

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

The Foundation for Islamic Education  
Villanova, PA

The Second Annual Conference  
Towards the Unity of the Muslim *Ummah*  
*History of Islamic Jurisprudence and Development of the Fiqhi Schools*

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*“And honor your covenant to Allah and do not go your separate ways”*  
*(Al-Imran 2: 103)*

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Praise be to Allah, and peace be upon His Messenger, Muhammad, and upon those who follow His *Sunnah* until the Day of Judgment.

### **Conference Objectives**

The conference aims at discussing the methodology for understanding the Qur’an and the *Sunnah*. At the start, a review of the fundamental rulings and their historical development will provide a broader understanding and enhance the awareness of the various schools of thought and the origin of their differences. Essential issues will be reviewed with open mind as part of our heritage in order to bring Muslims together and leave us better prepared to focus on contemporary issues with flexibility in a manner that satisfies the fundamentals of the religion.

The technical program will present the nature of the relationship of the Prophet (pbuh) with the Message of the Devine Revelation and his role (pbuh) in explaining what has been revealed. Then, the response of the Companions (may Allah be pleased with them), as the first audience, to the revealed passages from the Qur’an and the teachings of the Prophet (pbuh) or the *Sunnah*. The conference will provide an opportunity to study the main factors, which affected their approaches to understand the passages. It will also elaborate about the causes of variations of *Shari’ah* decisions existing between them or between the scholars in following generations, despite their devout acceptance of the Qur’an and the *Sunnah* as the supreme authority.

It is important to note that in preparation for this conference, great care was taken to make sure that the conference is not promoting or imposing a particular *fiqhi madhhab* or specific school of thought. Conference participants are invited to present scholarly work reviewing the development and characteristics of the various *fiqhi* schools and the

principles upon which their decisions or *fatwas* were based. These presentations will lead to a discussion and identification of the causes of variations in the *fiqhi* rulings associated with these schools. Each school has its own strengths and weaknesses, even if their followers do not recognize the latter.

The main aspects of the conference objectives can be summarized as follows:

1. Recognition that the *Shari'ah* is the Message of Allah (swt) addressed to all people of comprehension. Allah has commanded them to reflect upon what has been revealed to them through His Messenger. His desire is that His Message be interpreted with emphasis on ease and comfort, not as a burden or difficulty. The Prophet (pbuh) has conveyed what Allah had revealed to him and comprehended the spirit of that message which guided him in judging matters that were not explicitly revealed. The teaching of the Prophet (pbuh) was conveyed directly to his companions. However, their level of knowledge and comprehension varied from one to another due to expected variations in personal tendency and intellect. There were those who delved into the inner meaning and objectives of the passages, while others limited themselves to the literal and apparent meanings and then some had gone even beyond the allowed limits of *Shari'ah* with regard to the ease of the required observance. These approaches represented various trends which became the seeds that developed into various schools of thought. Understanding the meaning and objectives of the *Shari'ah* was a major and essential approach. However, the Prophet (pbuh) was tolerant toward those who adopted the literal and apparent meanings, but refuted those who violated the principle of moderation. Application of *Shari'ah* in litigations and disputes were initially in the hands of the Prophet (pbuh). However, the rapid expansion of Islam necessitated delegation of the judicial authority. The Prophet (pbuh) first selected some of his close companions to train them in that area and later appointed representatives to far away regions. He (pbuh) urged his companions to use their judgment when necessary (*ijtihad*) to render a new opinion. For example, when Mu'adh, the appointee to Yemen, was asked about the sources for jurisprudence when an issue was not explicitly referred to in the Qur'an or the Sunnah, he replied "ijtihad". The Prophet (pbuh) was pleased with that answer. During the life of the companions, *ijtihad* manifested itself in two forms: *qiyas* or treatment of a new issue according to a previously judged one, if both issues had similar causes ('*illah*); or of a *ijtihad* based on enhancement of benefits or *maslaha*.
2. These schools have been transmitted from one generation to the next until they evolved into a characteristic way of interpretation and observance of Islam. By the 2<sup>nd</sup> and 3<sup>rd</sup> centuries (*Hijri*), they were well established and became known as the "*fiqhi madhhabs*" or ways of understanding and practicing the religion. Among these, the four well known *madhhabs* evolved around the scholarly interpretation of the objectives of *Shari'ah*. However, others have elected to limit their basic premise to the apparent and literal meanings such as the *Zahiri* School, through the works of Dawud Az-Zahiri (202-270 H) and later Ibn Hazm (384-456 H).

The four *fiqhi* schools vary in their methodology between the two extremes: intended objectives (*maqasid*) on one side and literal meanings on the other. For instance, the

*Hanafi* School gave first consideration to the intended objectives, while the *Hanbali* School appeared in many of its interpretation to be closer to the *Zahiri* School that preferred literal meanings. These differences are a natural result of applying different basic rules. For example the rules used to verify the hadith or sources of various teachings and explanations related to the Prophet (pbuh). Another example is consideration of the *hadith da'if* (un authentic sayings related to the Prophet, pbuh). Further variations in basic rules dealt with sources of jurisprudence and its sequence of authority: for example the *fiqh* of Malik gave priority to the practice of the people of Madinah over the earlier teachings of the Prophet (pbuh) conveyed through “*ahadith ahad*”; another example is the varying degrees of acceptance of the rulings and past practices of the companions and the scholars who followed them.

3. Although there is an actual complementary relationship between *the fuqaha'*, *muhaddithin*, *usuliyin* and *ahlul-kalam* great deal of separation and contradiction started to grew between them. This has left a clear impact on the development of the Islamic thought and the history of Islamic jurisprudence. For instance, Abu Hanifah (80-150 H) and Malik (93-179 H) began their studies on understanding Islamic philosophy (*'ilmul-klam*). Later, they abandoned this area and directed their attention to interpretation and understanding of *fiqh*, as it was recommended by the *Qur'an* and the *Sunnah*.
4. The standards for acceptance or rejections of some of the unsubstantiated sayings or teachings attributed to the Prophet (pbuh) varied significantly between *fuqaha'* and *muhaddithin*. The *fuqaha'* considered the *muhaddithin* lagging in their application of the rules of verification related to the text (*matn*), while mainly researching the chain of narrators (*sanad*). They were likened to someone collecting firewood in the dark. In doing so, they attributed to the Prophet (pbuh) what they would have generally avoided rather than what they desired. In fact, within the *muhaddithin* as a group, the standards for criticism and verifications varied significantly when judging many of the narrators. This variability resulted in many disputable passages that may or may not be considered acceptable.
5. Although the authority of the *Qur'an* and *Sunnah* are unquestionable, the definition of the *Sunnah*, based on what was accepted or rejected, varied between schools (or *madhhabs*) according to the basic principles of each. Those who raised few objections, for example Ahmed (164-241 H), accepted the weak passages (*ahadith*) as part of the *Sunnah* and applied it to general matters of observance and social behavior as well as to judgments of disputes. The volume of the *Sunnah* in his *madhbab* became huge, encompassing many direct rulings and resulted in facilitating the conditions for “*ijtihad*”. Other schools, for example that of Abu Hanifah, scrutinized the origin of many *Sunnah* passages and carefully compared them to *Qur'anic* text. This approach encouraged learned opinions or “*ijtihad*” and *qiyas*. Its strict principles became a base for Islamic jurisprudence. However, due to its scrutiny, the conditions of *ijtihad* became stricter requiring higher levels of scholarship.

6. There are many passages of the *Sunnah*, collected by the *muhaddithun*, that were never used by the earlier or contemporary *fuqaha'*, due to the limits of their adopted principles. In other words, it did not meet the criteria of authenticity of their schools. Hundreds of passages which have been collected by Al-Bukhari (194-256 H), Muslim (204-261 H) and other collectors, and are considered authentic by their own criteria, were rejected by early *fuqaha'* such as Abu Hanifah (80-150 H), Malik (93-179 H), and Ash-Shafi'i (150-204 H) despite their awareness of the content of these passages. Their judgment was based on a different set of criteria of authenticity being used by the *muhaddithin*, not their lack of knowledge of its existence as claimed by some followers of the School of *Athar*. It is also important to note the closeness of the scholarly work to the time of the Revelation of the Message of Islam. For instance, Malik preceded Al-Bukhari by a hundred and one years affected number of people of the chain of narrators and applying the rules of verifications that must be taken into consideration, for the sake of academic honesty, as they influenced the difference of opinions between them. As an example, the question of whether an optional prayer is permissible or not when a person enters a mosque after the start of the Friday sermon? Malik gave precedence to the confirmed practice in Madinah, that discouraged the prayer, while others followed a *hadith* narrated through a single source (*hadith ahad*) which allowed it. Both practices are following the *Sunnah*, but with different approaches to define which is more authentic. There is a well known saying mentioned by many *fuqaha'*, but the *muhaddithin* would use it against them: "if the passage (*hadith*) is authentic, it is my *madhhab* or stand". They meant by this that the *hadith* is only confirmed when considered according to their criteria of their school of thought and no one else's. Others, however, erroneously understood that statement to mean that if the passage became known to a particular scholar, he was required to accept its apparent meaning and use it to derive an appropriate ruling. If he refused, they would consider him as rejecting that passage and abandoning the *Sunnah*, which is certainly a harsh and inaccurate judgment. They are confusing the knowledge about a certain *hadith* which considered as authentic by others and confirming its authenticity according to the standards adopted by that scholar.
  
7. Ahmad was extremely lenient in accepting many narrated *Sunnah* passages without carefully researching their sources and contents. He also tended to avoid collecting the views and rulings or *fatwas* of other scholars including his mentor Ash-Shafi'i. He even refused to write his own opinions and was unhappy when his son Salih recorded them against his wishes. His desire was that only the *Sunnah* should be written down. However, the *Sunnah*, as defined by Ahmad, extended to include the weak passages, the ruling of the companions of the Prophet (pbuh), and even those rulings that were developed by two generations of their followers. He encouraged his son, Abdullah, to write down the *Sunnah* that included the opinions of those past scholars (*as-Salaf*). Due to this approach, his school became known as the *Salafi School*. Also, because of the great collection of rulings of past cases which he accumulated, his school is also known as the school of relics or "*School of Athar*". In contrast, schools that of other *fuqaha'* are known collectively as the School of Opinion (*ijtehad*) or the School of *Ra'i*.

8. The roots of the *School of Ra'i* can be traced back to scholars from among the companions of the Prophet (pbuh) such as 'A'ishah, Abdullah ibn Mas'ud and 'Umar ibn Al-Khattab. It continued through their students, such as 'Alqamah ibn Qays and then through a second generation of students and followers such as Ibrahim ibn Yazid An-Nakh'i then Hammad ibn Abi-Sulayman (died in 96 H) who was the mentor of Imam Abu Hanifah (80-150 H). This is the school which was referred to earlier as based on the scholarly interpretation of the objectives of *Shari'ah*. However, we should keep in mind that labels can be confusing. For example, the names "*School of Ra'i*" and "*School of Athar*" are misleading, as they do not describe the true practice of each school. In reality, the *School of Ra'i* did not simply ignore any *Sunnah* passages, but rather set stricter criteria for measuring their authenticity. It did not widen the definition of *Sunnah* rather it considered the *hadith* and some accepted the opinions of the companions of the Prophet (pbuh) with variations about the authority of the later. Therefore, *ijtihad* became the dominant characteristic of the school. On the other hand, the *School of Athar* was not exclusively literal (*zahiriyah*) either as it did not totally ignore the objectives of the *Shari'ah*. However, it developed great interest in widening its base by collecting all past literature of *Sunnah* (from all sources), the companions' rulings (*fatawas*), and even the rulings developed during the following two generations. This obsession with collecting the entire past Islamic heritage was at the cost of relaxing the definition of authenticity. Such relaxation caused some serious problems as it gave preference, after the Qur'an and the authentic *Sunnah*, to rulings that may be in conflict with some of the learned sources of jurisprudence and that caused it to be labeled the *School of Athar* or the "*Salafi School*"
  
9. Many of the contemporary followers of the *Salafi School* are unaware of their intellectual roots. They do not realize nor admit they are in reality followers of the *Hanbali School* of thought. They followed Ahmad not only in matters of faith ('*qa'id* doctrines), but became bound by his rules in the principles of *fiqh* as well. Their denial is a natural conclusion of Ahmad's rules that gave credence only to the *Sunnah* (at large) and discredited *ijtihad*. He considered contemporary opinions of scholars of his time, including his own, as merely applications of past rulings to fit current societal conditions and therefore, should not be added to the knowledge base. He declared that these opinions are limited by time and place and lack the generality of the *Sunnah*. Ahmad's attitude made it difficult for scholars to classify him: was he a *faqih* with an independent school of thought or merely a *muhaddith*? Even today, his contemporary followers are but an extension of his past followers in their acceptance of his approach and the rules of the *Salafi School*. These guidelines are determined by the opinions and rulings of their scholars such as Ibn Taymiyah, Ibn Al-Qayim, Ibn Qudhamah, Ibn Kathir, and Ahmad himself (may *Allah* be pleased with all of them), who were in reality followers of the *Hanbali School* of thought. The fact that the *Salafi School* is an extension to the *Hanbali School* is not a cause for objection. The objective here is to recognize their intellectual roots, their strength/weakness and the general qualities of the *salafi madhhab* itself.
  
10. We should be cognizant of the relationship between the names associated with the various schools of thought and the historical and intellectual events of the time, as this

may cause variations in judging the standards of each school and defining its followers. For example, the scholarly work during the latter third of the nineteenth century to the first seven decades of the twentieth century (AD) was referred to as the *Salafi School*. This is the collective works of Sh. Jamaluddin Al-Afghani (1838-1897), Sh. Muhammad ‘Abduh (1849-1905), Sh. Muhammad Rashid Rida (1865-1935), Imam Hassan Al-Banna (1906-1949), Sh. Muhammad Al-Ghazali (1916-1998) and contemporary scholar Dr. Yusuf Al-Qaradawi. Their approach was considered an extension of the renewal trend practiced by Ibn Taymiyah that encouraged intellectual pursuit and the spirit of *ijtehad*. However, there evolved in the seventies several factions claiming to be proponents of the *Salafi School* of thought. They criticized the intellectual works of the above scholars as falling outside the boundaries of the traditional *Salafi School*, and despite variations between them, they proclaimed their trend as the only modern application of that school. Therefore, one should not be surprised if this cycle is repeated and other self-proclaimed groups evolve at present or in the near future, similarly describing themselves as belonging to the real *Salafi School* and denying the current claim of that group from the seventies their place as followers of that school. This implies, that with time, the titles attributed to groups may change again, and those who are considering themselves as “*Salafi*” now, may not be considered as such by the future generations that follow. Another example from the history of Islamic thought is the *Ash’ariyah* or *Maturudiyah* Schools, used by many Muslim scholars for several centuries to define the beliefs of “*Ahlus-Sunnah*”. This terminology is still commonly used in many of our well known institutions, like Al Azhar University, and claimed to have been quoted by the four renowned Imams. However, this understanding had been disputed by some recent trends who limited the use of “*Ahlus-Sunnah*” to the works of Ahmad and Ibn Taymiyah (661-728 H) in particular and excluded the opinions of many who disputed their work. This action was not the position of the *Imams* of that school who gave precedence to their own understanding of the disputed issues, while provided excuses to opposing opinions and praised the righteousness of their holders. Many of those who are fanatics to their own schools, are unaware about the rules set forth by the scholars as measures of distinction between *usul* (essential matters) and *furu’* (doctrines of the branches) in the fields of ‘*aqd*’ and *fiqh*. There are also those who understand erroneously that such division is limited to the field of *fiqh*. Equally mistaken are those who think that *usul* is the orientation of ‘*aqd*’ while *furu’* is a reference to *fiqhi* concerns of *ahkam* and rituals.

11. Acceptance of the weak *hadith(s)* and their application in judgments and religious observance, led to the emergence of many opinions and even schools of thought with teachings that contradicted the spirit of the *Shari’a* and the principles of the confirmed *Sunnah*. One example is the decline of the status of women in Islam by denying many rights that were established by the Qur’an and the confirmed *Sunnah*. Another example is the promise of severe punishment for committing minor infractions. This raised doubts among many about the fairness of the system of judgment and punishment claimed to be demanded by Allah (SWT). This situation led many scholars to either prohibit or put severe conditions on the inclusion of weak *hadith(s)* as part of jurisprudence, or their use in matters of religious observance. Unfortunately, upon reviewing the reality of this situation, one can see that those who accepted the

weak *hadith(s)* succeeded in prohibiting minor infractions, while turning many people away from Islam by tarnishing its reputation as a reasonable, just and fair social order.

12. It is necessary to bear in mind the impact of personal tendencies on rulings and interpretations or *fatawas* either among the generation of the *sahabah* or those who followed them. For instance, Ibn ‘Umar was known for *fatawas* that were strict and adhered to the letter of the interpretations, when compared to the *fatawas* rendered by Ibn ‘Abbas that were more flexible in nature as they followed the intended meanings. In contrast, harshness was expected from Abi Dharr. There is no question that the ultimate reference to judge and compare these *fatwas* is the blessed teaching of the Prophet (pbuh) that was based on facility, promise of good tidings and optimizing benefits. The Prophet (pbuh) had specifically warned against making life difficult or rulings offensive. An example from the recorded *Sunnah* reports how one of the righteous *sahaba*, in his attempt to please Allah by being overly strict, objected to the Prophet (pbuh) about some practices at the Prophet’s home. The Prophet (pbuh) gently corrected him and pointed him in the direction of the most appropriate stance.
13. We should bear in mind the impact of the socio-cultural conditions on the scholars’ *fatwas* and the interpretations of the *Sunnah*. Such conditions may cause them to knowingly choose a weak or doubtful *hadith* over a confirmed one in order to support a prevailing social condition. They may even manipulate the meaning of certain passages in order to suit their particular school of thought. The true intention of the scholar may not have been to appease society but rather the impact of the social context itself that influenced his vision and twisted his judgment. He may be unaware of the pressure steering him in that direction and be under the impression that he promulgates plain truth and social benefits. An example of contradictory rulings deals with the question of whether a woman will forfeit her control of her personal wealth upon marriage. There are some *ahadith* that confirms that forfeit and transfers the property control to the husband. On the other hand, other *ahadith* gives the women full authority over her wealth, both before as well as after marriage. She is allowed to dispose of her property without her husband’s permission or even his knowledge. In another example, confirmed *ahadith* allow women, even those who are young and of marriageable age, to go to ‘*id* prayer with the men to experience the blessing of the call to Islam. Al-Bukhari recorded, through Ibn Abbas, that the Prophet (pbuh) allowed his wives and daughters to attend the ‘*id* prayer. However, the commentator who explained this text limited the approval to elderly women, and restricted to those who had their husband’s approval. Additionally, they should be dress in work clothes of the house service (used during cleaning or cooking). At the end of his explanation, this commentator concluded that generally, permission to go to prayer should not be granted to women. It is clear in this example that there is a significant difference between social traditions and *Islamic Shari’ah*. Finally, in an extreme example, ‘Ali Al-Qari in his book, “*al-Mirqah*” stated that it is forbidden for a woman to learn to write. However, this claim was refuted by Shamsul-Haqq Al-‘Azim Abadi in his own book: “*uqud al Juman fi Jawaz al Kitabah Lin-Niswan*”.

The impact of socio-political context can be recognized as well in fiqh related to the relationship with the People of the Book (Jews and Christians). Historically, opinions may vary from the solid principles of the Qur'an and the authentic sunnah in their relationship as seen in during times of peace or war. It is obvious that justice is the basis of the relationships with all mankind under any circumstances. Islam granted for them the right to live in peace within the Muslim society and to be treated with fairness and kindness. It is permissible to have a social relationship with them such as with visitations and hosting each other, during times of both health and sickness. We should also use the best discourse when engaged in discussions with them. It is even permissible to marry their women as well as form a joint defense with them for the Muslim land. However, a trend of cautious relations with the People of the Book, has spread in the Muslim world as a result from the waves of invasions from the Crusaders. The savage crimes they committed fueled such hatred and feelings towards them and as a result, led the many *fuqaha'* and *muhaddithin* to be lenient in the acceptance of the passages that promote hate towards them even if they are not authentic from the *isnad* point of view. Moreover, passages may be in plain contradiction with the Qur'an, yet we see that such passages were reported prior to the Crusader wars.

There are passages that promote the bad treatment of the People of the Book, which encourage using psychological pressure to humiliate them. There is one such passage, which states that in order for the Muslims to walk in the middle of the road, that non-Muslims should be forced to walk on the sides of the street. Although, some are nice enough to state that in doing so, you should not allow them to hit a wall, nor to fall into a well. There are also those who promote the idea of that no Muslim will die except that Allah will sacrifice a Christian or Jew for the punishment in the Hellfire, instead of the Muslim. This is in plain contradiction with the passages of the Qur'an regarding each individual's accountability on the Day of Judgment. What a disaster we would have if the number of the Muslims exceeds the number of Jews and Christians in the Hereafter?! Those circumstances provide the opportunity to celebrate such passages as a form of defense and a method of protection to the Islamic identity. We believe that the authentic passages are sufficient sources to protect the *ummah* and to secure its revival and the leading role of humanity towards a global peace established on justice, cooperation and benevolence.

14. There is an agreement among the scholars of *usul* that matters of faith (*'aqidah*) must only be established with absolute certainty. Therefore, the passages from *Shari'ah* to be used in arguments must be confirmed in source (*mutawatir*). They rejected all passages from a single source (*ahadith ahad*). Even when its source is confirmed, *hadith ahad* cannot be used to argue matters of faith. Adoption of this ruling will be of great benefit in eliminating most of the disputes between Islamic factions, as the majority of their disputed claims are supported by *ahadith ahad*. Scholars have argued about the authority of authentic *ahadith ahad* and their use in judgments and religious observance of lawful and prohibited. The followers of the *Shafi'e School* have acknowledged the authority of *ahadith ahad*, while those who followed the *Hanafi School* rejected that claim based on the lack of absolute certainty. Moreover, the work of Ash-Shatibi, entitled "*Al Muwafaqat*", went even further to state that the *Sunnah* in

general, whether *ahadith ahad or mutawatir*, cannot stand alone in determining religious requirements or prohibitions. It must be in congruence with the Qur'anic passages, since the function of the *Sunnah* is merely explanation of Qur'anic passages. Thus scholars have distinguished between *usul* (essential matters) and *furu'* (doctrines of the branches) in the fields of '*aqad* and *fiqh*, as referred to previously. The *usul* refers to all *shar'i* doctrines supported by the definite passages of the Qur'an and Sunnah (*qat'i*) in its authenticity (*thubut*) and its meaning (*dilalah*). All other matters are classified as *furu'*. Opinions may vary in *furu'* due to the lack of certainty associated with its source or its meaning. Tolerance and ease are the basis for variations that exist at this arena. All passages of the Qur'an are definite in reference to the authenticity (*thubut*), but not all the meanings of the passages are definite; some may indicate more than one meaning resulting in different conclusions. Among the *ahadith* passages that are definite in its transmission (*mutawatir*) and the majority are indefinite in their authenticity (*thubut* or *zanni*). Meanings in both categories can be definite or indefinite. The *sahaba* had dealt with such *furu'* issues of '*aqida* with tolerance by accepting the excuse of the interpretation of each other. An example is if the Prophet had seen Allah, physically, or not, during the Night Journey. Their opinions vary without accusations or delving into conflict. The reason of the tolerance is the ambiguity of the meanings of the authentic passages, and the ambiguity of the authenticity (*thubut*) of the passages and of the definite meanings. Thus, the *Sahaba* considered such matters as *furu'*. Similarly, disputes about the possibility of the unbelievers seeing Allah in the Hereafter or not.

15. One of the principles of Islamic faith is the ability to recognize the path based on reasonable evidence (*dalil*). However, people differ in their capacity or qualification for *ijtihad*. In Muslim society, there are well qualified scholars capable of *ijtihad* and others that are not so specialized in the field of *Shari'ah*. Generally, ordinary people don't attempt *ijtihad* on their own, but rather follow a particular interpretation or *madhhab*. The choice of *madhhab* is usually determined by earlier societal tendencies that made a particular one dominant in that region. Therefore, new generations born and raised in the region will automatically follow the dominant *madhhab* with little choice on their part. Education and foreign travel may expose some to the influence of other schools of thought and therefore, help to expand their comprehension of the Message. Then, there are others who were never associated with any *madhhab*, but depended on the judgment of others around them who they deemed to be knowledgeable. Those who are proponents of this detachment from the bounds of *madhhabs*, must recognize that seeking and dissemination of knowledge is an essential requirement. However, they must also recognize that *ijtihad* is not that easy to be practiced by the majority of Muslims and therefore should happily accept the presence of a dominant school of thought in their region, as long as they considered among the approved well-known schools. Over time, Islam developed several acceptable interpretations or *madhhabs* to guide the practice of religion. However, followers of these schools are advised to know the evidence used to proof the ruling. Similarly, those who are promoting *ijtihad* should realize that our thought process will always be influenced by a particular scholar(s) and acceptance of the basic principles of the school(s) of thought we follow. In addition, many of the rulings of those who adhered

to a particular *madhhab* were based on *ijtihad*. Obviously, no *madhhab* is capable of predicting our future needs to the Day of Judgment. Even though this latter *ijtihad* was confined by the limits imposed by that particular *madhhab*, still resemble to some extent the position of those promoting absolute *ijtihad*. The proponents of absolute *ijtihad* are themselves guided by the principles of their own thought process, although they do not call it a *madhhab*. However, the objective should not be to eliminate the *madhhabi fiqh* or its followers from existence, but to remove fanaticism and the ugly behavior imposed by personal bias. It is more important to enhance the brotherly bond among Muslims established on the faith, rather than loyalties established on *madhhabi* ties. As for those to support following a particular *madhhab*, shouldn't expect all Muslims to follow their own or one single *madhhab*. It is equally unrealistic to expect everyone to stop contemplating the message revealed by Allah to his Prophet (pbuh), or to close the door of *ijtihad* claiming that Allah has ordained that no more scholars would be needed or produced in the future. Both reason and faith contradict these notions, as scholars of equal or even higher stature than those found in the early history of Islam are more likely to evolve in the future. Therefore, the above discussion may be summarized as follows: (a) it is impossible to eliminate our heritage of *fiqhi* schools of thought and their principles; (b) absolute *ijtihad* may be considered as a *madhhab* with its own developed principles; (c) *ijtihad* has its own qualifications and requirements that must be imposed on those who claim to follow its ways; (d) variability in interpretations and opinions should be considered means of flexibility, ways of facilitating observance and an intellectual enrichment that ensures the growth and vitality of Islam.

16. Each *fiqhi madhhab* has its own essential principles developed to guide the process of *ijtihad* and its sources of jurisprudence. Since these sources vary from one *madhhab* to another, rulings in matters of observance or disputes will also vary. These sources include the Holy Qur'an, the *Sunnah*, *fatawa's* and interpretations of the *Sahabah* and their followers for two generations, practical observance in Madinah, consensus, customary law or traditions, analogy, required benefits, the common good, and elimination of hardship. Intuitively, the ultimate authority resides in the *Qur'an* and the *Sunnah* and despite this consensus; there are differences in the interpretation of some of their passages. On the other hand, acceptance or rejection of other sources or their assigned priorities varied significantly among the various *madhhabs*. Specifically, there were differences in the principle rules *al-Qawa'id al-Usuliyah*, such as acceptance of *weak hadith* and rulings based on its application. Other differences included the relationship between the specific and general meanings of the passages, and the absolute the limited. These differences led to variability in the process of law itself, as well as the final judgment in many cases. All this discussion does not even take into account the practice of the *Zahiri* School which limits most interpretations to the letter rather than the spirit of the passages. Further yet, the practice according to the *Zaydi and Imami fiqh* included past rulings and opinions of the leading scholars or *Imams* of their *Madhhabs* as an integral part of the *Sunnah*. They even developed special criteria and conditions for accepting the *Ahadith* as attributed to the Prophet (pbuh). There is no question that a skilled and prudent wise *da'iyah* would be able to manipulate the multitudes of opinions from various *madhhabs* to suit the *shar'i*

purpose, such as to avoid burdening others through a questionable evident or to defend the Islamic *Shari'ah*.

A contemporary example in this regard is the position of the feminist currents who are questioning the concept of guardianship (*waliy*) for the establishment of the marriage covenant (a designate male guardian to the female to approve her marriage). They doubt the authenticity of the narrated *ahadith* or they doubt the methods used for interpretation of the *ahadith*. From their perspective, it lacks a logical explanation or apparent justification. They argue that in some cases the woman could be the wiser partner that has better or more careful judgment, particularly in family decisions that ultimately will affect her the most, even more than her *waliy*. Under these conditions, it is unreasonable to expect her to reverse her role particularly in dealing with matters of personal choice such as marriage. Additionally, in some cases, the woman herself has guardianship (*walayah*) and authority over men (such as a governor of a state or mayor of a city). When it comes to a decision of a personal nature such as marriage, it is required to have a man's to approve her decision. Possibly this chosen man was already working under her authority or supervision. Leave alone, that the matter of marriage and its consequences are falling upon her mainly, rather than that of her guardian (*waliy*), which will make her more cautious for the decision of marriage. For such cases as described by this example, the *fiqh* of Abi Hanifah was most accommodating. This scholar did not include the guardian (*waliy*) as a condition for the marriage. He classified the *ahadith* that required the guardian's control as applicable only to women in case of slavery. He supported his ruling by his understanding of *Qur'anic* passages that required the guardian's permission before a slave can be married, while the *Qur'anic* passages permitted a free woman to choose her future partner without reference to someone giving her permission or approval. We may also see supporting evidence from the *fiqh* practiced by 'A'ishah who established the marriage contract of her brother Abdul Rahman's daughter through her guardianship while he was away (*walayah*).

17. Scholarly investigations of the history of Islamic jurisprudence proved that the widening gap between the *Sunni* and *Shi'ah* factions, whether in religious doctrines or *fiqhi* rulings, had taken place much later than during the lifetime of the founders: *Imam Zayd ibn 'Ali* (80-122 H) and *Imam Ja'far ibn Muhammad* (80-148 H). Even during their lifetime, allegations were propagated by extremists of the *Shi'ah* followers, against Abu Bakr, 'Umar, 'A'ishah and other known companions of the Prophet (pbuh).. Such allegations was vehemently denied and refuted by these Imams who stated clearly that they heard nothing but goodness from their parents regarding these righteous *Sahaba*. In fact, the principles that guided their *madhhabs* and the sources upon which their rulings were based agreed, in many ways, with those of their *Sunni* counterpart. For example, they all agreed with the authority of the *Qur'an* and *Sunnah*. The two Imams also had their own definition of the accepted *Sunnah* similar to the practice of other *Sunni* Imams. Moreover, the *Zaydi fiqh* bore close resemblance to the *Hanafi fiqh* to the point that, in cases that were not explicitly treated in the *Zaydi fiqh*, rulings according to the *Hanafi fiqh* were applied by default. History also showed that the *Sunni Muhaddithin* agreed upon the integrity of these two *Shi'ah* Imams and recorded *ahadith* narrated through their authority. Therefore, it should be clear to all of

us, that by looking at the roots of our religion, we can find more agreement than conflict. There are only vital principles or *usul* that unite all of us. This should make us realize the necessity of bringing all factions of the Muslim society together in order to relive the early glorious centuries of Islam that were characterized by unity among the ranks and steadfastness in the name of Allah and the glory of His cause.

18. With regards to religious doctrines, we should be more concerned with what had been learned and discussed during the lifetime of the companions of the Prophet (pbuh) and should not delve into matters they elected to keep silent about. Allah has endowed them with the true faith as a standard that may lead us to the righteous path. In particular, we should be cautious about many reports written by *Sunni* and *Shi'ah* historians regarding matters of dispute among the *Sahabah*. There is no significant point in researching such matters now since it is difficult to confirm with certainty, and even if we can find supporting evidence, we are in no position to judge between them. Therefore, it behooves us to learn from our history that which can help us in the present and future. We are obligated to enhance our moral conduct and follow Allah's instructions to pray for those who conveyed and helped us understand His Message "Our Lord forgive us and our brothers who preceded us in the faith and remove from our hearts any anger towards those who believe in you". Let our position regarding matters of dispute between the *Sahabah* be defined by the Qur'an: "That nation past had gained the benefits of their work while you have your own gains and will not be responsible for the work of others". Certainly, they deserve our praise for nurturing the faith and for the sacrifices, they made in order to preserve and propagate Allah's word, as described in the Qur'an: "You were the best nation developed for humanity".
19. It is important to emphasize again that extreme care must be exercised when examining historical accounts. This, by no means, should undermine the value of history. Certainly, history is the nation's memory and an account of the influential forces responsible for shaping its present and future. The significance of such aspects is manifested through our recognition that the socio-political history of Islam is the result of changes in the social order demanded by its message since the days of the revelation and the interaction of this order with the dominant societal traditions and political pressures of the period. Our history, similar to other nations, conveys many lessons and admonitions. For example, we need to study the ways that enabled Prophet Muhammad (pbuh) to mold and shape that unique first generation of Muslims. What psychological and spiritual beliefs did he instill in them that generated such energy and raised them to such an amazing standard of purity and sacrifice in the cause of these beliefs? There is no mean to isolate the present of the *ummah* from its past. It is illogical to denounce the political tyranny in many contemporary Muslim societies, while justifying their historical roots that were nurtured in the past. Particularly if an attempt is made to paint the past with a *shar'i* justification. Instead, we should clearly admit past falsehoods such as the deviation from the *shar'i* principle that advised society to elect a qualified *Imam* or *Khalifah* for a specific term to protect the state's religious beliefs and run its political and social affairs. The *Imam's* rule was based on justice and consultation and his position was a contract that could be terminated, by general consensus, if the terms of that contract were violated. But in order to take a

constructive look at the past, we should all agree first that qualified, unbiased scholars and researchers should be the only people entrusted to study past history and to verify the degree of authenticity of its records. Their methodology should be established on the basis of thorough investigations, objectivity of analysis and logical unbiased conclusions. In other words, a methodology based upon scholarship and honesty, as described by Ibn Taymiyah. In addition, for proper understanding of historical accounts, we should make a clear distinction between the divine authority of *shar'iah* principles and the quality of those of those who implemented it, or the status of the interpreters. In other words, we should distinguish between the supreme versus the example, or the Revealed versus the history, or the Religion versus its practice. It is extremely rare at any time in history that the example reflects completely the ideal standards of its origin. Therefore, our stance should always be aligned with the principles in order to preserve their standard. Simultaneously, we should appreciate the achievements of those who contributed to our understanding and point out their mistakes if they erred. Naturally, to be human is to err; therefore, no one is immune from error including the best of humanity such as the Divinely Selected Prophets and Messengers. Those sincere and righteous individuals who tried their best to behave according to the *Shari'ah* principles are appreciated and loved by everyone. This love and respect reflects our desire to protect these principles and to preserve their message for future generations. However, we should not deviate from the principles ourselves in disregarding any error of judgment by these individuals. In other words, we should not sacrifice the principles and their standard to protect the individual.

Nevertheless, at the other extreme, the faults of those righteous individuals should not be exaggerated and made to obscure their sacrifices and accomplishments. Oppressive behavior of that nature goes against Islamic principles and Allah warned against it. When reviewing the accomplishments of the generation of the *sahaba*, we should make a clear distinction between what was a “forgiven error” and an “acceptable work”. We should reason that their faults may be classified as “forgiven error”, because Allah and his Messenger (pbuh) have recognized them with praise, but errors must not mistakenly be considered “acceptable work”. It is important that we should not confuse the truth with falsehood and simply propagate their errors through future generations. Nevertheless, such principles are firmly established in the Qur'anic methodology. Allah (swt) praised His Prophets and Messengers for their devotion and obedience to Him, while also pointing out their errors and mistakes. He called their choices explicitly errors or mistakes even if some of them were insignificant. Additionally, the Sunnah of the Prophet (pbuh) is evidenced with the implementation of these principles. The Prophet's (pbuh) pardon to Hatib, after committing a major sin, which threatened the security of the Islamic State, is a clear example for such balance. The pardon was due to the Hatib's past support and sacrifice for Islam. This illustrates the fair treatment that protects the *Shari'ah* standards and gives a fair assessment of the work of these righteous individuals. One of the best examples to illustrate this discussion, to follow the Qur'anic guidance and the Sunnah of the Prophet, is the position of 'Ammar ibn Yasir. He addressed the people of Kufah and first praised 'A'ishah, as the righteous wife of the Prophet (pbuh) in this life and in Paradise, then he pointed out that she was not correct in regards to her conflict with 'Ali. He then warned the people

against obeying her in this matter, which he considered to be a test from Allah (swt). When we examine this account closely, we find a clear balance in his approach. 'Ammar highly regarded 'A'isha and her position, yet knew that her *ijtihad* in that conflict was not in congruence with the principles of the *Shari'ah*. Therefore, while wisely protecting her position and her faith, he upheld the standards of the *Shari'ah*. In contrast, throughout our history we found many who only recorded the great achievements of the *Sahabah* and other early Muslims and tried hard to justify their errors or even turn them into acceptable work as if they were incapable of wrongdoings. Obviously, their motivation was to protect the reputation and the contributions of these righteous people.

At the other extreme, there were those who degraded the reputation of some of the early Muslims. Even though some mistakes occurred, they considered them the rule rather than the exception and totally disregarded the many achievements. They magnified their errors, accused them of violating the *Shari'ah* principles, becoming disobedient to Allah and even turning them into non-believers. Additionally they went to another extreme to enhance and inflate the reputation of others whom they value to the extent of endowing them with infallibility. They described their favorites as being directly inspired by Allah who guided their will and choice. Additionally they claimed that infallibility was a transferable trait that could be inherited, donated or bestowed on others, as is property or real estate. Thus, they elevated their icons to a status unattained by other human beings including Allah's Prophets and Messengers. Both groups of extremists also attacked each other and tried to tarnish or ignore the reputation of each other's selected favorites. In order to avoid these unnecessary conflicts, we have to be unbiased and never try to justify the mistakes of even the most righteous in any generation. At the same time, we should be fair and just in our criticism of those who contributed significantly to our understanding by pointing out their mistakes without exaggeration or accusations. Those whom Allah has guided will be able to walk the fine line of protecting and preserving the standards of *Shari'ah* while protecting the rights of the righteous individuals who have worked hard to enrich our understanding. May Allah guide all of us. We should also publicize the course of those moderate scholars who are known for their balance and objectivity, such as Ibn Taymiyah and Adh-Dhahabi, so they may gain in popularity. Finally, we may emphasize that recognition of the contributions of the righteous individuals and our acceptance that faults may be found, and recorded as such, is one of the principles of *Shar'ah* and one of its objectives.

20. The main themes of the Sharia focus on: the generosity of spirit, establishment of justice on earth, and the protection of human necessities (faith, life, intellect, reproduction and wealth). Scholars and *du'ah* are encouraged to nurture these principles and bring their evidence to the attention of the general public. Guidance is necessary when our focus is diverted to less important or secondary issues that have no supporting evidence to back them or its literal meaning was not intended due to specific evident or *qara'in*. Some of such issues may be classified by scholars as *tahsiniyat* (matters of improvements), or practices according to traditions (*'adat*) as a substitute for religious requirements.