The Development of Islamic Jurisprudence: Late Thirteenth/Nineteen Century to the Early Present

Dr. Labeeb Bsoul

Associate Professor Department of Humanities and Social Sciences Khalifa University - Abu Dhabi, United Arab Emirates

Abstract: *Muslims both in the past and present are concerned with the legal validity of their religious devotion and worship, especially in view of their increasing interactions with other civilizations, cultures, behaviors, economies, sciences, legislation, and politics. Confusion however arises in regards to which legal doctrine (madhhab) Muslims need to follow today; what should Muslims do to cope with contemporary problems and challenges of life; and where should they draw lines of distinction between the revealed and profane, as well as between jurisprudence and secular law and legislation in the Muslim world. Some contemporary Muslim scholars have raised serious concerns regarding such issues because of the interaction between the East and West. Muslim scholars and reformers responded to these concerns through a number of legal reform initiatives, and also through alignment and integration of Muslim faith with contemporary needs. This article discusses whether Islamic jurisprudence can dynamically meet the present demands placed on it and the needs it faces while evaluating the reactions taken to preserve the value of Islam in the modern era.*

Keywords: *Reformers, legal reform, Tajdīd, Majallat al-Aḥkām al-ʿAdliyyah, Islamic jurisprudence.*

I. Introduction

As a result of the intellectual regression of the Muslim world accompanied by the untimely disintegration of the Ottoman state and fragmentation of its Arab provinces, the Muslim world declined steadily into a state of political and economic subjugation under a rather broad episode of European colonialism. This brought about the occupation of many Muslim countries chief among them Algeria, Yemen, Tunisia, Egypt, Libya, Morocco, Syria, Lebanon, Iraq, Palestine, and Jordan. By the last quarter of the 13th century AH or 18th CE, and the beginning of the 14th century AH, 19th century CE, and with exception to the heart of the Arabian Peninsula, European countries wielded control over large swathes of a significant number of Muslim nations. The deconstruction of the Ottoman caliphate represented the final stage of western humiliation for the East, when Kemal Atatürk declared to all the abolishment of the symbol of Islamic unity, the caliphate which had for centuries been leader to the Muslim world, only to turn it into a breeding ground for occupation, cultural invasion and longer periods of colonization.

Due to the prevalence of intellectual stagnation throughout the Muslim world however, a consequent wave of reform rose across the Arab and Muslim world. Arab/Muslim reformers sought to revive a broad sense of national awakening alongside a studied stimulation of the very identity of Muslim and Arab communities, while advocating for the necessity to survey Islamic law in a manner suited to the changes of times. With time and much initiative, the Muslim community slowly began to realise their unfortunate state of intellectual stagnation and their dire need for holistic recovery and reform. In spite of Western ambitions and colonial interests however, the spirit of reform shone bright, but remained yield resulted in heavily case of moving from the present to the future.[1] The second generation of Muslim reformers included notable personalities such as ʿAbd al-ʿAziz al-Thaʿalibi, Salim Buhajib, al-Tahir ibn ʿAshur, in Tunisia, Muhammad ʿAbduh and Rashid Rida in Egypt, ʿAbd al-Rahman al-Kawakibi and Shakib Arsalan in the Levant, ʿAbd al-Hamid ibn Badis in Algeria, and ʿAllal al-Fasi in Morocco.

The call for Muslim reform did not go without an opposition that was largely influenced by the West, and as such believed that the legacy of Islam connotes backwardness and decay. This opposition consisted of important figures who usually products of Western education, taking every possible step to limit the progress of the Arab-Muslim renaissance, while simultaneously securing critical decision-making posts. Their perspective of reform was essentially shaped by a Western perspective of modernity and secular laws pertaining to government, politics, economics, and sociology. Their views led them to the belief that Islamic jurisprudence

---

required major transformation to even come close to resembling effective civil, intellectual, and cultural systems. Yet in spite of achievements made by Western oriented modernists in areas of education, development of military defence capabilities, and the introduction of western products, their efforts and contributions were nonetheless largely responsible for the sustained ignorance of the Arab/Muslim communities and the more tragic and greater destruction of their will, dignity, and humanity. Their efforts brought about a gradual yet systematic distortion and erosion of the Islamic heritage and identity, leaving Muslims to wallow in a state of economic, agricultural, technological, intellectual, cultural, and pedagogical dependency. After a century and a half of attempted renaissance and progress, the Arab-Muslim world remains dependent on the West and is a victim to Western exploitation.[2]

The Westernization especially targeted Islam's presence in the political and legislative spheres, by calling for systematic removal. Moreover, with its current manifestation, one sees the modern Muslim state as significantly reliant on Western creativity and innovation, only logically binding it to a legal assimilation of the West. It was in such circumstances that it became customary to replace the *shar'*/Islamic legislationwith Western constitutions, and to distance Muslim jurists from positions of legal, political and administrative influence.[3]

Both camps however, were often at loggerheads on the overarching question of how to reform the Muslim world. Such disunity contributed, in part, to Western domination and exploitation of Muslim societies. This is by no means a new debate, but rather an old and on-going dispute to the present; having been the catalyst for heated intellectual and political debates on systems of governance, education, curriculum, society and culture, gender and family, economics and social justice. These disputes sometimes became violent, with both camps becoming proficient in verbal abuse and insults. On the one hand, one camp was perceived by the other as being totally uprooted and removed from its origin and birthplace, afflicted by alienation from their very civilization, while the other was continually described as backwards, stagnant and rigid. Nonetheless, socio-historical and political changes affecting Muslims continued to provide a source of reflection, consideration, and criticism. Through those reflections, one would expect leaders to emerge inclined towards the pursuit of companionship, and peaceful synergistic attempts to cease the hostilities, aiming to prevent violence. Although this may lead to increased adversity initially, it may also herald hope and positive possibilities.[4]

The Thoughts And Manifestations Of The Qur'ān And The Sunnah:

To appeal to the Qur'ān as a guide and framework for remedying the general backwardness and stagnation afflicting Muslim societies, Muslim scholars advocated the careful study of Qur'ānic exegesis as a strategy to meet the changing needs of evolving modernity. In doing so, they drew upon the Qur'ānic works of early Muslim scholars. A new genre of scientific Quranic exegesis emerged, seeking to incorporate scientific interpretations of the meanings of Qur'ān. An emphasis was made on purification of Quranic interpretation from Israeli apocryphal myths and anecdotes, alongside an intensified scrutiny of weak *ḥadīth* traditions of the Prophet Muḥammad and his companions. Such efforts sought to introduce the genuine message of the Qur'ān, and its original vision for society, while also reflecting on its magnificence and defined objectives and goals. Attempts were also made to establish reconciliatory platforms for different views and perspectives.[5]

The Scientific Exegesis Approach

Out of the emerging currents of thought, this scientific approach used in the interpretation of the Qur'ān became popular among many later Muslim scholars who endeavoured to relate the Qur'ān to science, and to make the Qur'ān indicative of the creation of the universe either by way of predication (*taṣrīḥ*) or insinuation (*talmīḥ*). The most important trend in this regard is perhaps the focus on the scientific miracles found in the Qur'ān.[6] Among the most significant works in that emerged from this movement is that of 'Abd al-Raḥmān al-Kawākibī (d.1902) entitled *Ṭabā'i' al-Istibdād wa Maṣāri' al-Isti'bād* (The Nature of Despotism) which consisted of a compilation of newspapers articles he published during his visits to Egypt in 1901.[7] Al-Kawākibī's approach favoured eloquent scientific explanation of the Qur'ān, considering the issue of miracles of the Qur'ān to be one of the most important issues of the religion.[8] Another famous scholar is Muḥammad Jamāl al-Dīn al-Qāsimī (d.1914) and his work *Maḥāsin al-Ta'wīl*. One example of such a scientific approach

---

was the presentation of the view of a contemporary physician on the health-related disadvantages of consuming pork.[9] Maḥmūd Shukrī al-Ālūsī (d.1922), the grandson of Shaykh al-Ālūsī, the compiler of *Tafsīr Ruḥ al-Maʿānī*, whose works *Mā dalla ʿalayhi al-Qurʾānmimmā Yaʿdad al-hayʾah al-jadīdah al-Qawīmat al-Burhān*,[10] sought to show harmony between the Qurʾān and the scientific views held by modern-day astronomers.[11]

Similarly.in his *Tafsīr Ibn Bādīsfī Majālis al-Tadhkīr min Kalām al-Ḥakīm al-Khabīr*, ʿAbd al-Ḥamīd ibn Bādīs was also inclined to this approach of Qurʾānic exegesis.[12] Muṣṭafā S. al-Rāfiʿī also advocated this approach in his work *Iʿjāz al-Qurʾān wal-Balāgha al-Nabawiyya* in which he incorporated a special reference to the theme of *Qurʾān* and sciences.[13] The work of ʿAbd al-ʿAzīz Ismāʿīl entitled *ʿal-Islām wal-Ṭibb al-Ḥadīth"* (Islam and contemporary medicine) published in *Majallat al-Azhar* expounded on the fact that the Qurʾān is neither a source of medicine nor astronomy. He however, sometimes pointed that the Qurʾān reflects the reality of natural sciences. The author interpreted a number of verses in the Qurʾān related to astronomy in his attempt to highlight some of its miracles.[14] Shaykh Ṭanṭāwī Jawharī (d.1940) also adhered to a scientific interpretation of the Qurʾān, where he compiled the most interesting scientific interpretation of the Qurʾān in his *al-Jawāhir (The Jewels)*. In this commentary, Jawharī sought to establish a connection from the Qurʾān to various scientific discoveries and constants, for which he claimed that the Qurʾān enfolds seven hundred and fifty scientific verses. Jawharī's approach to *Tafsīr* was nonetheless criticized in view of allegedly diverting readers away from the glory, beauty and guidance of the Qurʾān.[15]

Among the most criticized Muslim scholars who utilized the method of scientific interpretation of the Qurʾān are Maḥmūd Shaltūt, Amīn al-Khūlī, Muḥammad Rashīd Riḍā. And Muḥammad Muṣṭafā al-Marāghī. Muḥammad ʿAzzat Darrūza (d.1888) in his work *ʿal-Tafsīr al-Ḥadīth'*,[16] denied the approach of inducing scientific, technical, or cosmic theories from the Qurʾān to prove the authenticity or miraculous nature of the Qurʾān.[17] Both Aḥmed Ḥanafī and Shaykh Ṭanṭāwi in their work *ʿal-Tafsīr al-ʿIlmī li-Āyāt al-Kawniyyafī al-Qurʾān'*,[18] and ʿAbd al-Razzāq Nawfal in his *ʿAllāh wal-ʿIlm al-Ḥadīth'*, *ʿal-Islāmwal-ʿIlm al-Ḥadīth'*, and *ʿal-Qurʾānwal-ʿIlm al-Ḥadīth'*,all adopted the same scientific approach in the interpretation of the Qurʾān and the discussion of Islam.[19] Among other most prominent contemporary scholars of the inimitable nature of the Qurʾān is Zaghlūl Rāghib M. al-Najjār,[20] and ʿAbdul al-Majīd al-Zindānī,[21] who through their interpretations of the Qurʾān and the Sunnah sought to prove the existence of current scientific discoveries, and as such the inimitability of Islamic Revelation.

Another interesting Qurʾānic approach with strong societal underpinnings is perhaps best characterized by the school of Muḥammad ʿAbduh (d.1905). In this school efforts were made to approach the Qurʾān in a way that distanced the influence of the *madhāhib* and critically evaluated the Israeli myth and anecdotes (*al-riwāyāt al-isrāʾiliyyah*) while removing the influence of weak or fabricated *ḥadīth* narrations affecting Qurʾānic exegesis. They sought to advance a model of Qurʾānic exegesis built predominantly upon unequivocal religious texts. In this regard, it adopted a social literary approach, and disclosed through it the eloquence and miracles of the Qurʾān, explained its meaning and goals, and cast light on the *sunan*/courses or methods of the great universe, and how an Islamic social structure addressed critical social issues. It also sought to negate the ambiguities and aspersions wrongly cast upon the Qurʾān, while maintaining an easy literary style to attract readers and facilitate ease of understanding.[22] Such an approach is currently criticized for the broad freedom it allocated in setting interpretations of the Qurʾān, which may have caused ignorance of legitimate facts in the Qurʾān. Besides this, their approach made use of unnecessary metaphors and as such departed from conveying the truth of the revelation. At times, the induced meanings were judged as incorrect and at other times were

[9] al-Muḥtasib ʿAbd al-Majīd ʿAbd al-Salām (1982). *Itijjāhāt al-Tafsīrfī al-ʿAṣr al-Rāhin.*Amman: Maktabat al-Nahḍah al-Islāmiyyah, p. 54.
[10] Maḥmūd Shukrī al-Ālūsī (1997). *Mā Dalla ʿAlayhi al-Qurʾān mimmā Yaʿdud al-Hayʾah al-Jadīdah* ed. Zuhayr al-Shāwīsh and MuḥammadNāṣir al-Dīn al-Albānī.Beirut: al-Maktab al-Islāmī.
[11] Ibid, p. 269.
[12] al-Muḥtasib ʿAbd al-Majīd ʿAbd al-Salām (1982). *Itijāhāt al-Tafsīrfī al-ʿAṣr al-Rāhin*, pp. 277-279.
[13] Ibid, pp. 279-281; Muḥammad Ḥusayn al-Dhahabī (1987). *al-Tafsīr wal-Mufasirūn*, vol. 2:501.
[14] al-Muḥtasib ʿAbd al-Majīd ʿAbd al-Salām (1982). *Itijāhāt al-Tafsīrfī al-ʿAṣr al-Rāhin*, pp. 283-291; Muḥammad Muḥammad Ḥusayn al-Dhahabī (1987).*al-Tafsīrwal-Mufasirūn*, vol. 2: 502.
[15] Muḥammad Ḥusayn al-Dhahabī (1987). *al-Tafsīrwal-Mufasirūn*, vol. 2:504-517; al-Muḥtasib ʿAbd al-Majīd ʿAbd al-Salām (1982). *Itijāhāt al-Tafsīrfī al-ʿAṣr al-Rāhin*, pp. 275-277.
[16] Muḥammad ʿAzzat Darūza (2008). *al-Tafsīrwal-Ḥadīth* Tunisia: Dār al-Gharb al-Islāmi.
[17] al-Muḥtasib ʿAbd al-Majīd ʿAbd al-Salām (1982). *Itijāhāt al-Tafsīrfī al-ʿAṣr al-Rāhin*, p. 62.
[18] Aḥmad Ḥanafī (1980).*al-Tafsīral-ʿIlmī li-Ayāt al-Kawniyyafī al-Qurʾān*, Cairo: Dar al-Maʿārif.
[19] ʿAbd al-RazāqNufal (1982).*al-Qurʾān wal-ʿIlm al-Ḥadīth* Cairo: Maṭabiʿ Dār al-Shaʿb.
[20] Zaghlūl Rāghib Muḥammad al-Najār (2007). *Tafsīr al-Ayāt al-Kawniyyafī al-Qurʾān al-Karīm* Cairo: Maktabat al-Shurūq. Among many other works such as *Qaḍiyat al-ʿAjāz al-ʿIlmīlil-Qurʾān al-KarīmwaḌawābiṭ al-Taʿāmulmaʿahā* Cairo: Nahḍat Maṣr, 2006; *Qaḍiyatal-Takhaluf al-ʿIlmīwal-Tiqanīfī al-ʿĀlam al-Islāmī al-Muʿāṣir* Doha: Markiz al-Buḥthwal-Maʿlūmāt, 1988; *al-Samāʾ fī al-Qurʾān al-Karīm min Ayāt al-Aʿjāz al-ʿIlmī* Beirut: Dār al-Maʿrifah, 2005.
[21] *Encyclopedia of Scientific Miracles in the Qurʾān and the Sunnah* of Sheikh ʿAbdul Majīd al-Zindānī, a Site cares *ʿAjāzāt* and scientific discoveries, historical, literary and sports.
[22] Muḥammad Ḥusayn al-Dhahabī (1987). *al-Tafsīr wal-Mufasirūn*, vol. 2:547-549.

based on weak and even false traditions. Muḥammad Rashīd Riḍā (d.1935) and Muḥammad Muṣṭafā al-Marāghī (d.1945) were both influenced by the approach of ʿAbdu and represented two of the most pioneering scholars in this school.[23]

Interestingly this trend also involves some contemporary advocates of Islamic reform (*tajdid*) along with allegorical interpretations of the Qurʾān adapted to suit the agenda of reform and modernization, albeit at the expense of binding their interpretations to the fixed oral and practical traditions of the Sunnah. As a result, they incorporated into their *tafsīr* strange opinions and allegorical interpretations of verses, not subject to Arabic grammar nor confirmed by the Sunnah, pertaining to legal penalties, punishments and penalties (*ḥudūd al-sharīʿah*). Such an approach largely ignored the wisdom of legislation (*asrār al-tashrīʿ*). For instance, interpretations were made of the verses of usury (*ribā*) and headscarf or veil which are inconsistent with the general Islamic legal orthodoxy. Doubtless, such an approach is a source of confusion and tribulation for the Muslim community in general.[24]

In addition to engagement of contemporary Muslim scholars with the commentary of the Qurʾān, there emerged however, a new wave of studies in the field of Qurʾān sciences. Studies in this field however, ceased in the late 9th century AH/15th century CE, and the beginning of the 10th century AH/16th century CE with Jalāl al-Dīn ʿAbdul al-Raḥmān al-Suyūṭī (d. 1505).[25] In 1917, Ṭāhir ibn Ṣāliḥ ibn Aḥmad al-Jazāʾirī al-Dimashqī compiled his work on ʿal-Tibyān li-baʿḍ al-Mabāḥith al-Mutaʿaliqah bi al-Qurʾān ʿalā Ṭarīq al-Itqān,[26] and Muhammad ʿAli Salāmah in his work ʿManhaj al-Furqān fī ʿUlūm al-Qurʾānʾ.[27] Muhammad ʿAbd al-Aẓīm al-Zarqānī compiled his work ʿManāhil al-ʿIrfān fī ʿUlūm al-Qurʾānʾ, where he succinctly introduced the sciences of the Qurʾān in an easy and smooth style. Al-Zarqānī addresses the ambiguities attributed to the Qurʾān and highlighted the foundations of the Qurʾān whilst identifying the various disciplines related to its field of inquiry.[28] The work by Ṣubḥī Ṣāliḥ on ʿMabāḥith fī-ʿUlūm al-Qurʾānʾ[29] demonstrates a sophisticated level of scrutiny. Along such lines, Mannāʿ al-Qaṭṭān composed a work with an identical title ʿMabāḥith fī-ʿUlūm al-Qurʾānʾ.[30] In addition to this, other scholars have conducted extensive research in this field of inquiry and as a result produced large amounts of information including those on the study of the Qurʾān and science.

The characteristics of various activities of Islamic jurisprudence in the middle of the 13th century AH/18th century CE to the present day were likely undertaken for a wide range of reasons including the following. First, the sovereign privileges associated with the Ottoman consular judicial system may have weakened Muslim states, consequently leading to the eventual encroachment and foreign imposition of non-Islamic legislation. Other Muslim countries along with their legislative bodies executed foreign legislations under the banner of Islam that were largely contrary to Islamic legislation, including the infamous law known as *Qānūn al-Jazāʾ la-Humāyūnī*/Ottoman Hamayonic Penal Code (Ottoman law issued in 1859),[31] which formally disrupted the enforcements of prescribed Islamic legal penalties of the orders of the Sultan.[32] This jeopardised the legitimacy of the verdict, and recounted provisions against it. Adopting attributable provisions to enshrined privileges of sovereignty also contributed to a general decline in Muslim religiosity. Muslims were crippled by ineffectively practical penalty laws and *muʿamalāt*/mutual relations [Muslim relations with other nations].[33] As such Muslims surrendered to non-Muslim provisions that had somehow become the new standards. The Muslim faith became limited to issues relevant to family and marriages.[34]

Majallat Al-Aḥkām Al-ʿAdliyyah:
In the late 13th century AH/19th century CE, the Ottoman state felt the urgent need to establish civil law for its courts in order to mitigate the confusion and differences resulting from different legal opinions in Ḥanafī jurisprudence, and to further establish religious provisions by means of appropriate legal drafting. To this end, they published the *Majallat al-Aḥkām al-ʿAdliyyah*. This project was entrusted to a committee composed of seven scholars, investigators and eminent scholars of the time under the leadership of Ahmet Javdat Pasha, the *nazir divan al-aḥkām al-ʿadliyya*/Beholder of the Bureau for Just Rule. The committee was tasked with writing a book on the mutual provisions (*aḥkām al-muʿāmalāt*), that was at once free from all differences, yet exhibited

[23] Ibid, vol. 2: 549-551.
[24] Ibid, vol. 2: 522-546.
[25] Jalāl al-Dīn al-Suyūṭī (2010). *al-Itqān fī ʿUlūm al-Qurʾān* Beirut: DārNūbilis, 10 vols.
[26] Ṭāhir ibn Ṣāliḥ ibn Aḥmad al-Jazāʾirī (1916). *al-Tibyān li-baʿḍ al-Mabāḥith al-Mutaʿaliqah bi al-Qurʾān ʿalā Ṭarīq al-Itqān* Cairo: Maṭbaʿat al-Manār, one volume, 282 pages.
[27] Muḥammad ʿAlī Salāmah (2004). *Manhaj al-Furqān fī ʿUlūm al-Qurʾān* Cairo: Dār al-Nahḍah.
[28] Muḥammad ʿAbd al-Aẓīm al-Zarqānī (1988). *Manahil al-ʿIrfān fī ʿUlūm al-Qurʾān* Beirut: Dār al-Fikir.
[29] Ṣubḥī Ṣāliḥ (1983). *Mabāḥith fī ʿUlūm al-Qurʾān* Beirut: Dār al-ʿIlmlil-Malāyīn.
[30] Manāʾ al-Qaṭṭān (1996). *Mabāḥith fī ʿUlūm al-Qurʾān* Beirut: Muʾasassat al-Risāla.
[31] Saīlīm Rustum al-Bāzz (1916). *Qānūn al-Jazāʾ al-Humāyūnī*, Beirut: al-Maṭbaʿah al-Adabiyya
[32] Ibn ʿĀshār, Muḥammad al-Fāḍil (1982). *Wamḍāt Fikir* Tunisia: al-Dār al-ʿArabiyya lil-Kitāb, vol. 1: 148-150.
[33] Labeeb Ahmed Bsoul (2008). *International Treaties (Muʿāhadāt) in Islam: Theory and Practice in the Light of Islamic International Law (Siyar) according to the Orthodox Schools* Lanham: University Press of America, pp. 39-81.
[34] Ibn ʿĀshār, Muḥammad al-Fāḍil (1982). *Wamḍāt Fikir*, vol. 1: 150-151

precision, readers' ease of comprehension, and consisted of selected sayings. This was undertaken with the intention of rendering the *Majallat* as a reference in legal procedures in Sharī'a courts which replaced the laws of rights in conventional courts, as well as its application on current transactions

Furthermore, this approach drew attention to the various schools of law and jurisprudence so as to meet the needs of the time. In accordance with the supreme authority, the committee met in the *Bureau for Just Rule* to establish their unified approach to prominent and trusted Ḥanafi rulings, which were organized into multiple volumes called *al-Aḥkām al-'Adliyyah*.[35] The committee submitted a copy to Sheikh al-Islam [Mufti] and another to experts and legal authorities for review. Based on the proposed modifications, a rectified copy was presented to the Sultan. The segments of the *Majallah* presented to him were *al-Muqaddima*/Introduction along with the first book of Sales (*Kitāb al-Buyū'*). It took a protracted seven years for the *Majallah* to be issued, whereupon it was published by the Sunni Royal Will in 1877. It became necessary to act upon all of its contents, and was applied in all Ottoman states, except for the Arabian Peninsula, Yemen, and Egypt.[36]

The *Majalla* is composed of an introduction and sixteen books. The introduction included two articles; the first on the definition of the science of jurisprudence and its divisions, and the second on the manifestation of jurisprudential rules. In total, it consisted of ninety-nine rules. The rules were combined by Zayn al-Dīn Ibn Nujaym (d. 1563).[37] The purpose of these rules was to guide the judges in their judicial process so as to ensure that their rulings were firmly rooted in evidence and underwent due process. Each of the sixteen books was divided into chapters, with each chapter divided into sections with an introduction for each. The issues were related to their principles and in accordance with classical works of Islamic jurisprudence. Many issues were illustrated through excerpts from *fatwās*.[38] The number of subjects in the *Majalla* totalled 1851 and were numbered in accordance with modern law for easy reference.

The *Majallah* is considered a major achievement of the Ottoman state and the first signs of renewal in contemporary jurisprudential writing. However, it was committed to the Hanafi school of law and jurisprudence and was confined to various statements within this doctrine without the least effort to take advantage of other legal doctrines that would essentially allow or provide flexibility on certain problems and issues. To broaden the scope of the *Majalla*, the Ottoman state appointed Salīm Rustum al-Bazz, a member of the *Shura* supreme council of Constantinople to head the committee for the *Majala's* review.[39] Al-Bazz engaged in a process of simplifying, explaining, and clarifying certain ambiguities, adding critical verifications, and referencing each branch to its cited evidence, arguments, and explanations.[40]

'Ali Ḥaydar Afandi Professor of *al-Majalla* at the law college in Istanbul and the Chief Justice, minister of justice, and secretary of the *iftā'* council, presented a complete explanation of the *al-Majala* known as *Shari al-Majalla*. Judges, jurists, and attorneys relied on his work. State officials issued an order to teach his book in law colleges, which was approved by the higher commissions of *iftā'*, as a supplement to studying the *Majalla*.[41] Among more than a hundred commentaries and numerous individual attempts to supplement the provisions of the *al-Majalla however*, the most famous perhaps is that of Ahmad ibn Muhammad al-Zarqa's *Sharḥ al-Qawā'id al-Fiqhiyyah*, who sought to develop an independent study that would be taught separately from the traditional jurisprudence attached to the education system in Syria.[42]

The Deficiencies Of MajallatAl-Aḥkām Al-'Adliyya:

The inability of the *Majalla* to meet the needs of the time, in spite of numerous commentaries, meant that it did not appeal to or meet the needs of the Muslim community. Following World War I, the Arab countries separated from the Ottoman state and issued demands for the *Majalla* to be changed with a different *majalla* or a new civil law formulated from various *madhāhib*. In their plea, they sought to effectively mitigate or altogether bypass the shortcomings of the *Majalla*.[43] In Syria for instance, the Ministry of Justice assigned legal experts to the development of a civil law derived from Islamic jurisprudence to meet the needs of the new era. In 1949, it dispatched for the same purpose one of its supreme judges to Egypt and provided him with a letter to the famous legal expert Dr. Al-Sanhūrī to collaborate on the development of a civil law based on the Islamic jurisprudence. This draft of civil law combined the rights and needs of modern jurisprudential needs with classical

---

[35] Saīlīm Rustum al-Bāzz (1986). *Sharḥ al-Majala* Beirut: Dār al-Turāth al-'Arabī, pp. 9-15; 'Alī Ḥaydar (1991). *Durrar al-Ḥukām Sharḥ Majalat al-Aḥkām*, tr. Fahmī al-Ḥusaynī Beirut: Dār al-Jīl, vol. 1: 9-13; Farīd Muḥammad Bayk (1983). *Tārīkh al-Dawla al-'Aaliyya al-'Uthmāniyya*, ed. Iḥsān Ḥāqī Beirut: Dār al-Nafā'is, pp. 547-554.
[36] Muḥammad Ḥasan al-Baghā (2009). "al-Taqnnfī Majalat al-Aḥkām al-'Adliyya," *Majalat Jāmi 'at Dimashq li-'Ulūm al-Iqtiṣādiyya wal-Qānūniyya*, no. 2., vol. 125: 749-750; Muṣṭafā Aḥmad al-Zarqā (1988). *al-Madkhal al-Fiqhī al-'Āmm* Damascus: Dār al-Qalam, vol. 1: 43, 239.
[37] Ibn Nujaym, Zayn al-Dīn Ibn Ibrāhīm (d. 970/1563). *al-Ashbāh wal-Naẓā'ir* ed. Muḥammad Muṭī' al-Ḥāfiẓ Damascus: Dār al-Fikir, 1986.
[38] Ibid.
[39] Saīlīm Rustum al-Bāzz (1986). *Sharḥ al-Majala* , pp. 9-15
[40] Ibid., p. 3 and p. 8.
[41] 'Alī Ḥaydar (1991). *Durrar al-Ḥukām Sharḥ Majalat al-Aḥkām*, vol. 1: 2, 7-8.
[42] Aḥmad Muṣṭafā al-Zarqā (1988). *Sharḥ al-Qawā'id al-Fiqhiyya* Damascus: Dār al-Qalam, p. 10.
[43] Muṣṭafā Aḥmad al-Zarqā (1988). *al-Madkhal al-Fiqī al-'Āmm* Damascus: Dār al-Qalam, vol. 1: 21-23.

jurisprudence. The first military coup in Syria brought about a cancellation of the draft, and invalidated the provisions of the *Majalla* while replacing it with the new Egyptian civil law derived from French legislation. In doing so, it essentially demolished the greatest declared jurisprudential effort in the Muslim world, and introduced a legal body that prohibited references to a judge, or a lawyer or even schools, but rather made references to foreign terminologies.[44]

After a few years, Iraq followed suit and abolished the *Majalla,* replacing it instead with an imported hastily adapted foreign civil law. As explained earlier, the *Majalla* contained a list of jurisprudential rules in order that the judicial process may abide by the spirit of such rules and principles, and further ensure due process.[45] However, the foreign laws which were adopted developed with minor if any reference at all to Islamic jurisprudence, meaning that this rich intellectual legacy along with the history associated with it was consequently marginalized, and soon forgotten. The abandonment of the *Majalla* signified a trend of ignoring Islamic jurisprudence, with exception of Saudi Arabia and some other member states of the Gulf region which remained immune to European legal influence. The remaining Arab countries replaced the study of Islamic jurisprudence with the study of foreign law and built law colleges to that end. The study of Islamic jurisprudence thus became limited to family and personal law.[46]

The Tunisian Majallah:
The Tunisian *majallah* of legal provisions project instituted by Minister Khayruddīn, on the issuance of the Ottoman *Majalla al-Aḥkām al-'Adliyyah*, to encourage Tunisia to develop an Islamic legal code that took into account national conditions and customs. When Khayruddīn approached the Europeans with the idea of a single unitary legal system for Tunisia, he was keenly aware that they would not allow such a legal code to develop from Islamic provisions. If the judiciary remained, it would have been during a time where both the Hanafi and Maliki schools enjoyed absolute authority in times of calamity, especially considering the disagreements between both schools. In such circumstances, the ruling of one school often contravened with the ruling of another resulting in all types of confusion and disunity.

Khayruddīn formed a committee consisting of Shaykh al-Islam of the Hanafi scholars Ahmad ibn al-Khūjah with two other Mālikī scholars from the Sharī'a council, Mufti Muhammad al-Nafīr, al-Qāḍī of 'Umar the son of al-Shaykh Qāḍī Bārūd, and Ḥaṣnah al-Ḥaddād a learned prominent scholar and expert in the reform of the country and its commerce. This committee was responsible for deducing from the collection of documents presented before them, legally legitimate Sharī'a rulings that take into consideration customary provisions. The code sought to unify Tunisia under a single code of law free from the conflicts of the *madhhabs*. The committee made great strides in this project; its progress however, was hampered when Khayruddīn left the Ministry.[47] Nonetheless, *Majalla al-Iltizāmāt wal-'Uqūd* was issued in 1906, relying strongly on Islamic sources. It followed the *Majalla*'s pattern in its structure and style, and focused on the development of a general theory of obligations.

II. Methodology Of Codification
The methodology used in the legal codification was influenced to a significant degree by the destruction of Basra, Irāq. Basra underwent a jurisprudential awakening represented in the attempts of its scholars to codify Islamic jurisprudence, and further arrange and organize its provisions to form a modern legal system. The review also consisted of a codification based on strict regulations, arrangements, and divisions into consecutive chapters, a review of linguistic and legal terms to suit the age, and a consideration of contemporary legal issues and trends, not to mention the sources of Islamic jurisprudence. Modern codification methods opted to do away with limiting the scope of legal codes to a particular *madhhab*/doctrine preferring rather to exploit the benefits of numerous legal schools and juristic opinions. For this, they used terms such as *madhāhib*, and the non-popular or surviving *madhāhib*, the well-known, and the less famous. Their synthesis eliminated sectarian tendencies, allowing or comparative studies which were conducted within and amongst schools of Islamic jurisprudence. A more elaborate approach was also adopted preferring the inclusion of lengthy explanations as opposed to the brevity that so often characterized earlier legal codes.

This new methodological approach of codification epitomized the demand of the advocates of reform and renewal such as 'Abd al-Raḥmān al-Kawākibī in his work *'Umm al-Qurā'*. In this regard, Muhammad 'Abdu called upon the High Supreme Justice in November 1899 in a declaration calling for reform of the Sharī'a courts. Al-Marāghī was instructed to establish a committee for the said reform which he called the "Organizing Committee of the Personal Status" since he believed the reform of the law is the reform of half of

---

[44] Ibid, vol. 1: 243-245.
[45] Ibid, vol. 1: 246-248.
[46] Ibid, vol. 1: 300-303.
[47] Muḥammad Birim al-Khamis (1886). *Ṣafwat al-'A'tibār bi-Mustawda' al-Amṣār wal-Aqṭār* Beirut: Dār Ṣādir, vol. 1: 269; Muḥammad al-Bashīr al-Nayfar (1977). *al-Tarājim al-Wafiyya li-A'lām al-Asrah al-Nayfariyya*, Tunisia: al-Shirkah al-Tūnīsiyyalil-Nashr, p. 50.

the judiciary. The other half of reform, however, was up to the judge himself, as the judge should be the first to understand the facts after thorough, careful and balanced review of the evidence.[48] Al-Marāghī communicated his advice and instructions to the committee to put forward materials confirming the time and place.[49] Since al-Marāghī decided the jurists were permitted to refer to permissible but non-famous legal opinions to suit the current social conditions, this assisted in a general renewal of jurisprudence. New attempts in the drafting of jurisprudence emerged, both as individual or collective efforts. The following is a glance at some of the efforts for a contemporary jurisprudence renaissance.

Encyclopaedia Of Islamic Jurisprudence:
Following the international conference held in Paris in 1951, the participants hoped to author the Encyclopaedia of Islamic Jurisprudence, modelled after International/European encyclopaedias of law. Muṣṭafā al-Zarqā holds that this attempt is a positive step towards the codification of Islamic jurisprudence and one of the greatest initiatives the Arab League should have pursued. Al-Zarqā's view was to set a specialized committee of jurists, legal experts, and dedicated assistants to work on a project that would require a number of years.[50] Their efforts culminated in developing the idea of producing the 'Encyclopaedia of Islamic Jurisprudence'.

In 1954, a College of Islamic Law was established in the University of Damascus, with the plan to execute the recommendation of the conference of Paris. A special committee was formed in the year 1956 during the deanship of Dr. Muṣṭafā al-Sibāʿī. Initial contacts with different Muslim scholars were made, with a dedicated funding budget to finance the project. The committee was led by Muṣṭafā al-Sibāʿī, Aḥmad al-Samān, Muṣṭafā al-Zarqā, Maʿrūf al-Dawālībī, and Yūsuf al-ʿAshsh. The committee began with identifying legal themes, issues, and provisions from different works of all Sunni madhhabs, to develop a verbal structure of the encyclopaedia, which would present in alphabetic order all the provisions of jurisprudence of the four schools.[51]

Another interesting attempt made towards producing an encyclopaedia of Islamic jurisprudence was held during the period of unity between Egypt and Syria in 1958 under a joint committee set to author a universal encyclopaedia of Islamic jurisprudence according to the four Sunni schools of law. Following the first attempt led by the University of Damascus, a special committee was formed to initiate the encyclopaedia, affiliated with the Supreme Council of Joint-Islamic affairs between Syrians and Egyptians. The higher supreme council of Islamic affairs issued in 1961 a partial model of a pilot encyclopaedia project, and made it available among legal scholars for review, so that they would be able to prepare the first volume in its final form.[52] Following the split of the Egyptian-Syrian unity pact in 1961 however, the project of the assigned committee was interrupted and was again but at a much slower pace pursued in Egypt until the Ministry of Religious Affairs of Egypt showed enthusiasm about the project's implementation.

In the year of 1967, the Ministry of Endowments and Islamic Affairs of Kuwait oversaw the launch of the Encyclopaedia of Islamic Jurisprudence project. This five-year initiative sought to facilitate the return of the Islamic heritage and benefit thereof in devising solutions appropriate to emerging needs. During this process, an initial plan was placed to extract a jurisprudential lexicon from the legal compendium of Ibn Qudāma al-Maqdisī's *'al-Mughnī'* (d. 1223).[53] This project was interrupted for a while with a view to re-evaluate the steps being taken so far and meet the requirements necessary for its completion. The project however resumed in the year of 1977, and a committee for planning and execution was put to work. Special committees were initiated to work on extracting legal terminologies from classical legal works. The committee was composed of eight members, with the goal of overseeing the project and reviewing the official planning. Such an initiative took into consideration the parallel projects in Egypt and Syria, with cooperation from Saudi Arabia. It then adopted what was seen as necessary to supplement the fifty research articles completed earlier.[54]

The purpose of the encyclopaedia was to formulate Islamic jurisprudence as found in the original sources in a nonetheless easy style, organised alphabetically according to subjects, and supported through inferences, with simplification of complex issues and references to the different opinions and juristic interpretations of *madhhabs*. Readers would be able to search for legal provisions or juristic views on any

---

[48] ʿAbd al-Mutaʿāl al-Saʿīdī (1996). *al-Mujadidūn fī al-Islām min al-qirn al-awalilā al-qirn al-rābiʿ ʿashar* Cairo: Maktabat al-Ādāb, p. 413.
[49] Ibid.
[50] Muṣṭafā Aḥmad al-Zarqā (1988). *al-Madkhal al-Fiqhī al-ʿĀmm*, vol. 1: 25-26.
[51] Ibid, vol. 1: 254; Mannāʿ al-Qaṭṭān (1982). *al-Tashrīʿ wal-Fiqh fī al-Islām: Tārīkhanwa Manhajan.* Beirut: Muʾassasat al-Risāla, pp. 345-249.
[52] *Mawsūʿat al-Fiqh al-Islāmī*, al-Majlis al-Aʿlālil-Shuʾūn al-Islāmiyyah (Supreme Council of Religious Affairs). Cairo, 1990, vol. 1: 6-7.
[53] Muwaffaq al-Dīn Ibn Qudāma al-Maqdisī (1997). *al-Mughnī: Sharḥ Mukhtaṣar al-Kharaqī.* ed.ʿAbdullah ibn ʿAbd al-Muḥsin al-Turkī and ʿAbd al-Fattāḥ Muhammad al-Hiluw. Riyad: Dār ʿĀlam al-Kutub.
[54] *Mawsūʿat al-Fiqh al-Islāmī*, Wizārat al-Awqāfwal-Shuʾūn al-Islāmiyyah. Kuwait, 1983; *al-Mawsūʿah al-Fiqhiyyah: nashrah taʿrīfiyyah*, Wizārat al-Awqāfwal-Shuʾūn al-Islāmiyyah. Kuwait, 1997: 8-15; *Dirāsāt al-Khalīj wal-Jazīrah al-ʿArabiyyah*, no. 16, pp. 175-179; "Istiṭlāʿ ḥawl al-Mawsūʿah al-Fiqhiyyah in Kuwait", *Majallat al-Waʿī al-Islāmī*, no. 246, pp. 84-93.

subject according to keywords. Accordingly, specific themes on Islamic rulings and their jurisprudential interpretations would easily be researched.[55][56]

The Project Of Uniform Civil Law:
The Unified Civil Law Project:
In the mid-seventies, the Arab League took on the task of drafting a unified civil legislation.[57] A newly formed committee of legal experts was formed and began patterning their draft after foreign legal sources, techniques, and practices. They soon realized the inefficiency in their approach, and as result decided to shift direction and to rather draft a unified civil law built on the basis of Islamic jurisprudence according to its different schools (*madhhab*). In the period extending between 1981-1984, Muṣṭafā al-Zarqā drafted '*Nuṣūṣ Mawād al-Naẓariyyah al-'Āmmah lil-Iltizāmātfī al-Fiqh al-Islāmi*' (A General Theory of Obligations) under the project of '*Qānūn al-Mu'āmalāt al-Māliyyah al-'Arabī al-Muwaḥḥad*'.[58]This consisted of 433 articles divided into a preface and five chapters; the first chapter consisted of 85 general jurisprudential rules/maxims; the second '*Aḥkām 'Āmmah*' (General Legal Rules) included articles on legal application, the rights of persons, items, and funds; the first chapter (Sources of Obligations) ranged from articles 146 to 298; the second chapter (The Obligation of Conduct) ranged from articles 299 to 340; the third chapter (Description of Obligations) ranged from articles 341 to 382 while the last chapter (Expiration of Obligations) ranged from articles 383 to 433.[59]

Individual Efforts:
In addition to the various, albeit limited, collective efforts seeking to codify Islamic jurisprudence so as to meet present needs; individual efforts also emerged with the same purpose. Muslim specialists sought to codify the Islamic jurisprudence in a form similar to the Ottoman *Majallat al-Aḥkām al-'Adliyyah*. Among them are the chief of legal codification and the leader of the school of Islamic reform, Muhammad Qudarī Bāshā (1821-1888). Bāshā was one of the leading jurists and judges in Egypt, who compiled three works on Islamic jurisprudence according to the Hanafi legal doctrine which he simplified and updated to suit the needs of the time.[60] His work '*al-Aḥkām al-Shar'iyyah fil-Aḥwāl al-Shakhṣiyyah*' was published in 1881 and consisted of 6476 articles. It was concerned with provisions for positive law, yet was easy to comprehend, especially for beginners. Bāshāwas deeply influenced by the Ottoman *Majallat al-Aḥkām al-'Adliyyah* in both its organizational structure and form. Bāshā addresses the provisions of family law and the predominant juristic opinions of the Ḥanafi *madhhab*, including provisions of marriage and divorce, will and inheritance, gifts, and other legal issues related to family provisions.

The second work, '*Murshid al-Ḥayrān 'ilā Ma'rifat Aḥwāl al-Insānfī al-Mu'āmalāt al-Shar'iyyah*', consisted of 941 articles spread across multiple volumes, and was dedicated to *mu'āmalāt* according to the Ḥanafi legal doctrine. The *Murshid* compared between the civil branch of the Sharī'a based on the Hanafi *madhhab* and man-made legislation. The author organized civil issues in the *madhhab* along the lines of Egyptian civil law stemming from foreign origins. The third work, '*Qānūn al-'Adlwal-Inṣāffī al-Quda 'alā Mushkilāt al-Awqāf*', consisted of seven chapters and 646 articles, including provisions on endowment (*waqf*) and all other related materials.[61]

Ahmad ibn 'Abdullah al-Qari al-Makki (d. 1940) is another distinguished jurist who composed his '*Majallat al-Aḥkam al-Shar'iyyah 'ala Madhhab al-Imam Aḥmad Ibn Ḥanbal*', in which he adopted the form and style of the Ottoman *Majallat al-Aḥkam*. His work consisted of 2382 articles. His work was composed in 1924, but not published until 1981 with the attetntion of scholars such as 'Abd al-Wahhab Ibrahim Abu Sulayman and Muhammad Ibrahim 'Ali.[62]

The third jurist is 'Abd al-Qadir 'Udah (d. 1373/1945) who compiled his encyclopaedia on Islamic criminal law known as '*al-Mawsu'ah al-Jina'iyyah* or *al-Tashri' al-Jina'i al-Islamī Muqaranan bi al-Qānūn al-Wad'i*'. In his work, 'Udah examined the general and specific aspects of Islamic criminal law in comparison to man-made laws. His work highlights the superior position of the Shari'ah in 689 articles, and also identifies the

---

[55] Ibid.
[56] *Mawsū'at al-Fiqh al-Islāmī*, al-Majlis al-A'lālil-Shu'ūn al-Islāmiyyah. Cairo, 1990, vol. 1: 6.
[57] Mustafā Aḥmad al-Zarqā (1988). *al-Madkhal al-Fiqhī al-'Āmm*, vol. 1: 31-32.
[58] Ibid.
[59] Muṣṭafā Aḥmad al-Zarqā (1999). *al-Madkhal 'ilā Naẓariyyat al-Iltizām al-'Āmmahfī al-Fiqh al-Islāmī* Damascus: Dār al-Qalam, pp. 5, 6 and 297-360.
[60] Ḥājjī Khalīfah, Muṣṭafā ibn 'Abdullah al-Qusṭanṭīnī (1994). *Kashf al-Ẓunūn 'an Asāmī al-Kutub wal Funūn*. Bagdad: Maktabat al-Mutanabbī, vol. 6: 302.
[61] Muhammad Qadrī Pāshā (2006). *Qānūn al-'Adlwal-Inṣāffī al-Qaḍā 'alāMushkilāt al-Awqāf*, ed. Markaz al-Dirāsāt al-Fiqhiyyah al-Iqtiṣādiyyah. Cairo: Dār al-Salām; Ḥājjī Khalīfah, Muṣṭāfā ibn 'Abdullah al-Qusṭanṭīnī (1994). *Kashf al-Ẓunūn 'an Asāmī al-Kutub w-al Funūn*,vol. 6: 302.
[62] Mustafā Aḥmad al-Zarqā (1988). *al-Madkhal al-Fiqhī al-'Āmm*, vol. 1: 305.

humanitarian principles, and scientific and social theories then largely unknown to the world. 'Udah adopted a comparative approach without relying on a single *madhhab,* and sought to identify the basis for any legal dispute among madhhabs.[63]

'Abd al-Razzaq al-Sanhuri authored his *'Masadir al-Ḥaqq fi al-Fiqh al-Islamī'* among other famous legal works.[64] His work *'Masadir'* provides a comparative inquiry of Islamic and foreign jurisprudence. It consists of a collection of lectures delivered to students of law, which addresses the underlying reasons establishing legal rights. His work however, is limited to financial legal rights, personal law, and property law. Al-Sanhuri argues that the right sources, whether in person or the right[s] remain an ambiguous problem in western jurisprudence to which he found a solution in Islamic jurisprudence. He concludes that Islamic jurisprudence is a great, yet unique legal system. His introduction revolved around the personal rights and right[s] in Islamic jurisprudence and their sources. His study is mainly divided into a discussion of the legal process and contracts as well as reviewed legal facts.[65]

Mustafa al-Zarqa is yet another distinguished Muslim jurist who worked as a Professor of civil law and Islamic law and who is considered the founder of Islamic jurisprudence in its contemporary form. Al-Zarqa composed a series of books including *'al-Madkhal al-Fiqhī al-'Amm'*, *'al-Madkhal 'ila Naẓariyyat al-Iltizām al-'Ammah fi al-Fiqh al-Islamī'*, *'al-Naẓariyyah al-'Ammah lil-Aḥkām al-Madaniyya fi al-Fiqh al-Islamī'*, as well as *'al-Nazariyyah al-'Ammah lil-Iltizamāt fi al-Fiqh al-Ajnabī'*. The segment on *'al-Madkhal al-Fiqhi al-'Amm'a* is constructed in three main parts, namely, an introduction to the sources of jurisprudence and its development which summarizes the views of the author regarding the process of unifying the criminal legal system in Arab countries on the basis of the Sharī'ah. This is followed with the main theories of jurisprudence and their foundations.

'Al-Madkhal al-Fiqhi al-'Amm' is a prologue to the study of *Majallat al-Ahkam al-'Adliyyah*. It constitutes a general introduction to Islamic jurisprudence and to *Majallat al-Ahkam al-'Adliyya.* Al-Zarqa elaborates extensively on the legal provisions and articles so as to render such commentary as explanatory references for judges. The author also examines the *Majallat al-Ahkam al-'Adliyya* in order that it may serve as a reference for detailed study. The author draws on the provisions of the Qur'ān, traditions of Prophet Muhammad, views and opinions of jurists across Madhhabs, as well as contemporary European legal theories. Al-Zarqā's attempt was successful and he is often credited for producing contemporary theories of jurisprudence.[66]

His discussion of *'al-Madkhal 'ila Nazariyyat al-Iltizam al-'Ammah fi al-Fiqh al-Islami'* serves as a preliminary step towards drafting law based on universal theories. It consists of four chapters on issues such as the overview of rights, obligations, wealth, and individuals. His work manifests itself as a contemporary method for the writing of Islamic jurisprudence, which elaborates on various legal issues, while at the same time simplifies the theories and terminologies in addition to the detailed accounts of legal applications. In this work the civil issues were drawn from Islamic jurisprudence, while the overall intention of the author was to develop civil law based on Islamic legislation to meet contemporary needs and changes.

Collective Ijtihād:

The thesis of the interruption of *ijtihād* remains an ongoing and heated subject to the present day, as seen with the debate on the closing of the gate of *ijtihād* by scholars such as Joseph Schacht,[67] Wael Hallaq,[68] Mohammad H. Kamali,[69] N. J. Coulson,[70] Ahmad Hasan,[71] Fazlur Rahman,[72] and others. Taken hypothetically to say the least, it would fair to establish the closing of the gate of *ijtihād*. Muslim scholars and the public as well are generally inclined towards the opinion of the closing of the gate of *ijtihād*, without causing them the trouble it does today. The continued sufficiency of *Ijtihād* however is due to of individual and social life conditions, as the reality of absolute *ijtihād* was already interrupted up to the emergence of contemporary reformers as a unified force. Again, the closing of the gate of absolute *ijtihād* (*ijtihādmutlaq*) was seen as an intellectual limitation but did not result in any form of social disorder. In our contemporary era however, social

---

[63] 'Abd al-Qādir 'Ūdah (2009). *al-Tashrī' al-Jinā'ī al-Islāmī Muqāranan bi al-Qānūn al-Waḍ'ī* Cairo: Dār al-Ḥadīth, vol. 1: 6-12.

[64] 'Abd al-Razzāq al-Sanhūrī (1998). *Sharḥ al-Qānūn al-Madinī: al-Naẓariyyat al-'Āmma lil-Iltizāmāt.* Beirut: Manshūrāt al-Ḥalabī al-Ḥuqūqiyyah; idem (1988). *Fiqh al-Khilāfa wa Taṭawurahā li-Tuṣbiḥa 'Aṣbat Ummam Sharqiyya* Cairo: al-Hay'a al-MaSriyyalil-Kitāb; idem, (1981). *al-Wasṭ fi Sharḥ al-Qānūn al-Madanī* Cairo: Dār al-Nahḍah.

[65] 'Abd al-Razzāq al-Sanhūrī (1970). *Maṣādir al-Ḥaqqfi al-Fiqh al-Islāmī: Dirāsa Muqārana bi al-Fiqh al-Gharbī* Beirut: Dār al-Fikr, vol. 1: 5-7.

[66] Ibid.

[67] Joseph Schacht (1982). *An Introduction to Islamic Law* Oxford: Oxford University Press, p. 69.

[68] Hallaq Wael (1993). "Was the Gate of Ijtihād Closed?," *International Journal of Middle East Studies*, pp. 587-605.

[69] Mohammad Hashim Kamali (2003). *Principles of Islamic Jurisprudence* Cambridge: Islamic Texts Society, p. 490., and 4930-494.

[70] N. J. Coulson (1964). *A History of Islamic Law* Edinburgh: Edinburgh University Press, p. 80.

[71] Karamali, Shaista P. Ali and Dunne, Fiona (1994). "The jtihād Controversy", *Arab Law Quarterly*, Vol. 9, No. 3, p. 246.

[72] Fazlur Raḥmān (1962). "Post-Formative Developments in Islam", *Islamic Studies*, Karachi, vol. 1, No. 4, p. 12

---

conditions have changed dramatically, as documented issues in the literature of jurisprudence lack the attention required to current issues, and are reflected in the fact that faith and social reality were rather dissociated.

The above has led numerous Muslim countries to embrace European laws and legislation, especially positive laws. The question that arises regards the position of specialized Muslim scholars who would link Islamic laws with life. This idea has gathered scholars and jurists of the contemporary era from different parts of the Muslim world. Appeals by Muhammad Tahir 'Ashur,[73] Muhammad al-Faḍil ibn 'Ashur,[74] Ahmad Shakir,[75] and Mustafa al-Zarqa[76] summarized the revitalization of jurisprudence/Shari'a through *ijtihād*. Since the only means of confronting the challenges of contemporary life affecting the Muslim community, then the legitimacy of the judicial processes needed to provide reliable yet flexible evidence by way of collective scholastic and juristic efforts, instead of exerting individual efforts of specialized figures in various fields of knowledge and intellectual disciplines.[77]

Majma' Al-Buhuth Al-Islamiyyah In Al-Azhar:
A regional scholarly assembly was established in 1961 under the chairmanship of Shaykh al-Azhar, involving a number of specialized committees including *lajnat al-buḥūth al-fiqhiyyah* (Committee of jurisprudential research), which was then entrusted with the responsibility of codifying legal provisions in light of various legal doctrines (*madhhabs*). It considered emerging issues and reported the appropriate provisions. This assembly held a general conference for International Muslim Scholars to discuss contemporary research. The first conference was held in 1964.[78]

Al-Majma' Al-FiqhiAl-Islami:
This assembly was initiated by the Muslim World League and hosted its first session in Mecca in 1978. It was established years following the proposal made by Mustafa al-Zaraq in 1964. The Assembly held periodic meetings to address pressing issues and to issue resolutions on issues such as the stock market, futures, contracts, stocks, bonds, goods, banknotes, and arising medical issues such as organ transplant, test-tube babies and others.[79] It is considered to be among the agencies of the Organization of the Islamic Conference, as established in the framework and mandate of the Islamic Summit Conference. It convened a committee on July 1981 to draft a statute for the *mujamma'* of Islamic jurisprudence and held a founding conference for the Islamic Jurisprudential Council in Mecca on August 26-29, 1983.[80]The Assembly sought to achieve the following main objectives: a) to achieve Muslim unity at the theoretical and practical level by way of humane conduct at the social and international fronts and in accordance with the provisions of the Islamic Shari'a; and b) to unite Muslim nations, the study of problems of contemporary life, and the application of *ijtihad* by way of providing solutions based on the Islamic Sharī'a.

The Assembly seeks to achieve its objectives through numerous means including the following: developing a glossary of jurisprudential terms to facilitate recognition of its linguistic meanings and terminology through specialized committees; composition of Islamic jurisprudence through development of a comprehensive encyclopaedia of jurisprudence for easy reference; cooperation and coordination with jurisprudence councils, committees and institutions in the Islamic world; codifying Islamic jurisprudence by means of specialized committees; Encouraging research in jurisprudence within universities and other scientific institutions to address contemporary challenges and emergency issues; establishment of centres of Islamic studies in parts of the world. Moreover, it sought the wide distribution of various Assembly researchers through available means; work on the revival of the Islamic jurisprudence heritage and the *al-khilāf*literature; and where possible required members of the Assembly to involve scholars and thinkers in their respective various fields of Islamic knowledge. This assembly was able to prove its presence in the sphere of Islamic jurisprudence and has since become a significant milestone in the area, with wide-spread influential decisions affecting Muslims' understandings regarding contemporary legal problems such as test tube babies, milk banks, resuscitation equipment, insurance and insurance financial compensation, paper banknotes, currency value adjustment, birth control, mortgage for the housing and construction costs purchase, implants of brain cells and the nervous system, the use of embryos

---

[73] Ibn 'Āshūr, Muḥammad al-Ṭāhir (1947). *Maqāṣid al-Sharī'h al-Islāmiyya* Tunis: al-Maṭba'ah al-Faniyyah, pp. 151-152.

[74] Ibn 'Āshūr, Muhammad al-Fāḍil (1982). *Wamḍāt Fikir*, vol. 2: 39-43.

[75] Indicated that the noble Qur'ān and the Prophetic Sunna should be the sources of legislation in Egypt. See, Muhammad Kamāl al-Dīn Imām (1998). *Naẓariyyat al-Fiqh fī al-Islām* Beirut: al-Mu'assasat al-Jāmi'yyat lil-Dirāsāt, pp. 38-39.

[76] Mannā' al-Qaṭṭān (1982). *al-Tashrī' wal-Fiqhfī al-Islām: Tārīkhan wa Manhajan*, p. 339

[77] Ibid.

[78] Ibid, p. 340.

[79] Ibid.

[80] Muḥammad 'Alī al-Taskhīrī (2003). *Mu'tamarāt Mujama' al-Fiqh al-Islāmi* Beirut: DārIḥyā' al-Turāth al-'Arabī, vol. 1: 9-10, and p. 341.

for organ transplantation, genital implants, and other relevant medical, social and financial issues emerging in today's world.[81]

III. Conclusion

This paper offered a critical approach to the impact of contemporary reformist thought on Islamic jurisprudence. With this background on the development of Islamic intellectual life in the last century, one sees that the emergence of Muslim reformers (*mujaddidin*) represents one of the most critical areas of intellectual, religious and civilizational inquiry in the Muslim world. Such an emergence has evolved around a broad intellectual doctrine and diverse jurisprudential dilemmas pertinent to contemporary life. The *Majallat al-Manār* voiced concerns and also remedies to many problems pertaining to Islamic legislation, including issues of civil transactions such as usury, insurance companies, investment certificates, and many other financial problems. Some issues were concerned with customs as discussed by Abū Isḥāq Ibrāhīm al-Shāṭibī (d. 790/1388)[82] such as *Zakāt*/alms giving, dress code, and determination of the early Arab months. Other issues pertain to provisions of Personal Status, including the maximum duration of pregnancy, polygamy, divorce, women financial independence, and those resulting from the East's interaction and communication with the West, and its implication on the development and vitality of Muslim daily life.[83]*Majallat al-Manār* continued to provide repeated considerations on the legal provisions based on reform advocacy, in order to meet societal needs, yet without giving preference to any particular legal school (*madhhab*).[84]

Muslims reformers did not approach Islamic jurisprudence and legislation in a direct form. Rather they advanced a comprehensive yet general plan of reform which addresses most if not all aspects of individual and social life. Their approach led to the development of a single doctrine for belief, ethics, society, politics, and economics. As a result, interest in these matters arose and was championed across the broad spectrum of Muslim reform movements, as epitomized by the *Majallat al-Manār*. In it, Muslim reformers called for solutions to problems following an Islamic method. Interestingly these reformers were not jurists *per se,* and nor were they specialized in the study of law; their reforms however were often legal in nature. This was perhaps because they sought to '*modernize*'Islamic law so as to meet current needs. They however, highlighted the need to abide by the very evidence of the law, rather than a formal affiliation to the school of law per se.[85]Jamāl al-Dīn al-Afghānī (d.1897) for instance resisted sectarian disruptions and instead proclaimed the need for the restoration of Islamic unity. Similarly 'Abd al-Raḥmān al-Kawākibī (d. 1902),[86] known as al-Furātī[87] called for the dismissalof all doctrinal differences. There was a general consensus however in regards to the need to make references to understandings of the original revealed text, or what has so far been produced by early Muslim predecessors.[88] In their many efforts, Muslim reformers sought to do away with narrow legal sectarianism and blind imitation that often plagued earlier Muslim works or legal manuals. Although many of these views treated non-fixed issues, Muslim reformers showed care and dedication in their attempts to identify the causes underlying legal rigidity so as to set the ground for a broader and more flexible legal framework that suits the demands of our modern age.[89]

---

[81] Ibid., vol. 1: 161-162, 164, 166, 206-207, 210, 429, 471, 476 and 479-480.

[82] Abū Isḥāq Ibrāhīm al-Shāṭibī (2001). *Fatāwā al-Imām al-Shāṭibī* ed. Muḥammad Abu al-Ajfān Riyadh: Maktabat al-'Ubaykān. Idem *al-Muwāfaqāt* (2009). *al-Muwāfaqāt fī Uṣūl al-Sharī'a*, ed. 'Abdullah Darāz Beirut: Dār al-Kutub al-'Almiyya, p. 29.

[83] Muḥammad 'Abduh (1989). *al-Fatāwāfī al-Tajdīdwal-Iṣlāḥ*, ed. Muḥammad 'Amārah Tunis: Dār al-Ma'ārif, pp. 23-24 and 30; Ibn 'Āshūr, Muhammad al-Fāḍil (1982). *Wamḍāt Fikir*, vol. 1: 152-153.

[84] Ibn 'Āshūr, Muhammad al-Fāḍil (1982). *Wamḍāt Fikir*, vol. 1: 152

[85] Ibid, vol. 2: 309; Sa'īdMuḥammad al-Jilīdī (1998). *al-Madhkhal li-Dirāsat al-Fiqh al-Islāmī* Tripoli: Maṭābi' 'Aṣr al-Jamāhīr, p. 174.

[86] 'Abd al-Raḥmān al-Kawākibī (1982). *Umm al-Qurā: ḌabṭMufawad}ātwaMuqararātMu'tamar al-Nahḍah al-Islāmiyya al-Mun'aqid fī Macca al-Mukaramah fī sanat 1316*, Beirut: Dār al-Ra'id al-'Arabī, pp. 13-15.

[87] During the reign of al-Kudāwī 'Abbās, al-Kawākibī presented him with a copy of his book *Umm al-Qurā*,where he stated that the Authority should be taking away from the Ottomans, and the Arabs should redeem this authority. Then he feared that this will cause him problems, and he gave himself a pseudonym al-Furātī. See, Sāmī al-Dahan (1995). *al-A'māl al-Kāmilah li-'Abd al-Rah}mān al-Kawākibī* Beirut: Markiz al-Dirāsāt al-Wiḥdah al-'Arabiyya, p. 30; SāmīDahan (1980). *'Abd al-Raḥmān al-Kawākibī* Cairo: Dār al-Ma'ārif, p. 29.

[88] 'Abd al-Raḥmān al-Kawākibī (1982), *Umm al-Qurā*, p. 15.

[89] Sa'īd Muḥammad al-Julīdī (1998). *al-Madkhal li-Dirāsat al-Fiqh al-Islāmī*, p. 174.