

THE CONCEPT OF IJMĀ' IN THE MODERN AGE With Particular Reference to Muhammad 'Abduh's Theory

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Introduction

The Qur'ān and the *Sunna* of the Prophet are the main sources of Islamic jurisprudence, from and through which the Islamic laws are derived. The Sunni jurists agree that *ijmā'* is the third source of Islamic law after the Qur'ān and the *Sunna* of the Prophet.¹ Even though some modern scholars, such as Snouck Hurgronje argues that *ijmā'* as a method and principle rather than its contents which are regarded as authoritative, not infallible.²

Islamic jurisprudence deals with acts of worship (*'ibādat*), such as praying, fasting, zakat etc. As well as with mu'amalat such legal transaction, family law, public activity, international commerce, international relations and so forth.³

After the death of the Prophet, to whom the Qur'ān was revealed and from whom the *Sunna* came, *Ijmā'* and *ijhād*, became imperative, since it was only through them that new problems, which the Qur'ān and the *Sunna* of the Prophet did not adequately explain could be solved.

Jurists such as Mālik, Shāfi'ī,⁴ Dā'ud al-Zāhirī, al-Āmidī,⁵ al-Ghāzālī,⁶

¹Wael B. Hallaq, "On The Authoritativeness of Sunni Consensus," *International Journal of Middle East Studies*, 18 (1986), 427. See also C.G. Weeramantry, *Islamic Jurisprudence : An International Perspective* (London: Macmillan Press, 1988), 40; N.J. Coulson, *A History of Islamic Law* (Edinburgh: The University Press, 1964), 55.

²Snouck Hurgronje, *Selected Writings*, ed., G.-H. Bousquet and J. Schacht (Leiden: E.J. Brill, 1957). See also Fazlur Rahman, *Islam* (New York, Chicago: Holt, Rinehart and Winston, 1966).

³Maḥmaṣānī, "Muslims Decadence," 187. See also Maḥmaṣānī, *Falsafat al-Tashrī' fi al-Islām* (Beirut: Dār al-Kashshāf li an-Nashr, 1371/1952), 150.

⁴al-Shāfi'ī, Muḥammad ibn Idris, *al-Risālah*, ed., Aḥmad Muḥammad Shākīr (Miṣr: Muṣṭafā al-Bābī al-Ḥalabī, 1358/1940), particularly pp. 471-486. See also al-Shāfi'ī, *al-Umm*, Vol. VII (Al-Azhar: Maktabat al-Kulliyāt al-Azhariyah, 1381/1961).

⁵al-Āmidī, *al-Iḥkām fi Uṣūl al-Aḥkām*, 2 Vols. (Cairo: Dār al-Kutub al-Khidīwiyyah, 1332/1914), particularly vol.1, 280-407.

⁶al-Ghāzālī, *al-Mustasfā min 'Ilm al-Uṣūl*, 2 Vols. (Baghdād: Maktabat al-Muthannā, 1970), particularly vol. 2 173-181.

and others have all discussed the concept of *ijmā'* in detail. The problem, however, is that their ideas are no longer applicable in modern times, given the tremendous changes in all spheres of life that have taken place since their day. The dynamics of modern society are entirely different. Consequently, it is necessary to determine the form which the concept of *ijmā'*, should take in modern times in order to answer and solve the current problems which confront Muslim society. This reform can be achieved by reexamining and reinterpreting medieval legal theory in accordance with the needs of the present time and environment and in the spirit of the Qur'ān and the *Sunna* of the Prophet.⁷

Muhammad 'Abduh (1849-1905)⁸ was one of those who concerned themselves with legal reform. Even though he did not write on Islamic legal theory as such, his method of interpreting the Qur'ān in his monumental *Tafsīr al-Manār*, which was edited by Rashīd Riḍā, and his concern to resolve the legal and other problems of his time, have a direct bearing on the question of reform in Islamic legal theory.

This paper will attempt to analyze 'Abduh's methodological approach in Islamic jurisprudence, with particular reference to the concept of *ijmā'*. In order to place 'Abduh's views in perspective, it will be necessary to describe the views of the Islamic modernists, such as Muḥammad Iqbal, Kemal A. Faruki, Fazlur Rahman and others.

The paper will be divided into three sections. The first section will deal with the definition and the institution of *ijmā'*. The second section will treat the bases of *ijmā'*, and the third comprises the conclusion.

⁷Ḥasan al-Turābī, *Tajdīd Uṣūl al-Fiqh al-Islām* (Beirut: Dār al-Fikr, 1980), 7. See also Subḥī Maḥmaṣānī, *Falsafat al-Tashrī' Fi al-Islām* (Beirut: Dār al-Kashshāf li an-Nashr, 1371/1952), particularly: 151-166, in which Maḥmaṣānī cites the necessity of changing rules and interpretation according to the changing demands of society and its circumstances.

⁸This birth date was accepted by the friends and followers of Muḥammad 'Abduh, since in the magazine, *al-Diyā*, his birth date was given as 1842. For the most extensive record of information on 'Abduh's life and work see Rashīd Riḍā, *Tārīkh al-Ustādh al-Imām ash-Shaikh Muḥammad 'Abduh*, 3 vols. (Cairo: Dār al-Manār, 1931). See also Charles C. Adams, *Islam and Modernism in Egypt: A study of the Modern Reform Movement Inaugurated by Muḥammad 'Abduh* (London: Oxford University Press, 1933); Adams, "Muḥammad 'Abduh the Reformer," *The Muslim World*, 19 (1929): 264-273; Mahmudul Haq, *Muḥammad 'Abduh: A Study of a Modern Thinker of Egypt* (Calcutta: The Little Flower Press, 1970); Malcom H. Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad 'Abduh and Rashīd Riḍā* (Los Angeles: University of California Press, 1966), 104; Albert Hourani, *Arabic Thought in the Liberal Age* (Cambridge: Cambridge University Press, 1962), particularly: 130-160.

A. The Definition and the Institution of *Ijmā'*

'Abduh defines *ijmā'* as the consensus of the entire Muslim community in a particular generation. The community as a whole is represented by the *ulū al-amr* (men in authority) in the broader sense of the term, since gathering the entire community is not practically possible. The *ulū al-amr's* agreement will serve as the agreement of the whole community. This agreement will be obeyed by the community as a whole, on account of public interest (*maṣlaḥa*), and not because of the infallibility of such an agreement. This public interest can be different in different places, times and environments.⁹

That this agreement of the *ulū al-amr* is the *ijmā'* of the entire community is according to 'Abduh, supported by the Qur'ān 4:59 and 4:83. 'Abduh criticizes and refutes the generally accepted jurists' definition of *ijmā'* as the agreement of jurists in a particular generation after the death of the Prophet. But Fazlur Rahman defines *ijmā'* as being co-extensive with the *Sunna* after the time of the Prophet. viz., the *Sunna* of the Prophet himself and the interpretation of it,¹⁰ or as the *ijtihād* of the 'Ulamā' and the ruling of political authorities in their day-to-day administration.¹¹

According to 'Abduh, the medieval jurists' definitions' were not conversant with the socio-political interests of the community, such as problems of peace and war, finance, administration and so forth.¹²

He explains further that, literally, *ijmā'* means "putting the things together, determining upon an affair, and resolving or deciding upon a matter,". For example *ajma'a al-amr wa al-ra'y* means that a thing or opinion is composed and settled, which had earlier been unsettled, or an affair is determined, resolved or decided so as to make it formally settled.¹³ Such a

⁹Muḥammad 'Abduh, *Tafsīr al-Manār*, Ed., Rashīd Riḍā, 2nd ed., 1367 A.H., vol. 5, 208-209. See Ahmad Hasan, *The Doctrine of Ijmā' in Islam* (Islamabad: Islamic Research Institute, 1978), particularly, 226-258.

¹⁰Fazlur Rahman, *Islamic Methodology in History* (Karachi: Central Institute of Islamic Research, 1965), 6.

¹¹*Ibid.*, 30.

¹²'Abduh, *al-Manār*, 205. See also Faruki, *Ijmā' and the Gate of Ijtihad* (Karachi: Pakistan Herald Press, 1954), 27, in which he states that many aspects of *ijmā'*, as formulated by the classical jurists, are still questionable; 'Alī 'Abd al-Rāziq, *al-Ijmā' fi al-Sharī'ah al-Islāmiyah* (Misr: Dār al-Fikr, 1946).

¹³See also Ibn al-Mandhūr, *Lisān al-'Arab* (Beirūt: Dār Ṣādir, 1375/1956), vol.8, 57-58. See also Muḥammad Shawkānī, *Irshād al-Fuḥūl ilā Tahqīq al-Ḥaqq min 'Ilm al-Uṣūl* (Misr: Muṣṭafā al-Bābī al-Ḥalabī, 1364/1937), 1 st ed., 71.

determined and settled decision is reached after mature thought and reflection, and close study in *shūrā*.¹⁴

Shawkānī defines *ijmā'* into two kinds. First of all, it means "settled," for example, *fa ajma'ū amrakum* means settle your matter. The second meaning "of being composed," for example, *lā ṣiyama li man lam yajma'a al-ṣiyāma min al-layli*. But the second meaning also returns to the first meaning since "composed" means settled.¹⁵

'Abduh also notes that a certain point can be reached by the opinion of a single person body. To support this idea, he cites some verses from the Qur'ān; e.g., Q.10: 71, Q.12: 15, Q.12: 102, Q.20: 64, and a number of instances from the *Sunna* of the Prophet. 'Abduh argues that the word *ijmā'* occurring in these statements does not mean the agreement of the jurists, but carries its non technical meaning, firm determination on a matter. He quotes the example of 'Umar who derived rules from the Qur'ān and the *Sunna* of the Prophet, and if they could not be found there, he derives them through *ijmā'* or from the righteous people (*sālihūn*). Moreover, in the early period of Islam there were thousands of *mujtahids*.¹⁶

Faruki does not define *ijmā'* explicitly, but from his discussion it can be concluded that *ijmā'* according to him is the agreement of the competent people, viz., people who have both religious and secular knowledge. For a comparative knowledge and value, he even suggests to work together with people from different religions and ideology.¹⁷

The word *ulū al-amr* in verse 4: 59 was interpreted by 'Abduh in a wider context. *Ulū al-amr* according to him designates well-known people in every nation, every town and every tribe. This view is also supported by the form of the word *ulū al-amr* in this verse, which is in the plural and which indicates a number of *ulū al-amr*. These *ulū al-amr* should be well-known in the community.¹⁸ They are all the men on whom people's reliance is put in respect of their religious and temporal matters because of their wider knowledge and sound opinion. To support this opinion, 'Abduh quotes a fact from the lifetime of the Prophet. He states that in the lifetime of Prophet, there was a body of people in Medina whom people consulted in the matters of

¹⁴Abduh, *al-Manār*, 207.

¹⁵Shawkānī, *Irshād*, 71.

¹⁶Abduh, *al-Manār*, 207-208.

¹⁷Faruki, *Ijmā'*, 19-20.

¹⁸Abduh, *al-Manār*, 200.

taking an oath of allegiance (*bay'a*), in *shūrā*, and in political, administrative and judicial events.¹⁹ But 'Abduh does not mention, however, whether or not the appointment of Abu Bakr as the first caliph was also an act of *ijmā'*, as claimed by the majority jurists.²⁰

Ijmā' is achieved after the exercise of *ijtihād*. A mistake in conducting *ijtihād* cannot be taken as a straying from the right path and truth (*ḍalālā*). In performing *ijtihād*, a *mujtahid* might be right or wrong. His mistake in *ijtihād* is equal to the mistake of a person who misses the right direction of prayer despite his best effort.²¹

'Abduh considers that nowadays form of *ijmā'* should be an institution which consists of experts from many different disciplines and through which people's problems can be overcome.

Muḥammad Iqbal and Faruki are two Islamic scholars who support 'Abduh's idea. According to Iqbal, the only possible form of *ijmā'* in modern time is that the transfer of the power of *ijtihād* to a Muslim legislative assembly. Thereby, *ijmā'* will also secure contributions from laymen who possess insight into affairs. A difficulty will arise, however, as regards an assembly which includes non-Muslims too, for such an assembly can hardly exercise *ijtihād*.²² Faruki states that there are two possible ways to operate *ijmā'*, namely, through legislation and by judicial precedent. If the principle of *ijmā'* can operate better through legislation than through judicial precedent, then, legislation, becomes the more Islamic method.²³ The most important thing, however, is the existence of an institution, whatever its nature, through which *ijmā'* can be achieved.

To ensure the proper functioning of the assembly, which is to serve as the instrument of *ijmā'*, it should according to Iqbal, be representative of both the elite and the '*Ulamā'*'. The '*Ulamā'*' should take part in the assembly for guidance on matters relating to religious matters. In addition, in order to avoid a misinterpretation of the main sources of Islamic law the Qur'ān and the *Sunna* of the Prophet, adequate steps should be taken, e.g. rebuilding the

¹⁹Ibid., 195.

²⁰See for example, al-ʿAmīdī, *al-Iḥkām fi Uṣūl al-Aḥkām*, 4 Vols. (Miṣr: Dār al-Kutub al-Khidwīyah, 1332/1914).

²¹'Abduh, *al-Manār*, 209.

²²Muḥammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Shaikh Muḥammad Ashraf Press, 1951), 174.

²³Faruki, *Ijmā'*, 25.

system of the legal education in Muslim countries so that its sphere is broadened and it is combined with the intelligent study of modern jurisprudence.²⁴

In contrast, some other scholars are opposed to the idea that *ijmā'* can work through a legislative assembly. Dr. S.M.Musa, for example, has three objections to this idea. First of all, the number of *mujtahids* are indeterminable; it is bound different from time to time and place to place in accordance with the nature and extent of education and culture. Secondly, the qualities of the *mujtahids* are not won through a counting of votes or the award of a certain certificate. Rather, a *mujtahid* is recognized by the people through his personal qualities as revealed during a whole lifetime and not on the eve of a hectic election campaign. Thirdly, the process of *ijmā'* is slow, sometimes very slow -- it must take a generation or even more and nobody can set the pace for it. When the *mujtahids* give their opinions on a certain point, it passes through the process of conflict and survival of the fittest. It is immeasurable in mathematical terms. Consequently, Musa doubts the usefulness of a legislative assembly for *ijmā'*, and he is skeptical if this assembly will have the best representatives from the community. Achievement of *ijmā'* really takes a long time, since once *ijmā'* is achieved there remains no dissident minority waiting for its turn to impose its own point of view. That is probably why there have been very few instances of the later generations going back upon the *ijmā'* of a previous generation. He concludes, therefore, that theoretically the possibility of *ijmā'* through a legislative assembly does exist, but practically it is redundant.²⁵

Musa also notes that during the early centuries of Islam, Islamic culture and civilization reached their zenith. The corpus of Islamic law developed to the extent that it could cater to all the needs of family life, public activity, a highly developed industry, crafts, international commerce, international relations and so forth. The law became static because the society in the medieval times was itself static. It was not moving as rapidly as in our time. This era was one of decline, both for the Muslims as well as for non-Muslims. The Muslims then were more aware of their needs than the Muslims of today.²⁶ Musa does support the necessity of *ijtihad* to meet new challenges,

²⁴Iqbal, *The Reconstruction*, 176.

²⁵S. M. Musa, *Studies in Islamic History and Culture* (Lahore: Institute of Islamic Culture, 1970), 212-213.

²⁶*Ibid.*, 214.

but does not agree with the kind of *ijmā'* proposed by Iqbal. Another reason he has to disagree with Iqbal is that the latter propose seems to be the involvement of layment in *ijtihād*. According to Musa, a layman has no right to conduct such *ijtihād*. Rather, *ijtihād* in Islam has to be based on the spirit of the Qur'ān and the *Sunna* of the Prophet, and only the scholars ('*Ulamā'*) are competent to undertake it.²⁷

As for the relationship between caliph and *ahl al-ḥall wal-'aqd*, 'Abduh does not describe directly. He just states that cooperation is necessary because the isolated individual is weak and shortsighted even in discerning his own best interest, let alone in those of the group. Consequently the extent of the consultation necessary is commensurate with one's responsibilities and authority.²⁸

According to Rashīd Riḍā, *khitāfa*, *imāma 'uzmā* and *imārat al-mu'minīn* are three terms with the same meaning. They signify the leadership of Islamic government combining the interest of religion and worldly life. As Fakhr al-Dīn ar-Rāzī (d.1209 A.D.) stipulated, Riḍā argues that the office must be confided to a single individual as "a safeguard for the entire community in case they should have to remove the imām for evildoing," since without the caliph the law cannot be enforced nor the welfare of the community protected.²⁹ The *ahl al-ḥall wal-'aqd* must possess effective influence in the community so that their decision will be assured of enforcement; and that the *ahl al-ḥall wal-'aqd* are the final authority, speaking for the full body of believers.³⁰

The *ahl al-ḥall wal-'aqd* have replaced the caliph as the human agency whose function to determine the matters from religion and temporal considerations, and the caliph has become their executive officer. But if *ahl al-ḥall wal-'aqd* should meet and pass other decisions opposed to the ruler's policy, these are binding on him, since they are the deputy of the community (*umma*) and it is they who have the right to select the caliph.³¹

²⁷ *Ibid.*, 215-216.

²⁸ Kerr, *Islamic Reform*, 137.

²⁹ *Ibid.*, 159.

³⁰ *Ibid.*, 161.

³¹ *Ibid.*, 164-165.

B. The Bases of *Ijmā'*

With regard to the bases of *ijmā'*, 'Abduh invokes Q.4: 59 and Q.4: 83, which enjoin obedience to the men in authority. As against early jurists, he rejects the use Q.4: 115 because this verse, according to him, does not relate to *ijmā'*.³² In explaining this verse, 'Abduh divide into ten parts, none of which deals with *ijmā'*.³³ He also denies the relevance of the well known tradition "my community will not agree in an error," 'Abduh maintains that this tradition does not speak of *ijmā'* at all.³⁴ Concerning with Q.2: 143 and Q.22: 78, according to 'Abduh, is a call to be a witness with the qualification of justice ('*adl*), not relating to *ijmā'*.³⁵

"*Jama'ah*" means *ahl al-ḥall wal-'aqd* in every generation.³⁶ But, according to Kirmani, those experts in various fields of knowledge (*ahl-al-'ilm*), and who are just (*ta'dil*), are similar to *ahl al-ḥall wa-'aqd*. Those on whom people place reliance in their affairs are not merely those who are just, as argued by the earlier jurists.³⁷

Shawkānī also bases his *ijmā'* on Q.4: 59, while simultaneously he disputing Q.4: 115 as a basis of *ijmā'* for two main reasons. The first reason is that the word *ghaira sabīl al-mu'minin* here, according to him, means unbelievers, since this verse was revealed (*nuzūl*) to men who were apostates (*murtād*). This verse does not speak of *sabīl al-ṣāliḥīn*. The second reason is that the word *sabīl* here is *ḥaqīqat*, and means way/street used for walking not agreement (*ittifāq/ijmā'*).³⁸

The term *ulū al-amr* is sometimes constructed to mean kings and despots. But it should be noted that the verse was revealed during the time of the Prophet when no kings and despots existed in Islam. It implies, therefore, that this verse indicates the necessity of a body of such people in a particular community who possess acumen in social and political events, and are

³²'Abduh, *al-Manār*, 417. As a comparison to the classical jurists' bases, see Wael B. Hallaq, "On the Authoritativeness of Sunni Consensus," *International Journal of Middle East Studies*, 18 (1986): 427-454; George F. Hourani, "The Basis of Authority of Consensus in Sunni Islam," *Studia Islamica*, 21 (1964): 13-60.

³³*Ibid.*, 410-416.

³⁴*Ibid.*, 201.

³⁵*Ibid.*, 213-214.

³⁶*Ibid.*, 213-214.

³⁷*Ibid.*, 214.

³⁸Shawkānī, *Irshād al-Fuḥūl*, 75.

competent to derive rules from the Qur'ān and the *Sunna* of the Prophet. This body was known in early Islam as *ahl al-shūrā* and *ahl al-ḥall wal-'aqd*. The term of *ahl al-amr* (*ulū al-amr*) actually designates the experts of the *umma's* affairs, law as well as public interest.³⁹ This terminology is probably similar to Maḥmaṣānī's terminology, who states that scholars ('*Ulama'*) were experts in all departments of ancient knowledge.⁴⁰

Historically, in the period of the *Rāshidūn* caliphate, for example, and particularly under the first two caliphs, the *ulū al-amr* were the leaders of the community (*ru'ūs an-nās*), and scholars (*ahl al-'ilm*), both experts in religious matters and *mu'amaṭāt*,⁴¹ and they decided everything on the basis of public interest, equity and justice.

In the Umayyad period, however, the interest of the *ulū al-amr* became confined to the interests of a particular family/clan, viz., the Umayyads. In the Abbasid period, the community was represented mostly by the non-Arabs ('*ajam*'), particularly from Persia. The result, therefore, was not obedience to God and the Prophet as happened in the era of the *Rāshidūn* caliphate, but the promotion of a particular community's interests.⁴²

With necessary changes in the form of this body, the institution of *ulū al-amr* can be made to work according to the changing demands of social life and circumstances. The men in authority (*ulū al-amr*) in modern times are the eminent (religious) scholars, army commanders, tradesman, peasants, people working in the public service departments, directors of the companies and societies, leaders of political parties, celebrated writers, physicians, advocates, managers and editors of dignified journals. In short, people in whom the community lays its confidence in important events, and consults them about the problems of daily life.⁴³ If this people have already had an agreement concerning a matter, this agreement should be obeyed by all Muslims as long as all of those representatives are from Muslims, and this agreement is in accordance with the Qur'ān and the *Sunna* of the Prophet. This agreement

³⁹Abduh, *al-Manār*, vol. 3, 11-12. See also Muhammad Nazeer Ka Ka Khen, "The Conceptual and Institutional Development of Shura in Early Islam," *Islamic Studies*, 19 (1980): 271- 282.

⁴⁰Maḥmaṣānī, "Muslim Decadence," 187.

⁴¹Abduh, *al-Manār*, 197. See also Muhammad Y. Faruqi, "The Development of Ijmā' : The Practices of the Khulafā al Rāshidūn and the Views of the Classical Fuqahā," *The American Journal of Islamic Sciences*, 9:2 (Summer 1992): 173-187.

⁴²*Ibid.*, 198.

⁴³*Ibid.*, 199. See also Kerr, *Islamic Reform*, 162.

According to 'Abduh the way Abū Bakr overcome problems which faced the community was by seeking guidance from the Qur'ān, and if he could not find the answer in the Qur'ān, by having recourse to the *Sunna* of the Prophet. If he still failed to solve the problem at hand, he asked the leaders of the community (*ra'īs al-Muslimīn*) and scholars ('*Ulamā'*) to discuss (*shūrā*).⁵⁰ 'Umar also followed the same way. The difference was that 'Umar tried to find precedents in Abū Bakr's decisions, before asking the '*Ulamā'*' and leaders of Muslims to discuss the matter. Unfortunately history does not tell us what Abū Bakr and 'Umar did in such matters where there was no agreement.⁵¹

Faruki discusses the concept of 'protection from error' on which generally jurists based their *ijmā'*. He cites three verses of the Qur'ān Q.6: 59, Q.20: 110, Q.31: 34. to show the Omniscience and Omnipresence of God and simultaneously the weakness of human beings. The first verse deals with the limits of knowledge in terms of time, while the second deals equally with to both time and space. There is also, particularly in the third verse, a reference to the limits to knowledge both in extension and in intention.⁵²

Faruki concludes that;

Here then is the border or limits of the knowledge of anything or anyone other than God-- including the consensus of the community --- on the one side and the Omniscient Infallibility of God on the other. It is fact that God is Omnipresent than other things and persons --- including the community --- are limited in their 'presence'. Thus the 'protection from error' which is deduced from the Quranic verse and the ḥadīth is limited to the limited 'presence' of the Community, whether this is evaluated in terms of time or space, extensionally or intentionally. Thus as the limit of the Community's presence alter, the legal deduction made from the Quran and Sunna must be re-examined and if necessary altered by fresh processes of *ijtihād*, if the Community is to continue to enjoy God's assurance of 'protection from error'.⁵³

In a clearer explanation, Faruki identifies a pure (infallible) *ijmā'* with *shirk*. He notes :

In earlier times, *shirk* took other forms such as the worship of graven images by people when they knew full well of a Higher Power than the store figures. Later,

⁵⁰*Ibid.*, 195.

⁵¹*Ibid.*, 196.

⁵²Faruki, *Ijmā'*, 15. See also Kemal A. Faruki, *Islamic Jurisprudence* (Karachi: Pakistan Publication House, 1962), 154-156.

⁵³*Ibid.*, 16.

there came the *shirk* of worship of human beings in similar manner, and to this day, the *shirk* of worship of one's particular tribe or nation exists. Yet, an identical risk of *shirk* arises in the case of concepts and institutions. If, to the concept of *ijmā'*, we ascribe an infallibility unbounded by any limits, temporal or spatial, which necessarily implies omniscience, and therefore, logically omnipotence, assuredly a "rival to Allah" has been set up.⁵⁴

In other words, to ensure 'protection from error' people have to alter previous *ijmā'* with fresh *ijtihad* and come to fresh *ijmā'* on the same problem, if necessary. There is no obligation to follow the previous *ijmā'* if it is not acceptable because of different in time or place.

Therefore, as regards the status of the *ijmā'* of the Companions, and whether it is binding on the later generations, Faruki does not express a direct point of view. He only states that both the past and the present *ijmā'* are protected from error within the respective time, space context of each, and indeed it is limited by each context.⁵⁵

Iqbal argues that the *ijmā'* of the Companions is binding in some but not in all. He distinguishes between the *ijmā'* related to points of fact and that related to points of law. The binding character of the former should be recognized, since the only people who passes knowledge on such things as whether or not the two small suras known as '*ma'uzatayn*' formed part of the Qur'ān, are the Companions. But it is not binding in points of law because such matters involve and competent people of all times can interpret things for themselves. Iqbal supports this point by citing Karkhi, according to whom, "The *Summa* of the Companions is binding in matters which cannot be cleared up by *Qiyas*, but it is not so in matters which can be established by *Qiyas*."⁵⁶

C. Conclusion

In short, what 'Abduh attempted to do is to build a workable institution of *ijmā'*. He hopes this institution can produce Islamic law as an answer to new problems which appear in society. This institution, of course, only attempts to overcome the community's problems in the *mu'āmalāt* matters and not in *Ibādat*. Through this institution, a particular problem can be

⁵⁴Faruki, *Islamic Jurisprudence*, 73.

⁵⁵*Ibid.*, 157.

⁵⁶Iqbal, *The Reconstruction*, 175.

understood from different angles, for a particular matter cannot be judged according to religious teachings before understanding it properly.⁵⁷

Another purpose of 'Abduh effort is to give this institution of *ijmā'* the power to be obeyed or followed by the people, and at the same time to be used as a standard to judge a matter.

Similarly, Riḍā also attempts to institutionalize *ijmā'*. He, therefore, proposes to combine the electors (*ahl al-ḥall wal-'aqd*), the participants in the process of consultation (*shūrā*), the persons of authority (*ulu al-amr*) and the mujtahids all members of a single body in which the sovereign powers of the community lie and whose executive the caliph is.⁵⁸

What has been attempted by 'Abduh, I believe, is something which takes account of the dynamic of changing society. He has attempted to make law responsive to the changing needs, purposes and interests of society. This is in accordance with the ideas of such legal theorists (*Uṣūliyyīn*), as the Shāfi'ite 'Izz- al-Din ibn 'Abd al-Salām, the Hanbalite Ibn Qayyim al-Jawziyya⁵⁹ and the Mālikite Abu Iṣḥāq al-Shātībī,⁶⁰ all of whom agreed that legal rules are based on causes and purposes which are founded on the interest of human beings in this life and the hereafter."

Consequently, all rules, even those based on legal texts, should cease to apply when the effective causes on which they are based and which provide their *raison d'être*, no more exist. This is in accordance with the original principle that the legal rule based on an effective cause depends for its existence on the existence of its effective cause.⁶¹ As a causes and purposes. Therefore, it is undeniable that laws change according to change in time, place

⁵⁷ Compare 'Abduh's concept with the classical jurists'. See for examples, al-Shāfi'ī, Muḥammad ibn Idrīs, *al-Risālah*, ed., Aḥmad Muḥammad Shākīr (Miṣr: Muṣṭafā al-Bābī al-Ḥalabī, 1358/1940), particularly: 471-486. See also al-Shāfi'ī, *al-Umm*, Vol. VII (Al-Azhar: Maktabat al-Kulliyāt al-Azhariyah, 1381/1961); al-Āmidī, *al-Iḥkām fi Uṣūl al-Aḥkām*, 2 Vols. (Cairo: Dār al-Kutub al-Khidiwiyah, 1332/1914), particularly vol. 1, 280-407; al-Ghazālī, *al-Mustasfā min 'Ilm al-Uṣūl*, 2 vols. (Baghdād: Maktabat al-Muthannā, 1970), particularly vol. 2, 173-181.

⁵⁸ Kerr, *Islamic Reform*, 197. See also Kerr, "Rashid Riḍā and Islamic Legal Reform : an Ideological Analysis," *The Muslim World*, 50 (1960), 170. His long explanation concerning the relationship between caliph and *ahl al-ḥall wal-'aqd* is in his book *al-khilāfa aw al-Imāmat al-'Uzma*. Unfortunately, this book cannot be found in Islamic Studies library, Montreal when the author was doing this research.

⁵⁹ Ibn Qayyim al-Jawziyya, *I'tām al-Muwaqqi 'in 'an Rabb al-'Ālamīn* (Miṣr: al-Maktabat al-Tijāriyat al-Kubrā, 1955), 4 vols.

⁶⁰ Abū Iṣḥāq al-Shātībī, *al-Muwāfaqat* (Miṣr: al-Maktabat al-Tijāriyat, n.d.). 4 vols.

⁶¹ Maḥmaṣānī, "Muslim Decadence," 198.

and conditions.

An example regarding this general rule is caliph 'Umar ibn al-Kḥattāb's abolition of the share of alms allotted by the Prophet to those whom he wanted to win for Islam. By giving them a share of alms, he sought to strengthen their evil, or profit by their great reputation among the people. This was in accordance with Q.9: 60. 'Umar based his action on the cessation of the effective cause that constituted the *raison d'être* of the Qur'ānic text, namely the need to promote Islam at its beginning. For in the days of 'Umar this effective caused to be relevant given that Islam had become powerful.⁶²

Another example is the decision of Abū Yusuf,⁶³ chief justice of Baghdad, regarding his decision that barley and wheat should be considered among the commodities measurable by weight. He took this decision in compliance with the usual custom in his days and in violation of the Prophet's saying which considered barley and wheat as commodities to be dealt with by measures of capacity, in accordance with the custom that was prevalent during the time of Prophet.⁶⁴

From these examples it appears that legal opinion can change according to the change of effective causes or of the custom on which they were based. Thus the interpretation of many texts concerning legal transactions has undergone a change, together with many legal views and opinions as a result of changes in social interests and needs.⁶⁵

That the spirit of Islamic jurisprudence is flexible and progressive is exemplified in the work of several caliphs and jurists. These include the two caliphs 'Umar ibn al-Kḥattāb⁶⁶ and 'Umar ibn 'Abd. al-'Aziz, an jurists such as the Ḥanafite Abū Yūsuf, the Malikite Shams al-Din al-Qarāfi⁶⁷ and the Ḥanbalite Najm al-Dīn al-Tūfi.⁶⁸

⁶²*Ibid.*

⁶³See Abū Yusuf Ya'qūf, *Kitāb al-Kḥarrāj* (Beirūt: Dār al-Shurūq, 1405/1985).

⁶⁴*Ibid.*

⁶⁵Faruki, *Ijmā'*, 24.

⁶⁶See for example Muḥammad Rawās Qala'aji, ed. *al-Mawsū'at Fiqh 'Umar ibn al-Kḥattāb* 4th. edn. (Beirūt: Dār an-Nafāis, 1409/1989), also Muḥammad Yusuf Guraya, "Judicial System Under 'Umar the Great," *Islamic culture*, 58 (1984).

⁶⁷Shams al-Din al-Qarāfi, *Sharḥ Tanqīḥ al-Fuṣūl fi Ikhtisār al-Maḥṣūl fi al-Uṣūl* (Cairo: Maktabat al-Kulliyāt al- Azhariyah, 1393/1973).

⁶⁸Najm al-Din al-Tūfi, *Sharḥ Mukhtaṣar al-Rawḍah* (Beirūt: Mu'assasah al-Risāla, 1991).

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