

Introduction

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I am now before a book that has a great scientific value. It has been written by a man having the favor of teachership and education on the most of the researchers of doctrinism of this generation. The cultural assembly of Muntada an-Nashr wanted me to be honored by writing an introduction for this book to shed some lights on the contents of some of its scientific words and then to evaluate it and to show its aspects and main characteristics and after that to talk about the personality of the author to show some of his immortal qualities.

As I am confined to obey the will of the assembly, so I have no choice to avoid this decision though I think that I do not deserve this honor.

Writing an introduction to this book to define some of its idioms and to clear the importance of its researches takes us in the first to a group of the teachers of the science of *Usool al-Fiqh* (the principles of jurisprudence) to get their opinions on defining some concepts mentioned in the book, whose author has used the same idioms that they use.

The first thing that faces us is the title of the book “an-Nass wal Ijtihad”. What has the author meant by the word “an-Nass” and what has he meant by “al-Ijtihad” and what does the comparison between them lead to?

I think that answering these three questions with all their surroundings will be enough to understand all the concepts mentioned in the book.

The professors answer the question of “*an-Nass*”¹ that it is “the literal evidence that expresses the legal verdict and that has been proved from the legislator (Allah or His prophet) in irrefutable way or according to supposition that is regarded legally and rationally whether the source is the Book or the Sunna”. Of course the author of this book has not intended other than this meaning as it appears from his researches.

As for the question of “*ijtihad*”, they answered with many answers different according to their different thoughts and points of view although the differences between them had nothing to do to the essence.

It seems from their words that they have two idioms about this word; one is more specified than the other. *Ijtihad* in its general concept according to al-Aamudi is “trying the best to suppose something of the legal verdicts in a way that it is felt that that one is unable to get more than it”.² Some jurisprudents of *Usool* adopted this definition with doing some reform to it and changing some of its words.

Ad-Dahlawi defines it as: “trying the best to understand the legal sub-verdicts from their detailed evidences that all belong to four sources; the Book, the Sunna, consensus and analogy”.³ Muhammad al-Khudhari defines it as: “trying the best by a jurisprudent to know the verdicts of the *Shari’a*” then he adds “full *ijtihad* is to try all that he can until he feels that he is unable to get anything more”.⁴

All these definitions and their likes are not skilled if they have meant to define the concept logically but if they have intended to explain the word like the linguists so it is no matter to depend on any of them. Perhaps the closer skilled definition that is away from criticism somehow is “the ability, by which one can join the little matters to the greater ones in order to produce a legal verdict or a legal or rational practical function” and it somehow avoids the defects of the previous definitions.

Being limited to demand supposing the legal verdict, as in al-Aamudi’s definition, excludes analogy,⁵ which produces the legal conclusions, if its little and greater matters are certain and being limited to knowledge as in al-Khudhari’s definition excludes the results that lead to the real verdict if its premises or some of them lead to accepted supposition legally and rationally because the result – as it is said – follows in its verdict the least of premises. And being limited to legal verdicts – as in all definitions – excludes the results, to which a mujtahid reaches via trying some rules and *usools* and especially the ones that annul its obligation like the legal acquittance derived from this tradition “the people of my Ummah are not responsible for what they do not know” and the rational acquittance derived from the decision of mind that decides the ugliness of punishing without an evidence and the likes. Of course these matters and their likes are not from the legal verdicts at all but they are practical functions determined by mind or legislation when a mujtahid becomes desperate to get a legal verdict by the means of knowledge or accepted supposition.

Anyhow the meaning of *ijtihad* in general is clear even if the previous definitions fail to give all its limits.

Ijtihad in its special meaning is a synonym of analogy according to ash-Shafi’iy’s thought. He says: “...what is analogy? Is it *ijtihad* or they are different? I said: they are two names for one meaning”.⁶ They might make it as a synonym for approval, opinion, conclusion and analogy as different names for one meaning. Mustafa Abdur Razaq says: “The opinion that we talk about is dependence on intellect in concluding the legal verdicts that is what we mean by *ijtihad* and analogy and it is also a synonym for approval and conclusion”.⁷

It is clear for one, who studies these researches and what definitions they have mentioned for these

idioms, to find that this speech has come out according to the requirements of this subject and its idioms. Its reason might be an ambiguity that the general concepts have imposed their confirmation upon this great researcher.

Apparently that one, who observes their sayings about the subject of *ijtihad* in its special meaning, will find it as a synonym of “opinion” for them and analogy, approval, benefits and the likes are just confirmations for this concept.

When comparing between “*nass*” and “*ijtihad*” mentioned in the title of the book, we understand that the author has meant by *ijtihad* here its special meaning, which is trying one’s opinion to derive the legal verdict with ignoring the “*nass*” that contradicts the verdict.

As for these evidences that have been mentioned repeatedly in some definitions of *ijtihad* in its general meaning and ad-Dahlawi has ascribed to it in his previous definition “the whole verdicts”, they are four – as he has mentioned – three of which the Muslims have agreed on and they are: the Book, the Sunna and consensus. The jurisprudents of the Shia have added to them “reason” while their Sunni brothers have added “analogy” and perhaps some of them have added approval, benefits and others.

With regard to the importance of the research on these evidences and preferring some of them to the others and the important relation with the researches of this book, we shall talk about in some details as necessary as the subject requires.

The Book means the Book of Allah that has been revealed to His messenger Muhammad (S), who has informed his Ummah of it and it has circulated among the Muslims until this day with no increase and no decrease. Its verses that concern the legal verdicts whether worships or dealings such as personal law, civil law, criminal law, procedure or others, have been collected to be about five hundred verses; a little more or a little less. These verses are considered as the first source of legislation according to the consensus of all the Islamic sects. These verses have been collected and classified into the chapters of jurisprudence and have been attached with their comments by some scholars like al-Miqdad as-Siyori in his book *Kanzul Irfan fee Fiqh al-Qur’an* and al-Jaza’iry in his book *Qala'id ad-Durar fee Bayan Aayat al-Ahkam bil-Athar* and others.

Some of these verses need to be explained as general or special, absolute or confined, in summary or in details and then to show the annulling and the annulled ones etc. Besides that there are some actions, whose verdicts have not been legislated by the Qur’anic verses, so we are in need to the second source, which is the Sunna. The Sunna is the sayings of the infallible ones,⁸ their doings and their accepting and confirming others’ sayings and doings. This is to complete the legislation on one side and to interpret the unclear texts of the Book on the other side.

Then the Sunna is the complement of the Holy Book. In fact both of them are but one since they belong to the First Legislator

“Nor does he speak out of desire. It is naught but revelation that is revealed.” (Qur’an, 53:3–4).

The Muslims have agreed unanimously upon considering the Sunna as a source of legislation.

Abdul Wahab Khallaf says: “The Muslims have agreed unanimously upon that all what the Prophet (S) has said or done or confessed of sayings and doings that have been conveyed to us correctly and truthfully and by which the Prophet (S) has intended to be as the essence of legislation and imitation, will be irrefutable proof for the Muslims and a source of legislation, from which the mujtahids are to conclude legal verdicts that manage the actions of the ordinary Muslims. This means that the verdicts derived from the Sunna will be, in addition to the verdicts mentioned in the Holy Qur’an, as the law that must be followed”. [9](#)

Consensus is joined to the Holy Qur’an and the Sunna as the third source of legislation. Since we are Muslims and we believe that we have a divine *Shari’a*, which has defined all what we need to manage our relations whether with Allah or among ourselves with one another and that this *Shari’ah*, which Allah has made flexible to keep pace with the time with its rules and principles, is the perfect *Shari’ah* that has ended all the previous laws. And as we believe that the *Shari’ah* is really so; therefore we do not have to violate its legal texts (*nass*) and we have no right to determine according to our own thoughts. This is about to be one of the agreed upon usool determined by the most of the ulama of *usool*; the ancient and the recent ones, the Sunni and the Shia”.

Professor Khallaf says in his book “The Sources of the Islamic Legislation”: “The event that an irrefutable verdict has come out of its text I wording and its meaning...” It means that mind cannot recognize out of this text except a definite verdict that there is no way for *ijtihad* in it and that the verdict of this very text must be followed.

Hence there is no chance for *ijtihad* about prayers because offering prayers is obligatory. The same is said about the shares of the heirs concerning the matter of inheritance. Therefore the jurisprudents of *Usool* say that *ijtihad* is not permissible on matters with texts having clear and irrefutable verdicts.

The fact, whose verdict is derived from a text having suppositional meaning (that it may lead to two verdicts or more and that reason can recognize which of the verdicts is more suitable), can be submitted to *ijtihad* but this *ijtihad* must be bound to the meanings included by the text and then to prefer one of these meanings. The *mujtahid* has to try his best in preferring one of the meanings relying on the linguistic and legislative principles and whatever result he gets, he has to act according to it.

For example Allah has said in the verse of *wudu* [10](#): ***(and wipe your heads)*** [11](#) and it is possible to refer either to wiping all the head because of the preposition (mentioned in the Arabic wording) or to wiping a part of the head. He adds: “The event that neither a text nor consensus has determined a verdict on can be submitted to *ijtihad*.” [12](#)

Some of the legislated verdicts can be got by knowledge either by using reason or depending on the true

traditions and some of them cannot be got by knowledge but by supposition. Supposition is one of the ways that may not give the exact reality in order to be relied on. Allah has mentioned a kind of blame and scolding for absolute (unjustified) supposition when saying in this verse:

“they do not follow anything but conjecture, and surely conjecture does not avail against the truth at all”; (Qur’an 53:28)

and

“O you who believe! Avoid most of suspicion, for surely suspicion in some cases is a sin” (Qur’an, 49: 12)

and other verses.

But the Holy Legislator (Allah) has given a permission to depend on some of the conjectures to be considered as trusted evidences out of His kindness to his people to make their affairs easy and not difficult. So a tradition narrated by one narrator, consensus and other ways can be depended on in legislating legal verdicts if they are considered as trusted sources; otherwise people should resort to precaution.

Analogy means – as ad-Dawaleebi says: “applying a legal verdict of a matter to another matter when there is a same cause behind them both.”¹³ For example wine has been prohibited because it causes intoxication (if this justification agrees with the Book and the Sunna when prohibiting wine or other things) so this verdict will be applied to other things, which cause intoxication, even if they are not wine.

The Shia do not regard analogy as one of the sources of legislation because it has been proved that the infallible Imams of Ahlul Bayt (as) had forbidden from depending on it in concluding legal verdicts and because the evidences of analogy are not sufficient to make analogy accepted as a source of legislation.

What is said about analogy can be said about approval, whose evidences are more ambiguous than those of analogy. As for the “suitable benefits” as called by the scholars of *Usool* and “the general benefits” as called by the Malikites and “*istislah* – regarding (something) good” as called by al-Ghazali,¹⁴ the Muslims have disagreed on defining it or depending on it or preferring it to the first sources. Professor Khallaf defines it by saying: “It is the benefit that the Legislator (Allah) has not legislated a verdict on it and there is no legal evidence on regarding it or annulling it.”¹⁵

The Shia do not accept it nor do they believe that it is permissible to rely on it in legislating legal verdicts or in preferring it to the first sources of legislation. In fact they believe that legislation is impermissible according to this source of legislation and they say: “adding something, which is not of the *Shari’ah*, to the *Shari’ah*”.

The strange thing is that some researchers have ascribed this matter to the Shia and said that they have practiced it and preferred it to the clear texts. The author of this book has refuted this fabrication in his book *al-Irfan* and then in this book and he has corrected their view about this subject.

Some of them have explained it in another way. They said: “*Istislah* in its real meaning is a kind of legislating a legal verdict according to the opinion based on the benefit on every matter that the *Shari’ah* has had no text on and that there is no other matter like it in order to submit it to analogy but the verdict is derived according to the general bases of the *Shari’ah* that any matter, which has no benefit, is not from the *Shari’ah*. These general bases are like what has been said by Allah:

“Surely Allah enjoins the doing of justice and the doing of good” (Qur’an 16:90)

and by the Prophet (S): “No harm or damage should be done (to anyone)” [16](#)

If we add to this explanation the word “special” after the word “*nass*” to accommodate its parts to each other and to remove the contradiction between them and we say that they mean by “the general benefit” this thing then the Shia will have no excuse to refrain from depending on this source in their legislation as long as it depends on the general bases determined by the Holy Legislator and refers to the legal principles. This is not acting according to the general benefit nor is it a kind of legislation but it is doing according to the Book and the Sunna.

In fact this research has made some researchers unable to define a certain concept on it and the examples mentioned on it do not concern it alone. Al-Ghazali gives an example by saying: (...like some unbelievers protecting themselves by some Muslim captives by making them as a shield; if we give up and leave them alone, they will attack us and defeat Islam and kill all the Muslims and if we shoot at the shield, we will kill an innocent Muslim, who is not guilty and who must not be killed, and this is not from the *Shari’ah*. If we give up, we will let the unbelievers prevail over all the Muslim and they will them all and then they will kill the captives too. So we may shoot at the shield (the Muslim captives) in order to save the rest of the Muslims. Achieving this aim in this way (killing innocent people) has not been determined by a certain source (of legislation).” [17](#)

This example is one of the clearest points of (*Tazahum*) which means that when two different legal verdicts meet by accident at the same time and that one cannot achieve them both because he will have not enough time to do that and that he cannot give up them both because he has to obey them; therefore one must use reason to choose one of the two verdicts and certainly one must choose the more important and the most useful verdict of them. If one does not know which of them is better or they are equal, one can choose any of them and acts according to it and ignore the other verdict.

The two verdicts mentioned in the example of al-Ghazali show the impermissibility of killing a Muslim and the necessity of keeping all the Muslims safe. Executing the two verdicts together in this case is impossible because executing one of them requires ignoring the other. Choosing the more important one of the two and doing according to it means choosing one of the two texts and doing according to it and this is like doing according to the Book or the Sunna and not doing according to the concept of “*istislah*”.

It appears from some of the other examples that they have been submitted to verdicts after comparing the texts with each other. I think that those, who have said that the Shia prefer general benefits to the

texts and considered them as excessive in practicing that, have thought of that after referring to the subject of “preference”¹⁸ mentioned in the principles of the Shia and considered that as “*Istislah*”.

Allah has said:

“He has chosen you and has not laid upon you any hardship in religion” (Qur’an 22:78).

The Prophet (S) has said: “No harm or damage should be done to others” besides the tradition that shows “necessities permit prohibited things”. All these evidences and their likes show that Allah has permitted his people to make use of the prohibited things in case of necessity or of facing serious dangers.

If there is no remedy to a sick man except by drinking an impure or a prohibited substance, then he should drink that prohibited substance and he will neither be sinful nor will he be punished by Allah because Allah is too kind to His people and He does not cause them any harm so He will not punish for drinking that prohibited substance (as remedy) in the necessary cases.

This is not in the way of preferring “*istislah*” to the text but it is preferring a text to another text and ignoring an evidence from the Book or the Sunna in special cases. The Shia ulama of *Usool* have many accurate studies about preferring some verdicts to others in the special cases. Let the reader refer to their books to see their opinions on the subject.

I have found after studying their (the Sunnis’) definitions and examples on the matter of “*istislah*” that they are classified into three classes; two of them belong to the concept of preferring some verdicts to others, the first of them concerns the matter of “*tazahum*” and the second concerns the matter of “preference”, which the Shia believe in, and the third class does not depend on a text whether special or general it is and the Shia do not believe in this principle. I think that the author of this book has discussed this class (of innovating verdicts) especially.

It has been mentioned that this kind of legislation has been adopted under the excuse of “the change of the verdicts according to the change of the time”. The Shia do not believe in subjecting the legal verdicts to the development that takes place. The *Shari’ah* with its divine verdicts, as the Shia believe, keeps pace with the different ages of time. It is full of vital power that makes it live forever. Its principles and evidences are enough to make it keep pace with every development that has taken place or will take place by concluding legal verdicts out of its texts or by following certain steps when it is not possible to derive a legal verdict.

The Shiite books of *Usool* and jurisprudence have a great legislative supply that has been produced because the Shia have opened the gate of *ijtihad*. If these books are read, many reformers, who call for “subjecting the verdicts to the changes of time and ignoring the first legal verdicts by replacing them with new verdicts that do not rely on any legal source but just rely on what they call as general benefit”, will make great use of them. We hope that the jurists, who are interested in such researches, and the

scholars of our Sunni brothers to make use of the experiences of the Shia in opening the gate of *ijtihad*.

In short, the Book and the Sunna (with consensus) are preferred to the all other sources of *ijtihad* like, analogy, approval, general benefits and others because they are numerous evidences and a mujtahid cannot do according to these bases when there is a clear text from the Book and the Sunna contradicting those bases.

Since this research, which we write this introduction to, is about verdicts and fatwas that have been issued in the first age of Islam, so we have no right to impose our opinions in preferring the rank of one evidence to the other before studying the subject fully.

Some historians have mentioned that when the Prophet (S) had sent Ma'ath bin Jabal to Yemen (as the wali), he asked him: "How will judge if cases are offered before you?" Ma'ath said: "I judge according to the Book of Allah." The Prophet (S) asked him: "If you do not find an answer in the Book of Allah?" he said: "Then I will judge according to the Sunna of the messenger of Allah (S)." The Prophet (S) said: "If you do not found an answer in the Book of Allah and in the Sunna of the messenger of Allah?" He said: "I will judge according to my own opinion."¹⁹ It has been mentioned that the Prophet (S) had approved Ma'ath's saying and praised him and said at the end of the tradition: "Praise be to Allah who has guided the messenger of the Messenger of Allah to what pleases the Messenger of Allah."²⁰

Maymoon bin Mihran narrated: "When litigants came to Abu Bakr, he referred to the Book of Allah to judge between them. If he could not find a judgment in the Book of Allah, he would refer to the Sunna of the Prophet (S). When he could not find something in the Book and the Sunna to judge according to it, he went out to ask the Muslims if any of them knew that the Prophet (S) had judged on such cases.

Many Muslims came to him mentioning the judgments of the Prophet (S) on such cases. Abu Bakr said: "Praise be to Allah, Who has made among us some ones who keep the knowledge of our Prophet for us." If he failed to find something in the Sunna of the Prophet (S) to judge with it, he gathered the chiefs and the notables of the people to consult with them and when they agreed unanimously on something, he would judge with it."²¹

Umar said to Shurayh the Judge from among his instructions to him: "...if a case is offered before you and there is no verdict on it in the Book of Allah or in the Sunna of the messenger of Allah nor has it been judged by anyone before you, then you may choose one of two things; either to judge according to your own opinion if you like to give a quick judgment or to suspend your judgment if you like. I think that suspending your judgment is better for you."²²

Ibn Mas'ood said: "Whoever of you happens to judge between people, let him judge according to the Book of Allah. If he cannot find any judgment in the Book of Allah, let him judge according to the Sunna of the Prophet (S). If it happens that a case is offered before him that has judgment neither in the Book of Allah nor in the Sunna of the Prophet (S), let him judge according to what the righteous people have judged with. If a matter comes to him that it is neither in the Book of Allah nor in the Sunna of the

Prophet (S) nor has it been judged by the righteous people, let him judge according to his own opinion but if he cannot, let him give up without feeling shy.” [23](#)

The traditions like these ones that have been narrated by the companions are too many. Refer to the books of Hadith.

Dr. Goldziher, the famous orientalist, has suspected the traditions saying that *ijtihad* has been found at the days of the Prophet (S) and then at the time of Umar after him. Among those traditions was the tradition of the Prophet (S) with Ma'ath bin Jabal when sending him to Yemen and the instructions of Umar to Shurayh the Judge and his letter to Abu Musa al-Ash'ari, in which he had showed him many systems of judgment and how to judge when there were no texts (from the Book or the Sunna) and especially the idiom of “analogy” was mentioned in this letter which had not been known except later on.” [24](#)

This orientalist – as Muhammad Yousuf Musa says – who has been interested in the Islamic studies, thinks that *ijtihad* has been practiced by the first generation of the Muslims but *ijtihad* in this stage was ambiguous and without positive guiding and it was away from the sect and its special doctrine. Later on it acquired certain limits and began to take a fixed direction and then it took the logical form which was “analogy”. [25](#)

Dr. Musa has refuted the opinion of Dr. Goldziher and his other orientalist historians because they were far away from understanding the essence of Islam and because the traditions mentioned by Ibn Qayyim al-Jawziyya were enough to prove that. But then he came back to say: “Indeed *ijtihad* in that period of the history of the Islamic jurisprudence was not the analogy that was known later on at the time of the jurists of the four famous sects but the *ijtihad* that had been practiced by some of the companions were not too far from this analogy if it was not the same even nothing had been mentioned about the cause, the manners and other researches which must be used in practicing analogy as we have found in the age of those jurists.” [26](#)

Whatever value this suspicion has and how scientific the disproof is, it doesn't matter. What is important to us is that what concerns the situations of the companions towards the verdicts determined by the Book and the Sunna. They have not permitted themselves to depend on other than these two sources especially when they often recited this verse:

“..and whatever the Messenger gives you, accept it, and from whatever he forbids you, keep back” (Qur'an 59:7)

except if some of them violated the normal condition by committing some contradictions either because of special psychological cases or certain circumstances that led them to do that.

They might be pleased with the opinions of some of them on the matters that there were no texts dealing with and so they formed the seed of consensus that was adopted by the scholars later on. I think that

they resorted to the duty of one who doubted about a matter and then he should resort to reason and *ijtihad* even if they had not been as they had become later on as these two researchers have said.

Of course they did not resort to this duty before they had looked for a text concerning the matter in the Book and the Sunna. Ibn Hazm said: "The Prophet (S) was in Medina and his companions were busy working to get their livelihood because life was too difficult in Hijaz. The Prophet (S) often gave his fatwas and verdicts at the presence of some of his companions, who could attend his meetings. These few companions, who might be sometimes one or two, should convey the Prophet's verdicts to the absent companions who had to act according to these verdicts."[27](#)

He also said: "We know that when the Prophet (S) wanted to give a fatwa or to determine a verdict, he did not gather all the people of Medina for that but he declared his verdicts before those who could attend his meetings and then the present companions should inform the absent ones. There is no doubt in this and it cannot be denied by any one who has reason and good sense."[28](#)

As Ibn Hazm has said that the present companions should inform the absent ones of the Prophet's verdicts and this would be an authority on them, which was really so, then the absent companions had no right to neglect searching for the legal texts. They had to search until they would fail to find any. Some traditions showed that the companions had kept on doing so. The tradition narrated by Maymoon bin Mihran mentioned this matter. He said: "...if he does not find an evidence in the Book of Allah, he has to judge according to the Sunna of the Prophet (S) but if he fails to find he any, he has to consult with the Muslims..."

Let us now come back to the book (this book) to understand its researches and to know its scientific value.

This book is an excellent study on doings, judgments and fatwas done by some of the great companions at the time of the Prophet (S) and after him. These doings, judgments and fatwas had contradicted the clear texts of the Book and the Sunna in spite that the doers had done them intendedly and they had known well that their doings were against the Book and the Sunna. If these doings had not been justified by some scholars and if the doers had not been excused in a way or another, these doings would have been considered as challenge and not *ijtihad*.

Some other doings were clear in their contradiction to the texts of the Qur'an and the Sunna but they were different from the previous ones because the doers had done them while unknowing of the divine texts and when they were warned of their mistakes, they gave up and repented. These kinds of doings would not be blamed because the doers had tried their best to look for the legal evidences and when they failed to find any, they gave fatwas according to their own opinions.

And since these doings, fatwas and judgments, which this book has discussed here, had been done intendedly and without paying any attention to the legal texts or without trying to look for the legal texts especially the aware people of these texts were close to the doers, although the doers themselves were

aware of the texts, so they would be blamed and responsible for these doings.

The third kind of these doings were considered as *ijtihad* on the meaning of the texts and then choosing what contradicted the real intention of the texts which normally came to mind and could be understood by all people. This kind of *ijtihad* annulled the apparent meaning of the text and chose another instead. The common thing between these fatwas and verdicts has been showed by the author of this book in two words, which they are the title of the book; “an-Nass wal-Ijtihad” for all these doings belonged to personal *ijtihad* and opinions although there were clear divine texts, that could be obtained easily, contradicting those doings and fatwas.

The book has wonderful historical chapters discussing these fatwas and shedding lights on them to make them clear or to explain the view of the author in criticizing them. The author has distinguished these historical events from the researches of the book by putting them in independent chapters.

The style of the author in his researches depends on showing the events in a historical point of view after taking them from the most reliable sources. Then he analyzes the event in a pure objective manner with showing the opinions of the people of those events if they have had opinions mentioned by the historians or showing the opinions of the later scholars who have justified the faults of those people. After that he gives his opinion after discussing all the views about the event in an accurate scientific discussion.

One glance at any of the important matters discussed in the book makes you feel how great efforts the author has made in getting these matters from their sources in the books of history and Hadith or the wide intellectual power that the author has given to these matters which shows the great knowledge and the scientific abilities he has which are seldom available among the writers of this generation.

As for the style of the book, it is not different from the style of the author in most of his books; brightness, genuineness, easiness besides giving the events what they deserve whether in brief or in details. We can say about these researches that they express the power of the great souls in challenging the heavy burden that time puts on their shoulders for the author has written this book while he was about eighty-five years old. He has put in it the extract of his experiences of more than half a century which he has spent in studying, researching and inquiring. This book is the most recent work that has been written by the author's honored pen and we do not say that it is the last one. May Allah make him live more and more to produce such great books and useful researches. [29](#)

Talking about the great personality of Sayyid Sharafuddeen and shedding some light on some aspects of this personality may take us back more than half a century to study some of the factors that have had effects on forming his personality and have participated in making him straight with no bit of deviation.

I mean by “some of the factors” the environment that has had the greatest favor on developing his talents. The environment was the holy Najaf, the Islamic university which has been established since more than one thousand years and it is still having its important scientific position. Sayyid Sharafuddeen

was one of the most famous students of this university at that time. The university was, as it had been throughout its ages, rich with its cultural heritage in the sciences of the Arabic language, jurisprudence, philosophy, literature and poetry.

To this university and to the University of al-Azhar belongs the greatest favor in connecting the circles of the Islamic culture with each other and in keeping the chain of this culture pure throughout the dark ages where ignorance and inactivity had prevailed over most of the cultural institutes. The University of Najaf might have been distinguished from the other institutes by opening the door of *ijtihad* for its students and leaving the way free for the minds to struggle in order to reach the truth via the scientific arguments to get out of the fruits of this struggle experiences full of life and activity.

Whenever the motive of the intellectual struggle is to reach the truth, it will be one of the most important tools of development and progress in every field of science and literature. This development that has joined jurisprudence and its principles in this university, whether in the programs or the methods, was one of the best fruits of that intellectual struggle.

If we could study jurisprudence throughout its different ages, we would get, as I think, to a series of experiments successive in their simplicity and depth and each of them taking you to the next one to study it deeply and to add to it the new thoughts and experiences and so on.

The familiarity of Najaf with these kinds of arguments and struggles during its long scientific life has imparted to it the aspects of objectivity and humbleness and kept it away from the bad aspects of disputes such as hatred, grudge and clinging to one's opinion even if it appears to be wrong. These bad aspects often exist in people whose aim behind arguments is just to get personal advantages or is out of a psychological complex. But if the aim is to get to the truth and if the concept, which is the point of argument, is separate from persons, objectivity and submitting to the truth will be the axis of the arguments among most of the arguers.

Quite often we have found great teachers submitting to the opinions of their students when they find them true besides their submission to their teachers or to each other. The teachers themselves often encourage their students to argue with them in order to sharpen their minds on the one hand and to strengthen their personalities and to accustom them to genuineness and leaving imitating the opinions of their schools and their teachers, as weak students often do, on the other hand.

In this sphere of mental freedom and intellectual dispute the author has spent his youth in Najaf moving between its institutes and great teachers to receive different sciences and knowledge. He, with his natural and acquired talents, was ready to receive all that knowledge and to comprehend it in the best way. He has been affected by this environment very much until his struggle for the sake of the truth has become as a nature to him.

These effects might pass his mind to reach his conduct in his social life and so he has become a struggler in the different fields of life. I think that the clue of his personality after his graduation from the

university might be known in the light of this nature more than any other aspect of his eternal aspects.

In order to see the effect of that on his mental and social life we show some sides of his life in which the nature of dispute and struggle for the sake of the truth has appeared in the most wonderful way.

The first of these sides was his struggle against the French colonists in Lebanon when he was young. He had completed his religious study in Najaf and then he went to Aamila to carry out his duty in educating the people there. His fame in the field of knowledge had preceded him there and concentrated his position inside the souls and since then he had become the leader of that country and the greatest educator there.

He made use of his wonderful talent of making speeches to move the public opinion and to spread knowledge among the submissive people and to incite their zeal to ask for their rights. This had made him liable to the grudge of the French, who sent one of their mercenaries (Ibn al-Hallaj) to assassinate him and this story became very famous in Lebanon.

After that he had been exiled from his country, his house had been plundered and his library had been burned besides the different forms of torment he had faced. Due to these doings the Islamic library had lost about twenty books written by the author besides many valuable and rare books he had in his library after being devoured by fire. He could not rewrite those burnt books after that.

Another side of his life was his struggle against some social diseases like appropriating the rights of weak people by some luxurious feudatories in the country. He found in that appropriation what contradicted the principles of Islam and so he made his famous rising against the feudatories. Murtadha aal Yaseen said when mentioning some scenes of the struggle of Sayyid Sharafuddeen in the introduction of *al-Muraja'at*:

“Feudalism was spread then and the public did not have any control over their affairs. They did not understand from life save the meaning of injustice and slavery or they were not allowed to understand something other than of their mean lives which were subjected to serve the powerful people and the tyrants.

When he (Sayyid Sharafuddeen) resided in Aamila, he could not bear this unjust system of life. He found that his soul, his faith and his piety did not let him keep silent before this feudalism, before these powerful tyrants and colonists and their mercenaries; therefore he revolted against feudalism and its people and denied it and denied them...”

Among the defects he found in his people was separation and the weak religious spirit. The first thing he had done was making his house, which he possessed in the village, as a Husayniyya (mosque) for people to gather in on the religious occasions and to be as a *minbar* for him to achieve his mission. Then he built them a big mosque to gather them at the times of prayers. There was no mosque in the village at that time in which people might offer their prayers. He kept on preaching his people until he

prepare a faithful generation that could recognize the reality of the society, the value of cooperation and rapport and could keep to the essence of the Islamic principles.

Some of my friends and I had the honor of visiting him two years ago in Yathir. We saw him instructing his followers to seize the opportunities to do good for people. While he was telling us about some of his reformatory projects and while we were listening to him carefully, we heard loud noises of delight coming from a far place. Sayyid Sharafuddeen stopped his talk and said: "I think that this approval was to so-and-so. He has succeeded to cut or to lift the biggest rock. The workers of the village have gone to build a mosque for them. I have encouraged them to compete in working. The encouragement you just heard was as a medal given to the first one of them who could succeed in carrying out his duty."

Then he said: "If they come, you should congratulate them for their blessed work and praise the successful one of them because this will have an effect on them because you are from holy Najaf, their religious capital and the city of the master of the guardians." They came and we congratulated them after Sayyid Sharafuddeen had introduced us to them with a kind of praise that made us feel shy before this great man and his companions. It was a good situation of him to encourage those people to compete in doing good.

Sayyid Sharafuddeen (may Allah have mercy on him) had a short word but it had a great meaning showing his reformatory tendency and one of his manners in his struggle against the defects of the society. He said: "Guidance is not spread except from where deviation spreads." [30](#)

Sayyid Sharafuddeen thought that strongest motive of deviation in his society was the programs of the imperialists which they had issued to teach them in their colonies. They had built modern schools to educate a generation far away from the essence of the religion that they would be able to revenge themselves on the hard struggle they had faced before during their missionary wars. It seemed that the missionary policy of the imperialists was the same everywhere.

The word of Miss Bell, the famous English spy, was a clear proof on this matter although her activity was in Iraq especially. She said: "The clergymen were the most active propagandists for the revolution in Iraq during the First World War and after it and this had led the rulers to establish modern schools to weaken the religious principles inside the souls of the new generations and so they would pluck up the roots of revolution out of its base." [31](#)

The clergymen then felt the danger of this policy and what subservience and surrender it would bring to the country; therefore they broke out in their famous rising against the policy of education and called for boycotting the modern schools but this call was unfortunately misunderstood at that time because of the effect of the opponents and then the clergymen divided into two groups; one group adopted the negative situation by being satisfied with calling for the boycott and uncovering the plots of the rulers as much as they could and the other group thought that they should add to the boycott a positive action as it had been showed by the word of Sayyid Sharafuddeen "Guidance is not spread except from where deviation

spreads.”

The base of this call was to establish modern schools imitating those schools in their programs and sciences which did not affect the Islamic principles besides teaching religious programs to concentrate the religious spirit inside the rising generation.

Among the propagandists of this group in Iraq was a great number of the scholars of Najaf. They tried many times to establish modern schools to achieve their aims but they faced many troubles that they could not solve then. After some time of their efforts and thoughts the Society of Muntada an-Nashr tried to establish primary, secondary and high schools. These efforts succeeded sometimes and failed other times according to their special circumstances. I think they will be more successful in the next years inshallah if more accurate systems and programs derived from the previous experiences and the most modern programs of the other schools are followed.

In Syria Sayyid Muhsin al-Ameen had undertaken this positive movement by establishing schools having his name which they are still carrying out their reformatory mission. The author of this book Sayyid Sharafuddeen had undertaken this task in Lebanon by establishing the Ja’fari School in Soor and had run it with the modern programs. He took much care of it by adding to the programs religious lessons and he entrusted his son Ja’far Sharafuddeen with the school to run it and to develop its religious concept and aim.

At the time of al-Alwah Magazine I often read on its pages that Sayyid Sharafuddeen had determined to establish an edifice (Ja’fari School) and I saw its designs and maps published on the pages of the magazine. I thought that such a project could not be carried out by one individual. It might be nearer to imagination than to reality. In my visit to Soor I saw this imagination as a fact. I saw the school matching with its high building the surrounding mountains. It was really more wonderful than all the colleges we had seen in Lebanon. It was big and large and included all the utilities that a modern school required. At that moment I understood that determinations should not be measured with certain criteria; there might one person who could equal with his struggle and power many groups of people!

Sayyid Sharafuddeen intended – as he had told us – to join a secondary department to its primary and intermediate departments to prepare the pupils to specialize in the religious sciences and then to set out from it to holy Najaf to complete the high studies and to get the degree of *ijtihād* or to specialize in the Islamic missionary affairs like the Society of Muntada an-Nashr had done.

As for his struggle and intellectual dispute to get to the truth from the shortest ways, it can be felt in his works; *al-Fusool al-Muhimma*, *al-Muraja’at*, a Word about Vision, to the Scientific Convention, the Answers on the Questions of Musa Jarullah and other works. All of these works deal with scholastic matters that have been discussed in the way of arguing and discussing previous opinions deeply and impartially as the author always has done and has been known with these aspects from among the writers of his generation.

These books, besides their scientific value, have excellent method in research and argument with humbleness that is seldom available except in the great ulama, whose souls are free from defects, and so they do not need to resort to haughtiness or flattery at the expense of the truth.

The best example on that is his book *al-Muraja'at* which is a collection of letters have been exchanged between the author and the head of al-Azhar University Sheikh Saleem al-Bishri on doctrinal subjects, which had been and are still objects of disagreement and dispute between the two greatest Islamic sects; the Sunni and the Shia.

These letters show wide knowledge, deep thinking and wonderful performance on the one hand and the firmness of argument and mental dispute besides being away from the emotional methods on the other hand. How wonderful it is when you see one of them (Sayyid Sharafuddeen and Sheik al-Bishri) submit to the other when he finds that his friend is nearer to the truth. He submits to the other without resorting to crooked ways or confused speech as some arguers do in order to satisfy their pride and haughtiness and to acquire the sympathy of their followers of simple people.

I think that the researches of this book represent the best manners of arguments and intellectual disputes and if they are studied deeply and regarded impartially by the scholars of this generation, they will do away with most of the points of disagreement between the two great Islamic sects and they will make them closer to each other in order to achieve the unity that all the reformers seek nowadays.

Sayyid Sharafuddeen is one of the propagandists for the unity but not in its negative form that calls for forgetting the past and ignoring it totally and drawing the curtain on all its tragedies as some scholars believe. They forgot that keeping silent before those tragedies and drawing the curtain on them would not remove their dregs from the souls but they would remain active inside the souls until they would appear in exclusion.

Sayyid Sharafuddeen thinks that many points of disagreement between the Sunni and the Shia do not come out of basic evidences but they are as results of fabrications and propagandas that have been created by some circumstances and have been encouraged by some governments and authorities in the old ages and if they have been studied objectively and impartially, the two sects would believe that they are far away from reality. As for the other points of disagreement, they are just as any simple disagreement between a doctrine and another or between a *mujtahid* and another and they do not deserve to cause separation and hatred. Even if these points of disagreement have been discussed in *al-Muraja'at* by the two scholars, they would make the different points of views near to each other.

Whenever arguments and intellectual disputes are away from sophism and away from affecting the public opinion by artificial speeches and they are close to the modern scientific methods, they will be the best ways to unite the different sects. The invitation of Sayyid Sharafuddeen is a positive and a fruitful invitation that he has followed in all his works and especially his two books *al-Fusool al-Muhimma* and *al-Muraja'at*. Even in his book *Abu Hurayra*, which is as a biography of this companion who has

narrated (and fabricated) too many prophetic traditions, he has not ignored this positive invitation.

In jurisprudence I have found many researches written by Sayyid Sharafuddeen having the same method of argument. He has written them out of this invitation. They are not less than the previous books in being as high examples on the good manners of arguments and debates. He has collected some of them under the title of “Juristic Questions” and published them in a special thesis. When I had the honor of visiting him, I expressed to him my admiration to these researches and to their wonderful method in argument and discussion and I begged him to keep on supplying the Arabic library with such jurisprudential researches.

His reply was too pleasing where he told us that he had begun writing a book about the matters of disagreement (in jurisprudence) among the Muslims since the first age of Islam until the time when the different Islamic doctrines had been formed in the middle of the Abbasid age. The book was supposed to be called as “al-Ijtihad fee Muqabil (against) an-Nass” but later on it was called as *an-Nass wal-Ijtihad* after Sayyid Sharafuddeen had added more details to it. He told us that he had finished the researches concerning some companions of the first age of Islam and that he would complete the rest of the book inshallah.

When we returned to Iraq, we brought this good news to our brothers of the members of “the Cultural Convention” who looked forward to reading this book.

23rd of Ramadan, 1375 A.H. / 4-5-1956 A.D.

Muhammad Taqi al-Hakeem

Holy Najaf

An-Nass wal-Ijtihad

- [1.](#) Nass means proviso, text or wording.
- [2.](#) Refer to al-Ahkam, vol.4 p.218.
- [3.](#) The thesis of al-Insaf fee Bayan al-Ikhtilaf by Allama Shah Waliyullah ad-Dahlawi mentioned in the Encyclopedia of Fareed Wajdi. This definition is in vol. 3 p.236.
- [4.](#) Usool al-Fiqh by Muhammad al-Khudhari p.357.
- [5.](#) Analogy here means logical analogy that depends on Usool.
- [6.](#) Ar-Risala by al-Shafi'iy, p.477.
- [7.](#) Introduction to the History of the Islamic Philosophy by Mustafa Abdur Razaq, p. 138.
- [8.](#) The infallible ones according to the Shia are the Prophet (S) and the twelve Imams, the first of whom is Imam 'Ali (as) and the last one is Muhammad bin al-Hasan (Imam al-Mahdi (as)).
- [9.](#) In Usool al-Fiqh wa Khulasat Tareekh at-Tashree' al-Islami, p.37.
- [10.](#) Wudu' : ritual ablution as a prerequisite for offering prayers.
- [11.](#) Qur'an, 5:6. In the Arabic wording there is a preposition before “your heads”.
- [12.](#) The Sources of Islamic legislation, p.8-9.
- [13.](#) The Entrance to the science of Usool and Fiqh, p.261.
- [14.](#) Ilm Ussol al-Fiqh wa Khulasat at-Tashree' al-Islami, p.92.

- [15.](#) The Entrance to the science of Usool and Fiqh, p.216.
- [16.](#) The Entrance to the science of Usool and Fiqh, p.274.
- [17.](#) Usool al-Fiqh by al-Khudhari, p.303.
- [18.](#) Preferring the more important verdict to the important one.
- [19.](#) Introduction to the History of the Islamic Philosophy, p. 145.
- [20.](#) Ibid.
- [21.](#) Encyclopedia of Fareed Wajdi, vol.3 p.212
- [22.](#) Ibid.
- [23.](#) Introduction to the History of the Islamic Philosophy, p. 177.
- [24.](#) Lectures on the History of Islamic Jurisprudence, p.23.
- [25.](#) Ibid., p.24.
- [26.](#) Ibid., p.25.
- [27.](#) Al-Ihkam fee Usool al-Ahkam, vol. 1 p. 114. Refer to Introduction to the History of the Islamic Philosophy, p. 123.
- [28.](#) Ibid.
- [29.](#) This introduction has been written while the author was still alive.
- [30.](#) The Introduction of al-Muraja'at, p.2.
- [31.](#) Wu'aadh as-Salateen, Ali al-Wardi, p.398.

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