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Ideological Islam in the United States: “Ijtihad” in the Thought of Dr. Taha Jabir al-Alwani¹

By
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Dr. Sheikh Taha Jabir al-Alwani, a leading Sunni Islamic thinker and jurist, who currently serves as the Chairman of the Fiqh (Jurisprudence) Council of North America. As the Mufti (Chief Legislator), al-Alwani faces important challenges of living and working as a member of a minority group in a Christian and ultra-modern environment. Having the expertise of an Al-Azhar University graduate in the Islamic sources, and having full understanding of the nature of American politics, economics and communications, al-Alwani has been able to develop an approach he calls the “Islamization of knowledge” (*Islamiyyat al-Ma’arifah*). This approach stands for the integration of Western knowledge as part of Islamic legal decisions, while attempting to bridge the gap between faith (Iman) and reason (*‘Aql*), by applying independent judgment in legislation (*Ijtihad*). Al-Alwani’s approach derives from the accepted teachings of mainstream Islamic orthodoxy, which advocates a return to early Islam, conclusions based directly on the Koran, and “collective ‘Ijtihad’”, while adapting the belief in legal decisions to local conditions and present circumstances.

On the 3rd of March 1999, the information section of the State Department distributed a circular to the American diplomatic missions around the world. The circular provided an overview of the graduation ceremony of the "Graduate School of Islamic and Social Sciences" whose ceremony was similar to others of its kind across America, and quoted extensively from the speech given by the president of the college: Sheikh Taha Jabir al-Alwani:

¹ This is a translated version of an article first published in Hebrew in *Jamaa*, 11 (2003) of Bin Gurion University – Beer Sheva. The article won the first prize on the *Jamaa* contest for 2003.

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The graduation ceremony at the Graduate School of Islamic and Social Sciences (SISS) last week had all the trappings of any other American university conferring advanced degrees -- caps and gowns, a musical entrance march, a robed faculty and a guest list of joyful families and friends. The only difference with this graduation was that its focus was on Islam and its meaning in the modern world.

SISS presented for the first time graduate degrees in Islamic Sciences with concentrations in Shari'ah Sciences, Political Science or Religious Practices. According to school administrators, the three-year-old educational facility is filling a growing need for American Islamic spiritual leaders and making it possible for military chaplains to better assist Islamic men and women in the U.S. military.

"Our main goal is integration," said Dr. Taha Jabir Al-Alwani, SISS president, who pointed out that the curriculum is designed to teach students about Islamic civilization and culture while exposing them to Western civilization, culture and social sciences. He said many of the foreign students who attend the center come because of the Islamic faculty, to improve their English, and "to better understand the West."

"There is no country or society today that can close its door to the world and create barriers between people," Al-Alwani said, adding that he hopes the school will turn out students who are prepared to be "new citizens for the global world."²

This unusual document presents Sheikh al-Alwani's work and character to the diplomatic public describing him as a religious authority exemplary of moderate Islam who calls for the integration of Muslims in American society.

Sheikh Taha Jabir al-Alwani was born in 1935 to a Sunni family in Iraq. Sheikh al-Alwani's family name marks him as a related to the Abu Alwan clan who live in the vicinity of the Euphrates, not far from Baghdad. Al-Alwani was educated at Al-Azhar University in Cairo over a period of almost twenty years. In 1973 he submitted his doctorate on the roots of Muslim jurisprudence (*Usul al-Fiqh*)³, which best qualifies the candidate to become a Muslim legislator (*Mufti*). At the same time Al-Alwani gained experience as a chaplain and lecturer in the field of Islamic Studies teaching at Iraq's Military Academy between 1963 and 1969.⁴

² <http://usembassy-australia.state.gov/hyper/WF990903/epf508.htm> ; www.usembassy-dhaka.org/state/StatePD/pr/PRESEP6.htm

³ About Muslim jurisprudence and its "roots" see E12-Fiqh (J. Schacht).

⁴ Biographical information taken from: www.usc.edu/dept/MSA/law/alalwani_usulalFiqh/taha.html ; http://www.siss.edu/faculty/frameset_faculty.htm , www.weforum.org/site/knowledgenavigator.nsf/Content/Alalwani%20Taha%20Jabir . Regarding the name al-Alwani see www.asharqalawsat.com (May 1, 2003 and May 25, 2003). The Mayor of the Iraqi city al-Falujah is named Taha Badawi Hamid al-Alwani. The health minister of Iraq is named Ala al-Din al-Alwani.



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Between 1975 and 1985 al-Alwani lived in Saudi Arabia and taught his specialty at Al-Imam Muhammad Ben Saud University in Riyadh. Afterwards he moved to the United States where he embarked upon a spree of intellectual activity. Al-Alwani is a member of the international Fiqh council in Jeddah, which operates as a central authority for Fiqh councils around the world (this includes, of course, the North American Fiqh Council), and is subordinate to the Organization of the Islamic Conference (OIC). Al-Alwani is also a member of the European Fiqh Council, the International Muslim League and other organizations.

The North American Fiqh Council headed by al-Alwani defines itself as a body of Muslim clerics in the United States and in Canada with training in the legal traditions of Islam, whose purpose is to provide legal answers to the queries of North American Muslims. Al-Alwani clarifies that the Fiqh council over which he presides was founded due to the great demand for religious services (the council receives 5-10 queries a week).⁵ The Fiqh council was established on the March 10th 1988, and according to al-Alwani is an extension of previous organizations such as The Islamic Student Union in the United States and Canada (founded in 1963) which merged with the Islamic Society of North America, founded in 1980 and was renamed the Fiqh committee. Cooperation between ISNA and the Fiqh council persists, and the President of ISNA, Dr. Muzmmel Sidiqi is a Fiqh council member (Smith 1999, p. 200). It is very difficult to determine the extent of the council's influence on North American Muslims. Al-Alwani states that the council cooperates with other Islamic organizations in North America and in the Caribbean. This being said, there seems to be no connection between Al-Alwani who is a product of the Islamic institutions in Saudi Arabia and Iraq and local Islamic movements native to North America such as Louis Farrakhan's "Nation of Islam".⁶

Throughout the years of his sojourn in the United States al-Alwani established connections with military and government officials, and in a State Department document he is acknowledged as an Islamic leader and granted his title.⁷ America's policy change regarding Islamic charity organizations after September 11th did not skip over Dr. al-Alwani and his organizations. On the March 20th, 2002 American law enforcement agents raided the offices of several Islamic institutions suspected of financing terrorist activity. The raid included institutions headed by al-Alwani in suburban Washington, namely: "The Graduate School of Islamic and Social Sciences" and the "International Institute of Islamic Thought – IIIT". Following the raid al-Sharq al-Awsat, a London-based Saudi newspaper, published a series of articles about these institutions. The first article in the series featured an interview with al-Alwani regarding the Islamic Fiqh council of North America, which he heads.⁸ After he was

⁵ www.Fiqhcouncil.org/aboutus.asp , www.asharqalawsat.com (July 22, 2002).

⁶ I checked the following books: Asma Gull Hasan, *American Muslims – The New Generation*, New York: Continuum, 2000; Jane Idleman Smith, *Islam in America*, New York: Columbia University Press, 1999. Yvonne Yazbeck Haddad and Jane Idleman Smith, *Muslim Communities in north America*, State University of New York Press, 1994.

⁷ <http://usinfo.state.gov/topical/pol/terror/01201611.htm> .

⁸ About the raid see: www.asharqalawsat.com (March, 2002), the following interview see: www.asharqalawsat.com (July 21, 2002).



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brought in for questioning in May 2003, the same newspaper provided him with a pulpit from which he could air his views. Al-Alwani expressed his principled opinions regarding Muslims in North America and his views on current issues such as the Palestinians' right to protect themselves in any way they chose and a critique against the U.S. deployment on the Iraqi front.⁹

To the best of our knowledge, no thorough study dealing with this very influential Mufti's ideology and position in the Islamic world has been published, except for a small number of newspaper interviews cited in this paper. The scarcity of material on al-Alwani may be attributed to his relative anonymity in the Middle East – Islam's main theater of operations. This relative anonymity, however, is precisely what makes al-Alwani such an interesting research project. His activities as a religious authority in the biggest non-Islamic western country require him to apply the training he received at al-Azhar University in a different cultural milieu—the West—and thus his work includes innovative solutions to dilemmas, which do not arise in Muslim countries. Al-Alwani is a prolific writer who has published books on a variety of subjects in the areas of Law, Islamic legal tradition and Islamic thought; more specifically on the rights of the defendant, women's status, mixed marriages, finance, the stock market, Jihad, conflict resolution, democracy and other subjects.

The ideological significance of Muslims as a minority in the USA occupies al-Alwani and the Fiqh council over which he presides. The way they refer to it in their discussions is "Fiqh al-Aqalliyat al-Muslimah" (Muslim Minority Jurisprudence). Al-Alwani defines the goals of the council in the following manner:

The council (North America Fiqh Council) will work to direct the Muslims to the approach, wherein the identity of the American Muslim is to be loyal to his homeland (Watan), America, due to his obligations towards it as a citizen, because the homeland for the Muslim is considered Dar al-Islam (Land of Islam) for him, as long as he is able to do his religious rituals inside it.¹⁰

⁹ www.asharqalawsat.com (June 5, 2003). About the investigation see report of newspaper from Florida: www.usforacle.com/vnews/display.v/ART/2003/03/28/3e844cbce0613 . MEMRI Special Dispatch (November 6, 2001) quotes anti war statements given by al-Alwani to Saudi newspaper al-Watan on September 22, 2001:

"Dr. Al-'Alwani himself had doubts as to whether Osama bin Laden is responsible for the attacks on the U.S. In an article that appeared in the Saudi daily Al-Watan, Al-'Alwani implied that Israel is behind the attacks, with the aim of "bringing about a merger between Israeli and American security theory [strategies]." He wrote, "Britain has released many documents on World War II; some of them indicate how the British fox Churchill dragged America into WWII by, among other things, arranging an Axis attack on the American Navy in the middle of the ocean. This operation [i.e. Pearl Harbor] is considered the most dangerous intelligence operation of that generation. America swallowed the bait and the cowboy entered the area and tipped the scales... in favor of the Allies... The events of Black September 11 are nothing more than the beginning of the merger between two security theories [strategies], the Israeli and the American."

http://www.memri.de/uebersetzungen_analysen/themen/usa_und_der_nahe_osten/us_american_muslim_06_11_01.html .

¹⁰ www.asharqalawsat.com (July 21, 2002).



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The classical definition of "Dar al-Islam" is: An area, which is governed by Islamic law i.e., an area ruled by the Muslim "Ummah".¹¹ In the citation above al-Alwani broadens the term. In his eyes "Dar al-Islam" includes not only Islamic countries but also Muslim minorities wherever they may be. Therefore, even though the United States is a country governed by non-Muslims, the broadening of the term makes it possible for the Muslim minority to include it in their definition of "Dar al-Islam".

An American Muslim is not only a citizen of the United States but also a subject of the "Muslim Ummah", an extraterritorial entity with political and religious significance. The "Ummah" was created by the prophet Mohammed who functioned as the Ummah's first religious-political leader. Al-Alwani calls on the Muslims residing in the United States to pay their taxes to the authorities, and at the same time pay the Zakah in support of their own community. The payment of the Zakah may be interpreted as an act of belonging to the Muslim "Ummah", since donation of charity had always been one of the important tests of loyalty among Muslims.¹²

A systematic and thorough discussion regarding Al-Alwani's various religious rulings is, of course, beyond the scope of this paper. This paper will restrict itself to a general discussion concerning the man's philosophy and the exegetical, theological, and religio-traditional tools he utilizes in order to convince his audience that integration between Islam and the West is possible. A central concept in Al-Alwani's work is "Ijtihad", which grants one the authority to express an independent opinion on religious matters, as opposed to ruling based upon precedents. Al-Alwani dedicated many articles and books to the Ijtihad principle in general and to its specific applications. Central to his historio-ideological outlook is the opinion that Ijtihad should be used as a key for the resolution of the problems between Muslims and the West.

In the introduction to his book "*Islah al-Fikr al-Islami bayn al-Qudrah wal-'Aqabat: Waraqat 'Amal*" (A Reformation of Islamic Thought, Between Capabilities and Obstacles: Work in Progress)¹³ Al-Alwani describes his program for the reformation of Islamic thought. Al-Alwani follows in the footsteps of Salafiyyah thinkers and explains that there is a pressing need for a deep reformation (*Islah*).¹⁴ The essence of this reformation would be the resuscitation of Islam and a return to the golden

¹¹ EI2-Dar al-Islam (A. Abel). EI2-UMMA (F.M. Denny).

¹² EI2-Zakat (A. Zysow) part 4: Zakah in Islamic History.

¹³ Taha Jabir al-Alwani, *Islah al-Fikr al-Islami Bayn al-Qudrah wal-'Aqabah: Waraqat 'Amal*, Herndon Virginia: al-Ma'had al-'Alami lil-Fikr al-Islami, 1412-1991. The introduction was written by Umar Ubaid Hasanah, a professor in the Arab Emirates.

¹⁴ EI2-ISLAH (A. Mared), The Salafiyyah is a neo-classical movement for Islamic reform founded by Muhammad Abduh (d.1905) Mufti of Egypt, who dealt with the question of Islam versus the modern world and the Westerners with a tendency to some openness. His student Rashid Ridha (d.1935) was a hardliner. He understood reform as "return to early values" in order to rediscover the Islam messages while sticking to the methods and educational doctrines of Al-Azhar. The Salafiyyah movement goes in his path until these days, and perhaps turns to Wahhabiyyah.



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tradition of the past based upon the paradigm of the "ancients blessed of memory" (al-Salaf al-Salih).¹⁵

Salafiyyah reformation literature deals primarily with "Usul al-Fiqh" (roots of jurisprudence), and Ijtihad - and claims that these are the tools with which to face the challenges of the developing world.¹⁶ Ijtihad is granted a prominent position in Islamic political thought and it appears frequently in the work of radical Islamic thinkers.¹⁷ This paper will compare some of Sheikh Yusef al-Qaradawi responses regarding Fiqh and Ijtihad issues with those of al-Alwani. Al-Qaradawi was chosen because he holds a prominent and central position among Islamic thinkers and Al-Alwani respects his opinions. This eminent Islamic thinker receives extensive media coverage and is the leader of the Wasatiyyah branch of the "Islamic reawakening" (al-Sahwah al-Islamiyyah). His primary objective is to fill a role he defines as "*Tarshid al-Sahwah*" i.e. proper guidance and direction of the Islamic reawakening.¹⁸ Immediately after the September 11th attacks al-Alwani was asked by a Muslim army chaplain who served in Washington whether it was permissible for Muslim soldiers serving in the U.S. army to fight in Afghanistan. Rather than answer this query on his own al-Alwani referred the question to al-Qaradawi who signed a Fatwa permitting Muslim soldiers – albeit with certain reservations - to fight in Afghanistan. Al-Alwani endorsed this Fatwa and phrased it in a way Muslim-American would understand. In the end, however, after widespread objection, al-Qaradawi recanted, and condemned his own Fatwa. The affair granted al-Alwani unprecedented publicity in the Arab media.¹⁹

Al-Alwani is a regular contributor to *The American Journal of Islamic Social Sciences* – *AJISS* – "a journal for Muslim intellectuals writing about the Islam" and is one its editors. The Journal is published by "The International Institute for Islamic Thought" (IIIT) and The Association of Muslim Social Scientists.

The Motto of the journal is to answer the following question:

What are Muslim intellectuals saying about Islam these days? Does Islam have anything to offer modern-day humanity, or has it lost its relevancy in the face of the apparently unstoppable secularism and the modernization/Westernization, which continues to spread around the globe?²⁰

The articles published in this journal are not necessarily intended for the highly educated Muslim since al-Alwani's readers include many Muslims whose religious education is sparse, new Muslims and non-Muslims. Al-Alwani makes his point with

¹⁵ EI2-SALAFIYYA (P. Shinar).

¹⁶ EI2-ISLAH (A. Mared)

¹⁷ Amir *Weisbrud, *Turabi Spokesman of Radical Islam*, Tel Aviv, Moshe Dayan Center, 1999, p. 23.

¹⁸ Sagi Polka, "Between Liberalism and Fundamentalism: The Political Thought of Mainstream Islam ("Wasatiyyah") in Contemporary Egypt", Doctoral thesis submitted to Bar Ilan University, Ramat Gan, Israel, July 2000 (Unpublished), p. 312-316).

¹⁹ www.asharqalawsat.com (October 14, 2001).

²⁰ From the inside cover of volume 9 of this periodical.



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the aid of American cultural symbols such as the "Kellogg's" company, the Congress, the Senate, and the dollar. By choosing the Ijtihad principle, making it central to his work, Al-Alwani shows astute marksmanship since encouraging initiative and independence of the individual is highly respected among Americans. Al-Alwani calls upon the American Muslim to "benefit from the positive aspects of American society"²¹ – and shows the believer how to differentiate between good and evil in American society. Al-Alwani's religious rulings are valid and justified because "they are a product of the Ijtihad principle and its application".

The Historical Justification for the Application of the Principle of Ijtihad

Ijtihad and "The closing of the gates"

Ijtihad is a traditio-historic Islamic concept, which signifies the independence of thought vis-à-vis religious rulings; the literal translation of the term is "effort" or "diligence". Islamic religious rulings must be based upon "the roots of the jurisprudence" (*Usul al-Fiqh*), which are the Koran, the oral traditions stemming from the prophet himself or traditions concerning his life (*Sunnat al-Nabi, al-Hadith*), syllogisms (*Qiyas*) and consensus among all Muslims (*Ijma'*). The use of syllogisms as a tool requires independent thought and is thus related to Ijtihad. The late Prof. Hava Lazarus-Yaffe defined the Islamic syllogism as "an analogy, or in other words the drawing of a logical conclusion on the basis of specific scriptures in the Koran or in the Sunnah, or on the basis of an analysis of the reasoning behind such scripture". For example, the Koran expressly forbids the drinking of wine - other inebriating beverages are not mentioned. The prohibitions against drinking these other alcoholic beverages is learned by syllogism, or in other words by comparing these drinks to wine.²²

The Ijtihad principle has gone through a change since it was first introduced as a principle, also known as "the closing of the gates of the Ijtihad". Without referring to it by name, Al-Alwani states "from the sixth century onwards nobody has made use of the Ijtihad principle as a tool of interpreting the Usul al-Fiqh...the science of Usul al-Fiqh has remained in the same place it was back in the sixth century."²³

Not all scholars of Islam agree with this statement. In Schacht's opinion, the use of the Ijtihad principle was not restricted until the ninth century. When the traditions of that time were set, however, Muslims were required to accept the more established doctrines without question.²⁴ According to Schacht, the formative period of Islamic

²¹ www.asharqalawsat.com (July 21, 2002).

²² I. Goldziher, *Lectures about Islam*, Mosad Bialik, 1978, p. 45; Hava Lazarus-Yaffe "Development of oral law and jurisprudence" in Hava Lazarus Yaffe (ed.), *Chapters in the history of the Arabs and Islam*, Tel Aviv, Reshafim 1967, p. 166-167.

²³ Taha Jabir al-Alwani, *Usul al-Fiqh al-Islami Source Methodology in Islamic Jurisprudence*, Herndon Virginia, IIIT, 1990, ch.6 p.1.

http://www.usc.edu/dept/msa/alalwani_usulalFiqh

²⁴ EI2-IDJTIHAD (J. Schacht).



Law came to its conclusion in the tenth century, with the formation of four accepted schools. From this moment onwards, the period of "*Taqlid*" (imitation) begins.²⁵ Wael B. Hallaq disagrees with Schacht in his article: "Was the gate of Ijtihad closed?" which was translated to Hebrew and published in *Jamaa* vol. 8. According to Hallaq independent legal initiative did not cease after the foundation of the schools. Hallaq believes that in one way or other the principle of Ijtihad has been applied from the dawn of Islam to the present day. Hallaq concedes, however, that from the sixth century onwards the Ijtihad principle was not generally used and certainly not widespread, and that "the number of Mudjtahidun dropped considerably".²⁶

The time line al-Alwani begins with the golden age then there is a period of decline and finally a renaissance. Al-Alwani maintains that the gates of Ijtihad were completely shut, and does not attempt to demonstrate that it persisted throughout the ages in any way. Any claim of partial preservation would contradict the basis of his idea that Islam had a period of decline, which it must be elevated from. According to al-Alwani Islam began in its zenith, politically and legally. The use of Ijtihad ceased at the of Islam's political decline – a decline that continues until the modern era. Therefore al-Alwani calls for a renewal of Ijtihad, which he firmly believes will restore Islam's natural position in global leadership.

Support of the Prophet and Islamic Sages for Ijtihad:

Al-Alwani holds the Islamic golden age in high regard. In order to gain legitimacy for his campaign to restore the Ijtihad principle to its position of prominence he attempts to demonstrate that Islam's greatest sages made liberal use of the principle, and were enamored of it. With his references to the Hadith al-Alwani tries to prove that he is not presenting something new, and thus ensures that Muslims won't castigate him for suggesting revolutionary ideas (*Bid`ah*).²⁷ In his book: "Usul al-Fiqh al-Islami: Source Methodology in Islamic Jurisprudence al-Alwani offers an overview of the development of Islamic legal sources. His principal references are to three generations: The prophet's generation, the generation of the four righteous Khalifas and the prophet's companions (*al-Khulafaa al-Rashidun*, and *al-Sahabah*), and the generation of the four imams who founded the four legal schools (*Madhahib*). He emphasizes the use of Ijtihad in each of these three generations. In his opinion, he is continuing a tradition begun by the prophet and his friends, and thus should be granted mainstream legitimacy.

Evidence of the prophet's approval of Ijtihad in the hadith is especially important for al-Alwani, and thus he emphasizes the famous quote attributed to Mohammed:

Allah's messenger, may the blessing and peace of Allah rest upon him,
has already decreed that whoever used his common sense (literally:

²⁵ Joseph Schacht, *An Introduction to Islamic Law*, Oxford: Clarendon Press, 1964, p. 70-71.

²⁶ Wael B. Hallaq, "Was the Gate of Ijtihad Closed", *Jamaa* 8/2002 p. 167 (Hebrew translation). Originally printed by IJMES, 16/1984 pp.3-41.

²⁷ Goldziher, p. 182-184.



Ijtihad) and succeeded (in understanding Allah's desires) would be rewarded doubly, and whoever followed Ijtihad and was mistaken (in his understanding of Allah's desire) would be rewarded once.²⁸

This statement is attributed to the prophet in order to solve the problem regarding a number of the prophet's friends to whom he had promised entrance to paradise while they were still alive. The problem was that some of them fought among each other, which should (according to tradition) ensure a sentence in hell.²⁹ Later on Muslims extended the use of single and double rewards to all types of Ijtihad.

In another Hadith attributed to Mohammed and quoted by al-Alwani, the prophet's companion Mu'adh bin Jabal³⁰ was sent to Yemen, and thus would be unable to seek the prophet's advice when he would be required to make a religious ruling. The prophet blessed Mu'adh and told him that [he], the prophet would ensure the accuracy of his religious rulings:

It was handed down to us ... from the mouth of the friends of Mu'adh bin Jabal, that when the messenger of Allah – may Allah bless him and keep him - wished to send Mu'adh to Yemen: Mu'adh said: How will I rule, if a case is brought before me? He said: I will rule according to Allah's book. [The prophet] asked: What if you don't find the answer in the book of Allah? He answered – [I will rule] according to the Sunnah of Allah's messenger. And what if you find the answer neither in the Sunnah of Allah's messenger nor in Allah's book? He answered: I will use my mind ["Ijtihad" in the original] and not spare myself any toil. Allah's messenger hit his chest and said: "May Allah be blessed for causing the messenger of Allah's messenger to utter words that please Allah's messenger"³¹

The prophet's Hadiths exude a calm faith that Allah aids the Judge, and that there is recompense for the effort in and of itself regardless of its accuracy. The act of supposition and expression of opinions is fraught with risk – the risk of being wrong, and so the goal of the two Hadiths quoted above is to reassure the judge that he won't be punished. By quoting these Hadiths al-Alwani wishes to compare the present use of Ijtihad with Mu'adh bin Jabal's early use of the same legal principle – since the prophet reassured Mu'adh, today's Judges also have nothing to worry about.

²⁸ Ibn Hazm al-Andalusi Abu Muhammad, 'Ali bin Ahmad, Al-Ahkam, Cairo, Dar al-Hadith, 1404, vol. 6 p. 306.

²⁹ EI2-Al-Ashara Al-Mubashshara (A. J. Wensinck). A version of this Hadith can be found in Muslim, al-Jami' al-Sahih. Bierut, Dar Ihyaa al-Turath al-Arabi, [undated], vol. 4, p. 2213.

³⁰Maadh bin Jabal, a companion of the Prophet, from Madina (Ansari Khazraji), participated in all of the battles, returned from Yemen in the days of Abu Bakr, died in the plague, famous for his dealing with Koran and Jurisprudence (Al-Asqalani, al-Isaba Fi Tamyiz al-Sahabah, Beirut, Dar al-Kutub al-Ilmiyyah, 1995, p. 107-109).

³¹ Abu Daud al-Sijistani al-Azdi, Sulayman bin al-Asha'ath, Sunan Abi Daud, Beirut Dar al-Fikr[undated], vol. 3 p. 303).



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Al-Alwani quotes sources proving that the first four Khalifas made religious rulings according to the Ijtihad principle.³² His goal - to paint as full a picture as possible regarding the use of Ijtihad – is apparent by his effort to include Khalif 'Uthman bin 'Affan as an Ijtihad user, even though this Khalif is not known as a religious authority:

Although, among the Sahabah he did not produce many fatwas, it is almost certain, that the majority of issues he was asked to deal with, had already been dealt with by Abu-Bakr or 'Umar, and that in those cases he chose to adopt their opinion. In a few cases, however, he applied the Ijtihad principle just like his predecessors.³³

It is important to note at this time, that one of the reasons for the use and application of the Ijtihad principle in the days of the Khalifate had to do with the legitimization of Islamic rule, since according to Muslim belief the Khalifas had been appointed by Ijtihad. Reference to this is made in many Salafi texts, and as an example we bring an excerpt from the work of Muhibb al-Din al-Khatib, who was a Sunni cleric in India. In 1968 he edited the Qadi of the 16th century, Abu Bakr Ibn al-'Arabi, *al-awasim fi al-qawasim*, which deals with major disputes concerning the actions of the prophet's companions. The scholar commented on the text more than is usually accepted. When the author of the Qadi defines the act of appointing rulers (*wilayah*) with the word Ijtihad, the editor commented upon this and explained:

The author ...noted the definitions and the facts a ruler must take into consideration when making use of "his Ijtihad" while appointing rulers or dismissing them, and this is the result of a vast and wonderful understanding (Fiqh), specified by Islam's imams and scholars in chapters they edited concerning the rulers' term in office (*Imamah*) and the government of the land, in their books concerning the roots of religion.³⁴

Al-Khatib, who deals with the issue of government in Islamic countries, emphasizes the Khalifa's use of the Ijtihad principle in this specific area. Al-Alwani accepts al-Khatib's contention regarding the use of Ijtihad by the Khalifas but his own conclusions are different. Al-Alwani, who wishes to legitimize new religious rulings relies upon the study of the roots of Koranic commandments,³⁵ finds proof for his contentions in the deeds of Khalifa Umar bin al-Khattab. He contends that Umar "understood that the Shari'ah had specific goals in mind, and that there is rhyme and

³² Al-Alwani, Usul al-Fiqh, ch. 2.

³³ Ibid, ch.2 p.4.

³⁴ Muhibb al-Din Al-Khatib, (commentary on al-Qadi Abu Bakr bin al-Arabi) al-Awasim Fi al-Qawasim Fi Tahqiq Mawaqif al-Sahabah Ba'd Wafat al-Nabiyy, Jedda, Dar al-Saudiyyah, 1968, p. 87, 243.

³⁵ Taha Jabir al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", AAISS, 14/3,1997, p. 43-44.



reason behind the decisions of the prophet".³⁶ Acceptance of this saying as historical fact grants al-Alwani legitimization to base all his rulings directly upon the Koran and the Hadith using syllogism.

A critical stage in the development of the Islamic legal system was the establishment of four schools of canonical law in the second or third/seventh or eight centuries around the figures of the founding Imams: Abu Hanifah (died 150/767), Malik (died 179/795), al-Shafi'i (died 204/820), and Ibn Hanbal (died 241/855). Al-Alwani claims that "Taqlid" or imitation came into practice only after the death of the Sahabah and the *Tabi'un* (the first generation after the prophet's companions).³⁷ Al-Alwani holds the opinion that the Imams themselves never practiced Taqlid, which was practiced only by subsequent generations. Al-Alwani attempts to demonstrate that Ijtihad was the acceptable and correct judicial methodology, and was used by every one of the figures above.³⁸

In al-Alwani's work, al-Shafi'i is the most prominent imam of the four. Al-Alwani's respect for al-Shafi'i is apparent from his own title at the college he established: He holds the "Islamic legal theory cathedra in memory of Imam al-Shafi'i." Al-Alwani claims that al-Shafi'i encourages independent thought and thus in his work "al-Risalah" he equates *Qiyas* and Ijtihad:

The [inquirer] asked: 'what is *Qiyas*, is it Ijtihad or are the two separate terms? I answered [al-Shafi'i]: 'the two have different names which are the same thing.'³⁹

Al-Alwani wishes to base himself on the Imams, not only regarding Ijtihad and its legitimacy but also regarding its practical application. He brings excerpts from the work of Abu Hanifah and Malik who give precedence to independent opinion over imitation in cases, which the Koran, the words of the prophet, and the Sahabah cannot help. Even Ibn Hanbal, who is the symbol of orthodoxy and reliance upon the Koran and the Hadith, allowed for a choice between imitation and independent opinion when it came to legal rulings from the words of the *Tabi'un*, according to al-Alwani.⁴⁰ The claim that the Imams permitted the study of legal rulings of earlier generations only, fits al-Alwani's opinion that [legal] inquiry must be based directly upon the Koran, and the deeds of the Prophet and those of his generation:

This is all done in order to uncover the methodology used in matching the text to the reality of the prophets era, and through this methodology

³⁶ Al-Alwani, *Usul al-Fiqh*, ch. 2 p. 4.

³⁷ For a wide discussion of the division into periods, which movement regards which period as the golden age, see EI2-ISLAH (A.Mared).

³⁸ Al-Alwani, *Usul al-Fiqh*, ch. 4; Taha Jabir al-Alwani, "Taqlid and Ijtihad", *AJISS* (9/ 2) 1992, p. 237.

³⁹ Al-Shafi'i, Muhammad bin Idris Abu Abdallah, *al-Risalah*, Cairo, 1939, p. 476.

⁴⁰ Al-Alwani, "Taqlid and Ijtihad" 1992, p. 237.



one can generalize and include all generations, so that mankind will be able to follow Koranic values and Sunni laws (the prophet's laws) until the end of all generations.⁴¹

Al-Alwani's assertion that religious rulings should stem directly from the Hadith is paralleled by Sheikh al-Qaradawi's words on his T.V. show "Al-Sharia wal-Hayat" on al-Jazirah, from a program titled "The Prophet's Sunnah as a Legal Source" in which he encourages legal study directly from the mouth of the prophet and from the prophet's deeds, in other words, the elimination of the middle man or in this case later legal texts.⁴² In another instance al-Qaradawi notes that Ijtihad had already begun in the days of the prophet himself.⁴³

From among the revered ancients on whose shoulders al-Alwani stands, his reference to the theologian Taqi al-Din Ibn Taymiyyah (died 728/1328) is especially striking. Ibn Taymiyyah was against Taqlid, and called on Muslims to study the actual Koranic passages.⁴⁴ Al-Alwani accepts Ibn Taymiyyah's position, and claims that the Ijtihad principle is universally binding, and that Taqlid is permissible only in emergencies.⁴⁵ Since Ibn Taymiyyah's goal was to cleanse Islam from all the new fangled notions that had become part of it over the years, and to bring back the golden age of the prophet, he became a revered figure in radical Islamic circles, especially among the Wahhabis of Saudi Arabia.⁴⁶ Perhaps al-Alwani mentions Ibn Taymiyyah in order to gain acceptance in orthodox Islamic circles such as the Wahhabis of Saudi Arabia and orthodox Sunni Muslims elsewhere. In contrast to his acceptance of Ibn Taymiyyah's ideas, al-Alwani reserves many pages to attack and condemn some of Muhammad 'Abduh's modern ideas, and to disassociate himself from other likeminded thinkers. It is important for al-Alwani not to be seen as an innovator. He explains how his opinions have no connection whatsoever with the "*Maslahah*" principle (the overall benefit to the public which allows for certain deviation from the strict rule of law) and dismisses the identification of germs with the "Jinn" of the Koran.⁴⁷

The Renewal of Ijtihad – The key to the Rejuvenation of the Islamic "Ummah"

Al-Alwani claims that the cessation of Ijtihad and the deterioration of the "Ummah" are intimately connected, and he's of the opinion that the key to the rejuvenation of Muslim society is the adoption of the Ijtihad according to principles he suggests. Al-Alwani believes that due to a lengthy historical process Islam has deteriorated, and is in the throes of a serious political and ideological crisis, which is preventing the

⁴¹ Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p. 44.

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http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=78&version=1&template_id=105&parent_id=16

⁴³ www.qaradawi.net "al-Ijtihad Futiha Min Ahd Rasul Allah".

⁴⁴ Schacht, *An Introduction to Islamic Law*, p. 72.

⁴⁵ Al-Alwani, "Taqlid and Ijtihad" 1992, p. 241.

⁴⁶ Goldziher, p. 190.

⁴⁷ Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p. 60-63; Goldziher: 1978, p. 186-187.



Muslims from fulfilling their destiny of providing an example for the rest of the world.⁴⁸ He complains that Muslim society borrows many of its characteristics from Western society, and is not unique in and of itself.⁴⁹ Thus, al-Alwani seeks to find a solution, which would help Muslims regain their rightful position at the forefront of world society. Since any such solution presupposes "western" knowledge, Muslims must use this important tool but they must not relinquish their unique Muslim identity in the process. The solution al-Alwani proposes is "the Islamization of Knowledge" and its central tool is of course "Ijtihad."

The Muslims as Models for the Rest of Humanity

The belief that the Muslims exist in order to fulfill some great destiny in this world vis-à-vis the rest of humanity comes from the innovative interpretation of a famous Koranic verse. Al-Alwani believes that man's purpose on earth is "*Istikhlaf*" – or in other words – to function as Allah's proxy on the face of this earth.⁵⁰ This belief is based upon the Koranic verse, which states that Allah sent the first man to earth to function as his Khalifa (proxy).⁵¹ The Muslims special job according to al-Alwani is mentioned in a subsequent verse:

"Thus have we turned you to the middle nation so that you'd be mankind's witnesses (Shuhada in the original Arabic), and the messenger will be your witness (Shahid in the original Arabic)"⁵²

The term "Ummah" is used to designate the Muslims as people whose religious and culture identity distinguishes them from the rest of humanity.⁵³ Traditional commentaries understand the words "Shahid" and "Shuhada" in their literal testimonial sense, and describe a future Day of Judgment when Muslims will testify on behalf of their prophet, and in turn their prophet will testify on their behalf:

It has been passed down (through the Hadith): That on the day of resurrection the nations will deny that prophets were sent unto them. Allah will then demand that the prophets bring proof that they were indeed sent, and Allah knows all. Muhammad's Ummah, may the blessing and peace of Allah rest upon him, will be brought [before Allah] and they will testify [that the prophets had transmitted what was required of them]. The nations will then ask: "How do you know this?", and Muhammad's Ummah will answer: "We know this from Allah's book transmitted orally by means of his truthful prophet. Muhammad will then be brought [before Allah] and he we will be queried regarding

⁴⁸ Al-Alwani, *Islah al-Fikr*, p. 27.

⁴⁹ Al-Alwani, "Taqlid and Ijtihad", *AJISS*, 8/1, 1991, p. 130

⁵⁰ Al-Alwani, *Islah al-Fikr*, p. 49; Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p. 56.

⁵¹ Koran: al-Baqarah, 30.

⁵² Koran, al-Baqarah, 143.

⁵³ EI2-UMMA (F.M. Denny)



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the state of his Ummah, he will exonerate them and testify [before Allah] that they are reliable witnesses.⁵⁴

Al-Alwani prefers an allegorical explanation of the essential role of the Muslim Ummah on the global stage, instead of the accepted classic philological explanation. Al-Alwani understands the term "Shahid" as "role model" – A Shahid is a person who functions as a role model for the rest of humanity. According to al-Alwani, one need not understand Shahid in its literal sense as a "witness" and the pertinent verse does not necessarily refer to bearing witness.⁵⁵

The use of this verse is employed as a popular symbol of the Islamic awakening. For instance, on al-Qaradawi's Internet web site the verse appears at the top of every page. Al-Alwani's reading of this verse is not unique, the Iranian thinker Ezzati also understands "Shahid" as "role model". In Ezzati's opinion the prophet is duty bound to fulfill the prophecies he imparts to the public in the most perfect manner. When the prophet guided humankind through his deeds, he was a living model of the mission he sought to impart, and thus was a "role model" for humanity. In this way his deeds, which set the example for his followers became "Sunna" for all Muslims who were commanded "to function as Shuhada (role models) for mankind".⁵⁶

The Discovery of America –A Missed Opportunity:

Al-Alwani maintains that the reason for the deterioration of Islam and Muslims is the neglect of their mission vis-à-vis the rest of the world – i.e. to function as role models. In an article published in al-Sharq al-Awsat al-Alwani describes an alternate present in which Muslims had functioned in this role as they were supposed to. In the article he describes his impressions following a meeting in Chicago with Spanish speaking converts to Islam. At the meeting he felt the need to speak of these people's "Islamic Roots":

You would find, whether you liked it or not, a rich history – beginning with the arrival of our fathers and grandfathers in al-Andalus (Muslim Spain), they came there and gave glory to Allah's words. Our rule lasted 800 years – sometimes it was good other times it was bad. If only the disputes between the powerbrokers and the enforcers hadn't occurred, and they hadn't vied for power between them – leading some of them to pacts with the crusaders against their paternal brothers and relatives (*Abnaa al-'Umumah* in the original – the expression's meaning here is "their Muslim brethren") – which split the one country into several countries and one Ummah into several Ummahs.

⁵⁴ Al-Zamakshari al-Khwarizmi Abu al-Qasim Jarallah, Muhammad bin Umar, *al-Kashaf fi Haqaiq al-Tanzil*, Beirut, Dar al-Fikr, 1995, vol. 1, p. 317-318.

⁵⁵ Al-Alwani, "Taqlid and Ijtihad" 1991, p. 130.

⁵⁶ www.al-islam.org/al-serat/Concept-Ezzati.htm originally published as A.Ezzati, Teheran University, *The Concept of Martyrdom in Islam, Al-Serat*, Vol XII (1986). See also Eitan Kohlberg, "Martyrdom and Self Sacrifice in Classical Islam", *Pe'amim* 75 (1998), pp. 5-26 (in Hebrew).



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If our grandfathers there (in Muslim Spain) had been able to see truth and follow it, and recognize what is false as false and stay away from it, and understand the task of the Muslim in the world of its true merits, the Islamic presence in al-Andalus (Muslim Spain) would remain until today. Who could know? Perhaps some of them would have been the ones who discovered America, not someone else, and America could have possibly been today among the lands of the Muslims (*Diar al-Muslimin* in the original – this is the plural form of Dar al-Islam. The expression appears here in its classic sense i.e. an area under Muslim control. The exclamation mark appears in the original).

But the divisiveness and the contention, the love of this earth and the abhorrence of death [and the afterlife], the distraction from the mission and the fact that we didn't remember the mission brought our Islamic presence in al-Andalus to an end in 1492 – the very year America was discovered by the messengers of the Christian Spaniards. One can deduce therefore, that if our predecessors had bared their souls, had realized their essence and had fulfilled their duties as Muslims, what had happened in Spain would not have happened. Would America look like it does today? Would Europe look like it does today? Absolutely not. But this is what Allah wanted and he acted in the way he did.

We have been negligent towards Islam; we have lost and destroyed Islam. We took Islam lightly, and thus Allah took us lightly, and the nations mocked us...⁵⁷

Al-Alwani wanted to provide a convincing explanation for Islam's inferiority vis-à-vis the Christians. The fact that this speech was given in the United States is especially noteworthy. It is expected that Muslim inferiority vis-à-vis Christians would embarrass Muslims – especially Muslims living as a minority in a Christian society. Al-Alwani makes a historical argument and explains that the Muslims missed discovering America because they were divided into factions and involved Christians in their conflicts. Thus they ignored their mission and were not a role model for other nations and instead of world leaders became the world's underdog. He implies, however, that change is possible. Al-Alwani believes that Muslim society can take action and become world leaders once more.⁵⁸

The Islamization of Knowledge by way of Ijtihad

Al-Alwani believes that in order to escape the inferiority which plagues Muslim society; Muslims must adopt "the Muslim methodology of thought (*Manahij al-Fikr*) and the principle of "Islamization of thought" (*Islamiyyat al-Ma'arifah*) as an alternative to the tools of western society which have harmed the Islamic Ummah and have degraded its cultural and historic essence.⁵⁹ Al-Alwani maintains that it is

⁵⁷ www.asharqalawsat.com (November 23, 2001).

⁵⁸ Al-Alwani, *Islah al-Fikr*, p. 49.

⁵⁹ Ibid, p.11.



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impossible to understand Islam using the tools of Western scholarship, and one must turn to Islam's classical tradition⁶⁰ in order to gain a true understanding of Islam. The "Islamization of knowledge" is an Islamic redefinition of all areas of human knowledge – the humanities, life sciences, social sciences, art, and literature. The goal of the islamization of knowledge is to create a methodology, which will enable one to understand all social phenomena in a uniquely Islamic way, using Islamic tools. According to al-Alwani this goal is unrealistic at the moment since the methodological axioms of science are all western, he defines "the islamization of knowledge" as the creation of a new Islamic methodology, which would eventually replace, western methodology.⁶¹

Al-Alwani regards the "islamization of knowledge" as an integrative process involving both belief and intelligence. One of the goals of al-Alwani's journal (Islamiyyat al-Ma'arifah) is to discuss "the redesigning of human knowledge according to the universal monotheistic belief by integrating two voices: the voice of revelation and the voice of reality."⁶²

According to al-Alwani Ijtihad will feature prominently in the process of the "islamization of knowledge". The goal of the "islamization of knowledge" will be to give Ijtihad its full definition as representative of the continuous reaction between human knowledge and revelation".⁶³ He maintains that only through the use of Ijtihad will the Muslims succeed in building an infrastructure for the development of Islamic research and inquiry, which will eventually replace western methodologies. This infrastructure will be built upon the integration of knowledge and Islamic sources:

Human thought is the product of the cooperation between "the limited" (i.e. intelligence) and "the absolute" (revelation), which causes [revelation] to descend to reality and corrects reality by means of [revelation] through fitting design[s], suitable solutions and sound mental constructs. There is no escaping the removal of confusion between belief which is divine revelation and thought which is human mental effort [Ijtihad in Arabic] and acknowledging the place and the role of each one of these⁶⁴

Al-Alwani believes that Ijtihad plays a critical role in the development of a spiritually and mentally well-adjusted Muslim and helps him fulfill his destiny as Allah's representative on earth and act in the best interest of the Islamic Ummah. With the help of Ijtihad al-Alwani expects to find solutions to the contradictions hampering modern Islam: Tradition versus modernism, classic modes of thought versus modern modes of thought, the material world versus the hereafter, science versus religion. Al-

⁶⁰ Al-Alwani, "Taqlid and Ijtihad" 1991, p. 132.

⁶¹ Al-Alwani, *Islah al-Fikr*, p. 12 .

⁶² www.iiit.org/ar/imarifah .

⁶³ *ibid.*

⁶⁴ *Ibid* p. 16-17, the curved brackets are original.



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Alwani maintains that there is no hope for methodologically flawed theories, or theories flawed at the source; i.e. theories based solely upon the importation of Western ideas or solely upon past tradition.⁶⁵

Islamic Law as All-Inclusive

Al-Alwani emphasizes that Islam encompasses every facet of life and that there is no way to exclude a specific subject and exclude it as "profane". Al-Alwani states, for example, that even investment portfolios must be approved by Muslim sages on the basis of "the islamization of thought" since the area of economics is not exempt from the all inclusive Islamic law. Al-Alwani defends himself against possible attacks of those who wonder what "islamization" and "knowledge" have to do with each other:

What is Islamic knowledge? Knowledge by itself, regardless of its source belongs to all of humanity - to all races and creeds. Do you want to involve Islam in everything? The truths of science do not overstep the boundaries of the experimental efforts of humanity. The expertise of humans and societies in the various areas of life is based upon well-defined and unchanging scientific methodologies – which are not influenced by the religious creed the scientist belongs to or by his beliefs. Why then should we throw Islam into this, it is no more than a religion, which defines the connection between the human being and his creator and purges human behavior.⁶⁶

Al-Alwani views the actions of those who ignore science as detrimental in the extreme, he calls them: "the voices of imitation" (*al-aswat al-muqallidah* – from the same root as *Taqlid*), and accuses them of Islam's present stagnation. He compares this tendency among Muslims to the tendency [among westerners] that brought about the deterioration of the Christian Church after the separation of religion and science - this led to Darwinism and Marxism and ultimately to a society based upon material principles. These ideas penetrated Muslim countries, which were influenced by the West and thus the present crisis of thought plaguing Muslims. Therefore, claims al-Alwani, one cannot make do with a solution which is devoted solely to "spiritual development", al-Alwani believes that Islam belongs in the market, not just in the mosque.⁶⁷ Sheikh al-Qaradawi also believes that every facet of human life is subject to Islamic law. In contrast with al-Alwani, however, he does not apply this principle to Wall Street, but examines the application of Islamic law in the political reality of the Middle East. When asked to define the term "Fiqh", al-Qaradawi writes:

Islam's function is to govern every aspect of a Muslims life in matters concerning this world and the hereafter, private or public, material or spiritual, and the Fiqh sets the course of a Muslim's life... unfortunately Muslims of recent times [only] ask the faqih and the fuqahaa concerning the laws of menstruation, the birthing mother, and the

⁶⁵ Al-Alwani, "Taqlid and Ijtihad" 1991, p. 132

⁶⁶ Al-Alwani, *Islah al-Fikr*, p. 12-13.

⁶⁷ Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p. 57



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nursing mother, and don't seek Fiqh in important matters. They don't ask about the laws concerning election fraud, or the forgery of the Ummah's will. We are the Ummah famous for our 99.99% [presidential election results]. What does Islam have to say about that?⁶⁸

In order to prove that the "islamization of knowledge" is the way to escape stagnation, al-Alwani has the reader proceed through a number of logical steps, which despite their complexity are presented in a clear and orderly manner. He begins with his new understanding of Muslims as humanities' "Shahids". He translates the term not as "witnesses" but as "exemplary role models" (and cf. above). The next step in this logical chain is his insight that the reason for the present deterioration of Muslim society is their neglect of this duty. An expression of this dereliction of duty was the lack of political solidarity, which led to the loss of Spain and the opportunity to discover America. The solution according to al-Alwani is the incorporation of Western knowledge into Islam by means of *Ijtihad*; al-Alwani regards this as possible since he believes that Islamic religion includes all areas of human endeavor.

Al-Alwani is a religious thinker well versed in logic and rationale. He prefers to base his religious claims upon rational proof and seldom appeals to emotions or entrenched theological axioms. Al-Alwani often includes his own proofs and explanations to fatwas passed on to him by other religious authorities of the Muslim world before passing it on to his congregation since "it is known that the western mind does not accept a thing without proof or reason".⁶⁹ Moreover, the essence of *Ijtihad* is the logical deduction. Al-Alwani chooses to bring Muslims closer to the faith by way of reason, not by threatening divine retribution on the Day of Judgment, a fitting tactic when dealing with educated Americans. Al-Alwani's method of measuring the success of his "islamization of knowledge" is the extent of Islamic society's freedom vis-à-vis the west, and the distance between Islamic society and the dominance it once enjoyed.⁷⁰ In other words, if Islam agrees to embark on the journey al-Alwani recommends they will succeed in overturning the past and erasing the catastrophe of 1492.

The Practical Application of *Ijtihad*

In previous sections we presented al-Alwani two fold proof for his understanding of "*Ijtihad*". On the one hand he showed how, ideologically, *Ijtihad* is the solution to the problems plaguing Muslim society, on the other hand he directed the historical spotlight to Islam's magnificent past and its subsequent deterioration. On the basis of these weighty arguments al-Alwani formulates a proposal for the application of his theory. Al-Alwani wishes to create a framework for modern "*Ijtihad* scholars". According to his plan expert "*Ijtihad* teams" from designated institutes will issue religious rulings based upon their research. An example of the practical application of al-Alwani's theory is in the area of interest payments, where al-Alwani applies the Koranic law to similar real-life situations (and cf. below).

⁶⁸ www.qaradawi.net "al-Fiqh Kalima Tughayir M'anaha".

⁶⁹ According to MEMRI's report quoted above.

⁷⁰ Al-Alwani 1991, "Taqlid and *Ijtihad*", p. 132.



The Academic Reform:

According to al-Alwani an Ijtihad team member must go through a two-tiered training "course": He must be a "faqih" like the ideal faqihs from Islam's golden age, and he must have a thorough knowledge of the area he is responsible for. Al-Alwani describes the practical side of the fuqahaa's historical responsibilities, the fuqahaa "are those who have been trained in Koran and Sunnah in order to make daily use of Ijtihad in their day to day treatment of the Ummah's religious problems, and who ensure on their behalf (the Ummah's behalf) that the leaders follow a righteous path, parallel to today's congress and senate".⁷¹ "At a certain stage", however, "the religious authorities stopped fulfilling this role".⁷² Today while we seek to resuscitate Ijtihad, al-Alwani maintains, "The faqih's traditional responsibilities can be fulfilled only by institutes devoted to education, research, public administration, supervision, or moral advice".⁷³

He believes that today's reality is too complicated for one faqih to be conversant in all pertinent issues, therefore, "academic committees and institutions specializing in many areas which include expertise in "faqih" matters need to be established".⁷⁴ "No more will Ijtihad depend on a specific person, rather a collective or institutional Ijtihad will be born dependent upon a variety of disciplines and "experts" these institutions will remain separate from official Fiqh committees such as the one headed by al-Alwani.⁷⁵ "Collective Ijtihad" appears often in the context of these discussions. In an interesting note, Sheikh al-Qaradawi refers specifically to the global network of official Fiqh committees subordinate to the Islamic Council (the Fiqh council of North America included) as role models when it comes to "collective Ijtihad".⁷⁶ The different way each of the scholars understands the responsibilities of the Fiqh council is probably due to al-Alwani's tendency to "academize" Ijtihad – al-Alwani resides in the US, which is full of universities and research institutions.

Among the experts that would be part of al-Alwani's "Fiqh committees" would be religious sages from all schools, "intelligentsia", and pundits from the social sciences, linguists, and community leaders. Al-Alwani maintains that this framework does not reduce the value of individual Ijtihad; rather it strengthens it, and provides it with direction.⁷⁷ Al-Alwani's call to "academize" Ijtihad fits his more general opinion regarding the role of the academy in the reformation of Islamic thought:

It's important to disseminate the awareness that the end of the Ummah's intellectual crisis hinges on this stratum (academia). This is a

⁷¹ Ibid, p. 136.

⁷² Ibid, p. 137.

⁷³ Ibid.

⁷⁴ Ibid. A similar idea appears in Hallaq, p. 124.

⁷⁵ Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p.43.

⁷⁶

http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=51&version=1&template_id=105&parent_id=16

⁷⁷ Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p. 43.



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matter we must not shirk from if we wish to sever the widely entrenched [but] fallacious connection between this stratum in its traditional western garb and the act of progressive renewal and resuscitation. We have to understand that academia is in need of correction and reform in all matters: Methodology, teaching staff and students⁷⁸

Al-Alwani expands upon the theoretical-methodological principles at the basis of his reformation of academia:

The Muslims were the first to establish methodologies, to develop them, to set up research systems, methods of thought and tools of the intellect [*Ma'arifah*]...strict methodologies existed in order to arrive at the correct conclusion in [all] areas of knowledge... but we must admit that methodological thinking, the methodological development of the sciences, as well as the creation of methodologies for new sciences came to a standstill, and all that remained in our hands were roots frozen in history doomed to stagnation, while at the same time the methodologies developed by the westerners led to far-reaching achievements. This is the reason for the fall of our institutions and our think tanks and for the way in which western methodology rules our universities.⁷⁹

According to al-Alwani this reformation must "allow the Muslim intellectual to maintain contact between himself and his traditional roots, but at the same time open new opportunities to expand his mind, in other words to be aware of modern-day culture and society, so as to enable the Muslim intellectual to critique them".⁸⁰ In this way the "intellectual faqih" at the "Ijtihad institute" will be able to apply al-Alwani's ideology of "Islamizing western knowledge", and use the intellectual tools of Islam to solve general scientific problems and day-to-day issues. One must note that not long after these lines were written (1996) al-Alwani succeeded in establishing such an institute which he named: The Graduate School for Islamic and Social Studies.

The Koranic Prohibition of Interest:

In a demonstration of his Ijtihad methodology, al-Alwani shows how solutions may be found to the problems of today's reality. In his article "Ijtihad in the Regulation and Correction of Capital Markets", 1997, he examines the legality of what goes on in the capital markets in light of the Koranic verses forbidding interest. Before we delve into an analysis of al-Alwani's arguments a survey of the pertinent Koranic verses as well as modern literature on the subject is in order. As an aid we will use al-Tabari's commentary to the Koran and Libyan author al-Baruni's book: *Financial Supervision*

⁷⁸ Al-Alwani, *Islah al-Fikr*, p. 86).

⁷⁹ Ibid, p. 87.

⁸⁰ Ibid p. 88.



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in the Days of the Prophet and the Righteous Khalifas, which examines the development of the interest prohibition in the golden days of the prophet.

The term first appears in the "al-Rum" surah from the Mecca period: "And whoever gives out of interest in order to increase men's profit [this money] will not increase before Allah, and whoever gives out of charity in order to draw near to Allah – behold their [reward] will be doubled" (Koran: al-Rum, 39). Al-Baruni maintains that this verse "anticipates the prohibition against interest", since the verse does not expressly forbid charging interest, but only forbids dedicating the proceeds of interest to Allah, and is negatively juxtaposed to charity, which is viewed in a positive light.⁸¹

Afterwards in the al-Medina period, the Koran continues its condemnation of interest: "Woe to the believers, do not eat the doubled and redoubled interest [*ribba* in the original]...".⁸² In his commentary on this verse al-Tabari defines what constitutes interest on a loan, or more accurately the fine for payment delinquency:

During their Jahiliyyah they acted in the following manner: If one of them had property at another's [house] [property which he'd lent him] until the date of payment, when the date of payment would arrive he'd ask for it back from its owner [the borrower], and he who had the property would answer: "delay the [repayment] of the debt and I will add to the property," and thus they would do. This is doubled and redoubled interest, and Allah, may he be exalted and made supreme, forbade it to them in the period of their islamization⁸³

The explicit prohibition against charging interest appear in the al-Baqarah chapter: "Those who eat interest will not arise, except as those who were harmed by the devil after being touched by him, since they said; Interest and commerce are one and the same, but Allah allowed commerce and forbade [charging] interest".⁸⁴ Al-Burani brings a number of definitions for *ribba* and some examples, and thus expands the meaning of the term:

Some of the definitions of *ribba*: Credit that is not compensation for a commercial transaction, any type of forbidden commercial exchange, any sum added to the capital in the absence of a two-sided commercial agreement, an additional sum that is of no benefit during the exchange of monies, the additional sum of those who are delinquent in their repayment [of a loan] [as described by al-Tabari], the yield of money in the modern sense, a method of earning which is a product of the money itself and prevents it [the money] from being used for the

⁸¹ Isa Ayub Al-Baruni, *al-Riqabah al-Maliyyah Fi Ahd al-Rasul wal-Khulafa al-Rashidin*, Tripoli Libya, Jami'iyat al-Daawa al-Islamiyyah al-Alamiyyah , 1986, p. 83-85.

⁸² Koran, aal 'umran, 130

⁸³ al-Baruni, p. 170; al-Tabari Muhammad bin Jarir, *Jami' al-Bayyan*, Bierut Dar al-Fikr, 1405, vol. 4, p. 90.

⁸⁴ Koran, al-Baqarah 275; al-Baruni 1986 p. 170.



reasons it was invented [commerce, and investment in production] and so forth"⁸⁵

The Prohibition against Interest according to al-Alwani's Ijtihad

Al-Alwani chooses to expand upon the narrow definition of "*Ribba*" and categorically includes any fraud or non-kosher gain under the term. Al-Alwani believes that man must work for his money and opposes on principle the contention that money can "work" for man.⁸⁶ In his opinion man's purpose is building the creative edifice of civilization (*Umran*) and any revenue from interest is detrimental to the achievement of this purpose. Al-Alwani wishes to create tools in order to perpetuate an Islamic economy, which would operate on the basis of pure intentions and principles and whose goals would be productive and stem from a belief in the uniqueness of Allah, instead of a cruel economy with unfair rules. Al-Alwani does not accept unreligious economic theories, he objects to the Marxist economic model as well as the neo-classical model, and calls upon Muslims to refrain from "mimicking" the west (*Taqlid*). The brunt of his attack is focused upon capitalist theoreticians, especially Milton Friedman and his predecessors. Al-Alwani objects to the contention that people's choices are indifferent and largely follow the supply and demand curve and then goes on to attack the idea that God does not involve himself in human economies.⁸⁷

The goal of the Islamic sage is to determine which financial transactions are "*Ribba*" and thus prohibited and which transactions are permissible. Specific rulings are difficult since most cases feature large institutions or businesses and complicated deals, and often involve elements out side of Dar al-Islam.⁸⁸ Al-Alwani offers his opinion on some of the branches of the financial markets, such as bonds, stocks and options. He analyzes these markets and by employing Ijtihad, which in this case combines a deep understanding of the financial markets and the Koranic directive - specifically the verse prohibiting "*Ribba*" (cf. the al-Baqara chapter above) comes to some very definite conclusions. Al-Alwani prefers the stock market over the bond market and in his ruling alludes to the pertinent Koranic verse:

Non-Religious economists maintain that restricting interest could destroy the economy. The Koran, in a stand against this threat, claims that even when the devil threatens to impoverish a Muslim who does not charge interest, he is promised Allah's [future] blessing. Allah's promise has been confirmed empirically if one considers that investing in the stock [of product companies] is much more lucrative than

⁸⁵ Al-Baruni, p. 166-167.

⁸⁶ Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p. 54.

⁸⁷ Ibid-p. 55-57, 64-65. About the fathers of modern economics who coined these phrases see: Gideon Yaniv, *Introduction to Micro Economics*, Tel Aviv, Open University, 1982, unit 1, p.9 and unit 4. p.9 .

⁸⁸ Ibid p. 56. It should be noted that the use of the term here has a double meaning , it is not clear if we are discussing societies who are physically out of Islamic countries, or societies not run according to Shari'ah in any place.



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purchasing bearer bonds [where the profit is from interest]. For example, according to data [provided by] Ibboston Associates, a dollar invested in bearer bonds in 1926 is worth \$33.73 today [1997]. In contrast a dollar invested in the New-York stock market in 1926 is worth \$1370.95 today.⁸⁹

One may conclude from this paragraph that al-Alwani employs the following syllogism as a tool in his Ijtihad. He equates the stock market with the Koranic "transaction" (and permits an investment of this type) and bearer bonds with the Koranic "Ribba" (prohibiting any investment in bonds) – thus applying Koranic teachings in the same way his predecessors did in the heyday of Islamic legal tradition.

Based on this reasoning, Al-Alwani condemns the oil producing countries of the Arab world since they invested their savings in bonds thus "mimicking" the western world (Taqlid) and eroding the value of Arab money. Peter Lynch, a professional consultant confirms al-Alwani's thesis regarding long-term investments,⁹⁰ but claims that today it is sometimes preferable to buy a mixture of bonds and stocks.⁹¹

Not all investment in the stock market is permitted according to al-Alwani. A Muslim believer should not invest in companies whose function is the provision of substances or services prohibited by Islam such as casinos or spirit companies.⁹² Even when the product is permissible, however, problems may arise. For example investments in monopolistic companies who jack prices up beyond all proportion are problematic – the examples al-Alwani brings are Kellogg's and Post which in the 90's were forced by the US government to lower prices.⁹³ Companies that sell outdated products to developing countries pollute the environment, or exploit non-renewable resources are also on al-Alwani's blacklist.⁹⁴

Al-Alwani is an advocate of a productive non-speculative Islamic market. Although, al-Alwani holds American law enforcement of the financial markets in high regard he maintains that non-religious supervision of the financial markets is not enough to make the market fair according to Islam. Al-Alwani worries about the investment manager and his ability to differentiate between decisions regarding his clients' portfolios and his own personal portfolio. He prohibits dealing in stocks, which involve prospecting for oil as well as various methods of "playing the market" and demands full disclosure. Transactions involving options are prohibited by al-Alwani barring further study and he wonders "whether an investor has the right to deal in stocks before a set date when the equity is predetermined in exchange for a fixed non-refundable payment?"⁹⁵

⁸⁹ *ibid* p. 54.

⁹⁰ Peter Lynch. *Beating the Street*, New York: Simon & Schuster, 1994, p. 53.

⁹¹ *Ibid* p. 49-56)

⁹² Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets", p. 59.

⁹³ *Ibid* p. 66 note 16.

⁹⁴ *Ibid*, p. 58.

⁹⁵ *Ibid* p. 58-59.



Innovation versus Reliance on Existing Norms

Al-Alwani's practical application of Ijtihad shows how involved he is in educated American society and his attempts to make his rulings relevant to life in the United States are sincere. Al-Alwani can chalk up legal innovations and original solutions to real problems in his attempt to contend with the challenges of western society. In Muhibb al-Din al-Khatib's ruling concerning the observance of Zakat one encounters a reference to the importance of Ijtihad in a country, which is not bound by the Shari'ah:

"[with his] spare [money] a human being must first observe the Zakat required by the Shari'ah [and give] directly [to the needy] according to his Ijtihad, if he hasn't [already] given it to an Islamic government bound by the Shari'ah authority"⁹⁶

This quote aptly describes the situation of al-Alwani who holds the same opinion as al-Khatib regarding charity.⁹⁷ On the one hand, the financial markets in the United States are certainly not Islamic; on the other hand al-Alwani believes that Islamic law pertains to every aspect of a Muslim's life in any place a Muslim may reside. Thus, al-Alwani chose an Ijtihad, which allowed the American Muslim to invest in the stock market with certain restrictions.

The theoretical-religious basis of al-Alwani's work is the same basis Muslim theoreticians from important Islamic centers rely upon. Regarding the application of Ijtihad by the righteous Khalifas both al-Alwani and al-Khatib believe in the same theoretical basis, i.e. a glowing beginning with righteous Khalifas who employed Ijtihad. This common belief led the clerics to different conclusions dictated, of course, by the different realities in which they found themselves. The same is true with regard to the belief in an all-encompassing religion. Both al-Alwani and al-Qaradawi subscribe to this belief but each brings an example from an area they regard as important. Ijtihad is no exception and again, each scholar applies it in a different way.

The Ijtihad based ruling forbidding interest is by no means al-Alwani's innovation, it was decided upon years ago at al-Azhar. In one of his rulings al-Qaradawi alludes to the collective Ijtihad on interest – i.e. the conference at the Islamic Research academy of al-Azhar at which representatives from 35 countries ratified the decision to consider interest charged by banks "Ribba" (thus forbidding it).⁹⁸ In other words, al-Alwani's ruling based on his "islamization of knowledge" does not deviate at all from

⁹⁶ Al-Khatib, p. 75. Khatib also lived under a non-Islamic government, in India, but it should be noted that the regimes in Muslim countries governed not according to Sharia are illegitimate in the eyes of Salafiyyah.

⁹⁷ www.asharqalawsat.com (July 21, 2002) and see introduction.

⁹⁸ http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=51&version=1&template_id=105&parent_id=16 . On the website of al-Qaradawi there is a book on the subject of forbidding interest of banks, in it he makes similar analogies from the same Koranic verses i.e. Al-Baqarah 275.



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the accepted interpretation of the Koranic verses. Al-Alwani's innovations are restricted to specific aspects of the American financial markets.

Conclusion

Ijtihad is one of the fundamentals at the basis of al-Alwani school of thought. He understands Ijtihad as the cornerstone of applying Koranic and Hadith teachings to the modern world. Thus, comprehension of al-Alwani's method of Ijtihad discussed above is the key to understanding his articles and discussion on legal and philosophic issues.

Al-Alwani formulates his Ijtihad methodology thusly:

1. Al-Alwani refers back to the golden age of Islam when "mental effort" (Ijtihad) was permissible in order to make new rulings based on direct syllogisms from the Koran and the hadith, in order to prove that his program is nothing more than a reconstruction of Muhammad's days.
2. Al-Alwani is faced with scientific and financial problems, and anybody wishing to solve these problems must acquire knowledge from non-Islamic sources. Al-Alwani maintains, however, that the proper way to understand this modern data is through Islamic methodologies (the islamization of knowledge).
3. Al-Alwani suggests frameworks for the modern application of Ijtihad and demonstrates how basing himself upon the Koranic verse forbidding "Ribba" he can rule on matters of this day and age such as bonds. Thus, using Ijtihad, al-Alwani Islamized foreign knowledge and issues religious rulings on "supposedly non religious matters"
4. Al-Alwani bases himself on a wide clerical consensus when he applies the Koranic ribba to modern finance, but does so in his own way. His original contribution is in the application of the Koranic prohibition to the idiosyncrasies of the American system.

This in a nutshell is Taha Jabir al-Alwani's Ijtihad.

As a cleric, al-Alwani is mainstream orthodox. In his call for renewal based on Ijtihad al-Alwani does not incorporate modernist views which compromise on religious issues. Ideologically, al-Alwani's view of the Islamic sources is in accord with the al-Azhar school and Sheikh al-Qaradawi. Al-Alwani stands at the head of the Fiqh Council of North America, which is subordinate to the International Fiqh Council of the Organization of the Islamic Conference (OIC), in this way al-Alwani is connected to the global Fiqh community. In a June 2003 interview, al-Alwani explains why he stipulates his acceptance of the "Supreme Council for the Unification of Legal Decisions in the Muslim World" with their acknowledgement that "legal decisions change according to time and place":

There is a [legal] field known as "Muslim Minorities Jurisprudence" (Fiqh al-Aqalliyyat al-Muslimah) for [those] who live in a different reality than that of Muslims residing in Islamic countries.... we as a Muslim



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minority have decided to examine the reality of these communities and make legal decisions for them, since the problems we face as minorities are very different from those a Muslim faces in an Islamic country.⁹⁹

The way in which the fatwah concerning the participation of Muslim soldiers in the coalition was issued is a good example of the application of al-Alwani's model – a decision for a local community based upon pan-Islamic directives. First of all, al-Alwani sought the advice of al-Qaradawi on the matter. Secondly, after al-Qaradawi issued him a fatwa, he couched it in a way more suited to the "western mentality". It should be noted that Sheikh al-Qaradawi himself supports the principle of adapting the law to time and place:

There are legal issues (*al-shar'*), which were written by the legislator and there are [legal] issues, which were not written. Many of the issues not alluded to, are issues that change with time and place.¹⁰⁰

Another characteristic of al-Alwani's legal methodology, which was applied in the above mentioned fatwa is the belief that Muslim law governs all branches of knowledge. In light of this one understands why the issue of a Muslim soldier's obedience to American Army orders needs al-Alwani's legal approval. This fatwa is an example of the connection between the Islamic legal system and Islamic political thought, which is an important aspect of "Fiqh al-Aqalliyyat". Political ideas are interwoven together with legal thought in the body of al-Alwani's method – al-Alwani believes in a historic model consisting of a golden age, deterioration, and a future reawakening and that the Muslim Ummah's task is to function as "role models" for the rest of humanity. Moreover al-Alwani makes frequent use of the multivalent term "Dar al-Islam" – sometimes in its concrete sense – as in his speech concerning Muslims as the potential discoverers of America, and sometimes in the more general sense as a Muslim place of residence. Thus, it is reasonable to assume that not only his legal theory but his political theory as well, is an adaptation of mainstream Islamic positions to the reality of Islamic life in the United States.

At this point in time Dr. Sheikh Taha Jabir al-Alwani and his institutions continue to publish articles, organize symposiums and conventions and preach Islamic ideas specially adapted to the American audience. Al-Alwani persists in his sensitive mission as Mufti of America. He continues to "walk between the drops" in a sincere attempt to reestablish the Muslims as world leaders.

⁹⁹ www.alsharqalawsat.com (June 5, 2003).

¹⁰⁰

http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=2987&version=1&template_id=105&parent_id=16, al-Qaradawi says that the source of the idea is from the title of a chapter from the book "I'lam al-Muwwaqi'in by Ibn Qayyim al-Jawziyyah a student of Ibn Taymiyyah: "The necessity of changing the Fatwa with the change of time, place, custom, situations and intentions. "



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