

## THE CLOSING OF THE GATES OF *IJTIHAD*

Catherine Cray

*Ijtihad* is a principle in Islamic doctrine that allows scholars to use their own independent reasoning to divine individual solutions to theological questions that do not contradict the *sunna* or the *Qur'an*. In the early centuries of Islam, *mujtahids* (scholars practicing *ijtihad*) changed the shape of Islamic law. Yet, by the 11th century, *ijma*, or agreement, had built up among these *mujtahids* that that the gates of *ijtihad* were closed—in other words, no one was allowed to practice *ijtihad* anymore. Instead scholars were to practice *taqlid*, “imitation” of the work of earlier *mujtahids*. This declaration has led to much controversy, even up to today, both as to whether or not the gates of *ijtihad* actually closed and why.

The closing of the gates of *ijtihad* grew out of the Abbasid attempt to take control of Islamic religious teaching away from the scholars. From the mid-8th to mid-9th centuries the Abbasid caliphs, based in their new city of Baghdad, maintained near absolute political power,<sup>1</sup> which they slowly tried to extend into the religious realm. They started by claiming for themselves the power to appoint *qadis* (scholars who served in courts of religious law), although previously Ummayyad provincial governors had always handled such appointments.<sup>2</sup> The Abbasid caliphs further took control of *qadis* by limiting their power: they allowed *qadis*

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Catherine Cray is a Senior at the Commonwealth School in Boston, Massachusetts, where she wrote this paper for Melissa Haber’s course in Medieval History in the 2013/2014 academic year.

to decide *only* cases of religious law, although *qadis* had formerly decided both religious and criminal cases with Umayyad governors.<sup>3</sup> Furthermore, despite the Abbasid caliphs' professed wishes to adhere closely to Islamic law, in almost all known cases, the caliphs rejected the *qadis*' decisions in religious cases,<sup>4</sup> showing that the *qadis* were merely figureheads. This diminished position can be seen in many scholars' unwillingness to become *qadis*; for example, when 'Abd-Allah ibn-Faruk was appointed *qadi* in 787, he resisted his appointment and would not give in until the governor's guards held him over the edge of the roof on a tall building and threatened to throw him over.<sup>5</sup>

Yet despite the *qadis*' lack of political power, they continued to influence religious law, because although a caliph could reject a *qadi*'s opinions politically, a caliph could not control whether a *qadi*'s opinion was accepted religiously. This distinction led to a separation between doctrine (which religious law guided) and practice (which state law influenced). Ibn al-Mukaffa (secretary of state in the Abbasid dynasty) saw this as a major problem; he wrote a treatise criticizing the contradictory nature of Islamic law, which stemmed from that separation of doctrine and practice. As the easiest solution, Mukaffa proposed that the caliph take complete charge of Islamic religious law.<sup>6</sup> Ultimately, the treatise did not achieve its aim of gaining complete religious power for the caliphs, though it was appealing. To many Muslims, who saw the growing rift between doctrine and practice as a major problem, this may have seemed like the only solution. But, to scholars, who hoped to maintain the purity of the law, this likely seemed to be the *worst* solution, putting religious law in corrupt hands. Therefore, it is possible that the scholars declared that the gates of *ijtihad* were closed to save Islamic law from imminent corruption by power-hungry Abbasids.

One of the scholars who protected Islamic doctrine from corrupt Abbasid caliphs was al-Shafi'i (died in 820),<sup>7</sup> who removed local ties from Islamic law and instead tried to develop a universal doctrine that the caliphs could not control. He strove for this doctrine by rejecting local sources of law, going so far as to exclude

local tradition from his ranking of the four most important sources of Islamic law (the *Qu'ran*, *sunna*, *ijma*, and *ijtihad*).<sup>8</sup> This exclusion shocked many of his contemporaries,<sup>9</sup> because previously local tradition had essentially dictated how Islam was commonly practiced<sup>10</sup> and seemed essential. Al-Shafi'i's push for a universal doctrine that rejected localized practices widened the gap between doctrine and practice, because everyday Muslims did *not* abandon their local traditions. Al-Shafi'i also rejected the localized *sunna* and only recognized the *sunna* of the Prophet, which all Muslims believed.<sup>11</sup> With the rejection of the localized *sunna*, al-Shafi'i also by extension rejected the local *mujtahids* behind the *sunna*. In this way, he made it even more difficult for new, lesser-known *mujtahids* and their doctrines to compete with the older, universally-known ones. Therefore, although al-Shafi'i did believe that *ijtihad* was a source of law, his push for universal doctrine inadvertently paved the way for the closing of the gates of *ijtihad*.

Through al-Shafi'i's struggle for a universal Islamic doctrine, certain well-known *mujtahids* came to be idolized, narrowing the scope of allowed doctrine and shutting out other newer *mujtahids*, who then could not practice *ijtihad*. These idolized *mujtahids* were the rumored founders of the four Sunni *madhhabs*, or schools of law, which are still around today.<sup>12</sup> Al-Shafi'i worked to emphasize each of these four *mujtahids'* renown.<sup>13</sup> His efforts paid off as devotion to a specific *madhhab*, and its *mujtahid*, began to supersede devotion to one's local leaders. We see this best as the Hanafi and Maliki *madhhabs*, which had previously only been practiced in specific locations, spread into new places:<sup>14</sup> not geographic location, but rather devotion to the founding *mujtahid* now defined popular participation in these *madhhabs*. Scholars of the time also grew increasingly devoted to these founding *mujtahids*; scholarly writings during and after al-Shafi'i's time closely mimicked the writings of those founding *mujtahids* not only in what they were saying but also in how they were saying it—professing the same beliefs and organizing them in a similar way.<sup>15</sup> As such intense devotion to these founding *mujtahids* began to unite Muslims from diverse backgrounds, we see that al-Shafi'i's work of eliminating local boundaries was now complete. Inadvertently,

by universalizing doctrine, al-Shafi'i also narrowed it, limiting the diversity in what Muslims believed, thus contributing to the final closing of the gates. Devotion to one's particular *madhhab* was so high that scholar al-Isnawi (citing 13th century scholar Ibn al-Salah as his source) argued that Sunnis could only adopt a doctrine held by one of the four *madhhabs*—and no other beliefs.<sup>16</sup> Through this limitation to solely one *madhhab*, we begin to see the emergently more rigid and universal doctrine that led to the closing of the gates.

Still, even when attachment to one *madhhab* flagged, doctrine continued to develop in accord with stringent rules and to disperse outside of typical regional boundaries. We see declining devotion as many a scholar began to transfer out of his current *madhhab* and into a new one solely to gain a higher position.<sup>17</sup> Despite scholars' infidelity to one *madhhab*, the universal spread of one rigid doctrine continued. Although switching *madhhabs* was growing more common, many scholars advocated for faithful devotion to one *madhhab*. For example, in his argument that *muftis* and *qadis* must stay within the boundaries of one *madhhab* in making legal decisions, 14th-century scholar al-Tarusi accepted almost as an axiom that *muqallids* [jurists not allowed to practice *ijtihad* and bound by *taqlid*] were not permitted to cross *madhhab* boundaries.<sup>18</sup> Doctrine narrowed even within *madhhabs*, as jurist al-Isnawi declared that a Muslim could not agree with the opinion of two *mujtahids* on one legal question,<sup>19</sup> although previously scholars had believed that multiple, equally correct solutions to one problem could coexist.<sup>20</sup> Furthermore, faithlessness to a particular *madhhab* not only did not obstruct the universalization of Islamic doctrine, but also actively helped it forward. Because the members of a *madhhab* did not remain constant (given the prevalence of switching), scholars in the 12th century worked instead to at least make the teachings of each *madhhab* constant,<sup>21</sup> thus embodying the movement to consolidate doctrine and the popular desire to understand and be certain of one's beliefs. Such firm assurance could not exist alongside the inquiring, wondering, and evolving that drove the practice of *ijtihad*—another step towards the closing of the gates.

Muslims remained bent on ascertaining the validity of their practice and continued to clarify contradictory points in Islamic law, trying to unite doctrine and practice and thus limiting future practice of *ijtihad*. With the plethora of contradicting legal opinions easily available, many Muslims were confused and had difficulty determining how to best practice the religion. To help resolve such confusion, legal officials called *muftis* emerged; in cases where multiple answers to one legal question were accepted as correct, *muftis* would decide which opinion was best. *Muftis* became a staple in the everyday life of wealthy families, instructing members on how to best live out their Islamic faith.<sup>22</sup> Thus, we see that the effort to consolidate Islamic law, limiting the number of correct opinions and practices to one, was coming from both legal scholars and common believers.

Acting on this impetus, jurists consolidated existing parts of Islamic law by limiting the number of unanswered legal questions, and thus established the new stricter doctrine present after the closing of the gates of *ijtihad*. The most pressing legal questions had already been answered and agreed upon,<sup>23</sup> answers that current *mujtahids* could not dispute without contradicting the *sunna*. Simply because of time passed, there were fewer unanswered questions and therefore fewer places where one even *could* exercise *ijtihad*. The places to exercise *ijtihad* narrowed further, as new *mujtahids* were not permitted to weigh in even in cases where scholars had agreed that multiple opinions were legitimate responses to one legal question. All new opinions were immediately dismissed as illegitimate even though no one of the old opinions had been agreed upon.<sup>24</sup> These factors combined, greatly reducing the number of undecided legal questions left for *mujtahids* to answer. In this way, the closing of the gates of *ijtihad* approached, perhaps because in this new religious climate the use of *ijtihad* no longer seemed necessary or even relevant.

However, despite these movements that advocated for a more invariable doctrine, that established the four *madhhab* philosophies as the only acceptable chains of thought, and that seemed to both impede the use of *ijtihad* and to debase popular opinion of it, new and creative reasoning (similar to *ijtihad*) continued within *madhhab* boundaries; what had been called *ijtihad* yet endured. For example, after the closing of the gates of the *ijtihad*, *madhhab* doctrines were dictated not by the original writings of their founders but rather by contemporaries' commentaries on the old works.<sup>25</sup> Additionally, a trend emerged among scholars in each *madhhab* of reasoning independently and then attributing their personal conclusions to one of the founders. For example, although the Hanbali *madhhab* attributed its doctrine to its founder, Ibn al-Hanbal, most of its practices and beliefs actually developed after his death.<sup>26</sup> In this way we see that, slyly, new thinking was still recasting the shape of *madhhab* doctrine.

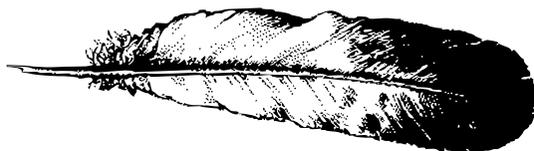
Beyond new reasoning masquerading as old, a few entirely and openly new ideas, the results of *ijtihad*, did become law. *Muftis* continued every day to form legal opinions, or *fatwas*—*fatwas* that the *madhhabs* then included in their books of law.<sup>27</sup> *Fatwas* were not particularly widespread and were in most cases used only by other *muftis*, but they represent the broad scale at which new thought was still arising. On a more influential level, medieval scholar Jabarti wrote a popular book in which he cited scholars who lived after the closing of the gates, and although Jabarti did not call those scholars *mujtahids*, he did describe their creativity and their unique opinions, and thus described those scholars as one would describe *mujtahids*.<sup>28</sup>

Ultimately, much of the controversy as to whether or not the gates of *ijtihad* closed arose from disagreement about what certain terms, like *ijtihad* and *mujtahid*, really referred to. Modern scholar Hallaq noted that as long as there were *mujtahids* there would be *ijtihad*, and so one might disprove the closing of the gates by revealing the existence of *mujtahids* in later centuries.<sup>29</sup> From this emerged inconsistencies in the definition of a *mujtahid*. The broad term could define anyone from a father who decided

at what time his family could break the fast for Ramadan on a dark day to a leader like al-Shafi'i who revolutionized the way in which Muslims everywhere worshipped. Modern scholar Hallaq, for example, theorized that medieval jurist Rafi'i used *mujtahid* to refer only to independent *mujtahids*, the four founders of the Sunni *madhhabs* or schools of law—a quite narrow definition.<sup>30</sup> When Rafi'i then proclaimed that there were no more *mujtahids* and that the gates of *ijtihad* were closed, many other scholars disagreed with him, not truly understanding what Rafi'i was saying. For example, although medieval scholars Qaffel and Gazali contended that the gates of *ijtihad* were *not* closed, they did agree that independent *mujtahids* were extinct.<sup>31</sup> Like Qaffel and Gazali, medieval scholars Ansari and 'Abd al-Shakur argued that while *mujtahids* who were as accomplished as Abu Hanafa (founder of the Hanafi school of law) were indeed extinct, other lower-level *mujtahids* could and did still exist.<sup>32</sup> Medieval scholars actively debated whether *muftis* (less powerful scholars) were *mujtahids* or not. For example, modern scholar Schacht clearly believed that *muftis* were not *mujtahids* and could not practice *ijtihad*.<sup>33</sup> On the other hand, the author of the prominent medieval work entitled the *Risala fi al-taqlid* disagreed, reasoning that because *fatwas* were the result of *ijtihad*, *muftis* were indeed *mujtahids*,<sup>34</sup> and similarly Muslim theologian Juwanyi referred to "*muftis* who are *mujtahids*."<sup>35</sup> Therefore, while all scholars agreed that the founders of the *madhhabs* were *mujtahids* and that after the closing of the gates there were no new *madhhab* founders, scholars disagreed as to whether lower ranking scholars were *mujtahids*, leading to the disagreement about whether or not the gates of *ijtihad* had closed.

Viewed in this way, the controversy may seem to be a matter of mere semantics, solved by simply setting a constant definition of *mujtahid*. However, we might also see the narrower definition of *mujtahid* as a purposeful reaction intended to protect the religion from the looming corruption of the Abbasid government. This purposefully narrower definition could now join *muftis* and universal *madhhabs* as examples of Muslims creating narrower and more stringent rules to solidify the validity of their practice and

protect it from impending taint. In this way, we see that as a result of the tyrannical Abbasid government's attempt to have power over Islamic religious law, the scholars seized control in what is sometimes referred to as the "closing of the gates of *ijtihad*," promoting the four *madhhabs*, unifying doctrine and practice, and eliminating contradictions in Islamic law so as to consolidate it.



## Notes

- <sup>1</sup> Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1996) p. 49.
- <sup>2</sup> *Ibid.*, p. 50.
- <sup>3</sup> *Ibid.*, p. 50.
- <sup>4</sup> Noel J. Coulson, *A History of Islamic Law* (Edinburgh: University Press, 1971) pp. 122–123.
- <sup>5</sup> *Ibid.*, p. 123.
- <sup>6</sup> Schacht, p. 55.
- <sup>7</sup> John Kelsay, “Divine Command Ethics in Early Islam: Al-Shafi’i and the Problem of Guidance,” *The Journal of Religious Ethics* 22 (1994) p. 101, <http://www.jstor.org/stable/40017843>.
- <sup>8</sup> Coulson, pp. 50–61.
- <sup>9</sup> Kelsay, p. 105.
- <sup>10</sup> Schacht, p. 62.
- <sup>11</sup> Kelsay, p. 106, 112.
- <sup>12</sup> The four Sunni *madhhabs* are the *Hanafi*, the *Maliki*, the *Shafi’i* (which al-Shafi’i founded), and the *Hanbali*. The *Hanbali* emerged shortly after the *Shafi’i*, following the popular jurist Ibn al-Hanbal, whom I have not mentioned in my paper because he was less influential than al-Shafi’i and less relevant to the closing of the gates of *ijtihad*.
- <sup>13</sup> Coulson, p. 40
- <sup>14</sup> Schacht, p. 57
- <sup>15</sup> Coulson, p. 84
- <sup>16</sup> Lutz Wiederhold, “Legal Doctrines in Conflict the Relevance of *Madhhab* Boundaries to Legal Reasoning in the Light of an Unpublished Treatise on *Taqlid* and *Ijtihad*,” *Islamic Law and Society* 3 (1996) p. 243, <http://jstor.org/stable/3399456>.
- <sup>17</sup> *Ibid.*, p. 250.
- <sup>18</sup> *Ibid.*, p. 251.
- <sup>19</sup> *Ibid.*, p. 243.
- <sup>20</sup> Coulson, p. 78.
- <sup>21</sup> Wiederhold, p. 253.
- <sup>22</sup> Schacht, p. 74.
- <sup>23</sup> *Ibid.*, p. 70.
- <sup>24</sup> Coulson, p. 80.
- <sup>25</sup> Schacht, p. 71.
- <sup>26</sup> Wael B. Hallaq, “Was the Gate of *Ijtihad* Closed?” *International Journal of Middle East Studies* 16 (1984) p. 11, <http://www.jstor.org/stable/162939>.

<sup>27</sup> Schacht, pp. 74–75.

<sup>28</sup> Hallaq, p. 34.

<sup>29</sup> *Ibid.*, p. 21.

<sup>30</sup> *Ibid.*, p. 26.

<sup>31</sup> *Ibid.*, p. 24.

<sup>32</sup> *Ibid.*, p. 25.

<sup>33</sup> Schacht, p. 73.

<sup>34</sup> Wiederhold, p. 241.

<sup>35</sup> Hallaq, p. 14.

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