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Rethinking the Concepts of Ijtihād and Taqlīd in the Ḥanafī Tradition: What Did the "Closing of the Gate of Ijtihād" Actually Change?

Hanefî Geleneğinde İçtihat ve Taklit Kavramlarını Yeniden Düşünmek: "İçtihat Kapısının Kapanması" Neyi Değiştirdi?

Murat Sarıtaş[1]

ABSTRACT

This study examines how the concepts of ijtihād and taqlīd were perceived in the Hanafī tradition between the 4th/10th and 10th/16th centuries. It argues that from the 4th/10th to 7th/13th centuries, Hanafīs restricted the scope of the term muqallid to the laypeople without legal training and knowledge and regarded jurists who completed their legal training, and were competent to evaluate legal opinions and make choices among them on juridical grounds as mujtahid mutlaqs, even if they were affiliated with a particular legal madhhab. The study further demonstrates that this understanding of ijtihād and taqlīd gradually transformed beginning in the 7th/13th century. By the 10th/16th century, when this shift was complete, jurists affiliated with a madhhab came to be classified as muqallids rather than mujtahids, regardless of their legal expertise. Finally, the study contends that, given there was no substantial difference between jurists of the two periods in the way they engaged with fiqh and their relationship with the Ḥanafī corpus of furūʿ al-fiqh, the shift in the conception of ijtihād and taqlīd was primarily discursive, in other words, jurists who were afilliated with a madhhab, had completed their legal training, and were competent to evaluate legal opinions and make choices among them on juridical grounds were regarded as mujtahid mutlaqs during the earlier period (4th/10th–7th/13th centuries) when the former understanding prevailed, but were depicted as muqallids after the 10th/16th century when the new understanding took hold.

Keywords: Ijtihād, Taqlīd, Mujtahid Muṭlaq, Muqallid, the Gate of Ijtihād, the Ḥanafī Madhhab

ÖZ

4./10. yüzyıldan 10./16. yüzyıla kadar geçen zaman diliminde Hanefî geleneğinde içtihat ve taklit kavramlarının nasıl algılandığını ele alan bu çalışma özellikle 4./10.-7./13. yüzyıllar arasında Hanefîlerin, mukallit kavramının kapsamını hukuki bilgisi olmayan, hukuk eğitimi almamış avamla sınırlı tutup hukuk eğitimini tamamlamış olup hukuki görüşler

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arasında hukuki açıdan değerlendirme yapıp tercihte bulunabilecek yetkinlikteki fakihleri, bir fıkıh mezhebine mensup olsalar bile, mutlak müçtehit kabul ettiklerini öne sürer. Ayrıca bu içtihat ve taklit anlayışının 7./13. yüzyıldan itibaren tedrîcî olarak dönüşüme uğradığını ve bu dönüşümün tamamlandığı 10./16. yüzyılda bir mezhebe bağlı olarak faaliyet gösteren fakihlerin, hukuki açıdan ne kadar yetkin olurlarsa olsunlar, artık mukallit sayıldıklarını gösterir. Çalışma, fıkıh yapma biçimleri ve Hanefî mezhebinin fürû birikimiyle ilişkileri açısından her iki dönemde faaliyet gösteren Hanefî fakihler arasında önemli bir farkın bulunmadığını göz önünde bulundurarak içtihat ve taklit anlayışındaki değişimin söylem değişikliğinden ibaret olduğunu; bir mezhebe bağlı olarak faaliyet gösteren, hukuk eğitimini tamamlamış olan ve hukuki görüşler arasında hukuki açıdan değerlendirme yapıp tercihte bulunabilecek yetkinlikteki fakihlerin eski içtihat ve taklit anlayışının hakim olduğu 4./10.-7./13. yüzyıllar arasındaki dönemde mutlak müçtehit olarak görülürken yeni anlayışın hakim olduğu 10./16. yüzyıl sonrasında mukallit olarak tasvir edildiklerini iddia eder.

Anahtar Kelimeler: İçtihat, Taklit, Mutlak Müçtehit, Mukallit, İçtihat Kapısı, Hanefî Mezhebi

Introduction

The debates surrounding the concepts of ijtihād and taqlīd have consistently occupied a central place in the study of Islamic law. Among modern scholars, two dominant approaches can be identified in relation to these concepts. The first approach portrays ijtihād in a positive light while offering a critical view of taqlīd. According to this perspective, ijtihād symbolizes intellectual freedom, originality, and progress, whereas taqlīd is associated with stagnation, inertia, and even a decline in legal thought. The second approach, in contrast, considers these concepts through the lens of legal ideals such as the rule of law and legal stability. From this perspective, ijtihād acquires negative connotations, while taqlīd is viewed positively. Scholars who follow this line of thinking argue that the Islamic legal tradition acquired characteristics such as legal predictability and institutional stability only after transitioning to a regime of taqlīd, and that these qualities were absent in the earlier era of ijtihād. Despite their opposing evaluations, both approaches share a common underlying conception of ijtihād and taqlīd. In both views, taqlīd refers to adherence to a specific legal madhhab and its corpus of furū‘ al-fiqh (substantive law), while ijtihād is defined as the direct derivation of legal rulings from the primary sources of Islamic law (the Quran, the Sunnah, Ijmā‘ and Qiyās) without reliance on the corpus of furū‘ al-fiqh of any particular madhhab. This definition of ijtihād encompasses the work of jurists unaffiliated with any madhhab, as well as those who, while formally affiliated with a madhhab, issue legal opinions that diverge from its established opinions by formulating opinions from the primary sources. Proponents of both approaches also agree that the "gate of ijtihād" was eventually closed.[1]

Hallaq enters this debate by challenging the thesis that the "closing of the gate of ijtihād" actually occurred. He does so on three grounds: the discourse of closure first appears only toward the end of the 5th/11th century; jurists' claims to ijtihād were not opposed until the late 8th/14th century; and the conditions for ijtihād set out in works of uṣūl al-fiqh are not especially onerous. In his view, ijtihād continued both in theory and in practice.[2] Yet because his evidence for the practical continuation of ijtihād rests on cases in which jurists adopted positions that depart from the founder's opinion or the madhhab's settled doctrine,[3] it appears that the meanings he assigns to ijtihād and taqlīd do not, in fact, differ from those assumed by

1 See Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1994), 80–81; Joseph Schacht, *An Introduction to Islamic Law* (Oxford [Oxfordshire] ; New York: Clarendon Press, 1982), 69–75; George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and The West* (Edinburgh: Edinburgh University Press, 1981), 290–291; Mohammad Fadel, "The Social Logic of Taqlīd and the Rise of the Mukhataṣar," *Islamic Law and Society* 3/2 (1996), 193–233; Sherman Jackson, "Taqlīd, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory:," *Islamic Law and Society* 3/2 (1996), 165–192; Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb Al-Dīn Al-Qarāfī* (Boston: Brill, 1996), 69–141, 185–224; Norman Calder, "Al-Nawawī's Typology of Muftīs and Its Significance for a General Theory of Islamic Law," *Islamic Law and Society* 3/2 (1996), 137–164.

2 Wael B Hallaq, "Was the Gate of Ijtihad Closed?," *International Journal of Middle East Studies* 16/1 (1984), 3–41.

3 See Hallaq, "Was the Gate of Ijtihad Closed?," 10–12.

others. On this reading, Hallaq's framework cannot account for the subsequent dominance of the "no-mujtahids-remained" thesis—first articulated in the late 5th/11th century and widely accepted after the 10th/16th. For the very phenomena he adduces as instances of ijtihād—the formulation of original legal opinions and, within a madhhab, the adoption of positions that depart from the founder's view or the settled doctrine—are still attested after the 10th/16th century.

Departing from the aforementioned understanding, El Shamsy shows that, in the Shāfiʿī madhhab up to the 7th/13th century, taqlīd was used to mean adopting a view without adducing evidence, while ijtihād was understood as its opposite; that the concept of ittibāʿ was developed for cases in which a jurist follows another jurist's position because he deems the latter's proofs stronger; and that, accordingly, Shāfiʿī jurists did not regard their juristic work based on al-Shāfiʿī's opinions as taqlīd but explained it in terms of ittibāʿ.[4]

On the other hand, within this framework it remains unclear, in concrete terms, whom the categories of mujtahid and muqallid actually correspond to. Moreover, by confining this framework to the furūʿ literature, El Shamsy takes ijtihād in uṣūl al-fiqh—as is common among modern researchers—to be an individual process in which the jurist interprets the naṣṣ independently, a conception that does not accord with "precedent," i.e., engaging with fiqh within a madhhab framework. For this reason, he maintains that uṣūl al-fiqh does not acknowledge the authority of precedent and, consequently—if the formative (tashrīʿ) period is bracketed—the authority of the settled practices of Islamic societies; thus it yields an anarchic conception of law in which all ijtihāds are regarded as equal in value and judicial decisions are unpredictable. He therefore portrays uṣūl al-fiqh as a timeless, ahistorical discipline that disregards historical reality.[5]

However, El Shamsy neither adduces evidence that would require the meaning of ijtihād in uṣūl al-fiqh to differ from its meaning in furūʿ al-fiqh, nor does he offer any explanation on this point. As I will show in this study, in the Ḥanafī uṣūl al-fiqh literature of the 4th/10th–7th/13th centuries the concept of ijtihād is used broadly enough to encompass juristic activity conducted within a madhhab framework. Accordingly, Ḥanafī uṣūlists of this period state that the faculty (malaka) of ijtihād can be acquired by studying a particular madhhab's corpus of furūʿ al-fiqh—and indeed that contemporary mujtahids attained their rank by this route. It follows that, in the uṣūl al-fiqh literature of the period in question, ijtihād is conceived as an activity that may be undertaken either individually or collectively. Moreover, if we bear in mind that the rules set out in works of uṣūl al-fiqh were formulated so as to provide the theoretical ground for the arguments of the furūʿ positions of the madhhab to which the uṣūl work belongs,[6] we

4 Ahmed El Shamsy, "Rethinking 'Taqlīd' in the Early Shāfiʿī School," *Journal of the American Oriental Society* 128/1 (March 2008), 1–23.

5 See especially El Shamsy, "Rethinking 'Taqlīd' in the Early Shāfiʿī School," 21–23.

6 Murteza Bedir, "Kelâmcı ve Fıkıhçı Usul Geleneklerine İlişkin Bazı Eleştirel Mülâhazalar," *İslâm Araştırmaları Dergisi* 29 (2013), 83–87.

may say that the aim of uṣūl al-fiqh is to justify madhhab-based fiqh—including the notion of precedent and the settled practices of Islamic societies beyond the formative/tashrīʿ period. As we will note below, Hanafī uṣūlists, in the context of the error–correctness problem in ijtihād, maintain that each legal question has a single determinate ruling in the sight of the Lawgiver and that the mujtahid's task is to reach that ruling. On this account, the claim that all ijtihāds are of equal value in uṣūl al-fiqh is untenable. In light of these considerations, it is difficult to accept El Shamsy's foregoing assessments regarding uṣūl al-fiqh.

This study examines how the concepts of ijtihād and taqlīd were understood in the Ḥanafī tradition between the 4th/10th and 10th/16th centuries and argues that Ḥanafī scholars operated within two distinct conceptual frameworks during this period —an earlier and a later one. According to the earlier framework, which remained dominant until about the 7th/13th century, ijtihād was a dynamic and living institution. It was defined as the act of a jurist who, possessing the intellectual capacity to evaluate and differentiate between legal opinions, adopts a particular view on the basis of its evidence or justification. A jurist who could comprehensively engage with all areas of furūʿ al-fiqh in this manner was termed a mujtahid muṭlaq (absolute). This conception of ijtihād also included the acts of Ḥanafī jurists who adapted the established positions of their own school on the basis of evidence or justification. Thus, any Ḥanafī jurist competent to issue legal opinions in all areas of the law was regarded as a mujtahid muṭlaq. The second framework began to emerge after the 7th/13th century and became dominant by the 10th/16th century. In this later conception—closer to modern understandings of ijtihād—jurists who relied on a particular madhhab's corpus of furūʿ al-fiqh to derive their legal opinions were classified as muqallids.

This study further argues that Ḥanafī jurists between the 4th/10th and 7th/13th centuries also engaged with fiqh on the basis of the Ḥanafī madhhab's corpus of furūʿ al-fiqh, just as later jurists did. Consequently, the change in the meanings of ijtihād and taqlīd should be understood not as a substantive shift in legal methodology, but rather as a discursive change. In other words, while earlier jurists referred to themselves as mujtahid muṭlaqs, later ones— despite possessing the same legal competencies and engaging with fiqh in the same manner—came to be described as muqallids. We may now begin our analysis by examining the debate over the requirements for ijtihād.

1. Attaining the Status of Ijtihād through Mastery of a Legal Madhhab's Corpus of Furūʿ al-Fiqh

The conditions for ijtihād are nearly the same according to all scholars of Islamic legal theory. These conditions can be summarized as knowing the four primary sources of Islamic law (the Quran, the Sunnah, Ijmāʿ and Qiyās).[7] As Hallaq highlights, considering these

7 See, for example, Abū Bakr Aḥmad ibn ʿAlī al-Rāzī al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl* (Kuwait: Wizārat al-Awqāf al-Kuwaitiyya, 1994), 4/273; ʿAlāʾ al-Dīn Muḥammad ibn Aḥmad al-Samarqandī, *Mīzān Al-Uṣūl Fī Natāij al-ʿUqūl* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), 1/252; ʿAlāʾ al-Dīn Muḥammad ibn ʿAbd al-Ḥamīd ibn Ḥusayn

conditions, becoming a mujtahid seems quite easy.[8] On the other hand, the claim of absolute (muṭlaq) ijtihād, as conceived in the literature, both modern and premodern, is not limited to meeting these conditions. The mujtahid muṭlaq is supposed to derive the rulings of all issues discussed in furūʿ al-fiqh based on the primary sources without relying on the corpus of furūʿ al-fiqh of any madhhab. It is evident that this would require a superhuman effort. Moreover, even if it is assumed that they find answers to all the questions of furūʿ al-fiqh, it is highly unlikely that these answers would have a chance to be applied in a legal context dominated by madhhabs. Thus, the question arises as to what purpose this effort will serve. This is probably why Ḥanafī scholars of usūl al-fiqh state that things work differently in practice, pointing out that these conditions are theoretical.

One of the usūlists that we are talking about is Shams al-Aimma al-Sarakhsī (d. 483/1090 [?]). Al-Sarakhsī says that a person who memorizes *al-Mabsūṭ* and the views of the mutaqaddimīn (earlier jurists) would have the capacity to exert ijtihād.[9] In the Ḥanafī tradition, numerous works bear the title *al-Mabsūṭ*. Foremost among them, without question, is Muḥammad ibn al-Ḥasan al-Shaybānī's (d. 189/805) work, also known as *al-Aṣl*. The opinions recorded in this work later formed the backbone of what came to be known as the *ẓāhir al-riwāyah* (also called the uṣūl)—and thus of the Ḥanafī madhhab.[10] As al-Sarakhsī notes, Muḥammad's manner of presenting issues in *al-Mabsūṭ* facilitates memorization: he reiterates the same matters across different chapters, thereby impressing them on the reader even unintentionally.[11] It is therefore most plausible that the *al-Mabsūṭ* mentioned in al-Sarakhsī's discussion of how to attain the rank of ijtihād is Muḥammad's *al-Mabsūṭ*. More important than the precise force of his terms "al-Mabsūṭ" and "mutaqaddimīn," however, is his claim that one can attain the level of ijtihād without direct engagement with the four primary sources of Islamic law. The importance of this approach lies in its pointing to a conception of ijtihād grounded in juristic opinions rather than in the primary sources. Yet both pre-modern discourse—exemplified by Kamālpashazāde's typology of jurists—and much of modern scholarship conceive ijtihād as a process that proceeds directly from the primary sources. By contrast, in *al-Mabsūṭ* al-Sarakhsī stipulates that, to be a mujtahid, one must know the four primary sources of Islamic law, not the opinions of jurists.[12] On its face, then, two statements about the prerequisites of ijtihād—both stated by al-Sarakhsī—appear to be in tension. To probe this apparent contradiction, what ʿAlāʾ al-Dīn al-Samarqandī (d. 539/1144), a Ḥanafī jurist from the same region a generationlater,

al-Usmandī, *Badhl Al-Naẓar Fī al-Uṣūl*, critical ed. Muḥammad Zakī ʿAbd al-Barr (Cairo: Maktabat al-Turāth, 1992), 689–693.

8 Hallaq, "Was the Gate of Ijtihad Closed?," 5–7.

9 Husām al-Dīn ʿUmar ibn ʿAbd al-ʿAzīz ibn Māza al-Bukhārī Ṣadr al-Shahīd, *Sharḥ Adab Al-Qāḍī Li'l-Ḥaṣṣāf*, critical ed. Muḥyī Hilāl Sarḥān (Baghdad: Wizārat al-Awqāf, 1977), 1/189-190

10 Murteza Bedir, *Buhara Hukuk Okulu: Vakıf Hukuku Bağlamında X-XIII. Yüzyıl Orta Asya Hanefî Hukuku Üzerine Bir İnceleme* (İstanbul: İSAM Yayınları, 2014), 66–67.

11 Shams al-Aʾimma Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Maʿrifa, no date), 1/3.

12 al-Sarakhsī, *Al-Mabsūṭ*, 16/62.

says on the matter might be helpful.

ʿAlāʾ al-Dīn al-Samarqandī addresses the requirements of ijtihād in two categories: ʿazīmah and rukhsah. While the word ʿazīmah indicates the ideal level of proficiency for ijtihād, the word rukhsah refers to the minimum requirements to be a mujtahid. Accordingly, memorizing the parts of the Qur'an and Sunnah related to ahkām is ʿazīmah, that is, the ideal level of competence expected from a mujtahid. The rukhsah, that is, the minimum level of competence sought to become a mujtahid, is to perform a lot of practice in a way that makes it possible to find the relevant nuṣūṣ in case of need, and gain experience as a result of these exercises. After adding knowledge of the methods of deriving rules (aḥkām) to these requirements, al-Samarqandī raises the question of whether it is necessary to know the corpus of furūʿ al-fiqh to become a mujtahid:

> [Knowledge of the Qurʾān, the Sunnah, ijmāʿ, and qiyās] was the prerequisite stipulated for a person to be recognised as a mujtahid during the time of the Salaf (the early generations of Muslim scholars). Knowing the furūʿ al-fiqh, that is, the substantive rulings produced by earlier mujtahids through legal reasoning, was not a prerequisite for ijtihād, and the same holds true today. In practice, however, the faculty of ijtihād is developed by studying the furūʿ al-fiqh, which was based on the legal opinions (ijtihāds) of earlier mujtahids such as Abū Ḥanīfa and Shāfi'ī.[13]

In this statement, al-Samarqandī talks about two separate paths leading to the level of ijtihād. The first of these paths is to learn the four primary sources. The other one is to learn a madhhab's corpus of furūʿ al-fiqh. These are also the two methods mentioned in al-Sarakhsī's seemingly contradictory accounts. In the quotation above, al-Samarqandī provides additional information that may help us solve the aforementioned contradiction. According to this information, it is difficult to achieve the level of ijtihād through the four primary sources. Therefore, over time, a relatively easier method of attaining ijtihād—studying a particular madhhab's corpus of furūʿ al-fiqh—was developed. Al-Samarqandī states that the method of becoming a mujtahid through the four primary sources was practiced only by the Salaf. In fact, this method is not unique to the Salaf; it can also be employed by jurists of later generations. Nevertheless, the jurists of al-Samarqandī's era preferred the other method due to its ease. It is also remarkable that al-Samarqandī, who lived in the 6th/12th century, speaks of ijtihād as a living institution that still exists. No restriction has been placed on ijtihād in the statement. This raises the possibility that the ijtihād mentioned could be absolute ijtihād. If al-Samarqandī indeed referred to absolute ijtihād with the concept of ijtihād in the statement, we can say that this statement is quite significant for the discussion on the closure of the gate of ijtihād. On the other hand, the level of ijtihād being achieved through a corpus of furūʿ al-fiqh of a madhhab during al-Samarqandī's time brings to mind a mujtahid profile that we know from Kamālpashazāde's ranking of fuqaha: the mujtahid fi'l-madhhab.[14]

13 al-Samarqandī, *Mīzān Al-Uṣūl*, 752.

14 Shams al-Dīn Aḥmad ibn Sulaymān Kamālpashazāde, "Risāla Fī Dukhūli Waladi Al-Bint Li'l-Mawqūf," *İbn Kemâl'in İslâm Hukuku Alanındaki Arapça Yazma Risaleleri: Tahkik ve Tahlili*, critical ed. Salim Özer (Kayseri:

In Kamālpashazāde's classification, three ranks of mujtahid are distinguished: the mujtahid muṭlaq (absolute mujtahid), the mujtahid fi'l-madhhab (madhhab-bound mujtahid), and the mujtahid fi'l-masāil (mujtahid on specific issues). The first two groups do not follow a specific jurist in matters of furūʿ al-fiqh. Instead, they form their own opinions by performing ijtihād on the basis of the four primary sources. By contrast, the authority of the last group to perform ijtihād is confined to new questions of furūʿ al-fiqh. On issues already examined and resolved by earlier jurists, the mujtahid fi'l-madhhab is expected to adhere to the opinions produced within their own madhhab. Therefore, they are essentially muqallids with respect to their madhhab's corpus of furūʿ al-fiqh.[15] Could the level of ijtihād to which al-Samarqandī refers, namely, the level supposedly attained through engagement with a madhhab's corpus of furūʿ al-fiqh, correspond to that last group of mujtahids who, once newly emerging legal issues are set aside, are essentially muqallids? We shall return later to what al-Samarqandī precisely meant by "ijtihād." Now we can turn to what ʿAbd al-ʿAzīz al-Bukhārī (d. 730/1330), another Transoxanian Ḥanafī uṣūlist, says about the conditions of ijtihād.

ʿAbd al-ʿAzīz al-Bukhārī's statement regarding the conditions of ijtihād is parallel to those of al-Sarakhsī and al-Samarqandī, yet it also offers important clues about the understanding of ijtihād during the period under examination. In fact, al-Bukhārī's statement in question is part of a lengthy quotation from al-Ghazzālī (505/1111), the famous Shāfi'ī scholar. However, al-Bukharī voices no objection to the views articulated in this quotation and does not present his own opinions or those of other Ḥanafī scholars in response. Therefore, we can safely assume that this quotation also reflects al-Bukhārī's own position as well. In this regard, al-Bukhārī maintains that ijtihād requires knowledge of the sources of rulings (madārik al-sharʿ) and the method of deriving rulings from them (istithmār). According to him, the sources are four: the Qur'an, the Sunnah, ijmā', and reason ('aql). To extract rulings from these four sources, mastery of four sciences is required: 1. Madārik al-'uqūl (logic), 2. Lugha (lexicography) and nahw (grammar), 3. Nāsikh (abrogating) and mansūkh (abrogated) in the Qur'an and the Sunnah, 4. Sahīh/maqbūl (authentic/accepted) and fâsid/mardūd (weak/rejected) in the narrations.[16]

After noting that the disciplines of lugha, ḥadīth, and uṣūl al-fiqh encompass most of the requisite knowledge, al-Bukhārī turns to the question of whether studying kalām (theology) and furūʿ al-fiqh is necessary for ijtihād. In his view, kalām is itself a product of ijtihād; therefore, mastering it is not a prerequisite. It suffices for a jurist to hold the Islamic creed with firm conviction, even on the basis of taqlīd. Al-Bukhārī maintains that someone who begins as a muqallid in matters of creed will, upon reaching the level of ijtihād, move from taqlīd to taḥqīq (verification) thanks to scholarly competence and sustained engagement with the naṣṣ. He offers a similar assessment regarding furūʿ al-fiqh:

Erciyes Üniversitesi Sosyal Bilimler Enstitüsü, Thesis type: Doctoral dissertation, 1991), 195.

15 Kamālpashazāde, "Risāla Fī Dukhūli Waladi Al-Bint Li'l-Mawqūf," 195.

16 ʿAbd al-ʿAzīz al-Bukhārī, *Kashf Al-Asrār ʿan Uṣūl al-Bazdawī* (İstanbul: Sharikat al-Ṣiḥāfa al-ʿUthmāniyya, 1890), 4/15-16.

> There is no need to master furūʿ al-fiqh in order to attain the rank of mujtahid. The rulings collected in furūʿ al-fiqh are, after all, the outcomes produced by jurists after they have already reached the level of ijtihād. How, then, can knowledge of furūʿ al-fiqh be considered a prerequisite for ijtihād when ijtihād is itself the prerequisite for furūʿ al-fiqh? Admittedly, in our own time one generally attains ijtihād only through sustained engagement with furūʿ al-fiqh; unlike in the era of the Ṣaḥāba, this has become the practical route to becoming a mujtahid today. Yet it nonetheless remains possible, even now, to reach ijtihād by following the method of the Ṣaḥāba.[17]

As seen, al-Bukharī believes that knowledge of furūʿ al-fiqh, like kalām, cannot be stipulated as a prerequisite for ijtihād. The rationale is straightforward. Because furūʿ al-fiqh is a compilation of past ijtihāds, it can come into being only after the faculty of ijtihād has first been acquired. It is therefore illogical to demand the product (furūʿ al-fiqh) as a requirement for the very capacity that produces it (ijtihād). At first glance, the same objection might seem to undermine the idea that one can acquire ijtihād through the study of furūʿ al-fiqh. Yet al-Sarakhsī, al-Samarqandī, and al-Bukhārī all affirm that such study can, in practice, cultivate the faculty of ijtihād and raise no logical difficulty on this point. Although these jurists do not spell out how the apparent circularity is resolved, we can reconstruct their logic. In their usage, furūʿ al-fiqh denotes the body of rulings formulated by earlier mujtahids. Those rulings are indeed the products of ijtihād—but of ijtihād exercised by past scholars. By contrast, al-Sarakhsī, al-Samarqandī, and al-Bukhārī are concerned with how a contemporary student might attain the rank of ijtihād. In this scenario the causal sequence involves two different agents: the ijtihād that created the received corpus belongs to the earlier jurists, whereas the faculty of ijtihād that the corpus now helps to cultivate belongs to the present jurist. Because cause and effect do not converge in the same person, the alleged logical problem disappears; studying furūʿ al-fiqh can therefore serve as a legitimate pathway to acquiring the capacity for ijtihād. Let us now return to what the quoted authors mean by ijtihād. To which of the three categories, ijtihād muṭlaq, ijtihād muqayyad, or ijtihād fī 'l-masʾalah, does the form of ijtihād cultivated through intensive study of a single madhhab's furūʿ al-fiqh belong? The statements of both al-Samarqandī and al-Bukhārī offer important clues to the answer.

Immediately after affirming that the rank of ijtihād can be attained through the study of a madhhab's furūʿ al-fiqh, al-Samarqandī adds:

> Whoever listens to these furūʿ discussions and, through them, acquires a sound mastery of fiqh becomes one of the ahl al-ijtihād. This, some of our mashāyikh have said. Once a person reaches this level, he is a mujtahid: it is obligatory for him to follow his own ijtihād and impermissible for him to follow that of others.[18]

As noted above, al-Samarqandī holds that a jurist who attains ijtihād through intensive study of a madhhab's furūʿ al-fiqh is thereafter forbidden to follow the opinions of other jurists. As discussed earlier, a mujtahid fī l-masʾala is effectively regarded as a muqallid in

17 al-Bukhārī, *Kashf Al-Asrār*, 4/16-17.
18 al-Samarqandī, *Mīzān Al-Uṣūl*, 752.

relation to the furūʿ al-fiqh of his own madhhab. It follows, therefore, that the type of mujtahid al-Samarqandī has in mind cannot be the mujtahid fī l-masʾala. This inference is corroborated by the following passage from al-Bukhārī. After affirming that the rank of ijtihād can be attained through engagement with the furūʿ, he adds:

> Mastery of these disciplines is a prerequisite for the mujtahid muṭlaq, a jurist qualified to issue fatwās on every aspect of the Sharīʿa. According to the majority of scholars, however, ijtihād is not an indivisible rank; rather, a scholar may attain that rank in some rulings while falling short of it in others.[19]

In this passage, al-Bukhārī employs the term mujtahid muṭlaq to describe a jurist who attains ijtihād through mastering the furūʿ al-fiqh. His usage of the label, however, does not coincide with the meaning Kamālpashazāde assigns to it. According to al-Bukhari, a mujtahid muṭlaq is not a jurist who derives rulings through ijtihād based on a methodology established by himself and the four primary sources of Islamic law; rather, the term designates a jurist who can issue fatwās across all fields of furūʿ al-fiqh. Al-Bukhārī's definition of mujtahid muṭlaq embraces every category in Kamālpashazāde's typology -even the muqallid- because each possesses exhaustive mastery of the entire corpus of furūʿ al-fiqh and is therefore qualified to issue fatwās in any field of it. The same passage contrasts the mujtahid muṭlaq with another class of jurists who may issue fatwās only within a single field of furūʿ al-fiqh, rather than across the entire corpus. Crucially, the usual requirements for ijtihād are said not to apply to this second group. The examples given suggest that such jurists confine their expertise to a specialised sub-field—for instance, farāʾiḍ (the law of inheritance)—and render opinions exclusively within that domain.[20] The fact that mujtahid functions here as a synonym for 'muftī' is especially significant; we shall return to this point in due course.

The picture is more complicated than it first appears. Our analysis shows that the mujtahid muṭlaq described by al-Samarqandī and al-Bukhārī differs sharply from the type Kamālpashazāde places under the same label—a type that many modern scholars treat as the classical definition of the term. Even more interestingly, every notable Ḥanafī jurist from the period under review— a period generally regarded as the time when the formation of the madhhabs was complete and the gate of ijtihād closed—conforms exactly to this model of the mujtahid muṭlaq. At first glance, the very notion of a "Ḥanafī mujtahid muṭlaq" seems almost oxymoronic and therefore calls for closer scrutiny. How can a jurist be affiliated with the Ḥanafī madhhab yet still qualify as a mujtahid muṭlaq? What, precisely, do al-Samarqandī and al-Bukhārī mean by this designation?

To begin answering these questions, we must clarify how a mujtahid muṭlaq who is identified as Ḥanafī relates to the Ḥanafī madhhab itself. A key issue is whether such a jurist—despite bearing a Ḥanafī identity—may legitimately operate beyond the boundaries of the madhhab's legal framework. As noted above, the outer limits of ijtihād are set by ijmāʿ. Any opinion on a

19 al-Bukhārī, *Kashf Al-Asrār*, 4/17.
20 al-Bukhārī, *Kashf Al-Asrār*, 4/17.

disputed matter remains legally valid -even if it differs from the opinion adopted by the Ḥanafīs- so long as it does not contravene an established ijmāʿ. Consequently, the restriction imposed by ijmāʿ does not prevent a Ḥanafī mujtahid muṭlaq from adopting positions outside the confines of the Ḥanafī madhhab. We must therefore turn to the other factors that may constrain ijtihād. One such constraint surfaces in the uṣūl al-fiqh debate on error and correctness in ijtihād.

The debate on error and correctness in ijtihād shows that Ḥanafī scholars view ijtihād as a process of discovery—much like solving a mathematical equation. This debate focuses on two questions: (1) whether, for every issue open to ijtihād, there exists with the shāriʿ (Lawgiver) a single determinate ruling, and (2) if so, whether the mujtahid is duty-bound to reach that specific ruling. Al-Samarqandī categorizes the participants in this debate into two principal camps. The first maintains that there is no single, determinate ruling with the shāriʿ that a mujtahid is required to discover. According to this view, the shāriʿ may issue multiple rulings on the same issue. Within this camp, a further dispute arises regarding whether these rulings are all equally valid. Some scholars contend that the legal truth (ḥaqq) in relation to the shāriʿ is relative and contingent upon the mujtahid's zann ghālib (predominant assumption) regarding the matter. As a result, each ijtihād is considered valid and correct for the respective mujtahid in the sight of the shāriʿ. Others within this camp, however, reject the notion that all rulings are equally valid. They maintain that, hypothetically, were the shāriʿ to disclose the actual ruling on the issue, there would be a single, more accurate ruling that the shāriʿ intended. Accordingly, the ijtihād that aligns with this ruling is deemed more correct (aṣaḥḥ), even though opposing ijtihāds are still regarded as correct (ṣaḥīḥ) in a legal sense. The second group of uṣūl scholars maintains that there exists a single, determinate ruling intended by the shāriʿ. Among them, there is debate over whether the evidence leading to this ruling must be definitive (qaṭʿī) or whether presumptive (zannī) evidence suffices. Even when the evidence is definitive, it is acknowledged to retain some degree of interpretive ambiguity. Consequently, a mujtahid who fails to reach the correct ruling is nonetheless excused and even rewarded (maʾjūr) for earnestly exercising ijtihād. Al-Samarqandī affiliates himself and other Ḥanafī uṣūl scholars with this group, asserting that the shāriʿ has indeed established a single, determinate ruling accessible through zannī dalīl (probabilistic evidence).[21]

Based on this understanding, it can be affirmed that for Ḥanafī jurists, even in ijtihādī or disputed matters, there exists a single correct ruling that is independent of the mujtahid. However, due to the zannī nature of the evidence employed to reach that ruling, it is never possible to ascertain with certainty which ruling corresponds to the correct one. By recognizing the zannī character of the relevant evidence, al-Samarqandī implicitly acknowledges this epistemological limitation. Thus, what is expected of the mujtahid is not necessarily to arrive at the correct ruling itself, but to exhaust all reasonable efforts in its pursuit. This framework underscores that, for the Ḥanafīs, ijtihād is conceived as a quest to uncover a ruling that exists

21 al-Samarqandī, *Mīzān Al-Uṣūl*, 754.

independently of the mujtahid—much like solving a mathematical equation with one unknown and a unique solution. With this conceptual foundation in place, we may now proceed to examine the relationship between the notion of the Ḥanafī mujtahid muṭlaq and Ḥanafī identity.

2. Ijtihād Muṭlaq as a Process Carried out within a Madhhab

The notion of ijtihād as an act of discovery implies that a mujtahid cannot arbitrarily prefer rulings or opinions from the inherited corpus of furūʿ al-fiqh. Similar to solving a mathematical equation, a mujtahid is bound to prefer the ruling that their legal training mechanically leads them to. This principle transforms legal education into one of the most significant factors influencing the ijtihād process in theoretical terms. Let us recall that the Ḥanafī muṭlaq mujtahid acquired their skill of ijtihād studying the Ḥanafī corpus of furūʿ al-fiqh. It would not be unsafe to assume that the rulings to which the skill of ijtihād acquired through the Ḥanafī corpus of furūʿ al-fiqh would lead the mujtahid muṭlaq on disputed matters would be the preferences of earlier Ḥanafī jurists. To put it more clearly, even if the type of mujtahid muṭlaq mentioned by al-Samarqandī and al-Bukhārī is taken to represent jurists who are not considered muqallids and who are capable of adopting any legal opinion not limited to those of the earlier Ḥanafī jurists, they would still be compelled to act similarly to the muqallid Ḥanafīs in Kamālpashazāde's classification. Thus, the general rule that a mujtahid cannot act outside their own madhhab—whether madhhab is understood as an institutionalized legal school or as personal opinion (raʾy)—ultimately means that the mujtahid cannot act outside the institutionalized legal school in which they acquired their legal formation.

Accordingly, the mujtahid draws upon the legal solutions and ijtihāds formulated by earlier authorities within the madhhab, rather than independently deriving rulings for the vast array of legal issues. This reliance considerably alleviates the mujtahid's burden. Moreover, it obviates the need for comprehensive knowledge of the opinions articulated by previous jurists on disputed matters. As previously noted, the validity of an ijtihād is contingent on the condition that its conclusion does not contradict ijmāʿ, even in its broadest definition. Accordingly, the ruling reached by the mujtahid must fall within the range of opinions previously articulated by earlier jurists. For this reason, al-Usmandī (d. 552/1157 [?]) emphasizes that the mujtahid must be thoroughly acquainted with all established instances of ijmāʿ as well as the various opinions advanced on contested issues. By aligning themselves with the opinions or preferences of earlier Ḥanafī authorities, the mujtahid effectively ensures that their legal conclusions remain within the bounds of recognized disagreement and thus do not transgress the limits set by ijmāʿ, even without exhaustive knowledge of every individual opinion.[22] More significantly, operating within the framework of one of the four madhhabs lends legitimacy to the mujtahid's opinions, increasing the likelihood of their opinions gaining acceptance within both the legal system and the broader social order.

22 al-Usmandī, *Badhl Al-Naẓar*, 691.

The notion of a muṭlaq mujtahid who operates within the framework of a madhhab and does not transcend its boundaries may initially appear counterintuitive, even implausible. This could lead one to assume that such an understanding of ijtihād is merely a marginal view unique to al-Samarqandī and al-Bukhārī. But was their conception of ijtihād truly an outlier within the Ḥanafī tradition? To address this question, we must examine additional sources from the period under investigation.

Our inquiry begins with the thought-provoking remarks of al-Dabūsī (d. 430/1039), a leading figure in the 5th/11th-century Ḥanafī legal theory, concerning taqlīd. The following statements offer critical insights into his understanding of ijtihād and its relation to adherence to the madhhab:

> Allah created humankind upon a natural disposition (fiṭrah), but Satan led them astray from the right path. Among the leading causes of this deviation is taqlīd. A scholar imitates another scholar, prioritizing their opinion, following their jurisprudence, and believing this to be religiously sound. What leads them to this path of imitation is nothing but laziness, for if they engaged in ijtihād, they could arrive at a similar conclusion themselves... Taqlīd is the capital of the ignorant and stems from the ignorance of one's own worth and value. This is why a person goes and follows another without evidence, even though they are not different from one another...
>
> In the early generations, that is, the Companions, the Successors, and the righteous – may Allah be pleased with them all – they based their actions on evidence, referring first to the Book, then the Sunnah, and after that, the opinions of those who followed the Prophet, preferring only what was proven sahīh through evidence. For example, in one matter, a person might follow the opinion of ʿUmar, but in another matter, they might oppose him and adopt the view of ʿAlī. It is well known that Abū Ḥanīfa's companions sometimes agreed with him on the basis of evidence, while at other times they opposed him. In religion, there is no madhhab called ''ʿUmarism' or ''ʿAlīsm.' Affiliation is only to the Prophet. The generations praised by the Prophet for their virtue did not rely on their scholars or on their own selves but on evidence.
>
> When the fourth generation, that is, the common people, abandoned taqwā (piety) and neglected examining evidence due to laziness, they began to take scholars as evidence and follow them. Thus, some became Hanafīs, others Mālikīs, and others Shāfiʿīs. These people began to regard individuals as evidence and considered the madhhab into which they were born to be sahīh merely for that reason. Later generations followed their scholars indiscriminately, adhering to their madhhab regardless of the conclusions they reached. This is how the Sunnah was replaced with bid'ahs (innovations) and truth with whims.[23]

In the passage cited above—remarkably reminiscent of the anti-madhhab and pro-ijtihād discourse of the modern reformist era—al-Dabūsī offers a critique of the taqlīd of madhhab imāms such as Abū Ḥanīfa, Mālik, and al-Shāfiʿī, instead advocating for ijtihād grounded in the primary sources of Islamic law. His emphasis on the epistemic authority of the primary sources over the authority of madhhab imāms is particularly striking. At first glance, these statements could be interpreted as al-Dabūsī called for ijtihād muṭlaq in his time, as conceptualized in

23 Abū Zayd ʿUbayd Allāh ibn ʿUmar al-Dabūsī, *Taqwīm Al-Adilla Fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2001), 399.

Kamālpashazāde's classification. However, closer examination of al-Dabūsī's works and legal opinions, this conclusion appears problematic. To put it more clearly, the strong tone of criticism directed at taqlīd in the cited passage is immediately noticeable. It would be incorrect to think that someone who vehemently criticizes taqlīd in such strong terms would view themselves as a mere muqallid. Therefore, we can assert that al-Dabūsī likely regarded himself as a mujtahid muṭlaq, engaging with the four primary sources. This conclusion also helps to clarify his understanding of ijtihād. For this purpose, it will be sufficient to examine the historical data reflecting how al-Dabūsī engaged with fiqh. Even a cursory glance at al-Dabūsī's works and opinions in the field of furūʿ al-fiqh reveals that his jurisprudential approach was not fundamentally different from that of the Hanafī jurists whom Kamālpashazāde classified as muqallids. Like other Hanafī scholars, al-Dabūsī adhered to and defended the opinions of the Hanafī madhhab against jurists from other madhhabs. Accordingly, it can be argued that al-Dabūsī, like al-Samarqandī and al-Bukhārī, viewed ijtihād as a process that ultimately culminates with the Hanefī corpus of furūʿ al-fiqh even if it begins with the primary sources.

In the quoted passage, al-Dabūsī further claims that if a muqallid undertakes ijtihād, they will most likely reach a conclusion similar to that of the jurist whom they follow. For a Ḥanafī jurist, this implies that the muqallid would arrive at one of the opinions already found in the Ḥanafī corpus of furūʿ al-fiqh. Read in this light, al-Dabūsī's remark supports the conclusion that his conception of ijtihād muṭlaq operated within the parameters of a single madhhab.

Turning back a century and shifting our focus to the Iraqi lands, we encounter a significant statement by another foundational figure in Ḥanafī legal thought, al-Jaṣṣāṣ (d. 370/981): "When an *ʿammī* (layperson) who is not qualified for ijtihād faces a legal issue, they must ask the people of knowledge."[24] This statement indicates that al-Jaṣṣāṣ categorizes people into two groups based on their legal knowledge: the mujtahid and the ʿāmmi. Considering that al-Jaṣṣāṣ uses the word ʿammī for those without legal knowledge, one can argue that al-Jaṣṣāṣ places jurists into a single category: mujtahid. Consequently, this statement suggests that al-Jaṣṣāṣ considered possessing the qualifications for ijtihād a prerequisite for being a faqīh. Based on this reasoning, we can infer that al-Jaṣṣāṣ viewed all faqīhs of his time as mujtahids. Furthermore, after outlining the qualifications for ijtihād, al-Jaṣṣāṣ explicitly states that these same qualifications are also necessary for issuing fatwas: "It is permissible for someone possessing the qualifications we have mentioned to perform ijtihād by comparing far'ī (secondary) issues to aslī (primary) issues. If this person is righteous (ʻādil), they can also issue fatwas."[25] Although al-Jaṣṣāṣ does not explicitly state the reasoning behind this rule, it is not difficult to guess. The only way for a non-mujtahid to issue a fatwa is to cite the ijtihād or fatwa of a mujtahid. However, there always exists the possibility that the mujtahid whose opinion is being cited might revise their stance, or that the non-mujtahid might issue a fatwa

24 al-Jaṣṣāṣ, *Al-Fuṣūl*, 4/281.
25 al-Jaṣṣāṣ, *Al-Fuṣūl*, 4/273.

that applies to a different context than the one intended by the mujtahid. The existence of such possibilities undermines the foundation upon which the fatwa of the non-mujtahid rests. This issue is particularly relevant in the case of the legal opinions of mujtahids who have passed away. Consequently, one could argue that the legal opinions of such mujtahids lose their status as a *fatwa* and their practical value upon their demise. For these past opinions to regain their status as a fatwa or practical value in a specific context, they must be adopted as the basis in the fatwa of a living mujtahid. From this perspective, setting aside the requirement of ʿadāla (integrity and moral probity), it may be asserted that al-Jaṣṣāṣ, much like al-Bukhārī, employs the terms mujtahid and muftī interchangeably to denote the same category of jurists. Lastly, let us recall that Kamālpashazāde's concept of ahl al-tamyīz used for the followers of the Ḥanafī madhhab is also employed by al-Jaṣṣāṣ for mujtahids. According to al-Jaṣṣāṣ, tamyīz or tarjīh is an act of ijtihād and can therefore only be performed by mujtahids.[26] Thus, it can be asserted that the terms mujtahid, faqīh, muftī, and ahl al-tamyīz all refer to the same individuals. Considering that al-Jaṣṣāṣ does not impose any qualifications on the concept of ijtihād, every faqīh, muftī, and ahl al-tamyīz qualifies as an absolute mujtahid. This understanding is also shared by prominent Ḥanafī authorities of the 5th/11th and 6th/12th centuries, such as Sarakhsī,[27] Abū ʿAbdullāh al-Jurjānī (d. 522/1128),[28] Ṣadr al-Shahīd (d. 536/1141),[29] al-Walwālījī (d. after 540/1146),[30] al-Kāṣānī (d. 587/1191), and al-Marghīnānī (d. 593/1197).

Thus, the aforementioned jurists, as well as other Ḥanafī scholars and muftis of their era, should be considered mujtahid muṭlaq. However, historical evidence indicates that the Ḥanafī jurists who lived in this period acted in a manner akin to the muqallid jurists, as described in Kamālpashazāde's classification. For this reason, Kamālpashazāde presents the leading Ḥanafī jurists of the time as concrete examples of the category of muqallid jurists. For instance, Ṭaḥāwī, one of the most significant Ḥanafī scholars of 4th/10th century Egypt; Karkhī (d. 340/952), a foundational figure in the Ḥanafī usūl al-fiqh; al-Sarakhsī and his teacher al-Ḥalwānī (d. 452/1060 [?]); al-Ḥalwānī's notable student al-Pazdawī (d. 482/1089); and Qāḍīkhān (d. 592/1196), one of the most influential Ḥanafī jurists after the 6th/12th century, are all cited by Kamālpashazāde as examples of the mujtahid fī'l-mas'alah profile in his classification.[31] As mentioned earlier, even though this category includes the term mujtahid, it is characterized

26 Abū Bakr Aḥmad ibn ʿAlī al-Rāzī al-Jaṣṣāṣ, *Sharḥ Kitāb Adab Al-Qāḍī Li'l-Ḥaṣṣāf* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2013), 14.

27 al-Sarakhsī, *Al-Mabsūṭ*, 16/108-9; Ṣadr al-Shahīd, *Sharḥ Adab Al-Qāḍī*, 189–190.

28 Yūsuf ibn ʿAlī Abū ʿAbd Allāh al-Jurjānī, *Khizāna Al-Akmal*, critical ed. Aḥmad Khalīl Ibrāhīm (Beirut: Dār al-Kutub al-ʿIlmiyya, 2015), 4/83-4; 4/126-7.

29 Husām al-Dīn ʿUmar ibn ʿAbd al-ʿAzīz ibn Māza al-Bukhārī Ṣadr al-Shahīd, "Kitāb Al-Wāqiʿāt," *Es-Sadruşşehîd Ömer B. Abdülazîz'in (Ö. 536/1141) Kitâbü'l-Vakı'ât Adlı Eserinin Tahkik ve Değerlendirilmesi*, critical ed. ʿAbd al-Nāṣir Ḥakīmī (Konya: Necmettin Erbakan Üniversitesi Sosyal Bilimler Enstitüsü, Thesis type: Doctoral dissertation, 2018), 717.

30 Ẓahīr al-Dīn ʿAbd al-Rashīd ibn Abī Ḥanīfa al-Walwālijī, *Al-Fatāwā al-Walwālijiyya* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2003), 4/33.

31 Kamālpashazāde, "Risāla Fī Dukhūli Waladi Al-Bint Li'l-Mawqūf," 195.

as muqallid in terms of its relationship with the corpus of Ḥanafī furū al-fiqh. In the same classification, Kamālpashazāde identifies al-Jassās as an example of ahl al-takhrīj and Qudūrī (d. 428/1037) and Marghīnānī as examples of ahl al-tamyīz. He describes both the ahl al-tamyīz and ahl al-takhrīj categories as followers incapable of ijtihād.[32] It is well-known that these jurists carried out their legal activities as adherents of the Ḥanafī school and within its boundaries. Therefore, labeling them as absolute mujtahids would align with historical evidence only if this designation refers to jurists who acted within the confines of their respective schools.

Additional evidence supports this interpretation. For instance, al-Qudūrī, al-Sarakhsī, Abū ʿAbdullāh al-Jurjānī, and Ṣadr al-Shahīd insisted that qāḍīs must be selected from those possessing the capacity for ijtihād. In their view, a qāḍī must be a mujtahid, and it is impermissible for non-mujtahids to be appointed as qāḍīs or to seek such positions.[33] It is clear that making ijtihād a prerequisite for the office of qāḍī is meaningful only in a context in which numerous mujtahids are available. These mujtahids would undoubtedly represent the most competent jurists of their time. Given that the leading jurists of the periods mentioned acted as followers of a madhhab, one can assert that the concept of mujtahid refers to those jurists who were followers of their respective madhhabs. We can also support this conclusion with practical data. In an example of a court ruling concerning yamīn al-muḍāfa (a conditional oath), the act of a Shāfiʿī deputy judge adopting the established view of the Shāfiʿī madhhab to which he belongs is portrayed not as taqlīd but as his own ijtihād.

Yamīn al-muḍāfa is a type of divorce tied to marriage, expressed in the form of a conditional oath such as, "If I marry so-and-so woman, she is divorced!" According to the Ḥanafī madhhab, if the person who makes this oath marries the woman in question, she is considered divorced. Accordingly, if the oath-taker uses general expressions that would require all women he might marry to be divorced with three pronouncements of divorce, he effectively closes the path of marriage for himself. Sources indicate that this form of yamīn al-muḍāfa was widespread among unmarried young men in 5th/11th-century Transoxiana and was seen as a significant problem by jurists.[34] One of the methods used to resolve this problem relies on the Shafi'i madhhab's opinion that yamīn al-muḍāfa is invalid. Under this method, a case would be brought before the court to annul the oath. A Ḥanafī qāḍī, in order to secure an annulment ruling, would appoint a Shāfiʿī deputy judge (nâib) specifically for that case. The deputy would then issue a ruling based on the Shāfiʿī madhhab's position, declaring the oath invalid.

The fact that the case is heard by a Shāfiʿī deputy is not the result of a natural process but is rather designed by the Ḥanafī judge to ensure a court ruling in a specific direction. For this

32 Kamālpashazāde, "Risāla Fī Dukhūli Waladi Al-Bint Li'l-Mawqūf," 196.

33 Abū al-Ḥusayn Aḥmad ibn Abī Bakr al-Qudūrī, *Mukhtaṣar Al-Qudūrī Fī al-Fiqh al-Ḥanafī* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 225; al-Sarakhsī, *Al-Mabsūṭ*, 16/108-109; Abū ʿAbd Allāh al-Jurjānī, *Khizāna*, 4/83-84; Ṣadr al-Shahīd, *Sharḥ Adab Al-Qāḍī*, 1/126.

34 Abū Bakr Muḥammad ibn Aḥmad Ẓahīr al-Dīn al-Bukhārī, *Al-Fatāwā al-Ẓahīriyya* (İstanbul: Bayazid Library, Veliyyüddin Efendi, 1498), 350a.

reason, Ḥanafī jurists regard the annulment ruling as if it were issued by the Ḥanafī judge himself. This raises the question of whether a ruling given by a Ḥanafī judge based on the opinion of another madhhab is valid. According to Abū Ḥanīfa, such a ruling is valid, whereas Abū Yūsuf and Muḥammad deem it invalid. To avoid this problem and ensure that the court ruling is unanimously valid, Ḥanafī jurists emphasize that when the Ḥanafī judge appoints the Shāfiʿī deputy, he must clarify that the deputy is not obligated to rule in favor of annulment but is free to issue a ruling based on whichever opinion his ijtihād leads him to regarding yamīn al-muḍāfa.[35] A court record example cited in *al-Fatawa al-Zahīriyya* demonstrates that this principle was indeed respected in practice:

> [Name] son of [Name], who is a Shāfiʿī, states: A letter reached me from [Name] son of [Name], who had been appointed by Sultan [Name] to undertake the duties of the office of qāḍī and issue rulings in the districts of [Name]. This appointment included adjudicating the dispute over the divorce that resulted from an oath associated with the marriage of [Name] daughter of [Name] and [Name] son of [Name]. The qāḍī ordered me to preside over this case, hear the witnesses, and issue a ruling based on my own ra'y and ijtihād to resolve the dispute. Complying with the qāḍī's directive, I convened a court session for the case. [Name] daughter of [Name] appeared before me along with her husband, [Name] son of [Name]… The husband requested that I issue a ruling according to my own ra'y and ijtihād. Thus, after due deliberation, I exercised ijtihād, ultimately concluding that the oath tied to marriage was invalid, in accordance with the view of those who consider such oaths to be invalid. Consequently, I ruled that the oath in question was null and void and that this woman was lawfully married to this husband under the said marriage contract...
>
> I carried out all of this based on the authorization granted to me by [Name] son of [Name], the qāḍī, to adjudicate this case in accordance with my own ra'y and ijtihād.[36]

As can be seen, the court ruling example quoted above explicitly states that the person appointed to adjudicate the case concerning yemīn al-muḍāfa is affiliated with the Shāfiʿī madhhab. Despite this, the qāḍī does not instruct him to base his ruling on the position of the Shāfiʿī madhhab; rather, he directs him to engage in ijtihād and to base his judgment on whichever opinion his ijtihād leads him to adopt. In doing so, the qāḍī effectively recognizes him as a mujtahid. Moreover, it should be noted that yamīn al-muḍāfa is not a novel issue that requires fresh ijtihād merely because it is absent from Shāfiʿī legal texts. On the contrary, it has existed since the early formative period of Islamic law. The view that yemīn al-muḍāfa is invalid, which the Shāfiʿī deputy claims to have arrived at through ijtihād, is in fact the well-established and widely known view of the Shāfiʿī madhhab. Therefore, it is not possible to explain the Shāfiʿī deputy's action as ijtihād in the sense described in Kamālpashazāde's classification of jurists. The statements in the court decision example we have cited suggest that, at least in the late 6th/12th century and the first quarter of the 7th/13th century, a jurist

35 Murat Sarıtaş, *Fıkıh, Mezhep ve Sultan: 16. Yüzyıl Osmanlı Merkez Topraklarında Mahkeme Kararlarında Hangi Hukukî Görüşlerin Esas Alınacağı Ile İlgili Emr-i Sultânîler* (İstanbul Üniversitesi Sosyal Bilimler Enstitüsü, Doctoral Dissertation, 2024), 38–41.

36 Ẓahīr al-Dīn al-Bukhārī, *Al-Fatāwā al-Ẓahīriyya* (Veliyyüddin Efendi, 1498), 349b–350a.

affiliated with a madhhab adopting the established view of their own madhhab was also considered an act of ijtihād. Based on all of this, we can argue that the understanding of ijtihād held by al-Samarqandī and al-Bukhārī was not marginal but rather representative of the period we examined. Thus, although the meanings in which Ḥanafī jurists of the period under examination used the concepts of mujtahid muṭlaq and ijtihād muṭlaq have been largely clarified, we can further deepen our analysis by exploring the issue of the transmission and narration (hikāya/naql) of the fatwas.

The Ḥanafī sources from the period under study mention a third category, alongside the mujtahid and the ʻammī (layperson with no legal knowledge), called the ḥākī or nāqil. A ḥākī (or nāqil) is someone who has memorized the opinions of the madhhab with which they are affiliated. In this respect, the ḥākī/nāqil differs from the ʿammī, who possesses no legal knowledge. However, the ḥākī/nāqil is not permitted to issue fatwas. The sources emphasize that even if the ḥākī/nāqil provides an answer to a legal question, this answer does not qualify as a fatwa. As the name itself suggests, the act of ḥikāya/naql performed by the ḥākī/nāqil is limited to the mere transmission of legal opinions. The ḥākī/nāqil lacks the competence to evaluate the legal opinions they have memorized. Thus, this should be considered the distinguishing feature that separates a ḥākī/nāqil from a mujtahid, faqīh, or muftī. Since the legal work performed by a ḥākī/nāqil consists merely of transmitting or narrating legal opinions, the conditions for narration (riwāyah), rather than the conditions for ijtihād, are brought up for the qualification of hikâya/naql.[37] Accordingly, we may conclude that, in the period under examination, the term mujtahid was applied to jurists who—despite their affiliation with a particular madhhab—possessed the competence to evaluate competing legal opinions. Such jurists were presumed to embrace the positions they espoused as the outcome of their own ijtihād, even when those positions coincided with the established views of their school. Consistent with this inference, Ḥanafī sources from the era frequently preserve a dictum attributed to Abū Ḥanīfa's disciples: "It is impermissible for anyone who does not know the foundations of our opinions to issue fatwās on the basis of them."[38] Ṣadr al-Shahīd elaborates on this dictum as follows:

> A person who possesses books of fiqh, along with the opinions of certain scholars, the Sahâba (Companions), and the Tābiʿūn (Successors), may transmit these views, provided that he has memorized them accurately and is trustworthy. Those who hear these reports from him may also pass them on in the same manner. However, issuing fatwās on the basis of these opinions is impermissible unless one can distinguish among the competing legal rulings (tamyīz). This prohibition rests on a report attributed to Abū Ḥanīfa: "It is impermissible for anyone who does not know the foundations of our opinions to issue fatwās on the basis of them. Thus, it becomes clear that a fatwā is valid only when it rests on ijtihād, and that

37 al-Sarakhsī, *Al-Mabsūṭ*, 16/109.

38 Abū al-Layth Naṣr ibn Muḥammad ibn Aḥmad al-Samarqandī, *ʿUyūn Al-Masāʾil* (Baghdad: Maṭbaʿat Asʿad, 1386H), 485; Abū ʿAbd Allāh al-Jurjānī, *Khizāna*, 4/127; Burhān al-Dīn ʿAlī ibn Abī Bakr al-Marghīnānī, "Mukhtārāt Al-Nawāzil," *Burhaneddin El-Mergînânî'nin "Muhtâratu'n-Nevâzil" Eserinin Edisyon Kritiği* (Konya: Selçuk Üniversitesi Sosyal Bilimler Enstitüsü, Thesis type: MA, 2010), 529.

> ijtihād, in turn, requires the capacity to evaluate, discriminate among, and choose between competing legal opinions. In contrast, mere transmission (riwāya) relies solely on accurate memorization to avoid errors.[39]

As can be seen, Ṣadr al-Shahīd characterizes a jurist's issuance of a fatwa based on Abū Ḥanīfa's opinion not as taqlid but as ijtihād. In his view, for someone to move beyond the status of a mere ḥākī/nāqil and be regarded as a mujtahid, it is not necessary for them to introduce a new or different legal opinion. Rather, the essential criterion is possessing the ability to critically assess legal views, distinguish between them, and make informed choices. Thus, a person who possesses this competence is regarded as having exercised ijtihād and based their fatwa on their own ijtihād, even if they issue a fatwa in accordance with Abū Ḥanīfa's opinion. This conclusion aligns with the prevailing definition of taqlīd in the period under examination—namely, the acceptance of another's legal opinion without knowledge of its evidence or rationale.[40] Within this framework, al-Samarqandī maintains that taqlīd is permissible only for laypeople and students of law,[41] thereby implying that those who have completed legal training are to be regarded as mujtahids. In doing so, he offers a more concrete delineation of the concept of the mujtahid.

This portrayal of the ḥākī/nāqil closely parallels the category of the "pure muqallid" in Kemālpashazāde's classification. As Kemālpashazāde explains, individuals in this category, while possessing some knowledge of law, lack the capacity for ijtihād, takhrīj, tarjīḥ, and tamyīz—that is, they are not qualified to evaluate or distinguish between legal opinions. Consequently, in his words, they simply adopt the opinions they come across, without exercising legal reasoning. Based on this similarity, it seems appropriate to associate the ḥākī/nāqil of the period under study with Kemālpashazāde's pure muqallid. If this alignment holds, it would follow that, according to the understanding of ijtihād prevalent in that period, all jurists other than the pure muqallid would be considered absolute mujtahids.

3. Shift in the Conception of Ijtihād and Taqlīd

The Ḥanafī understanding of ijtihād underwent a transformation over time. Jurists began to emerge who asserted that there were no longer any qualified mujtahids in their era.[42] Consequently, questions such as whether a period without mujtahids was possible, how religious and legal life would be regulated in the absence of mujtahids, how the institution of fatwā would function, and whether it was permissible to follow a deceased mujtahid began to appear in some Ḥanafī uṣūl works. These works generally affirmed that it was permissible to follow a mujtahid who

39 Ṣadr al-Shahīd, "Kitāb Al-Wāqiʿāt," 717.

40 al-Dabūsī, *Taqwīm Al-Adilla*, 388; al-Samarqandī, *Mīzān Al-Uṣūl*, 676.

41 al-Samarqandī, *Mīzān Al-Uṣūl*, 676.

42 Ṭāhir b. Aḥmad Iftikhār al-Dīn al-Bukhārī, *Khulāṣat Al-Fatāwā* (Karachi: Maktabat al-Rashīdiyya, no date), 4/49; Ḥāfiẓ al-Dīn Muḥammad ibn Muḥammad al-Bazzāzī, *Al-Fatāwā al-Bazzāziyya* (Būlāq: al-Maṭbaʿa al-Kubrā al-Amīriyya, 1310h), 2/236; Molla Fanārī, *Fuṣūl Al-Badāʾiʿ Fī Uṣūl al-Sharāʾiʿ* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2006), 2/494.

was no longer alive. Accordingly, it was argued that a non-mujtahid could issue fatwās based on the opinions of a deceased mujtahid, provided that he was knowledgeable about that mujtahid's methodology, opinions, and their supporting evidence. Furthermore, it was maintained that such a jurist could address new legal issues by employing the foundational principles and methodology of that mujtahid and attribute the resulting rulings to him. In this way, it was argued that a period without living mujtahids was conceivable. Thus, alongside the categories of mujtahid and layperson (ʿāmmī), a new category was introduced: one who is a jurist (faqīh) but not a mujtahid. In addition, the term mujtahid muṭlaq, which had previously been applied to scholars competent to issue fatwās in all areas of the law, came to be reserved exclusively for the eponymous founders of the madhhabs, such as Abū Ḥanīfa, whose opinions were now subject to taqlīd.[43] This shift in the meanings of ijtihād and taqlīd, which can be observed as beginning gradually in the late 6th/12th century, gained momentum in Mamluk-era Ḥanafism during the 8th/14th and 9th/15th centuries. By the 10th/16th century, this new conception of ijtihād and taqlīd had become widespread and firmly entrenched among Ḥanafī jurists. This conception finds its clearest expression in Kemālpashazāde's classification of the fuqahāʾ, in which all Ḥanafī jurists apart from Abū Ḥanīfa and his direct disciples, such as Abū Yūsuf and Muḥammad, are characterized as muqallids in relation to the Ḥanafī corpus of furūʿ al-fiqh.[44]

On the other hand, when one compares Hanafī jurists who, in accordance with the earlier conception of ijtihād, regarded themselves as mujtahid muṭlaq after the late 4th/10th century, with those who adopted the new understanding of ijtihād and identified themselves as muqallids, it becomes evident that there is no major difference between the two groups in terms of the way they engaged with fiqh and their relationship to the Ḥanafī corpus of furūʿ al-fiqh. Both groups operate within the institutional and epistemological framework provided by the Ḥanafī madhhab. In this context, it may be argued that the shift in the concept of ijtihād and taqlīd within the Ḥanafī tradition is essentially a discursive transformation. That is, Ḥanafī jurists began to describe the practice of legal reasoning within the parameters of the madhhab, which was formerly characterized as ijtihād muṭlaq, as taqlīd; likewise, they began referring to jurists affiliated with the madhhab, who were once regarded as absolute mujtahids, as muqallids, even if those jurists were recognized as prominent legal authorities. Indeed, as can be seen from the earlier discussions, the qualifications that were previously considered distinctive features of mujtahid muftīs, such as the ability to understand the evidence and foundations of legal opinions and to critically evaluate them from a juridical standpoint, appear in the new conception as criteria for issuing fatwās by muqallids. In other words, individuals who were

43 Muẓaffar al-Dīn Aḥmad ibn ʿAlī Ibn al-Sāʿātī, *Badīʿ Al-Niẓām al-Jāmiʿ Bayna Kitāb al-Bazdawī Wa-l-Iḥkām* (Mekke: Jāmiʿat Umm al-Qurā, 1985), 2/683-4; *Fuṣūl Al-Badāʾiʿ*, 2/475, 2/493-5; Kamāl al-Dīn Muḥammad ibn ʿAbd al-Wāḥid Ibn al-Humām, *Al-Taḥrīr Fī Uṣūl al-Fiqh* (Cairo: Maṭbaʿa Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih bi-Miṣr, 1351h), 546, 550; Abū ʿAbd Allāh Shams al-Dīn Muḥammad ibn Muḥammad Ibn Amīr Ḥāj, *Al-Taqrīr Wa-al-Taḥbīr ʿalā Kitāb al-Taḥrīr* (Būlāq: al-Maṭbaʿa al-Kubrā al-Amīriyya, 1316), 3/339, 3/346-9.

44 Kamālpashazāde, "Risāla Fī Dukhūli Waladi Al-Bint Li'l-Mawqūf," 195–197.

once identified as mujtahids under the old paradigm are now labeled as muqallids within the new framework.

Conclusion

All of this indicates that particularly between the 4th/10th and 7th/13th centuries, a different understanding of ijtihād and taqlīd prevailed within the Ḥanafī tradition. During this period, Ḥanafī jurists understood ijtihād as the process by which a legally competent jurist, capable of evaluating legal opinions on juridical grounds, adopts a particular opinion with knowledge of its evidentiary basis. If a jurist with these qualifications could issue legal opinions across all fields of furūʿ al-fiqh, they were designated as a mujtahid muṭlaq. Within this framework, a legal opinion was not required to be derived directly from the primary sources to qualify as a product of ijtihād. Consequently, affiliation with a particular madhhab and engagement with fiqh on the basis of its corpus of furūʿ al-fiqh was not seen as incompatible with the status of being a mujtahid muṭlaq. Moreover, it was believed that the capacity for ijtihād muṭlaq could be attained through rigorous engagement with the corpus of furūʿ al-fiqh of a particular madhhab. According to this understanding, jurists affiliated with a particular madhhab who were sufficiently qualified to evaluate legal opinions and their evidentiary bases on juridical grounds across all fields of furūʿ al-fiqh were regarded as mujtahid muṭlaq. Their opinions, even if they aligned with the established opinions of their madhhab, were considered outcomes of their own personal ijtihād rather than taqlīd.

This conception of ijtihād appears to have undergone a gradual transformation beginning in the 7th/13th century, a process that was largely complete by the 10th/16th century. In this later understanding, Ḥanafīs came to define ijtihād strictly as the derivation of legal opinions directly from the primary sources. One key difference from the earlier view was that engagement with fiqh on the basis of a particular madhhab's corpus of furūʿ al-fiqh was now classified as taqlīd and excluded from the domain of ijtihād. Consequently, it came to be said that no mujtahids remained in this later period. Nevertheless, in both periods, the way Ḥanafī jurists engaged with fiqh and their relationship with the madhhab's corpus of furūʿ al-fiqh remained nearly identical. Thus, the transition from the older to the newer understanding was largely a discursive change. More precisely, jurists who had been regarded as mujtahid muṭlaq under the older framework were, despite possessing the same legal competencies, reclassified as muqallids under the newer one.

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