn, educated in Najaf, but subsequently resident mostly in the Lebanon. He is popularly famous for his "*alMuraja`at*" (Sayda, 1355/19367; frequently reprinted), which contains his detailed correspondence with the Egyptian scholar Salim alBishri in defense of Shi`ism. His "*AlNass was Ijtihad*" was published in Najaf in 1375/19556, and has also been reprinted several times. He is also the author of "*Abu Hurayra*" (Sayda, n.d.), a book about the controversial narrator of *hadith*.
13. "*AlKafi fi `Ilm alDin*", (ed `A. A. Ghaffari, 8 vols., Tehran, 13779) the first and largest of the Shi`i collections of *hadith*, compiled by Muhammad b. Ya`qub b. Ishaq alRazi al-Kulayni (d. 328/939). It contains over 16,000 traditions from the Prophet and the Imams covering all aspects of

the *usul* (the 'roots', mainly theological) and the *furu`* (the 'branches', mainly preceptual) of the religion.

14. The *khobar alwahid* is that kind of tradition which has not reached the status of *tawatur*, i.e., has not been narrated by so many traditionalists that there is no doubt about its validity. Under certain conditions, such traditions are admissible as proof (*hujja*) in the derivation of precepts.
15. Abu Ja`far Muhammad b. alHasan b. `Ali alTusi (385/995 460/1067), the Shaykh alTa'ifa (the Chief [scholar] of the [Shi`a] Sect), author of "*Uddat alUsul*" (Tehran, 1314).
16. Jamal alDin Abu `Amr `Uthman b. `Umar b. Abi Bakr b. Yusuf, Ibn alHajib (570/1174 646/1249), the Maliki legist, author of "*Muntaha alSu'al wa lAmal fi `ilmay alUsul wa lJada`*" which he condensed into his "*Mukhtasar alUsul*". Besides alIji's commentary on this abridgement, there is also one by the `Allama alHilli (see below, note 19), called "*Ghayat alUsul*" which he wrote to refute alIji's (see: "*alDhari`a*", XIV, p.56).
17. Abu Hamid Muhammad alTusi alGhazali (450/1058 505/1 111), who followed the Shafi'i *madhhab*. The full title of his work on jurisprudence is "*alMustasfa min `ilm alUsul*" (2 vols, Cairo, 1356).

18. The main substantial difference between Shi`i and Sunni *ijma`* is that the former must contain the opinion of the Imam in the consensus. The discussion of how this can be achieved during the Imam's occultation forms one of the important parts of the science of *usul*.
19. Jamal alDin Abu Mansur, Hasan b. Yusuf b. `Ali b. Mutahhar, the `Allama alHilli (648/1250 726/1325), the famous legist, philosopher and *mutakallim*, author of "*Tahdhib Tariq al Wusul ila `ilm alUsul*" (Tehran, 1308).
20. Abu Ja`far, Muhammad b. `Ali b. alHusayn b. Babawayh alQummi (d. 381/991).
21. These are: "alKafi" (see note 13); "Man la Yahdurahu lFaqih " (ed. H. M. Khirsan, 4 vols, Najaf, 1957, by 195862), also by alTusi.
22. The fourteen "impeccables": i.e., the Prophet, his daughter Fatimat alZahra, and the twelve Imams.
23. After the student of *fiqh* has mastered the necessary sciences, he may, if his teacher considers him to be capable of deriving his own legal opinions, receive a certificate authorizing him to do so; but he still cannot be followed by others in *taqlid*. For this to happen, he must rise to the final degree and become a *marja` al-taqlid*, where other qualities besides just his scholarship, e.g., his piety and conformity to the

shari`a, cause him to be respected above other *mujtahids*, and thus to become a source of certainty to his *muqallids* that in following him they will not deviate from the *shari`a*.

24. This is a question of certainty (*qat` , yaqin*): the evidence for the existence of a precept must be such as to leave no room for any kind of doubt in the mind of the person who models his behaviour according to it; in the case of proofs concerning sensory evidence, the very data themselves are only probabilistic, so no proof employing them can arrive at demonstrable certainty. Therefore, in such a proof, other probabilistic elements such as *`aql* are admissible, but these cannot be used to derive the precepts of the *shari`a*.
25. Muhammad Baqir b. Muhammad alBihbihani (11168/17047 1208/17934).
26. The Shaykh Murtada b. Muhammad Amin b. Shams alDin b. Ahmad b. Nur alDin b. Muhammad Sadiq alShushtari alDizfuli alAnsari (1214/1799 1281/1864), whose "*Rasa'il*", on *usul alfiqh* were published as "*Fara'id al-Usul*"(Tehran, 1296). His works in *usul* and *fiqh* now form the backbone of the presentday teaching of these subjects.
27. One of the *`atabat*, the *Shi`i* sacred towns in Iraq, the site of the battle where the third Imam, alHusayn, and his followers were

massacred on 10 Muharram 61/680. It is about 95 kms. S.S.W. of Baghdad.

28. The Shaykh Yusuf b. Ahmad alBahrani (d. 1186/1772), author of "*alHada'iq alNadira Ahkam al'Itra alTahira*" (ed. M.T. allrwani, 20 vols., Najaf, 1377).
29. a) Ja'far b. Khidr b. Yahya alNajafi (1164/751 1227/1812), known as "*Kashif alGhita `an Mubhamat alShari`a alGharra*" (Tehran, 1271).
b) The Sayyid Muhammad Mahdi b. Murtada b. Muhammad b. ` Abd alKarim alHasani alHusayni (11545/17412 1212/1797), known as the Sayyid Bahr al'Ulum. c) The Sayyid Muhammad Mahdi alShahrastani alHa'iri b. Abi'lQasim alMusawi (d. 1216/1801).
30. Muhammad Baqir b. Muhammad Taqi b. Maqsud `Ali alMajlisi allsfahani (1037/1627 1111/1700), compiler of the encyclopaedic collection of Shi'i *hadith*, "*Bihar alA nwar*" (110 vols, Tehran, 1376 [vol. VIII, Tehran, 1304])
31. The Sayyid Ni`mat Allah b. `Abdillah b. Muhammad alMusawi alJaza'iri (d. 1112/1700), a pupil of the `Allama alMajlisi (see previous note).
32. Muhammad b. Murtada b. Mahmud Muhsin al-Kashani (d. 1091/1680).
33. It is to be understood that *tawatur* is a proof of certainty according to the science of *usul al-fiqh*,

and that it has been so established independently of textual proofs. This rational view was challenged by the Akhbaris precisely because of the lack of textual backing.

34. Protecting the *nafs*, the soul, the greater, moral *jihad*, as opposed to the lesser *jihad* of protecting Islam against the external enemy.
35. One *kurr* of water is approximately 377 litres. In religious law if an amount less than this comes into contact with a religiously impure thing, the water too becomes impure, whereas above this amount the purity is not endangered.
36. `Abd Salih, the "Righteous Servant". For this story see the *sura* of "alKahf", 60 82.
37. Since he obviously refrains from such activities.
38. According to a commonly accepted ruling, this applies only to those matters which the *muqallid* formerly performed according to the *fatawa* of the subsequently deceased *marja` al-taqlid*. If any new matter arises for him, he must follow the *fatwa* of a living, *`adil mujtahid*
39. Two principles (*usul `amalia*) for the preponderance of one opinion over another in *fiqh*. If one opinion is chosen over another *`ala l-aqwa*, it is chosen because the proof for it is thought to be stronger; if it chosen *`ala lahwat*, it is because of the principle of precaution (*ihhtiyat*) which requires that what is least likely

to be at variance with the *shari`a* should be adopted. It will be appreciated that there may be a good deal of rather trivial argument as to whether one or the other of the two opinions should be chosen, according to which of these two principles is preferred.

40. a) for "*Fara'id al Usul*", see above, note 26. b) "*Kitab alMakasib*", also by the Shaykh alAnsari, an extensive exposition of the section in *fiqh* on transactions. c) "*Kifayat alUsul*" (2 vols, Tehran, n.d.) by "Akhund" Mulla Muhammad Kazim al-Khurasani (d. 1329/1911), a systematic text on *usul alfiqh*.
41. After the student (*talaba*, lit. 'seeker') has completed his reading of the main texts and mastered the necessary preliminary sciences, he may continue to the more detailed, but also more specialised, courses given by the main teachers of the subjects concerned. These lessons, the *darsi kharij*, are *kharij* to (outside, beyond) the texts, and the teacher will expound his own opinions, thus teaching the actual practice of *ijtihad*. The teacher will be able to assess the abilities of his pupils in these classes, and, in the case of *fiqh*, may subsequently award a certificate of *ijtihad* to those he considers to have mastered all the required skills and to be consequently in a position to employ them to arrive at their own legal opinions (see also above, note 23).

42. a) "*Wasa'il alShi'a*" (ed. `A. alRabbani M. alRazi, 20 vols, Tehran, 1376 1389), by the Shaykh Muhammad b. alHasan alHurr al`Amili (d. 1104/1693); the most comprehensive collection of *hadith* relevant to *fiqh*, arranged according to subject matter. b) "*Jawahir alKalam*" (ed. `A. Quchani *et al.*, 43 vols, Najaf-Qum-Tehran, 1377/1401), by the Shaykh Muhammad Hasan b. Baqir alNajafi (d. 1266/1849); an extensive commentary on the "*Sharayi` allIslam*" by the Muhaqqiq alHilli (602/1202 676/1277).
43. The Shaykh `Abd alKarim b. Muhammad Ja`far alMirjirdi alYazdi alHairi (1276/185960 1355/1937), whose move from Arak to Qum in 1920 began the modern history of that city as a centre of Shi`i learning.
44. The Sayyid Ahmad alHusayni alZanjani (1308/1890 1393/1973), a Qummi scholar. His "*alKalam Yajurru IKalam*" (3 vols, Tehran, 1363/1944) is a compendium of historical, literary, biographical and *hadith* information.
45. By the Shaykh alAnsari.
46. "*AlMufradat fi Gharib alQur'an*", (ed. M. S. al-Kilani, Cairo, 1961), by Abu lQasim alHusayn b. Muhammad b. alMafdal allsfahani (d. 502/1108-9), a famous lexicon of obscure meanings in the Qur'an.

The Role of Reason in Ijtihad

Murtada Mutahhari

Translated from the Persian by Mahliqa Qara'i

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In the previous discussion, "The Principle of *Ijtihad* in Islam", two trends in Islamic thought were referred to. One of them related to the subject of the justifiability or unjustifiability of the use of *qiyas* and *ijtihad bi al-ra'y*, a practice that acquired prevalence among different schools of fiqh. The other was regarding the controversy about Divine justice and reason as the criterion of moral and legal *judgements (al-husn wal-qubh al-'aqliyyan)* among the mutakallimun. These controversies actually revolved around the central issue of the role or the "rights" of reason.

Some schools of fiqh which supported *qiyas*, especially the Hanafi school, believed in the role of reason in *ijtihad*, which in their interpretation took the form of *qiyas* and *ijtihad bi al-ra'y*. But the other schools opposed to *qiyas*, especially the Zahiri school, did not approve of any role for reason, neither in the form of *qiyas* nor in any other form. Accordingly, the first group, while enumerating the sources of legislation, maintained that there were four: the Qur'an, the Sunnah, *ijma'* (consensus) and *ijtihad (qiyas)*. But the second group did not go beyond the Qur'an, the Sunnah and, at the most,

ijma'. Among the *mutakallimun*, the Mu'tazilah believed in the independent role of reason, and also in Divine justice and the rational basis of moral and legal judgements. They believed that the system of creation is established on the foundations of justice, and that the present system is the best possible. They also explained away the problem of evil in the world and believed that in the next world too punishment and reward will be according to the unalterable criteria of justice. The knowledge of these criteria is also within the province of reason. It is not possible that God should will anything that is not according to these definite rational criteria.

With regard to legislation, also, they believed that the Divine commands have been set forth according to the criteria of justice and with due attention to a series of real benefits and harms (that lie in obedience or disobedience to the laws). According to the Mu'tazilite doctrine, there is a purpose and aim hidden in every Divine Act, whether it relates to creation or legislation.

But the Asha'irah did not believe in any of the above-mentioned doctrines. They did not acknowledge Divine justice or the rational basis of moral and legal judgements. They did not believe that the world is based on the principle of justice and that the present system of creation is the best possible. Neither, according to them, in the other world matters will be decided on the criteria of justice, nor the system of Divine laws has been

patterned to ensure a series of benefits and to avoid harms. They did not believe in any aim and purpose for Divine Acts either. According to their doctrine, the belief in the principle of justice, the belief in a rational basis of moral and legal judgements, and the belief that Divine Acts are subject to aims and purposes, usefulness and harmfulness, contradict the principle of *tawhid* and the idea of absolute freedom of God as a free actor. No law or principle can be set forth as a criterion of His Will thus imposing limits upon Him. God's Will is neither subordinate to any criteria nor is it subject to any laws or principles; on the contrary all laws and principles are subject to and proceed from His Will. Judgements of reason cannot be relied upon to enable us to say definitely that such and such a thing is in accordance with justice or not. For instance, it cannot be said for certain that those people who obey God will be sent to heaven and those who sin to hell. His Will and Acts cannot be restricted by any of such rules. They interpret the following verse that says:

لَا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ

He will not be questioned as to that which He doth, but they will be questioned. (21:23)

to mean that it is not right to ask 'why' and 'wherefore' about His Acts. There is no criterion or standard applicable to Divine Acts so as to justify any question about God's Action or forbearance.

The Asha'irah have formally objected to the statement that 'The Heavens stand on the foundations of justice', and said that it is not so; they point out that matters like pain and disease, the creation of Satan, social injustice and inequality, class distinctions, domination of the corrupt over the virtuous in the world, and the like, are things which are observable through reason, and, if the order of the universe were based on justice, should not have existed. As for the religious laws and precepts, they have formally declared that they are not based on wisdom and prudence.

They say that the *Shari'ah* and its laws bring together disparities and separate similarities. Many matters, in spite of their being unlike, have the same judgement, and many other matters in spite of their being similar and parallel have different judgements applicable to them. They have mentioned various examples, to mention which is not possible here. Anyhow, according to the Ash'arite doctrine, the process of creation is not subject to the principle of justice; rather, justice is subordinated to creation. In the same way, the laws of the *Shari'ah* are also not subject to any real underlying benefits or harms; rather, benefit and harm, good and evil, are subservient to the provisions of the *Shari'ah*. That is, if we are to speak about justice and injustice, right and wrong, beneficial and harmful, what we should mean is

that whatever God does is just, good and beneficial, not that God does what is just, good and beneficial.

This kind of thinking is not without similarity to the trend that existed among the ancient Greek thinkers and the Sophists two thousand and five hundred years ago about reality and the worth of human thought and ideas. They raised the question whether reality is something which exists and our minds and their ideas, in order to be valid, should correspond to reality, or whether it is not so and reality is subject to our minds. For instance, during philosophical and scientific contemplation, we may make a statement about something and say that such and such is the case. Now does our statement correspond to some reality independent of our minds, which would be true if it corresponded with that reality? Or whether, on the contrary, truth and reality are subservient to our minds, and whatever we perceive is the truth? And since it is possible that different individuals should perceive something in diverse ways, truth is relative to each one of them, being different from what it is for others? Therefore, truth and reality are relative?

What a group of Muslim *mutakallimun* have said about religion in relation to truth, goodness, justice and benefit was said before them by the Greek Sophists about the mind in relation to reality and truth. The arguments presented by the Sophists for proving their claim resemble those advanced by this group of *mutakallimun*. Due to this similarity it

would be right to give them the name of 'Islamic sophists'.

This group of *mutakallimun* believed that they had discovered various contradictions, equal treatment of disparities, and unequal treatment of similarities in Islamic laws. They maintained that, on account of these contradictions, it is not possible for any real benefits and harms to be the criteria of religious laws. Therefore, it is the religious laws that are the criteria of good and bad, benefit and harm.

The Sophists had also made an excuse of the contradictions and errors of reason and perception, to hold that due to these contradictions it is not possible for a reality which is transcendental to the mind, and which the mind should follow, to exist. Reality, on the other hand, is a function of the mind. The answer given by philosophers to Greek and non-Greek sophists is also similar to the one given by the 'Adlites (those who believed in Divine justice, 'adl) to that group of *mutakallimun*, but here we shall abstain from going into further details.

The doctrine of *taswib* (lit. ratification) held by this group of *mutakallimun* is totally similar to the theory of relativism. According to the theory of relativity of truth, whatever one perceives is truth in relation to him though in relation to others it may be error, not truth. Also according to the theory of *taswib*, whatever one mujtahid may deduce is

correct as far as he himself is concerned, although it may not be so for others.

On the Crossroads

There are many problems which are theoretically of profound significance, but practically are not so important. There are also many problems which are not so important regarding their theoretical value but from the practical point of view they are of extraordinary significance. For instance, in theology we have the problem of Divine Attributes, which is of great importance so far as theory is concerned but is of little practical utility. For example, the study of and inquiry into the question whether the Attributes of God are identical with His Essence or not can be an important subject for theoretical study, but from the practical point of view it is of little consequence which one of the two doctrines you choose; it does not influence the life and behaviour of a Muslim society. But the problem of *jabr* or *tafwid* (predestination or freedom) is important from the theoretical point of view as much as it is valuable for its practical aspect. Because the belief in the doctrines of determinism and fatalism and the negation of every kind of human freedom ruin the spirit of action and kill every kind of dynamism.

The problem of Divine justice and belief in rational criteria of moral and legal judgements occupies the most important position in Islamic thought due to

its great influence on the intellectual and scientific history and behaviour of Muslims. It is a fact that those who discussed and studied this issue soon arrived at the crossroads, where they had either to accept religious laws as based on a reality discoverable by reason, to try as far as possible to discover that rational basis, to acknowledge a purpose and meaning of religion, to try to discover those purposes and objectives, and to recognize reason as an "inner proof and an "internal prophet" and to accept the definite judgements of reason as enjoying the approval of the Divine Lawgiver; or to consider the aim and purpose of the *Shari'ah* as entailing mere obligation and acts of absolute servility devoid of any objective, and close all the doors on research and intellectual inquiry.

How much it matters whether we conceive religion in terms of external forms and shapes, viewing any change in external forms and appearances as a change of essence and content, and, imagining some kind of inherent correspondence between those forms and the very spirit of religion, recognize that soul in every form and shape! And what a great difference it makes whether we consider the universal laws of Islam, which cover a wide range of social and ethical problems and concern all modes of human life, as based upon a series of realities relating to spiritual health and well-being and innate human rights, or if we deny the existence of those realities and believe, for instance, that vices

like jealousy, falsehood, and suspiciousness are bad because they have been forbidden by the Lawgiver, and virtues like truthfulness, honesty, and benevolence are good as they have been commanded by Him, as if there is no difference between them in reality. Similarly, human rights also are to be acknowledged as such on account of their being set forth by the Islamic lawgiver, or else had they been determined in some other fashion that would have been equally right. Justice and oppression are also defined in the light of these commandments, and if something else had been enjoined, justice and injustice would have been defined in quite a different way.

The Shi'ite Position

The two above-mentioned intellectual trends were discussed from the point of view of Sunni *fiqh* and *kalam*. Now it is necessary to study them from the Shi'ite point of view also. The early Shi'ite logic concerning the first of the two trends is extremely sensitive and interesting. As for the first trend, that is, regarding the problem of justifiability or unjustifiability of *qiyas*, Shi'ah rejected *qiyas* on the basis of the express texts (*nusus*) of their Imams. As mentioned in the former discussion, the Shi'ah disapproved of *qiyas* for two reasons:

Firstly, the use of *qiyas* was justified by others for the reason that the problems to be solved are unlimited, whereas the dicta of the *Shari'ah* are

limited; therefore they are forced to resort to it. The Shi'ah do not accept this reason because, they say, it is not necessary that every event and problem should have a specified rule. General rules applicable to all situations are given in the *Shari'ah*. The only thing needed is competent *ijtihad*, inquiry and reflection to derive the particular from the general. Many ahadith narrated from the Imams (A) and recorded in the collections of hadith, like al-Kafi, etc., make the same point.

Secondly, *qiyas* is something which is based upon conjecture, surmise, and superficial similarities, and is a kind of interference made by reason in such matters which are not intelligible. At one time we may be concerned with the course of action in a case when reason comprehends a fact with certainty and clarity. At other times, in cases where the matter is not comprehensible to reason, is it justifiable to follow conjecture and surmise? There is of course a great difference between the two kinds of situations, but evidently if the foundations of the religion are to be laid on *ra'y*, *qiyas*, surmise and guess-work, it will lead to its destruction. This was the position held by the Shi'ah with regard to the first trend.

As for the second, had the Shi'ah logic in rejecting *qiyas* been similar to that of its other opponents who rejected it because they did not believe in the rational basis of the religious laws and that they were based on facts of nature, they too would have

been forced to take a hostile stand against the doctrines of Divine justice and the rational basis of moral and legal judgements. However, as we have seen, the Shi'ah's reasons for rejecting *qiyas* were different. Therefore, in spite of strongly disapproving *qiyas*, they formally affirmed the share of reason in *ijtihad*. The Shi'ite *fuqaha'* and the *usuliyyun* officially recognized reason as one of the four sources of *fiqh* and the Shi'ite *mutakallimun* earnestly supported the doctrine of justice, to the extent that it came to be said: "'*Adl* and *tawhid* are 'Alawids."

It is here that the sensitiveness of the Shi'ite stand comes to light. On the one hand they accepted the share of reason, and on the other they discarded *qiyas* and *ra'y* as something based upon surmise and conjecture. In fact, with utmost discernment they followed the real path of the Qur'an, which eloquently approves of the use of reason but disapproves of surmise and conjecture, and considers it invalid.

The Shi'ah occupied a very delicate position between the right and the left, and a little deviation from the middle path was enough to expose them to the danger of *qiyas* on the one side and on the other to that of servile obscurantism and stagnant formalism.

However, during the later years, when the pointer of the scale tilted in favour of the Asha'riah, and

even the Hanafis, who stood at the remotest point from the Ash'arite doctrine, became inclined towards them, how long could the Shi'ah adhere to the middle course and be able to advance at the same time without deviating either towards the extreme of *qiyas* or towards that of a stagnant formalism? It is a matter that deserves to be studied in its scientific and historical detail. Here we can briefly point out two things:

Firstly during the course of the intellectual history of Islam, all the sects and groups influenced one another. The 'Adlites were influenced by the ideas of non-'Adlites and the non-'Adlites by those of the 'Adlites. The influence of ideas was reciprocal, and naturally the Shi'ah also couldn't remain aloof from it.

Secondly, if we examine the extant works of Shi'ite scholars, we shall find the anti-*qiyas* sensitivity of the early days to prevail right up to the present. It is hard to find a single scholar among the Shi'ite fuqaha' to exhibit any pro-*qiyas* tendencies, and if a very small number of scholars had such tendencies, they belonged to the former times not to the later ages. Therefore, there is complete certainty as to the absence of deviation towards this extreme. However such a sensitivity regarding deviation towards the other extreme is not so evident. Those who are in the know of it know well that the terms 'Adlites and non-'Adlites have only ceremonial implications in the vocabulary of the later scholars.

Had the way paved by the 'Adlites in the past been followed, it would have been the source of the origination of many of the social sciences among Muslims - the sciences whose fountainhead was discovered by the Europeans gradually one thousand years after the Muslims' discovery of it.

The interest in truth and justice as independent realities, on the part of the Europeans, gave rise to social, political and economic philosophies and scientific and judicial disciplines on the one hand, and on the other served as the source of awakening of nations and infused in them the feeling of life's worthiness.

The Muslims could not continue their journey on the path that was discovered by them and recognize the source and origin of human rights as being inherent in nature. They failed to discover the primary bases of the Islamic legal system and the social philosophy of Islam and to explain it to others and make use of that general basis in the deduction of the laws of the *Shari'ah*.

In the opinion of the specialists, the Islamic legal system is one of the most valuable legal systems of the world. In the East greater emphasis was laid on ethics than on law, contrary to the West, where either the case was opposite, or at least the same emphasis was laid on the two. The distinction belongs to Islam of paying equal attention to both ethics and law. But the Muslims, due to various

reasons and factors, gave more importance to ethics and neglected the Islamic legal system.

Possibly, the above discussion about the role of reason and the doctrine of justice may give rise to the misconception that since Islamic laws are based upon the interests of the individual and society it is good to indulge naively in speculation and try to find some philosophy behind Islamic laws and rituals and conjure up reasons for such acts, for instance, as *tayammum* (ritual purification by sand when water cannot be obtained), *ghusl* (bathing), *madmadah* (mouth washing) or *istinshaq* (drawing water into the nose during the wudu') and to abstain from performing them as long as the underlying rationale has not been found. I should clarify that my purpose is not this. What I wish to say is that Islamic laws and precepts, whether they concern civil rights, penal laws, social relations or some other aspect, are based on a series of truths and facts. If we acquire the knowledge of those facts through a scientific method appropriate to their study - whose principles have been mostly discovered in our present-day world - we will be able to understand the meaning of and rationale behind Islamic laws, which have reached us through revelation, in a better way. For instance, through the Holy Qur'an as well as through the teachings of the leaders of the Din, great aphorisms and ethical rules have reached us. These sayings and injunctions have been always accessible to

everyone. But is it possible for everyone at present, or was it possible for those in the past, to analyze them fully and to understand perfectly their aim and spirit without being misled?

Unless one does have complete knowledge of the scientific fundamentals of ethics and psychology, it is not possible for him to grasp the spirit of those words of wisdom, which appear to be simple at first sight. The real value and sublimity of those heavenly sayings become clearer if anyone studies the various ethical systems of the world with their occasionally divergent aims and principles.

To give another example, in the Holy Qur'an, as well as in the words of the Prophet (S) and the Infallible Imams (A), we come across a great number of discourses regarding *tawhid* and the Names and Attributes of God. Those who have spent their lives studying *tawhid* and theology know that sometimes they come across statements in the Qur'an and the Nahj al-balaghah with an underlying ocean of meaning, whereas the same expressions and sentences led the Ahl al-Hadith, the Hanbalis and the Zahiris to anthropomorphism and heresy. What is the reason? This is because, since knowledge is the key to revelation, whatever has been received through revelation, despite its simplicity and universal utility, is an extract of reality which can be arrived at only through science.

At the time of the last Hajj, while encouraging the people to memorize and preserve whatever they heard from him, and to convey to the future generations, the Prophet (S) said:

How often one conveys knowledge to another who is more learned than himself.

The one who hears ahadith may possess more power of understanding and analysis than the narrator himself. He may comprehend its spirit, purpose and meaning in a better way on account of his superior knowledge. The religion can be understood better in the light of knowledge. The secret of greatness and miraculous character of the holy religion of Islam lies in the immense scope of its teachings; and if any aspect of nature is illuminated by means of science, it not only does not make obsolete the teachings of Islam but makes them brighter and clearer.

In the realm of the spiritual, in relation to the mystic path, those who have been successful in grasping the hidden meaning of the discourses relating to this topic, have been those who have had familiarity with that realm. Ibn Abi al-Hadid says that the gist of what all mystics have said can be seen in the few sentences of the sermon of the Imam 'Ali (A) commencing with the words

In short, knowledge is the key to religion. The scope of Islamic teachings and laws covers all modes and aspects of human life, and, definitely, the more we

come to know about a sphere of human life and scientific principles related to it, the greater the benefit we shall be able to draw from the bounty of Divine revelation. If merely the knowledge of Arabic language were sufficient for the understanding of the religion, a simple Arab would have been able to draw as much amount of benefit from its teachings as a philosopher (*hakim-e ilahi*).

The bases of human rights, also, are not an exception to this general rule. Like ethics and theology, the rights are also based upon a series of natural truths. The more we are acquainted with those fundamental truths and principles, the better can we understand the aim and purpose of the religion. If we know those principles and fundamentals, perhaps we shall recognize many of the verses of the Qur'an and traditions as relating to *ahkam* which hitherto have not been counted as having any legal significance. However, for the time being, it is not possible to go into further details.

Thus, our aim is not that we should philosophize or speculate about the rationale of Islamic laws and precepts. We aim to point out that since the teachings of Islam cover all spheres of human life, and since, on the basis of our belief in the doctrine of Divine justice, we know that these teachings are not extravagant and baseless, but are based upon truth and natural realities and are constituted on the basis of those realities, so if we come to know closely those realities - which have been

systematically studied in the course of several centuries and their study has taken the form of scientific disciplines - we shall be better able to comprehend the meanings and purposes of the language of revelation (*wahy*), as we have seen in the study of ethics and theology.

In Islam, there are laws associated with economy, society, government and politics. Now all of them are considered to be subject to a series of unalterable and fixed laws. Therefore, how can anyone without the knowledge of those laws claim to have comprehended perfectly the viewpoint and purpose of Islam regarding matters relating to them and present them before the world as the most sublime of social teachings? If an ordinary person without knowing anything about *hikmat-e ilahi* can comprehend the verses and traditions related to *tawhid* and other topics of theology as well as a philosopher who has worked diligently and understands well the basics of philosophy, then any person ignorant of the sciences can also comprehend and understand the viewpoint of Islam concerning various social problems to the extent of a social scientist.

Islam, according to the express text of the Qur'an, is the religion of nature. On the other hand we observe that a group of scientists and scholars have claimed that some of the human rights are natural and inborn, hence permanent and fixed, general and universal, and are prior to all other positive

rights. Is it not necessary to investigate this problem, to see whether this is true? If it is, it is evident that Islam acknowledges them formally.

Is it true that things like the freedom of the individual, equality, the right to private property and ownership, the freedom of belief, the freedom of expression and the like are rooted in the human nature and are laws prescribed by nature itself, and that their acknowledgement constitutes the basic condition for the development of all human societies and wholesome human relations?

Do human rights precede social existence? Does the individual possess them prior to his social existence, and does social existence mean that every individual participates in society with the capital of his prior and essential rights, thus establishing a kind of association with the help of other individuals? Or the rights of an individual in society are posterior to society and that social existence is the source and origin of the individual's rights? Or does the individual in himself have no rights whatsoever; whatever he has are duties and responsibilities alone, and rights belong to society, as some have said?

What is the basis for determining rights? Is it the interests of the individual or those of society? To what extent is it necessary to protect the rights of the individual? Is the limit for the protection of the rights of the individual the point where such

protection interferes with the right of other individuals, or occasionally this limit is set when the individual's rights conflict with the interests of society? These, and hundreds of such questions, have to be answered, and incidentally we have received guidelines and teachings in Islam regarding all of them. If those guidelines were compiled and given a scientific form, it would elucidate the great value of Islamic teachings and open many of the present dead-ends.

Therefore, by emphasis on the share of reason we neither mean to support the practice of *qiyas* and *ra'y*, which was innovated in the olden days, nor the practice of speculation, which has become customary in our age. The aim is to stress the scientific study of problems which are covered in the great scope of the teachings of Islam, whose resourcefulness and problem-solving potential has been recurringly proved to us in the course of the last fourteen centuries. This is the only lasting miraculous aspect of this monotheistic faith.

The Role of *Ijtihad* in Legislation

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The terms '*mujtahid*' and '*ijtihad*' are nowadays among those which have acquired great currency, even sanctity, among the Shi'ah. One would be surprised to know that the term *ijtihad* was formerly, from the times of the Prophet (S) and for several successive centuries, a Sunni term. It became Shia after undergoing a change of meaning, or what would be more precise to say, the term remained specifically Sunni for several centuries and became 'Muslim', in the wider sense, that is, after undergoing a change of meaning and dissociating itself from its earlier particular sense.

As to its not being a Shi'i term formerly, there is no doubt; if there is any uncertainty, it is about the date of its acceptance by the Shi'ah. It is not improbable that this term like several groups of people in the seventh century was converted to Shi'ism at the hands of the absolute Ayatullah, al-'Allamah al-Hilli. However, as we shall presently explain, the conversion came after its undergoing a change of meaning.

Apparently, there seems to be no doubt that this term was never used by any of the Imams of the Ahl al-Bayt (A). The terms *ijtihad* and *mujtahid*, in the

sense in which they are used by Shi'ah and Sunni *fuqaha'*, have not been used in any of their ahadith. Neither they themselves were ever known by the epithet '*mujtahid*' nor did they ever use it for the scholars and legists from among their companions. Otherwise the root relating to such terms as *fatwa* and *ifta*, which convey approximately the modern sense of *ijtihad*, and its derivatives do occur in the ahadith. For instance, al-'Imam al-Baqir (A) is reported to have said to Aban ibn Taghlib:

Sit in the mosque of al-Madinah and give fatwas for the people . Indeed I love more like you to be seen amongst my Shi'ah.

And in a famous hadith, al-'Imam al-Sadiq (A) is reported to have said to 'Unwan al-Basri:

Avoid giving fatwa in the way you would run away from a lion; do not make your neck a bridge for the people.

The reason for the former unpopularity of the word is that during the early centuries of the Islamic era - that is also the period in which the Imams of the Ahl al-Bayt (A) lived - the word, due to the specific meaning it carried, was not acceptable to the Imams (A). Naturally, it could not have played any role in their teachings. However, after undergoing a gradual change of meaning, when it came to be used in a different sense by Sunni *fuqaha'* themselves, it was also adopted by Shi'ite fiqh. Now

we shall briefly describe the background of the Sunni usage of this term.

'Ijtihad' in the Sunni Tradition

Sunni scholars narrate a hadith that the Prophet (S), while sending Mu'adh to Yemen, asked him as to on what he would base his judgement. "In accordance with the Book of Allah", replied Mu'adh, "But what if you don't find it there?" inquired the Prophet (S). "According to the Sunnah of the Apostle of Allah", replied Mu'adh. "But what if you don't find it there too?" asked the Prophet (S) again. 'I will exert my own opinion', replied Mu'adh.

The Prophet (S) put his hand on Mu'adh's chest and said: "Thank God for assisting His Apostle with what he loves." They have narrated other traditions on the subject to the effect that either the Prophet (S) directly commanded his Companions to exercise ijtihad in case they could not find a rule in the Book and the Sunnah, or to the effect that he approved of the practice of his Companions that practised ijtihad. To the Sunnis, this is something definite, confirmed by consensus (*ijma'*).

About the Holy Prophet (S) himself, they have said that some of his injunctions were purely based on personal ijtihad not on revelation. Even in their works on jurisprudence (*'ilm al-'usul*) the problem is raised whether or not the Prophet (S) could make errors in his personal ijtihad. They have narrated traditions in this regard and transmitted reports of

the Companions as to how they justified their own actions or those of others on the basis of *ijtihad*. We abstain from quoting any of them here for the sake of brevity.

It is evident that in all the above instances the term *ijtihad* is not used in its current sense, that is, making the utmost effort in deducing rules of the Shari'ah from the related sources (*adillah*). The meaning of *ijtihad* there is 'exercising of one's opinion or judgement' (*al-'amal bi al-ra'y*). It means that in a case where the Divine dicta are absent or implicit, one should see what would be more acceptable to one's intelligence and taste, or nearer to truth and justice, or analogous to other Islamic laws, and to adopt it for his judgement. Accordingly, *ijtihad* is also accounted as one of the sources of Islamic legislation, like the Quran and the Sunnah, although not as a source parallel to these two. So long as a rule is to be found in the Quran and the Sunnah, the need for *ijtihad* does not arise. However, in absence of relevant dicta in the Quran, the Sunnah or *ijma'*, *ijtihad* becomes a source of legislation. On this basis, they have said that the sources of legislation are four: the Book, the Sunnah, *ijma'*, and *ijtihad* (i.e. *qiyas*).

Also, according to this approach, *ijtihad* is not synonymous with expertise in Islamic law (*faqahah*), nor is the term *mujtahid* synonymous with *faqih*. Rather, *ijtihad* is one of the functions of the *faqih*. The *faqih* should have knowledge of the

Quran and the hadith corpus; he should be able to distinguish the *nasikh* from the *mansukh*, the *'amm* from the *khass*, the *mujmal* from the *mubayyan*, and the *muhkam* from the *mutashabih*. He should be familiar with the Quranic vocabulary and terminology, know the circumstances in which a particular verse was revealed (*sha'n al-nuzul*), and have knowledge of the successive generations of narrators and transmitters of hadith. He should also be able to reconcile the apparently conflicting traditions. In addition to all that, he should practise *ijtihad* and exercise his personal judgements in particular cases.

What was the character and basis of that *ijtihad*? Did the term *ijtihad* found in hadith mean exercising *qiyas*? Did the Prophet (S) and his Companions practise *ijtihad* in this sense. Did it also apply to other practices such as *istihsan*? Al-Shafi'i, in his famous *Risalah*, has a chapter on *ijtihad*, which follows the one on *ijma'*, and is itself followed by one on *istihsan*. In his discussion of the subject, al-Shafi'i draws the conclusion that the *ijtihad* prescribed by the Shari'ah is confined to *qiyas* and that other types of *ijtihad*, such as *istihsan*, do not have any canonical grounds. Al-Shafi'i believes that the canonical grounds for *qiyas* are identical with those for *ijtihad*.

There were other questions that were debated by Sunni *fuqaha'*, such as: Are *ijtihad* and *al-'amal bi al-ra'y* confined to cases where there is no express

text (*nass*) or whether one may do *ijtihad* (called *ta'awwul* in this case) and exercise his judgement despite the presence of express texts? What are the conditions applicable to *Sunnah* if it is to preponderate *ijtihad*? Are all traditions narrated from the Prophet (S) to be relied upon and given precedence over *ijtihad*? Is reliable *hadith* confined to those which are *mashhur* and *mustafid*, as Abu Hanifah believed? Who are those who had the right of *ijtihad* and whose *ijtihad* was binding (*hujjah*) for the others? On what grounds have the others no right to go against their *ijtihad*? Evidently, to go into the details of each of these questions is outside the scope of this paper. However, it is necessary to mention some relevant points here:

1. The position of the *fuqaha'* and imams of the Ahl al-*Sunnah* with respect to the acceptability of *ijtihad*, in the above-mentioned sense, is not the same. Some of them give a wider scope to *ijtihad* and *qiyas* and some restrict it. Some altogether reject *qiyas* and *ijtihad*.

Abu Hanifah, who lived in Iraq and was considered the jurist of the Iraqis, because of the many conditions he required for a tradition to be acceptable, and also on account of being distant from the centre of *hadith*, which was the Hijaz, had lesser knowledge of *hadith*. Also due to other reasons, including his background of *kalam* and logic, he took greater recourse to *qiyas* and on this

account was strongly opposed by the Sunni jurists of his time and those who came after him.

Malik ibn Anas spent his life in al-Madinah and made lesser use of *qiyas*. Reportedly, he did not use *qiyas* except in a few cases, and, according to a report of Ibn Khallikan, was greatly repentant at the time of his death of having taken recourse to *qiyas* in his fatwas even in those few cases.

Al-Shafi'i, who belonged to the Iraqi school and had studied under Abu Hanifah's pupils and had as well studied under Malik in al-Madinah, took a middle road between Malik and Abu Hanifah.

Ahmad ibn Hanbal was more a muhaddith than a faqih and avoided *qiyas* even to a greater extent than Malik Ibn Anas.

Dawud ibn Ali al-Zahiri al-'Isfahani, the founder of the Zahiri school, was altogether opposed to the practice of *qiyas* and regarded it as an innovation (*bid'ah*) in the faith.

As a consequence of these differences there emerged among the Ahl al-Sunnah two general trends: one of them was represented by the Ahl al-Hadith and the other by the Ahl al-Ra'y. The Ahl al-Hadith, or the Traditionists, attached lesser or no significance to *qiyas* and *ra'y* and the Ahl al-Ra'y in turn relied to a lesser extent on ahadith.

2. Concurrently with the emergence of the Ahl al-Ra'y and the Ahl al-Hadith, a problem that arose

among the contemporary circles of *kalam* was that of the rational basis of legal judgements (*al-husn wa al-qubh al-'aqliyyan*). Although at first sight there seems to be no link between these two developments, because one of them belonged to fiqh and took place in juristic circles and the other belonged to the circles of *kalam*, but, as pointed by some historians, the theory of rational basis of judgement - which was raised by the Mu'tazilah and who staunchly defended it - was also intended to find some kind of basis for ijtihad, i.e. *qiyas* and the practice of *ra'y*. According to this theory, the laws of the Shari'ah were based on a series of real benefits and harms and that human reason was capable of independently discovering those benefits and harms inherent in things; therefore reason was capable of discovering the purposes and criteria of the laws of religion through ijtihad and *ra'y*.

This conjecture is further strengthened if we remember that the Ahl al-Hadith, who later, in the fourth/tenth century, came to be known as Asha'riah, represented the chief opposition to the Mu'tazilah.

3. Right from the first century, from the time when groups of people gathered in mosques for the purpose of study and debate, some persons debated about the issues of *halal* and *haram*. They gathered around them pupils and adherents from among the common people, who regarded their fatwas as authoritative and referred to them their

questions about *halal* and *haram*. Such was the beginning of the gradual development of a class of scholars who later came to be called *fuqaha'*. Every region, city and group followed a certain individual, and the rulers had not yet adopted the policy of following the fatwas of a certain jurist as official law.

The emergence of this class of jurists did not require any special conditions. Occasionally, social conditions demanded that one prominent individual should be recognized by the people and followed in religious precepts. Gradually, this resulted in the emergence of diverse legal approaches and schools, which in turn were preserved and perpetuated by the pupils of the originator after his death. In this way, various legal schools and sects emerged amongst the Sunnis, the most famous of them being the Hanafi, the Shafi'i, the Maliki, the Hanbali and the Zahiri schools. Of course, the founders of these schools were not the only early jurists and *mujtahidun* that were there. There were others who held their own legal opinions and were not followers of anyone. However, this independence gradually disappeared after the fourth/tenth century and no independent *mujtahid* emerged after this time in the Sunni tradition. Apparently, the last person to have been an independent *mujtahid* with his own independent approach in legal issues was the well-known historian and exegete Muhammad ibn Jarir al-Tabari (d. 310/922),

who although famous for his work on history, is considered a Sunni faqih of the first rank.

The later Sunni *mujtahids* were either *al-mujtahid al-mutlaq al-muntasib* or *mujtahid al-fatwa* (also occasionally known as *mujtahid al-madhab*). '*Al-mujtahid al-mutlaq al-muntasib*' means a *mujtahid* who is attached to one of the well-known schools and follows the juristic approach of its founder but in deducing legal rules, on the basis of the school's juristic principles, he may formulate his own independent legal opinions which may be different from the legal opinions of the founder. For instance, while being a Shafi'i or a Hanafi in jurisprudence, he may differ with al-Shafi'i's or Abu Hanifah's express fatwas in legal matters. A number of eminent Sunni jurists are considered to belong to this class, such as: Imam al-Haramayn al-Juwaym, Abu Hamid Muhammad al-Ghazali, Ibn al-Sabbagh, and others.

Mujtahid al-madhab or '*mujtahid al-fatwa*' is someone who follows the founder of the school in all matters in which the founder has expressly given his views. However in issues in which he does find an opinion of the founder, he may exercise his own Ijtihad and give fatwa .

Accordingly, Ijtihad is of three kinds: independent Ijtihad, semi-independent Ijtihad (*al-'ijtihad al-mutlaq al-muntasib*), and Ijtihad within the framework of the juristic and legal positions of a school (*Ijtihad al-fatwa*).

In any case, the *mujtahids* who came after the fourth century did not find any followers. On the other hand the *mujtahids* who came before this period were not limited to the four imams of the popular schools; there were nine other eminent jurists of whom some lived before the four imams - such as al-Hasan al-Basri - some were their contemporaries - such as Sufyan al-Thawri - and some who came after them - such as Dawud al-Zahiri and Muhammad Ibn Jarir al-Tabari - and all of them had more or less followers among the people. However, there was a gradual rise in the followers of the four imams, for, according to al-Maqfizi in *al-Khitat*, al-Malik al-Zahir, the ruler of Egypt, officially declared in the year 665/1257 that except the four schools - Shafi'i Maliki, Hanafi and Hanbali - other schools had no official recognition and that no judge had the right to give judgement except on the basis of the four schools. The people were also strictly forbidden to follow any except the four schools. This was the beginning of the restriction of the official schools to four.'

This brief description shows that when we talk of the closure of the door of Ijtihad in the Sunni tradition, we refer to the Ijtihad of the first kind, i.e. independent ijthad. As to the second kind (*al-ijthad al-mutlaq al-muntasib*) and the third kind (*ijthad al-madhab*), their doors have remained open.

Why should the doors of independent *ijtihad* have been closed after the fourth century and no one should have right to complete independence and be bound to follow one of the imams in jurisprudence? Why and for what reason is it not permissible today to follow anyone except the four imams? Why should one who follows any one of the imams follow him in all issues and have no right to follow the other three by exercising discretion in some issues? Sunni scholars have given various answers to all of these questions and none of them is convincing.

Shah Wali Allah Dehlawi (d. 1180/1765), in a treatise (*risalah*) called "*al-'Insaf fi bayan sabab al-'ikhtilaf*" - which has been quoted by Farid al-Wajdi under *jahada* in the *Da'irat al-Ma'arif*, with the remark that it is the best treatise written on the topic - acclaims the closure of the door of independent *ijtihad* and the latter scholars' imitation of one of the early imams and says: that is, 'It is a secret that God Almighty has inspired in the scholars with' to safeguard Islam and protect the religion from disintegration. Farid al-Wajdi himself does not approve of the prohibition on *Ijtihad* and does not confirm those words of Shah Wali Allah.

Two years ago, according to what we have read in papers and have heard, the great 'Allamah Shaykh Mahmud Shaltut, the *mufti* and rector of Al-'Azhar University, with great courage characteristic of

great reformers, broke this thousand-year-old spell and officially announced that the door of ijthad is open and that there is nothing objectionable about a follower of one school referring to the judgements of another school in case they are supported by firmer arguments. He also announced in an official fatwa that it is correct to follow the Ja'fari school of fiqh, just like the other schools. Subsequently, a chair of comparative legal studies was established at al-'Azhar. Undoubtedly this was the greatest step that was taken since the beginnings of Islamic jurisprudence for the sake of the benefit and general welfare of Muslims. Its worth will be better recognized in the future.

4. Another problem related to the subject of Ijtihad is that of *takhti'ah* (admission of the possibility of error in the judgements of the *mujtahid*) and *taswib* (confirmation of the *mujtahid's* infallibility and denial of any possibility of error), which has throughout been a topic of debate in books on *kalam* and *usul al-fiqh*. Generally, it is mentioned in books on *usul* that the Shi'ah *fuqaha'* admit possibility of error in the *mujtahid's* fatwas and are accordingly called *mukhatti'ah* (derived from *khata'*: error), whereas the Sunni *fuqaha'* believe that the *mujtahid* is always right in his judgements, and are hence called *musawwibah* (derived from *sawab*: that which is right). However, it is not the case that all the Sunni *fuqaha'* support *taswib*; rather, only a small number of them have accepted

this view. In any case, for the Shi'ah, who define Ijtihad as 'the effort to deduce the real law from the sources of the Shari'ah', it is difficult to imagine that every *mujtahid* should be always right. It is not possible that whatever any *mujtahid* may judge should be correct and his judgement should be the real law; for it is possible that different *mujtahids* may hold divergent opinions simultaneously about a certain subject and the same *mujtahid* may hold different opinions at different times about the same issue. How is it possible that he should always be right?

The roots of the theory of *taswib* lie in a certain theory of Ijtihad which is held by those who define Ijtihad as the practice of *qiyas* and *ra'y* . They claim that the laws received by the Prophet (S) through revelation are limited, whereas issues and problems which require legislation are unlimited in number. Therefore, the laws given by the Divine Lawgiver are not adequate to meet the requirements. Accordingly, God has given the right to the scholars of the Ummah, or a group of them, to employ their personal taste and intelligence in cases where there are no religious dicta and select something which resembles other Islamic laws and is closer to the criteria of justice and truth. In accordance with this reasoning, they accept the theory of *taswib*, for, according to this view of Ijtihad, it is itself one of the sources of the Divine Law.

The idea of *taswib* was unimaginable to the minds of Shi'ah jurists, because they had taken for granted the principle that every event or problem should have a real Divine law related to it. Ijtihad, to them, meant inquiry and effort to discover that law with the help of reliable canonical sources. Of course, in the light of such an outlook of ijihad it is impossible that every *mujtahid* should be right.

The theory of *taswib*, however, does not rest on such an outlook of ijihad. It rests on an outlook which regards it as impossible that God should have legislated laws regarding every kind of situation. Because, if such were the case, they should have been set forth in the Book and the Sunnah; but the laws given in the Book and the Sunnah are limited in number, whereas situations are innumerable and unlimited. Hence God has given the 'ulama' of the Ummah the right to legislate through ijihad such laws as have not been given through revelation. Since this right is God-given, the judgements of the *mujtahid* are the actual laws of God.

The problem of *taswib* and *takhti'ah* has been debated a lot in books on *kalam* and *usul*, and here our purpose was just to refer to the abovementioned point. The above discussion related to the Sunni background of the term ijihad; now we shall turn to the change of meaning that this term underwent, which resulted in its acceptance by the Shi'ah.

'Ijtihad' in the Shi'ah Tradition

Until the fourth/tenth and the fifth/eleventh centuries we observe that whenever the word is used by a scholar it carries the sense of *qiyas* and *ra'y*. For instance, Shaykh Abu Ja'far al-Tusi (d. 460/1067), in his '*Uddat al-'usul*', devotes a chapter to *qiyas*. He devotes another chapter to Ijtihad where he discusses one of the issues related to ijthihad, i.e. the problem of *taswib* and *takhti'ah*. The book has another chapter entitled "Did the Prophet practise ijthihad, and whether it was legitimate for him to practise it? Was it legitimate for the Companions of the Prophet to practise ijthihad when they were away from him or were in his presence?" Later, in the course of his discussion, he says: "This controversy is basically uncalled for according to our doctrines, because, as we have proved earlier, *qiyas* and ijthihad are absolutely impermissible in the Shari'ah. "

This remark of al-Shaykh al-Tusi shows that until his age the word Ijtihad was still used in the sense of *ra'y* and *qiyas*.

'Ijtihad' lexically means 'putting in utmost effort' in doing something. In the earliest days, the term in accordance with the traditions ascribed to the Prophet (S) and the Companions, was taken to mean *ijthihad bi al-ra'y*, or putting in utmost effort in the exercise of *ra'y* and *qiyas*. However, gradually it took a wider meaning and came to mean putting in

utmost effort in discovering the laws of the Shari'ah from its reliable sources. Thus we see that al-Ghazali (d. 505/1 111) in his *al-Mustasfa* - although he uses the word recurringly in its earlier sense of *qiyas*, for instance, when he says:

They have differed as to the permissibility of practising *qiyas* and *ijtihad* during the days of the Prophet ... (vol. 2, p. 354)

He also uses it in the general sense of scholarly effort on the part of a faqih

It (*ijtihad*) means putting in of the utmost effort in doing something. But the term has come to be used in the terminology of scholars specifically for the *mujtahids* putting in of the utmost effort in acquiring the knowledge of the laws of the Shariah. (vol. 2, p. 350)

From this time onwards we see that the term is used less frequently in the special sense of *ra'y* and *qiyas* and takes on the sense of scholarly effort in discovering the laws of the Shari'ah. With this change, the term found way into the Shi'ite fiqh also, for earlier the Shi'ah had opposed it on account of their opposition to *Ijtihad bi al-ra'y*, not because they were opposed to scholarly diligence. In any case, they did not resist its use after it changed its meaning. Probably the first to use this term among the Shi'ah Imamiyyah scholars was al-'Allamah al-Hilli (d. 726/1326), who accepting it used it in its second sense in his work *Tahdhib al-*

'usul. In that work he devotes a chapter to Ijtihad and uses it in the sense current today. It seems that it was from this time that the Shi'ah accepted the word or the word embraced Shi'ism.

We said earlier that the opposition to *qiyas* was not limited to the Shi'ah and there were schools among Sunnis who either altogether rejected it and regarded it as a heresy or avoided it as much as possible. The Mu'tazilah, who advanced the doctrine of *al-husn wa al-qubh al'aqliyyan*, backed *qiyas* and *ra'y* in their fight against the Ahl al-Hadith who rejected it. The Ahl al-Hadith, who later came to be called Asha'irah due to their approach in *kalam*, rejected the doctrine of *al-husn wa al-qubh al-'aqliyyan*, claiming that the desirability or undesirability of things is derived from the commands and prohibitions of the lawgiver and not vice versa. As a result, they denied reason any role in legislation of Divine laws. The controversies between the Mu'tazilah and supporters of *qiyas* and *ra'y* on one side and the Asha'irah and the Ahl al-Hadith on the other side revolve around the role of reason and its share in legislation.

It must not be concluded from the above discussion that the Shi'ah opposition to *ra'y* and *qiyas* was also based on the same reasons as those of the Asha'irah and the Ahl al-Hadith, which was outright opposition to the role of reason in deduction of the laws of the Shari'ah. The Shi'i opposition to *qiyas* and *ra'y* had two reasons. The first was that the

claim of the supporters of *qiyas* that the Book and the Sunnah are not adequate sources of legislation was not acceptable to the Imams of the Ahl al-Bayt (A). In the sermons of the Nahj al-balaghah and other Shi'i compilations of hadith the idea that the Book and the Sunnah are not adequate has been vehemently rejected. In the Usul al-Kafi, the chapter followed by another entitled:

The chapter about referring to the Book and the Sunnah, and that verily there is no haram or halal and nothing needed by the people that is not present in the Book or the Sunnah.

The second reason advanced by the Shi'ah against *qiyas* was that it was based on conjecture and led very frequently to error. These two reasons clearly stand out in the books of early Shi'ah scholars, and we shall abstain from further details for brevity's sake.

The best evidence of the fact that the Shi'ah opposition to *qiyas* and *ra'y* was not based on a hostility to the role of reason in canonical matters is that, from the very beginning that the Shiah jurisprudence was committed to writing, reason was considered one of the sources (*adillah*) of law. The Shi'ah jurists stated that the sources of the Shari'ah are four: the Book, the Sunnah, *ijma'* and '*aql* (reason), whereas the Zahiris and the Ahl al-Hadith confined the *adillah* to the Book, the Sunnah and *ijma'*, and the support'ers of *ra'y* and

qiyas regarded them as four: the Book, the Sunnah, *ijma'* and *qiyas*.

The Shi'ah jurists, while opposing *qiyas* and *ra'y*, accepted the Mu'tazilah viewpoint about the rational basis of ethico-legal judgements, defended it and did not oppose it like the Asha'irah and the Ahl al-Hadith. The concurrence of views between the Shi'ah and the Mu'tazilah regarding this doctrine and its corollaries - such as the doctrine of Divine justice - led the Shi'ah among the Mu'tazilah to be known as 'Adliyyah and the Shi'ah left behind the Mu'tazilah in their support of the doctrine of Divine justice. As a result, it came to be said in scholarly circles that: "justice and tawhid are 'Alawid and fatalism and anthropomorphism are Umayyad."

The reason for calling justice 'Alawid was that the supporters of the Ahl al-Bayt (A) were also defenders of the doctrine of *al-husn wa al-qubh al-'aqliyyan* and the doctrine of justice was a corollary to it. As to tawhid being 'Alawid, it was on account of the belief in the unity of Divine Essence and Attributes. The Umayyads supported *jabr* (fatalism) and *tashbih* (anthropomorphism) due to political exigencies. The issue of the independent capacity of reason to perceive the good and evil of things, and the subsidiary doctrine of justice, became so much a characteristic of the Shi'ah that justice came to be recognized as one of the principal tenets of the Shi'ite creed.

That the Shi'ite opposition to *ra'y* and *qiyas* is not to be taken to have been an opposition to the role of reason in *ijtihad* becomes completely obvious when we examine the extant documentary evidence. At the present the Shi'ah state the principle of the interrelation of Divine laws and actual benefits and harms and the principle of harmony between reason and religious law in these words:

Whatever is the judgement of reason, is also the judgement of the Shari'ah.

This is an incontrovertible axiom of Shi'ite jurisprudence. The above discussion makes it clear that the Shi'ah Imamiyyah approach to *ijtihad* was an independent one: it was neither bound to *ra'y* and *qiyas*, nor did it impose any bounds on reason in the manner of the Ahl al-Hadith. The Imamiyyah jurists on the one hand recognized the rights of reason and regarded it as one of the sources of law, on the other hand they rejected *qiyas* and *ijtihad bi al-ra'y* in their books on jurisprudence, in chapters devoted to *qiyas*. However, it would have been in order if the latter scholars had followed the ancient ones in discussing *qiyas* and *ra'y* in their works. It would have helped to define the exact limits of the prohibited form of *qiyas*, which would have been better understood. This would have prevented some individuals from waging a battle against reason under the pretext of opposition to *qiyas*. In fact it would have been better for scholars to devote a separate chapter to reason and rational

grounds in their works on jurisprudence, in which they could delineate more precisely the role of reason and also discuss, secondarily, the inadmissibility of *qiyas*. In view of this author, the absence of any discussion by the latter scholars about the inadmissible form of *qiyas* and the limits of the role of reason in legislation has been more or less detrimental to Shi'ah fiqh and ijtiḥād.

We should know that the great secret of Islam, from the viewpoint of the Imams of the Ahl al-Bayt (A), is the principle that the general laws of the Book and the Sunnah are sufficient for satisfying the religious needs of Muslims for all time, and that they have no need of *ra'y* and *qiyas*. It is characteristic of all Islamic laws that they are not only not hindering to human progress in any era, but are conducive to it by guiding and directing it in the right direction. All that is needed to grasp this great secret is to have an enlightened and firm grasp of the vital issues. This great secret of the resourcefulness of Islam can also be called 'the great secret of ijtiḥād'. To be certain, if an independent chapter were devoted to the above topic in books on jurisprudence, some of the existing contradictions and constraints in the relationship between fiqh and progress would have been eliminated. This problem requires an independent study and here we shall abstain from going into further details.

In the course of history, those Sunni schools of fiqh which were more rigid and formalistic and allowed

lesser role to reason in deduction of laws, either disappeared gradually or the number of their followers diminished. The Zahiris, who followed Dawud ibn 'Ali, became altogether extinct. The Hanbali school, which after the Zahiri is the most rigid and formalistic of Sunni schools, gradually lost followers, and had it not been for the appearance of Ibn Taymiyyah, who provided the material on which Wahhabism was later to thrive, perhaps today the number of followers of the Hanbali school would have been very small.

The school of Malik spread only in North Africa and Maghrib, away from the centres of Islamic culture, and, as Ibn Khaldun says, the cause of the spreading of the school of Malik in North Africa and Maghrib was that the inhabitants were Beduins who lived away from the centres of science and culture. In any case, the rigid and formalistic Sunni schools declined and lost followers with the passage of time.

Akhbarism in the Imamiyyah Tradition

One of the most surprising as well as regrettable phenomena was the emergence of Akhbarism among the Shi'ah in the early eleventh/seventeenth century. Akhbarism was a hundred times more rigid and formalistic than either the Zahiri or the Hanbali school. Its emergence must be considered a great catastrophe in the Shi'ah world whose effects more or less survive to the present day, causing

stagnation and obscurantism in the Shi'ah Muslim society.

The founder of Akhbarism was Mulla Amin Astarabadi, who expounded his beliefs in his famous book *Fawa'id al-madaniyyah*. Mulla Amin, as his book shows, was a brilliant and learned man. In general, those who found a school, no matter how baseless, rigid and false its teachings may be, are brilliant and intelligent men. A dullard cannot found a school and gather followers around himself. The dullards, however, are influenced by those brilliant individuals and become their loyal followers.

Amin Astarabadi claims to have discovered some truths which nobody before him had succeeded in knowing. Also, he claims a kind of Divine inspiration for himself; in the introduction to the *Fawa'id al-madaniyyah*, he says:

And you (i.e. the reader), after having gone through our book, will find in it truths untouched by any of the early or latter philosophers, legists, scholastics, and jurisprudents, and yet they are only a sample of what my Lord, the Almighty and the Supreme, has granted to me.

In this book he challenges even the philosophers and the *mutakallimun*, as occasionally he has to discuss some issues related to philosophy and kalam. In the book's tenth chapter, he discusses the meaning of *nafs al-'amr*. The eleventh chapter is

named by him "*Fi bayan aghlat al-'Asha'irah wa al-Mu'tazilah fi awwal al-wajibat*" ("On the mistakes of the Ashai'rah and the Mu'tazilah about the first obligations"). In the twelfth, he cites the mistakes of Muslim philosophers and theologians.

Amin Astarabadi under different pretexts, tried to deny the legal authority (*hujjiyyah*) of three of the four well-known sources of law, that is, the Quran, *ijma'*, and *'aql*, thus recognizing only the Sunnah as the reliable source. As to the Quran, he claimed that no one has the right to refer directly to the Quran and to interpret it. Only the Infallible Imams have such a right. Our duty is to refer to their *ahadith*. Only those parts of the Quran that have been explained in hadith may be referred to for legal purposes; other parts whose exegesis does not exist in hadith may not be acted upon. Also in order to deny the authenticity of the text of the Quran, Amin Astarabadi raised the issue of its corruption (*tahrif*).

As to *ijma'*, he denied its validity, considering it an innovation (*bid'ah*) of the Sunnis. He also offered many arguments to deny the authority of reason. On the contrary, with respect to *ahadith* he went to the other extreme and claimed that all the traditions, especially those of al-Kafi, Man la yahdruruhu al-faqih, al-Tahdhib and al-'Istibsar are of certain authenticity and legally binding. He ferociously attacked al-'Allamah al-Hilli, who had classified traditions into *sahih*, *muwaththaq*, *hasan*,

and *da'if*, and occasionally insults the 'Allamah and his followers in his book.

He categorically rejected the very principle of Ijtihad (even in its latter sense in which the Shi'ah *fuqaha'* had accepted it) and regarded it as an innovation in the faith. No one has any right to follow anyone except an infallible Imam, he claimed. He brought the entire force of his opposition to bear against reason and its authority. He claimed that all innovations involving reason - such as regarding Ijtihad as legitimate, considering the *zawahir* (apparent meanings of the Quranic verses) to be of binding authority, classifying ahadith into weak and strong, inquiring into the reliability of transmitters of ahadith and the like - came into vogue because the *fuqaha'* have followed the practitioners of *qiyas*, the scholastics, philosophers, and logicians to rely upon reason. Now, if Mulla Amin were to prove that reason is liable to error except in matters relating to objects of sense - experience or those which are derived from it (such as the concepts of mathematics), the *fuqaha'* would no longer go after Ijtihad and reason. Accordingly, he advanced rather forceful arguments to disprove the authority of reason in matters which are not perceptual or derived from sense-experience. He is especially keen to prove that metaphysics and theology, since they are based on pure reasoning, are devoid of any value; hence the title of the twelfth chapter of *the Fawa'id al-madaniyyah*:

On part of the errors of philosophers and Muslim theologians (*hukama'*) in their sciences and that their cause-as we have proved earlier-is that no one who deals with the issues whose preliminaries are extra-sensible is secure from error except the Infallible Ones (the Prophet [S], Fatimah [A], and the twelve Imams [A]).

There, he discusses some well-known problems of philosophy, such as the necessity of an intervening rest between two reciprocating straight line motions, that something which is necessarily associated with some impossibility is also impossible, the problem of precedence, and the problem of the preponderance of will.

On the whole, he is of the opinion that reason can be a guide only in the study of problems related to the natural sciences, which are based upon sense-experience, and in that of mathematics, whose concepts are derived from such experience or are closely related to it, but not in problems of theology and metaphysics. This view agrees totally with the outlook of the European empiricists of the sixteenth century. Incidentally, the period in which Astarabadi lived approximately coincides with that of the emergence of empiricism in Europe. It is not known whether his views were original or he had borrowed them. All that we know about him at the present is that he lived in Makkah for nearly ten years where he studied under Muhammad Astarabadi, to whom he refers as a *faqih*, a *mutakallim*, and philosopher.

After that he had spent several years at al-Madinah. But we know nothing about how he came to adopt those views, whether he had innovated them or had borrowed them from someone else ...

Amin Astarabadi himself, and his followers as well, do not consider him as the founder of a new school called Akhbarism. Rather they consider him a revivalist who restored the way of the early Shi'ah scholars of hadith. They claim that their way is the same as that of the early Shi'ah that was followed until the times of al-Shaykh al-Saduq and from which the people were gradually led astray by such scholars as Ibn Abi 'Aqil, Ibn Junayd, al-Shaykh al-Mufid, al-Sayyid al-Murtada, and al-Shaykh al-Tusi, who brought in reason and ijtiḥad to temper with Divine commands. Shaykh Yusuf ibn Ahmad al-Bahram (d. 1186/1772), the author of *al-Hada'iq al-nadrah*, who was himself a moderate Akhbari, in the tenth muqaddimah of *al-Hada'iq al-nadrah*, under a heading style "*Fi hujjiyyat al-dafiil al-'aqli*" (On the legal validity of rational grounds), cites the following words of Sayyid Ni'mat Allah al-Jaza'iri from the latter's work *Anwar al-nu'maniyyah*:

To be certain, a majority of our companions (i.e. the Shi'ah) followed a group of our opponents, among them philosophers, naturalists, or *Ahl al-Ra'y* and others, who, relying upon reason and its arguments, cast away the teachings of the prophets when they did not agree with their intellects.

In these words, which hint at excommunication, Sayyid Ni'mat Allah al-Jaza'iri considers the majority of Shi'ah scholars - and along with them the philosophers, the naturalists, and those who follow *ra'y* and *qiyas* to be heedless of the teachings of prophets, merely on the ground that they recognize the authority of reason. By the 'majority' he means all the scholars who came after al-Shaykh al-Saduq, as if until that time all Shi'ah had been Akhbaris.

In fact Akhbarism had never existed before as a school with distinct doctrines such as those based on the denial of the authority of the *zawahir* of the Quran, the denial of the authority of reason, impermissibility of the *taqlid* of anyone except the Ma'sum and so on. It is true that there were some who seldom went beyond quoting traditions in their books - even quoting them verbatim in their *fatawa*. But the fact is that the abundance of ahadith on the one hand, and the accessibility to the Imams of the Ahl al-Bayt (A) on the other, had been the major cause that the need for ijihad and the need to deduce particular rules from general laws had not yet been felt.

Al-Shaykh al-Tusi, in the introduction to *al-Mabsut*, says: "I had heard from the 'Ammah (i.e. the Sunnis) the criticism that our fiqh is limited because we do not practise *qiyas* and *ra'y* and is therefore also inadequate for answering all the problems. For years I had been desirous of writing a work on legal deduction without having recourse to *qiyas* and

ra'y, deducing in it particular rules (*furu'*) from the fundamental general principles (*usul*) that we have been taught in traditions. However, various preoccupations and hindrances prevented it." Then he adds:

My determination was weakened further by the absence of any desire on the part of this sect (i.e. the Imamiyyah) towards it and their indifference in this regard; because they have compiled the traditions which they relate with their familiar vocabulary, to the extent that if in a problem different words to which they are not used to are employed to convey the same sense, they consider it as an odd thing.

Al-Tusi makes it clear that the biggest impediment in his writing of such a book was that it was not yet customary among the Shi'ah to practise *ijtihad* and to deduce particulars from universals.

As said before, there had not emerged any great jurist until that time who could officially practise *ijtihad* and deduce particular rules from the general principles. There had been some - such as al-Shaykh al-Saduq, Ibn al-Walid, and others - whose method was based on narration of traditions, not on a discursive study of the subject. Even if they wrote any book on *kalam*, their argument consisted mainly of traditions. It was they whom al-Shaykh al-Tusi calls '*muqallidah*' (imitators) and criticizes them. Al-Sayyid al-Murtada - as quoted in the

introduction to al-Sara'ir by Ibn Idris - refers to them as *ashashb al-hadith min ashabina* (the 'ahl al-hadith' from among our companions), and al-'Allamah al- Hilli, in Tahdhib al-'usul, calls them '*al-'akhbariyyun min ashabina*' (the 'akhbaris'-traditionists-from among our companions).

Perhaps it is on this account that al-Shahristani, in *al-Milal wa al- nihal*, divides the Imamiyyah into the subsets of mu'tazilah and akhbaris. In the first volume of his work, he says:

When there came to be divergence in the traditions narrated from their Imams, as time passed every group of them took its own way, and some of the Imamiyyah became either Mu'tazilah, or Waidiyyah, or Tafdiliyyah, or Akhbariyyah, or Mushabbihah, or Salafiyyah.

However, it is quite certain and definite that in the early era there was no school opposed to that of ijtiḥad and legal deduction amongst the Shi'ah to have challenged the authority of the *zawahir* of the Quran or the authority of reason in order to defend hadith.

The appearance of Akhbarism, as I have said before, was a catastrophe for the scientific and intellectual life of the Shi'ah. Many individuals came to adopt its teachings and came to look down upon reason and rationalism. They made reflection upon the Quran a taboo and, instead of making the Quran the criterion for the acceptability of hadith, made

hadith a criterion for the Quran. Fortunately there emerged eminent personalities among the *mujtahidun* and *usulis* who fought the influence of the Akhbaris. Among them the names of Wahid Behbahani and Shaykh Murtada al-'Ansari - may God elevate their station - stand high. To describe in detail the services of these two personages is beyond the scope of the present study.

By the way, it should not remain unsaid that the struggle against Akhbarism was a difficult and complex matter because its teachings took a deceptive and self-righteous stance which misled the public. It was for this reason that they rapidly gained influence and popularity after Amin Astarabadi ...

As is known, there broke out severe and bloody conflict towards the end of the second/eighth century and the beginning of the third/ninth between the *Ahl al-Hadith wa al-Sunnah*, who resemble the Shi'ah Akhbaris, and the Mu'tazilah, who believe in the role of reason and the validity of rational arguments. Al-Ma'mun (r. 198-218/813-833), who was personally a man of learning, supported the Mu'tazilah and backed them in the controversy about the createdness of the Quran. He sent out a circular declaring those who denied the creaturehood of the Quran as heretics, who had no right to be judges and preside over the courts of law nor was their testimony to be accepted in the courts. As a result the Mu'tazilah attained great

power during al-Ma'mun's reign. More philosophical works than at any other time were translated into Arabic during al-Ma'mun's reign and rationalism became prevalent. When al-Mutawakkil (r. 232-247/846-861) came to power, he reversed the tide by throwing the weight of his support behind the *Ahl al-Hadith*. The Mu'tazilah were proscribed and the publication of philosophy was banned. Al-Mas'udi, in *Muruj al-dhahab*, writes:

When the caliphate fell to al-Mutawakkil, he ordered the people to abstain from discussion and debate and whatever they were used to in the days of al-Mu'tasim and al-Wathiq. He directed them to adopt compliance and imitation.

Al-Mutawakkil's support for the *Ahl al-Hadith wa al-Sunnah* - who like the Shi'ah Akhbaris had a deceptively self-righteous stance, spoke untiringly of submission and devotion and persistently chanted the phrase *qala Rasul Allah* ('so said the Apostle of Allah') - had an extraordinary effect on the people, to whom it appeared to be a defence of the Prophet. For this reason, al-Mutawakkil, despite his tyranny and debauchery, came to assume saintly image in the popular mind.

The Mu'tazilah could never recover from that blow. And we, the Shi'ah, should thank God that there arose no Mutawakkil in the era of the emergence of the Shi'ah Akhbaris, who were a hundred times

more obscurantists and formalistic than the *Ahl al-Hadith wa al-Sunnah*, in their defence.

However, we should note the point that even though the Akhbari onslaught was defeated through the courageous resistance of a number of the followers of the school of *ijtihad*, but the Akhbari thinking was not completely destroyed. Whenever the champions of *ijtihad* have made any headway and wherever they have put their feet, Akhbari thinking had to recede and disappear. But Akhbari obscurantism still rules in those places where they were not able to reach.

How often we come across mujtahids who do *ijtihad* with an Akhbari brain. Many of the kind of things which are published in the name of the 'teachings of the Ahl al-Bayt' and come to the market, but which strike dagger into the back of the Ahl al-Bayt of the Prophet (S), are no more than the remnants of the thought of Mulla Muhammad Amin Astarabadi.