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Morgan Clarke is Associate Professor of Social Anthropology at the University of Oxford and a fellow of Keble College. He is an anthropologist of the Arabic-speaking Middle East with a particular interest in contemporary Islam, especially Islamic law and its relationship to positive law, secular ethics and the civil state. His fieldwork to date has been in Lebanon (2003-4, 2007-8). His doctoral work (Oxford, 2006) focused on Islamic bioethics, concerning assisted reproduction in particular, and was published as *Islam and new kinship: reproductive technology and the shariah in Lebanon* (Berghahn, 2009). His subsequent and current work examines the social life of the sharia and Islamic religious authority more generally.

ABSTRACT: "A more Reasonable and Equitable approach to Shi'i *Ijtihad*"

Ijtihad is a powerful symbol of religious authority in Islam generally. The dominant vision in contemporary Imami Shi'i Islam gives it special emphasis both by allowing the possibility of absolute *ijtihad* and by enjoining non-*mujtahids* to adopt the opinion of one of the *mujtahid* class, more specifically, in the prevailing view, the 'most learned' among them. In this paper, I wish to focus on a domain of religious authority of real practical concern in the context where I have conducted most of my research, Lebanon. In Lebanon, religious courts have jurisdiction over family law. 'Ja'fari', i.e. Twelver Shi'i, 'sharia courts' (*mahakim shar'iyya*), presided over by Shi'i clerics, apply 'the Ja'fari *madhhab*'. On what basis do they rule? One dominant view would restrict the right to judge to *mujtahids*. But in Lebanon, on the relative margins of the Shi'i scholarly world, claims to *mujtahid* status are not easily made. Another view would allow the non-*mujtahid* to judge on the basis of a document of agency (*wikala*) from a *mujtahid*. Further possibilities are that it is enough that the non-*mujtahid* cleric 'knows what they are doing' in the restricted field of family law, and/or that they apply the best-known opinion (*al-mashhur*) within the *madhhab*. It is far from clear in any given case which, if any, of these positions is in operation. From the perspective of the day-to-day operations of the courts, however, the question would seem to be largely irrelevant – a technical matter rather than a practical concern. All judges, civil as much as Islamic, are in any case said to exercise *ijtihad* of a more down to earth sort in determining their rulings. But, in the context of pressing debates about the reform of personal status law in Lebanon, which lags behind other jurisdictions in the region, the Shi'i judge's right to exercise their *ijtihad* in determining the law to be applied is presented as a definitive response to the possibility of codification, a possibility that the Ja'fari courts are almost alone in continuing to resist. That would, as others have pointed out, make *ijtihad* here more of a conservative force than the progressive one widely celebrated today. In this paper, drawing on my fieldwork in the Ja'fari courts, I think through the question of judicial *ijtihad* in particular, as an issue that has considerable implications for the relationship between ideal religious discourse and the practical management of administrative life.