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Author(s): L. CLARKE

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THE SHĪ'Ī CONSTRUCTION OF *TAQLĪD*

L. CLARKE
Concordia University, Montreal

Taqlīd in Islamic jurisprudence means 'emulation of another in matters of the law'. It is the complement of the principle of *ijtihād* or independent juristic reasoning; the believer who cannot gain first-hand knowledge of legal matters by performing *ijtihād* instead 'emulates' those who can. In this way, no one is left without assurance that he may be quit of the duty (*taklīf*) laid upon him by God to follow His ordinances. The one who performs *ijtihād* is called *mujtahid*; the one who emulates is called *muqallid*. *Taqlīd* has acquired special significance for Shī'ism[1] in the nineteenth and twentieth centuries as the theoretical foundation for an accentuated clerical hierarchy. This essay outlines some of the controversies associated with the construction of *taqlīd* argued by Shī'ī scholars in both classical and modern juridical treatises, with illustrations of the legal reasoning behind them. It concludes with a consideration of how these arguments have entered into current discussions of authority. The essay demonstrates that although the principle of *taqlīd* has become central to Shī'ism, the issues involved in it have always been subject to dispute, and that these disputes lend flexibility to the doctrine and enable potential change.

TAQLĪD IN JURISTIC WRITINGS

The doctrine of *taqlīd* is present in both the Sunnī and Shī'ī legal systems. The two schools use many of the same proof-texts from the Qur'ān and Ḥadīth. For the Shī'īs, however, the implications of accepting *taqlīd* as a legal principle after the disappearance of the Twelfth Imām were more acute. For this meant acknowledging that they no longer had access in the age of Occultation to the certainty (*yaqīn*) which only the Imām, now hidden, could have afforded them. They would have to rely, instead, on mere emulation of the uncertain opinions of learned men derived through legal reasoning. Many Shī'īs

[1] By Shī'ism is meant Twelver Shī'ism, to which the majority of present-day Shī'īs adhere.

were loath to accept the loss of certainty (the views of one group that persisted in this attitude, the Akhbārīs, are discussed below). Nevertheless, fully developed treatises on jurisprudence were already in place by the fifth/mid-eleventh century, a mere one hundred years after the beginning of the Greater Occultation in 329/941, and these already speak familiarly of *taqlīd*.[2]

Taqlīd is treated in works of *uṣūl al-fiqh* or 'bases of the law', which discuss the derivation of legal rulings. In the earliest *uṣūl al-fiqh* treatises, such as those of al-Sharīf al-Murtaḍā (d. 436/1044) and Shaykh Ṭūsī, known as 'Shaykh al-Ṭā'ifa' (d. 460/1067), the subject of *taqlīd* is found under the heading '*ṣifāt al-mustaftī*'—attributes of him who [must] seek legal opinions. By the time of al-Muḥaqqiq al-Ḥillī, 'al-Muḥaqqiq al-Awwal' (d. 676/1277), author of the *Maʿārij al-uṣūl*, the emphasis is no longer on the processes of issuing and seeking of legal opinions (*iftā'* and *istiftā'*) but rather on *ijtihād* or legal reasoning. *Taqlīd* has become the corollary of *ijtihād*. By the nineteenth century, discussion of *ijtihād* and *taqlīd* frames juridical treatises either as a preface or postscript, highlighting the fact that authority is the product of expertise in a discipline of complex legal reasoning limited to only a few. Sayyid Muḥammad Kāẓim Yazdī's (d. 1919) *al-ʿUrwa al-wuthqā* is one famous example, followed by its many commentaries. The history of *taqlīd* thus appears to represent, in its general sweep, an ever-increasing assertion and rigidity of juridical authority.

[2] Some Shīʿī scholars even consider that *taqlīd* took place in the time of the Prophet and imāms. They argue that although the Prophet's rulings were, of course, certain, this certainty was not transferred to the following of those rulings, which is therefore properly described as *taqlīd*. See Shaykh Ṭūsī, 'Shaykh al-Ṭā'ifa', *ʿUddat al-uṣūl fī uṣūl al-fiqh* [lithograph: scribe Mīrzā Muḥammad al-Shīrāzī] (Bombay: Duttprasad Press, 1312–1318/1895–1900), 116–17 (relating the opinions of others), and ʿIzz al-Dīn Baḥr al-ʿUlūm, *al-Taqlīd fī l-sharīʿa al-islāmiyya* (Beirut: Dār al-Zahrā', 1398/1978), 116–26; see also Rūḥ Allāh Khomeini, *Risāla fī l-ijtihād wa l-taqlīd* in Shaykh Jaʿfar al-Subḥānī al-Tabrīzī, *Tahdhīb al-uṣūl* (transcriptions of studies under Ayatollah Khomeini), 3 vols (Qum: al-Maṭbaʿah al-Ghilmīya, 1382/1962), 3:167. For views on certainty in the time of the imāms see Shaykh Bahā'ī, *Zubdat al-uṣūl* [lithograph: scribe Muḥammad Ṣādiq ibn Muḥammad Riḍā al-Tuwaysirkānī] (Tehran: Barādarān-i Najafī, 1319/1901), 116–17, 123–4 and Baḥr al-ʿUlūm, *Taqlīd*, 19. Others argue that that just as the legal rulings (*aḥkām*) of the Prophet, since they were the result of revelation, were in the realm of absolute certainty (*qaṭʿīya*) and not *ijtihād*, so following the imāms before the Occultation of the twelfth imām also involved certainty rather than *taqlīd*. See Shaykh Bahā'ī, *Zubdat al-uṣūl*, 116–17 and Ḥillī, 'al-Muḥaqqiq al-Awwal', *Maʿārij al-uṣūl* [lithograph: scribe Mīrzā Muḥammad al-Shīrāzī] (Tehran: Dār al-Nāṣira al-Bāhira al-Qāhira, 1310/1893), 51.

There are also independent discussions of *ijtihād* and *taqlīd*. Āghā Buzurg Ṭihrānī lists seventeen works under this title in his grand bibliography of Shī'ism *al-Dharī'a ilā taṣānīf al-Shī'a*.[3] Most of the titles Ṭihrānī records belong to the mid-eighteenth through the early twentieth centuries. The eighteenth and nineteenth centuries were the time of the great, final struggle of Uṣūlism with renascent Akhbārism—of the faction of Shī'īsm that favoured reliance on a system of legal reasoning and emulation of those who had mastered this system with the faction that insisted that the believers should 'emulate' only the imāms by referring to the record of their words and deeds, the *akhbār* or *ḥadīth*s. Most of the works listed by Ṭihrānī are still in manuscript. One important work available as a lithograph, the *Risālat al-ijtihād wa l-taqlīd* of Waḥīd Bihbihānī, the eighteenth-century champion of Uṣūlism, combines an attack on the reliability of *ḥadīth* with a defence of Uṣūlism and the position of the Uṣūlī *mujtahid*s, without dwelling on *taqlīd* as such.[4] The literature of this important juncture in the development of *taqlīd* has yet to be investigated.

The necessity (wujūb) of taqlīd and prohibition of taqlīd in fundamental beliefs

The Shī'īs use texts from the Qur'ān and Sunna to investigate questions pertaining to the validity of *taqlīd* such as 'Did the imāms actually recommend resort to learned persons of the community?' and 'Where some kind of resort apparently took place, was this *taqlīd* of the person resorted to, or rather an attempt to receive, second-hand, instruction from the imām?' No single text, however, is thought to constitute a *ḥujja* or authoritative proof for *taqlīd*.[5] In Sunnī Islam, *taqlīd* is compulsory because it is established by *ijmā'* or consensus. *Ijmā'* is also considered by some Shī'īs to be one of the indications for *taqlīd*. In the fifth/tenth century, al-Sharīf al-Murtaḍā wrote: 'There has never been any dispute in the community, either in the past or in the present, over the necessity of resort (*rujū'*) by the common man (*'āmmī*) to the *muftī*, or over the fact that he must accept that *muftī*'s teaching ... . He who disputes this stands in violation (*kāna khāriqan*)

[3] Muḥammad Muḥsin Āghā Buzurg Ṭihrānī, *al-Dharī'a ilā taṣānīf al-Shī'a*, 18 vols (Najaf: Maṭba'at al-Qaḍā', 1936), s.v. '*al-Ijtihād wa l-taqlīd*'. The *Dharī'a* is arranged alphabetically by title; there may be additional works on the subject, but under different titles.

[4] This short work is also referred to as *Risālat al-ijtihād wa l-akhbār*, perhaps a more appropriate title for it; see Ṭihrānī, *Dharī'a*, s.v. '*al-Ijtihād wa l-akhbār*'.

[5] A detailed discussion of the texts from the Qur'ān and Ḥadīth is found in Baḥr al-'Ulūm, *Taqlīd*, 116–26.

of the *ijmāʿ*.' Despite al-Sharīf al-Murtaḍā's statement, however, very few Shīʿīs have referred the matter of *taqlīd* to *ijmāʿ*.[6]

In modern discussions, the case for *taqlīd* is based on reason. The Shīʿīs say that *taqlīd* is not a legal (*sharʿī*) necessity, that is *taqlīd* is not a duty imposed by the law. As with *ijtihād*, it cannot be so because the law would then contain a provision in itself requiring that it itself be followed, resulting in a vicious circle (*dawr*).[7] The necessity for *taqlīd* is said rather to be either based on 'rational precedent' (*al-sīra al-ʿaqliyya*), or innate (*fiṭrī*).

Rational precedent or *al-sīra al-ʿaqliyya* refers in Shīʿī jurisprudence to the general custom of all nations, including non-Muslims. The general precedent among Muslims only, or among the Shīʿa only, is referred to as 'legal precedent' (*al-sīra al-sharʿiyya*). Both kinds of precedent must be present in order to constitute a proof (*ḥujja*) with regard to legal matters. In addition, the example of the Prophet or imāms must also point to the execution (*imḍāʾ*) of the precedent.[8] The rational precedent for *taqlīd* is the habit found among all peoples of the ignorant (*jāhil*) turning to the learned (*ʿālim*) for advice in those affairs of which they have no knowledge. Khomeini writes:

> One might even say that the sole proof for *taqlīd* is, in accordance with [the practice of] rational persons, the resort of the *jāhil* to the *ʿālim*. [The desire or habit of resorting to learned persons] has even been considered to be inherent in man, a product of both nature and nurture. For it is thus that he perceives the necessity of seeking knowledge from learned persons, in matters having to do with his livelihood and material life as well as in other areas. The *jāhil* resorts in matters having to do with the practical arts to the artisan, and the sick man who cannot cure himself resorts to the physician.[9]

The legal precedent or *sīra sharʿiyya* is also present as required, for it is evident from the Ḥadīth that resort of the *jāhil* to the *ʿālim* was the norm in the early Muslim community. Finally, since legal precedent agrees with rational precedent, that the Prophet did not repudiate (*r-d-ʿ*) resort of the ignorant to the learned points to his assent to and therefore execution of this custom. Khomeini writes: 'Lack of repudiation of the legal custom by the Prophet—despite his knowledge that the community would resort to jurists among whom there

[6] See Riḍā Sar, *al-Ijtihād wa l-taqlīd* (Beirut: Dār al-Kitāb al-Lubnānī, 1976), 86, where al-Sharīf al-Murtaḍā is also quoted.

[7] See Baḥr al-ʿUlūm, *Taqlīd*, 45.

[8] For a summary of the *sīra* in the *uṣūl* and conditions for its authoritativeness, see Muḥammad Riḍā al-Muẓaffar, *Uṣūl al-fiqh*, 2 vols (Beirut: Dār al-Taʿāruf, 1403/1983), 2:153ff.

[9] Subḥānī al-Tabrīzī, *Tahdhīb*, 3:164–5.

would be dispute—is proof of his execution of and satisfaction with [this practice].'[10]

The necessity of *taqlīd* is also, from the point of view of reason, 'innate' (*fiṭrī*), because of the innate desire of every human being to avoid the punishment awaiting him in the next world if he does not act in accordance with the commands of God. The *jāhil* or 'ignorant one' is faced with situations in which he must follow the divine law. At the same time, he realizes that he hasn't the capacity to attain the knowledge he needs to be certain that he is properly obeying that law. He thus turns to *taqlīd* to protect himself from possible harm. This argument is called the argument of repulsion of harm (*daf' al-ḍarar*). A similar argument is expressed through the juridical proof called 'proof according to blockage' (*dalīl al-insidād*). According to this proof, since precise knowledge of most rulings is impossible after the time of the imāms, the *mukallaf* (believer charged by God with fulfilling the duties or *taklīf* laid upon him by God) must find an alternative in order to avoid punishment. One alternative is to rely on whatever certainty (*yaqīn*) may still be had from the texts. Certainty, however, is accessible in only a few areas, such as prayer. Other alternatives are *ijtihād* (supposing one is competent to perform it) and caution (*iḥtiyāṭ*), meaning either the covering of all possibilities in the expectation that at least one will coincide with the actual (*wāqi'*) command of God or, in a situation in which there are conflicting opinions, refraining from action altogether in order to avoid doing wrong. And then there is, of course, the alternative of *taqlīd*, which is most accessible and easiest.[11]

Taqlīd is, however, limited to the laws of the *sharī'a* called the 'branches' or *furū'*. Emulation without knowledge in matters of fundamental belief (called the *uṣūl* or 'roots') is not permitted. This is the opinion held by the generality of Sunnīs as well as Shī'īs. Al-Sharīf al-Murtaḍā writes:

> The inclusion of the roots along with the branches in permission for *taqlīd* is not legally valid. This is because *taqlīd* by the *mustaftī* [the one who seeks a legal opinion] of the *muftī* is itself permitted because the *mustaftī* is able to gain knowledge of the appropriateness (or 'good'—*ḥusn*) and necessity of that *taqlīd*. He is able to gain this knowledge because of his [prior]

[10] Ibid. 3:174. Khomeini means that the Prophet would certainly have realized that there would be serious dispute among the jurists, so that this would doubtless have moved him to forbid resort to them—had it not been for the fact he positively approved of such resort.

[11] For a discussion of the *dalīl al-insidād*, see Muẓaffar, *Uūl*, 2:27ff.

knowledge of the roots. Were he not cognisant (*ʿāliman*) of the *uṣūl*, it would surely not be possible for him to be aware of the appropriateness of this *taqlīd*.[12]

In other words, the validity of *taqlīd* depends on knowledge of fundamental beliefs; how then could knowledge of the beliefs itself depend on *taqlīd*? The result would be a vicious circle. The validity of the *uṣūl* must therefore be perceived by the intellect.

Another argument against *taqlīd* in the 'roots' or fundamental beliefs concerns the nature of *taqlīd* itself. In matters of the *furūʿ*—the 'branches' or actual laws of the *sharīʿa*—the *muqallid* is protected from punishment for possible error through God's acceptance of the results of a probabilistic determination of the law. (This legal probabilism is discussed in the next section.) In the case of the creed, however, there can be no dispensation for such error. Knowledge of fundamental beliefs such as the existence of God must be correct, not probable. If, therefore, the 'ignorant' (those who are unable to perform *ijtihād*) were simply to imitate others in matters of *uṣūl*, they would expose themselves to the possibility of sinful error—an occurrence that it is the whole purpose of the doctrine of *taqlīd* to avoid. Al-Sharīf al-Murtaḍā says: '*Taqlīd* in the roots does not rest, as does *taqlīd* in the branches, on a method of knowledge which protects one from approach to that which is reprehensible (*qabīḥ*).'[13]

As far as I am aware, the only jurist to recommend *taqlīd* in fundamental beliefs or *uṣūl* is Shaykh Ṭūsī, in the fifth/eleventh century. Ṭūsī argues that the complete ignorance of the layperson not guided by a *mujtahid* is more likely to expose him to error than the possibility of following an errant belief held by a *mujtahid*. He therefore extends the doctrine of *taqlīd* to the *uṣūl* (and that of legal probabilism along with it):

> The opinion that seems strongest to me is that the *muqallid* has the right (*ḥaqq*) in the 'roots' of religious matters. Even if he falls into error through his *taqlīd*, he shall not be punished for it, but pardoned [in the same way that he is pardoned for errors having to do with the branches] ... . For I find not one person among the Shīʿa who gave his allegiance [*walā*] to any of the imāms toward whom the imām then terminated his responsibility [*mawāla*] because he had [merely] heard their words and then adopted their beliefs, not relying on any proof based on reason or revelation. Nor can anyone say that [*taqlīd* in *uṣūl*] is not permissible because it leads to enticement [of the laity]

[12] *Al-Dharīʿa ilā uṣūl al-Shīʿa*, ed. Abū al-Qāsim Gurjī, 2 vols (Tehran: Intishārāt-i Dānishgāh, 1346/1927), 2:798.

[13] Ibid, 2:797; see also ʿAllāma Ḥillī, *Tahdhīb al-wuṣūl ilā ʿilm al-uṣūl* [lithograph; scribe: Abū l-Qāsim] (Tehran: Dār al-Khilāfah, 1308/1890–91), 2; and Ḥillī, *Maʿārij*, 54.

to [beliefs] that might be foolish—for it does not lead to anything of the kind. It is impossible for a *muqallid* to conceive, unaided, that such a thing [i.e. knowledge of the *uṣūl*] is feasible for him. Rather he fears [attempting] to approach such knowledge! Neither is it possible for him to be aware that the punishment of God would fall away from him [if he were to hold the correct beliefs] and sustain belief—for he could only be aware of this if he had knowledge of the *uṣūl* [in the first place]. But if we assume [as I do] that he is a *muqallid* in all these things, then how could he be aware of the dropping away of the punishment of God and be [at the same time] enticed to belief that might be foolish, or how could he sustain [such a false belief]? Someone other than himself—from among those learned men who possess knowledge of the *uṣūl* and who have studied all the matters relevant to it—would know [of the falling away of the punishment of God from those who hold the correct beliefs], and learned men do not terminate the responsibility they have toward their charges, nor do they abandon them. It is not possible for them to do such a thing unless they know that the possibility of divine punishment has dropped away [from those for whom they are responsible]. This puts the *muqallid* beyond the reach of enticement.[14]

Ṭūsī points here to a circularity in the argument against *taqlīd* in the fundamental beliefs—awareness of the danger of divine retribution which supposedly leads the 'ignorant' (*jāhil*) layperson to seek knowledge of the fundamental beliefs itself depends on knowledge of those beliefs.[15]

Later jurists reject Ṭūsī's acceptance of *taqlīd* in belief.[16] Those who argue against him set up their lines of defence around the problem of the kind of knowledge gained by the common man. This is the issue al-Sharīf al-Murtaḍā sees as important:

It is said that if it is permitted to do *taqlīd* in the branches [of the law], then it [should also be] permitted to do *taqlīd* in the roots [of belief]. But the stronger case [for those who hold for *taqlīd* in *uṣūl*] would be to argue that: 'We are told that the common man cannot do *taqlīd* in matters of *uṣūl* such as the Unicity and Justice of God and Prophethood, and that he must instead be cognisant (*'āliman*) of these things. But whoever is capable of knowledge of *uṣūl* such as these, with the multiplicity of difficult points involved, would also be capable of knowledge of the legal precepts that arise in temporal

[14] *'Uddat al-uṣūl*, 115.

[15] Of course, the argument, referred to above, that awareness of punishment is 'innate' (*fiṭrī*) would solve this logical problem.

[16] E.g. Ḥasan ibn Zayn al-Dīn al-'Āmilī, *Ma'ālim al-uṣūl* (also known as *Ma'ālim al-dīn*) [lithograph repro.], ed. Mudarrisī Chahārdihī, with the Persian translation–commentary of Āghā Hādī Mutarjim Māzandarānī (Tehran: Kitābfurūshī-i Shāfi'ī, 1379/1959 or 1960), 427ff; and in modern times al-Shaykh al-Anṣārī, *Farā'iḍ al-uṣūl* [lithograph: scribe al-Hādī Muṣṭafā al-Najmābādī] (Tehran: Kitābfurūshī-i Muṣṭafavī, 1326/1908 or 1909), 178.

affairs—and if he is capable of this knowledge, then *taqlīd* is forbidden him.'[17]

Shaykh Ḥasan ibn Zayn al-Dīn al-ʿĀmilī (d. 1011/1602), author of the *Maʿālim al-dīn*, sets out further details of Ṭūsī's argument for *taqlīd* in the *uṣūl*:

Ṭūsī offers two proofs. This first is the that the '*ulamā*' of all the towns assent to the [simple] Declaration of Faith (*shahāda*) of the common people, even though they know that the common people have not arrived at those beliefs through decisive (*qaṭʿī*) proofs [but are rather simply doing *taqlīd* of the '*ulamā*']. [To this it might be objected that] the Declaration of Faith is accepted because the laity knows the basic premises (*awā'il*) of those proofs, which are easy to grasp. To which we [Ṭūsī] reply that: If such knowledge were to accrue to every *mukallaf* [as it would if the knowledge were that simple], there would remain no one liable to punishment [which would render the reward and punishment spoken of by God meaningless]. On the other hand, if it is maintained that [the premises of belief] are not [automatically] known to every *mukallaf*, then judgement of the Declaration of Faith would have to rely on knowledge that the proofs had been understood [by the *mukallaf*] ... . and this is impossible *since none of the 'ulamā' have required such a thing*.[18] [The second proof adduced by Ṭūsī] is that the Prophet judged that the Islam professed by the Arabs [was authentic] without [first] presenting them with the proofs for the words [of the Declaration] ... . They learned the obligatory devotions contained in the *sharīʿa*, such as prayer, [simply] by his command.

ʿĀmilī then answers:

In fact, it is not necessary to set out proofs, as that is commonly conceived, nor to defend them point by point. What is necessary is knowledge of the general sense (*al-dalīl al-ijmālī*), to the point that it engenders certainty. This can be attained with very little study. Thus it is not necessary to question someone about his knowledge in order to accept his declaration of faith, and the Prophet did not present the proof to the Arabs because they had already acquired the requisite knowledge through him.[19]

Al-Sharīf al-Murtaḍā explains the nature of this general knowledge:

Knowledge of the *uṣūl*—of Unity and Justice and related matters—can be known in a general manner (*ʿalā jihat al-jumla*), in its most summary and accessible aspects. [In any case,] if the common man comes across a difficult point, he will not realize how that might impair his belief ... . [He will only realize this] if he is also capable of solving it and of acquiring the knowledge

[17] *Dharīʿa*, 796. Here al-Sharīf al-Murtaḍā, in the style of scholastic dispute, begins by presenting an argument contrary to his own opinion. His subsequent refutation appears below.

[18] Text in italics addition of the Persian commentator.

[19] *Maʿālim al-uṣūl*, 12–13.

necessary [for its understanding and solution]. If, on the other hand, he is not capable of such a thing because of limited intelligence, then he will not be aware of the fact that a certain difficult point might impair his belief—and it will not affect him.

In contrast, (al-Sharīf al-Murtaḍā continues) the many incidents of single laws—the 'roots' or *furū'*—cannot be taken together and abridged so that a general understanding may be got of them altogether, as is the case with the *uṣūl*. Rather, each incident requires knowledge peculiar to it. The common man is not capable of such detailed knowledge, and therefore must resort to *taqlīd*.[20]

PROBABILISM IN SHĪ'Ī LAW: THE DOCTRINE OF *KHAṬA'* AND *ṢAWĀB*

Ḥasan ibn Zayn al-Dīn al-'Āmilī in his *Ma'ālim al-dīn* defines *taqlīd* as 'action according to the directive of someone other than oneself, without proof' (*al-'amal bi-qawl al-ghayr min ghayr ḥujja*).[21] Thus the *muqallid*, in order to be considered such, must be unaware of the reason for the course he is advised to follow. The function of the *mujtahid* from the point of view of *taqlīd* is to gain the proof or *ḥujja* on behalf of the *muqallid*. (Note that a *ḥujja* does not engender certainty [*qaṭ'*]. It is only that which 'reveals something of another thing, speaking to it in such a way that it confirms or establishes that thing.'[22] What the *muqallid* lacks and expects to gain through his *taqlīd* of the *mujtahid* is relevant or likely proof, not certainty.) The *mujtahid* takes the *muqallid*'s responsibility for the correctness of his actions upon himself, while the *muqallid* is quit of his responsibilities by following the directive of the *mujtahid*. This shifting of responsibility is at the root of the concept of *taqlīd*, in accordance with its lexicographical meaning, 'hanging something around someone's neck'. The common man places responsibility for his actions, as it were, on the shoulders of the *mujtahid*.[23]

[20] *Dharī'a* 3:798–9. Notice that the arguments in the juridical texts against *taqlīd* in the fundamental beliefs or *uṣūl* are, in accord with the nature of those texts, logical arguments aimed at epistemology. Belief, in other words, is treated as cognition. The experiential nature of belief is not taken into account—even though this is the focus of discussions of faith or *īmān* in the realm of theology, where much is made, for instance, of the verification (*taṣdīq*) of the heart.

[21] *Ma'ālim*, 13.

[22] Muẓaffar, *Uṣūl al-fiqh*, 2:8.

[23] For a statement of this *dalīl lafẓī* (linguistic proof), see Mīrzā 'Alī al-Gharawī al-Tabrīzī, *al-Ijtihād wa l-taqlīd min al-tanqīḥ fī sharḥ al-'Urwa al-wuthqā* (transcriptions of studies under Ayatollah Khū'ī) (Najaf: Maṭba'at al-Ādāb, n.d.), 78.

Yet it is admitted that the *mujtahid* may be in error as to the actual and absolutely correct legal precept (*al-wāqiʿ*). Shaykh Bahā'ī states: 'The common view is that [legal opinions] cannot be regarded as always correct (*al-mashhūr ʿadam al-taṣwīb*)—as indicated by the widespread attribution of error in past generations [by *mujtahid*s] to one another, with none denying this [possibility of] error ... [and as also indicated by] the necessity which would then result of combining two opposites ... and believing each to be preponderant [at the same time].'[24] The solution lies in the concept of proof or *ḥujja*. Briefly stated, 'proof' results from the process of *ijtihād* whether the result of that *ijtihād* coincides with the *wāqiʿ* or not, that is whether the *mujtahid* is correct, or in error.[25] All the *mujtahid* has to do to gain authoritativeness or *ḥujjiyya* for his opinion is to exercise his powers of *ijtihād* to the fullest capacity possible for him.

It is not correct, as Schacht has asserted,[26] that 'the *mujtahid*s of the Twelver Shīʿīs are infallible'. The infallibility of the imāms does not extend to the *mujtahid*. There is a possibility of error by the *mujtahid* in the Shīʿī view just as there is in the view found among the Sunnīs. In fact, the Shīʿīs appear to emphasize error more than most Sunnīs do. For modern Shīʿī jurists perceive this difference between themselves and the Sunnīs—that while most Sunnīs assert that the ruling of all jurists is 'right', the Shīʿa believe that, since an actual divine injunction does always exist for every thing and since, in the absence of the Hidden Imām, the human mind is not wholly equal to grasping it except in certain limited cases, the jurist is most likely to be in error.[27]

The result of this doctrine, from the point of view of *taqlīd*, is that the *muqallid* is not held accountable for following a precept that is at some distance from the *wāqiʿ* (which is, of course, known only to God). That precept has only to be accompanied by *ḥujja*, obtained through the reasoned supposition (*ẓann*) of the *mujtahid*. Al-Sharīf

[24] *Zubdat al-uṣūl*, 114–15. Shaykh Bahā'ī means that since it can be observed that *mujtahid*s produce different opinions, it must be that at least some are in error as to the *wāqiʿ*; otherwise conflicting opinions would have to be admitted to be correct at the same time—which is impossible.

[25] See further Muẓaffar, *Uṣūl al-fiqh*, 2, chapter on *ḥujja*.

[26] *EI*[1], s.v. 'Khaṭa''.

[27] For a statement of this in English, see Ayatollah Muḥammad Bāqir al-Ṣadr, *A Short History of 'Ilmul Uṣūl*. Y. K. Nafsi (Accra and Bombay: Islamic Seminary Publications, 1984), 51ff. The belief that there is a divine injunction for every thing is already underscored by the tales in the Shīʿī *ḥadīth*s of comprehensive books of legal rulings possessed by the imāms such as the '*Kitāb ʿAlī*' and '*Jāmiʿah*', as well as by the assertion that all knowledge that will ever be required is contained in the full understanding of the Qur'ān known by the imāms. It is said, for instance, that 'Alī knew all the legal injunctions that would ever be needed, even down to 'the penalty for a scratch [inflicted]' (*arsh al-khadash*).

al-Murtaḍā says: 'There is nothing to prevent a person seeking a legal opinion from accepting the declaration of a mufti who may be in error ... for the getting of a *ḥujja* by [merely] seeking an opinion protects him from approach to anything evil (*qabīḥ*).[28] To consider that a *muqallid* could be held responsible for the error of a *mujtahid* (which error, being a common man, he could not possibly perceive) would be, as Shaykh Bahā'ī notes, 'repugnant to reason' (*qabīḥ 'aqlan*).[29]

QUALIFICATIONS OF THE *MUJTAHID*

There are basically two aspects of *ijtihād* relevant to the theory of *taqlīd*. These are the definition of the *mujtahid* as against the emulator or *muqallid*, and the means by which the emulator may know the *mujtahid*.

The first requirement for a *mujtahid* is knowledge of the law. This learning includes knowledge of the Qur'ān, the Sunna, the Arabic language, and the principles of the science of *uṣūl al-fiqh* or jurisprudence, as well as certain other fields such as logic.[30] Some earlier texts cite more limited requirements. Al-Muḥaqqiq al-Awwal, for instance, limits the knowledge required of the Qur'ān to only the legal verses (the number of which he fixes at five hundred), and knowledge of the *ḥadīth*s to those connected with legal ordinances. He even says that it is not necessary to have these in memory, but only to be 'learned' in them.[31] All persons capable of *ijtihād* may rely on their own opinions in the matters in which they are competent. There are a number of additional qualifications, however, for *mujtahid*s who are the objects of *taqlīd*, that is whom others emulate. The number and definition of these additional qualifications vary from one discussion to another. A *mujtahid* must first possess the quality of justice (*'adāla*); 'justice' here is akin to piety, and includes

[28] *Dharī'a*, 797–8.

[29] *Zubdat al-uṣūl*, 119. The Shī'īs believe that humankind can perceive good and evil independent of revelation. Thus in Shī'ī jurisprudence, the categorical judgement by the intellect of something as *qabīḥ* or repugnant may rule it out. For a discussion of this principle in the context of the vexed question of reason (*'aql*) in Shī'ī jurisprudence see Muẓaffar, *Uṣūl*, 2:109ff.

[30] There is, however, disagreement as to the disciplines to be included in *ijtihād*. Both Khū'ī and Khomeini, for instance, do not consider the science of logic to be necessary. The logical axioms that are evident to all, they say, are sufficient for the discipline of *uṣūl al-fiqh*. (Gharawī, *Tanqīḥ*, 25; al-Subḥānī al-Tabrīzī, *Tahdhīb*, 3:139).

[31] *Ma'ārij*, 57.

adherence to the Shīʿī faith. Examples of other qualifications are legal majority, faith (*īmān*, by which is meant belief in the Shīʿī imāms), and male sex.

As for the definition of the power of *ijtihād* itself, there are two views. Some consider that *ijtihād* results only when legal ordinances are extracted *in fact*. Shaykh Bahāʾī (d. 1011/1602) attributes this opinion to ʿAllāma Ḥillī (d. 726/1325); according to Ḥillī, *ijtihād* is 'the full exercise of one's capacity (*istifrāgh al-wusʿ*) in the seeking of a reasonable supposition (*ẓann*) regarding some aspect of the legal ordinances of the *sharīʿa*, in such a way that blame for dereliction (*taqṣīr*) falls away [from the *mujtahid*].'[32] Others say that *ijtihād* is a faculty; Shaykh Bahāʾī himself describes it as 'a *malaka* (faculty) which makes possible the inference (*istinbāṭ*) of the legal rulings (or 'branches', *farʿ*) from the root (*aṣl*), that is the bases of the law, *either actually or potentially*.'[33] (It is clear from the jurists' discussions that what is meant by *malaka* is not aptitude, but the actual ability that results from learning, becoming part of the permanent equipment of the subject.) Ayatollah Khūʾī, the chief 'resort' for *taqlīd* of the Shīʿī world until his death in 1992, attributes the definition of *ijtihād* as *malaka* only to 'later scholars' (*al-muta'akhkhirūn*), that is those living after the fourteenth century.[34] That *ijtihād* is a faculty was the position of the great nineteenth-century jurist, Anṣārī,[35] as well of both Khūʾī and Khomeini.

This difference in the definition of *ijtihād* is important in deciding the line between *mujtahid* and *muqallid*. ʿAllāma Ḥillī says that *taqlīd* is permitted to one who has not practised *ijtihād*, even if he 'is learned and has reached the rank of *ijtihād*'.[36] Khomeini, on the other hand, emphasizes that

> if a man devotes himself assiduously to the preliminary studies necessary for the exercise of *ijtihād*, applying himself to them with firm resolve so that the potential for *ijtihād* results from his study and he attains to that holy rank, then although he may not extract one single legal ordinance … so that it may be justly said of him that he is ignorant (*jāhil*) in this respect, *taqlīd* of another will be forbidden to him. He is obliged to employ all his capacities and use his mind to the fullest in order to obtain the ruling [which may be necessary for him].

[32] *Zubdat al-uṣūl*, 115.
[33] Ibid. Emphasis added.
[34] Gharawī, *Tanqīḥ*, 21.
[35] As reported by Khūʾī from Anṣārī's own *Risāla fī l-ijtihād wa l-taqlīd*: Gharawī, *Tanqīḥ*, 30.
[36] *Tahdhīb*, 2.

This is because, Khomeini says, the whole basis for the theory of *taqlīd* is the rational principle that the ignorant person must resort to the learned; all the instances in the Qur'ān and Sunna where resort is recommended refer only to those who cannot reach the level of *ijtihād*.[37]

In short, when *ijtihād* is defined as a faculty rather than an action, that faculty bars the *mujtahid* from resorting to *taqlīd*. It is no longer possible for one to claim to act as a qualified jurist at some times, but as a layperson at others. If this position is, as Ayatollah Khū'ī suggests, a later one, it may indicate a determination in those times to more clearly mark off the religious experts from the laity.

A related question is that of the so-called partial (*mutajazzi'*), as opposed to the absolute (*muṭlaq*) *mujtahid*. Even though the earliest texts do not employ these terms, they still admit the possibility of partial competence by allowing that the mufti or *mujtahid* need only be capable of extracting 'some' or 'a large part' of the legal rulings.[38] Some scholars have considered the absolute *mujtahid* an impossibility, given that acquisition of all knowledge relevant to the *sharī'a* is impossible. Others consider all *mujtahid*s to be *muṭlaq*, regarding the faculty of *ijtihād* as one and indivisible. Again, some consider the partial *mujtahid* a possibility, and others an impossibility.[39] The dominant opinion, however, has been that a partial *mujtahid* may exist.

What is the position of the partial *mujtahid* with regard to *taqlīd*? The believer charged with *taklīf* must be able to be guided in all the instances of the *sharī'a* necessary for him. The partial *mujtahid* may therefore do *taqlīd* in matters in which he has not reached the level of *ijtihād*. In this way he combines the roles of religious expert and layperson, that is of *mujtahid* and *muqallid*. Even so, the jurists are careful to emphasize that the line between emulator and emulated is not fluid. Shaykh Bahā'ī says: 'The *mutajazzi'* is to do *taqlīd* [only] in matters concerning which he is not well informed, if time is short.'[40] Khū'ī also says:

The *mutajazzi'* is learned in [those legal ordinances] which he extracts—that is he is more learned than those other than himself. Thus his resort to another

[37] Subḥānī al-Tabrīzī, *Tahdhīb*, 3:137. Emphasis on *ijtihād* as faculty seems to be in harmony with the view that the authoritative proof or *ḥujja* of any person arrived at through his own effort of *ijtihād* must for him be superior to a proof arrived at by another, because the certainty derived from witnessing a thing oneself is necessarily greater than that of hearing the witness of another. See Baḥr al-'Ulūm, *Taqlīd*, 168.

[38] See for instance al-Sharīf al-Murtaḍā, *Dharī'a*, 2:800.

[39] For a discussion of these alternatives, including proofs and counterarguments, see Baḥr al-'Ulūm, *Taqlīd*, 177ff.

[40] *Zubdat al-uṣūl*, 120.

would constitute the resort of a learned person (*ʿālim*) to an *ʿālim*, or [rather] that of an *ʿālim* to someone who is, from his point of view, ignorant (*jāhil*), for he might consider the other to be in error (*qad yarā khaṭaʾa-hu*)—and how could he resort to one whom he believed to be in error in his *ijtihād*?[41]

We now turn to the means by which the emulator may know the *mujtahid*. Here the question is: The emulator is by definition ignorant of matters having to do with *ijtihād*. How then can he identify the *mujtahid* he is to follow? The answer generally given is that the emulator knows the *mujtahid* through inductive reason, that is through observation. Al-Sharīf al-Murtaḍā says:

> The common man has access to knowledge of the characteristics of him from whom he must seek legal opinions, for he will know the situation of the *ʿulamāʾ* in the area in which he lives through social intercourse (*mukhālaṭa*) and through reliable reports attested by several authorities (*al-akhbār al-mutawātira*), and he will also be aware of their ranks in learning, uprightness (*ṣiyāna*), and attachment to religion.

ʿĀmilī, author of the *Maʿālim*, adds: '... or [the *mujtahid* may be known] through the witness of two just and informed persons, for that is also proof [*ḥujja*]—except that it is difficult for all the conditions necessary for the acceptance of this witness to be found together *since one of the conditions of witness is that it be based on certain (qaṭʿī) knowledge, and a witness would rarely have such knowledge of all the qualifications*'.[42] The assertion that a *mujtahid* may be known by observation, al-Sharīf al-Murtaḍā continues, is not damaged by those who say that one who is himself ignorant cannot judge the knowledge of others, for 'we do know who are the most learned in the towns in which we live in areas such as commerce and goldsmithery, even though we may know nothing of these things ourselves. The same holds true for knowledge of grammar and literature [and thus also for the other sciences connected with *ijtihād*].'[43]

On the other hand, al-Ḥillī, known as 'al-Muḥaqqiq al-Awwal', cautions that the *mujtahid* is not to be known by his own declaration. Such a person, he says, may be mistaken as to his own status, or even be a liar. Nor can he be distinguished by the common man who may see him engaged in issuing legal opinions or who observes his uprightness and piety. The *mujtahid* who is to be an object of *taqlīd* may be known only through the estimation of the *ʿulamāʾ*.[44]

[41] *Tanqīḥ*, 35.

[42] *Maʿālim*, 429. Text in italics addition of the Persian commentator.

[43] *Dharīʿa*, 801.

[44] Cited in ʿĀmilī, *Maʿālim*, 431. Ḥillī as cited here by ʿĀmilī seems to be in conflict with a statement (quoted below) from Ḥillī's own *Maʿārij*. I do not know where ʿĀmilī's citation is taken from, or how it can be reconciled with the *Maʿārij*.

Al-Muḥaqqiq al-Awwal's remarks raise a delicate question. Can the identification of the *mujtahid* by the *muqallid* be in error? One would assume that it cannot, since the possibility that the *muqallid* might be, through no fault of his own, led astray by false authority would surely be repugnant to reason. Such a possibility would destroy the whole basis of the theory of *taqlīd*, as well as the perfect Justice of God, which is so important to the Shī'īs. The two Ḥillīs appear to address themselves to this problem. Al-Muḥaqqiq al-Awwal writes: 'It is agreed that one may not seek legal opinions except from him who seems most likely in one's view (*ghalaba 'alā ẓannihi*) to possess both *ijtihād* and piety, [which he may determine by] seeing him giving fatwas in the sight of the people. It is also agreed that it is not permitted to ask someone [for a legal opinion] whom one considers (*yaẓunnuhu*) neither learned nor pious.'[45] Al-Muḥaqqiq al-Awwal seems to imply that the common man may rely on his presumption, whether right or wrong. 'Allāma Ḥillī goes further. 'He who seeks legal opinions,' he writes, '*is not required to have certain knowledge of the ijtihād of the mufti*;[46] ... rather he is to do *taqlīd* of him who seems most likely in his view (*man yaghlibu 'alā ẓannihi*) to possess both *ijtihād* and piety.' According to 'Allāma, this *ẓann* or reasonable supposition is got through witnessing the mufti giving fatwas among the people and through the agreement (*ijmā'*) of the Muslims as to his status.[47] Both al-Muḥaqqiq al-Awwal and 'Allāma extend the principle of *ẓann* (reasonable supposition) and therefore also probabilism to the *muqallid*'s identification of the *mujtahid*. That is, once the *muqallid* has arrived at a reasonable supposition as to who the learned jurist or *mujtahid* is, he is no longer responsible for the real status of the one he has chosen. He shall not suffer the punishment of God if his presumption is in error. 'Āmilī, on the other hand, rejects 'Allāma's view, emphasizing that the common man or *'āmmī* does have reliable ways (those enumerated above) to identify the learned jurist or *'ālim*, so that he shall not be in error.[48]

TAQLĪD OF THE DEAD

The Sunnīs and, among the Shī'īs, the Akhbārīs (now only a small minority dwelling in Bahrain and southern Iraq) permit *taqlīd* of

[45] *Ma'ārij*, 55.

[46] Meaning not the correctness of each of the mufti's efforts of *ijtihād*, but rather the status of his *ijtihād* altogether.

[47] *Tahdhīb*, 2.

[48] *Ma'ālim*, 429–31.

a dead *mujtahid*. It may even be said that this is presently the rule for the Sunnīs, since they are now thought to do *taqlīd* of the founders of the four schools. The Uṣūlī Shīʿīs, on the other hand, insist that one can only do *taqlīd* of a living *mujtahid*.[49] Several proofs are adduced against *taqlīd* of the dead. Al-Muḥaqqiq al-Awwal allows such a *taqlīd* only when 'it is related from a living *mujtahid* who heard it directly from [the deceased *mujtahid*] ... or if a trustworthy document is found related to it.'[50] The issue for al-Muḥaqqiq al-Awwal is therefore the reliability of *taqlīd* of one who is not alive to testify to his opinion. (Since the *mujtahid*s today who serve as resorts for imitation each publish a treatise summarizing their rulings, called a *Risāla*, this objection would seem to have been removed.) Another argument against *taqlīd* of the dead asserts that the *ḥujjiyya* or authoritativeness of a *mujtahid* disappears along with his consciousness at his death—just as it would with insanity, senility, or other states of fading awareness.[51] The Uṣūlīs also point out that since the Qur'ān and the *ḥadīth*s of the imāms do not by themselves clearly address all the different circumstances of life that will arise through the ages, there must always be a living *mujtahid* present to interpret the evidence in relation to those changing circumstances. This is the most common argument, and it is discussed at greater length below. In the final analysis, however, the Uṣūlī prohibition against *taqlīd* of the dead is necessary to preserve *ijtihād* itself, for if it were permitted to bind oneself to the opinion of a dead scholar, there might eventually be no room left for the opinion of a living *mujtahid*. *Ijtihād* would become a wasting asset. Al-Muḥaqqiq al-Awwal writes: 'The statement of the dead *mujtahid* is not to be admitted, for *ijmāʿ* could not be formed if [the dead *mujtahid*] were included, while a living [*mujtahid*] opposed him.'[52]

[49] It is generally allowed, however, that while one may not do *taqlīd* of a dead *mujtahid* to begin with (*ibtidā'an*), it is allowed to the *muqallid* who followed a *mujtahid* while still alive to follow the same *mujtahid* after his death 'in continuation' (*baqā'an*). This permission pertains to any legal question already settled by that *mujtahid*. The reason given for *taqlīd* of a dead *mujtahid* 'in continuation' is that for a *muqallid* to have to apprise himself of a whole new set of rulings would involve 'unreasonable hardship' (*ḥaraj*), which it is not the intention of the law to impose. The directive that Khomeini's followers were to continue to do *taqlīd* of him after his death had this rationale (Khomeini himself answers this question in his *Kashf al-asrār* [Qum: n.p., n.d.], 192–3).

[50] *Maʿārij*, 55.

[51] Baḥr al-ʿUlūm, *Taqlīd*, 147. Baḥr al-ʿUlūm attributes this view to Waḥīd Bihbihānī.

[52] *Maʿārij*, 55.

Taqlīd of the living and dead has long been a subject of Shī'ī jurisprudence.[53] However, in the seventeenth and eighteenth centuries, during the Uṣūlī–Akhbārī controversy, it became the focus of intense sectarian argument. I will discuss it in that context.[54]

The great division between the Uṣūlīs and Akhbārīs occurs over the question of the bases of the law. The Akhbārīs admit neither consensus (*ijmā'*) nor reason (*'aql*) as bases of the law. They rely only on the Qur'ān and Sunna. In fact, the corpus of Shī'ī *ḥadīth* (also called *akhbār*) is considered by them to be virtually unimpeachable, so that both the opinions of the infallible imāms and the Qur'ān may be known through them. There is no need to resort to reason. The Uṣūlīs, on the other hand, consider the *ḥadīth*s recorded in the four canonical Shī'ī books to be obscure and subject to doubt. Thus they interpret the traditions in accord with reason, that is they interpret them so as to fit in with the conclusions of the rational argument.

It is this disagreement over the reliability of the traditions or *akhbār* that leads to dispute over *taqlīd* of the dead. In the view of the Akhbārīs, since learned persons derive legal principles only from unimpeachable sources, without relying on reason, their deductions will hold throughout time. The truths they have determined are certain and will not change after their deaths. The Uṣūlīs, on the other hand, admit that the deductions of their *mujtahid*s result only in *ẓann* or reasonable supposition. The outcome of a *ẓann* will vary from person to person over time. Only the *wāqi'*, that is the actual Divine precept (which is, in the absence of the Imām, fully known only to God) is unchangeable, and due to the limitations of the scriptural sources and of human reason, the *mujtahid*'s *ẓann* does not necessarily coincide with the *wāqi'*. The *ẓann*, moreover, will be different as objective circumstances change. A living *mujtahid* is therefore needed to perceive these changing circumstances and arrive at a new *ẓann*. It is with this background in mind that

[53] Ṣadr (*al-Ijtihād wa l-taqlīd*, 123–5) states that *taqlīd* of the dead was only discussed after the time of Shaykh Ṭūsī (Ṭūsī died in 1067). He also says that neither al-Muḥaqqiq al-Awwal in the *Ma'ārij* nor 'Allāma Ḥillī in the *Mabādi'* touches on this question. The *Ma'ārij*, however, clearly says that 'the statement of the dead [*mujtahid*] is not to be taken into account (*lā qawl li-l-mayyit*)' (55); the later Ḥillī repeats the same phrase (which is a standard one), although in his *Tahdhīb* (1), not in the *Mabādi'*.

[54] The twenty-one works listed in Āghā Buzurg Ṭihrānī's *Dharī'a*, by both Uṣūlīs and Akhbārīs, under the headings '*Taqlīd al-amwāt*'and '*Taqlīd al-mayyit*' date mostly from this period. One of these (#1732, unpublished) is by Waḥīd Bihbihānī, the late eighteenth-century champion of Uṣūlism mentioned above. This is evidently polemical literature.

Bihbihānī characterizes the Akhbārī position on *ijtihād* as leading to 'stagnation'.[55]

On the other side, the seventeenth-century Akhbārī champion Amīm Astarābādī in his *Radd ʿalā l-qā'il bi-l-ijtihād wa l-taqlīd fī l-aḥkām al-ilāhiyya* ('Refutation of those who would pronounce in favour of *ijtihād* and *taqlīd* in the divine rulings') completely rejects both *ijtihād* and *taqlīd*.[56] According to the Akhbārī view, one may only follow the inerrant imāms. This produces certainty; 'imitation without knowledge' of any later authority is not allowed. The common man has only to be informed by one learned in the Sunna of the *ḥadīth*s relevant to his case, of the apparent inconsistencies, and of the verdict of the imām. There is no such thing in the Akhbārī view as an 'ignorant' layperson (*jāhil*). Neither the one learned in the *ḥadīth*, nor the one who obtains knowledge from him can be *jāhil*; only he who does not follow either of these paths is ignorant.[57]

The greatest difference between Uṣūlī and Akhbārī, however, occurs not at the level of doctrine but, as suggested above, over a practical issue of literally vital importance: the survival of the *mujtahid* class. Permission to follow the opinions of dead scholars was in times of Akhbārī ascendancy an evident danger to living *mujtahid*s. A dignitary of the Safavid court in the first half of the eleventh/seventeenth century stated that no Shīʿī *mujtahid* remained in Iran or the Arab world in his time.[58] Bihbihānī's reaction to Akhbārism was to raise the spectre of the common people following random beliefs put forward by unqualified persons in the absence of the *ijtihād* of the *mujtahid*s.[59] At the present in Bahrain, where Akhbārism predominates, *taqlīd* of the dead (or perhaps more properly, consultation of their opinions) has led to a situation in which living *mujtahid*s have practically disappeared.[60]

[55] *Risālat al-ijtihād wa l-taqlīd* [lithograph] (Tehran: n.p., 1312/1895), 25.

[56] Tehran: n.p., 1321/1903 or 1904.

[57] For an Akhbārī discussion of the key concept of ignorance, see Shaykh Yūsuf al-Baḥrānī, *Kitāb al-ḥadā'iq al-nāḍira fī aḥkām al-ʿiṭrah al-ṭāhira*, ed. Muḥammad Taqī al-Irawānī, 13 vols (Najaf: Dār al-Kutub al-Islāmiyya, 1377/1957), 1:77ff. Shaykh Baḥrānī, apparently influenced by a desire for rapprochement between Akhbārīs and Uṣūlīs, does use both the terms *ijtihād* and *taqlīd* (see his introduction to the *Ḥadā'iq*, *passim*). While the Akhbārī system of consultation between scholar and adept may, however, approach the Uṣūlī system in practical terms, the difference in theory seems irreconcilable.

[58] Hossein Modaressi, 'Rationalism and Traditionalism in Shīʿī Jurisprudence,' *Studia Islamica* 59 (1984): 155.

[59] *Risālat al-ijtihād wa l-taqlīd*, 88ff. A great danger here, Bihbihānī suggests, is that in the absence of *mujtahid* authority, women might gain some control.

[60] Oral communication, Prof. Ali al-Oraibi, University of Bahrain.

RECENT RECONSIDERATIONS OF *TAQLĪD*

In the Uṣūlī Shī'ī tradition, *taqlīd* has become the instrument by which the religious specialists—the muftis or *mujtahid*s—are differentiated from laypersons. The line between clergy and laity appears to have been most sharply drawn in practice in the nineteenth century, during which time there was an increased emphasis on hierarchy, leading also to lesser *mujtahid*s routinely deferring to the 'more learned' (*a'lam*).[61] These elaborations owed much to the social conditions of the time—for instance, the evolution of transport and media, which made the laity aware of and gave them access to religious authorities outside their own geographical areas so that they began to cluster around a few greater figures.

This essay, however, has made it clear that the boundary between clergy and laity was not always unambiguously marked in the *theory* of *taqlīd*. The controversies about *taqlīd* argued in the juristic texts in fact revolve around just how strict the division is to be. This is the problem addressed by the disputes about *ijtihād* as a faculty or an act and about the possibility of a partial *mujtahid*. It is also the issue behind the Uṣūlī insistence on *taqlīd* of a living *mujtahid*, since—as the Akhbārīs rightly perceive—what reliance on a dead *mujtahid* finally means is that the laity may derive its own authority from its own reading of the texts. The traditional assertion, by Sunnīs as well as Shī'īs, that *taqlīd* in the articles of the creed is invalid seems to define clearly one prerogative of the laity. But even this boundary has been disputed, as at least one prominent scholar, Shaykh Ṭūsī, attempts to extend the authority of the learned divines into the *uṣūl*.

These arguments in the texts spring from the scholastic heritage of Shī'ī learning. As the examples of legal reasoning above illustrate, Shī'ī scholasticism—like Western mediaeval scholasticism, its close relative whose rationalist worldview it shares—is based on oral disputations conducted within a system of (largely syllogistic) logic, directed at 'disputed questions' and generating an extensive commentary tradition. This method affords a certain flexibility in thought—at least as far as it does not deteriorate into mere formalism. In the latter part of the twentieth century, as trends have developed in Uṣūlī Shī'ī thought away from hierarchy and concentrated personal authority

[61] The literature on these developments, since they are taken to be the basis of the modern Shī'ī structure of authority and ultimately of the Iranian theocracy, is extensive; see *EI*^{2}, 'Mardja'-i Taḳlīd', by Jean Calmard and (the authoritative work) Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam: from the Office of Mufti to the Institution of Marja'* (Kuala Lumpur: International Institute of Islamic Thought and Civilization, 1996).

(the impetus behind these trends is discussed below), the '*ulamā*' have drawn on this scholastic heritage to offer reconsiderations of *taqlīd*. This endeavour has certainly been facilitated by derivation of the imperative for *taqlīd* from reason and its placement outside the *sharīʿa* proper, as the jurists may then offer their own 'reasonable' arguments for reform, including arguments from social necessity.

The outstanding concern in our times with regard to *taqlīd* is that concentration of power in the hands of just a few *marjiʿ al-taqlīd*s (the *mujtahid*s who become the chief 'resorts for emulation' for lay Shīʿīs) is unsuited to the conditions of modern life. How, the reforming jurists say, can the resorts for emulation effectively address the rapidly changing circumstances of modern life—which is, after all, the mandate of the living *mujtahid*s—when to do so would demand a current and wide knowledge of many fields, which no one or even several persons alone can possess? One solution suggested is that the authority to issue responsa be held jointly by a council of qualified jurists. This proposal, highlighted in a collection of essays published in the early 60s on the institution of *marjiʿ* (penned mostly by prominent jurists, and made famous in the West by a summary by Lambton[62]), has by now become commonplace. It has gained added impetus from the urgent need of the Islamic Republic of Iran to press as much manpower and expertise as possible into the task of producing and administering Islamically-legitimated rulings and laws—for a highly personal and concentrated *taqlīd* is unsuited to the structure of the modern nation-state, which requires that authority be distributed and formally institutionalized. A similar proposal by the late Ayatollah Muḥammad Bāqir al-Ṣadr (imprisoned in Iraq and then deceased in 1980) calls for the combining of legal opinions of different authorities to form one functioning system of Islamic legal thought. His proposal depends on the legal probabilism expressed in the doctrine of *khaṭaʾ* and *ṣawāb*. *Ijtihād*, he says,

> ... varies according to the different ways *mujtahid*s understand the texts and reconcile apparent contradictions ... [but] as long as it functions and fulfils its role within the framework of the Qur'ān and Prophetic Tradition and remains faithful to certain general requirements, it enjoys an authentic legal and Islamic character. This makes it possible to choose the strongest elements in each area in order to address [real] problems in life. What is at issue is the scholar's fundamental right to freedom and to apply his own discretion ... . The *ijtihād* from which such rulings are derived is, after all, subject to error.[63]

[62] 'A Reconsideration of the Position of the *Marjaʿ al-Taqlīd* and the Religious Institution', *Studia Islamica* 20 (1964), 115–35.

[63] *Iqtiṣādunā*, 4th edn (Beirut: Dār al-Taʿāruf, 1401/1981), 415–19.

In the interest of the same goal of achieving a more diffuse and less personal structure of authority, the doctrine that the laity is to do *taqlīd* of the 'more learned' (*aʿlam*) jurist is also disputed. In the collection of essays referred to above, both Sayyid Murtaḍā Jazā'īrī and Ayatollah Ṭāliqānī object to concentration of power in the hands of the 'most learned'. They state, in fact, (and this assertion has subsequently been repeated by others) that it is not in any case possible in modern times to determine who is most learned, as well as impossible for any person to be most learned in all the matters with which jurisprudence must presently concern itself.[64] 'Grand Ayatollah' Muḥammad Ḥusayn Faḍlallāh of Lebanon has recently made a similar point:

> If it should happen that a number of different *mujtahid*s possesses competence in legal matters in an area in which a determination is to be made, this opens up greater opportunities, since their [collective] perception of the 'actual' (*wāqiʿī*) legal ruling will be more sound than the opinion of one *mujtahid, even if that mujtahid is the most learned*. The views of a group normally represent a more complete knowledge than the view of a single person. Thus the question of superior learnedness (*aʿlamiyya*) is not of the essence in a situation in which there is a multiplicity of *ijtihād*s.[65]

Ayatollah Muḥammad ʿAlī Taskhīrī, a prominent Iranian cleric with ties to the conservative wing of the present regime, argues that since *taqlīd* of the most learned is based not on the *sharīʿa* but only on 'rational precedent' (the *sīra ʿaqliyya* described above), it cannot be an inflexible rule—and is, in fact, prescribed neither by rational nor legal (*sharʿiyya*) precedent. Reviewing the arguments of prior scholars both in favour of and against *taqlīd* of the most learned, he decides firmly against it. Taskhīrī also rejects the dominant view of *ijtihād* as a faculty (*malaka*) possessed by the *mujtahid* that would rule out his doing *taqlīd* of another even when he had not inferred a ruling in fact. According to the Ayatollah, since *ijtihād* is not a faculty, the *mujtahid* may do *taqlīd* when, for instance, he finds that he does not have enough time for *ijtihād*—due to, it is implied, the impossibly large number of new issues arising in modern times and the complexity of problems lying outside the *mujtahid*'s immediate competence.[66] Even though he does not use the term, Taskhīrī is here arguing in

[64] Lambton, 'Reconsideration', 124–5.

[65] '*al-Marjiʿiyya al-Wāqiʿ wa l-muqtaḍā*' (The Institution of the *Marjiʿ*: Reality and Necessity) in *Arā' fī l-marjiʿiyya al-Shīʿiyya* (Beirut: Dār al-Rawḍa, 1415/1994); emphasis added. Several other essays in the book review the juridical arguments for and against *aʿlamiyya* and offer similar critiques.

[66] 'Supreme Authority (*Marjiʿiyya*) in Shiism', in L. Clarke, ed., *Shīʿī Heritage* (Binghampton, NY: Global Press, 2000), 147ff.

favour of the partial or *mutajazzi' mujtahid*. His argument is aimed at a proposal that *mujtahid*s infer rules and attract *taqlīd* only in the areas in which they are expert (ignoring, apparently, the hierarchy-reinforcing argument sometimes made in the texts that the *muqallid* must emulate only one jurist since, given that the determinations of the jurists differ from one another, to emulate several would lead to inconsistency).[67]

Some jurists have also been inspired to reconsider the question of the authority of the *mujtahid* relative to the lay emulator—that is, to reconsider the basic principle of *taqlīd*. These discussions are called forth by a desire to mitigate the openly authoritarian nature of *taqlīd*, it being recognized that many laypersons will possess their own expertise in certain areas, and that modern questions have a social impact which calls for the input and participation of the people. Thus many jurists declare that the *taqlīd* of the people is to be informed, rather than 'blind.'[68] Sayyid Muḥammad Ḥusayn Faḍlallāh says:

> What is meant by *taqlīd*—that is resort to the expert in legal rulings—is not blind imitation. That is far removed from the rational [or 'scientific'–*'ilmiyya*] spirit of Islam, which is based on enquiry, investigation, and awareness. All persons, whether learned or not, are obliged to embrace Islam [only] after enquiry and investigation. People are obliged to accept the various dimensions of religion [only] because of understanding. Islam considers thought, learning, and teaching to be the loftiest and most sacred of deeds. No scholar has ever viewed following a *mujtahid* as an act of worship [*'ibāda*] that would bar the *muqallid* from [independent] examination. Rather, all jurists are agreed that if the *muqallid* is certain that the jurist he is following is mistaken in his fatwa, he is not allowed to follow that fatwa. It is not, as some people have imagined, that one person issues an opinion and the other is obliged to simply obey … . Rather, *taqlīd* is a conscious, considered venture.[69]

Sayyid Faḍlallāh has even suggested in a series of religious opinions[70] that it is permissible to emulate a deceased *mujtahid*—not only, as the Uṣūlī tradition already accepts, in continuation of emulation begun while the *mujtahid* was still alive, but initially (see above n. 49). Faḍlallāh does at the same time admit that *taqlīd* of a living *mujtahid*

[67] Although this point too (like most others) has been challenged, with some arguing that one may, under certain circumstances, combine or choose between the opinions of different jurists. See for instance the seminal work of Sayyid Muḥammad Kāẓim Yazdī (d. 1281/1864), *al-'Urwa al-wuthqā* (*Taqlīd, mas'ala #65*).

[68] E.g., Ayatollah Muṭahharī and 'Martyr' Bihishtī, as reported in Lambton, 'Reconsideration', 126, 130.

[69] 'al-Taqlīd fī l-aḥkām al-shar'iyya wa-mawqi'uhu min al-thaqāfa al-dīniyya' ('*Taqlīd* in legal rulings and its place in religious culture'), in *Arā' fī l-marji'iyya*, 24.

[70] Available (with English and French translations) on his official website: ⟨www.nlink.com/fadhlullah/emultn/taqlid.html⟩

is at least preferable (I do not know how he reconciles the two opinions). Nevertheless, this suggestion has stirred protest, as it is seen as undermining the authority over the laity of the present established hierarchy in the Shī'ī world, with whom, as it happens, Faḍlallah has already been in conflict.

Objections to *taqlīd* have also been raised in Sunnī circles, both by conservative-reformists and liberals. The conservative-reformists assert that authority does not lie in the body of *sharī'a* decisions of the four schools that became the object of *taqlīd*, but in the scriptures and the example of the Prophet (or of the Prophet and his Companions).[71] Thus the Yemeni-Egyptian conservative-reformist Muḥammad 'Alī al-Shawkānī (d. 1250/1832) argues in his tract *al-Qawl al-mufīd fī l-ijtihād wa l-taqlīd* ('Practical statement concerning *ijtihād* and *taqlīd*') that the various proof-texts from the Qur'ān and Ḥadīth adduced to support *taqlīd* do not point to imitation without knowledge of the validity of the act (that being the proper definition of the Arabic word *taqlīd*). What they recommend is rather a kind of concurrence after information and consideration. Shawkānī rejects any human authority that attempts to mediate between the individual Muslim and the Qur'ān and Sunna, the unimpeachable sources of the law. This is the basic premise of his argument against *taqlīd*. Since, he says, the legal opinions of the muftis are based on a combination of *taqlīd* and personal opinion (*ra'y*) rather than on the Qur'ān and Sunna, they are invalid. In place of *taqlīd*, each legally obligated Muslim (*mukallaf*) must ask a scholar for the appropriate indications from the Qur'ān and Sunna. He should then act according to his own understanding of the information given, not according to an invalid *taqlīd* compounded by the baseless personal opinions of the legal scholars.[72] The liberal Sunnī objection to *taqlīd* is simply that it is an obstacle to legal and social change. Instead of practising *taqlīd*, it is necessary for Muslims to look back to the scriptures and re-interpret them through *ijtihād* so that they become relevant to modern times.[73]

These Sunnī objections to *taqlīd* are to some extent paralleled in Shī'ism. Shawkānī's conservative scheme, for instance, seems similar

[71] For a summary of the conservative and liberal positions, see *EI*[1], 'Taḳlīd', by J. Schacht; and Rudolph Peters, '*Idjtihād* and *Taqlīd* in 18th and 19th Century Islam,' *Die Welt des Islams* 20 (1980): 131–45.

[72] *Al-Qawl al-mufīd* ... (Cairo: Idārat al-Ṭibā'a al-Munīriyya, n.d.), 13–14.

[73] *Taqlīd* among some conservative Sunnīs also became a positive designation for 'adherence to authentic Islam, and refusing to yield to Western-inspired liberalism'. *Taqlīd* in this sense is posited as the opposite of *bid'a* or reprehensible innovation. This understanding has generated an extensive literature of tracts in favour of *taqlīd*. The Indian Subcontinent seems to have been especially fertile ground for these tracts.

to that of the Akhbārīs, especially since he also writes: 'He who is not immune from error [that is anyone except the Prophet, excluding even his Companions and the first four, 'Rightly-Guided' Caliphs] is proof neither for us nor for you, neither in word nor in deed.'[74] The Sunnī liberal critique is echoed in the oft-repeated complaint of reforming Uṣūlī Shīʿī jurists that the *mujtahid*s had been effectively doing *taqlīd* of past authorities (which, as *mujtahid*s, is forbidden them) rather than fulfilling their duty as living jurists by actively and realistically evaluating the myriad problems of modern life.

In the final analysis, however, Uṣūlī Shīʿī criticisms are aimed, as seen in the citation from Faḍlallāh above, at the quality of *taqlīd* rather than its elimination. The desire of the living jurists to retain their authority as well as the elitism of the theory of *ijtihād* and *taqlīd* are no doubt powerful determinants of this attitude. The Uṣūlī Shīʿī *taqlīd* is also to an extent immune from the attacks levelled against *taqlīd* by Sunnī reformists in that it cannot be portrayed as a bar to change, since change is guaranteed by the *ijtihād* of the *mujtahid*s. Thus Faḍlallāh continues with a caution that laypersons must still, nevertheless, emulate the *mujtahid*s in the legal rulings they finally derive. Just because the people are able to grasp the fundamentals of religion themselves, he says, does not mean that they can do the same in the law.[75] Similarly, while Khomeini argues in the first section of his *Islamic Government* that the *mujtahid*s must actively apply *ijtihād* to modern life (rather than relying on the rulings of the past and therefore effectively practising *taqlīd*), he also emphasizes that, although it may be necessary for experts to be consulted, these are only advisors. The final ruling is for the jurist alone, and must be obeyed.

On the other hand, Muḥammad Mujtahid-Shabistarī, a liberal Iranian cleric, asserts the very opposite. The opinions of the people, he says, 'are not useless'. They should not confine themselves to doing *taqlīd* of the jurists. Rather,

> ... the principle that Muslims cannot rely on emulation in matters of belief but are obliged as far as they are able to use their own reason tells us that the believer who knows God through reason cannot be without some opinion as to the values God envisions for society. Every person understands the good and evil in such things to some extent; they are not mysterious or hidden. When a fundamental law or value is promulgated in the name of God, those who have known God through reason and understand from their own

[74] *Qawl*, 6. As explained above, the Akhbārīs follow the words of the inerrant imāms, and no other, errant authority.

[75] 'Taqlīd fī l-aḥkām', 25–6.

experience the meaning of social life will certainly be able to contribute opinions, even if they are not jurists.[76]

By transforming the principle of prohibition of *taqlīd* in fundamental beliefs into permission for the laity to participate in discovery of the law, Mujtahid-Shabistarī renders the boundary between *mujtahid* and *muqallid* permeable. Here is evidence that, in the question of *taqlīd* at least, juristic disputation has the potential for much more than logical formalism.

[76] 'Religion, Reason, and the New Theology', in Clarke, *Shī'ī Heritage*, 258–9. In this argument belief is, again, treated as cognition; see note 20.