

Mohsen Kadivar, “*Ijtihad in Usul al-Fiqh: Reforming Islamic Thought through Structural Ijtihad*,” *Iran Nameh*, 30:3 (Fall 2015), XX-XXVII.

Ijtihad in Usul al-Fiqh: Reforming Islamic Thought through Structural Ijtihad

Mohsen Kadivar

Professor of Islamic Studies, Duke University

I

Ijtihad, or independent reasoning, has been the first cause of the dynamism of Islam from within for several centuries, and it has worked well. According to this method, Muslim scholars—mostly jurists (*fuqaha*)—referred to the Qur’an and the tradition of the prophet Muhammad in order to find the practical duties (*shari’a*) of believers. The ordinances of *shari’a* that were introduced by the jurists were sufficient for the believers. They enjoyed practicing these ordinances (*ahkam*), and the order of Muslims’ lives continued without difficulty.

When a new problem occurred, the jurists tried to find its solution according to the traditional method of *Ijtihad*. If they did not clearly find the response in

Mohsen Kadivar is a visiting research professor of Islamic studies at the department of Religion, Duke University since 2009. He earned the certificate of Ijtihad from the theologian seminary of Qom and received a Ph.D. of Islamic Philosophy and theology from Tarbiat Modarress University in Tehran. Kadivar has published several books in Persian and Arabic and a dozen of essays in English. His interests span both classical and modern Islamic thought with a special focus on Islamic philosophy, theology, law, ethics, Qur’anic studies and Shi’i political thought.

Mohsen Kadivar <mohsen.kadivar@duke.edu>

ISSN 0892-4147-print/ISSN 2159-421X online/2015/30.3/XX-XXVII

the scripture or prophetic tradition, consensus (*ijma'*) and a few techniques in each school, such as analogy (*qiyas*) and her “sisters” (such as *istihsan*, *istislah*, and so on), or reason (*'aql*) assisted them in finding the ordinances of *shari'a*.

Since the end of the nineteenth century, it has seemed that the understanding of the *fuqaha* in the name of the ordinances of *shari'a* do not fit modern life in regard to certain issues. These areas of inconsistency between Islam and modernity have gradually expanded. There were not just a few problems, or a small domain of *shari'a* ordinances. By the second decade of the twenty-first century the areas of inconsistency covered almost the whole of nonritual ordinances of *shari'a* as well as a few parts of the rituals (*manasik* or *'ibadat*). These areas include not solely *shari'a* and practical ordinances, but also the theoretical parts of Islam in the name of theology (*kalam*), the interpretation of the scripture (*tafsir al-Qur'an*), and the science of tradition (*'ilm al-hadith*).

It is not just a few elites who found the shortcomings and weaknesses of the understanding of the conservative scholars. The majority of the modern educated Muslims have reached this conclusion. As much as Muslim communities confront the phenomenon of modernity, the problems of the inconsistencies of Islam and modernity become larger, deeper, and more widespread. But it should be noted that these problems are not exclusive to Muslims: Jews, Christians, and other traditions have had almost the same problems and experiences with modernity.

II

There are three main approaches among Muslims to this issue. The first approach locates the problem within the essence of religions, including Islam. Islam, for them, is the obstacle to modernity, development, and improvement. Eliminating religion from life is the solution. Live as if there is no God or assume that He is dead. Subjective or philosophical secularism is the result of this first approach. Happiness is based on departing from Islam and its out-of-date rules. The time of religions, God, scripture, and revelation is over; it is now the time of reason, autonomy. The second approach involves accusing modernity for this deviation from religiosity.

This solution involves returning to early Islam, the pure teachings of the prophet, and the literal understanding of the scripture. Modernity has ruined human spirituality. There were no problems in Islam, *shari'a*, or the understanding of the *'ulama*. The problem is satanic modernity. We may call this approach fundamentalism, and it contains the varied versions of conservatism.

The third approach falls between these two radical points of view. It tries to make a way for the consistency of Islam and modernity and to consolidate to make a product in the name of modern Islam under the process of reforming Islamic thought. According to this approach there exists a big problem, but the problem is not religiosity, God, or revelation. The problem is not the essence of Islam. The problem is the implementation of the understandings of the past experts in modern times. The products of *Ijtihad* of the *'ulama* of the past centuries no longer respond to the needs of Muslims in the modern age. What should be changed is the understanding of Islam—not Islam itself. The understandings of Islam by Al-Ghazali or Sheikh al-Mufid belonged to their times and situations, not to our time and situation.

Although many Muslim experts, including theologians, jurists, scripture interpreters, Hadith compilers and commentators, philosophers, and mystics serviced Islamic teachings during the fourteen previous centuries and their services were quite respectful, rich, and wonderful, it is not right to follow them blindly or repeat their works without any revision or to utilize their frameworks without making adjustments.

III

This reformist approach has two major elements. The first involves applying traditional *Ijtihad* in response to modern issues. The modern problems are much bigger than the powers of the traditional methods. Thus, most of the problems of modernity have remained unsolved or have been responded to in unsatisfactory ways.

The second element recognizes the insufficiency of traditional *Ijtihad*. There exists a spectrum of views of progressive Muslims in this element, from Jamal al-din al-Afghani (Asad-Abadi) and Muhammad Iqbal Lahori

to the present and recent past, including the views from Fazlul Rahman, Mohammad Arkoun, Nasr Hamid abu Zaid, ‘Abid al-jaberi, Abdulkarim Soroush, and Muhammad Mujtahed Shabestari. Each of them tried to reform Islamic thought from their unique point of view. Although I could offer some critiques of each of them, I would not deny the importance of their efforts in the reformation of Islamic thought. I respect all of them and value their works. Regarding their experiences, as well the experiences of Christian and Jewish theologians, guided me to a comprehensive method that could be called “structural *Ijtihad*,” or *Ijtihad* in the foundations and principles. Muhammad Iqbal Lahori, in *Reconstruction of Religious Thought in Islam*, used this term in 1930. There is an informal agreement among progressive Muslims about the necessity of structural *Ijtihad*, but each thinker has used it in different ways. We have many descriptions and prescriptions of structural *Ijtihad* in the past eighty years; now is the time to apply it and show the product of this method in understanding Islam. I endeavor to offer my approach to structural *Ijtihad* in this paper.

IV

Structural *Ijtihad* means revision in the principles and foundations of Islamic thought. The reform should be started beyond and before *shari’a*, as *shari’a* is subordinate to many foundations and principles that exist prior to it.

The scope of *Ijtihad* is not only *shari’a*, *fiqh*, and the practical part of Islam, but also the theoretical part of Islam, which includes traditional theology, ethics, the interpretation of the scripture, the compiling and commentary of the hadiths, and so on. We should start with these methods. Traditional *Ijtihad* is based on a science in the name of *usul al-fiqh*, which could be translated as “the methodology of the jurisprudence.” This science is not exclusive to jurisprudence, however. It includes the methodology of all Islamic texts, including the Qur’an and the hadiths.

According to one of the best classifications of *usul al-fiqh* that was made by Muhammad-Rida al-Mizaffar, the distinguished Iraqi jurist of the twentieth century, *usul al-fiqh* has four parts. The first and main part of *usul al-fiqh* is Muslim linguistic philosophy, or the discussions of the utterances (*mabihith al-alfaz*). The second part includes the rational accompaniments,

or consequences (*al-mulazimat al-'agliyah*). The third part is in the qualification, credibility, reliability, and domain of authority of each of the sources of Islamic teachings (*al-hujjiah*), including the Qur'an, the tradition of the prophet, the consensus, reason, analogy and its "sisters," and customs (*'urf*). Consolidation of the sources in the time of inconsistency, contradiction, and differences (*al-ta'adul wa al-tarajih*) is an appendix of this part. Textual sources are full of inconsistencies. What, then, would be the method during the time of the inconsistency of the sources? The fourth part regards the practical principles (*al-usul al-'amaliyah*) in the absence of four *shari'a* sources (*kitab, sunna, ijma'*, and *'aql* or *qiyas*). *Ijtihad* and *taqlid* (following religious authority) are like the conclusion of *usul al-fiqh*.

These four major parts of *usul al-fiqh* are the cornerstone of traditional *Ijtihad*, traditional interpretation of the Qur'an, traditional hadith commentary, and traditional theology. Any reform without reconstruction of almost all of these parts of traditional methodology is unsuccessful.

V

Usul al-fiqh needs reconstruction, not a mild reform. There are many valuable points within it, but it needs enrichment and continuity of *Ijtihad* throughout itself. We may be inspired by linguistic philosophy, hermeneutics, historicity, and critical thinking. The role of the scholar in understanding the texts is often ignored in traditional Islam. It is one of the main shortcomings of the traditional *Ijtihad*. It is what we should learn from modern philosophers such as Shelayar Makher, Otto, Heidegger, Gadamer, and Eric Donald Hirsch. The result of these additions brings us to a brilliant point: there could be several real meanings of a text. There is no standard meaning of a text. Welcome to diversity and inter-religious plurality! Also we should keep in mind that the text may not be understood out of its context.

Historicity is another major method that traditional Muslim scholars have ignored. Islamic teachings, as with all other religions, were made gradually in a long process of challenges, evolutions, and under the influence of sociopolitical and economic cultural powers. Studying the genealogy of Islamic teachings is required for all Muslim scholars. It includes the genealogy of Islamic dogmas, beliefs, norms, values and ordinances.

Critical thinking is one of the most utmost necessities of structural *Ijtihad*. Critical thinking is defined as “an intellectually disciplined process of actively and skillfully conceptualizing, applying, analyzing, synthesizing, and/or evaluating information gathered from, or generated by, observation, experience, reflection, reasoning, or communication, as a guide to belief and action.” The lack of this method is one of the big shortcomings of traditional *Ijtihad*.

VI

Reconstructing *usul al-fiqh* is only half of the way, as it is *Ijtihad* in principles. The other half of structural *Ijtihad* is *Ijtihad* in foundations. These foundations are the epistemological, cosmological, ontological, anthropological, sociological, psychological, theological, and ethical foundations of Islam. The medieval understanding of these foundations needs reconstruction and revision. Ptolemy’s cosmology (*Batlamaous*) has been the cosmology of the traditional Muslim scholar. The cosmology of the modern Muslim scholar is based on post-Newtonian cosmology.

Aristotelian epistemology has been dominant for traditional Muslim scholars. The epistemology of modern Muslim scholars is neo-Kantian. The ontology of most of the traditional Muslim scholars has been based on the principle of the separation of the existences (*tabayon al-wujud*). Modern Muslim scholars’ ontology is based on the principle of gradation and the unity of the existence (*tashkik va wahdat al-wujud*) that was articulated by Mulla Sadra.

According to the anthropology and ethnology of the traditional Muslim scholars, gender equality is not acceptable. Justice is based on natural merits. Modern Muslim scholars generally believe in egalitarian justice and gender equality. On the other hand, according to traditional *Ijtihad*, religion is the basis of different classes of rights for human beings. According to structural *Ijtihad*, rights belong to the human, as he/she is human, and is not dependent on his or her faith, belief, or religion. These two foundations produce two different kinds of jurisprudence, *fiqh* and *shari’a*.

Who is God? Arbitrary ruler, or just Lord that ought to be just? This is the key question of theology that affects the whole of religious teachings. Although the majority of Muslims follow the doctrine of *Ash’raite*, and the minority,

including Shi'ites and the banned *Mu'tazilite*, believe in a just ruler, the output of this fundamental axiom has not been apparent in different aspects of Islamic teachings such as ethics, jurisprudence, and interpretation of the scripture and hadith. The philosophy of resurrection depends on the response to this key question. Although reason has been accepted as one of the four sources of *shari'a*, it should be noted that the jurists have not applied it in its full capacity. Seyyed Muhammad Baqir Sadr, the distinguished Iraqi jurist that was executed by Saddam Hussein in 1979, wrote frankly in the introduction of his fatwa handbook *al-fatawa al-wadiha*: "I did not use reason, although I believe in it, because after sufficient verbal sources, I do not need it at all."

What was the philosophy of prophecy? What is our expectation of religion and revelation? Was religious law the ultimate goal of prophecy? This is what traditional Muslim scholars, including philosophers, theologians, and jurists claimed. According to this doctrine, *fiqh* became the first ranking and the master of all Islamic sciences. The second result of this doctrine regards *shari'a*, which became the system of Islamic Law, and thus Islam became a law-oriented religion. This was a big misunderstanding. According to structural *Ijtihad*, *shari'a* is the set of ethical values. The difference between these two approaches is vast. Values are almost permanent, but the law is subject to changes of situation, time, and place. There is no reason that the rules that fit Arabia in the seventh century should fit the modern time. What remains of those rules taken out of their contexts is the form or the shell, and what is lost is the soul and kernel.

VII

Islamic rules in the time of revelation had four characteristics. They were reasonable, just, ethical, and more functional than competing rules, according to the mentality of that time. In fact, most of the nonritual ordinances of *shari'a* do not have all or some of these characteristics, at least according to the mentality of modern times. The form of the rules in the absence of these four characteristics is not a valuable thing to be preserved. The time of traditional *Ijtihad* and its products is now over. Its products do not work in modern times. In the school of structural *Ijtihad* those rules that are not reasonable, just, ethical, and more functional according to the mentality of

this time are marked as abrogated rules (*mansukh*). It is a way of minimalizing the scope of religion, but deepening it.

The Qur'an introduced itself as the book of guidance, not the book of law. A few verses in the scripture about the penal code or the rights of women do not mean they are permanent law. The scripture and prophetic tradition had two goals: giving the guidelines of a happy life and managing the religious life of the time of the establishment of Islam. The former is permanent; the latter is temporal—regardless of whether it is in the scripture or tradition. Traditional Muslim scholars ignored this main point and took all the content of the scripture and tradition as permanent and timeless. They made quite a bit of difficulty for Muslims through this mistake. Structural *Ijtihad* aims to distinguish between these two types of Islamic ordinances. It keeps the permanent doctrines and teachings and sends the remainder to the museum of the history of Islam. All of the problems about Islam come from those ordinances that were temporal and were restricted to their special land and situation from the beginning. It was not an unchangeable and inseparable part of Islam. It was a big misunderstanding.

Ijtihad in principle and foundation (*Ijtihad fi al-usul wa al-mabani*) is my understanding of structural *Ijtihad*. I think this is the necessary step of the reconstruction of Islamic thought while preserving the soul of Islam.