An Introduction to Collective
Ijtihad (Ijtihad Jama'i):
Concept and Applications

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Abstract

This article explores the concept of collective *ijtihad* as a means of determining new judicial judgments. Accordingly, it analyzes the theoretical framework of this kind of *ijtihad* and its application by discussing the various institutions that practice it. In general, this article seeks to present this as a practical mechanism for ascertaining the Shari'ah's opinion concerning the Muslim ummah on a variety of current issues. At the outset, it will present briefly the controversy concerning the closure of the gate of *ijtihad*, for this kind of *ijtihad* relies heavily upon our recognition that, throughout the history of Islamic law, jurists have never abandoned the task of *ijtihad*.

The Controversy Surrounding the Theory of the Closure of the Gate of *Ijtihad*

In his introduction, Joseph Schacht asserted that Islamic law is no longer relevant to modern life, due to its inflexibility and consequent inability to meet the constant changes therein. He stated further that the nature of Islamic law's unchanging principles had inevitably resulted in this situation. At the time of the classical jurists, although the nature of the system was the same, those involved in legal matters found a remedy for Islamic

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law's constrained rudimentaries: *ijtihad*. This doctrine contributed to easing the law's rigid foundations by serving as a dynamic device to suit the application of Islamic law to the relevancies of life. This mechanism, however, had been abandoned with the consensus of the jurists, which led to the assertion that the gate of *ijtihad* allegedly had been closed during the middle of the ninth century.[1] This assertion was then echoed by many scholars, especially the Orientalists.[2]

Some scholars refuted this claim. One of them, Wael B. Hallaq, opined that "these views on the history of *ijtihad* (i.e., about its abandonment) after the second/eighth century are entirely baseless and inaccurate."[3] He proved that the jurists had never abandoned the mechanism of *ijtihad*, neither in theory nor in practice. After analyzing the relevant sources in some depth, namely, the subject matter dating from the fourth/tenth century onward, he concluded that his findings contradicted the theory suggested by Schacht and echoed by others.[4] The basis of his claim may be summarized by the following four points:

a) In reality, centuries of Islamic law had witnessed a number of jurists who had reached the level of *ijtihad* and had practiced such.

b) After the formation of the well-known schools of law, subsequent jurists utilized *ijtihad* as a way to develop positive law within these schools. The writings of jurists from the sixth century onward provide overwhelming evidence of this development.

c) The phrase *insidad bab al-ijtihad*, or any expression that may imply this notion of closure, never occurred before 500 AH. Despite this, some scholars claim that closure dated back to the fourth century AH.

d) The claim that there was a juristic consensus regarding such a closure seems unlikely, given the books written by jurists who condemned those who called for or believed in it.

Ibn 'Abd al-Barr (d. 463/1070) devoted a whole chapter in his *Jami' Bayan al-'Ilm wa Fadlihi* to refuting *taqlid*, and called for those eligible to undertak *ijtihad* to do so.[5] Al-Khatib al-Baghdadi (d. 462/1069)[6] and al-Mawardi (d. 449/1058)[7] made the same call. More interestingly, in his *Ahkam al-Sultaniyah*, al-Mawardi further insisted that the delegated officials (*'ummal al-tafwid*) must apply the result of their own *ijtihad* even though it may disagree with that of the ruler *(imam)*, because they were not bound to follow the *ijtihad* of others.[8] Some jurists even wrote works claiming that the

existence of the *mujtahid* and *ijtihad* was indispensable. In his *Al-Radd 'ala man Akhlada ila al-Ardwa Jahila anna al-Ijtihadfi Kulli 'Asr Fard*, the eminent Shafi'i jurist al-Suyuti (d. 911/1505) argued that *ijtihad* is a *fard kifayah* (communal duty) on the Muslim community as a whole. By failing to produce even a single *mujtahid*, the whole community is in a state of sin.

Pursuing this view, al-Suyuti reasoned that knowing and deriving the Shari'ah's opinion in every aspect of life is necessary for all Muslim communities. The only person genuinely qualified to deduce and produce these opinions, by engaging in *ijtihad*, is the *mujtahid*. The cessation of the mechanism of *ijtihad* would eliminate ways of knowing the Shari'ah's opinions on issues facing Muslim communities, a situation that could lead to the demolition of the Shari'ah itself. The demise of Islamic law is inconceivable, for God has promised to protect it until the day of resurrection.[9] Consequently, the existence of the *mujtahid* and the undertaking of *ijtihad* are indispensable.[10] Courageously, al-Suyuti proclaimed that he was capable of performing the highest rank of *ijtihad* in the Shafi'i school: *ijtihad mutlaq*.[11]

In addition to these arguments, affirming the jurists' consensus that the gate of *ijtihad* has been closed as well as the non-existence of the *mujtahid* is both self-contradictory and debatable. How could the classical jurists have reached such a consensus if they were not *mujtahidun*, for if they were not, then their consensus may be disregarded because they were not entitled to undertake it. If they were *mujtahidun*, how could they deny the existence of something of which they were a part? This clearly demonstrates that the asserted closure of the gate of *ijtihad* is baseless and inaccurate, and, as such, gives validity to Hallaq's claims.

The contemporary jurist Muhammad Mustafa Shalabi concurred with Hallaq on the inaccuracy of Schact's assertion, although his approach to the issue was different. While he admitted that the notion of such a closure was, in fact, renounced by the classical jurists, he claimed that the sole purpose of this was to prevent unqualified people from undertaking *ijtihad*. Therefore, the phrase *insidad bab al-ijtihad* must be understood within the context that the gate of *ijtihad* was – and is – closed to all unqualified people. Although this statement seems merely to repeat the discussion concerning the necessity of holding the necessary qualifications to be a *mujtahid*, jurists were forced to reiterate this due to the arrogance of some people, even those who were unqualified, who wished to undertake this task.

He further argued that the jurists' writings are open to interpretation, as there is no textual evidence from any reliable source of Islamic law that supports the notion of the gate's closure. Shalabi went on to affirm that

throughout the history of Islamic law, there were always at least one or two jurists who were eligible to perform *ijtihad*, and that therefore the Muslim community had never been left without any *mujtahid* throughout its historical development.[12]

The Emergence of the Concept of Collective *Ijtihad*

The collapse of the closure theory has given a new dimension to applying Islamic law in the modern world. Both modernists and Islamists accept that the appropriate utilization of this legal mechanism will provide Islamic law with fresh interpretations that are suitable for the modern world. *Ijtihad* plays a crucial role in applying the Shari'ah to contemporary society and, to quote the words of Vikør: "Ijtihad is a prerequisite for the survival of Islam in a modern world."[13]

The Prophet practiced *ijtihad* and encouraged his Companions to exercise it. As shown by al-'Alwani, on several occasions the Prophet was prepared to tolerate their deficient exercise of *ijtihad*. This does not deny the fact that the Prophet would later revise any inadequacy.[14] As a result, before the Prophet's death there were Companions who were competent to exercise *ijtihad*, even though their level of understanding and capability were different.[15] The caliphs used these valuable sources wisely. It is reported that when the caliphs Abu Bakr and 'Umar faced a new issue that had no direct ruling from the Qur'an or no precedent from the Prophet, they would gather the Companions together and ask for their opinions. After this, they would pass a judgment based on a consensus or majority opinion of those who were present at that time.[16] This practice of deducing a ruling through consultation *(shura)* with the Companions, as claimed by many, lays the foundation for the concept of collective *ijtihad*.[17]

However, this practice differs from contemporary collective *ijtihad* in two aspects. First, such a consultation seemed to happen on the spur of the moment, for such meetings were not arranged. As shown by Ibn 'Abd al-Barr, the caliph would simply call for a meeting in the mosque whenever he faced a complicated issue that needed to be resolved; contemporary collective *ijtihad* is undertaken by means of a prior invitation to the members to gather in a certain place at a given time to discuss particular issues. Second, there was no predetermined number of members called to engage in such a consultation, for it was just done with the number of Companions who were present at the time. None of the records made available by *hadith*

scholars or jurists mention the number of Companions present in any such meeting; in contemporary collective *ijtihad*, the number of participants is fixed. This feature will be scrutinized in detail in the coming pages.

When 'Uthman became caliph, the Companions, especially during the second half of his reign, started to disperse all over the Islamic territories.[18] Many of them formulated their own ways of deducing *ahkam* (legal rulings). The resulting diversity of interpretation and consequent differences in methods of applying the law's provisions were then expanded through the jurists' works. Over time, this resulted in the establishment of the schools of law, led by the four Sunni schools, namely, Hanafi, Maliki, Shafi'i and Hanbali.[19] The earlier practice of exercising *ijtihad* after consulting with the Companions was no longer undertaken.

According to some studies, during this era *ijtihad* was performed on an individual basis and no arrangement was made to gather all of the *mujtahidun* together to discuss and agree on specific Shari'ah rules.[20] If all of the *mujtahidun* happened to arrive at one particular ruling on a certain issue, this agreement was referred to as *ijma'* (consensus). But as this happened only rarely, such jurists as Imam Ahmad believed that *ijma'* was feasible only in matters for which specific evidence is explicit in the Qur'an or the Prophet's *sunnah*.[21] According to this view, the only *ijma'* likely to take place was the *ijma'* held by a particular legal school[22] or group of people,[23] or *ijma'* confined to particular localities.[24]

This state of affairs continued during the subsequent periods of *fiqh*, whereby jurists became more comfortable with affiliating themselves with existing legal schools instead of creating their own.[25] Their vigor was focused mainly on ascertaining strong opinions in their respective legal school, distinguishing them from weak ones, or expanding and applying them to new issues. In this regard, some of them attempted to write concise works, on which others wrote elaborate glosses, on which yet others wrote further glosses and annotations. It has been proved beyond a shadow of doubt that there was a tendency during this era to believe that the quality of the *ijtihad* made by later jurists was inferior to that made during the golden era of *fiqh*. Recognizing the gravity of undertaking *ijtihad* and believing that the quality of the *mujtahidun* had diminished, these later jurists sought to perform *ijtihad* collectively. However, the ruling authorities' gathering the jurists together to discuss and decide certain issues rendered this task unrealizable.[26]

The first attempt at such an *ijtihad* materialized under the auspices of the Ottoman Empire, which promulgated an Islamic Civil Code (the

Majallah) during the Tanzimat period. Attempts to revitalize the feeble Empire led to the promulgation of new laws based mainly on western codes (i.e., the Penal Code [1840, revised 1851 and 1858], the Commercial Code [1850, revised 1860], the Code of Commercial Procedure [1861], and the Commercial Maritime Code [1863]). The promulgation of new civil codes caused controversy, and several Islamists, led by Cevdet Pasha, aired their dissatisfaction with the government's inclination toward adopting western ideology on the grounds that it was an effort to distance Islam from the Empire. Hence, they suggested the promulgation of a new civil code that was western in form and standard, but Islamic in content and approach. As a result, a seven-man Committee of Jurists (the Committee of the Majallah) was appointed under the chairmanship of Cevdet Pasha.[27] Its members were Ahmad Khulusi and Ahmad Hilmi, members of the Grand Council of Justice; Muhammad Amin al-Jundi and Sayf al-Din, members of the Council of State; Sayyid Khalil, inspector of *Awqaf*; and Shaykh Muhammad 'Ala' al-Din ibn 'Abidin (of Damascus).[28]

The committee's main objective was to compile the law of transaction, based on the Hanafi legal school, which would then be applied throughout the Empire. To achieve this, the committee studied and extracted the most dominant Hanafi opinions and compiled a law that was subsequently promulgated as a civil law of the Ottoman Empire. At this time, this law applied to Turkey and all of the Empire's other possessions, except for Egypt, Arabia, and Yemen.[29] It remained the civil law of Turkey until Kemal Ataturk replaced it with the Swiss Civil Code in 1926.[30] It remained in force in Bosnia-Herzegovina even after the Austro-Hungarian Empire occupied it in 1878, in Albania until 1928, in Cyprus at least into the 1960s, in Lebanon until 1934, in Syria until 1949, in Iraq until 1953,[31] and in Jordan until 1976.[32] The Majallah also influenced the modern civil codes of Middle Eastern countries, and today serves as a source of the codified laws.[33]

Scholars of Islamic law acknowledge the Majallah as the first and most successful attempt to codify Islamic law. In the words of Islahi: The Majallah is "the most successful attempt towards codification in Islamic law."[34] However, no one, as far as the writers of Islamic law are concerned, realized that promulgating the Majallah also marked the beginning of the era of collective *ijtihad*. Even though this idea did not emerge as such, the committee's work laid down the initial method of establishing collective *ijtihad* as a means of *ijtihad* in the modern world.

The seven scholars appointed to prepare this law convened, studied the classical manuals of Islamic law, scrutinized all of the opinions, and then

formed the opinion considered to be the most appropriate for that time[35] and most in harmony with the exigencies of modern life and business.[36] The committee also practiced the principle of *takhayyur*,[37] for its members included Hanafi opinions that were not regarded as the most prevalent, as well as some non-Hanafi opinions.[38] Despite the criticism that the Majallah adhered to the Hanafi school, one must bear in mind that the Hanafi school had enjoyed official status in the Ottoman Empire since its formation.[39] This rendered the Majallah inadequate, in some ways, to meet the Empire's economic and social needs. However, it cannot be denied that the idea of collective *ijtihad* performed by committee brought about an Islamic law in a new and hitherto unknown form and model.

Rashid Rida, the well-known Islamic modernist, further propounded the notion of collective *ijtihad*. During his discussion regarding the Islamic state's decline and the reasons behind it, he theorized that in order for the Islamic ummah to regain lost glory, the gate of *ijtihad* (if it was closed) should be reopened and used by contemporary jurists. His thesis promoted a new theory in the exercise of *ijtihad*, part of which had not been advanced by the Majallah. Realizing the difficulties that individuals might face in exercising *ijtihad*, he suggested that *ijtihad* should be performed collectively and supported by the government. In other words, he tried to relate this kind of *ijtihad* to the institution of *ijma'*. He contended that the classical theory of *ijma'* was previously impracticable, because the authorities had never organized it. If planned wisely by the pertinent authority, the institution of *ijma'* would benefit both the Muslim community and the government. He suggested that the caliphate should adapt this concept, integrate it into governmental institutions, and that those who perform it consist of *ahl al-ḥall wa al-'aqd* (those who loosen and bind).

In this sense, Rida attempted to associate the institution of *ijtihad* with that of classical *shura*. However, this body should be considered as an *ijma'* institution whose opinions would be more that just advisory to the caliph. He suggested that in order to gain recognition from the whole Islamic world, this institution should be pan-Islamic in character. Thus, his concept is more far-reaching than the Majallah. Instead of relying upon a specific legal school, Rida suggested that this committee should be free from any attachment to a particular school. Rather, its members should look into all schools of law and concur with the opinion considered to be the strongest, the most suitable and adaptable to the government, and the most practicable to the community. He contended that it is currently far easier to convene

all living *mujtahidun* from the Muslim world for the purpose of applying *ijma'* than it was at the time of classical jurists.[40]

This suggestion, however, met with little interest from other jurists. It appears that, although Rida's idea of instituting *ijtihad* and formulating it collectively was remarkable, its implementation was far from feasible, given existing realities. The idea was formed when the Ottoman Empire was at its weakest and facing colossal problems within its provinces. This issue appeared insignificant with the other problems facing the Empire, such as having to deal with surrounding armed forces from various European countries as well as attempting to revitalize itself. The fragmentation of Islamic territories rendered the realization of this vision difficult, and, consequently, his theory appeared impossible to implement.

Sanhuri revived Rida's ideas during his work on the new Egyptian civil code. Confronted by several difficulties while codifying and absorbing Islamic law into this code, especially in determining the most appropriate opinion to be promulgated as law, he proposed establishing a body of representatives to work on this legislation. The committee's major role was to examine carefully the opinions of jurists from various schools regarding certain issues of law, and then to opine which one was the most suitable for incorporation into the new legislation.[41] Although some contemporary jurists supported him, many others were reluctant to participate, as the idea of blending Islamic and foreign law is considered a deviation from Islam and even apostasy.[42]

The suggestion made by Rida and advanced further by Sanhuri, namely, to make the institution of *ijtihad* equivalent to classical *ijma'*, is somewhat problematic and unviable due to the various issues necessitating adequate solutions prior to practical implementation. Such issues include the controversy over the desirable attributes of those people who are to be considered as *mujtahidun*, the question of who decides the nature of the relevant qualifications, and how elections are to be structured. In addition, there are questions as to the institution's practical workings and whether or not the committee's opinion is to be considered infallible, as in the case of classical *ijma'* (which set a precedent that could not be altered by any future *mujtahid*[43]). If the answer to this is in the affirmative, then what practical mechanism can be put in place to prevent the occurrence of contradictory opinions in the twenty-first century?

Shalabi, another Egyptian jurist, appears to recommend something similar to Sanhuri's idea. He opined that, in addition to daily Muslim matters related to worship, marriage, and so on, *ijtihad* should be practiced in the

sphere of legislation and promulgating law in Islamic countries. Aware of this task's magnitude, he contended that since individual *ijtihad* is not enough, it should be carried out collectively *(jama'i)*. He maintained that this could be achieved by establishing "The Juristic Assemblage" (al-Majma' al-Fiqhi) or "The Supreme Council for Religious Law and Legislation" (al-Majlis al-A'la li al-Fiqh wa al-Tashri'). Reflecting the suggestion made by Rida, he proposed that this committee should be pan-Islamic in character.[44] Apparently, this was the first time that the term collective *ijtihad (ijtihad jama'i)* was used. After this, scholars began using it to refer to a type of *ijtihad* in a forum, where jurists meet and determine rules for arising issues. Some of these assembling bodies have borne the name al-Majma' al-Fiqhi and al-Majlis al-A'la. This will be discussed in greater detail later.

The Concept of Collective *Ijtihad*

The term *collective ijtihad (ijtihad jama'i)* comprises two combined words: *ijtihad* and *jama'i*. Literally, *ijtihad* means "to strive, endeavor, make every effort, take pains, exert oneself, and work (too) hard in doing something."[45] It would appear that jurists have encompassed all of these meanings in their definitions of *ijtihad* in legal usage. For instance, al-Amidi defines *ijtihad* as: "To spare no effort in the quest of discovering the supposed rules of the Shari'ah in the sense that the *mujtahid* leaves no stone unturned."[46] Similarly, Ibn al-Haj defines it as: "The exertion of the *mujtahid's* whole effort in his attempt to establish the anticipated rules of the Shari'ah."[47] Al-Asnawi has advanced a shorter definition: "To spare no effort in the quest of knowing the rules of the Shari'ah." Similar definitions can be found in the writings of al-Shawkani,[48] al-Subki,[49] and al-Bazdawi.[50]

In general, there is no significant disparity among these definitions. All indicate one most important element of *ijtihad*: the jurists' striving, to the point of intellectual exhaustion, to derive and establish rules of law based on evidence found in the sources of law, such as the Qur'an, the Sunnah, *ijma'*, and *qiyas*.[51] Anything less than total exertion rules out the practice of *ijtihad*.[52] The subjective nature of this "total exertion" is noteworthy in that only the *mujtahid* knows the quality of the endeavor performed. This explains why jurists stipulate that trustworthiness *('adalah)* in accordance with Islam is a crucial criterion for any *mujtahid*. Being a trustworthy person *('adil)*, the *mujtahid* would not produce any *ijtihad* without exerting the effort required to reach it.

These definitions, however, are contested by that proposed by al-Shafi'i. When asked: "What is analogy? Is it *ijtihad*, or are the two different?" he replied: "They are two terms with the same meaning."[53] Here, al-Shafi'i opined that *ijtihad* is similar to *qiyas*, a source of law ranked fourth after the Qur'an, the Sunnah, and *ijma'*. He suggested that they are used interchangeably. Al-Ghazzali dismissed this assertion and refuted the idea that the two were similar in nature by stating that *ijtihad* means to discover the Shari'ah's rules by utilizing evidence from the sources of Islamic law, and that *qiyas* is one of these sources. Thus, in this sense *ijtihad* is wider than *qiyas*. As far as can be ascertained, no other jurist supported al-Shafi'i's assertion.

Some scholars divide *ijtihad* into individual *ijtihad (ijtihad fardi)* and collective *ijtihad (ijtihad jama'i)*. They differ, however, in how they define these terms. According to al-'Attar, individual *ijtihad* is an attempt by a particular *mujtahid* to deduce Shari'ah-based rules from evidence therein.[54] Al-Khudari attempts to broaden this definition by including the *ijtihad* of several *mujtahidun*, as long as this *ijtihad* does not involve all of the *mujtahidun* or an overwhelming majority of them. If this happens, the *ijtihad* is considered collective *ijtihad* or *ijma'* (these two are different, in his opinion).[55]

In contrast, al-'Attar defines collective *ijtihad* as the consensus of more than one *mujtahid* on a certain Shari'ah rule, into which all had put their efforts to derive the ruling from the relevant sources.[56] He attempts to broaden this kind of *ijtihad* to cover not only the *mujtahidun*, but also the researchers of *fiqh* and jurists who have not attained the rank of a *mujtahid*.[57] Al-Khudari, however, regards collective *ijtihad* as *ijma'*, as discussed in *usul al-fiqh* literature.[58]

Various issues arise regarding the above-mentioned division of *ijtihad*. It is worth noting here that such a division of *ijtihad* is unknown within classical *usul al-fiqh* literature, which has led some contemporary scholars to believe that no accurate definition of collective *ijtihad* has been formulated.[59] As far as the science of *usul al-fiqh* is concerned, classical jurists divided *ijtihad* into individual *ijtihad* and *ijma'*. If one *mujtahid* deduces rules from evidence using the proper method of deduction, this is called individual *ijtihad*. If all of the *mujtahidun*, or, according to some jurists, an overwhelming majority of them, agree on particular rules, this is called *ijma'*. The term collective *ijtihad* has been created by contemporary jurists to deal with new and complicated current issues.[60]

The complexity in implementing classical *ijma'* lays the foundation for this kind of *ijtihad*.[61] Consequently, contemporary jurists are at variance in

their decision regarding the status of collective *ijtihad*. Al-'Attar, al-Hasan, and Siraj[62] maintain that it is another type of *ijtihad*, one superior to individual *ijtihad* but inferior to classical *ijma'*. Therefore, it does not necessitate all of the requirements of *ijma'* and thus can include such non-*mujtahidun* as ordinary jurists and researchers of *fiqh*. Some scholars suggest that collective *ijtihad* should include experts from various aspects of human life, such as economists, sociologists, and medical practitioners.[63] Consequently, any decision resulting from collective *ijtihad* differs from that produced through *ijma'*, for its decision is not considered as certain *(yaqin)* and does not enjoy the infallibility and utmost reliability that *ijma'* does. On the other hand, some jurists hold the view that this collective *ijtihad* can be equivalent to classical *ijma'* in its infallibility and utmost reliability.[64]

Qasim puts forward a further proposal.[65] While accepting that collective *ijtihad* is a medial between individual *ijtihad* and *ijma'*, he suggests that collective *ijtihad* today should be viewed as having the authority of classical *ijma'*, at least in the place and at the time that it is accomplished. For instance, the Organization of Great Jurists of Saudi Arabia (Hay'at Kibar al-'Ulama' fi al-Mamlakat al-'Arabiyat al-Sa'udiyah) decided that collective *ijtihad* should be made compulsory, at least in Saudi Arabia.[66] However this is impractical in some countries where collective *ijtihad* is practiced by more than one body. No problem arises if these bodies reach the same *ijtihad* ruling, but if they do not, which body will have the proper authority to imple-ment it? Qasim provides no answer to this question.

Some contemporary jurists are attempting to unravel this puzzle. Siraj suggests that demarcations must be drawn between the consensus reached by all *mujtahidun* and that reached by the majority of them. In the former case, their unanimous agreement would be considered as *ijma'*, its decision would be considered *yaqin*, and any conflicting opinion would be deemed *khariq li al-ijma'* (ripping the consensus) and thus considered null and void.[67] However, if agreement is reached only by some or by the majority of the jurists, it would be considered collective *ijtihad*. Contrary to *ijma'*, this *ijtihad*, rather than being certain and admitting no contradictory view, would be regarded only as the predominant view, and contradiction would be acceptable as long as appropriate measures were taken while deducing these opinions. However, jurists should examine this collective *ijtihad* and all of its arguments carefully before embarking upon any other *ijtihad* relat-ing to a similar case.[68] This standpoint seems to be much more practicable, although it still reflects the notion that collective *ijtihad* is ranked below classical *ijma'* and should not possess the latter's authority.

Having considered all of these illustrations, it can be concluded that, conceptually, collective *ijtihad* differs from individual *ijtihad* and classical *ijma'* in two aspects. First, collective *ijtihad* involves more than one *mujtahid*. However, this does not reach the scale set by the jurists in performing classical *ijma'*, in which all living *mujtahidun* must be involved. During this study, no evidence was found of writers attempting to suggest that collective *ijtihad* be performed in the way that classical *ijma'* was allegedly performed. This reluctance can be explained as follows: Although classical *ijma'*[69] is theoretically easier to perform at present, I feel that, in practice, jurists encounter a number of difficulties. Some of these lie in establishing a standard procedure to determine who is a *mujtahid*, what are the precise criteria for such a person's attributes, and how are they to be gathered from all over the world? The question of how to deal with the numerous bodies and committees in the majority of Islamic countries that have, until now, had their own members and have produced several rulings on various issues, is a most interesting one. Are they willing to relinquish the status quo in order to establish just one body of *mujtahidun*? All of these quandaries suggest that today, collective *ijtihad* is of a more practical nature than *ijma'*.

This dissimilarity between collective *ijtihad* and classical *ijma'* leads to another essential distinction, namely, the question of infallibility, for any ruling reached via classical *ijma'* is considered irrevocable and not to be challenged or reinterpreted by later generations.[70] Many scholars do not extend this privilege to collective *ijtihad*, although some, such as Qasim, suggest otherwise.

Therefore, the theoretical framework of collective *ijtihad* can be laid down as follows:

a) Collective *ijtihad* is ranked second in authoritativeness, lower than *ijma'* but higher than individual *ijtihad*. It is a more reliable and practicable means of *ijtihad*. It is more reliable than individual *ijtihad* and, in practical terms, more realistic that classical *ijma'*.

b) Its role is essential to Islam's continuity and survival in the modern world. It is a viable way to accommodate all Muslims, organizations, or even authorities who are concerned with a more utilitarian solution that suits the exigencies of modern life and business.

c) Nevertheless, it does not possess all of the qualities of *ijma'*. For example, it does not hold the same authority and its decisions are not binding. Consequently disagreement between the various bodies that undertake it is inevitable. Its decisions are consultative only

in character, unless a covenant is made between the parties to imple-
ment a binding decision. For instance, the ruling of the Shari'ah
Advisory Board (Hay'at al-Riqabat al-Shar'iyah) regarding certain
banking institutions is deemed compulsory for those institutions.

d)   Committees that undertake collective ijtihad should consist of the
following members: jurists who have reached the rank of *ijtihad*,
jurists who are not yet *mujtahidun*, and researchers who have stud-
ied Islamic law. However, there must be enough *mujtahidun* on these
committees to produce a beneficial and reliable outcome. Moreover,
there has been an apparent lack of clear parameters as to exactly
which criteria should be required in a contemporary *mujtahid*.

e)   In addition to encompassing jurists of Islamic law, these committees
should include a variety of experts who possess keen insight into the
topics under discussion. For instance, matters related to economics
or medicine should be discussed with economists or medical prac-
titioners. Their membership could be permanent, temporary, or hon-
orary. Although their role would be advisory, their professional
presence would help the other members acquire a better under-
standing of the issues and perhaps eliminate any ambiguities.

Having discussed the theoretical framework, I will now discuss the
practical side of this *ijtihad* and its application in some of the institutions
established in various Muslim countries.

Applying Collective *Ijtihad* in the Muslim World

Applying collective *ijtihad* can best be explored by studying the institutions
that undertake it. However, as this is beyond the scope of this article, the
following list details a few examples of well-known institutions and the
countries in which they operate (or have their headquarters):

•   *Egypt:* The Academy for Islamic Researches (Majma' al-Buhuth
al-Fiqhiyah), and The High Council for Islamic Affairs (al-Majlis
al-A'la li al-Shu'un al-Islamiyah).

•   *Saudi Arabia:* The Organization of Great Jurists of Saudi Arabia
(Hay'at Kibar al-'Ulama' fi al-Mamlakat al-Arabiyat al-
Sa'udiyah); The Permanent Committee for Scientific Researches
and Ifta' (al-Lajnat al-Da'imah li al-Buhuth al-'Ilmiyah wa al-
Ifta'); The General Commission for the Administration of

Scientific Researches, Ifta' and Missionary Works and Preaching (al-Ri'asat al-'Ammah li Idarat al-Buhuth wa al-Ifta' wa al-Da'wah wa al-Irshad); The International Fiqh Academy (Majma' al-Fiqh al-Islami al-Dawli); and The Fiqh Academy (Majma' al-Fiqh al-Islami).

- *Kuwait:* The General Administration for Ifta' (Kuwait); The Islamic Organization for Medical Researches (al-Munazzamat al-Islamiyat li al-'Ulum al-Tibbiyah); The Islamic Council for Fatwa and Shari'ah Supervisory in the Kuwaiti House of Finance (Hay'at al-Fatwa wa al-Riqabat al-Shar'iyah fi Bayt al-Tamwil al-Kuwayti); and The International Shari'ah Council for Affairs Related to Zakat under the House of Zakat in Kuwait (al-Hay'at al-Shar'iyat al-'Alamiyat li al-Zakat al-Tabi'at li Bayt al-Zakat fi Dawlat al-Kuwayt).

- *Sudan:* The Board for Shari'at's Ifta' in Sudan (Majlis al-Ifta' al-Shar'i fi al-Sudan) and The Supreme Council of the Shari'ah Supervisory Board for Banking and Financial Institutions in Sudan (al-Hay'at al-'Ulya al-Shar'iyah li al-Jihaz al-Masrafi wa al-Mu'assasat al-Maliyah fi Sudan).

- *Pakistan:* The Council for Islamic Teaching in Pakistan (Majlis al-Fikr al-Islami bi Bakistan).

Several points should be made pertaining to these institutions. First, members are selected in three ways: from local scholars, international scholars, or from a combination of the two (local members being predominant). For instance, The Organization of Great Jurists of Saudi Arabia, The Permanent Committee for Scientific Researches and Ifta,' as well as The General Commission for the Administration of Scientific Researches, Ifta' and Missionary Works and Preaching, select only Saudi citizens as Council members; The High Council for Islamic Affairs in Egypt selects only Egyptians; and The General Administration for Ifta' in Kuwait appoins only Kuwaiti citizens.

However, some institutions have not restricted their membership to scholars who reside in the locality of the head offices. For instance, members of The International Fiqh Academy and The Fiqh Academy are selected from different parts of the Islamic world, even though their headquarters are located in Saudi Arabia. Similarly, The Islamic Organization for Medical Researches and the International Shari'ah Council for Affairs Related to Zakat under the House of Zakat, in spite of being administrated

from Kuwait, draw their members largely from outside of Kuwait. Only the Academy for Islamic Researches, formed under the patronage of al-Azhar, adopts a different approach: Law no. 103 of 1961, in Reorganizing Certain Regulation Pertaining to al-Azhar and Its Institutions, states:

> A body of Shari'ah scholars should be established to succeed the Council of Great Jurists established in 1911.[71] This organization is to be known as the Academy for Islamic Researches, the aim of which is to engage in a wider scope of operation compared to the previous council. The intention is to appoint no more than fifty scholars, of whom no more than twenty non-Egyptians may be members; provided that the Egyptian scholars form the majority in this academy.[72]

A further issue that may be raised while considering membership is related to gender. During my study, I found no evidence of any female scholars participating in these organizations. Nor is there any apparent regulation that ensures a place for women in *ijtihad jama'i* (with the exception of the Council for Islamic Teaching in Pakistan). By virtue of Article 228 of the Federal Constitution of Pakistan, a committee known as The Council for Islamic Thinking (Majlis li al-Fikr al-Islami) has been established. The number of members must be at least eight and must not exceed fifteen. At least one woman is appointed to this committee, but this is the sole institution to do so. No explanation can be found to clarify the reason for this, and one may assume that Muslim communities are unconcerned by the gender bias in collective *ijtihad*.

However, the apparent discriminatory nature of the latter should not be attributed to Islam, because over the centuries Islam has had several female *mujtahidat*. 'A'ishah, the Prophet's wife, is considered a *mujtahidah*. She instructed several Companions and their successors who went on to become *mujtahidun* in the history of Islamic law. In reality, stipulating that women must be included as members is futile, particularly if no competent and knowledgeable female scholars can be found. It is therefore suggested that practical steps be taken to educate women and encourage their academic potential so that eligible female jurists can be produced to take their place in these institutions.

The scope of these institutions is generally two-pronged: those having life issues as a main concern, and those engaged in specific matters only. Representing the first group are numerous institutions of collective *ijtihad*, such as The Academy for Islamic Researches, The International Fiqh Academy, The High Council For Islamic Affairs, and The Permanent

Committee for Scientific Researches and Ifta'. The International Fiqh Academy, for instance, states in its objective:

> This Academy should be considered as a meeting place for scholars from various parts of the Muslim World to examine numerous issues relating to the problems faced by Muslims in their daily lives in their countries; therefore opinions and views should be exchanged and scrutinized properly in order to generate the most correct and sound opinions.[73]

Similarly, circulars relating to implementing Law no. 250 of 1975 with regard to establishing The Academy for Islamic Researches in al-Azhar, state their objectives as follows:

> To conduct indepth research in every sphere of Islamic studies; to reform Islamic literature and present it in its unadulterated form; to extend the knowledge of Islam and Islamic culture at every level; to scrutinize the Islamic legacy and publish it; to produce statements and opinions on various issues that emerge, such as societal and economic problems; to carry out the responsibility of preaching the wisdom of educating mankind towards the way of Allah; to follow all that is published pertaining to Islam and its legacy, whether local or international [in order to] promote any benefit that might be derived from these works, and also to identify and refute those studies which may deviate from the true ethos of Islam; and to schematize the system of sending people from al-Azhar to various parts of the globe and encouraging the acceptance of people to come and learn in al-Azhar.[74]

It is clear from these objectives that The Academy for Islamic Researches conducts research and undertakes collective *ijtihad* for various important issues. In addition to collective *ijtihad*, some institutions participate in preaching, publishing books related to Islamic teachings, and in other issues. This can be seen, for example, in the projected objectives of The Academy for Islamic Researches in al-Azhar, as well as those of The General Commission for the Administration of Scientific Researches, Ifta' and Missionary Works and Preaching, as well as The Organization of Great Jurists of Saudi Arabia, The Permanent Committee for Scientific Researches and Ifta in Saudi Arabia, The High Council for Islamic Affairs in Egypt, and The Board for Shari'at's Ifta' in Sudan.

The second grouping includes institutions that tend to concentrate on particular issues. For instance, The Islamic Organization for Medical Researches restricts its sphere of research and *ijtihad* to matters related solely to medicine. Its stated objective is

to encourage Muslims toward medical research, to support those who work in areas related to the medical profession, to multiply efforts in conducting research involving medical issues in order to find a most appropriate opinion of the Shari'ah in any new medical findings, and to discover the solution of the Shari'ah to any instrument or medication that may be prohibited by the Shari'ah.[75]

Thus, it focuses its work and *ijtihad* solely upon matters relating to the medical profession and does not involve itself in any other issues concerning the Muslim ummah. This is true of The International Shari'ah Council for Affairs Related to Zakat under the House of Zakat in Kuwait. As its name implies, it engages only in matters related to zakat. As its objectives state, its sole purpose is "to deal with various contemporary issues concerning zakat and all matters related to its collection, distribution, and investments."[76]

In addition to these two particular institutions, many supervisory boards have been established by banking and finance institutions to monitor their activities or investments. Their purpose is to ensure that their activities do not violate Islamic banking and finance principles. For instance, The Islamic Council for Fatwa and Shari'ah Supervisory Board in Kuwait's House of Finance was established primarily to supervise the latter organization's activities and to suggest solutions to any current modes of transaction and other activities that are contrary to the principals of Islamic finance.[77] A similar establishment is The Supreme Council of Shari'ah Supervisory Board for Banking and Financial Institutions in Sudan, which specializes in giving *fatawa* and *ijtihad* in matters related to transactions, business, and banking. Its main objectives are to supervise the activities of the Central Bank of Sudan and other Sudanese banking and financial institutions, and to ensure their compliance with the Shari'ah.[78]

Although these institutions have had a positive effect on the various mechanisms pertaining to modern finance and their necessary adherence to the essence of Islamic principles, there is still room for improving ideas so that they are directly linked to Islam, rather than implementing ideas that reflect a mere modification of existing western systems. This could be achieved through the direct involvement of skilled economists and bankers who would help scholars of Islamic law understand the modern laws related to transactions and business. Further efforts could be channelled into producing scholars of Islamic law who are well-versed in the intricacies of current and rapidly changing methods of conducting transactions and business.

It is apparent from further observation that decision-making practices vary from one institution to another. At present, most consider their decisions as consultative only and, as a result, no one is bound to follow their collective *ijtihad*. Be that as it may, some of these institutions do follow another system. Most Shari'ah supervisory boards belonging to banking and financial institutions make *ijtih ad* compulsory for their respective banks. For instance, The Islamic Council for Fatwa and Shari'ah Supervisory in the Kuwait's House of Finance consists of two sections: the Advisory Board, where scholars of Islamic law meet and arrive at particular decisions on certain matters; and the Board of Monitoring, whose duties are, *inter alia*, to ensure that decisions of the former organization are fully implemented.[79]

This practice also is followed by The Supreme Council of Shari'ah Supervisory Board for Banking and Financial Institutions in Sudan.[80] The Council for Islamic Teaching in Pakistan has gone even further: It makes its decisions binding not only on certain institutions, but also on the country and the president. Based on Article 230 of the constitution, this council can object to any bill tabled in Parliament if any deviation from the Shari'ah is detected in any provision. Accordingly, the bill must be amended before being presented for a second time. This mechanism ensures full compliance with the Shari'ah's principles.[81]

Some scholars incline toward making the decisions of some of these institutions binding, at least in the countries in which they operate. This suggestion is far from realistic, for in most cases there is more than one institution in any given country that practices collective *ijtihad*. Given this, which decision is to be considered binding? In my opinion, this suggestion is practical in only two situations: where the establishment of a particular institution is undertaken by that country and provisions for it have been inserted into the law, so that the relevant authority has to enforce its decisions, as in the case of Pakistan's Council for Islamic Teaching; or, where the institution has been set up by a particular body to advise its members on specific matters (as is the practice in many banking and financial institutions). Even in this scenario, there must be laws that obligate these institutions to implement the decision reached.

This writer feels that whatever shortcomings are manifest in these institutions' application of collective *ijtihad*, it is indisputable that it has brought new life to the practice of *ijtihad* and revitalized the application of Islamic law in today's world. This does not, however, negate the need for more research and development in applying this *ijtihad*, as practiced by these institutions. Perhaps more discussion is essential for further improvement.

Conclusion

Collective *ijtihad* is a new method formulated by contemporary scholars in response to modern issues and developments. No precise definition has yet been proffered, but various scholars define it loosely as the agreement of the majority of jurists on any matter. Currently, it is practiced by several fatwa institutions scattered throughout the Muslim world. Despite several attempts to equate it with classical *ijma'*, this study has revealed that, in theory, the former is inferior to classical *ijma'* and yet is superior to individual *ijtihad*. Therefore, its decisions are not considered binding, except for those who are themselves obliged to follow it, such as banking and financial institutions or Pakistan.

Nevertheless, this kind of *ijtihad* is more viable than classical *ijma'* and more reliable than individual *ijtihad*. Consequently, formulating a particular answer on any matter should be achieved via this new type of *ijtihad*. Nevertheless, some revisions need to be made regarding its practice in order to overcome any shortcomings. Some suggestions for this have been presented above. It is hoped that this article will further discussion of the important mechanism of *ijtihad*, especially in the area of finding solutions to today's problems in accordance with the Shari'ah's principles.

Notes

1. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, reprinted 1991), 70-71.
2. Norman Anderson, *Law Reform in the Muslim World* (London: The Athlon Press, University of London, 1976), 7; M. Khadduri, "From Religious to National Law," in J. H. Thompson and R. D. Reischauer, eds., *Modernization of the Arab World* (Princeton, NJ: Van Nostrand, 1966), 77-78; H. A. R. Gibb, *Mohammedanism* (London and New York: Oxford University Press., 1970), 104; N. J. Coulson, *A History of Islamic Law* (Edinburgh: University Press, 1964), 81; Majid Khadduri (tr.), *Islamic Jurisprudence: Shafi'i's Risala* (Baltimore: The Johns Hopkins Press, 1961), 7.
3. Wael B. Hallaq, "Was the Gate of *Ijtihad* Closed?" *International Journal of Middle Eastern Studies*, no. 16 (1984): 4.
4. Ibid., 3-41.
5. Yunus ibn 'Abdullah Ibn 'Abd al-Barr, ed. Abu al-Ashbal al-Zuhayri, *Jami' Bayan al-'Ilm wa Fadlihi,* 1st ed. (Dar ibn al-Jawzi: 1994/1414).
6. Al-Khatib al-Baghdadi, *Kitab al-Faqih wa al-Mutafaqqih* (n.p.: n.d.): 2:66-70.
7. Al-Mawardi, *Adab al-Qadi*, ed. M. H. al-Sarhan (Baghdad: Matba'at al-Irshad, 1971/1391), 1:269-73.

8. 'Ali ibn Muhammad al-Mawardi, *Al-Ahkam al-Sultaniyah wa al-Wilayat al-Diniyah* (n.p.: 1960), 116.

9. Allah says in al-Qur'an: "It is We Who have sent down the Reminder and We Who will preserve it (Surat al-Hijr: 9).

10. Al-Suyuti, *Al-Radd 'ala man Akhlada ila al-Ard wa Jahila Anna al-Ijtihad fi Kull 'Asr Fard* (n.p.: n.d.), 1:63ff.

11. Speaking on himself in this regard, he said: "God has bestowed on me alone and uniquely the duty of undertaking *ijtihad* in this age." Cited in J. O. Hunwick, ed., "Ignaz Goldziher on al-Suyuti," *Muslim World* 68, no. 2 (April 1978): 98.

12. Muhammad Mustafa Shalabi, *Al-Fiqh al-Islami bayna al-Mithaliyat wa al-Waqi'iyah* (Alexandria: 1960), 189-91.

13. S. Knut Vikør, "The Development of *Ijtihad* and Islamic Reform, 1750-1850" (paper presented at the Third Nordic Conference on Middle Eastern Studies: Ethnic Encounter and Culture Change, Joensuu, Finland, 19-22 June 1995). Online at: www. Hfuib.no/institute/smi/paj/vikør.html.

14. Taha Jabir al-'Alwani, *Ijtihad* (Herndon, VA: International Institute of Islamic Thought, 1993), 6-9.

15. Al-'Alwani claims that there were less than 160 men and women who were qualified to practice *ijtihad* at that time, yet no evidence supporting this claim is provided. Ibid., 8.

16. Examples of these judgments can be found in Abu Yusuf, Ya'qub ibn Ibrahim al-Ansari, *Kitab al-Kharaj* (Cairo: al-Matba'at al-Salafiyah, 1325), 26-27; al-Qasim ibn 'Abd al-Salam Abu 'Ubayd, *Kitab al-Amwal*, ed. Khalil Harras (Cairo: Maktabah Kulliyah al-Azhariyah, 1975/1395), 61-62; Abu Muhammad 'Abdullah ibn 'Abd al-Rahman ibn Bahram al-Darimi, *Sunan al-Darimi* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), 1:58, Abu Muhammad 'Abdullah ibn Ahmad ibn Muhammad Ibn Qudamah, *Al-Mughni* (Beirut: Dar al-Kutub al-'Ilmiyah, n.d.), 2:720-21; al-'Ayni, *'Umdat* (n.p.: n.d.), 23:266; Yunus ibn 'Abdulah Ibn 'Abd al-Barr, ed. Abu al-Ashbal al-Zuhayri, *Jami' Bayan al-'Ilm wa Fadlihi*, 1st ed. (Dar Ibn al-Jawzi: 1994/1414), 2:56.

17. 'Abd al-Nasir Tawfiq al-'Attar, "Al-Ta'rif bi al-Ijtihad al-Jama'i," *Conference on al-Ijtihad al-Jama'i fi al-A'lam al-Islami* (al-Ain, UAE: United Arab Emirates University, 1996), 1:32 (organized by Faculty of Shari'ah and Law); al-'Alwani, *Ijtihad*, 8.

18. The second caliph, 'Umar ibn al-Khattab, did not allow the Companions to disperse but kept them in Madinah. When 'Uthman ibn al-'Affan became caliph, this decree was discontinued.

19. For some of the examples of these disagreement and their reasons, see M. S. H. Ma'sumi, "Disagreement on the Sahabah and Early Jurists," *Hamdard Islamicus* 2, no. 4 (1979): 23-35.

20. Wahbah al-Zuhayli, *Usul al-Fiqh al-Islami*, 2d ed. (Damascus: Dar al-Fikr, 1998), 1:488; al-'Attar, "Al-Ta'rif," 1:32.

21. It is reported that Imam Ahmad said: "It is no more than a lie for any man to claim the existence of *ijma'*. Whoever claims *ijma'* is telling lie." See Muhammad ibn 'Ali al-Shawkani, *Irshad al-Fuhul ila Tahqiq al-Îaqq min 'Ilm al-Usul*, ed. Muhammad Hasan (Beirut: Dar al-Kutub al-'Ilmiyah, 1999), 64; Ibn Qayyim al-Jawziyah, *A'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Cairo: al-Maktabat al-Tijariyah, 1374), 1:30. Among recent scholars who held that classical *ijma'* is not feasible in modern times are al-Shakyh al-Khudari Abu Zuhrah and Abd al-Wahhab Khallaf. See al-Zuhayli, *Usul al-Fiqh al-Islami*, 1:578-81. See also note 68 (below).

22. This kind of *ijma'* is often cited in classical book of *fiqh* with the following citation "That on which our associates *(ashabuna)* have agreed and dis-agreed." For instance, see 'Umar ibn 'Abd al-'Aziz al-Husam al-Shahid Ibn Maza, *Sharh Adab al-Qadi*, ed. Abu al-Wafa' al-Afghani and Muhammad al-Hashimi (Beirut: Dar al-Kutub al-'Ilmiyah, 1994), 4-5. Cited in Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge, UK: Cambridge University Press, 2001), 80.

23. Such as *ijma' al-shaykhayn, ijma' al-khulafa' al-rashidin,* or *ijma' al-'itrah*.

24. Such as *ijma' ahl al-Madinah* and *ijma' 'ulama' al-Kufah*. See al-Zuhayli, *Usul al-Fiqh al-Islami*, 1:505, 512-16; Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge University Press: 1997), 20.

25. This era was accepted by many scholars as one of *taqlid*.

26. The idea of selecting specific opinions to be made into the law of the country or, in other words, asking the jurists to produce certain opinions on certain issues, did emerge throughout Islamic history. However, it was never put into effect for various reasons. For further discussion on this, see Amin Ahsan Islahi, *Juristic Differences and How To Solve Them in an Islamic State*, 1st ed., tr. S. A. Rauf (New Delhi: International Islamic Publishers, 1993), 58; Amin Ahsan Islahi, *Islamic Law, Concept, and Codification* (Lahore: Islamic Pubs., n.d.), 89ff; Subhi Mahmasani, *Falsafat al-Tashri' fi al-Islam* (Malaysia: Hizbi Publisher, 1987), 40, Hasan Ahmad, *The Early Development of Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1970), 161; Zafrul Islam, *Socio Economic Dimension of Fiqh Literature in Medieval India*, 1st ed. (Lahore: Research Cell, Dyal Singh Trust Library, 1990), 70. It seems that one of the points raised by Rida in his suggestion for institutionalizing of *ijma'* is that without the involvement of the ruling authorities, the practice of *ijma'* would never be feasible. See Muhammad Rashid Rida, *Al-Khilafah al-'U`ma* (Cairo: 1923), 80, 102.

27. Al-'Attar, "Al-Ta'rif," 1:32-33.

28. Mahmasani, *Falsafat al-Tashri'*, 42.

29. Al-Qadi Tariq Ziyadah, "Mawqi'u Majallat al-Ahkam al-'Adliyah al-'Uthmaniyah bayna I'timad Madhhab Fiqhi Rasmi Wahid wa al-Qawanin al-

Madaniyah al-î adithah," *Dirasat fi al-Fiqh wa al-Qanun* (Lebanon: Dar al-Shimal Press, 1990), 104.

30. G. Shaw-Lefevre Eversley, *The Turkish Empire: Its Growth and Decay* (Lahore: Premier Book House, 1959), 440-41.

31. "Medjelle," *First Encyclopedia of Islam, 1913 - 1936* (Leiden: E. J. Brill 1987), 449.

32. Ziyadah, *Mawqi'u*, 104.

33. Ibid.

34. Islahi, *Islamic Law*, 91.

35. "Medjelle," E. I., 971.

36. J. H. Kramers, "Medjelle," *First Encyclopedia of Islam,* 449.

37. *Takhayyur* is the general Arabic term for the process of selection. For further reading, see Coulson, *A History*, 185- 201.

38. J. N. D. Anderson, *Islamic Law in the Modern World* (New York: New York University Press: 1959), 17, 24, 47-48.

39. "Medjelle," 971.

40. Rida, *Al-Khilafah al-'U`ma*, 66, 70, 79, 80, 102.

41. 'Abd al-Razzaq al-Sanhuri, "Wujub Tanqih al-Qanun al-Madani al-Misri wa 'ala ayy Asas Yakunu Hadha al-Tanqih," *Majallat al-Qanun wa al-Iqtisad*, 6:115-16.

42. 'Umar Sulayman al-Ashqar, *Al-Shari'at al-Ilahiyah la al-Qawanin al-Jahiliyah* (n.p.: 1078 AH), 127-46.

43. In classical *ijma'*, any opinion contradicting the opinion held by way of *ijma'* is considered null and void *(khariq li al-ijma')*.

44. Muhammad Mustafa Shalabi, *Al-Fiqh al-Islami bayn al-Mithaliyah wa al-Waqi'iyah* (Alexandria: 1960), 189-91.

45. Ruhi and Munir al-Ba'labaki, *Al-Mawrid*, 1st ed. (Beirut: Dar al-'Ilm li al-Malayin, 1997), 38.

46. Sayf al-Din al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, 1st ed. (n.p.: Tab'at Rabitah al-'Alam al-Islami, 1387), 4:141.

47. Ibn Amir al-Haj, *Al-Taqrir wa al-Tahbir*, 1st ed. (Cairo: al-Matba'at al-Amiriyah, 1316 AH), 3:291.

48. Muhammad ibn 'Ali al-Shawkani, *Irshad al-Fuhul ila Tahqiq al-î aqq min 'Ilm al-Usul* (Beirut: Dar al-Ma'rifah, 1979), 250.

49. 'Ali ibn 'Abd al-Kafi al-Subki, *Al-Ibhaj fi Sharh al-Minhaj* (Cairo: Maktabat al-Kulliyat al-Azhariyah, Cairo, 1982), 3:262.

50. 'Ala' al-Din 'Abd al-'Aziz ibn Ahmad al-Bazdawi, *Kashf al-Asrar 'an Usul Fakhr al-Islam al-Bazdawi* (Beirut: Dar al-Kitab al-'Arabi, 1973), 4:14.

51. Muhammad Muhammad Farhat, "Al-Ijtihad al-Jama'i: Ta'rifuhu, Shurutuhu, Mawdu'atuhu, Wasa'iluhu, wa Adillatuhu," *Conference,* 1:129.

52. Rachel Anne Codd, "A Critical Analysis of the Role *Ijtihad* in Legal Reforms in the Muslim World," *Arab Law Quarterly* 14, part 2 (1999): 112-31, at page 115.

53. Khadduri, *Islamic Jurisprudence*, 288.
54. Al-'Attar, "Al-Ta'rif," 1:31.
55. Al-Sayyid al-Tayyib Khudari, *Al-Ijtihad fi Ma la Nass fihi*, 1st ed. (Riyadh: Tab'at Maktabat al-Haramayn, 1983), 81.
56. Al-'Attar, *Al-Ta'rif bi al-Ijtihad al-Jama'i*, 1:31.
57. Ibid.
58. Khudari, *Al-Ijtihad fi Ma la Nass fihi*, 81.
59. Jamal al-Din Mahmud, "Al-Ijtihad al-Jama'i fi al-Mamlakah al-'Arabiyah al-Sa'udiyah," *Conference*, 1:395.
60. Khalifah Babkar Al-Hasan, "Commentary on 'Abd al-Nasir's 'Al-Ta'rif,'" *Conference*, 1:116; Farhat, "Al-Ijtihad al-Jama'i," *Conference*, 1:146.
61. Farhat, "Al-Ijtihad al-Jama'i," *Conference*, 1:146.
62. Muhammad Ahmad Siraj, "Al-Ijma' fi Ahkam al-Mu'amalat al-Maliyat al-Mu'asirah," *Conference*, 2:664-65.
63. Al-'Attar, "Al-Ta'rif," 1:31.
64. Ibid.; Khudari, "Al-Ijtihad fi Ma la Nass fihi," *Conference*, 81; Farhat, "Al-Ijtihad al-Jama'i," *Conference*, 1:168; Yusuf al-Qardawi, *Al-Ijtihad fi al-Shari'ah al-Islamiyah*, 1st ed. (Kuwait: Tab'at Dar al-Qalam), 182.
65. Yusuf Mahmud Qasim, "I ujiyat al-Ijtihad al-Jama'i, wa al-i ulul al-Muqtarahah 'inda Ta'addud al-Ijtihadat fi Mawdu' Wahid," *Conference*, 2:904.
66. Ibid., 913-16.
67. The doctrine of *ijma'* operated as a restrictive principle to ratify the status quo, for once the *ijma'* had cast an umbrella authority not only over those points that were the subject of a consensus but also over existing variant opinions, to propound any further variant was to contradict the infallible *ijma'* and therefore tantamount to heresy. See Ignaz Goldziher, *Introduction to Islamic Theology*, tr. Andras and Ruth Hamori (Princeton, NJ: Princeton University Press, 1981), 50 ff.
68. Muhammad Ahmad Siraj, "Al-Ijma' fi Ahkam," *Conference*, 2:664-65.
69. Even the existence of the classical *ijma'* in practice is also arguable. Al-Shafi'i for instance, maintained that *ijma'* only existed regarding obligatory duties, such the five pillars of faith, and other matters on which Qur'anic verses or Prophetic tradition have decisively placed them. In such a situation, one can still query the significance of such *ijma'*, for as long as these two sources have already pronounced rules, no other sources are necessary for these rules to be effective. In this way, the authority of *ijma'* is only redundant in the face of a decisive ruling of the Qur'an or the Sunnah. See: Mohammad Hasyim Kamali, *Principles of Islamic Jurisprudence*, 2d rev. ed. (Kuala Lumpur: Ilmiah Pubs., 1998), 168-69.
70. Wael B. Hallaq, "On the Authoritativeness of Sunni Consensus," *Journal of Middle Eastern Studies*, no. 18 (1986): 427-28.
71. By virtue of Law no. 10.

72. 'Abd al-Fattah Barakah, "Al-Ijtihad al-Jama'i fi Misr: Majma' al-Buhuth al-Islamiyah," *Conference*, 1:195.

73. *Majallat Majma' al-Fiqh al-Islami*, no. 2 (1986/1407), 2:33.

74. Barakah, "Al-Ijtihad al-Jama'i," 1:195.

75. 'Abdullah Madhkur al-Madhkur, "Al-Ijtihad al-Jama'i fi Dawlat al-Kuwayt," *Conference*, 1:441.

76. Ibid., 1:485-89.

77. Ibid., 1:475-78.

78. Khalifah Babkar Al-Hasan, "Al-Ijtihad al-Jama'i fi al-Sudan: Tarikhuhu wa Mu'assasatuhu wa Injazatuhu," *Conference* 1:611-16.

79. Al-Madhkur, "Al-Ijtihad al-Jama'i fi Dawlat al-Kuwayt," 1:475.

80. Al-Hasan, "Al-Ijtihad al-Jama'i fi al-Sudan," 1:613-14.

81. Diyab 'Abd al-Jawwad 'Ata, "Al-Ijtihad al-Jama'i fi Bakistan," *Conference* 1:586-88. Constitution of Islamic Republic of Pakistan Year 1973.