‘The Past, Present and Future of Shi‘ī Ijtihād’

5th – 6th July 2018
‘The Past, Present and Future of Shīʿī Ijtihād’

Contributors Workshop
5th – 6th July 2018

Al-Mahdi Institute
60 Weoley Park Road, Birmingham, B29 6RB
The relatively recent Shi‘i migration to the West, coupled with rapid technological and scientific advancements of the modern world, have led Shia Muslims to experience new jurisprudential (fiqhī) dilemmas and issues, which require close attention of experts that specialise in the practice of deducing sharia regulations (ijtihād).

The 6th annual fiqhī workshop at the Al-Mahdi Institute seeks to facilitate scholarship by directly addressing questions that analyse the developmental aspects of ‘Shī‘ī Ijtihād’. Ijtihād, particularly in the Shī‘ī milieu, has been continuously evolving in its function and application since its practice was formalised. The evolution of Shī‘ī Ijtihād has been - and is being - informed by stances towards notions of Shī‘ī religious authority. The workshop encourages, and invites, paper proposals that analyse the following:

- The relationship between uṣūl al-fiqh and ijtihād; how historical and reformulist epistemic and ontological shifts within the Shī‘ī legal discourse have impacted its hermeneutical standpoints and how this in turn has affected and continues to affect the practice ijtihād.
- A critical engagement with the development of orthodox Shī‘ī notions of religious authority structures and their current status.
- An examination of developments in Ijtihād for Shī‘a Muslims in a western context.

The workshop, therefore, is pleased to host presenters from both traditional seminary and academic backgrounds, presenting from a range of disciplines. As has become an effective format in our previous annual workshops, the Fiqhī debates will be positioned alongside contributions from broader theological, historical and anthropological approaches - thereby enriching a multidisciplinary understanding of contemporary outlooks dealing with The Past, Present and Future of Shī‘ī Ijtihād.
Programme Schedule: Day 1

Thursday 5th July 2018

9:30 – 10:00 – Registration
10:00 - 10:15 – Opening Remarks

10:15 – 12:00 – PANEL ONE (Chair: Mrs Nazmina Dhanji)

Strategies of Sanctifying *Ijtihād* in Later Twelver Shiʿite Legal Theory
Professor Devin J Stewart (Emory College of Arts & Sciences)

*Motahari, Social justice and fiqh*
Dr Christopher Pooya Razavian (University of Birmingham)

*Ijtihād and anti-Ijtihād in Shiʿi History*
Dr Zackery M. Heern (Idaho State University)

12:00 – 12:30 – Tea/Coffee Break

12:30 - 13:40 – PANEL TWO (Chair: Mrs Nazmina Dhanji)

*The controversy around Ijtihād in matters of belief*
Professor Rob Gleave (University of Exeter)

*Shiʿi Ijtihād: Juristic Exertion to Religious Establishment*
Shaykh Kumail Rajani (University of Exeter)

13:40 - 14:45 - Lunch and Prayers

14:45 – 15:55 – PANEL THREE (Chair: Dr Wahid Amin)

*How Progressive Can Ijtihād Be? A Word on Qāʿidat Al-Mulāzima*
Professor Mohammad Rasekh (Shaheed Beheshti University)

*Augmented and Artificial Intelligence in Usul al-Fiqh: The scope for perfect computational reasoning in Ijtehad*
Shaykh Jaffer Ladak (Islamic Seminary of Kerbala) & Dr Mohammad Ghassemi (Massachusetts Institute of Technology)

15:55 – 16:30 – Tea/Coffee Break

16:30 – 17:40 – PANEL FOUR (Chair: Dr Ali-reza Bhojani)

*The Need for Ilm Al Rijal in Ijtihad*
Sayed Hossein Qazwini (Islamic Seminary of Karbala)

*Shiite Continuous Ijtehad in Dealing with the Issues of the Present Age*
Ayatollah Professor Sayyed Mohaghegh Damad (Shaheed Beheshti University)

18:00 – 20:30 – Dinner
Programme Schedule: Day 2

Friday 6th July 2018

10:00 - 11:45 – PANEL ONE (Chair: Shaykh Muhammed Reza Tajri)

Shi‘i Clerical Authority and the Dilemma of Trias Politica in Modern Era
Dr. Mohammad Reza Kalantari (Royal Holloway, University of London)

The authority of the muqallid: a bottom-up approach to taqlīd in Imami law
Mr Cameron Zargar (Near Eastern Languages & Culture)

The definition of scholarly capital in Iraq’s contemporary marja‘iyya field
Dr. Elvire Corboz (University of Edinburgh)

11:45 – 12:15 – Tea/Coffee Break

12:15 - 13:25 – PANEL TWO (Chair: Dr Wahid Amin)

From “the ethics of slavery” to “the ethics of worship”: Some recent developments in Shi’a jurisprudence
Dr. Ali Fanaei (Al-Mahdi Institute)

The ijtiḥād of the Ja‘fari judge
Dr Morgan Clarke (University of Oxford)

13:25 - 15:00 – Lunch and Prayers

15:00 - 16:45 – PANEL THREE (Chair: Shaykh Kumail Rajani)

Ayat al-Nafr: A Quranic justification for collective Ijtihād?
Dr Ali-reza Bhojani (University of Nottingham) & Professor Seyed Mohammad Ghari S Fatemi (Al-Mahdi Institute & Shahid Beheshti University)

Ijtihād and Taqlid within an existential framework
Shaykh Arif Abdulhussain (Al-Mahdi Institute)

Beyond ijtiḥād: In search of moral foundations of interpretive jurisprudence
Professor Abdulaziz Sachedina (George Mason University)

16:45 – Closing remarks by Shaykh Muhammed Reza Tajri

17:00 – End

18:00 – 20:30 – Dinner
ABSTRACT: "Strategies of Sanctifying *Ijtihād* in Later Twelver Shi’ite Legal Theory"

This presentation discusses two non-technical requirements for *ijtihād* that appear in Twelver Shi’ite discussions of legal theory between the sixteenth century C.E. until the present. One is termed *al-quwwah al-qudsīyyah* "sacred faculty" or *al-malakah al-qudsīyyah* "sacred aptitude." This first appeared in lists of the requirements for *ijtihād* in the works of Ṣuddih b. ʿAbd al-ʿĀmilī (d. 1011/1602), and has been discussed relatively regularly ever since, notably in the works of Muḥammad b. ʿAbd al-Wahhāb al-Bihbihānī, Mīrzā Abū al-Qāsim b. Muḥammad Ḥasan al-Qummī’s (*Qawānīn al-uṣūl*), and also by more recent legal authorities such as Abū al-Qāsim al-Khūṭī, al-Sayyid al-Rūḥānī, al-Sayyid al-Ṣaffāhānī, and al-Sayyid. Sayyīd ‘Abbās Kāshīf al-Ghiṭā has written a discussion of al-Bihbihānī’s thought on this topic. Debate on this concept, which I have labeled "the sanctification of legal interpretive talent" and which, in my view, ultimately derives from Ibn Sinā’s philosophical discussions of the status of prophets, centers on comparing and contrasting this particular trait or aptitude with other ordinary traits or aptitudes that are functional in society. The second non-technical requirement for *ijtihād* is that of *takhliyat al-nafs* "emptying the lower soul," which, to the best of my knowledge, entered discussions of *ijtihād* in the works of Muḥammad b. ‘Abd al-Wahhāb al-Bihbihānī, *Risālah fī al-akhbār wa l-*ijtihād and *al-Fawāʾid al-ḥāʾiriyyah*. This concept, which appears to derive from the Sufi tradition’s concept of taṣīyat al-bāṭin, or from ethical discussions of *takhliyah* and *taḥliyah* "cleansing and adorning" i.e., freeing oneself from negative traits and adopting positive ones, became an important consideration for al-Bihbihānī, and this clearly went beyond the ordinary requirement of ʿadālah "moral probity," which required the active mujtahid to have a clean public moral record. I have not yet found other discussions of this term in later Twelver Shiite legal theory, but I suspect that such discussions exist. Both of these concepts provide examples of the connections and cross-pollinations of legal theory with other traditions of Islamic thought.
Dr Christopher Pooya Razavian’s research is focused on the relationship between autonomy and tradition in Shi’ism. He argues that greater attention needs to be paid to the discursive nature of autonomy and tradition within Shi’i thought. His PhD was under the supervision of Professor Sajjad Rizvi at the University of Exeter. He has also spent many years in Iran, at both the Islamic Seminary and the University of Tehran. His last conference paper was titled ‘Autonomy and the Internalization of Shi’i Tradition’ presented at the Religion in Public Life Conference at the University of Exeter.

**ABSTRACT: “Motahari, Social justice and fiqh”**

The Islamic revolution of Iran was one of the defining moments in global political history. It not only revolutionized Iran’s political structure but also the way religion and modernity can coexist. Morteza Motahari was one of the most influential clerics active before the before the revolution. His books and speeches influenced many. A central effort of Motahari was to create a modern Weltanschauung, world view, or jahān bīnī in Persian. This world view was the foundation for his political ideology, and the center of this political ideology was his concept of justice. Given Motahari’s influence, it is surprising that such little attention has been given to his works in Western academic literature. While his books in Iran have been popular, Motahari’s stances on legal issues have been sparsely discussed within the Persian literature. This paper will help to fill this lacuna by examining how Motahari’s understanding of social justice impacted his views on jurisprudence. The difference between Motahari’s understanding of social justice and the traditional understanding of justice will be examined first. This will highlight how Motahari’s understanding of social justice is founded on the two notions of equality and freedom, and how he understood justice to be relative to time and place. This will provide the framework to understand how Motahari employed the concept of justice in fiqh. Motahari used the concept of justice as a primary principle to evaluate various laws. This paper will examine a few of the practical issues that Motahari discussed. It will be shown that Motahari’s conception of justice influenced his views on Women’s rights, financial transactions, and freedom of thought. He argued for more rights for women in divorce, argued against the use of legal loopholes (ḥiyal), and that Islam has provided room for freedom of conscience.
Dr Zackery M. Heern – Idaho State University

Dr Zackery M. Heern is an Associate Professor in the Department of History at Idaho State University in the United States. Dr. Heern specializes in Middle East and Islamic studies, and his research and teaching interests include Iran, Iraq, modern Islamic movements, Shi'i Islam, intellectual history, world history, and religion. His book, *The Emergence of Modern Shi’ism: Islamic Reform in Iraq and Iran*, was published by Oneworld Publications in 2015 and was featured in *The Economist* magazine. He has also published several academic papers on Shi'i knowledge and authority. His current book project is titled *Britain and Shi‘ism in Iraq: Imperialism and Resistance in State Formation*.

**ABSTRACT: "Ijtihād and anti-Ijtihād in Shi‘i History"**

This paper analyzes Shi‘i conceptions of ijtihād through the lens of history. Instead of only including scholars who worked to normalize ijtihād and establish the official status of mujtahids, this paper outlines a spectrum of positions on ijtihād from varying scholarly perspectives, including those generally categorized as rationalists, textualists, and mystics. Research for this paper, then, is based on the writings of Shi‘i scholars who address ijtihād from a wide range of viewpoints.

The question of accepting or rejecting ijtihād is often cited as a primary difference between Usulis, Akhbaris, and Shaykhis. Wahid Bibbihani (d. 1791) is widely cited as the champion of Usulism because he advocated ijtihād, and Muhammad Amin al-Astarabadi (d. 1627) is generally recognized as the founder of modern Akhbarism because of his rejection of ijtihād. Although Shaykh Ahmad al-Ahsa‘i (d. 1826) was trained by the most prominent Usuli scholars of his day, he advocated a synthesis of Shi‘ism that included mysticism, textualism, and rationalism. Al-Ahsa‘i, however, argued that only Perfect Shi‘is are capable of ijtihād. In this study I treat ijtihād as a rubric with which to test the boundaries between Shi‘i schools of thought. My analysis of scholarship on ijtihād from representatives of these schools indicates that Shi‘i conceptions of ijtihād are much more complex than a simple rejection or acceptance of a common set of principles. The ideas associated with ijtihād evolved over centuries. The ijtihād promoted by Bibbihani, therefore, was different than that of Murtada Ansari (d. 1864), who redefined the key terminology associated with ijtihād. Additionally, the reasons for accepting or rejecting ijtihād changed over the course of Shi‘i history, but were often tied to Sunni-Shi‘i polemics. Al-Astarabadi, for example, condemned Usuli scholars for adopting Sunni methods of jurisprudence. Additionally, Bibbihani rejected analogical reasoning (*qiyās*) as a Sunni method, but accepted a similar concept of transference (*ta‘diyya*) in his approach to Islamic law.
Professor Robert Gleave is Professor of Arabic Studies at the Institute of Arab and Islamic Studies, University of Exeter. His primary research interests include hermeneutics and scriptural exegesis in Islam; Islamic law, works of Islamic legal theory (usul al-fiqh); violence and its justification in Islamic thought; and Shi’ism, in particular, Shi’i legal and political theory. He has organised a number of funded research projects including Islamic Reformulations: Belief, Governance and Violence and Legitimate and Illegitimate Violence in Islamic Thought. He is author of Islam and Literalism: Literal Meaning and Interpretation in Islamic legal theory (EUP, 2011) and Scripturalist Islam: The History and Doctrines of the Akhbari Shi School of Thought (Brill, 2007).

**ABSTRACT: “The controversy around Ijtihād in matters of belief”**

In this paper I aim to examine the much-cited maxim that *Ijtihād* is permitted in matters of jurisprudence (*fiqh*) but not in matters of belief (*iʿtiqād, uṣūl al-dīn*). One finds this general position across many Muslim schools of theology and law; it is tied to the underlying notion that, for the religious subject (*mukallaf*) matters of belief need to be established with certainty based on indubitable indicators, whilst legal matters only require informed opinion (*ẓann*) based on uncertain indicators analysed by the legally competent expert (*mujtahid*). Two things sparked my interest in this question:

First, there is the examination of discussions of different opinions (*khilāf*) in matters of belief (found in both Sunni and Shi’i works of *uṣūl al-fiqh*). In these discussions, one finds a range of opinions: most (but not all) subscribe to the distinction between “core” Muslim beliefs (on which there can be no *Ijtihād* or *khilāf*) and subsidiary beliefs (on which the community can differ). However, this line (between matters of certainty and dispute in religious doctrine) shifts between works without a firm resolution, indicating that even for the premodern *uṣūlī* and theologians, a fixed set of beliefs on which all Muslim must agree is not established. This impacts, of course, on the dynamics of declarations of unbelief (*takfīr*).

Second, in the later Akhbārī-Uṣūlī dispute in Twelver Shi’ism, one finds an assertion from some Akhbārīs that the individual believer can (and in some cases *must*) exercise her or his *Ijtihād* in matters of belief, but (as is natural for Akhbārīs) they declare all *Ijtihād in fiqh* impermissible. This interesting reversal of the Uṣūlī position (in which *Ijtihād* is not allowed in matters of belief, but unavoidable in matter of *fiqh*) is partly terminological. But it also reveals an Akhbārī emphasis on the individual responsibility for one’s religious belief (and not merely one’s religious observance).

Both of these prompts reveal to me that what counts as “true” Muslim belief was far from rigid. Even amongst some (supposedly) rigid premodern Muslim intellectuals, what constituted “sound” belief may have been more ambiguous than some contemporary voices might wish to present it. This is what I aim to talk about.
Shaykh Kumail Rajani – Exeter University

Shaykh Kumail Rajani is a PhD Candidate at the University of Exeter where he also teaches in the capacity of a Post Graduate Teaching Assistant. He conducted most of his studies and research in the Shi‘ite seminary (hawza) of Qum and has attended the highest level of Hawza studies, bahth al-khārij, for 8 years. His areas of interest are Islamic Law, Qur’anic exegesis, Hadith, Shi‘ite Studies in general and Ismaili Studies specifically. He has worked extensively in the religious and communal history of Bohra & Khoja communities. His current thesis focuses on Ismaili Hadith Literature.

ABSTRACT: “Shi‘i Ijtihād: Juristic Exertion to Religious Establishment”

Though the Shi‘i community enjoyed the presence of the Imams till 260/873 and relied on their instructions in legal matters, there are certain reports suggesting that the Companions of the Imams exercised ijtihād within the Shi‘i framework of the concept. This could either be a result of the direct encouragement of the Imams, or conversely, the Imam was not held, at least by some of the Companions, as a divine juristic authority as assumed by the Prophet. The implication of this thought is that Imams also exercised ijtihād in their interpretation of Qur‘an and Prophetic traditions, an idea which is unequivocally rejected by the later Shi‘i scholars. Notwithstanding the ambiguity surrounded the concept, authority and the remit of ijtihād in the early stage, its modality changed significantly post-occultation as the Shi‘i community encountered new challenges in formulating their social identity in the absence of an Imam. The scholars of the post-occultation era, whilst averting from the popular Sunni framework of ijtihād, endeavoured to present a model for ijtihād conducive to the Shi‘i worldview of Imam. But it was late in the seventh/thirteenth century when the epitome of the Shi‘i ijtihād became evident as a new genre of ijtihādi fiqh emerged in the school of Hilla. The practice sustained, with the exception of a relatively dominant scripturalist tendency of the Safavid era, and finally culminated in the colossal literature of fiqh and usūl al-fiqh in the school of Najaf. This new centre not only flourished academically, but also attracted larger Shi‘i populace to direct their religious queries and dues, soon to advance the historical autonomous ijtihādi practice into a modern heteronomy marji‘iyya establishment. Here, besides demonstrating an individual’s expertise on the matters pertaining to law, the purpose was to cater the religious and geo-political needs of the followers. The post-Islamic Republic of Iran’s Qum is believed to have adopted the framework of the religious establishment of Najaf and continued to flourish with negligible ad hoc changes within the system. It is quite evident that the modality of the ijtihād remains unchallenged and the minimal changes are circumstantial. However, the contemporary school of Qum has provided some academic space to discuss and challenge the conventional Shi‘i jurisprudence. This approach not only challenges certain conventional fatwas but also suggests a different epistemological framework to conduct a more holistic ijtihād. This paper aims to provide a brief outline of the trends and strands of Shi‘i ijtihād throughout the history and examine the current reformatory attempts to redefine ijtihād for a more dynamic fiqh (fiqh i pūyā).
Professor Mohammad Rasekh – Shaheed Beheshti University

Professor Mohammad Rasekh started his undergraduate studies with Islamic Theology and Philosophy and later finished it with LLB at the University of Tehran. He also studies Arabic, Logic, Fiqh, Usul, Tafsir, Kalam and Philosophy for more than ten years in the Seminar. He continued his studies by doing LLM at LSE and PhD at University of Manchester. He joined Shahid-Beheshti University (formerly the National University of Iran) in Jan. 1999, and since 2011 he has been a full professor of law and philosophy. He specialises and has published in philosophy of law, law and religion, biomedical law and ethics, philosophy of rights, and comparative constitutional law. He has cooperated with various European Institutes and is currently conducting research on philosophy of Islamic normative reasoning with the aim of authoring articles and a book.


Ijtihād has been supposed to be a dynamic and promising way of looking into the sacred texts with the aim of putting forth efficacious rules and rulings. These are needed as we have been constantly encountered with an almost infinite number of new human events and problems in response to which new religious ideas and solutions ought to be provided. Qā`idat al-mulāzima (correlation of `aql and shar`) principle has been one of the promising theoretical devices in the later Shī`ī usūlī scholarship to this effect. It might have been thought that this method can make the required break through with regard to grave and urgent Muslim life problems and, hence, keep the ijtihād process as an ever progressive one. Given the epistemological limits within the process of Shī`ī jurisprudential reasoning (usūl al-fiqh), the correlation principle’s extreme importance cannot be considered as an exaggeration. For instance, the late Murtazā Mutahhari endeavoured to utilize such a device in certain instance, such as insurance contract, and tended to take the qā`ida to its logical extent; a position that sounds like taking a step even further than the thesis of identity of the intellect and the scripture. In this research, upon an exposition of the background and also significance of the correlation principle, the major arguments for and against it shall be introduced. An appraisal, in the end and as a conclusion, will be put forward. The culmination point of an analytic approach to ijtihād from this perspective shall no doubt exceed the realm of usūl al-fiqh.

**Keywords:** Rationality, `Aql, Shar`, Shī`ī Jurisprudential Reasoning, Identity of Shar` and `Aql, Muslim Theology
Shaykh Jaffer Ladak – Islamic Seminary of Kerbala

Sheikh Jaffer was born and raised in Milton Keynes, UK. After two years in medical recruitment, he opened his own agency in 2005 and subsequently appointed director of the DRC Group, the second largest agency supplying locum doctors to the NHS in the UK, leaving in 2011. After returning from Hajj in 2005, he began his Islamic studies, speaking in centres around the world, leading Ziyaarat and Hajj groups. He has studied at Jaami’a Imam as-Sadiq (a) of Ayatollah al-Qazwini, Hawza Imam al-Jawad (a) of Grand Ayatollah Syed Taqi al-Madarresi in holy Kerbala and Al Mahdi Institute, Birmingham. He has authored two books, The Hidden Treasure (2011) and The Ways of The Righteous (2015) with various other written works in the pipeline. He is currently the Resident ‘Alim of Hyderi Islamic Centre, London and completing his Masters Degree in Islamic Law at the Islamic College, London.

Dr Mohammad Ghassemi – Massachusetts Institute of Technology

Mohammad Ghassemi is a doctoral candidate at the Massachusetts Institute of Technology. As an undergraduate, he studied Electrical Engineering and graduated as both a Goldwater scholar and the University’s "Outstanding Engineer". Mohammad later pursued an MPhil in Information Engineering at the University of Cambridge where he was a recipient of the prestigious Gates-Cambridge Scholarship. Since arriving at MIT in 2011, he has pursued research which has allowed him to leverage his knowledge of machine learning and background in hardware/sensor design to enhance critical care medicine. Mohammad’s doctoral focus is machine learning techniques in the context of multi-modal, multi-scale datasets.
ABSTRACT: “Augmented and Artificial Intelligence in Usul al-Fiqh: The scope for perfect computational reasoning in Ijtehad”

Advances in the computer sciences, and particularly artificial intelligence, have had a profound impact on secular jurisprudence. In the United States, criminal sentencing is augmented through algorithms that consider behavioural and circumstantial factors to determine probabilities of criminal recidivism. Algorithm-assisted jurisprudence is theoretically attractive because machines are not prone to the biases, moods, and inconsistencies that may confound their human counterparts. Furthermore, prior findings in the psychological sciences suggest that human biases may reside within the subconscious, making their presence difficult to detect, and the extent of their influence difficult to know. The immunity of the machines to these bias may enable more perfect judicial reasoning, and promote a more consistent system of justice.

For the purposes of the Islamic sciences, and particularly jurisprudence, the implications of artificial intelligence are also thrilling, but have been under-utilized to date. Existing Islamic software is designed to either enhance the pace of scholarly inquiry (e.g. allowing theologians to search the vast literature for key terms, or concepts), or quantify the historicity of the literature (e.g. analysis of chains of narration). To our knowledge there have been no applications of artificial intelligence for the purposes of Islamic jurisprudence. Importantly, the probabilistic nature of artificial intelligence techniques fit naturally within the existing frameworks of Usul al-Fiqh and Ijtehad, which rely on epistemic degrees of certainty: (Yaqeen), surety (Itmi'naan) and high probability (Dhann Mo'tabar).

This paper conceives of the inclusion of machine reasoning in Usul al-Fiqh, driving the sciences of Islamic jurisprudence to a new epoch. Augmented reasoning, or supervised learning, working from any number of a-priori assumptions may radically evolve the procedures of resolving contentions (Bab at-Tazahum) and contradictions (Bab at-Tanaqudh). Given the employment of perfect reasoning and potential for unlimited time-invariant computations, supervised learning may demonstrate to the legal practitioner (Mujtahid) every potential scenario of reasoning given the minutest modification of assumptions, but also reveal the flaws inherent in imprecise human reasoning. Though focusing on the effects of augmented and artificial reasoning in Usul al-Fiqh, the paper will also explain how machine reasoning may benefit other sciences such as the higher aspirations of the Divine Law (Maqasid as-Shari'ah) and the science by which to understand hadith literature (’Ilm al-Dirayah).

In order to demonstrate the practical benefit of augmented reasoning, the paper will assume one legal issue (Mas’alah): that of the patriation of religious endowment (Waqf) to the authority of the jurist and contrast present legal reasoning of its restitution and employment, against perfect reasoning and the interminable number of scenarios it may provide guidance on in the decision making of the legist. In doing so, we aim to provide a clear example of how machine reasoning may offer a more accurate employment of Islamic jurisprudence in various fields of law.
ABSTRACT: “The Need for Ilm Al Rijal in Ijtihad”

There is much debate on the need for Ilm Al Rijal in the process of Ijtihad. Those who reject the need for Ilm Al Rijal pose several justifications. One is that the door of knowledge is shut (bab al ilm munsad) and so jurists may refer to any conjecture, and since there is a possibility that any given tradition can be valid despite it’s isnad – especially if it does not contradict the Quran and logic - we can rely on that tradition without referring to Ilm Al Rijal. Another justification is that khabar al wahid is not valid and unreliable and so a jurist must derive laws from other sources, such as the Quran, logic and consensus. With the invalidation of khabar al wahid, we no longer have a need for Ilm Al Rijal.

On the other hand, the majority of jurists correctly believe in the need for Ilm Al Rijal for the process of deriving laws. Khabar al wahid is a valid source of Islamic laws as long as meets certain conditions and criteria. In fact, khabar al wahid is the major basis for Shii law. And since one of the most efficient means of validating a tradition is by studying it's isnad, we are in need of Ilm Al Rijal.

However, this does not mean that the isnad is the only way to validate the authenticity of a tradition. In our paper, we will examine the need for Ilm Al Rijal and aim to reach a moderate conclusion that does not put away with this science completely nor does it make it a central tenet of Ijtihad.
Ayatollah Seyyed Mostafa Mohaghegh Damad is an Iranian Shia cleric, and reformist who has been called "a leading instructor" in Iran's major seminary city of Qom. He has served as Chairman of the Commission of Compiling Judicial Acts and a Judge in the Ministry of Justice. His English publications include 'Protection of Individuals in Times of Armed Conflict Under International and Islamic Laws and Religion, Philosophy and Law: A Collection of Articles and Papers.' He received his PhD in Law from the Catholic University of Louvain, Belgium and his BA and MA from the University of Tehran.

**ABSTRACT: “Shiite Continuous Ijtihad in Dealing with the Issues of the Present Age”**

Most Islamic fuqahā have from the earliest times tried to harmonize the tensions between social demands and the “Shari‘a”, interpreting sacred texts in a way as to make religious laws as acceptable to conventions as possible in order to avoid any social friction, except for cases of direct opposition between the two, when there would be no other choice but to stop the convention, an act called rada‘ (“prohibiting “) in Islamic terminology. On this matter, the different schools of ijtihād have pursued different ways and offered their own proposals, among which one can mention the theories of expediencies (“masāliḥ”), of aims (“maqāsid”), and of cause and philosophy (“illah va hilmah”).

In our times, the main challenge for Islamic jurisprudence is the issue of human rights, for which the fuqahā must formulate theories based on general principles and rules of Islamic fiqh. Hereby, the main task is finding out the adequate general principles and rules, some of which count as belonging to fiqh proper and some to a stage prior to fiqh.

Shi‘ite ijtihād certainly is capable of being applied on the basis of rational principles of justice and human dignity, which means that to obtain judicial verdicts these two principles can be seen as logically prior to other principles, and not alongside them. In our opinion, this method can enable Islamic fiqh to take up the challenge posed by issues concerning human rights. The present paper tries to prove this assertion.
Mohammad R. Kalantari – Royal Holloway University of London

Dr Mohammad Reza Kalantari is the Deputy Director of Centre for Islamic and West Asian Studies, Royal Holloway University of London. He holds a PhD in International Relations and Politics of the Middle East from Royal Holloway. His research interest lies in the Middle Eastern studies with particular focus on interaction of regional doctrines, elite ideologies, and political Islam. His two forthcoming books, ‘the Clergy and the Modern Middle East: Shiʿi Political Activism in Iran, Iraq, and Lebanon’, and ‘Shiʿi Authority and the Challenge of Islamic Extremism: The Question of Muslim Unity in the Middle East’, are set to be published by the Royal Asiatic Society and I.B.Tauris in early 2019.

ABSTRACT: “Shiʿi Clerical Authority and the Dilemma of Trias Politica in Modern Era”

The notion of separation of executive, legislature, and judiciary powers, Trias Politica, is one of the distinct features of democratic regimes in modern political thought. For many, failure and success of a democracy lies in the extent to which the separation and independence of these three branches of the governance is realised. In Shiʿi orthodox doctrine, however, they are originally the Prophet and his twelve succeeding infallible Imams who have the divine right to rule, to legislate, and to judge. And of course, Shiʿi mujtahids, as general deputies of the last Imam, have appropriated some of his prerogatives and claimed for themselves the similar rights of legislation and judiciary, Ifta and qada. Consequently, it is incumbent upon Shiʿi mujtahids to issue legal opinions based on their interpretation of divine law in given circumstances, and to carry out judicial arbitration during the Occultation Era. They retained, for themselves, in any case, the exclusive authority for supervision and application of the law. Reviewing the original resources, and probing the sources of these jurisprudential standpoints, this research aims to address two distinct questions: Can a given mujtahid refrain himself of political activism while at the same time claiming over exclusive authority for legislature and judiciary powers? And what should be the new direction for ijtihad to make clerical authority in more conformity with the contingencies of modern democratic settings?

Keywords: Islam and modernity; political Shiʿism; ijtihad; separation of powers; democracy
Mr Cameron Zargar received his BA in Near Eastern Studies from U.C. Berkeley in 2003. His areas of interest include Arabic and Islamic history. Upon completion of his BA degree, Cameron pursued studies in the ʿāhzas of Iran, spending one year in Tehran at the ʿāzha of Ayatollah Mujtahidi and eight years in Qum. He also received another BA from Jamīʿat al-Mustafa. After completing the suṭūḥ, He participated in dars-e khārijī for two years, working with Ayatollah Shahīdīpūr, Ayatollah Ganjī and Ayatollah Shubayrī Zanjānī. In 2012, Cameron returned to the U.S., and received an MA in Near Eastern Languages and Cultures from the Ohio State University in 2014. Currently, Mr Zargar is a a PhD student in NELC at UCLA where his research is based on the authority of the marāji’ as understood through the lens of their followers.

**ABSTRACT: “The authority of the muqallid: a bottom-up approach to taqlīd in Imami law”**

Taqlīd in Imami Shi’ism is usually evaluated in terms of the authority of the marāji’. These Imami jurists provide opinions for millions of followers on essentially all religious aspects of life, including worship, marriage, eating and conducting business. In scholarship on Imami Shi’ism in European languages, the marāji’ are described as holding power over muqallids by way of their charisma. This charisma is oftentimes described as being derived from the Twelve Imams, and framed within the context of Max Weber’s model of genuine or revolutionary charismatic authority. Scholars in academic institutions turn to such theory because the influence of the marāji’ cannot be assessed in terms of state or official power, as they have neither a bureaucracy, a formal election, or means of coercion or enforcement. The problem with this approach is that stating the authority of the marāji’ in terms of charisma and personal appeal implies that muqallids do not make a rational decision when they decide to adhere to the opinions of a marja’, which is simply not the case. Rather, muqallids refer to the marāji’ because they believe they are most qualified to interpret Islamic sources, and that by doing they can avoid blame on the Day of Judgment for not sufficiently pursuing God’s law. Furthermore it is the muqallids who choose to self-impose the fatwas of Imami jurists, meaning, in essence, the authority of the marāji’ is derived from their followers. Thus, it is worth evaluating the authority these followers have in the process of taqlīd. This authority includes: 1. the muqallids’ freedom to choose from among marāji’; 2. their role in determining who becomes a marja’; and 3. their responsibilities in the application of fatwas. The first and third aspects of the muqallids’ authority is stated in Imami legal theory and reinforced in my interviews with members of the Imami community in Iran. The second aspect can be understood by way of a historical survey of the institution of marja’īyya; the building of patronage networks and establishing relationships with lay members of the Imami community allowed for nineteenth century jurists in Iraq to be recognized as transregional legal authorities in Iran and elsewhere in the Muslim world. Thus, this paper will demonstrate that the muqallids play an active role in the process of taqlīd and that the authority of the marāji’ is dependent upon the Imami community at large.
Dr. Elvire Corboz – Aarhus University

Dr Elvire Corboz’s research is centered on contemporary Shi’ism, in particular its transnational dynamics. In addition to her continued work on the Shi’i clerical establishment and the institution of the marja’iyya, she is currently at work with the question of state-sponsored religio-political transnationalism through a study of Iran’s outreach to Muslim communities in the UK. She is also interested in the transnational history of the Khoja Ithna Asheri community.

**ABSTRACT:** “The definition of scholarly capital in Iraq’s contemporary marja’iyya field”

Knowledge (‘ilm) is at the heart of the Shi’i system of clerical authority known as the marja’iyya. At a time when more or less well-established claimants to the position are proliferating, this article explores the scholarly credentials of the contemporary marja’ (source of emulation). I conceptualize the marja’iyya with Pierre Bourdieu’s notion of the field in order to examine how scholarly capital is defined, and possibly redefined, by thirteen religious scholars currently competing in this marja’iyya field in Iraq. To do so, I use their ‘official’ biographies in Arabic and analyze the types of arguments put forward to claim prominence. The biographies invariably address three determinants of scholarly capital: social determinants, in particular the inherited capital of being born into a clerical family; determinants of educational capital, referring to one’s religious training and certifications; and determinants of intellectual-scientific prestige capital, such as one’s scholarship and teaching. Moreover, the credentials emphasized in the different biographies are much alike, and if a marja’ does not satisfy them, ‘almost-like’ credentials are constructed. This indicates a high degree of both homogeneity and stability in the ways capital is defined within and by an otherwise internally diverse marja’iyya field.
Dr Ali Fanaei – Al-Mahdi Institute

Dr Ali Fanaei completed 17 years of seminary studies in the Hawza Ilmiyya of Qum. His teachers included; Ayatollah Sayyid Muhaqheqh Damad, Ayatullah Tabrizi, the Ayatullah Haeiri, Ayatullah Vahid, Ayatullah Montazeri, and the Ayatollah Ahmad Mianeji. He has an MA in Islamic Theology from the University of Qum taking special interest in modern theology and philosophy of religion. He then moved to the UK to conduct research at the University of Sheffield where he was awarded an Mphil for research on Moral Scepticism and Realism and a PhD for research regarding the epistemic justification of moral beliefs. Alongside training students at Al-Mahdi Institute, he has also published a number of influential works in Farsi, through which Dr Fanaei is becoming known as one of the most important of a select group of roshan fikri (‘enlightenment thinkers’) whose engagement with questions pertaining to the modern world is informed with the deepest Hawzawi credentials.

**ABSTRACT:** "From “the ethics of slavery” to “the ethics of worship”: Some recent developments in Shi’a jurisprudence"

To derive a law or any quasi-legal norm from its sources, we need, among other things, a model or paradigm. This paradigm has two major aspects; metaphysical and epistemic/hermeneutical. From the metaphysical point of view, this paradigm consists of a set of meta-legal norms which determine the rights and responsibilities of both the law-maker and the subjects of the law. From the epistemic/hermeneutical point of view, the paradigm in question plays the methodological role of a framework in understanding and regulating the relationship between the law-maker and the subject. In other words, the epistemic/hermeneutical function of these meta-legal norms is to govern the conduct of jurists in the process of legal inference, instructing them how to accomplish the task of deriving the law and issuing verdicts (Fatwas). Let us call this set of meta-legal norms “The ethics of legislation”. When it comes to Sharia as a legal system or at least a quasi-legal system, this paradigm becomes a theological assumption of Islamic jurisprudence. Like other legal traditions, Shiite legal tradition is based on such a paradigm. In this paper, I will outline and briefly examine four different paradigms, using the following labels; “the ethics of slavery”, “the ethics of obedience”, “the ethics of sovereignty”, and “the ethics of worship”. The first model has been the most influential one throughout the history of Islamic civilization. The second and the third model have been suggested very recently by a number of contemporary Shiite jurists, including Ayatollah Sadr, Ayatollah Khomeini and Ayatollah Sistani. After outlining and criticising the first three models, I will present and defend the last one as the most appropriate model for understanding Sharia.
Dr Morgan Clarke– Allameh Tabataba’i University

Morgan Clarke is Associate Professor of Social Anthropology at the University of Oxford and a fellow of Keble College. He is the author of: Islam and New Kinship: Reproductive Technology and the Shariah in Lebanon (Berghahn Books, 2009) and Islam and Law in Lebanon: Sharia Within and Without the State (Cambridge University Press, in press).

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 clerk ‘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.
Seyyed Fatemi spent thirteen years studying to the highest level in the traditional educational seminaries of Qum under the direct instruction of some of the leading scholars of the present day. Alongside his traditional education Seyyed Fatemi was also trained in Public Law at Tehran University, receiving the award of both an LLB and an LLM. In 1999 Seyyed Fatemi was awarded with a PhD from the Faculty of Law at the University of Manchester for research engaging with Comparative Human Rights. Seyyed Fatemi’s teaching and research interests include; the Philosophical foundations of human rights, International and comparative Human rights, Islam and Human Rights, Usul al-Fiqh and Hermeneutics, the History and Development of Fiqh, and Muslim Theology.


The Quran condemns individuals who do not use, nor explore, their own understanding in matters of religion. Yet Quran 9:122, often referred to as Ayat al-Nafr, apparently obliges a group of individuals from every community to go forth in pursuit of a deep understanding of religion, so that they may ‘warn’ their people when they return to them. This paper will explore the potential of 9:122 to act as justification for emerging notions of collective Ijtihād.

Muslim legal theorists have long been citing this verse as a potential justification, not for collective Ijtihād, but for the authority of the isolated tradition (khabar wāḥīd). This has led legal theorists to reject the possibility of the verse suggesting that knowledge acquisition and transmission ought to be collective. The verse has been further employed to advocate a Quranic justification for the authority of scholarly fatwa issued by individual mujtahids and the necessity of non-specialists to follow these opinions. After critically reviewing the exegetical history of the verse amongst Shi‘ī legal theorists, the paper will argue that neither the verse itself, no its apparent context, support the prevalent views. The paper will then move to discuss the potential of the verse to support collective notions of Ijtihād, and whether the verse is in fact not simply directive (irshād ‘a) towards changing non-scripture dependent ideas in epistemology which seem to demand a shift towards collective Ijtihād.
Shaykh Arif Abdulhussain – Al-Mahdi Institute

Shaykh Arif founded the Al-Mahdi Institute in 1993, and currently serves as its Director and Senior Lecturer in uṣūl al-fiqh and Muslim Philosophy. He has been at the forefront of developing and delivering Advanced Islamic studies for over twenty years and is committed to sharing the Human face of Islam at all levels of society through a combination of public lectures and intra and inter faith dialogue. Shaykh Arif was educated at the Madrassah Syed Al-Khoei, London and graduated with Honours in 1988 where he also taught Grammar, Logic, Islamic Law and Usul al-Fiqh. He then travelled to Iran to further his studies and received his training at Hawza Ilmiyyah of Qum. He also attended private training and research studies with leading scholars of Qum. Alongside these studies he was also teaching in Qum across a wide spectrum of the traditional Muslim scholarly disciplines.

ABSTRACT: “Ijtihad and Taqlid within an existential framework”

**Taklif** as the imposition of religious duties and responsibilities on individuals and communities in all areas of human life is contingent on capacities and abilities. On the other hand, since capacities and abilities are existentially based they are relativistic and in a constant state of change due to the individuality of existent entities and a continual state of flux and change in existence generally. The implication of this is that *taklif* is also in a state of flux and change both on the vertical and the horizontal axis in line with the nature of existence.

*Ijtihad* as a means of ascertaining *taklif* in a relativistic and an evolutionary existential framework of necessity has to be to fluid and dynamic in line with the nature of *taklif*. Therefore, *ijtihad* as means of appreciating *taklif* similarly will undergo a constant state of change since the only requirement from *ijtihad* by Sharia standards is accuracy in appreciation of *taklif*. Consequently, *ijtihad* as a means of appreciating *taklif* would require newer models that are constantly integrating different disciplines and bringing together different expertise in any given area of human life.

Finally, *taqlid*, as means of ascertaining *taklif* through reliance on the *ijtihad* of another is based on levels of incompetency in understanding *taklif* directly in differing individual and collective contexts. This incompetency is naturally reduced with the growth of human learning and experience in areas that have already been responded to through *ijtihad* and hence there remains no further need of *taqlid* in those matters. However the growth of the human community will raise newer levels of incompetency with the result that *taqlid* as reliance on others is constantly being reduced in areas of competency and increased in newer areas with human growth and sophistication.

In conclusion since *taklif* is existentially based it creates dynamism in the nature of *ijtihad* and the level of reliance on *ijtihad* at every level of human existence.
Prof. Abdulaziz Sachedina is a Professor and IIIT Chair in Islamic Studies at George Mason University in Fairfax, Virginia. Dr. Sachedina, who has studied in India, Iraq, Iran, and Canada, obtained his Ph.D. from the University of Toronto. He has been conducting research and writing in the field of Islamic Law, Ethics, and Theology (Sunnī and Shi‘īte) for more than two decades. In the last ten years he has concentrated on social and political ethics, including Interfaith and Intrafaith Relations, Islamic Biomedical Ethics and Islam and Human Rights. Dr. Sachedina’s publications include: Islamic Messianic, Human Rights and the Conflicts of Culture, The Just Ruler in Shi‘īte Islam, The Prolegomena to the Qur’an, The Islamic Roots of Democratic Pluralism, Islamic Biomedical Ethics: Theory and Application, Islam and the Challenge of Human Rights in addition to numerous articles in academic journals.

**ABSTRACT:** "Beyond ijtihad: in search of moral foundations of interpretive jurisprudence"

Ijtihad has served as a catchword for reformist agenda in the Muslim world. In different forms and with different emphases the term has evoked connection with liberalism in politics and enlightenment in intellectualism among Muslim leaders and thinkers. The concept has been viewed with suspicion among the traditionalists, and has met outright rejection among the conservative literalist, the ahl al-hadith. Depending on who speaks for Islamic jurisprudence, the signification of ijtihad has undergone metamorphosis, at times, beyond recognition if it still represents matured legal reasoning endeavoring to find solutions for day to day living of modern Muslim men and women. A more fashionable and favorite term among the modernizing Muslim jurists is the Maqasid jurisprudence, signaling a rediscovery of a new methodology for the applied jurisprudence, as if these objectives were some kind of eternal prescription for asserting the slogan: al-islam huwa al-hall (Islam is the solution [for all modern maladies in the field of law, ethics, and politics]). Obviously, and probably for its own good, this academic treatment of methodology has been confined to the institutions of higher learning with no impact on the traditional centers of Islamic thought and practice. It will be unfair to judge these scholarly endeavors so sweepingly negative. Needless to say that without rational hermeneutics and contextual understanding of the objectives of the Shari‘a and their application in contemporary Muslim lives, how can one assert the relevance of these lofty ideals and values preserved in the classical sources of Islamic legal thought? The challenge for any serious scholar of Islamic legal methodology is to come out of his/her “academic” claims in the real world where people are faced with day to day decision-making in all areas of human living in modern societies. Ijtihad, whether founded upon text-based hermeneutics or on purely rational estimation of the “objectives” of the divine law, is an on-going process that suggests nothing more than a work-in-progress.

In recent years ijtihad had opened a new chapter in forging an intimate and even logically feasible relationship between ethics and interpretive jurisprudence. The new methodology has drawn attention among some Shi‘ite jurists of Iraq, establishing a new integrative and yet distinct ethical underpinnings of Islamic religious law. If the process of ijtihad is related to methodological application of cognitively valid evidence in support of an acquired ruling in a case, then ethics (the search for and determination of objective evaluation of right or wrong course of action) forms an integral part of interpretive jurisprudence. The core of this paper will address this new development in the area of rational-textual reading of the legal methodology and its cognitive validity in the area of applied jurisprudence today.
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