

Foreword

In the Name of Allah, the Beneficent the Merciful

Allah's benediction and peace be upon our Master Muhammad and his honourable Progeny and Companions.

It is stated in a holy tradition: "Gabriel descended upon Adam, and said to him: Allah has commanded me to let you choose one of these three: intellect ('aql), religion, and modesty (haya'). Adam said: I choose intellect. Then modesty and religion said: So we shall come with you, O Adam, as Allah has commanded us to be with intellect wherever it be."

The points to be derived from this hadith are:

1. Whatever is disdained by intellect has no place in religion, and one who has no intellect, has neither religion nor modesty, though praying all the night and fasting during daytime. Henceforth one of Muslims' Imams has said: The proper criterion with which we can distinguish between the Prophetic and non-Prophetic tradition is that it's having substantial reality, and being under explicit light, since that which has no reality or luminosity is but an utterance of Satan.
2. As long as religion is inseparable from intellect, closing the door of ijtiḥad is regarded as closure to the door of religion, as ijtiḥad (inference of rules) means setting free of intellect ('aql), and giving room for deriving branches from their origins, since interdicting intellect is an interdiction to religion due to the interrelation between them. In other words, if we all for closing the door of ijtiḥad we have to abide by one of two choices: either to close the door of religion as we did with ijtiḥad, or to claim that intellect does not support religion, admitting none of its rules, which are both not accepted by logic of shar' (Islamic Law) and reason.
3. Any 'alim (scholar) who bigots for any creed (madhḥab) is worse than the jahil (ignorant) who has not been a fanatic, in this case, for religion and Islam, but being fanatic for an individual, particularly the leader of the madhḥab, as long as intellect does not necessitate following him in person. Also opposing the madhḥab is not an opposition to the nature and reality of Islam, but to the leader of that madhḥab, or

more proper to the mental image he had of Islam.

Anyhow, we are all aware of the fact that in the first stage of Islam there were no madhahib (schools of law) nor firaq (sects), as Islam was free from any flaw and blemish, and Muslims have been the vanguard of all nations. We are also certainly aware that these sects and creeds have sown seeds of discord among Muslims, setting up barriers and distances that prevented their attaining to might and treading one path toward one end, creating thus a good chance for the colonialists and enemies of Islam to exploit this division for instigating seditions. The West could never dominate and extremely exploit and subdue the East, but only through this disunity and crumbling of forces.

For this reason, the staunch leaders made up their minds to apply the idea of making agreement among and consolidating the Islamic community, and striving for its interest with all available means, like opening the door of ijtiḥad, and annulling the prevalence of following a certain madhhab (creed).

It is known among the jurists that the reason necessitating the closure of the door of ijtiḥad lies in that its opening has created confusion and chaos, as it was transgressed by juniors from among knowledge-seekers, and claimed by unqualified persons, that is: the reformers (muslihun) have cured the disease by exterminating the patient, not by uprooting the disease!

This claim was stated by the ancestors in their books, and reiterated by the tatters without any investigation or putting to the test. But I think the only reason for closing the door of ijtiḥad lies in that the oppressive ruler was fearing from freedom of opinion and criticism against him and his throne, so he resorted to trickery, using – as usual – the claim of protecting the religion, as a medium to rely upon any freeman disdaining from cooperating with his government upon debauchery and dissipation.

The best evidence for this fact is that the call for letting the door of ijtiḥad open has never emerged but only with the decline of the domination of the foreign and regressive powers, the call whose achievement was conditioned upon attaining freedom with its fullest meanings.

Thereafter, both imitation and submission to the avaricious are but slavery and servitude, which we have experienced for a long time, but time is opportune to have freedom in our thoughts, as we be free in our homeland, to abandon imitating a specific creed and a certain utterance, and to select from among the ijtiḥadat of all the madhahib (creeds) what can comply with development of life, and easiness of the Shari'ah (Islamic Law). If selecting from among the creeds is not an absolute ijtiḥad, it may be considered anyhow a sort of ijtiḥad.

On the basis, and for the sake of paving the way for selecting from among all the creeds, I have determined to compile this book, abridging in it all the opinions of the five schools of law: Ja'fari, Hanafi, Maliki, Shafi' i and Hanbali, from their sources.

These opinions include beliefs that conform to life and achieve justice, beside ideas which must be covered and rejected. So I have disdained from the latter for maintaining the honour of fiqh and fuqaha',

and have published the former ones, doing my best to make them easy to understand by every knowledge-seeker, and expound them in a brief and explicit way.

On this course, I met with the difficulties that are faced by anyone intending to translate any book from a foreign language to his own language, as the difference between the old method and new method of writing is like that between the Arabic language and any other language.

I have come across some libraries, as I used to do every day, searching for what is recently brought out by publishers. In one of the libraries I saw a student from the Tunisian mission, intending to specialize in the Lebanese University, searching in books. When his eyes fell upon the book "Ali wa al-Qur'an" in my hand, he asked my permission to look into it, but as soon as he read the advertisement on the cover about the book "al-Fiqh 'ala al-madhahib al-khamsah", he rejoiced and said: "We are in bad need for a book like this".

I said: What for? He replied: "We in Morocco follow the madhhab (creed) of al-Imam Malik, and he is very strict in matters with which other imams deal leniently. We, the youth, whatever be our culture and trends, and regardless of others' opinions and charges against us, never intend to oppose Islam or rebel against its commandments. But we, at the same time, do not desire to be in distress and impediment while applying and abiding by Islam's rules, so in case of facing any trouble in which Malik is strict, we would like to know others' opinions in it, hoping for finding a way out to perform, feeling certain of not perpetrating any forbidden act. But getting acquainted with the fiqh of other schools of law has been infeasible for us, because our shaykhs ignore or disregard whatever contradicts Imam Malik's verdicts. If we refer to ancient books, it will be impossible for us to apprehend them due to the complexity, obscurity and prolixity that lead us nowhere, but in your book we shall find the simplification and facilitation badly needed by every youth."

I rejoiced at his saying, which prompted me to go forward in bringing out the other parts, making me not regretful or sorry for abandoning my former decision, as I intended in the outset to mention along with every opinion of every school, the proof upon which it was based, including a Qur'anic verse, or narration, or unanimity (ijma'), or reason ('aql), or a companion's utterance. But I have been recommended to suffice with mentioning the sayings alone, as this being easier for people to comprehend, and a good motive for the circulation of the book, as the proofs cannot be recognized but only by knowledgeable people.

It seem as if this saying has drawn my attention to a fact inherent inside me, since a large number of those who acquired fiqh are more concerned with fatwa more than with its proof or source, so how about others?! Then I changed my mind, being sufficed with abridging and exposing the opinions of the five schools of law, abandoning giving proofs and comments, except in some rare cases, with the aim that the book be for all people and not dedicated for certain elite, and for the public not for the elect.

Despite this, I faced a difficulty in translation not known but only by those who practised and suffered it,

a difficulty I never met in all my previous works. Then I heard someone saying: Writing the fiqh according to the schools is too easy, as it is just conveying, no more no less, which is like the saying: War is no more than holding a weapon, and coming forth toward battle, with no consequences!

Whereas the fact is that fiqh is an infinite sea, as one matter can be divided into different ramifications, about any of which the schools' opinions may be numerous and contradictory, and rather the opinions of the fuqaha' of the same school, or even the opinions of the same scholar. Anyone trying to have full conception of any ethical matter, will encounter the severest hardship and suffering, so how about writing the whole fiqh, with its branches: the rituals ('ibadat) and transactions (mu'amalat) according to all schools?!

Thus when al-'Azhar Mosque intended to prepare the book "al-Fiqh 'ala al-madhahib al-'arba'ah" in 1922, it chose a committee of renowned 'ulama' of schools for this purpose, each writing according to his school. So the committee embarked on this task that lasted for years, till succeeding in compiling the rules without their proofs, as we witness in this book. While admitting that this work has relieved me of many efforts, but it has at the same time caused me many troubles in numerous matters, compelling me towards searching and investigation into lengthy and abridged books for so long time. I spent more than thirty-three years in acquiring, teaching and compiling fiqh, so how about one knowing nothing about it except the name?!

While the book "al-Fiqh 'ala al-madhahib al-'arba'ah" reports every school's opinion separately, as stated in the books of its fuqaha' except what is concurred by all the four schools, this book states together the agreement of two or more schools in one sentence, for the sake of brevity and easiness.

I never experienced a hardship like that I found in contradiction of transmission, and multiplicity of narrations from one imam about one matter, as this book supposes prohibition, the second one permission, while the third book considers the same matter as an honour. And as my intention has been facilitation for the readers, so I avoided, as possible, reporting various narrations, being sufficed with narrating from the previous authors, especially when the narrator being a follower of the imam he is narrating from. I may sometimes report the concurrence of the four Sunni imams about an issue being agreed upon by three of them, while two narrations have been reported from the fourth imam: one concurs with the three and the other contradicts them. So I choose the concurrent one for the sake of narrowing the gap and circle of difference and dispute.¹

But if the narration was being concurred by all, I mention the disagreeing one explicitly referring most the time to the four schools: Shafi'i, Hanafi, Maliki and Hanbali by the term "al-'Arba'ah" (the four) alone.

Concerning the Ja'fari fiqh followed by the Imamiyyah², I have reported from it that which got their unanimity, and chosen only that is widely known from the issues upon which they differed.

In conclusion I like to reiterate the statement mentioned in the preface of the book "al-Fiqh 'ala al-madhahib al-'arba'ah" whose compilation has been shared by seven renowned 'ulama' from al-'Azhar,

which reads:

"It is no fault that this book being blamed for any shortage, since perfection is only Allah's, but the fault is in that who sees the wrong and never guides to its right, and in that who guides to the right but never corrects his wrong."

We implore Allah, the Exalted, to guide us to the truth, making these pages of benefit for those seeking it, and praise be for Him at first and last.

Muhammad Jawad Maghniyyah

[1.](#) Here is an example: The Imamiyyah, Shafi'is, Hanafis and Malikis hold that Zakat (alms) is due for the brothers and paternal uncles, while two opinions are ascribed to Al-Imam Ahmad Ibn Hanbabal. One observes permission and the other prohibition, so I mentioned the concurrence.

[2.](#) The term Imamiyyah has been used for those believing in the obligation of (following) the Imamate (Twelve Imams) and the establishment of the text (nass) from the Prophet (S) appointing Ali Ibn Abu Talib as his successor. The Imamiyyah fiqh is called al-Fiqh al-Ja'fari as the disciples of al-Ima Ja'far as-Sadiq have written from him four hundred compilations for four hundred compilers, that have been called "Usul al-'Arba'mi'ah". Then they were compiled in four books called "Al-Kafi", "Man la-yahduruhu al-Faqih", "Al-Istibsar" and "al-Tahdhib", which are considered the most renowned references for getting acquainted with the traditions of rules for the Imamiyyah.

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