



INTERPRETING ON THE FAULT LINES:  
TRENDS OF IJTIHAD  
IN NORTH AMERICA

An Interview with  
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**My first question, Shaykh, is about the definition of ijtiḥad, or what does ijtiḥad mean to you?**

Ijtiḥad has basically two connotations when it is spoken of, if not more of course. The linguistic meaning generally means due diligence, to exert effort. In the Islamic legal sense, ijtiḥad is a term which means to exert or, say for a scholar who is a capable scholar, to exert his utmost effort in order to arrive at as close as what we consider to be definitive judgment about a particular occurrence as possible. *Istifragh al-wus'i lil wusul ila hukmin shari'yyin mathnun*. The idea is that a scholar is utilizing all of his knowledge and resources along with the understanding of a contextualized application of that knowledge in order to achieve what he or she believes to be the judgment of God concerning a new issue that arises, which is not explicitly stated in the Islamic sources. That is the more technical sense of what ijtiḥad is all about. Then there is a more general sense a type of ijtiḥad which is not specialized; it is something the average Muslim or person expected to or assumed to have a certain amount of prerogative to choose what particular opinions that one wants to follow, or even for a person to exert his own effort in order to establish some very basic things related to ritual on a regular basis, such as the

direction of Mecca for one particular position or the times of the prayer based on the natural signs. That is also referred to in the books of Islamic legal theory as ijtiḥad, except it is not the type of ijtiḥad, which would qualify an individual to issue fatwa necessarily.

**That would be more in personal matters?**

Yeah, any matters that relate to everyday life and trying to carry out any particular rituals that one is expected to carry out, such as the five prayers, the start of the month of Ramadan, things like that, these are things that where a particular scholarship is not a qualification or a condition for the validity of establishing those things. A Muslim does not need to refer to the scholars in order to determine whether or not the month has begun or that the time of the prayer has begun, or the direction of Mecca for one's locale. Those are things that both the learned and unlearned can achieve equal qualification in order to determine those things. The other matters, which I am speaking about, need more specialized form ijtiḥad and usually are in reference to more detailed and more complex issues of Islamic law.

**If we look at the specialized ijtiḥad then, who can practice this ijtiḥad? Who is it open to?**

In terms of the more specialized forms of ijtiḥad, there are a number of conditions that have been listed in the books of Islamic legal theory, but there are also a number of subcategories of mujtahidin that you find in the Islamic sources too. For instance there is one level of ijtiḥad that is referred to as: al-ijtiḥad al-mutlaq, absolute ijtiḥad. That is the level of ijtiḥad where an individual has the qualifications to have his or her own legal school based on certain presumptive legal principles and universals. That is a level we usually reserve for, in the Sunni tradition, people like the four imams, like Imam Ahmad, Imam Malik and others. That is the highest level of ijtiḥad. And there are other scholars who have appeared in Islamic history

who, it has been said, had the qualifications to have their own schools, in addition to the fact that there were simply more than the four schools in the early period for a number of centuries in the era after the death of the Prophet. There are lower levels of ijihad after that. There is the mujtahid that exists within one particular school who can determine what opinions in the school reflect the true spirit of the principles of the founder of the school. You have those mujtahidin within the schools also. There is another level of ijihad referred to as al-mujtahid al-murajjih, which is a type of mujtahid who is said to have the capacity to determine valid opinions inter-school opinions across the different madhahib. So you have different degrees of mujtahidin. And you also have in the books a discussion of what is called al-mujtahid fi mas'alah, one who can do ijihad in one single issue and this can be an individual who is not even close to the level of absolute mujtahid or mujtahid in the madhhab or any other things like that, but this person has a capacity to research and to arrive at some opinion about one particular issue because of specialization in that particular area.

### **In our contemporary context, do we have these mujtahids available?**

The question, realistically, has been a topic of debate for a number of centuries, whether or not we even have the first highest level, *al-mujtahid al-mutlaq*. We can go back some centuries and find scholars who came out and claimed that, for one, they did not exist or, two, even if they did exist, the masses could only follow one of the standard schools of the four in the Sunni tradition, and it started to become more restrictive in the sense people started to say that you can only follow one of the four schools. But the further you go back, even during the time of people such as Imam al-Juwayni, imam al-Ghazali, and Imam Razi also in his book on usul, you find that when they speak about the qualifications of ijihad, there is no distinction between Sunni and Shiite. But what happened in the Sunni traditions in par-

ticular, as well as the Shiite tradition, is that as time went on the particular opinions started to appear that ijihad must occur within the confines of the Sunni tradition or the particular ijihad is not considered valid. So the ijihadat that come from deviant sects such as the Shiite, the Khawarij, the Rawafid the Ibadis and others like that, the Ismailis, would not be considered valid forms of ijihad, even though anyone can argue that there is really not strong evidence to support such a claim, more interpreted as a political ploy to restrict the monopoly of the truth to a certain group of people. And a similar trend happened among the Shiites, except that it probably crystallized a lot earlier among the Shiites than the Sunnis. Living today, I remember one time having a discussion about this with one of my teachers in Morocco, where among a group of students I asked a question about whether or not there were ijihad and mujtahidin in the Islamic world or just the world in general. So he did not really answer the question to say yes or no but what he actually did say, I actually recorded his statement was, *la yakhlū zamanun min da'wa al-ijihad*, That is, "No period exists without the claim of ijihad," meaning there will always be those who claim ijihad in any particular era. And this is not to say that they do not exist, he did not say that in such a way that it meant there were no mujtahidin in the world anymore, but he basically pointed out that there will be those who always claim to have the capacity and there are always going to be those who claim that those same people who are claiming don't have the capacity to do so. Even if you claim it or you do not claim it, there is to me from what I witnessed there is plenty of ijihad, there always has been ijihad. Imam Ahmad ibn Hanbal actually had an opinion that it was not possible for an age to exist without there being a mujtahid in the world and he based it on the hadith of the Prophet, *la tazalu ta'ifatun min ummati 'la al-haqiqi thahirin*, "There will remain a faction of my ummah upon the truth victorious", and he interpreted it to mean that there will always be in every age a mujtahid, whereas other scholars entertained the idea that it was possible for an

age to come where there would not be a mujtahid. Imam Ahmad's position was different on the issue and also the same for the Shiites, the Shiites have the same opinion, not exactly the same, but similar to Imam Ahmad ibn Hanbal in that they believe that there always has to be a mujtahid and there always has to be ijihad. And I do believe that that particular opinion is more reflective of the reality that we do live as human beings, and even if there are those who were claiming that there is no one available who is qualified for ijihad. Even the person who is making the claim in a sense is making an ijihad, so either there is not or there is one and the only one is the one who is saying there are no mujtahidin on the face of the earth, in the sense that will make this an act of pretension on the part of those people who would say that there is no one the earth who is qualified to do ijihad.

**Ijihad had been, and continues to be, a process. It never really stopped?**

No, no it never really stopped, no.

**What then about qualifications? Especially in contemporary times, ijihad has become a buzzword, and there are people who want to open the gates of ijihad, fling them wide open and invite everybody in. What qualifications can you speak about for the practice of ijihad?**

The qualifications are pretty standard qualifications. First and foremost, as mentioned in our source books, the individual must have a very thorough knowledge of the Arabic language, in particular, the language of the Islamic sources. And that is to say that a person if a person just simply knows conversational Arabic or just knows a little bit of grammar, then that does not qualify the individual to do ijihad, that you have to have deep and profound knowledge of the Arabic language and the context of the scripture and the history of the scripture and the history of the language of the scripture. What happens today is that many words that

are mentioned in the Qur'an in particular are utilized by Arabs who speak Arabic in a different way than they intended in the Qur'an. That is the first and most important of all qualifications for ijihad. After the Arabic language, usually the conditions mentioned include things like knowledge of the Qur'an, particularly the verses in Qur'an, which relate to praxis, verses from which legal judgement can be extracted. Also, knowledge of all the ahadith, which have also the same sort of import with relationship to legal judgement. Somewhere in the range of five hundred ahadith, five hundred verses, and then understanding the language, the history, and the context of those verses. Have knowledge of usul al-fiqh, the Islamic legal theory, and the linguistic foundations to extract judgments from those books. Some include knowledge of Arabic eloquence, and in some cases Islamic poetry, but only to the extent to understand certain types of language and types of words. Having knowledge of the scales of poetry is not a condition of ijihad. Some scholars would include knowledge of logic, but that is not also something held to be a condition by the majority of scholars because it is a later development that one does not have to have knowledge of the systematic logic in order to do ijihad either. In addition to that, this would be knowledge qira'at, different modes and types of readings of the Qur'an, which existed during the early period, especially because certain readings offered different legal consequences when we read it together with one or the other different recitations of the verse. And so those things all need to be taken into account before one is said to be qualified to do ijihad. But what is more important, but definitely important beyond those qualifications, and I think this is something somewhere where a lot of scholars at times forget about or don't give much consideration to, is having knowledge of the culture of the people one intends to offer a fatwa for and to understand the context, the cultural context, the historical context, the sensitivities of those people also before one offers one's opinion about a particular issue. And this is where I think most scholars usually go wrong

or at least have irresponsible statements that can lead to a lot of hardship or misunderstanding amongst different populations. So that is extremely important to take into account, the cultural context also.

**That leads perfectly to my next question, which is about context and place. There is ijtiḥād in the Muslim world and ijtiḥād in North America as well. Are they two separate things? Are they connected? Would ijtiḥād in North America be different from ijtiḥād, let us say, in Morocco, Egypt, or Saudi Arabia?**

Yeah, I believe so, that it would be different, but I would not say only just in North America. I think in North America by itself you have Canada, you have the U.S., you have Mexico. And even within the United States, you have a number of different circumstances even for different areas in the U.S., such that one has to be careful not to totalize or universalize a particular fatwa and make it apply to everyone in those particular places because it may lead to hardship on other peoples who exist in the same country. So when a mufti gives a fatwa, it has to be understood within his or her local context, and this is where a lot of problems occur. For instance, there are some scholars who have the opinion that it should be unlawful for a Muslim woman to cover her face in the U.S. for instance. Now, part of the rationale is because it discourages people from accepting Islam. So if you had women walking around who are covering their faces and following a traditional school of Islamic law, like the Maliki school or the Shafi'i school for instance, it might discourage non-Muslims from accepting Islam because they might think that as a Muslim I have to cover my face. Now what is problematic with this particular opinion, in my view, is that this would differ according to where you are located in the U.S. I come from Philadelphia, Pennsylvania; this is where I am originally from. And in Philadelphia there is a strong Salafi influence in Philadelphia, so a lot of women when they become Muslim they actually do

wear the face veil, niqab. So you have a very large convert community and people coming from all walks of life to that community. And I mean literally all walks of life. For instance maybe a woman who used to work in a nightclub, used to be a dancer for instance, and a stripper or something like that and she becomes Muslim. A lot of women like that become Muslim find it to be very attractive to see that it is OK to cover your face as a Muslim woman. So if you tell that woman that it is unlawful for her to cover her face after she becomes a Muslim, she might not become a Muslim, she might be discouraged from becoming a Muslim. She might like the idea that when she walks down the street in the same city, that men who have seen her and looked at her a certain way with her clothes off, that they would recognize her when walking down the street, so to save herself from the embarrassment, she likes the idea that she can cover her face. Here is an example within one country, you have to be careful about when people give a fatwa, that you take into consideration all of the cultural and even sub-cultural sensitivities and try not to universalize. So when you give a fatwa, you have to contextualize it and you have to make it totally clear who it is directed at and who is this being given for, and I think this is one thing that is neglected quite often these days because of the establishment of the nation-state. When we start to think that anyone living in the same borders have the same sensitivities and the same environment and environmental conditions which would demand for us to give a fatwa without thinking it would impact some groups of people more negatively than others, but we usually don't care about that, we just do it because of consideration of who would not become a Muslim. And that is another problem, too, because when you ask the question of will it discourage people from accepting Islam, you have to ask the question, who would it discourage and who is it that we want to become a Muslim? Those are all things that quite often than not taken into account, which lead to certain sociological issues that influence certain biases, even in fatwa.

**I like that point about the nation-state and considering different people and different circumstances within the nation-state. Would I assume that the process of ijihad would not be different if it is carried out in Morocco versus the U.S. or a particular state in the U.S., it is just the context would be different, but not the process itself?**

No, not the process, it would be the same process. If one takes a particular office, one is expected to be qualified to execute that office. And if someone asks you to fix their car, you should have the education to know how to fix the car. And so the qualifications would be the same but what is included with this is the knowledge of the culture of the people where the fatwa is being issued, so that always has to be taken into account.

**A person living in the US and Canada, if they do want a fatwa, where would they go? Who is the best person they can go to for a fatwa? Would it be a person living in their locality or country, would it be a person from overseas?**

It would differ. I think it would differ depending on, one, whether the person is a convert or non-convert. And then even the same for convert community, because you can be a non-convert — like for instance my family is a convert family but I am not a convert myself, I was born Muslim, my father and mother converted to Islam, so I am a member of the convert community in that sense. That is a different context that exists there. So it would depend on the person who is the mufti having knowledge of all of the details and background of the reality that I live, whether that person be from overseas or here, it really would not matter. The main thing is that when the mufti issues the fatwa, the mufti is taking into account all the risks of giving a fatwa for the people of Egypt in the context of the people of New York, New York. So as long as the person is able to do that, it really would not matter where

the person comes from, but preferably you want to have a person who lives in the society, the same city, the same state as the person who is asking for the information because in that particular instance at least the mufti is given the right experience in learning about the society. I think the best mufti would be one who does deal with people on a regular basis, not a person who is distant from the people. Quite often a lot of scholars are at a distance from the people, they are on their high chair and they don't deal with marriage problems, they don't marry people, they don't divorce people, they don't counsel people about relationships, they are just simply teaching and giving a lecture. Those people, to me, are the least equipped even if they have a vast amount of Islamic knowledge, the least equipped or atleast they come into understanding of context a bit later because they don't have, they are not exposing themselves to the disrespect of the masses, which would be people on the front line, they would come to understand that there is something about the reality of the people on the ground and the struggles they go through. So we can be a bit idealistic at times, way up in our ivory tower and we have these great ideas about the direction of Islam, where we want it to go but we cannot relate to the people on the ground or it takes a long time or it takes us longer to get there because our focus is somewhere else. So when you have people becoming Muslim and they are trying to transform their lives, then you need to have people who very wisely can bring people, guide people into the religion while taking into account the struggles they are having and even anticipating certain struggles, too, so they can take a gentle approach at times, which would be necessary, so not to turn people away. I would say that outside of the normal conditions, those are the types of people I believe are the best suited to give fatwa for any particular situation.

**Do we then run into a problem, maybe, of qualifications ... what do we do with that if the qualified person is not available? Do we lower the qualifications? Do we go over-**

## seas? How do we reconcile distance, locality with qualifications?

What happens quite often is that, on one hand, there are those people who don't have even the basic religious qualifications, the basic tools of *ijtihad*, and they have an opinion about Islam and are trying to represent the Muslim community to the public, and that is a problem because you have to have that requisite knowledge. On the other hand, the other extreme is, you find those who, yes, they may have the requisite qualifications from a traditional standpoint in that they know the books, they know the Qur'an, they know the hadith, they know the language and all those types of things, but they don't understand the context of the people. So when they issue a fatwa, they issue it in such a way that it does not really empower the Muslims who are living in the host society in particular. And so the Islamic qualifications were not enough; let us say that even their qualifications were not complete because they didn't have knowledge of the culture, which is an additional qualification, and not simply to learn Arabic and these other things. When some people who are sort of in-between those two stand out and they try to lead the people, gather people, what happens on side of those who are Islamically trained to give fatwa are, quite often, *ad hominem* attacks against those people. They say if this person does not have these qualifications, then we should not listen to them. Quite often those same people are better at steering and empowering their people than the 'ulam who are overseas are. So the *ad hominem* attack is not helpful because in place of that fatwa that you will get from this person who is in between is a fatwa that is not practical. So at the end of the day, there is still no movement occurring. So the way to resolve it is to take recourse to the concept of *al-ijtihad fi mas'alah*, (single-scenario *ijtihad*) it is to take recourse there. This is a discussion in *usul al-fiqh*. And although most scholars don't agree with it, there is a minority of scholars of *usul* who said this is possible for a person who has the qualifications to do *ijtihad* in a particular

issue as long as they exert their utmost to arrive at the probable judgment or most probable correct judgment about the matter, then we should accept that particular opinion. And I think that is where we are. Not just even here but even in the Muslim world. This is what pretty much how we have been operating for a long time except there is a certain amount of insincerity in the learned community about how we express our views of this because scholars won't say they are doing *ijtihad* because people think, "Oh you are saying you are a *mujtahid*, but then give a fatwa." But giving a fatwa is doing *ijtihad* sometimes also, especially related to something unprecedented in Islamic source books. So there is a lot of work ahead of us, and I think that we have to come to grips with our own pretension and overcome it, such that we say, this is a legitimate view. Another part of it, too, is to understand *fiqh*. When I studied *fiqh*, one of the very first things my teachers taught me was an expression, *al-fiqh min bab al-thunyun*, jurisprudence is from the realm of speculation. And what that means is that it is not revelation, it is not *wahy* from Allah, but we say this is the *hukm* of the issue not that we are saying that we know for a certainty that is what Allah would say about it, it is that we think this is what Allah would say about it but we cannot prove that this the correct judgment. So when you begin to understand that jurisprudence is not a precise process or science in itself, this should give us less reason to be critical of other people who actually come forth with practical solutions to issues that are helping to empower people, help people become morally committed individuals and productive people in society, that we need to be less critical about people when it is obvious we see the movement occurring.

**You, in a sense, situate yourself between those who say everybody can practice *ijtihad* and it has no requirements or requests and the other extreme that *ijtihad* is very limited to certain individuals who have become masters of law, masters of language, etc. Right?**

I am not sure if I would say that I position myself in between them. I am saying that the hype about lack of qualifications of ijtiḥad is just that; it is a lot of hype. Either there is no one who is qualified to do ijtiḥad today and hasn't been qualified to do ijtiḥad for a long time, or it is not as hard as people make it seem that it is. It is not as difficult as people would like to make it appear that it is, and so that is really what I am saying. I am not saying people don't need to have qualifications; people still need to have qualifications. I am just saying that those qualifications as they have been presented to us by people of the past are probably not as stringent as people would think they would be, but people still need to fulfill the qualifications and they can be achieved. And I think that the Shi'ite position on that is pretty clear and I think it is a reasonable position because it reflects the reality on the ground that we have been dealing with for centuries now. Imam Ahmad ibn Hanbal's own qualifications were questioned by people like Imam al-Tabari, who actually referred to him only as a muḥaddith, a scholar of ḥadīth, and that in itself agitated the masses, those people who followed Imam Ahmad, it agitated them against Imam al-Tabari. You find historically Sunnis themselves were excluding Imam Ahmad ibn Hanbal's opinions from many of their books. It took them centuries to start to include his opinions among the books of comparative jurisprudence. So you find those types of examples all throughout our history. So there has been an evolutionary process occurring, and the person who becomes a Muslim quite often sees it and ends giving it like a static process that things have always been the way that they are today but they miss a lot of the history of the evolution of Islamic jurisprudence and evolution of fiqh and even theology. I think there is a middle ground between those two extremes, but I am not completely sure if I would characterize my position as one in between those two extremes. I think I am more so saying that it is easier to achieve ijtiḥad than people are typically are told it is. Now, it is easy to achieve ijtiḥad to the extent that you start your own school? I think that is a bit more dif-

ficult, but an ijtiḥad about an issue, I think that is much easier to achieve than people typically understand that it is.

**Let us talk a little bit about the limits of ijtiḥad. Is all of Islam open to ijtiḥad, is it only in law, is it law and theology, is it all of law?**

In the area of doctrine, clearly there is no room for ijtiḥad in the sense to say those things that the Prophet Muhammad brought and we are absolutely certain that he brought and all Muslims agree upon, the historical tradition acknowledges that these are things brought by the Prophet, those things are not open to interpretation. So for instance, the belief in God, tenets of faith, things like the obligation to pray five times a day, fast Ramadan, pay Zakah, to perform the Hajj and other things like that, these are things not open to change, not open to reinterpretation, revamping . . . the aqīdah, definitely our doctrine. Now there are aspects of our doctrine and theology, historical doctrine, we know where we differ with Shia or we differ with the Mu'tazilah and the Khawarij. These are secondary matters of Islamic doctrine where, of course depending on who you talk to they are of the truth as we know, so those areas naturally are open for discussion, open for negotiation between the different factions of Muslims. But when you come to the issue of shari'ah, shari'ah should be understood in a couple of different ways. In one sense you can understand shari'ah as a combination of both, what we call, negotiable and non-negotiable aspects of Islamic law. Some things are not negotiable that have been established, they cannot change and will not change till judgment day. Then there are others that are negotiable. In the area of non-negotiables, this includes a set of universals that are intended to guide the judgment of the later community and so you find there is far less that is non-negotiable than the areas that are negotiable. Another way to look at shari'ah is as being inclusive of both. Islamic shari'ah has both those negotiables and non-negotiables, but when we

look at the non-negotiables we are looking at things that can change based on circumstance. But the fact that they change does not make them not part of shari'ah. That is one way to look at it. Another way to look at shari'ah is to say that shari'ah is only the non-negotiable part of Islam, whereas anything else is not shari'ah, so those are two different sets of perspectives on that particular issue because people typically say shari'ah is what was revealed to the prophet and so this is what we were given. So that is what makes shari'ah only that, everything else when we talk about fiqh, the ahkam, that would be something different according to that particular perspective. So yeah there are things that can change and other things that are not open to change.

### So ijtiḥad would be where exactly?

Ijtiḥad can only occur in the areas of points of new discussion and new areas of inquiry. So for instance, the matter of whether or not the Prophet saw God on the night journey — did he see God or not? — that is a secondary matter of aqidah. Some say he did, some say he did not. It is not so important for a Muslim to believe either or; that is a secondary matter. As for some new area of inquiry after the Prophet's death, the Prophet he was the one who told us what Islam is, that was his duty, then when he passed away then religion was complete at that point and it was complete since then, our doctrine was clear, our creed was clear, and our practices were clear too. Amongst those completed things were these universals that guide future discussions and future deduction about law. That is one example. Another issue in the area of practice too, for instance, how you hold your hands in prayer?, Do you move your finger or not move your finger, these are matters that are related to areas of inquiry though when new instances occur and then the scholars are trying to seek judgments about them, this is where ijtiḥad occurs. The area of aqidah, some scholars do say that mistakes that occur in the area of aqidah are excusable also, there is a group of scholars who had this view. Imam

Ghazali mentions that view in his *Mustasfa*, but generally the scholars are of the view that you cannot make ijtiḥad in aqidah, and if you do a big mistake in aqidah such that it leads to unbelief, then you are not excused. Whereas in the matter of fiqh, they would say a scholar's mistakes in fiqh — ijtiḥad in fiqh — still gets reward; he is not kafir; but in aqidah you become a kafir. But that is not a point of consensus either. For instance, scholars like ibn Taymiyyah who is said to have made certain serious errors in the area of aqidah, some scholars would argue he was a kafir because he said so and so. But others, would say “No, he was a mujtahid, he was qualified to do ijtiḥad and he has his dalil for what he said, and even though he is wrong, he is not a kafir, it was a matter of ijtiḥad and a mujtahid is rewarded even if he makes a mistake, whether in fiqh or aqidah.” So generally that is the way we learned it and were taught about the Islamic law.

### Can ijtiḥad revisit an issue of ijma', for instance like Muslim women marrying non-Muslim men, would that be an issue that can be revisited.

Any point of religion where there is a claim of ijma', we always can investigate the claim; the claim can always be investigated. But I think it is important to highlight the difference between two types of ijma'. We just call it ijma' for the sake of calling it ijma' right now, but there is one for instance issue of the non-negotiables of religion, *al-ma'lum min al-din bi al-darurah*, we usually refer to as ... these things that have not been negotiated after the Prophet's time. These were things that were determined during his time, they were passed down by indisputable authenticity, and they were established on that basis, on the basis of indisputable authenticity such that we know for certainty that these form the teachings of the Prophet. And so those areas which are matters of consensus, you cannot revisit those issues. They are what they are. A Muslim woman marrying a non-Muslim man — that belongs among those issues. If there was a disagreement about, let's say a woman



becomes a Muslim while she is married to a non-Muslim man — can she remain married to him? — that is a point of disagreement. A new area of inquiry, that is a different issue. But to initiate a marriage between a non-Muslim man and a Muslim woman, that is a point of consensus, one of the non-negotiable areas, one of the things we learned from the prophetic era, and that would be under *al-ma'lum min al-din bi al-darurah*. Now when it comes to other issues, the mainstream definition of *ijma'*, scholarly consensus, we can investigate every claim. There are scholars who argue that *ijma'* never occurred in the history of Islam. A number of scholars claim this, modern day scholars and even some scholars of the past, so scholars who are of the modern period, such as Abdul Wahhab Khallaf and Wahba al-Zuhayli, also have this view that scholarly consensus according to the definition of consensus as mentioned in the books of Islamic legal theory has never occurred historically. There are a lot of claims, but those claims are very subjective claims. They either mean the consensus of one particular era, the consensus of one madhhab, the consensus of the four schools, the consensus of the majority of Muslims; but that never means every single mujtahid had this view or every single mujtahid was discovered to express his view of this matter during a particular time, making it binding on all other Muslims to the judgment day. And I believe that their argument is a sound argument and is provable that it actually never occurred. On the concept of *ijma'*, there is even no consensus on the authoritative nature of it. The Shiites do not accept *ijma'*. Shiites don't even accept it as a *masdar min masadir al-shari'ah* (a canonical legal source), they don't even accept it as that. *Ijma'* for Shiites is only the consensus of their imams, if you find it in their books, that is all what it means. They argue that the Sunnis just made it up so they can try to silence them, and I do believe there is some legitimacy about their claim, because historically that is what actually happened in terms of the matter of *ijma'*. So when you do have an area where there is a claim of *ijma'* and the scholar finds that there is a legiti-

mate reason to revisit the issue, then naturally it is permissible for the issue to be revisited, because the claim was a false claim, it was a false claim, there is no fear of one becoming a kafir for going against the claim of *ijma'*. And you find them all throughout our history, all types of claims, like that. I can give you one clear example: There was a problem during certain regimes with sodomy, with boys. So some scholars issued fatwas saying that it was haram for a man to be in the same room with a beardless boy, and the evidence they used for was a hadith that mentioned that when a man and a woman are alone, the shaytan is the third of them. But the hadith does not say anything about boys, but it says something about a man and a woman, but some scholars who mentioned this ruling then went on to claim that there was an *ijma'*, that there is consensus, that a man cannot sit alone with a young boy who does not have a beard.

### So that is an example of baseless *ijma'*?

Right, exactly

### So, *al-ma'lum min al-din bi al-darurah*, are these matters of *ijma'*?

I only call them *ijma'* because of the level of authority that is given to these, but they are not arrived at based on the same criteria for *ijma'*. For *ijma'*, the technical, legal *ijma'* that the 'ulama of Sunnah have developed was to arrived at based upon, first and foremost, the occurrence of a new issue and then all the mujtahidin who existed during the time would issue fatwa about the matter, and then once the fatwa is issued about the matter and we ascertain everyone's opinion, then we express them and then we assume that an *ijma'* has occurred, and that has never occurred historically. So *al-ma'lum min al-din bi al-darurah* is not arrived at in that way. The way *al-ma'lum min al-din bi al-darurah* is arrived at is similar to the way we arrive at knowledge of the Qur'an in that we know the Qur'an we have today is the same one that was revealed to Prophet Muhammad

because so many people from so many people from so many people have relayed it, sent it down to us to the present day that we have no doubt that anything has been changed from it nor did any conspire upon a lie. Wherever you go, it is the same recitation, the same reading, the same script. So that is when we get *al-ma'lum min aldin bi al-darurah*, it originates from *tawatur*, (indisputably authentic transmission) not from *ijihad*. So when we say it is part of *ijma'* it is only to say that these are points that are non-negotiable in the religion.

I'm coming to my last question, which is about reform in Islam. What are your thoughts about reform in Islam? Is it something that is needed and what type of reform is needed if it is actually needed?

You first have to define Islam. So if we understand Islam as something monolithic, a monolithic thing that has its list of do's and don'ts and beliefs, a person who sees it that way, then obviously that person needs a reform of their understanding of Islam. That is the only way that we can speak about reforming Islam, because you think that Islam is only do this, do not do this, God says we are supposed to do that ... But that is not what Islam is, Islam is something broader than that. Islam is a dynamic religion; it is not a static religion. We have aspects that are static, but most are very dynamic. So when we start speaking about reform in Islam, that is a misnomer, realistically it paints the wrong picture of what Islam truly is. Islam has always been dynamic. Dr. Umar would say, Islam is like water and it takes the shape of any vessel that you put it in: you put it inside a bottle, it takes the shape of the bottle; you put it inside a bowl, it takes the shape of a bowl. And that is really what Islam is, realistically, and so the question itself becomes problematic when you see it that way.

...

I do think that Islam has a certain formulation of morality, we have our own morality and I think those areas where our morality clashes with the morality of certain people in the West.

I would not say the West completely because even that core issue we call West, western, the western world, you have to realize that there is something we excluded when we are trying to negotiate with the western world. Quite often, when Muslims think of the West now, they think about all of Europe and America and Canada, but even western history has been very slanted towards western Europe, so eastern sensitivities are not necessarily taken into account either, they are also excluded from that particular conception of western history, western world. I think that Muslims need to wake up to that, most people need to wake up to that. In saying we have our own morality, we start there, understanding that certain things about the morality cannot be renegotiated. You cannot renegotiate our own morality in, let's say, the issue about homosexuality, which always comes up. As a Muslim, I have to believe that it is immoral for one to engage in sexual activities with the same sex or even immoral to engage with the opposite sex without being married; heterosexual sex is also immoral in the Islamic tradition when not in the confines of marriage. So we have our own morality and we have to uphold it. We should not be expected to compromise on that, and so it has to come to the point where those who are demanding Muslims to conform acknowledge that their morality is not universal morality either. And to expect us to give up our own identify for theirs is just saying that they have a universal formulation of morality that has been sanctioned by God and ours is not. It is a capitulation to a false universal and they have to be made aware of that, and if they are already aware of it, they need to understand that Muslims are not going to be willing to just surrender to those claims.

### **So there is a limit, ultimately?**

Definitely there are limits. We all have limits.

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