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MUHAMMAD 'ABDUH AND THE REFORMATION OF ISLAMIC LAW

By

Aswita Taizir

A Thesis Submitted to the

Faculty of Graduate Studies and Research

in partial fulfilment of the requirements

for the Degree of Master of Arts

In Islamic Studies

THE INSTITUTE OF ISLAMIC STUDIES

MCGILL UNIVERSITY

MONTREAL, CANADA 1994

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ABSTRACT

Author : Aswita Taizir

Title : Muḥammad 'Abduh and the Reformation of Islamic Law

Department : Institute of Islamic Studies, McGill University

Degree : Master of Arts

This thesis examines Muḥammad 'Abduh's ideas on Islamic Law, and the extent to which his writings influenced subsequent Muslim reformers in the sphere of law. The study focuses on 'Abduh's views on *ijtihād* and its application in modern society.

The principle of *ijtihād*, as practised by 'Abduh, was not dependent upon the opinions of previous scholars. A leading reformer of Islamic law (1849-1905), 'Abduh rejected *taqlīd* which in nineteenth century Egypt was the rule of the day. Scholars in his day adhered to the books of their respective *madhhab*s to the extent of choosing to ignore the main sources of Islamic law, viz. the *Qur'ān* and *Ḥadīth*. For this reason, 'Abduh did not follow any particular *madhhab* in his *ijtihād*, but chose to be guided by whichever school of law he believed was best fit to deal with a particular contemporary problem. This practice has come to be known as *talfīq*. His use of it was the beginning of legal reform in Islamic law.

To facilitate legal reform, 'Abduh employed the Islamic legal principle of *al-maṣlaḥah al-mursalah*. This principle was an application of *ijtihād* which he invoked in order to deal with issues such as polygamy and bank interest. 'Abduh's *fatwā*s were based on the sources of Islamic law, i.e. the *Qur'ān* and the *Ḥadīth*. Although his main concern was to rehabilitate the use of reason in law, he never strayed far from the traditional sources.

Résumé

Auteur : Aswita Taizir

Titre : Muḥammad 'Abduh et la Réforme de la Loi Islamique

Département : Institut des Etudes Islamique, Université McGill

Diplôme : Maîtrise en Arts

Cette thèse examine la pensée de Muḥammad 'Abduh sur le sujet de la Loi Islamique, et comment ses idées ont inspirée les générations Musulmanes après lui à confronter les problèmes modernes. Plus précisément, nous analysons la pensée d' 'Abduh sur l' *ijtihād* et son utilité dans la société moderne.

Le principe d' *ijtihād*, appliqué par 'Abduh, ne dépend pas des opinions de savants antérieusr. Comme réformateur de la Loi Islamique (1849-1905), 'Abduh a rejeté le *taqlīd* qui était en force en Egypte aw 19 ème siècle. Les savants á son époque ont adhéré aux livres de leurs propres *madhhab*s, excluant les grandes sources de la Loi Islamique - le *Qur'ān* et *Ḥadīth*. Pour cette raison, il n'a pas suivi un *madhhab* en particulier dans son *ijtihād*, mais il a choisi de suivre l'école de Loi le plus apte á résoudre, les problèmes contenporains. Cette pratique est connue comme *talfīq* (éclectisme). L' usage du *talfīq* correspond aw début de la réforme légale de la Loi Islamique.

Pour faciliter la réforme, légale 'Abduh a employé le principe de *al-maṣlaḥah al-mursalah* (intérêt publique). Cette méthode est une application du principe d' *ijtihād*, qu'il a invoqué pour résoudre les problèmes comme la polygamie et l'intérêt bancaire. Les *fatwās* d''Abduh étaient basées sur les sources de la Loi Islamique (le *Qur'ān* et *Ḥadīth*). Il redonner de l'importance à la raison, il n'es ést jamais des sources traditionelles.

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I dedicate
this work to my parents

Taizir Tawaf and **Hasna Kamin**

Whose untiring care and endless love have constantly
surrounded me and been a powerful source of inspiration
of which this is partial reflection

System of Transliteration
from the Arabic Alphabets to the Latin
used in this work

Name of Letter	Arabic	Latin
hamzah	ء	'
bā'	ب	b
tā'	ت	t
thā'	ث	th
jīm	ج	j
ḥā'	ح	ḥ
khā'	خ	kh
dāl	د	d
dhāl	ذ	dh
rā'	ر	r
zā' or zāy	ز	z
sīn	س	s
shīn	ش	sh
ṣād	ص	ṣ
ḍād	ض	ḍ
ṭā'	ط	ṭ
ẓā'	ظ	ẓ
'ayn	ع	'
ghayn	غ	gh
fā'	ف	f
qāf	ق	q

Vowels, Diphthongs, etc.
Short Vowels: a, i, u.
Long Vowels: ā, ī, ū.
Long with "tashdīd": īya...
Diphthongs: aw, ay

In the name of Allāh, the most Merciful and Compassionate

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In conducting this study I have been helped by many people, without whose assistance and encouragement this work would not have seen the light of day. I would like to express my gratitude to the Minister of Religious Affairs of Indonesia, the Rector of IAIN "Imam Bonjol" Padang, the Dean of Sharī'ah faculty, my parents and family, and all my colleagues who helped and encouraged me to further my studies in Canada.

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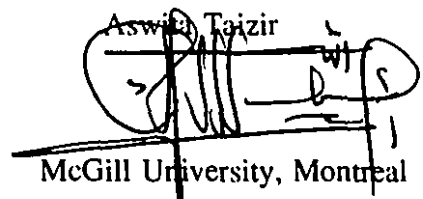
Aswin Taizir



McGill University, Montreal

Agustus 10, 1994

INTRODUCTION

A SHORT BIOGRAPHY OF MUḤAMMAD 'ABDUH

A. Muḥammad 'Abduh's Early Life

It is commonly believed that the Muftī al-Shaykh Muḥammad 'Abduh was born in 1849 in a peasant family of Maḥallat Naṣr, a small village in Gharbiyyah province of the Egyptian Delta.[1] His father, 'Abduh ibn Ḥasan Khair Allāh, came from the village of Maḥallat Naṣr. His mother, Junaynah bint 'Uthmān al-Kabīr, was a widow with one son when 'Abduh Ḥasan Ibn Khair Allāh married her. She belonged to a renowned family of Ṭantā in the Gharbiyya'n province.[2]

'Abduh was born in the midst of the oppressive conditions from which Egypt was suffering during Muḥammad 'Alī Pāshā's reign (1805-1849). Muḥammad 'Alī's monopolistic economic system and agricultural policy resulted in the impoverishment of the Egyptian people. 'Abduh ibn Ḥasan Khair Allāh, 'Abduh's father, was among those who opposed the government's tyranny and its confiscation of the peasants' lands through very high taxes. He fought against injustice during the latter part of the reign of Khedive 'Abbās I. Consequently, he was exiled for fifteen years.[3] He later returned to Maḥalla' Naṣr, where 'Abduh grew up.

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[1] Muḥammad Rashīd Riḍā, *Tārīkh al-Ustādh al-Imām al-Shaykh Muḥammad 'Abduh*, 3 Vols. (Cairo: Dār al-Manār, 1931), I, 13. See also 'Aṭīyah Sulaymān 'Awdah Abū 'Ādhirah, *Mushkilatā al-Wujūd wa al-Ma'rifah fī al-Fikr al-Islāmī al-Ḥadīth 'inda kull min al-Imām Muḥammad 'Abduh wa Muḥammad Iqbāl* (Beirut: Dār al-Ḥadāthah, 1985), 12; Muṣṭafā 'Abd, al-Rāziq, *Muḥammad 'Abduh* (Cairo: Dār al-Ma'ārif lil-Ṭibā'at wa al-Nashr, 1945), 15-16.

[2] Muḥammad 'Abduh, *Al-Iḥtifāl bi Iḥyā' Dhikrā al-Ustādh al-Imām al-Shaykh Muḥammad 'Abduh* (Cairo: Maṭba'at al-Manār, 1922), 10.

[3] Mahmudul Haq, *Muḥammad 'Abduh: a Study of a Modern Thinker of Egypt* (Calcutta: Aligarh Muslim University Press, 1970), 19.

At the age of ten, 'Abduh started learning to read and write from his father. Then, he received his elementary religious education from various other teachers. He was able to commit the entire *Qur'ān* to memory within two years, thus earning the titles of *al-qāri'* and *al-ḥāfiẓ*, which were unusual achievements at such a young age.[4] Complimenting 'Abduh, Muṣṭafā 'Abd al-Rāziq[5] said that "he never saw a man who had been through Qur'ānic school, but that his torso swayed about of its own accord, however much he tried to keep still."[6]

In 1862, 'Abduh's father sent him to the Aḥmadī mosque in Ṭanṭa, which had a reputation for specialized teaching in *Qur'ān*ic studies as well as in the art of *Qur'ān*ic recitation. He pursued advanced studies there until 1864. He eventually decided to leave the place because the teaching methods there did not encourage him to continue his studies. As he said later, "I studied one and a half years, but I learned nothing."[7] The teachers were accustomed to using technical terms of grammar or jurisprudence and made no effort to explain their meaning to those who did not know them.[8] Difficult texts were taught without much elucidation. Thus 'Abduh failed completely, for instance, to understand the commentary

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[4] C.C. Adams, "Mohammed 'Abduh: The Reformer," *Moslem World*, Vol. XIX (January, 1929): 266.

[5] Muṣṭafā 'Abd al-Rāziq was, along with his brother 'Alī 'Abd al-Rāziq, a student of 'Abduh at Azhar. He wrote widely on the Shaykh and his theories, and collaborated with M. Bernard Michel on a French translation of 'Abduh's "*Treatise on the Unity of God.*"

[6] Uthmān Amīn, *Muḥammad 'Abduh* (Cairo: Dār Iḥyā' al-Kutub al-'Arabīyah, 1944), 7.

[7] 'Abduh, *Al-Ihtifāl*, 13, and Riḍā, *Tārīkh al-Ustādh*, Vol. I, 20.

[8] Aḥmad Amīn, *Muḥammad 'Abduh* (Cairo: Mu'assasah al-Khā'ijī, 1960), 12-13; see also al-Iḥtifāl, 13.

of al-Kafrāwī on the *Ajurrūmiyyah*.[9] Under these conditions, he despaired of being a successful student. He returned to Maḥallat Naṣr and got married in 1865 at the age of sixteen.[10]

During that time, 'Abduh's uncle, Shaykh Darwīsh, played an important role in introducing him to the religious sciences. Had Shaykh Darwīsh not encouraged 'Abduh, he would have completely abandoned his studies. 'Abduh admired ṣūfism, and learned about it from Shaykh Darwīsh. His uncle was the only spiritual teacher and guide of his conscience, and it was he who opened 'Abduh to feelings of love for God. According to 'Abduh, this feeling builds up one's tolerance and prepares the mind to understand matters that would otherwise have remained dull or simply incomprehensible. He grew up to believe in ṣūfism as an essential first step in religious education. A ṣūfī relative was also the first to inculcate deep feelings in him for the *Qur'ān* and for the study and practice of Islam. 'Abduh said: "All the grace I now enjoy, in my religion, I have because of ṣūfism."[11]

Because of the beneficial influence of his uncle and his wise advice, 'Abduh came back to continue his studies in the Aḥmadī mosque at Ṭanṭā after his marriage in 1865, and remained there for four years. He then studied at Cairo's al-Azhar University from February 1866 till 1877. He found the conditions there similar to those at the Aḥmadī mosque at Ṭanṭā and was not satisfied with the system of education, which was rigid and far from satisfactory.

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[9] This was a famous medieval treatise on the laws of classical Arabic grammar by Muḥammad ibn Dāwūd Ajurrūmī (d. 1323 A.D.). The treatise had to be memorized by the students.

[10] 'Abbās Maḥmūd al-'Aqqād, *'Abqarī al-Iṣlāḥ wa al-Ta'līm al-Ustādh al-Imām Muḥammad 'Abduh* (Cairo: al-Mu'assasah al-Miṣrīyah al-'Āmmah, 1952), 86.

[11] Muḥammad 'Amārah, *Al-A'māl al-Kāmilah lil-Imām Muḥammad 'Abduh*, 6 Vols. (Beirut: al-Mu'assasah al-'Arabīyah lil-Dirāsāt wa al-Nashr, 1972), III, 531.

The subjects taught at this University were based solely on classical Arabic works of dogmatic theology. The students were to read texts, their commentaries, the glosses on the commentaries, and the superglosses on the glosses.[12] Moreover, as 'Uthmān Amīn has said:

> The spirit of petrification held sway over the curriculum, and the course of instruction was totally devoid of anything that might be of use to a man or inspire him with the desire for learning....The teacher would give his lecture "on what he knew or what he did not know" without concern for the proficiency of his students or the degree to which they were prepared to understand him....'Abduh himself said: "I used to listen to the Shaykh as he taught, and I thought that he was speaking a foreign language.[13]

Consequently, 'Abduh went through a religious identity crisis. He indulged in ascetic exercises and even tried to isolate himself from society. But, the wise advice of his uncle, Shaykh Darwīsh, again helped him emerge from this mystical crisis.[14] Thus *ṣūfism* proved to be a turning point in 'Abduh's life, for it freed his mind from *taqlīd* (i.e. blind acceptance of religious authorities) and led to a belief on his part in the union of the mystic with God. While he was aware of the serious dangers of *ṣūfism* and understood why *ṣūfī*s had been criticized in certain Muslim circles to the point where they virtually had to become a secret society, he was convinced that the mistakes of *ṣūfī*s did not justify a condemnation of their entire way of life, thought and worship.[15] Darwīsh also encouraged 'Abduh to study such subjects as logic, mathematics and geometry, which were not taught at al-Azhar. Darwīsh

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[12] 'Uthmān Amīn, *Muḥammad 'Abduh*, 18.

[13] *Ibid*, 21-22.

[14] 'Abduh, *Al-Ihtifāl*, 18.

[15] 'Abduh condemned, for example, the concept of *ḥulūl*, viz. the claim that God had come to "dwell" in the *ṣūfī*'s body. But he held that *tadhawwuq*, the *ṣūfī* way of perception, a highly individualized form of conceiving truth through total intuition, may well be a legitimate form of "knowing" for an individual.

clearly left a profound impression upon 'Abduh's thought and character, drawing the latter closer to the *ṣūfīs* than to the jurists. 'Abduh disliked the rigidity of the jurists, and in his own juristic career showed a tolerance and freedom of thought unusual among his contemporary jurists.

While still at al-Azhar University, 'Abduh met Jamāl al-Dīn al-Afghānī (1839-1897), who came to Egypt in 1869 and again in 1871.[16] 'Abduh was a student of his from 1871 to 1879. Al-Afghānī, who was already famous as an advocate of religious and political freedom for the Islamic peoples, greatly influenced 'Abduh's intellect and emotions, especially his nationalistic feelings. 'Abduh became one of the most brilliant of Afghānī's disciples, showing his admiration for the latter in his first work, *Risālat al-Wāridāt* (Mystical Inspirations), published in 1874.[17] A theological treatise embodying his earlier mystical and pantheistic vision of God, it has come to be regarded as a work of religious reform as well as a political response to Europe and, by implication, to Christendom. Moreover, the momentous political events of this time greatly influenced his meditations and drove him to study the cultural and political relations between the East and the West. 'Abduh, therefore, came to pursue many interests and activities outside al-Azhar. He was particularly active in dealing with the political relations between the East and the West, and became an advocate of the Nationalist party (*al-Ḥizb al-Waṭanī*).[18]

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[16] 'Abduh, *Al-Iḥtifāl*, 18; see also Charles C. Adams, *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muḥammad 'Abduh* (New York: Russel & Russel, 1968), 33; 'Uthmān Amīn, *Muḥammad 'Abduh*, 23-24.

[17] 'Uthmān Amīn, *Muḥammad 'Abduh*, 26.

[18] The main goal of this party was the immediate evacuation of the British from Egypt, even if this required the use of force.

In 1876, he began writing articles on various cultural matters; in addition, he wrote a series of articles on social and political affairs for the Arabic newspaper *al-Ahrām*.[19] At the same time, he was also preparing to get his diploma at al-Azhar in order to be able to teach. In 1876, he published his second work, *al-'Aqā'id al-'Aḍudiyah*,[20] which contained a collection of glosses on the commentary of Jalāl al-Dīn al-Dawwānī on a treatise on theology and the various theological schools by 'Aḍud al-Dīn al-Ījī (d. 1355 A.D).[21] *Al-'Aqā'id al-'Aḍudiyah* was an attempt to strike a reasonable balance among the differing doctrines of these schools and to restate the Ash'arite creed in a more or less moderate and rational manner.[22]

In 1877, 'Abduh ultimately passed the difficult al-Azhar examinations and obtained his diploma, the *'Ālimīyyah*.[23] This diploma granted him the right to use the title of *al-'ālim*, and licensed him to teach the Islamic religious sciences.

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[19] 'Uthmān Amīn, *Muḥammad 'Abduh*, 28-30. This newspaper was founded in Alexandria in 1875 by the Lebanese brothers, Salīm and Bishāra Taqlā. It was initially critical of British policy and was in favour of a continued link between an Egypt ruled by the Khedive and the Sultan in Istanbul. For details, see P. J. Vatikiotis, *The History of Modern Egypt from Muḥammad 'Alī to Mubārak*, fourth edition (Baltimore: The Johns Hopkins University Press, 1991), 184, and Riḍā, *Tārīkh al-Ustādh*, Vol. II, 36-37.

[20] 'Uthmān Amīn, *Muḥammad 'Abduh*, 25.

[21] M.TH. Houtsma, A.J. Wensinck, E. Levi, H.A.R. Gibb and W. Heffening, *Encyclopedia of Islam*, first edition (Leiden: E. J. Brill, 1913-1936, reprinted, 1987), Vol. VI, 1-27.

[22] Osman Amin, *Muḥammad 'Abduh*, translated from the Arabic by Charles Wendell (Washington D.C.: American Council of Learned Societies, 1953), 101.

[23] In order to obtain a diploma, students had to pass an examination in all "fundamental subjects" (i.e. jurisprudence, theology, traditions, exegesis, grammar and syntax, rhetoric and logic). Further detail, see, Osman Amin, *Muḥammad 'Abduh*, 20.

B. Muḥammad 'Abduh's Career

Early in his career, while he was still a student of al-Afghānī, 'Abduh was as obsessed as his master with the immediate problem of political power, rather than with the broader implications of the ideological crisis confronting Muslims. He helped al-Afghānī formulate the call for a Pan-Islamic regeneration.[24] In an article in *al-Ahrām*, he wrote:

> The *'ulamā'* who are the spirit of the nation have failed so far to see the benefit of the modern sciences. They continue to busy themselves with what might have been suitable for a time that is long gone by, not realizing the fact that we are living in a new world. We must study the affairs of other religions and states in order to learn the secret of their advancement. We see no reason for their position of wealth and power except their progress in education and the sciences in their countries.[25]

After 'Abduh completed his diploma at al-Azhar University in 1877, he was allowed to teach logic, theology and ethics. In addition, he held informal classes in his own house. Soon afterwards, he began teaching at the *Dār al-'Ulūm*, a new college established to provide a modern education for students of the Azhar who wished to become judges or teachers in government schools. He was also appointed teacher of Arabic in the Khedive's school of languages.[26]

In 1879, he was appointed professor of history at the college of *Dār al-'Ulūm* and professor of literature at the school of languages. He performed his new functions while still continuing to teach courses at al-Azhar University. During this period he became involved in journalism in collaboration with al-Afghānī. His teaching career was soon interrupted for

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[24] The Egyptian Islamic response to the British occupation was no longer simply reformist but emerged rather as a movement for independence from foreign control.

[25] Riḍā, *Tārīkh al-Ustādh*, Vol. II, 36.

[26] 'Abduh, *Al-Iḥtifāl*, 21.

reasons that are not clear, although some scholars believe the interruption was due to his association with al-Afghānī and to his political views. He was dismissed by the Khedive Tawfīq Pāshā (d. 1892) and ordered to refrain from all political activities and to return to his native village, Maḥallat Naṣr.[27] But in 1880, the then Prime Minister, Riyāḍ Pāshā, recalled him and appointed him as one of the editors of the official gazette, *al-Waqā'i' al-Miṣrīyyah*, and later as its chief editor.[28]

As editor, 'Abduh was able to play a considerable role by virtue of his boldness and critical mind. This was an influential position from which he could articulate his ideas and propagate his enlightened views. Moreover, he had the opportunity to criticize the other newspapers then being published in Egypt. *Al-Waqā'i'* became the mouthpiece of the liberal party under 'Abduh's control, and he was able to resume the pursuit of his reformist activities in the fields of education, language and religion. He published the substance of two of al-Afghānī's lectures on the philosophy of education and the arts.[29] 'Abduh's interest in educational reform led him to focus his attention on the contemporary state of education in the country; in his articles, he frequently criticized the schools, teachers, methods of instruction, the general conduct of the educational programs, and the work of the Department of Education as a whole. His criticism brought about the establishment, on March 28, 1881, of the Superior Council of the Department of Education, which had executive powers in the

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[27] Aḥmad Amīn, *op. cit.*, 33.

[28] *Ibid.*, See also 'Abduh, *al-Ihtijāl*, 22.

[29] Riḍā, *Tārīkh al-Ustādh*, Vol. II, 26-36.

administration of general education. 'Abduh was appointed a member of this council.[30]

'Abduh wanted social reform according to the principles of liberty, justice, democracy, consultation and mutual aid. He wanted justice rather than merely a strict adherence to the rules of a particular legal code. To choose what was reasonable, practical and just for society was, for 'Abduh, a better, and indeed, a more ethical alternative than to adhere blindly to traditional practices.

However, *al-Waqā'i'* did not last long. 'Abduh had worked as its editor for only eighteen months, until May 1882, when 'Urābī Pāshā obstructed 'Abduh's activities and terminated the journal. When Great Britain occupied Egypt, 'Abduh joined the nationalist party and actively participated in the rebellion of July 11, 1882 against the British occupation, an action which led to his exile to Syria for three years. In 1884 he left Syria to join al-Afghānī, who was then living in Paris, and to work for the liberation of Egypt.[31] In Paris they together founded a society and began publishing *al-'Urwah al-Wuthqā* ("The Indissoluble Bond"), an Arabic newspaper directed mostly against British policy. Published weekly, *al-'Urwah* attempted to unite the scattered Muslim peoples all over the world, to help remove the causes of their disunity, awaken them from their apathy, and to free the Islamic countries from both foreign penetration and native tyranny. The journal was particularly concerned to voice opposition against the British occupation of Egypt, and to call for an Islamic revival against European domination. *Al-'Urwah* was the first Arabic journal to appear in Europe. It urged Muslims to reject their local nationalism and to strive instead for

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[30] Adams, *Islam and Modernism*, 48, see also Haq, *Muhammad 'Abduh*, 64.

[31] Aḥmad Amīn, *op. cit.*, 48.

unity based on religion.[32] One of the articles that appeared in *al-'Urwah* claimed:

> ...Islam is the one bond which unites Muslims of all countries and obliterates all traces of race or nationality. Its Divine law (*sharī'ah*) regulates in detail the rights and duties of all, both ruler and subject, and removes all racial distinctions and occasions for competition within the body of Islam. Any Muslim ruler can win distinction and gain great influence in the Muslim world by his devotion to the *sharī'ah*.[33]

After only eighteen issues (published between March 13 and October 16, 1884), however, the newspaper was suppressed by Great Britain because of its critical outlook and its influence in India and Egypt in particular.[34]

After *al-'Urwah* was banned, 'Abduh left for London to continue his struggle for the liberation of Egypt. However, his scholarly temperament did not destine him for the career of a militant politician. For this reason, 'Abduh left Paris in 1885 and settled in Beirut, which was at that time a major center of Arabic culture. Soon afterwards, he was appointed a teacher in the Sulṭāniyah school, which had been founded by partisans of Midḥat Pāshā.[35] During this period, he wrote an important book called *Risālat al-Tawḥīd* (Treatise on the Unity of God), a masterly exposition of the Muslim conception of religion. This work, which is a summary of his lectures on theology, has been translated into many languages, including English, French, German, and Indonesian.

This book has been considered the most important of his philosophical and theological

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[32] *Ibid.*, 54-62.

[33] Adams, *Islam and Modernism*, 59.

[34] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 380.

[35] 'Uthmān Amīn, *Muḥammad 'Abduh*, 96.

writings. In it, 'Abduh argued that Islam occupies a unique place among the monotheistic religions because it is able to reconcile reason and revelation. But he also stressed that the terms "rational" and "modern" are opposed to religion.[36] It has been said that because of this essential contradiction, 'Abduh failed to reform Islamic theology, and ascribed to Islamic doctrine possibilities which were incompatible with its very nature.[37] To re-interpret the dogmatic bases of a revealed religious message entailed the danger of rejecting some of them and changing others beyond recognition. Thus, his later religious disciples, led by Shaykh Muḥammad Rashīd Riḍā (1865-1935), ended up with a movement whose basic teachings reverted to strict orthodoxy.[38] Riḍā tried to systematize the teachings of his master into genuine theological dogma. However, it cannot be ignored that *Risālat al-Tawḥīd* was considered an illuminating book at the time of its first publication.

'Abduh also stressed the rationality of Islam in his defence of religion against local secularism, such as that represented by Farah Anṭūn (1874-1922). Anṭūn, who derided 'Abduh in the pages of Egyptian newspapers,[39] criticized the systemization of dogmatic thought and was skeptical of 'Abduh's reformist efforts. 'Abduh then wrote two detailed letters, one to the Shaykh al-Islām in Constantinople, advocating the reform of religious education, and the

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[36] Muḥammad 'Abduh, *Risālat al-Tawḥīd* (Cairo: Maṭba'at al-Nahḍah Miṣr, 1956), 23-24

[37] See Elie Kedourie, *Afghānī and 'Abduh: An Essay on Religious Unbelief and Political Activism in Modern Islam* (New York: Frank Class and Co Ltd, 1966).

[38] Albert Hourani, *Arabic Thought in the Liberal Age: 1798-1939* (Cambridge: Cambridge University Press, 1983), 222-226.

[39] For details, see Farah Anṭūn, *Ibn Rushd wa Falsafatuhu: Ma'a Nuṣūṣ al-Manāẓarah bayna Muhammad 'Abduh wa Farah Anṭūn* (Beirut: Dār al-Ṭāli'ah lil-Ṭibā'ah wa al-Nashr, 1981); also Hourani, *op. cit.*, 253-259.

other to the governor of Beirut recommending educational reform in Syria.[40]

In 1888, 'Abduh was permitted by the Khedive to return to Egypt, and in the following year, he was appointed as a judge to the National Court. The return of 'Abduh to Egypt marks the end of the first phase of his life. These years were characterized by struggle and by intellectual and moral preparation. His personality had taken definite form by his sense of mission, viz. the reform of Islam and of Muslim society. In 1891, he became a counsellor at the Court of Appeals *(Maḥkamat al-Isti'nāf)* in Cairo.[41] There, 'Abduh found that the law enforced in the National Courts, especially criminal law, was based on the French Code. He sat with judges the majority of whom knew the law in its original language. This was one of the factors which motivated him to study French, so as to be equally well versed as his colleagues in his understanding of the law.[42] As a magistrate he also became known for his sense of equity and independence of spirit and was never encumbered by the mere forms of judicial procedure.

On June 3, 1899, he was appointed Grand *Muftī* of Egypt, a post he held until his death in 1905. His voice was by now very influential and authoritative. He wanted to see the Egyptian people guided, as Charles C. Adams says, "...by a spirit of liberality and a freedom from bondage to tradition and a desire to render the religion of Islam entirely adaptable to the requirements of modern civilization."[43] During his time as Grand *Muftī*, 'Abduh

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[40] 'Uthmān Amīn, *Muḥammad 'Abduh*, 102-103.

[41] Riḍā, *Tārīkh al-Ustādh*, Vol. III, 21, see also, Abū 'Ādhirah, *Mushkilatā al-Wujūd*, 32.

[42] 'Uthmān Amīn, *Muḥammad 'Abduh*, 107-108.

[43] Adams, *Islam and Modernism*, 80.

articulated his concept of "*tamaddun*," which he saw as the goal of the Egyptian state. "It is the sum of all kinds of perfection, whether literary, material, sensual or metaphysical. Excelling in the industries is a part of it, so is competing in the sciences and the exercise of the most noble moral standard."[44] According to him, the role of the state in Islam is considerable, but is not totalitarian. The state should be the arbiter of conflicts, the protector of the weak, and the initiator of basic reform. 'Abduh applied his reformist ideas to the interpretation of the sacred law and to specific Islamic practices, issuing controversial *fatwās*, such as the well-known "*Transvaal fatwās*."[45] With such *fatwā*, he tried, in fact, to help the Muslim minorities in South Africa who could not afford to be isolated from their Christian neighbors by unnecessary restrictions.[46] These *fatwās* clearly reveal his tolerance towards other religious beliefs, and his effort to reconcile the fundamental principles of Islam with the demands of modern times. Nevertheless, many people turned against him in his own country. In his position as Grand *Muftī*, 'Abduh also had the opportunity to reform the religious courts and the administration of the *awqāf* (endowments).

Following his appointment as a member of the Council of Administration of al-Azhar University, 'Abduh began indefatigably to strive towards raising the cultural, moral, and material level of the University. His campaign against blind submission to authority and his

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[44] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 40.

[45] "The Transvaal *Fatwā*" was so-called because the question that was addressed to 'Abduh came from by Indian Muslims living in the Transvaal in South Africa, where they had to live among a large non-Muslim majority. These most famous *fatwās* makes it lawful for Muslims to eat food prepared by Christians and Jews and permits them to adopt the dress of non-Muslims if the exigencies of life make it necessary for them to live among foreigners. Another *fatwā* makes it legal for Muslims to deposit their money in banks and to draw interest on it. For details see Mahmudul Haq, *Muḥammad 'Abduh*.

[46] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 714-716; Haq, *op. cit.*, 10 and 54; see also 'Uthmān Amīn, *Muhammad 'Abduh*, 114-115.

appeal to critical thinking and the use of reason brought about undeniable results in the spheres of both religion and morality. His influence on al-Azhar was soon felt given the liberal tone of the doctrines he professed. He seemed a pragmatic person. For the school, he suggested a specific curriculum that would conform to Islamic values. 'Abduh also suggested a detailed and varied program for religious education, which would be set up to meet the needs of very different people.

'Abduh promoted numerous social reforms in Egypt, calling for an improvement in the condition of the poorer classes and for better educational opportunities for Egyptian women. On June 25, 1899, he became a permanent member of the legislative council,[47] and was one of the founders of the Muslim Benevolent Society, which aimed at opening a private school.[48] Its main purpose was to establish schools for poor children. Such schools were to serve as an experiment in private national education; students would be given a modern education, with an emphasis on Muslim upbringing. In addition, 'Abduh worked for the reform of the religious courts (*al-Maḥākim al-Shar'īyah*). He was very influential, and his efforts became the basis of future reforms of the judicial system. He prepared a report on reforming the law in order to meet the needs and interests of a changing society on the better training of judges. He also wanted to improve their material condition, so as to raise the intellectual and moral standards for future judges, and sought a reorganization of the method of their recruitment. The idea of creating a school for *sharī'ah* judges (*madrasat al-qaḍā al-shar'ī*) was suggested by him. During this time, he also wrote a valuable book relating to the

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[47] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 719.

[48] This organization was founded in 1892; see Riḍā, *Tārīkh al-Ustādh*, Vol. I, 726.

reform of *sharī'ah* courts. This work, entitled *Taqrīr fī Iṣlāḥ al-Maḥākim al-Shar'īyah*, was published in 1900.

Later that year, 'Abduh participated in the founding of the Society for the Revival of the Arabic Sciences, and became its president. The purpose of this society was to promote the use of correct Arabic. 'Abduh was also among the founders of the Egyptian University which later became Cairo University. Later, he became involved in a polemic with Gabriel Hanotaux, the French Minister of Foreign Affairs, who had criticized Muslims. 'Abduh responded in the form of a book entitled *al-Islam wa al-Naṣrānīyah* (Islam and Christianity),[49] which is a valuable piece of modern Muslim apologetic. Another important work took the form of commentaries on parts of the *Qur'ān*. He collaborated with one of his disciples, Rashīd Riḍā, in preparing a comprehensive commentary on the whole *Qur'ān*, but the work remained unfinished at the time of his death and was later completed by Rashīd Riḍā, and is best known as *Tafsīr al-Manār*.[50] His work unfinished, 'Abduh passed away at Alexandria on July 11, 1905, at the age of fifty-six. He left behind three daughters,[51] some disciples and a number of works which would perpetuate his name.

'Abduh substantially contributed to the development of the Muslim community. He attempted to reform several aspects of Egyptian social life, in accordance with Islamic principles. In basing his reform agenda on the *Qur'ān*, 'Abduh demonstrated that pragmatic

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[49] *Ibid.*, 802.

[50] According to Riḍā, 'Abduh had, by the time of his time, reached only as far as Sūrat al-Nisā', 129, in his commentary. See *Tafsīr al-Manār*, Vol. V, 341.

[51] 'Abd al-'Āṭī Muḥammad Aḥmad, *Al-Fikr al-Siyāsī lil-Imām Muḥammad 'Abduh* (Cairo: Al-Hay'ah al-Miṣrīyah al-'Āmmah lil-Kitāb, 1978), 63; see also, Riḍā, *Tārīkh al-Ustādh*, Vol. III, 60, and Abū Ādhirah, *Mushkilatā al-Wujūd*, 36.

measures could still be derived from Islamic principles. Thus, for example, in the case of education, he showed that it was possible to devise political programs that conform to Islamic values.

During his active career, 'Abduh was especially critical of abuses in the educational and legal spheres of Muslims, and in particular of Egyptian life. He also sought to reform various aspects of Muslim social and religious life. However, it was in the educational and legal spheres, two areas of public life that were under governmental control, rather than in the theological reformation of Islam, that 'Abduh seems to have had the greatest success.

CHAPTER I

MUḤAMMAD 'ABDUH AND IJTIHĀD

A. The Role of Reason and Revelation in Islamic Law

'Aql (reason/intellect) plays an important role in the intellectual history of Islam and, according to 'Abduh, is one of the pillars of the *sharī'ah*. *'Aql* is the basis of *taklīf* (religious obligation), and is one of the five universals (*al-kulliyyāt al-khams*).[1] Its function, however, is different from that of revelation, though both are expressions of Allāh's guidance (*al-hidāya*) to human beings. In interpreting Sūrat al-Fātiḥah, 'Abduh affirmed Allāh's bestowal to mankind of four kinds of *hidāya* (guidance),[2] viz. *hidāya al-wijdān* (inner consciousness), *hidāya al-ḥawās* (senses/feeling), *hidāya al-'aql* (intelligence), and *hidāya al-dīn* (the guidance of religion). *'Aql* is man's capability to think of and to appreciate Allāh's creatures, as implied in the *Qur'ān*: "Have they, then, never journeyed about the earth, letting their hearts gain wisdom, and causing their ears to hear? Yet, verily, it is not their eyes that have become blind- but blind have become the hearts that are in their breast."[3] In this verse, *'aql* means to understand, comprehend, and think. The seat of *'aql* is not conducted in the brain, but the heart *(qalb)*, which is centered in the breast (*ṣadr*). Allāh has also endowed human beings with intelligence and the power of judgement to distinguish between right and wrong and to choose the right path. As the *Qur'ān* says:

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[1] They are: preservation of religion (*al-dīn*), the life (*al-nafs*), reason (*'aql*), honour and property. See, 'Abd Allāh Maḥmūd al-Shaḥātah, *'Ulūm al-Tafsīr* (Cairo: Maṭba'at Jāmi'at al-Qāhirah wa al-Kitāb al-Jāmi'ī, 1986), 43.

[2] Muḥammad 'Amārah, *Al-A'māl al-Kāmilah lil-Imām Muḥammad 'Abduh*, 6 Vols. (Beirut: Al-Mu'assasah al-'Arabīyah lil-Dirāsāt wa al-Nashr, 1972), IV, 44-45.

[3] Sūrat al-Ḥajj:46, see Muhammad Asad, *The Message of the Qur'ān* (Gibraltar: Dār al-Andalūs, 1980), 22.

And there are on earth [many] tracts of land close by one another [and yet widely differing from one another]; and [there are on it vinyards, and fields of grain, and date palms growing from cluster one roots or standing alone, [all] watered with the same water: and yet, some of them We favoured above others to eat by way of the food [which they provide for man and beast]. Verily, in all these there are messages indeed for people who use their reason.[4]

Both reason and revelation are very important elements in the theory and practice of Islamic law for they supplement each other. 'Abduh believed that Islam is the most perfect religion, as its teachings are in harmony with reason. 'Abd al-Ghaffār 'Abd al-Raḥīm remarks:

> Reasoning is a must for every sane person, a requirement he cannot escape from. One must make efforts to search for the truth in the world one lives in. He must examine things with the sources he has, even if he is for or against a certain topic or idea. He must solidify his position with strong evidence. But just as he has to use his reason, he must not read into evidence what is not there.[5]

On the other hand, revelation (*al-waḥy*) consists of the words of Allah given to His Messenger in order to convey to his people guidance in their life. The mission of the Prophet was to change the ways of *jāhilīyyah*. This was the most important task of the Prophet, as indicated in the *Qur'ān* (e.g. Sūrat al-Qaṣaṣ 47, 59). As well, Islam came to the people in

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[4] Sūrat al-Ra'd:4.

[5] 'Abd al-Ghaffār 'Abd al-Raḥīm, *Al-Imām Muḥammad 'Abduh wa Minhajuhu fī al-Tafsīr* (Cairo: Al-Markaz al-'Arabī lil-Thaqāfah wa al-'Ulūm, 1980), 242.

order to provide them with protection against harm and to bring them merit.[6]

The *Qur'ān* strongly recommends that Muslims use their intellect (*'aql*) appropriately.[7] The word *'aql* can be found in more than forty-five verses of the *Qur'ān*,[8] such as Sūrat al-Anfāl 22, and al-Nahl 10-12. In addition, there are many verses that use different words derived from *'aql* which convey the same meaning. For example, the word *naẓara* can be found in more than 30 verses,[9] such as Sūrat al-Qāf 6-7; the word *tadabbara*, in sūrat Ṣād 29; *tafakkara* in Sūrat al-Nahl 68-69; *faqiha*, in Sūrat al-Isrā' 44; *tadhakkara* in Sūrat al-Nahl 17; and *fahima* in Sūrat al-Anbiyā' 78-79.

'Abduh also interpreted the word "*al-ḥikmah*" in Sūrat al-Baqarah 267, to mean *'aql*. *'Aql* conforms to the true sciences; it is the measure (*wazn*) of man's actions. On the other hand, Muḥammad Rashīd Riḍā, citing Ibn 'Abbās, declared that "*al-ḥikmah*" in the *Qur'ān* means *al-fiqh*, which embodies the guidance of the *Qur'ān* and its laws and wisdom. To understand and interpret the *Qur'ān*, *'aql* should be exercised.[10]

'Abduh interpreted the words "*mutashābih*" (allegorical) and *"al-rāsikhūn fī al-'ilm"* (firmly grounded in knowledge) in Sūrat Āl 'Imrān 7, to mean that which tests man's heart and stimulates people to think about the *Qur'ān*; *'aql, he held*, is to be used in analyzing verses, especially those which relate to phenomena (*kawnīyyah*), whether they are *mutashābih*

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[6] Muḥammad 'Abduh and Muḥammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-Karīm, al-Shahīr bi-Tafsīr al-Manār*, 12 Vols. (Cairo: Dār al-Manār, 1911), VI, 264.

[7] 'Abduh, *Tafsīr al-Manār*, Vol. IX, 570.

[8] Harun Nasution, *Akal dan Wahyu dalam Islam* (Jakarta: Universitas Indonesia, 1983), 44.

[9] *Ibid.*, 39.

[10] 'Abduh, *Tafsīr al-Manār*, Vol. III, 75-76.

or not.

'Abduh wanted to apply the *Qur'ān*ic recommendation to use *'aql* in every aspect of Islamic teachings, and in fact, this influenced his attitude toward life in general. The phenomena of the universe should bring people to think about it, and encourage them to use their *'aql* (intellect). Therefore, it can be said that to understand Islamic teachings properly, people have to use their *'aql* in order to benefit from its beneficial aspects (*maṣlaḥah*), and to avoid hardship.[11]

The point of departure in 'Abduh's legal thought is the conviction that Islam is the religion of nature (*fiṭrah)* and the religion of *'aql*.[12] Nature is constantly changing, and can only be understood when man is able to complement his belief with his reason. 'Abduh stated that *'aql* is indispensable for a proper understanding of belief and law.[13] 'Abduh based this view on the command of Allāh: "Verily God does not change men's condition unless they change their inner selves."[14] Thus, people cannot reach worldly (*dunyāwī*) happiness and eternal life (*ukhrāwī*) without understanding the *Dīn*.[15]

With respect to the relation between reason and revelation, Malcolm H. Kerr maintains that reformers' normally adopted one of two approaches. The first assigns "separate spheres

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[11] *Ibid.*, Vol. II, 283.

[12] *Ibid.*, Vol. II, 454; and see also, Vol. VI, 33.

[13] Nasution, *op. cit.*, 51-52.

[14] Sūrat al-Ra'd:11.

[15] *Al-Dīn* is the normative or perfect religion which Allah has ordained for mankind and which includes faith, ethics, law, devotions, and all religious institutions.

of competence to reason and revelation."[16] According to this view, "God's creation of the world of nature, including human nature, is in keeping with the necessary basis for determining the principles of social morality, while revelation addresses itself to spiritual questions of personal devotion and liberation."[17] The second approach recognizes "the parallel competence of both reason and revelation while in the same sphere, denying that there is either a separation or a conflict between them."[18] 'Abduh represents the second type of reformist effort, for he believed that although reason and revelation are different paths to truth and fulfil different functions, they cannot contradict each other.[19] If there appears to be some contradiction between reason and revelation, it should be assumed that one or the other has been incorrectly understood, since they are two different means to convey the one divine truth. Revelation is therefore subject to interpretation (*ta'wīl*).[20] This means that man has been given the freedom to think and the independence to act. 'Abduh glorified reason to the extent that he was ready to grant it precedence over the literal meaning of the divine law in case of a conflict between the two.[21] No conflict would occur, however, if people realized that Islam is a rational religion which grants individuals freedom of thought, as is shown in

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[16] Malcolm Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad 'Abduh and Rashīd Ridā* (Cambridge: Cambridge University Press, 1966), 107.

[17] *Ibid.*

[18] *Ibid.*

[19] Muḥammad 'Abduh, *Risālat al-Tawḥīd* (Cairo:Maṭba'at al-Nahḍah, 1956), 6-8.

[20] Muḥammad 'Abduh, *Al-Islām wa al-Naṣrānīyyah ma'a al-'Ilm wa al-Madanīyyah* (Cairo: Maktabah Nahḍah, 1956), 52.

[21] Mahmudul Haq, *Muḥammad 'Abduh: A Study of a Modern Thinker of Egypt* (Calcutta: Aligarh Muslim University, 1970), 91.

many verses in the *Qur'ān*. *'Aql* and revelation cannot therefore be separated in human life except in matters of *'aqīdah* or belief.

Even though the theory of good and evil is a theological problem, it has implications for 'Abduh's legal thought, as will be seen shortly. In this context it should be mentioned first that *naql* and *'aql* (the *Qur'ān* and the *Ḥadīth)* are the two most important sources of guidance in Islam. The use of *'aql* is crucial for a proper understanding of Islamic law (*al-aḥkām al-shar'īyyah)*, as *'aql* is necessary for distinguishing between good (*ḥasan*) and evil (*qabīḥ*).[22] According to 'Abduh, it is through the use of *'aql* that one is able to accept good things and reject bad ones.[23] 'Abduh used the terms *ḥasan* and *qabīḥ* to describe good and bad not only in the moral sense but also in the aesthetic sense, as well as to indicate the utility or harmfulness of something. The first and the last senses are closely related to law, which is made in order to preserve that which is good and beneficial for man and to prevent that which is bad and harmful.[24] 'Abduh himself believed that "the *sharī'ah* came only to point out the good among what already exists; it does not originate goodness."[25] God, for him, orders virtue because it is good in itself; it does not become good because He commands it.[26] In other words, reason can help determine what is good or bad, useful or harmful. Revelation also is a kind of confirmation of reason. This view leads 'Abduh to state that if

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[22] 'Abduh, *Tafsīr al-Manār*, Vol. VIII, 373; see also Kerr, *op. cit.*, 124-125.

[23] 'Abduh, *Tafsīr al-Manār*, Vol. VI, 74.

[24] *Ibid.*, Vol. II, 204

[25] 'Abduh, *Risālat al-Tawḥīd*, 80.

[26] Muḥammad 'Abduh, *Tafsīr Sūrat al-'Aṣr min Durūs min al-Qur'ān* (Beirut: Dār Iḥyā' al-'Ulūm, 1980).

the text of the *Qur'ān* or a *Ḥadīth mutawātir* contradicts reason, the latter should override the former. According to him:

> There are certain things which we cannot know by our reason. Some of them we do not need to know, and it is best not to speculate about them; we cannot know anything about the divine essence for our minds and language are not adequate to grasp the essence of things. Others we need to know in order to live properly, but cannot know by our own efforts: certain attributes of God (His word, sight, hearing); the nature of the life to come, its judgement, its pleasure and pains; certain acts of worship which are pleasing to God, but which man by himself could never have thought of. And there are things which can in principle be known by reason, but which most men do not in fact know, because their reason is imperfect or because of the power of passion to lead their minds astray. For both these reasons, men need a help if they are to live as God wishes them to: a help to whom they can look in defining the principles of conduct and fixing a right attitude to believe.[27]

'Abduh believed that revelation and reason were not antithetical, but complimentary. "For him both religion and reason are reliable guides; yet neither one can sufficiently and safely be substituted for the other, nor should it violate the rights of others."[28]

The *Qur'ān* inspired 'Abduh to learn more about logic and philosophy (when he was at al-Azhar University), which helped shape his belief in the dynamic relation between true thinking and good action. This trend of thought was further influenced by thinkers such as Aristotle, Ibn Rushd, and Ibn Sinā, and, to a lesser degree, by certain Western, particularly,

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[27] Albert Hourani, *Arabic Thought in the Liberal Age: 1798-1939* (Cambridge: Cambridge University Press, 1983), 145-146, citing 'Abduh's *Risālat al-Tawḥīd*, pp. 73-74. This book is one of 'Abduh's major works. *Tawḥīd* means the act of affirming that Allāh is the One, the Absolute, transcendent Creator, the Lord and Master of all that is. Traditionally and simply expressed, *tawḥīd* signifies bearing witness that "there is no god but God." *Tawḥīd* is the essence of Islam. It is also that which gives Islamic civilization its identity, which binds all its constituents together and thus makes of them an integral, organic body which we call civilization.

[28] 'Abd al-'Aṭī Muḥammad Aḥmad, *The Concept of Freedom in Muḥammad 'Abduh* (Ph.D Thesis, Institute of Islamic Studies, McGill University, Montreal, 1957), 34.

French authors.[29] He realized that the Europeans had progressed intellectually because they enjoyed freedom of thought. However, he did not believe that Muslims should imitate them except in the use of reason and while remaining within the framework of the *sharī'ah* and its regulations. He wanted to show how Muslims too could develop intellectually as the Europeans had. To this end, he emphasized the essential role of reason, and *ijtihād*, which is an expression of it. This subject will be taken up in the following chapter.

Before discussing the function of reason and revelation in Islamic law, we should first clarify the term *sharī'ah*. *Sharī'ah* literally means the path (*al-ṭarīq*) to a watering place.[30] While Ibn Jarīr claimed that everything which was enjoined by religion was *sharī'ah*, some of the other *fuqahā'*[31] considered the word to be a metaphor, signifying a path to water which would bring cleanliness to mankind's soul. Another interpretation holds that religion was one, but the *sharī'ah* was varied. Qatādah argued that *sharī'ah* was more specific in meaning than religion.[32] The laws could be changed by different messengers; religion (*al-dīn*), on the other hand, was definite and unchanging.[33] The *sharī'ah* thus signifies divine law which comprises specific laws (*aḥkām*)[34] based on the "totality of Allāh's commands

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[29] M. M. Sharif, "Renaissance in Egypt: Muḥammad 'Abduh and His School," in *History of Muslim Philosophy: With Short Accounts of Other Disciplines and the Modern Renaissance in Muslim Lands* (Wiesbaden: Otto Harrassowitz, 1966), 1496

[30] 'Abduh, *Tafsīr al-Manār*, Vol. VI, 412-413.

[31] *Fuqahā'* (plural of *faqīh*) means specialists in Islamic jurisprudence (*fiqh*). *Faqīh* can also be a synonym for *'ālim* (singular of *'ulamā'*) meaning a scholar of the religious sciences.

[32] 'Abduh, *Tafsīr al-Manār*, Vol. VI, 412-413.

[33] These are mentioned in Sūrat al-Shūrā 21, and al-Jāthiyah 18.

[34] *Aḥkām* means prescriptions directly taken from the *Qur'ān* and *Ḥadīth*.

revealed to the Prophet Muḥammad"[35] and embodied in the *Qur'ān*. *Sharī'ah* is also defined as the collective name for all the laws of Islam, including Islam's all-encompassing religious, ethical and jurisprudential system. The discipline which deals with the principles of Islamic law is called *uṣūl al-fiqh*, or *'ilm al-uṣūl* (Islamic jurisprudence). Technically, *uṣūl* means principles, rules, or fundamentals,[36] and *uṣūl al-fiqh* signifies the knowledge or science of law which deals with the nature of the sources of law and matters relating to them, as distinguished from *'ilm al-furū'* (positive legal rulings), which is the name for the science of Islamic substantive law. As Bernard Weiss has put it:

> In the standard Islamic metaphor, the rules themselves are "branches" or "fruits", which grow out of the "root" (*uṣūl*), that is, from the sources. Only the roots are given; the branches, or fruit, are not...they must be made to appear; and for this to happen, human involvement...we may call it, in keeping with the above metaphor, human husbandry...is required.[37]

Uṣūl al-fiqh therefore means the science of Islamic jurisprudence, or the methodology of deriving laws from the sources and of establishing their juristic or constitutional validity.

Since reason has a very important place in 'Abduh's scheme of things, the concepts of *maṣlaḥah* and *mafsadah* also become very significant for him. The idea of *maṣlaḥah*, as dealt with by the *uṣūlīyyūn*, is based on "*jalb al-manāfi' wa daf' al-mafāsid*" (seeking the beneficial and avoiding the harmful). Consideration of what is useful or harmful is dependent on human reason, through which things are determined and distinguished as such.

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[35] Muḥammad Muṣṭafā Shalabī, *Al-Madkhal fī al-Ta'rīf bī al-Fiqh al-Islāmī* (Beirut: Dār al-Nahḍah al-'Arabīyyah, 1985), 27.

[36] Rūḥī Al-Ba'labaki, *al-Mawrid: A Modern Arabic-English Dictionary* (Beirut: Dār al-'Ilm lil-Malāyīn, 1991), 118.

[37] Bernard Weiss, "Interpretation in Islamic Law: The Theory of Ijtihad," *American Journal of Comparative Law*, Vol. 26, No 2. (1978): 199.

'Abduh believed that independent thinking (i.e. the exercise of *ijtihād*) would enlarge the scope of knowledge because most of the aspects of *mu'āmalāt* can be further elaborated with the use of *'aql*. In order to observe the role of *'aql* and revelation in Islamic law, we may look at some methodologies of legal reasoning in *uṣūl al-fiqh* which can serve as valid *dalā'il* (proofs, sing. *dalīl*) in addition to the *Qur'ān* and *Ḥadīth*. *Fiqh*, is the result of the exercise of human intellect in deciphering the *Qur'ān* and *Ḥadīth* and in deriving principles and laws from them. The term *fiqh* literally means to understand, grasp, or comprehend[38] and to do so one needs intellect (*'aql*). Technically, in the context of Islamic jurisprudence, *fiqh* refers to scholarly efforts to ascertain the *aḥkām al-shar'īyah* (Islamic law) in detail by exploring its *dalā'il* through the *Qur'ān* and the *Ḥadīth*. According to Muḥammad Muṣṭafā Shalabī, *fiqh* is the practical knowledge of the *sharī'ah* which is derived from detailed sources.[39] *Fiqh* is knowledge of Islam through its laws, the science of the laws of Islam. Such an understanding and interpretation requires *ijtihād*, and 'Abduh was well aware of this need to interpret the *Qur'ān* and the *Ḥadīth* and to derive laws from them.

The *dalā'il* referred to above include *"ijmā'* (juristic consensus), *qiyās* (analogical deduction), *istiḥsān* (juristic preference), and *al-maṣāliḥ al-mursala* (public interest)."[40] These methods are meant to solve problems in the light of the *Qur'ān* and the *Ḥadīth* as well as the general principles of the *sharī'ah*.[41] All of these methods involve the use of human

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[38] Al-Ba'labakī, *Al-Mawrid*, 831.

[39] Muḥammad Muṣṭafā Shalabī, *Uṣūl al-Fiqh al-Islāmī* (Beirut: Dār al-Nahḍah al-'Arabīyyah, 1986), 17.

[40] *Ibid.*, 62.

[41] Nādiyah Sharīf 'Umarī, *Al-Ijtihād fī al-Islām: Uṣūluhu, Aḥkāmuhu, Afāquh* (Beirut: Mu'assasah al-Risālah, 1981), 35-42.

reason. They are used when the *fuqahā'* cannot directly find the solution to a problem in the *Qur'ān* or the *Ḥadīth*.

Thus, it can be said that 'Abduh uses reason as an instrument for understanding what the revelation intends. As al-Ghazzālī put it, "the most perfect knowledge is the science which reconciles reason and revelation or reason and the *sharī'ah*. *Uṣūl al-fiqh* belongs to this kind of science."[42] Revelation will not be understood by Muslims if they do not attempt to find out what the revelation is about. Therefore, *'aql*, according to 'Abduh, is the closest friend of revelation as it helps man understand the sacred texts.[43] If man cannot use *'aql* properly, he remains incapable of showing due respect to God who created him. The secondary sources of Islamic law, such as *ra'y*, *qiyās*, *istiḥsān* and *istiṣlāḥ (al-maṣlaḥah al-mursalah)*, all use *ijtihād*, and *ijtihād* itself ultimately involves the use of reason.

In his opinions, 'Abduh based himself on *'aql*, as well as the *Qur'ān* and *Ḥadīth* and other sources, as will be shown later. For 'Abduh, the sources of Islamic law were classified into the two categories of revelation and reason. He regarded the *Qur'ān* and *Ḥadīth* as the sources of Islamic law, and stated that "the *Qur'ān* is the primary religious book."[44] It is, according to him, a text whose authenticity or integrity is beyond question and which contains general rules which are in conformity with the laws of nature.[45] In viewing the *Qur'ān* as the main source of Islamic law, 'Abduh did not always adhere to the literal meaning of the

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[42] Al-Ghazzālī, *Al-Mustasfā min 'Ilm Uṣūl al-Fiqh*, Vol. I (Cairo: Ṣāhib al-Maktabah al-Tijāriyyah al-Kubrā, 1937), 5.

[43] 'Abd al-Ḥalīm al-Jindī, *Al-Imām Muḥammad 'Abduh* (Cairo: Dār al-Ma'ārif, 1979), 108.

[44] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. I, 182.

[45] *Ibid.*

revealed text. He warned judges (*qāḍī*s) against basing their decisions on the literal meaning of the text (*naṣṣ*) alone. He pointed out that since *fīqh* means "understanding", whoever makes a legal decision on the basis of the literal meaning of the text only, without understanding the spirit of the law (*rūḥ al-Sharī'ah*), is not a *faqīh* (jurisconsult).[46] In this regard, he re-introduced the legal maxim "*inna al-'ibrata bi al-maqāṣid wa al-ma'ānī lā bi alfāẓ wa al-mabānī*," i.e. consideration is to be given to the intentions and meanings, not to merely words and the phrases.[47] Consequently 'Abduh also opposed the *ẓāhirīyah* trend and its literal understanding of the text without recourse to reason.[48]

'Abduh's views on reason (*'aql*) and revelation can be seen with reference to his interpretation of the sacred texts. Quraish Shihab, who has analyzed 'Abduh's ideas on exegesis, argues that 'Abduh did not wish to interpret the particular details of the *Qur'ān*, nor the ambiguous verses, nor those verses which could not be interpreted by human reason.[49] From the *Tafsīr al-Manār*, one can observe that 'Abduh's way of commenting on the *Qur'ān* tends to be pragmatic. He sought to interpret the *Qur'ān* as a whole, bringing out its universal message. He did not simply interpret fragments of the *Qur'ān* or relate such fragments to events which occurred at the time of the Prophet or earlier.[50] 'Abduh believed that interpreters (*mufassirs*) of the *Qur'ān* cannot avoid interpreting it in the light of their intellect,

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[46] Muḥammad Rashīd Riḍā, *Tārīkh al-Ustādh al-Imām Muḥammad 'Abduh*, 3 Vols. (Cairo: Dār al-Manār, 1931), I, 613.

[47] *Ibid.*

[48] M.M. Sharif, *op. cit.*, 1505.

[49] M. Quraish Shihab, *Membumikan al-Qur'ān: Fungsi dan Peran Wahyu dalam Kehidupan Masyarakat* (Bandung: Penerbit Mizan, 1992), 78.

[50] M. M. Sharif, *op. cit.*, 1507.

the quality of their knowledge, and their contemporary cultural conditions. Since our own intellectual situation and cultural conditions are not the same as those of past interpreters, we must be cautious and critical in reading previous *tafsīr*s. Consequently, it is among the duties of present day interpreters to interpret the *Qur'ān* in accordance with the present intellectual situation as well as the contemporary social and cultural conditions.

Several of the principles underlying 'Abduh's *Tafsīr*, are related to his legal thought. These include:

> **[1]** The diversity and completeness of the *Qur'ān*, **[2]** The textual unity of every sūrat (chapter) and the link between the āyāt (verses), **[3]** The *Qur'ān* as the main source of the *sharī'ah* is placed above the *fuqahā'* and their *madhhab*s, **[4]** The battle against *taqlīd* and stagnation, **[5]** The use of reason and the scientific method of research and reaching conclusions, **[6]** The use of reason (*'aql*) to explain the extraordinary and bring it nearer to what is ordinary, (especially as regards the use of magic), **[7]** The need to think more deeply about what the *Qur'ān* has left ambiguous, **[8]** Basing social life on the principles of the *Qur'ān*.[51]

For purposes of Qur'ānic interpretation, 'Abduh accepted only *Ḥadīth al-mutawātir*. He was extremely reluctant to accept *Ḥadīth āḥād* as a source of Islamic law.[52] He also questioned the validity of the transmission of *Ḥadīth* through the use of *isnāds* (chains of authority),[53] and said, "what is the value of a *sanad* when I do not know the transmitters myself, their condition and their places"?[54] But, he further argued, knowing the condition

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[51] Shaḥātah, *'Ulūm al-Tafsīr*, 40-191.

[52] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. I, 181.

[53] *Isnad* means a chain of reporters who transmit a particular *Ḥadīth* or tradition. *Musnad* is a collection of *aḥādīth* which are arranged according to the reporters who have related them, such as *Musnad* Abī Dāwūd, etc.

[54] 'Amārah, *op. cit.*, 184.

of the transmitter was almost impossible.[55] Therefore, as al-'Āṭī has noted, 'Abduh accepted *Ḥadīth* only if he believed it to be in accordance with the meaning of the *Qur'ān*, otherwise he rejected it.[56]

To sum up, 'Abduh believed that reason in conjunction with revelation played an important role in the development of Islamic law, and particularly in the practice of *ijtihād*. By combining these two principles in the exercise of *ijtihād*, he hoped that the *'ulamā* would be able to solve the problems of modern times, and that reason would be used in the service of the Ummah.

B. *Ijtihād* versus *Taqlīd*

1. *Ijtihād* and its problems

Ijtihād has played an important role as a tool in resolving problems faced by Muslims since the early periods of Islam. At the time of the Prophet every problem was solved by him either in his capacity as the Prophet of God (through revelation), or through personal *ijtihād*, which too was under the guidance of God. After the Prophet passed away, the *Qur'ān* was compiled and preserved by his Companions. It addressed various aspects of human existence, including both *'ibādāt* (ritual and worship) and *mu'āmalāt* (relationship among people in society), although verses dealing with the latter are few. As 'Abd al-Wahhāb al-Khallāf observed:

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[55] *Ibid.*

[56] 'Abd al-'Āṭī Muḥammad Aḥmad, *Al-Fikr al-Siyāsī li al-Imām Muḥammad 'Abduh* (Cairo: Al-Hay'ah al-Miṣrīyyah al-'Āmmah lil-Kitāb, 1978), 118.

> There are only 228 *āyāt al-aḥkām* (legal verses) on *mu'āmalāt*. The specifications of those āyāt are: on family law, i.e. marriage, divorce, inheritance, 70 verses; on civil law, i.e. trade, contract, mortgage, rent, company, etc, 70 verses; on penal law 30 verses; on the relationship between Muslims and non-Muslims, 25 verses; on jurisdiction and procedures, 13 verses; on the relationsnip between rich and poor, 10 verses; on the state, 10 verses.[57]

Many issues arose after the death of the Prophet for which no solution was found in the *Qur'ān*. In most cases these issues sprang up as a result of external factors, e.g. through contact with foreign cultures, rather than internal ones. Situations demanding resolution began to emerge as early as the period of the second Caliph.

'Abduh was aware of the urgent need to solve the many problems posed by the modern world. He attempted to free the Islamic tradition from its fetters, and to show that Islam was compatible with the sound principles of modern civilization. By advocating *ijtihād*, 'Abduh hoped to provide solutions to some of these pressing problems.

The Terminology of *Ijtihād*

According to the *uṣūliyyūn* (experts in Islamic jurisprudence), *ijtihād* means "self exertion"; in its technical sense, *ijtihād* signifies exerting oneself in understanding and interpreting the *sharī'ah*.[58] According to al-Āmidi, *ijtihād* technically means "exhausting one's efforts in verifying a legal uncertainty, through the application of certain legal rules."[59]

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[57] 'Abd al-Wahhāb al-Khallāf, *'Ilm Uṣūl al-Fiqh* (Cairo: Maṭba'at al-Nashr, 1956), 35-36.

[58] 'Abduh, *Tafsīr al-Manār*, Vol. V, 204

[59] Sayf al-Dīn Abū al-Ḥasan Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, 3 Vols. (Cairo: Muḥammad 'Alī Ṣubayḥ, 1968), III, 204-205

Muhammad Hasan Hītū defines it as "strenuous effort to derive the rules of Islamic law."[60] 'Abduh himself defines it as "the utmost efforts of Islamic jurists for elucidating the unclear rules of the *sharī'ah*."[61] In short, *ijtihād* can be defined as the jurist's exerting the utmost effort with regard to any legal question in order to formulate an independent opinion on it. Those who practice *ijtihād* are known as *mujtahid*s (qualified jurists).

The Key Features of 'Abduh's *Ijtihād*

'Abduh justified his use of *ijtihād* on the basis of the following *Qur'ān*ic verse: "And strive hard in God's cause with all the striving that is due to Him; It is He who has elected you [to carry His message], and has laid no hsrdship on you in [anything that pertains to] religion...."[62] This injunction was one of the universal principles of Islamic jurisprudence (*qawā'id uṣūl al-fiqh).*

Other principles of Islamic jurisprudence that became the basis of 'Abduh's views with respect to *ijtihād* were the following: "difficulty brings about ease" (*al-mashaqqah tajlibu al-taysīr);* "the prevention of malicious acts precedes the acquisition of benefit" (*dar' al-mafāsid muqaddamu 'alā jalb al-manāfi');* "necessity renders permissible what is otherwise prohibited" (*al-ḍarūrāt tubīḥu al-maḥẓūrāt*); and "whatever was prohibited due to its essence is permitted due to necessity" (*wa mā ḥurrima li sadd al-dharī'ah yubāḥu li al-ḥājah*).[63]

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[60] Muḥammad Ḥasan Hītū, *Al-Wajīz fī Uṣūl al-Tashrī' al-Islāmī* (Beirut: Mua'ssasah al-Risālah, 1983), 495.

[61] 'Abduh, *Tafsīr al-Manār*, Vol. V, 204.

[62] Sūrat al-Ḥajj:78.

[63] 'Abduh, *Tafsīr al-Manār*, Vol. VI, 270.

According to the *fuqahā'*, one of these principles, viz. that difficulty brings ease, could be applied to matters which were not touched upon by the *nass*.

Another guiding principle of 'Abduh's *ijtihād* was the following statements of the Prophet: "The Muslims adhere on their religious stipulations; except those which render the unlawful lawful or the lawful unlawful" (*al-muslimūna 'inda shurūṭihim illā sharṭan ḥarrama ḥalālan aw aḥalla ḥarāman*). Another statement is to the effect that: "Since lawful or unlawful matters have already been mentioned in the *Qur'ān* and the *Ḥadīth*, other cases which have not been mentioned in those texts are areas of exemption" (*Al-Ḥalālu mā aḥallahu Allāhu wa al-ḥarāmu mā ḥarramahu Allāhu fī kitābihi, wa mā sakata 'anhu fahuwa 'afw*). Therefore, *ijtihād* relates to things not mentioned in the *Qur'ān* and the *Ḥadīth*, and denotes interpretation according to the *fuqahā'*'s knowledge. The *fuqahā'* are allowed to practice *ijtihād* within acceptable limits, which collectively are called *al-ibāḥah* in *uṣūl al-fiqh*. *Al-Ibāḥah* was a main principle in practising *ijtihād*, particularly in *fiqh* matters. This principle generated differences of opinion, but differences of opinion are considered by Muslim scholars to be a mercy from Allāh (*raḥmah*).[64]

With regard to divine law as revealed in the *Qur'ān*, 'Abduh stated that its interpretation should be undertaken. Reward, he said, had been promised for the cumulative ability attained to by the community, not for what the intellects of the few could aspire to.[65] In this respect, 'Abduh seems to be referring to the tradition of the Prophet that if a person is engaged in the search for truth with all his heart, he will attain reward even if he fails to

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[64] Al-Jindī, *op. cit.*, 115.

[65] 'Abduh, *al-Islām wa al-Naṣrānīyah*, 58.

reach the truth; if the result of *ijtihād* is wrong, Allāh would grant forgiveness.[66] An illustration of this point is the Prophet's conduct in distributing the booty from the battle of Tabūk;[67] he gave a share even to the *munāfiqūn* (hypocrites) and forgave them.[68]

Legitimacy of *Ijtihād* in 'Abduh's view

The starting point of 'Abduh's views on the legitimacy of continuing in the practice of *ijtihād* was the injunction of the *Qur'ān*: "O you who attained to faith! Pay heed unto God, and pay heed unto Apostle and unto those from among you who have been entrusted with authority; and if you are at variance over any matter, refer it unto God and the Apostle...." [69] Basing himself on this verse, 'Abduh argued that people were allowed to practice *ijtihād*, for Allāh had left it to the people to regulate their worldly matters, the *mu'āmalat*, on condition that their actions did not conflict with the *sharī'ah*. 'Abduh also invoked the jurisprudential principle that "the foundation of things is permission (*al-aṣl fī al-ashyā' al-ibāḥah*).[70] He interpreted the verse: "He it is who has created for you all that is on earth...."[71] to mean that such matters as those of state and politics had been given to the people to manage. In Doing

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[66] 'Abduh, *Tafsīr al-Manār*, Vol. II, 17; see also Vol. XII, 212.

[67] See Sūrat al-Anfāl, verse 67.

[68] Sūrat al-Tawbah:43, see 'Abduh, *Tafsīr al-Manār*, Vol. XII, 212.

[69] Sūrat al-Nisā':59.

[70] 'Abduh, *Tafsīr al-Manār*, Vol. VII, 140

[71] Sūrat al-Baqarah:29.

so, people must fulfil the principle of *shūrā*[72] (mutual consultation), for the *Qur'ān* speaks approvingly of those: "and whose rule [in all matters of common concern] is consultation among themselves...."[73] Mutual consultation here means, according to 'Abduh, practising *ijtihād* on the basis of original texts.

But who had the legitimate authority to legislate and interpret the law? From the *Qur'ān* 4:59 quoted above, it can be inferred that the *ūlū al-amr* had such legal authority. However, the *'ulamā'* disagreed on who who the *ūlu al-amr* were. Some said that the *ūlū al-amr* were rulers (*umarā'*), who were to be obeyed on condition that they did not force their subjects to do things which were prohibited in the *nass*. They could also interpret the law in matters which were not mentioned in the *nass*. On the other hand, according to the view of the *Shī'ah*, the *ūlū al-amr* were the infallible (*ma'ṣūm*) Imāms.[74] This opinion however was not accepted by non-Shi'ites.[75] In the view of Muḥammad Rashīd Riḍā, the *ūlū al-amr* were the leading figures of the community and comprised the great *'ulamā'*, teachers, jurists, *rijāl al-shūrā*, engineers, merchants, and physicians.[76]

For 'Abduh, the *ūlū al-amr* were the *ahl al-ḥall wa al-'aqd* of the Muslim community. They consisted of *umarā'*, *'ulama'*, army leaders and all the other leaders and *zu'amā'*. In short, all those who were concerned with the needs of society and public interest comprised

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[72] Shūrā means consultation or the consultative/representative form of government commanded by Allah (*Qur'ān* 3:159 and 42:38 above) and practised by the Prophet and *al-Khulafā' al-Rāshidūn* after him.

[73] Sūrat al-Shūrā:38, 'Abduh, *Tafsīr al-Manār*, Vol. VII, 140.

[74] *Ibid.*, Vol. V, 181.

[75] *Ibid.*, Vol. V, 181.

[76] *Ibid.*, Vol. IV, 130.

the *ūlū al-amr*.[77] People were to follow the decisions arrived at through the former's *ijtihād*, though in matters of *mu'āmalah* only. The *ūlū al-amr*, moreover, were recognized as such on the basis of their great efforts for the improvement of society. According to 'Abduh, the *'ulamā'* if they were to be counted among the *ūlū al-amr*, should fulfil three main legal criteria, i.e. their *ijtihād* should be based on the *Qur'ān* and the *Ḥadīth*; it should provide justice for everyone; and it should preserve public interest, which relates to public and personal needs (*al-maṣlaḥah al-'āmmah wa al-khāṣṣah*).[78] 'Abduh emphasized, however, that obedience to what the *ūlū al-amr* said relating to Islamic law, did not mean *taqlīd*, but *ittibā'*, which is supported by *dalā'il* (proofs) from the *Qur'ān* and the *Ḥadīth*.[79]

Basing himself on the opinion of Fakhr al-Dīn al-Rāzī, 'Abduh argued that there were two forms of agreement, [1] the agreement of the people (*ummah*); and [2] the agreement of the *ahl al-ḥall wa al-'aqd*. However, al-Rāzī's opinions were quite different from those of 'Abduh. By *ūlū al-amr*, al-Rāzī meant the *umarā'* and the *sulṭan*.[80] 'Abduh's view was based on the reliable opinions of the *'ulamā'* who had written *tafsīr*s of the *Qur'ān*. To him, the *ūlū al-amr* were: *al-Khulafā' al-Rāshidūn*, army leaders, *'ulamā'* who gave *fatwā*s and taught people about Islam, and all those leaders who preserved themselves from sin.[81] On the *ijtināḍ* of the *ūlū al-amr* after the death of the Prophet, 'Abduh quoted al-Dārimī and al-

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[77] *Ibid.*, Vol. V, 181.

[78] *Ibid.*, Vol. VII, 140; see also Vol. II, 89.

[79] *Ibid.*, Vol. II, 90-91.

[80] *Ibid.*, Vol. V, 183.

[81] *Ibid.*, Vol. V, 183.

Bayhaqī as follows:

> In deciding the law, Abū Bakr used to refer to the *Qur'ān*. If he found a relevant passage, he decided upon the case, but if he could not find one, he looked in *Ḥadīth* and decided on the basis of it. If he could not make a decision, he would say so to the Muslims, informing them that he had such and such a case for which he could find no precedent in the *Qur'ān* or the *Ḥadīth*. He would ask if anyone knew any precedents. If any of them replied in the affirmative and said that the Prophet had deliberated on such and such a case, Abū Bakr would take this decision and conduct mutual consultation with the Muslims. If they agreed on the case, Abū Bakr would make his decision accordingly.[82]

'Abduh goes on to state:

> 'Umar ibn al-Khaṭṭāb performed the same as Abū Bakr had. If he did not find a case in the *Qur'ān* and the *Ḥadīth*, he looked at Abū Bakr's legal decisions. If he found a precedent, he decided according to it, but if he did not, he asked Muslims' leaders and '*ulamā*' to discuss it; and if they agreed in their opinions, he decided accordingly.[83]

After the period of *al-Khulafā' al-Rāshidūn*, there was the era of Banū *Umayyah* (A.D. 661-750) which, according to 'Abduh, saw the abandonment of the principle of *shūrā*. The Umayyads based their rule on tribal loyalty (*'aṣabīyah)* rather than the authority of the *ūlū al-amr* of the Muslims. After collapse of the Umayyad dynasty, the Banū 'Abbās came to power. The Abbasids, according to 'Abduh, were a Persian-backed Arab dynasty. They were preoccupied with conquering lesser kings and imposing their rule on them. This resulted in the destruction of the principle of *shūrā*. They did not recognize the *ūlū al-amr* because they disagreed with the *amīr* and jurists in matters of religion and science. Then, there came Ottomans, who perpetuated dynasty rule. During this period there were no *ūlū al-amr* who understood *fiqh*. According to 'Abduh, the Ottomans thought that the *ūlū al-amr* could be

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[82] *Ibid.*, Vol. V, 195-196.

[83] *Ibid.*

found not only from among the Muslims, but also from among non-Muslims.[84]

The *ūlū al-amr* in the modern world, in 'Abduh' view, consist of the great '*ulamā*', the army leaders, Islamic jurists, experts in commerce and agriculture, people who are concerned with *al-maṣlaḥah al-'āmmah*, heads of universities, physicians, and so forth.[85] Muslims depend on them in matters of *al-maṣlaḥah al-'āmmah*. Every country should know the people who are their leaders and seek their opinions through mushāwarah. The *ūlū al-amr* should be chosen by the community to govern the state and manage the community's affairs without any pressure from the government or from others. If their selection is made not by the community but by the government, it is illegal (*bāṭil*) from the point of view of Islam. There would be no obligation to obey them, according to the *Qur'ān*. The *ūlū al-amr* are to representatives of the community, which means, according to 'Abduh, that the community should have the right and to choose them, with no pressure from outside.[86] The community then pledges an oath of allegiance (*bay'ah)* to them.[87]

As for the function of the *ūlū al-amr* according to 'Abduh, their main duty is to discuss matters of importance to the community. This is stipulated explicitly in the *Qur'ān*:

> And if any [secret] matter pertaining to peace or war comes within their ken, they spread it abroad, whereas, if they would refer it unto the Apostle and unto those among the believers who have been entrusted wit authority, such of them as are engaged in obtaining intelligence would indeed know [what to do with] it. And but for God's bounty towards you, and His Grace, all but a

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[84] *Ibid.*, Vol. V, 197.

[85] *Ibid.*, Vol. V, 198.

[86] *Ibid.*, Vol. V, 199.

[87] *Bay'ah* means the oath of allegiance pledged to the *Khalīfah* by the leaders of the Ummah or by the members of the Ummah at large.

few of you would certainly have followed satan.[88]

With respect to differences of opinion among the *ūlū al-amr*, some scholars have argued that in such a case the people should follow established opinions. 'Abduh, however, disagreed with this view and suggested that we go back to the *Qur'ān* and the *Ḥadīth* and the principles of Islam, because additional opinions did not have any guarantee as to their rightcousness. Moreover, 'Abduh stated that many people had formed groups and members of a group assisted each other; one assisting the other even in things which were wrong.[89]

'Abduh held that the *'ulamā'* among the *ūlū al-amr* were divided into two categories, i.e. *ahl al-athār* or *ahl al-Ḥadīth*, and *ahl al-ra'y*.[90] This categorization, according to 'Abduh, could be found in every period. *Ahl al-ra'y*[91] consisted of the Imāms of *madhhabs* who practiced *ijtihād* and avoided *taqlīd*, while *ahl al-Ḥadīth*[92] were *'ulamā'* who used the sacred texts more than *ra'y*. Amongst the *ahl Ḥadīth* and *ahl fiqh uṣūlī* (experts in Islamic jurisprudence) of the fifth century was Abū Muḥammad 'Alī Ibn Aḥmad Ibn Sa'īd Ibn Ḥazm

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[88] Sūrat al-Nisā':83.

[89] For example, if there were two hundred members on a council, a hundred and ten of them might follow one party. These would then want to decide cases on the basis of their own opinions. Some members of the council would know what were doing was wrong, but would go along with the majority view of their party. Thus, if sixty members followed fifty other members, the number of members who agreed with the wrong decisions would be a hundred and fifty, with the result that less than half of the members stood for what was right. See 'Abduh, *Tafsīr al-Manār*, Vol. V, 190.

[90] *Ibid*, Vol. VII, 143.

[91] According to ibn al-Qayyim, there are two kinds of *ra'y:* first, mere opinions which are based not on *dalīl* but rather on supposition; second opinions which are based on the *Qur'ān* and the *Ḥadīth*. See 'Abduh, *Tafsīr al-Manār*, Vol. VII, 164.

[92] Coulson called them "supporters of Traditions who maintained that the use of juristic reasoning in any form was both illegitimate and unnecessary. Outside the *Qur'ān*, they argued, the only true source of law lay in the practice of the Prophet Muḥammad, the one person who was qualified to interpret and explain the divin will". See N.J. Coulson, "Islamic Law," *An Introduction to Legal Systems* (London: Sweet & Maxwell, 1968), 54-79.

(994-1064). He compiled many books on Islamic jurisprudence, and did not base his opinions on *ra'y* or *qiyās*.

Ibn Ḥazm's *fiqh* works were blindly followed by Muslims of his age and became the sources of their *madhhab*s. The followers of these *madhhab*s were ignorant of the *naṣṣ*, and merely followed the opinions of particular Imāms. The scholars who followed the opinions of the Imām, were called *mujtahid muntasib*. Despite his adherence to a *madhhab*, al-Shaykh 'Izz al-Dīn Ibn 'Abd al-Salām practiced *ijtihād*, not *taqlīd*, and was well known as a *mujtahid muṭlaq*.[93]

As a scholar, Taqī al-Dīn Aḥmad Ibn Taymīyah (1263-1328) had a stature equal to Ibn Ḥazm's. He was well known as a reformer of the seventh century A.H/fourteenth century A.D.[94] He benefitted from the books of Ibn Ḥazm, although he disagreed with using only the *naṣṣ* as the source of law. He said that the *ahl -al-ra'y* did not resort only to *qiyās*, but could also distinguish between the sound *(ṣaḥīḥ) qiyās*, which fits with the *naṣṣ*, and the unsound (bāṭil) *qiyās*. The views of ibn Taymīyah on *ahl al-Ḥadīth* were inherited by his disciple, Abū 'Abd Allah Muḥammad ibn al-Qayyim al-Jawziyya.[95]

Subsequently, to better interpret the *Qur'ān*, many collections of *ḥadīth* were compiled, including *Fatḥ al-Bārī*, and *Sharḥ Ṣaḥīḥ al-Bukhārī*, which was written by Aḥmad ibn Ḥajr al-'Asqalānī. Al-'Asqālānī (1372-1449), was a famous scholar of ninth-century Egypt. This book was a compilation of extracts from works on *Ḥadīth* and the opinions of

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[93] All the books of the great Imāms, such as Ibn Ḥazm, Ibn Idrīs al-Shāfi'ī, Ibn Abī Shāmah are preserved in the Dār al-Kutub al-Kubrā in Egypt.

[94] *Tafsīr al-Manār*, Vol. VII, 145-146.

[95] *Ibid.*, Vol. VII. 145.

the *'ulamā'* on *'aqīdah*, *fiqh*, and literature.[96] It greatly influenced scholars of the next generation such as Muḥammad Ibn 'Alī al-Shawkānī (1759-1839). The latter devoted his book *Nayl al-Awṭār*, to matters of *fiqh Ḥadīth*, and another book, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaq min al-'Ilm al-Uṣūl*, to Islamic jurisprudence.[97]

As for the *ahl al-ra'y*, their *ijtihād* was based on their personal opinion. During the early development of Islamic law, according to 'Abduh, *ijtihād* meant *ijtihād al-ra'y*, the exercise of "opinion" or personal judgement.

Detailed explanation is provided by 'Abduh regarding the fact that *qiyās* was regarded by *ahl al-Ḥadīth* as based on reasoning more than *naṣṣ*. Ibn Ḥazm did not use *qiyās* in interpreting the sacred texts, because he believed that the commands of Allah did not allow it (sūrat al-Mā'idah 59); he insisted that Muslims should base their opinions only on the *Qur'ān* and the *Ḥadīth*.[98] His arguments were based on verses of the *Qur'ān*, such as sūrat al-Mā'idah 3: "... This day have I perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion...." On the other hand, ibn al-Qayyim (1292-1350) was one of the *'ulamā'* who, according to 'Abduh, employed *qiyās* as a method of interpretation. He explained that there were invalid and valid types of *qiyās*. Types of invalid *qiyās*[99] include: [1] opinions which contradicted the *naṣṣ*; [2] opinions which are based only on presumption, rather than on indications from the *Qur'ān* and the *Ḥadīth*; [3]

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[96] *Ibid.*

[97] *Ibid.*

[98] *Ibid.*, Vol. VII, 151.

[99] *Ibid.*, Vol. VII, 162.

opinions which led to *bid'ah*; [4], opinions which threaten to change the *sunnah*; and lastly, opinions not based on the *Qur'ān* and *Ḥadīth*.

In addition, Ibn al-Qayyim enumerated the types of sound *qiyās*:[100] [1] opinions of the ṣaḥābah (the companions of the Prophet); [2] the opinions of interpreters (*mufassirūn*) who knew how to interpret the sacred texts; [3] opinions based on mutual consultations of the *ahl al-shūrā*. According to al-Shāfi'ī, *ijtihād* is often used synonymously with *qiyās*: "They are two terms with the same meaning."[101] However, original thinking is not discouraged. Whether implicitly or explicitly, originality in the law still depends on the logic and reasoning of legal science (*fiqh* or *sharī'ah*), or at least certain parts of it. If this is lacking, original thinking or *ijtihād* may refer to accepted custom or even to natural law.

Requirements for a *Mujtahid*

According to Islamic law, the *mujtahids* are required to believe in God, have knowledge of (*ma'rifah*) His attributes, and believe in the Prophet Muḥammad. They are also required to be well-versed in the *sharī'ah*, understand how to interpret the sacred texts, possess *'ilm al-Ḥadīth*, have the ability to classify sound *Ḥadīth* and weak *Ḥadīth*, know how to distinguish between reliable and unrealible transmitters of *ḥadīth* (*jarḥ* and *ta'dīl*), and understand the Arabic language.[102] Likewise a clear understanding is needed on their part of the general premises upon which deduction or induction are based. It is also required that

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[100] *Ibid.*, Vol. VII, 164.

[101] Al-Imām Muḥammad ibn Idrīs al-Shāfi'ī, *al-Risālah* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1969), 295-303.

[102] 'Abduh, *Tafsīr al-Manār*, Vol. V, 204.

they have knowledge of the case at hand and of all the previous arguments related to it.

'Abduh suggests that the '*ulamā*' who have knowledge should undertake their own *ijtihād*, as the opinions of the previous *fuqahā*' are not necessarily in accordance with the present circumstances. Since "rules" are clearly different from the law itself, such rules might be changed and adapted through *ijtihād* to changes of conditions and circumstances, provided that this *ijtihād* is legitimately based on revelation and a sound methodology.[103] The methods used by the reformers to re-interpret the classical texts are found in their writings on *uṣūl al-fiqh*. All strongly emphasized the importance of practising *ijtihād*.

Examples of this method of reform include the problems of divorce and polygamy. The reformers re-interpreted the classical texts concerning both divorce and polygamy, and came to the conclusion that certain modifications had to be introduced. As a result, the concept that no divorce "would be effective except by conduct of court came into being."[104] It is also stipulated that a man who has a wife should not be permitted to marry another woman without the consent of the court.[105]

The Fields of *Ijtihād*

According to 'Abduh, wherever the *Qur'ān* gives no direct council, the *mujtahid*s can make legal decisions. As the times changed many new problems arose which the *Qur'ān* did

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[103] Every effort of *ijtihād*, however, must be based on the sacred texts and the methodology authorized by the legal schools, i.e the *madhhab*s of Imām Abū Ḥanīfah (80-150 A.H./699-767 A.D.), Imām Mālik (93-179 A.H./713-795 A.D.), Imām al-Shāfi'ī (150-204 A.H./767-820 A.D.), and the *madhhab* of Imām ibn Ḥanbal (164-241 A.H./780-855 A.D.).

[104] Norman Anderson, *Law Reform in the Muslim World* (London: The Athlone Press, 1976), 57.

[105] Anderson, *Law Reform*, 62.

not address or touch upon. 'Abduh divided the content of the *Qur'ān* into *qaṭ'ī naṣṣ* (the clear verses of the *Qur'ān* which do not need explanation) and the *ẓanni naṣṣ* (unclear verses which sometimes have more than one meaning).[106] The former is obligatory for every Muslim to learn and to follow. Since the *qaṭ'ī naṣṣ* is by definition unambiguous, no *ijtihād* is allowed. This category of the *sharī'ah* includes matters of *'ibādāt* and what is *ḥalāl* and *ḥarām* in Islam. This kind of *naṣṣ* gave rise to different opinions amongst the *'ulamā* and the *madhhabs*. On the other hand, the *ẓannī naṣṣ*, which includes matters relating to human actions and to the *mu'āmalāt*, such as politics, culture, etc, is open to *ijtihād*. Therefore, the *ijtihād* of the *ūlū al-amr* relating to *al-maṣlaḥah al-'ammah* is restricted to matters of *mu'āmalah*, such as judicial matters (*al-qaḍā'iyah*), politics (*siyāsah*) and municipal affairs and did not extend to *'ibādāt* and personal matters. In other words, problems involving the public interest were the only ones open to solution through *ijtihād*. Matters of *'aqīdah*, *'ibādah* and related matters were off limits.[107] The five daily prayers, for example, may not be made subject to *ijtihād*.

'Abduh also argued that *ijtihād* involves freedom of judgement; freedom in sofar as it provides a new understanding of the original texts, free from medieval interpretations. *Ijtihād* is also free as long as it rejects "the passive acceptance of dogmas from religious authorities without asking for proof and without thinking of the right of free examination and personal initiative" (*taqlīd*).[108]

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[106] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 49, and see also Vol. II, 109.

[107] *Ibid.*, Vol. I, 613; see also 'Abduh, *Tafsīr al-Manār*, Vol. VII, 165, and Vol. III, 327-328.

[108] 'Uthman Amin, *Islam and West*, e.d. Frye, 166.

H.A.R. Gibb has argued, however, that *ijtihād* does not imply "freedom of judgment" as modernists such as 'Abduh would have us believe.[109] He bases his argument on the consideration that *ijtihād* literally means "exerting oneself," in the sense of striving to discover the true application of the teachings of the *Qur'ān* and the *Ḥadīth* in a particular situation, without going against the obvious sense of these teachings. On the other hand, in Gibb's opinion, *ijtihād*, as it has been propagated by modernists; is hardly valid because it needs *ijmā'*. For 'Abduh, modernist interpretation remains individual, personal, and therefore questionable unless it secures the approval of *ijmā'*, against which it has raised its voice. What the modernists were striving for was to reach a new *ijmā'* which could only be achieved when the *'ulamā'* exerted themselves to find new solutions to new problems, and stopped following the traditional way of thinking. Until this outlook has been achieved, the modern *'ulamā'* have the right to practice *ijtihād* among themselves. In other words, the traditional *'ulamā'* were to be deprived of their authority till they responded seriously to the new circumstances. With this practical formulation of principle, *ijtihād* was validated and practised by 'Abduh himself in numerous cases.

Given the changing situations, the *'ulamā'* were required to solve problems faced by Muslims and to provide rulings on matters not explicitly mentioned in the *Qur'ān* or the *Ḥadīth*. 'Abduh was appreciative of the *mujtahid*s, no matter which *madhhab* they came from. In his view, the *mujtahid*s were the people who made efforts to arrive at the truth, with good intention. and with the highest *taqwā* (piety). The term *madhhab* was defined by 'Abduh as "the way of looking for proofs (*dalīl*) through which the *fuqahā'* try to understand the *Qur'ān*

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[109] H.A.R. Gibb, *Modern Trends in Islam* (Beirut: Librairie Du Liban, 1975), 12.

and the *Hadīth* and decide the law based on the basis of the text (*nass*), and in terms of the original meaning of the Arabic language and its idioms." For 'Abduh, *madhhabs* provide guidance in deriving rules from the main sources of Islamic law, the *Qur'ān* and the *Ḥadīth*.

The Purposes of 'Abduh's Reforms

'Abduh called for a re-interpretation of the *Qur'ān*. However, he emphasized that re-interpretation of the law by the *fuqahā'* should always take account of the changing circumstances, for the same opinion cannot be applied in different situations and conditions. He tried to read into the text of the *Qur'ān* more than the traditional interpretation would permit, things that would fit new circumstances. Perhaps this was the reason for his attempts at forging a harmonious relationship between revelation and intellect.

As for the reform of Egyptian society, 'Abduh emphasized the need to free thought from blind imitation (*taqlīd*) of the past,[110] to scrutinize new facts liberally, and to apply to them solutions which would be better suited to the spirit and exigencies of the modern age.[111] He strongly believed that Islam could be adapted to modern thought.[112] In his reformist campaign, he employed two important principles as the basis of his own *ijtihād*. The principles, which were being a continuation of what had already been approved of by the jurists but were given a new twist by 'Abduh, were *al-maṣlaḥah al-mursalah* or *al-maṣlaḥah al-'āmmah* and the principle of *talfīq*.

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[110] Muḥammad Aḥmad, *Al-Fikr al-Siyāsī*, 98-99.

[111] M.M. Sharif, *op. cit.*, 1501.

[112] Hourani, *op. cit.*, 144.

Regarding *al-maṣlaḥah al-mursalah*, 'Abduh affirmed that the *Qur'ān* contains general and basic principles suitable to the public interest of any time and place.[113] 'Abduh based his opinions on (*istinbāṭ*), and did not follow the interpretation of a *madhhab* without ascertaining the legal reasoning underlying it.[114] It should be noted that Islamic jurists have followed different methods in performing *ijtihād*. For instance, the traditionalists (represented by jurists of the *Shāfi'ī* school), attempted to set a limit on *ijtihād*, and held that *ijtihād* should be carried out on the basis of a strict interpretation of revelation. Several other jurists, however, insisted on the importance of *ijtihād* on the basis of *al-maṣlaḥah al-mursalah*. 'Abduh carried out his *ijtihād* on the latter basis. It was Imām Mālik who first developed the doctrine of *al-maṣlaḥah al-mursalah*, and 'Abduh was himself of the Mālikī rite, although he also studied Ḥanafī jurisprudence at the Azhar. As a *Qāḍī*, 'Abduh followed the *Mālikī* tradition of taking of *al-maṣlaḥah al-mursalah*, and later instructed other *qāḍīs* to decide the cases before them according to it. A detailed study of 'Abduh's religious opinions and of *al-maṣlaḥah al-mursalah* in 'Abduh's though, will be undertaken in Chapter II.

All legal decisions should depend, 'Abduh held, on the principle of *jalb al-maṣāliḥ* (promoting advantages), and eliminating evil *(dar'u al-mafāsid wa izālatiha)*. These main principles of *al-maṣlaḥah al-mursalah* were used mainly by the Mālikī school, but as al-Qarāfī has shown, *al-maṣlaḥah al-mursalah* was to some extent a feature of all *madhhabs*. Some *dalā'il* for using *al-maṣlaḥah al-mursalah* included, [1] the principle of Islamic law, *lā ḍarara wa lā ḍirār* "do not inflict injury nor repay one injury with another." This *Ḥadīth*

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[113] Fuzlur Rahman, *Islam* (Chicago: University of Chicago Press, 1979), 217; see also Riḍā, *Tārīkh al-Ustādh*, I, 614.

[114] Riḍā, *Tārīkh al-Ustādh*, I, 940.

was narrated by Aḥmad Ibn Ḥanbal and Ibn Mājah, from Ibn 'Abbās; [2] *nafy al-ḥaraj min al-dīn wa ithbāt al-yusr* (eliminating difficulties in religion, and establishing ease).[115]

'Abduh realized that human opinion cannot be unified on any single point. This, he said, was natural, and invoked the testimony of sūrat Hūd 118: "If thy Lord had so willed, He could have made mankind one people, but they will not cease to dispute." Therefore, it is no surprise that the *'ulamā'* disputed about which of the *maṣāliḥ* did or did not accord with the *naṣṣ*.[116] 'Abduh lamented the fact that certain books of the law schools were alone considered authoritative, while the *Qur'ān* was neglected and the message brought by the Prophet (*Rasūl*) deemed useless.[117] Accordingly, he allowed himself a sort of eclecticism (*talfīq*), and blended together various elements from different schools.[118] This eclecticism implied *ijtihād* in choosing (besides originating) the suitable solutions for the new conditions. In other words, he did not adhere to a particular *madhhab*, but followed any which could help resolve new problems. For him, this was a kind of *ijtihād* in reforming Islamic law.

With respect to *talfīq*, according to 'Abduh, there were two categories of opinions. It should be pointed out first, that difference in understanding and thinking are a given on any issue. This was spoken of in sūrat Hūd as quoted above. Although people disputed with each other, they were expected to keep *ukhuwwah Islāmiyyah* (Muslim fellowship). 'Abduh

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[115] This principle was based on Sūrat al-Ḥajj:78, 'Abduh, *Tafsīr al-Manār*, Vol. V, 212; see also Vol. VI, 269.

[116] Najm al-Dīn al-Ṭūfī (d. 716 A.H.) of the Ḥanbalī school of law, advanced *maṣlaḥah* over the *naṣṣ* and *ijmā'* as *'urf* (custom) brought improvements and benefits such as in the area of trading, and was compatible with the aims of the *shar'ah (maqāṣid al-shar'ah)*, 'Abduh, *Tafsīr al-Manār*, Vol. IV, 23-25.

[117] 'Abduh, *Tafsīr al-Manār*, Vol. II, 76, and see also Riḍā, *Tārīkh al-Ustādh*, Vol. I, 943

[118] Hourani, *op. cit*, 142.

illustrates this with an example from his own life: as a student of *Qur'ān*ic exegesis at al-Azhar, his friends had suggested that he not study till midnight as this would affect his health. Another example was the difference in the opinions of the four schools. Their founders sincerely strove with all their effort to understand the sacred texts and their derivatives. Their differences did not create hostility among them. Furthermore, differences of opinion should not lead one to label another as an unbeliever. According to 'Abduh, as long as one did not disregard the *Qur'ān* and respected the Prophet one was still a Muslim, not a *kāfir* (unbeliever).[119]

Diversity of opinion is therefore not a danger to the Islamic community. Nevertheless, if people blindly adhere to one *madhhab* without analyzing it, they will never solve new problems. Muslims, 'Abduh says, have to realize that the earlier *mujtahid*s were ordinary people and their opinions were not always valid; while the undertaking of *ijtihād* is never free of problems, *taqlīd,* which is its exact opposite, negates rational thought itself. Muslims, 'Abduh held, should go back to the original sources, i.e. *al-Qur'ān* and the *Ḥadīth:* true submission is solely to God, not to anyone else, that is, not to the opinions of the previous *fuqahā'*.

'Abduh believed that through the practice of *ijtihād,* modern problems which are not explicitly mentioned in the *Qur'ān* or in the *Ḥadīth,* may effectively be solved. The results of *ijtihād* can grow into a comprehensive system of law, unlimited by time or social conditions. Muḥammad Iqbal was right when he stated that "*ijtihād* was the principle of

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[119] 'Abduh, *Tafsīr al-Manār,* Vol. IV, 23-25.

movement."[120] *Ijtihād* provides modern solutions for modern problems and is thus forward-looking. On the other hand, if Muslims do not practice *ijtihād*, they will lag behind. Through *ijtihād*, 'Abduh wanted to revive Islam and to provide it with a principle by which it could select, adapt and adopt whatever was suitable to its interest. He sought a re-interpretation of Islam,[121] and the key to his re-interpretation was the principle of *ijtihād*.

In examining 'Abduh's views on *ijtihād*, one can conclude that he was a *mujtahid murajjih*,[122] that is, a person who is able to select the opinions of various imams, to ascertain which one has the stronger proof or *dalīl* and which one is more appropriate to the situations and conditions but without transgressing the *naṣṣ qaṭ'ī*. This kind of *mujtahid* can be called a *mujtahid fatwā*, a *mujtahid* who gives *fatwā*s or legal decisions on the basis of what he deems to be the stronger among opinions of earlier jurists. In his *ijtihād*, 'Abduh always based his opinion on the *Qur'ān* and the *Ḥadīth*, with *al-maṣlaḥah al-mursalah* as the method of his *ijtihād*. Though he apparently did not invent a new method of *ijtihād*, careful analysis shows that he interpreted laws differently from other *mujtahid*s. Rashīd Riḍā has thus called him "*al-qāḍī al-mujtahīd*", while Maḥmūd Shaḥātah considers 'Abduh's method as characteristic of a true *mujtahid*.[123] It seems that 'Abduh's *ijtihād* could have been the basis of a new *madhhab*, but he did not try to form one.[124] The concept of *ijtihād* as a juristic

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[120] Muḥammad Iqbal, *Reconstruction of Religious Thought in Islam* (Lahore: Institute of Islamic Culture, 1986), 147-148.

[121] Muḥammad Aḥmad, *The Concept of Freedom*, 137.

[122] Zainal Abidin, "Problematik *Ijtihad*", in *Ijtihad dalam Sorotan* (Bandung: Penerbit Mizan, 1992), 103-4.

[123] Shaḥātah, *'Ulūm al-Tafsīr*, 59.

[124] 'Abd al-Ḥamīd al-Mutawallī, *Mabādī' Niẓām al-Ḥukm fī al-Islām* (Alexandria: Dār al-Ma'ārif, 1966), 273.

technique assumed a far-reaching significance at the hands of 'Abduh. *Ijtihād*, according to him, did not belong only to the *fuqahā'* (Muslim jurists), but also to the *mutakallimūn* (theologians), and even to the *falāsifa* (philosophers).[125] This means that *ijtihād* could be performed by different kinds of intellectuals, although not by common people. Laymen, according to 'Abduh, must ask somebody who is a religious scholar if the questions they raise are related to the *Qur'ān* and the *Ḥadith*. In this case, laymen can follow the law by understanding the sources themselves. Thus blind acceptance (*taqlīd*) can be eliminated even among laymen. The truth can be found not only with certain teachers or *madhhabs*, but can in fact be found everywhere. 'Abduh felt that some *fuqahā'* were responsible for creating rigidity within a *madhhab* by expanding only on the opinions of the previous *fuqahā'* of their *madhhab*.[126] They left the *Qur'ān* and followed the rulings of their *madhhab*, whereas in truth *ijtihād* is allowed by both the *Qur'ān* and the Ḥadīth.[127]

The "closing of the gate" of *ijtihād*

A *mujtahid*, according to 'Abduh, is required to undertake *ijtihād* directly on the basis of the *Qur'ān* and the *Ḥadīth*. Because of the different situations faced by the different *mujtahids*, the results of the *ijtihād* by a previous *mujtahid* are not always suitable to contemporary cases. 'Abduh therefore advised the *fuqaha'* to form an examination committee to re-examine the opinions of the previous *fuqahā'*, and to choose the strongest among those

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[125] 'Abduh, *Al-Islam wa al-Naṣrānīyyah*, 52, 58.

[126] 'Abduh, *Tafsīr al-Manār*, Vol. II, 76.

[127] *Ibid.*, Vol. IX, 569

opinions so as to implement them. If *ijtihād* is not practised, he said, Muslims would be compelled to draw on non-Islamic legal sources.[128] This reasoning seems to underlie 'Abduh's view that the gate of *ijtihād* should not be considered closed. Without exercising *ijtihād*, Islamic law becomes inapplicable in the ever-changing circumstances of life.[129]

Before we discuss 'Abduh's views with respect to the closing of the gate of *ijtihād*, it is necessary to provide a historical background against which his views can be understood.

The historical development of Islamic law can be divided into three main periods. In the formative period (i.e. the period from the beginning of Islam to the fourth/tenth century) Islamic law was very flexible and easily adapted itself to the existing laws of the societies conquered by Muslims. This period is seen as the great creative period of Islamic law.[130] During the second period, starting from the beginning of the fourth/tenth century, Islamic law was finalized by the four orthodox schools of law. This led to inflexibility, so that Islamic law "became increasingly rigid and set in its final mould."[131] Legal decisions were codified into "books of the jurists", which were considered unalterable and unchanging.[132] Some scholars believe that the historical beginnings of *taqlīd* coincided with the formation of the four schools of law, while others maintain that the practice of *ijtihād* virtually ended in the

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[128] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 944.

[129] Anderson, *Law Reform*, 58-59.

[130] Herber J. Liebesny, "Comparative Legal History: Its Role in the Analysis of Islamic and Modern Near Eastern Legal Institutions" in *The American Journal of Comparative Law* 2 (1953): 202.

[131] Joseph Schacht, *The Origins of Muḥammadan Jurisprudence* (Oxford: Clarendon Press, 1959), 137.

[132] Mahmudul Haq, *op. cit.*, 87. See also Reuben Levy, *The Social Structure of Islam* (Cambridge: Cambridge University Press, 1957), 182, who claims that the gate of *ijtihād* was closed after the death of Ibn Ḥanbal, the founder of the last of the four orthodox *madhhabs*.

last days of the 'Abbasid period.[133] The supposed closure of the gate of *ijtihād* thus occurred in the fourth century of the Hijra.[134] The second period ended towards the close of the thirteenth/nineteenth century when the Islamic national state began to emerge along with a growing consciousness of the need for legal reform,[135] given that it was no longer possible to deal with new problems on the basis of classical Islamic law.[136]

The third period in the development of Islamic law began when Western ideas began to encroach considerably upon Muslim intellectual circles, especially after the French Revolution. As a result of these Western ideas, many aspects of Islamic teachings came to be questioned by Muslims themselves. One of the most serious questions raised was about the role of Islamic law,[137] particularly in the area of family law, such as the law of marriage and the status of women. As Majid Khadduri says "the greatest challenge... has come from the West, under the impact of which Islamic Law is bound to change."[138]

The resistance of the jurists to change and reform was based on their conviction that by the fourth/tenth century "a point had been reached at which all essential questions of law

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[133] M. H. Qureshi, *Islamic Jurisprudence* (Karachi: Nafees Publications, 1970), 91. For further details on the justifications of *taqlīd*, see also al-Shalabī, *Al-Madkhal*, 136-138.

[134] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1986), 70-71.

[135] Anderson, *Law Reform*, 14.

[136] Bassam Tibi, *Islam and the Cultural Accommodation of Social Change*, translated by Clare Krojzl (Boulder, Colorado: Westview Press, 1990), 65.

[137] A. Rahman I. Doi, *Shari'ah in the 1500 Century of Hijra: Problems and Prospects* (London: Ta-Ha Publishers, 1981), 8.

[138] Majid Khadduri, "From Religious to National Law," in *Mid-East: World-Centre, Yesterday, Today, and Tomorrow*, ed. Ruth Nanda Ansher (New York: Harper and Brothers Publishers, 1956), 220. See also his "Secularization and Islamic Law," in *The Principles of Law Making*, ed. Nazar Ali Shah (Lahore: Meezan Printing Press, 1961), 37.

had been thoroughly discussed, and further deliberation was deemed unnecessary, if not disruptive."[139] Contesting the view and the logic of these jurists, 'Abduh maintained that the classical legal doctrines "are no longer true in modern times and therefore obviously no longer appropriate to new legal requirements."[140] The gate of *ijtihād* is "wide open to meet all the questions raised by the new conditions of life,"[141] because Islam is essentially a rational religion.

It is for this reason that 'Abduh declared that the right to *ijtihād* existed at all times and continues to do so. It was up to the jurists to handle *ijtihād* properly and justifiably. The gate of *ijtihād* had, he insisted, never been closed, contrary to what many scholars would have us believe. Modern scholarship has vindicated 'Abduh's view. Thus Wael Hallaq states that "a phrase used to convey the idea that *fiqh* became utterly stultified at an early stage."[142] W. Montgomery Watt writes:

> Since it is not clear how the 'Gate' came to be closed, it would be worth trying to discover whether part of the motive for declaring the Gate closed was the desire to reduce Governmental pressure on individuals. A man is better able to resist pressure to accommodate his decision to reasons of State, if he is able to say, "I have no competence to vary such and such a decision.[143]

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[139] Weiss, *op. cit*, 208.

[140] Tibi, *Islam*, 65.

[141] *Ibid.*

[142] Wael B. Hallaq, "Was the Gate of *Ijtihad* Closed?", *International Journal of Middle East Studies* 16 (1984).

[143] Montgomery Watt, *Islam and the Integration of Society* (London: Routledge & Kegan Paul, 1961), 243.

2. *Taqlīd* and its Nature

As a technical term, *taqlīd* means following the opinion of another person without knowing the basis of that opinion and whether it is valid or invalid.[144] *Taqlīd* has also been defined as "the adoption of the utterances or actions of another person as authoritative, with faith in their correctness and without investigating their soundness."[145] To 'Abduh *taqlīd* in its legal application was a symptom of a social malaise which had to be treated effectively if society was to progress.[146] To follow the opinion of somebody else without understanding it and knowing its *dalīl* was, according to 'Abduh, analogous to the behaviour of a child viz-aviz its parents, or of a student viz-aviz his teachers. Islam, being a rational religion, discourages *taqlīd*.[147]

Taqlīd begins where *ijtihād* ends. 'Abduh emphasized the need to avoid a passive acceptance of the opinions and assertions of earlier religious authorities without asking for proof. Conviction, 'Abduh said, must be based on an intelligent acceptance of faith, for the faith without investigation is as bad as faithlessness.[148] 'Abduh's attack on *taqlīd* was based on his rational theology. For him, God has equipped people with *'aql* (reason), which must be used in order to understand revelation. Thus, according to 'Abduh, whoever practiced *taqlīd* did not use his *'aql*. He noted three meanings of the Qur'ānic phrase *afalā ta'qilūn*:

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[144] 'Abduh, *Tafsīr al-Manār*, Vol. XII, 220.

[145] Aḥmad Amīn, *Muḥammad 'Abduh* (Cairo: Mu'assasah al-Khāijī, 1960), 88.

[146] 'Abduh, *Risālat al-Tawḥīd*, 65.

[147] As can be seen in the story of the people of Thamūd (who were contemporaries of the Prophet Ṣāliḥ) in Sūrat Hūd: 62, and 87.

[148] Mahmudul Haq, *op. cit.*, 88.

[1] that people did not use their intellect to know something that they needed to understand, but were content with what already existed in the *Qur'ān* without trying to analyze it; [2] they understood nothing of Islamic teachings; and [3] they only followed what their fathers adhered to before them.[149]

However, 'Abduh pointed out, blind acceptance (*taqlīd*) of earlier views and teachings was disapproved of by the four Imāms of the *madhhab*s. They agreed that nobody should follow their opinions unless he could understand their arguments.[150] According to 'Abduh, they also held that if there was any dispute over their opinions, i.e. in their interpretation of the *Qur'ān* and *Ḥadīth*, then Muslims should reject their views. He quoted the Ḥanafī jurist, Abū al-Layth al-Samarqandī as follows:

> the Muslims were permitted to follow the *fuqahā*'s opinions as long as they understood the bases of the their opinions. On the other hand, Muslims who practised *taqlīd* were no better than animals: meaning they had *'aql* which they did not use; eyes with which they did not see; and ears with which they did not hear.[151]

The cause of Muslim intellectual stagnation in recent centuries, according to 'Abduh, was the *fuqahā*'s lack of courage to use their reason in dealing with divine law. As a well-known opponent of *taqlīd*, 'Abduh became the spearhead of the movement of rationalism and liberalism in Egypt. He attacked the practice of *taqlīd*, even though he lived in an era when *taqlīd* was the order of the day and other contemporary scholars adhered to the authoritative works of their respective *madhhab*s even to the extent of choosing to ignore the main sources

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[149] 'Abduh, *Tafsīr al-Manār*, Vol. II, 93.

[150] *Ibid.*, Vol. II, 82.

[151] *Ibid.*, Vol. II, 84.

of Islamic law, i.e the *Qur'ān* and the *Ḥadīth*. 'Abduh was very critical of these scholars for having "brought upon the people what he saw as the disease of blind acceptance of belief in the authority of others (*taqlīd*)."[152] It was this habit of *taqlīd* that 'Abduh considered the cause of the decline of Muslims.[153]

'Abduh insisted that it was a religious responsibility of the individual to use his mind. "According to the *sharī'ah*, he said "nobody held the authority to control individual belief,"[154] an opinion which opens the door to the right of individual freedom in Islam in matters of belief and in other respects.

On the basis of the above arguments, 'Abduh claimed that people who use *taqlīd* without using their *'aql* would not receive the guidance (*al-hidāya*) of Allāh. Such people were not to be considered *mu'minūn*, believers in God, because they followed religion without understanding the meaning of Islamic teachings.[155] He pointed out that "belief in authority without reason and guidance is a characteristic of godlessness, and a person becomes a believer only when he grasps his religion with reason and comprehends it with his soul, so that he becomes fully convinced of it."[156]

To conclude, 'Abduh called for a re-opening of the gate of *ijtihād* as a means of confronting and resolving modern problems. He derived his legal opinions not from the

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[152] Charles C. Adams, *Islam and Modernism in Egypt* (New York: Russel & Russel, 1968), 113.

[153] 'Abduh, *Tafsīr al-Manār*, Vol. VIII, 374.

[154] Muḥammad 'Abduh, *Tafsīr al-Qur'ān al-Karīm, Juz' 'Āmm* (Cairo: Maṭābi' al-Sha'b, n.d.), 175.

[155] 'Abduh, *Tafsīr al-Manār*, Vol. II, 94.

[156] He based this opinion on Sūrat al-Baqarah:170, see *Tafsīr al-Manār*, Vol. II, 94.

textbooks of the orthodox legal schools but directly from revelation, and advised others to do likewise.[157] He also implicitly appealed to the method of eclecticism (*talfīq*) to find suitable solutions to human problems. He based his legal opinions primarily on the principle of *al-maṣlaḥah al-mursalah*, and was open to the influence of all *madhhabs*. "Whenever there is *maṣlaḥah*," he said, "that is the *shari'ah*."[158]

He saw an urgent need for reform in different areas of Muslim life. He also hoped, through his efforts, to help control the impact of foreign ideas of institutions, an impact which had brough about new problems.

'Abduh and his disciples were thorough reformists, and were very critical of *taqlīd* in any form. Some of his disciples, Rashīd Riḍā for example, also differed from 'Abduh in a number of basic matters.[159] Creating a *madhhab* of his own would have reintroduced *taqlīd* instead of eliminating it. People should only be allowed to undertake *ijtihād* if they had a knowledge of the *sharī'ah*, understood the *Qur'ān* and *Ḥadīth*, and knew how to interpret the sacred texts in matters of mu'āmalat.

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[157] N.J. Coulson, *op. cit.*, 54.

[158] Zakarīyyā Sulaymān Bayyūmī, *Al-Tayyārāt al-Siyāsīyyah wa al-Ijtimā'īyyah bayna al-Mujaddidīn wa al-Muḥāfiẓīn: Dirāsat Tārikhīyyah fī Fikr al-Shaykh Muḥammad 'Abduh* (Cairo: Al-Hay'ah al-Miṣrīyyah al-'Āmmah lil-Kitāb, 1983), 110.

[159] One of their differences concerns the use of *Ḥadīth* in interpreting the *Qur'ān*. 'Abduh rejected unsound *Ḥadīth*, while Rashīd Riḍā was prepared to use even a weak *Ḥadīth*. So Riḍā made greater use of *ḥadīth* in interpreting the *Qur'ān* than 'Abduh. According to Maḥmūd Shaḥātah, Riḍā wanted to strengthen the harmony between the *Qur'ān* and *Ḥadīth*. If 'Abduh found a contradiction between the *Qur'ān* and the *Ḥadīth*, he left the latter and interpreted the *Qur'ān* by using his reason. Al-Shaḥātah, *op. cit.*, 84 and 218.

CHAPTER II

MUḤAMMAD 'ABDUH'S LEGAL THOUGHT AND HIS *FATWĀS*

A. The Legal System and the Judiciary

The return of 'Abduh to Egypt in 1888 marked the end of the first phase of his life and the beginning of his involvement in the promotion of numerous social reforms. These years were characterized by struggle, and by intellectual and moral preparation, and during this period 'Abduh's personality took a definite form. 'Abduh's efforts were directed towards the reform of Islam, and by extension the reform of Islamic society. This became his principle mission in life.

Contrary to his expectations, 'Abduh was appointed by the Khedive as a judge in 1888. He was made responsible for reforming the *sharī'ah* courts (*al-maḥākim al-shar'īyah*),[1] a task which was close to his heart. In doing so, he inspected the *sharī'ah* courts which enabled him to understand the problems they were facing.

'Abduh remained a judge till 1899. Shortly afterwards he became a *Muftī* and prepared a report on the state of the courts, a report which was adopted by the government as a program for their modification. The report maintained that the courts in their present state could not meet the responsibilities of an age in which family relations were experiencing a severe strain.[2] In his report he explained the shortcomings and the negligence of the government courts. According to him, the *sharī'ah* courts had reached a high level of corruption, which had brought about demands to abolish them and merge their work with that of the civil courts. His suggestions for

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[1] 'Abd al-Ḥalīm al-Jindī, *Al-Imām Muḥammad 'Abduh* (Cairo: Dār al-Ma'ārif, 1979), 78.

[2] Muḥammad 'Abduh, *Taqrīr fī Iṣlāḥ al-Maḥākim al-Shar'īyah* (Cairo: Maṭba'at al-Manār, 1900), 2-5; see also Muḥammad 'Amārah, *Al-A'māl al-Kāmilah lil-Imām Muḥammad 'Abduh*, 6 Vols. (Beirut: Al-Mu'assasah al-'Arabīyah lil-Dirāsāt wa al-Nashr, 1972), II, 219-221.

the reform of the *sharī'ah* courts were not based on Islamic values only but also on adaptations from foreign law,[3] particularly the statutes relating to the sciences. He wanted to show that the *sharī'ah* courts existed not only for giving legal decisions but also for maintaining public welfare based on Islamic principles (*aḥkām al-shar'īyah*). For that reason he focused his attention on the family, not on the individual;[4] according to him, the family is the main basis for developing the good aspects of life. If the family is in good shape, the state will be progressive as well.

As a judge he had to decide cases among disputants. In dealing with these cases, he did not base his decisions on the official rules or those of the *madhhab*s, not even the Ḥanafī *madhhab* which was adhered to by the Egyptian government. Generally speaking, he always emphasized the principles of justice in his decisions, even when this contradicted the existing Egyptian laws. His application of the principles of justice can be seen in the following cases, as summarized by Muḥammad Rashīd Riḍā:[5]

> [1] A person who was unable to pay his debt with interest. In this case 'Abduh decided that the debtor must pay the debt without interest, [2] A person found guilty of "contempt of court." In this regard 'Abduh made the sentence heavier than that which was stipulated in the Egyptian Act, [3] A person who gave a false oath or false witness. Again, in this case, 'Abduh gave the heaviest sentence.

These sentences, according to Riḍā, were not in accordance with the Egyptian regulations. In the first case, his decision was based mainly on the principle of justice, while in the second

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[3] Al-Jindī, *op. cit.*, 78.

[4] *Ibid.*

[5] Muḥammad Rashīd Riḍā, *Tārīkh al-Ustādh al-Imām al-Shaykh Muḥammad 'Abduh*, 3 Vols. (Cairo: Dār al-Manār, 1931), I, 420.

and the third, the basis for his decision was the concept of public interest.[6] Rather than follow the specific rules of a particular *madhhab*, he vigorously adhered to the principle of public interest (*al-maṣlaḥah al-mursalah*), that the common good should take precedence over every other consideration. Since 'Abduh's decisions rested upon the principle of justice, Riḍā referred to him as *al-Qāḍī al-'ādil* (a just judge) and not *al-Qāḍī wa al-rusum* (customary judge).[7] 'Abduh stressed the principles of fairness and equality in his judicial activities. His judicial decisions or pronouncements were based not only on Egyptian law but also his own *ijtihād*.

In 'Abduh's view, there were five major problems that needed to be addressed through the following measures:[8]

> **[1]** Extension of educational training for all officers of the *sharī'ah* courts, i.e. the judges and clerks, **[2]** Reform of Islamic court schedules, **[3]** Unification of the four madhhabs, (with priority being given to the Ḥanafī) with the purpose of attaining unanimous application. **[4]** Creating a law code in the practice of Islamic law, **[5]** Developing the position of the *sharī'ah* court officers, and the augmentation of the other employees of the courts.

The concerns listed above can be classified into two general categories embracing personal and physical problems on the one hand, and legal procedures and legal materials on the other. During his time as a *Qāḍī*, 'Abduh suggested reforms that would improve the performance of these courts. Before trying to reform the courts, 'Abduh convinced the government of the fact that people really needed *sharī'ah* courts, which would be more responsive to issues touching on

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[6] Jamal Mohammad Ahmed, *The Intellectual Origins of Egyptian Nationalism* (London: Oxford University Press, 1960), 38.

[7] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 420. See also 'Abd al-Ghaffār 'Abd al-Raḥīm, *Al-Imām Muḥammad 'Abduh wa Minhajuhu fī al-Tafsīr* (Cairo: Al-Markaz al-'Arabī lil-Thaqāfah wa al-'Ulūm, 1980), 103.

[8] Al-Jindī, *op. cit.*, 84.

family ties and relationships than would the civil courts.[9] 'Abduh's position was based on the evidence of many cases relating to family matters which had been brought to the *sharī'ah* courts.[10] People had complained to him of the cumbersome court procedures in the *sharī'ah* courts. Responding positively, "the government gave him a free hand in making his investigations, and full authority."[11]

1. Procedural improvements and Legal Material

Regarding court procedures, Abduh observed that some elements of it were very confusing. For example, in registering a case,[12] the clerks had to fill out many forms. They did not record the case and the matters pertaining to it in the same file. For instance, when a plaintiff brought a case to the court, it was recorded on the first page of the court report. On the next page, the names of the disputants were given and their witnesses were mentioned several pages later. 'Abduh recommended the discontinuance of this inefficient practice. What was needed was to record on better quality paper a preliminary report on the cases before the court, which could then be placed in note papers. Therefore, according to 'Abduh, every case file should contain all the facts and relevant information. He also suggested that recorded cases should be put in different folders according to the cases in question.

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[9] 'Abduh, *Taqrīr*., 2; cf. Nabil Abdo Khoury, *Islam and Modernization in the Middle East: Muḥammad 'Abduh an Ideology of Development* (Ph.D Thesis, State University of New York Press, 1976), 161.

[10] 'Abduh, *Taqrīr*, 3.

[11] Charles C. Adams, *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muḥammad 'Abduh* (New York: Russel & Russel, 1968), 81.

[12] 'Abduh, *al-A'māl al-Kāmilah*, Vol. II, 234-235.

Another procedure of the *sharī'ah* courts that 'Abduh thought should be changed was the peculiar seating arrangements (*al-jalsāt*) for the judges.[13] The assembly rooms were not well arranged, and physical structure of the court house was the worst-looking building in town, and was often in complete disrepair. Inside the court, the seats of the judges were not differentiated from those of the rest, most chairs were broken. So that, some judges had no choice but to sit on boxes. The judges sat wherever they wanted. In one of the Islamic courts, he observed that the presiding judge sat at a place apart from the other attending judges. Nor was there a boundary between the judges and the audience's quarters/section. Children played freely in the court room even when the court was in session.

These pitiful conditions led 'Abduh to suggest to the government to establish proper courthouses, where proper rooms and furniture would be available, and judges and clerks would be able to do their work well. This would lead to the improvement of the image and dignity of the *sharī'ah* courts.[14]

Part of the problem lay in the fact that court officials were dissatisfied with their working conditions. Especially the clerks[15] who did not perform their job satisfactorily. They had no responsibility to call disputing parties to come inside the court, or to ask for the names, and so forth. Some times, the clerks also questioned the witnesses, which was not their task but that of the judges and lawyers.

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[13] *Ibid.*, Vol. II, 257.

[14] 'Abduh, *Taqrīr*, 8; see also *Al-A'māl al-Kāmilah*, Vol. II, 222-223.

[15] The clerks were responsible for recording all cases as well as the names of disputants and witnesses, their surnames/titles (*laqab*), and lineage (*nasab*) etc. These were necessary in order not to make false decisions. See 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 232.

'Abduh had observed that judges and clerks were underpaid and incompetent. Worse yet, most could not write properly.[16] Their salaries were far below that of judges and clerks in the civil courts,[17] which are based on the judges' levels of expertise.[18] This probably affected them so much that the court officers, i.e. the judges and the clerks, were not punctual in conducting the affairs of the court. They did not pay attention to the schedule of cases. It often happened that a case was delayed for a long time after it had been set for trial. Consequently, the people loathed and despised the court system.

Basing himself on these observations, 'Abduh recommended that the government establish clear recruitment regulations which demanded better qualification requirements for the clerks. The clerks should know the Arabic language, be able to write properly in it, and have a knowledge of Islamic jurisprudence.[19] To realize these conditions, one suggestion was that the candidates should be tested by a committee, and if they are found to be wanting in their knowledge and competence they should be required to pursue legal studies for four years.

Another suggestion was that those candidates who had graduated with an *ahlīyah* degree

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[16] They had been appointed as clerks not by virtue of their clerical abilities, but on the basis of the connections or relationship that they might have with the judges. They were, however, poor and did not earn a good salary. Clerks who had worked for more or less twenty-eight years were paid two hundred or three hundred and fifty *qirsh*, while the beginners were paid fifty *qirsh*, a situation which 'Abduh saw as being a little better than that of an ascetic (*zāhid*). See 'Abduh, *Taqrīr*, 9.

[17] 'Abduh, *Taqrīr*., 10. Within the civil court system there was also discrimination in the payment of salaries, for whereas city court officers received five hundred *qirsh* per month, their counterparts in the central courts earned much less, perhaps three hundred and fifty *qirsh* only. This happened, according to 'Abduh, because there were no regulation to manage such matters effectively. 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 224.

[18] Judges at the first level would get three thousand *qirsh*, and at the second, four thousand *qirsh*. He considered that if the judges were given only six hundred *qirsh* it would not be enough for their livehood, given the economic circumstances of the average Egyptian at the time. 'Abduh did not, however, elaborate on how the different levels of judges, were to be determined, and what were the qualifications required for each. For instance, whether it was a difference in knowledge or seniority. See 'Abduh, *Taqrīr*, 10.

[19] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 225.

be excused from further examinations for appointment to a position.[20] 'Abduh believed that in this way qualified clerks would become available for Islamic courts. If they were well qualified, 'Abduh reasoned, they should be offered a good salary.[21] This rule could be applied gradually, in accordance with the government's budgetary constraints.

As for judges of the Islamic courts, their position was no better that of clerks; they too were incompetent. 'Abduh observed that many judges in the Islamic courts had poor knowledge of Islamic law and of the administration of Islamic courts. This led to misjudgments and misunderstandings in applying the law.[22] Therefore, he suggested thet rules be established for the proper qualifications of judges, who should attain the rank of *shahādah 'ālimiyya* and be *Muftī*s, he demanded that they should have undertaken specific study of Islamic law, i.e. the law of the *sharī'ah* courts (*al-qaḍā'*) as well as civil law (*mu'āmalah*). In addition, he demanded that such candidates display good behavior[23] and that they be tested by the Islamic courts committee to that effect. The candidates or the students of law should have to pass such subjects as *fiqh*, arithmetic (*'ilm al-ḥisāb*), the Arabic language in its written and oral forms, Islamic history, etc.[24] It was also recommended by 'Abduh that the judges should apply the laws on the basis not only of the Ḥanafī school of law, but also the other legal schools, viz. the school Shāfi'ī, Mālikī, and Ḥanbalī.

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[20] 'Abduh, *Taqrīr*, 10.

[21] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 225-226.

[22] *Ibid.*, 227-228, and 'Abduh, *Taqrīr.*, 13.

[23] *Ibid.*, 227, and 'Abduh, *Taqrīr*, 14.

[24] 'Amārah, *ibid.*

2. Judicial Competence of Sharī'ah courts.

'Abduh observed that some of the judges seemed to be confused when they heard cases relating to family law (*al-aḥwāl al-shakhṣīyah).*[25] They thought that the *sharī'ah* courts were not competent to deal with such cases. This assumption was due to the attempts made by the government to narrow down the jurisdiction of *sharī'ah* courts. At that time, the competence of the *sharī'ah* courts in matters of family law was limited mainly to marriage, divorce and inheritance. For their part, the judges of the *sharī'ah* courts did not even refer the case in question to the *sharī'ah.*[26] A case in point is that of a husband who took his disobedient wife (*nushūz*) to court with the intention of refusing to provide maintenance (*nafaqa*) for her, including food, clothes, and a residence. The judges decided to allow the wife to stay in the husband's house for two months. This was decided only on the merits of the case at hand, and without reference to the *sharī'ah.*

Moreover, cases related to property were decided by the civil courts, even though they might in fact be related to family law, as in matters of inheritance (*al-mawārīth*), and endowments (*al-awqāf*).[27] In this respect, 'Abduh recommended enlarging the competence as well as the jurisdiction of the *sharī'ah* courts. He stated: "it is not appropriate to make the competence of the *sharī'ah* courts narrow but rather it is obligatory to enlarge it." Therefore, it was necessary both to revise legislation (*al-qawānīn*) which had been enacted without any consideration to Muslim family law as well as to draw up new rules on the respective jurisdiction

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[25] 'Abduh, *Taqrīr*, 32.

[26] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 246.

[27] *Ibid.*

of the *sharī'ah* and the civil courts.[28] In other words, he suggested that the government make clear regulations about the cases which were to be dealt with by the *sharī'ah* courts and the civil courts respectively.

Another reform was to modify articles 21, 22, and 23 of the law governing the *sharī'ah* courts.[29] In those articles the word "*tawaṭṭana*", in the context of legal decisions relating to divorce, referred to the plaintiff's (*muddaʻī*) place of residence. A difference of opinion could arise if a wife got married on her family's land, then stayed with her husband for a long time, moved to another location, and eventually returned to the place where the marriage contract had been concluded. Should a divorce in this case be decided on the basis of the law which referred to where the husband was living or with reference to the place where the marriage contract had been concluded? If the decision was based on the law referring to the husband's residence, it would not be within the competence of the *sharī'ah* court. Therefore, 'Abduh recommended that the wording of articles numbers 21 and 23 be changed, from "*tawaṭṭana*" to "*bi iqāmah*", while article number 22 remained the same. This meant that the decisions would be based on the wife's place of residence.

These are issues which arose in an actual case in which a wife was abandoned by her husband without making arrangements for her maintenance. She lived in Aṣwān while her husband resided in Alexandria. 'Abduh considered this case on the basis of the *madhhab* of Zufar, in the *sharī'ah* court of the region where the wife was living. The decision was made without informing her husband. Provided all other requirements were fulfilled, the wife was

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[28] *Ibid.*

[29] *Ibid.*, 247-248.

legally free.[30] This decision seems to contradict a *Ḥadīth*, according to which "no legal decision can be taken without the attendance of the two disputing people." The accused must be present in the court. But the divorce case was decided by 'Abduh thus, because sufficient time had been given to both parties to clarify their position and to know if one of them did not approve. If one of them could not appear in court, he or she could have sent a substitute (*wakīl*) instead. Nevertheless, according to the *madhhab* of Abū Ḥanīfah, a decision without the presence of the disputants was considered weak. According to article number 70 of the law magazine *'Uthmānīyah*, the summoning of an absent disputant is to be made three times. One of the judges (*munādī*) should then go to the husband's place and hear his excuse for not coming to the court. This means that if after the third time he does not come to the court or send a substitute (*wakīl*), the judges can legally render a decision. However, it was also necessary that two witnesses for the plaintiff be present. After hearing the complaint of the plaintiff and his witnesses, the judge could then give a decision.[31] However, the wife could not get maintenance while the husband was missing, since she had herself made an excuse for not attending the court. This, according to 'Abduh, was injurious to women and unjust.

3. Pleading

One of the principles of the *sharī'ah* court was that all decisions should be made with the disputing parties in attendance. Defendants were ordered, even forced, to attend the court in order to plead their rights. 'Abduh, however, frequently found that one of the two parties to a dispute

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[30] *Ibid.*, 248

[31] *Ibid.*, 250.

involving family law often failed to appear. This was especially so in divorce cases where the husband accused his wife of *nushūz* and then left her. The wife was frequently unable to obtain a judgment on her *nafaqa* (maintenance). Although the husband could appoint a *wakīl*, usually a family member, to represent him in court, 'Abduh felt that this was not a dependable solution, and he urged that Islamic lawyers (*al-muḥāmūn*) be trained and made available for this purpose.[32]

Another issue that needed reform was the examination of cases. 'Abduh tried to relax the conditions relating to the witnesses so as to include a broad category of people, including those of questionable character. For example, the previous *fuqahā'* required that the witnesses be free of bad behavior (*fāsiq*).[33] This condition, according to 'Abduh was not necessary as it was difficult to prove that someone was a *fāsiq*.

As regards capital punishment from the point of view of Islamic criminal law (*qiṣās*)[34], 'Abduh cited the case of Muḥammad 'Alī Ḥamīd.[35] Ḥamīd was accused of having committed a murder for which there was only circumstantial evidence (*qarīnah*)[36] and no other evidence to indicate that he had committed the crime (*jarīmah*). The accused could not be sentenced to capital punishment since the judges were not sure what charge was to be laid against him. 'Abduh's own position on this case seems to have been influenced by the following *Ḥadīth*:

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[32] *Ibid.*, 251.

[33] *Ibid.*, 269.

[34] Qiṣās means the right of retaliation for a crime such as murder, homicide, maiming, and serious bodily harm.

[35] Al-Jindī, *Muḥammad 'Abduh*, 111.

[36] *Qarīnah* (plural *qarā'in*) is one kind of criminal evidences. The majority of jurists restrict evidence to the testimony of witnesses. In addition to testimony there are confessions (*iqrār*). Evidence outside of these two types takes the form of evidentiary presumptions (*qarā'in*).

"avoid *ḥudūd* punishments if there is any doubts" (*idra'ū al-ḥudūd bi al-shubuhāt*). In other words, "doubt nullifies the *ḥadd*[37] punishment." This *Ḥadīth* reinforced both the conviction of the judges and the evidentiary basis of law (*al-bayyinah*)[38]. The principle of Islamic legal procedure thus relates to the rights of the accused under Islamic criminal procedure.

'Abduh suggested two things to clarify certain aspects of Islamic criminal law. First, *iqrār* (confession) had to be based on *qarā'in* (presumptions/evidence) to ensure *qiṣās* (the death penalty). The application of the penalty was to be based on the testimony of two witnesses who had seen or heard about the crime, or on their *iqrār*. In this case, 'Abduh asserted that ibn al-Qayyim al-Jawzīyya and ibn Taymiyah and many others had ratified the validity of *qiṣāṣ* on the basis of *qarīnah*.[39] Secondly, there was a need for an increased confidence in the judges with respect to a case. In the judicial system, the judges had a noble status. They were expected to be able to understand the cases brought before them and to decide on them justly.[40]

Another reform that 'Abduh suggested with respect to the elimination of irrelevant details was, avoiding injustice by making strict procedural rules, categorization of cases in separate places, and simplification of the language of the codes so that it could be understood by the layman. At that time, some lawyers preferred to use the French language in pleading cases. 'Abduh suggested that Arabic be the standard language of the courts.

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[37] Ḥadd is a punishment for a crime against the law of God. Seven crimes are specified in the *Qur'ān*, which prosecution and punishment is mandatory. They are adultery, defamation, drinking alcohol, theft, brigandage, apostasy, and rebellion.

[38] The Shāfi'ī, Ḥanafī, and Ḥanbalī schools maintain that evidence (*al-bayyinah*) means the testimony of witnesses (*shahādah*), and point out that the *Qur'ān* considers such testimony as the basis of proof in many situations, including transactions between people, matters of personal status, and wills.

[39] Al-Jindī, *op. cit.*, 112.

[40] *Ibid.*, 112-113.

Also, during his period in the *sharī'ah* court, 'Abduh formulated two articles, the tenth and the eleventh, of the legal code (*al-qānūn*). In the tenth article, it was laid down that if there was serious discord between husband and wife, two just arbiters should be appointed, i.e. one from the husband's side, and the other from the wife's side in order that they may reconcile them, as required by the *Qur'ān*, Sūrat al-Nisā' 35. It would be preferable, according to 'Abduh, if the arbiters were neighbors. If a reconciliation could not be effected in this way, the case was to be brought to the court which would attempt to reconcile the two parties. If this proved impossible, a *ṭalāq*[41] could be effected for them by the court. Such a divorce would be valid. The eleventh article laid down that the wife could be granted permission by a *qāḍī* to ask for divorce from her husband,[42] if the husband was causing hardship to her, for instance by abandoning her without any reason or beating her.[43]

'Abduh was full of admiration for the founders of the *madhhab*, who were all *mujtahids*. He considered them to be people who had concentrated their abilities and thought on law in order to articulate its principles and its content.[44] However, he emphasized that differences of opinion

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[41] There are two types of divorce, i.e. *ṭalāq raj'ī* and *ṭalāq bā'in*. The first two pronouncements of divorce, followed by a period of retreat from the wife with whom marriage is consummated, are called *ṭalāq raj'ī*, in which return to the conjugal relationship is still possible. When the third divorce is pronounced it becomes *ṭalāq bā'in*. In *ṭalāq raj'ī* the spouses still have the usual rights over each other, since the marital relationship has not ended. If one of them dies, the other will inherit the other. Maintenance will still remain available to the wife and children. *Ṭalāq raj'ī* is based on sūrat al-Baqarah 228-229. See for more detail al-Sayyid Sābiq, *Fiqh al-Sunnah*, 3 Vols (Beirut: Dār al-Fikr, 1992), 233-236.

[42] In Islamic law, this kind of divorce is called *khul'*. *Khul'* signifies divorce at the instance of the wife. It can be achieved through mutual agreement of the two parties or through the order of the *Qāḍī* on payment by the wife to the husband of a certain amount that does not exceed what was given to her as dower *(mahr)*. This is based on sūrat al-Nisā' 128. See for more details 'Abd al-Raḥmān Al-Ṣābūnī, *Madā Ḥurrīyat al-Zawjayn fī al-Ṭalāq fī al-Sharī'ah al-Islāmīyyah* (Cairo: Dār al-Fikr, 1968), 495.

[43] Al-Jindī, *op. cit.*, 79.

[44] Muḥammad 'Abduh and Muḥammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-Karīm, al-Shahīr bi-Tafsīr al-Manār*, 12 Vols. (Cairo: Dār al-Manār, 1911), Vol. IV, 24.

among them were to be regarded as natural and human. Unity of opinion, he said, was most likely impossible to achieve. His statement was based upon the *Qur'ān*ic verse: "If Thy Lord has so willed, He could have made mankind one people, but they will not cease to dispute."[45] He pointed out that differences of opinion should not threaten Muslim unity as long as those who hold the differing opinions are able to tolerate differences.[46]

In the light of the above, 'Abduh thought that the judges, wherever they reside, should be able to deal with the different cases brought to them on the basis of their knowledge. In other words, the judges should be able to exercise *ijtihād*. 'Abduh also recommended that the judges not adhere blindly (*taqlīd)* to any one of the *madhhab*s, but that they should choose the opinions of the school whose ruling was relevant to the case at hand. This activity is known in *uṣūl al-fiqh* (Islamic jurisprudence) as *talfīq* (eclectic interpretation).[47]

The concept of *talfīq*, as introduced by 'Abduh, "was broader and more sweeping than orthodox jurists would have approved."[48] The process of *talfīq* does not involve merely the "borrowing" of a specific point from a *madhhab* other than the jurist's own, but consists also in a systematic comparison of all four *madhhab*s as well as the doctrines of independent jurists who accepted none of them.[49] It is evident that *talfīq* intends to bring about a kind of reformation

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[45] Sūrat Hūd:119. See Muhammad Asad, *The Message of the Qur'ān* (Gibraltar: Dār al-Andalūs, 1980), 542.

[46] 'Abduh, *Tafsīr al-Manār*, Vol. II, 76.

[47] Mahmudul Haq, *Muḥammad 'Abduh: A Study of a Modern Thinker of Egypt* (Calcutta: Aligarh Muslim University, 1970), 80.

[48] Albert Hourani, *Arabic Thought in the Liberal Age: 1798-1939* (Cambridge: Cambridge University Press, 1983), 153. See also, Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad 'Abduh and Rashīd Riḍā* (California: University of California Press, 1966), 216-217.

[49] Hourani, *Arabic Thought*, 152.

in Islamic jurisprudence. This is the reason why when 'Abduh attempted to use this method, he was met with opposition and became isolated from other contemporary Egyptian '*ulamā*'.[50] Undaunted by this conservative backlash, he endeavored to compile *fuqahā*'s opinions on certain cases regardless of the schools of law they belonged to. He believed that such a compilation was necessary as there was much difference of opinion among Muslim jurists, which made contemporary judges encounter difficulties when deciding as to which juristic opinion was appropriate to the case at hand. Furthermore, some judges were unable to make legal decisions on the basis of classical books.[51] Consequently, there were many misjudgments, particularly in cases of endowment, divorce, and testaments.[52] These were some of the reasons why 'Abduh suggested that the *sharī'ah* courts' commission should compile certain books comprising legal materials for the Islamic courts.

B. The *Fatwās*

During his time at the *sharī'ah* Court, 'Abduh introduced reforms which touched on many areas of Egyptian social life. 'Abduh's *fatwās*, which were issued when he became the chief *Muftī* of Egypt, were a major expression of his legal thought. In the rest of this chapter, I shall focus on those of his *fatwās* which dealt with two areas, polygamy and bank interest.

The main function of a *fatwā* is to answer legal queries.[53] Some scholars differentiate

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[50] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 672.

[51] 'Abduh, *Taqrīr*, 64.

[52] *Ibid.*, 65.

[53] Muḥammad Salām Madkūr, *Al-Qaḍā' fī al-Islām* (Cairo: Dār al-Nahḍah al-'Arabīyah, 1964), 135.

between *fatwā* and *ijtihād*. According to them, the former focuses on answering legal questions or cases, while the latter is not limited to a case at hand, but may deal with issues that have not yet appeared.[54] It goes without saying that *ijtihād* is required for the issuing of *fatwās*.

'Abduh saw a dual function in issuing *fatwās*, whether on behalf of the government (official *fatwās*) and in response to questions posed to him as a *Muftī* by ordinary Muslims. The first type of *fatwās* is based mainly upon the Ḥanafī school, the official school of law followed by the Egyptian government.[55] In this sense, as has been pointed out by 'Abd al-Raḥīm, he followed the Ḥanafī school as long as it was in accordance with the public interest.[56] This means that if the opinion of the Ḥanafī school was not in accordance with the public interest he did not follow it. In the second type of *fatwā*, he performed *ijtihād* directly on the basis of the *Qur'ān* and the *Ḥadīth*.[57]

'Abduh was appointed as the *Muftī* of Egypt on June 3, 1899. According to 'Abd al-Ḥalīm al-Jindī, there are two large books comprising the *fatwās* of 'Abduh which are preserved in *Dār al-Iftā'*.[58] Each contains 500 *fatwās*. The first book deals only with *waqf* (endowment), and *mawārīth* (inheritance), while the second was concerned with all other matters of Islamic law.

As has been mentioned in Chapter One, 'Abduh was a pragmatist. In all his suggestions for the reform of the *sharī'ah* courts, he demonstrated that pragmatic measures could still be

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[54] Muḥammad Abū Zahrah, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-'Arabī, 1957), 401.

[55] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 645. See also, al-Raḥīm, *Al-Imām Muḥammad 'Abduh*, 105.

[56] al-Raḥīm, *Al-Imām Muḥammad 'Abduh*, 105.

[57] Riḍā, *Tārīkh al-Ustādh*, Vol. I, 690-691.

[58] Al-Jindī, *op. cit.*, 110.

derived from Islamic principles. 'Abduh called for specific programs that would achieve reformist goals and also conform to Islamic values. As a *Muftī*, he was able to answer questions relating to such matters as strikes and business activities by suggesting lines of action that would be proper for a Muslim government to take. 'Abduh exercised his personal *ijtihād* in deciding all kinds of legal issues, and following any *madhhab* which he thought was suitable to a given problem or question which had been addressed to him. For example, it was the *madhhabs* of Imām al-Shāfi'ī and Abū Ḥanīfah that he followed in interpreting the doctrines of *maṣlahah*.

'Abduh's *fatwās* can be broadly classified as dealing with either family law or economic matters. In focusing on his rulings on polygamy and bank interest, the following section will attempt to examine how he applied his *ijtihād* in these two areas:

1. Polygamy

According to 'Abduh, marriage is vital for human existence and happiness. Like other animals, man needs to reproduce in order to perpetuate his species.[59] However, due to man's memory, emotions, and intelligence, a complex social structure evolves, and the family is the basic unit of this structure.

'Abduh was very concerned about the welfare of women. He saw much that was destructive in Egyptian society, mainly with respect to the rights of women. He regarded their position to be similar to that of men in all aspects of life. He called for women's emancipation, and deprecated the behavior of men who behaved unjustly towards uneducated women, by keeping more than one wife. Uneducated women were taken advantage of by men as merely

[59] 'Amārah, *Al-A'māl al-Kāmilah*, 68.

another object of exploitation. Men thought of marriage only as a means to fulfil physical needs; they considered women as a commodity, and thought little of the love and compassion which they were supposed to feel towards their spouses. Referring to the *Qur'ān*ic verse, "...He engenders love and tenderness between you,"[60] 'Abduh insisted that love and compassion had to be nurtured in a harmonious relationship. He did realize, however, that this could be difficult to achieve if the woman was uneducated. On the other hand, an educated woman, who knew her rights and her worth, would contribute immeasurably towards a happy marriage on the basis of the mutual attraction of the senses, hearts and minds.[61] 'Abduh said that while the *Qur'ān* legally permitted men to have more than one wife (up to four), yet it also required that a man be perfectly fair towards all his wives. This condition, he reasoned is almost impossible to fulfil. The *Qur'ān*, says, "...marry from among [other] women such as are lawful to you [even] two or three or four...," but immediately qualifies (*muqayyad*) with permission as follows: "but if you have reason to fear that you might not be able to treat them with equal fairness, then [only] one...." [62] This means that Islam allows a man to have more than one wife only if he believes that he can treat all his wives equally and justly; if not, according to 'Abduh, Islam does not permit the practice of polygamy, as the conditions of the family life would thereby be worsened.[63] The implications of the above injunction of the *Qur'ān*, which is the only text where polygamy is explicitly permitted, according to 'Abduh, needs some elucidation. First

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[60] Sūrat al-Rūm:21.

[61] 'Amārah, *op. cit.*, 74.

[62] Sūrat al-Nisā': 3.

[63] Al-Jindī, *op. cit.*, 119.

of all, the *Qur'ān* in this verse merely permits polygamy conditionally, but does not enjoin it. Secondly, the condition imposed is very stringent; indeed, it almost borders on the impossibility of fulfillment, unless one is inclined not to give full weight to the meaning of the word "*'adl*", which connotes justice or fair-dealing in all matters, including the apportioning of love and all worldly necessities among the wives. In matters of the heart, even the Prophet himself realized that he was not able to love all his wives equally. His love for 'Ā'ishah was more than that for the other wives. For example, the Prophet used to allot specific days for each one of his wives. It is said that once when he was sick he stayed at 'Ā'ishah's place, which the other wives did not like. One of his wives asked him as to where he had slept the previous night? After his wives found out that he was unwell, they allowed him to stay in 'Ā'ishah's house. The Prophet asked them if they were sincere in permitting him to do so? They answered in the affirmative. According to a tradition, "whoever has two wives, and he is inclined to one of them, he comes forward at the day of judgment with a deformed physique." The Prophet excused his being inclined towards one of his wives by saying: "O my God, this (being equal towards the wives) was my effort towards what I had; I did not have the capability towards what You had, but I did not." Consequently, in order to be just to his wives, the Prophet used to cast lots to determine which wife would travel with him on a journey.[64]

Thirdly, 'Abduh held that if the husband is not capable of fulfilling the conditions for polygamy, then he must marry only one wife and no more. He argued that the conditions of polygamy mentioned in the verse made it imperative that the court should be able to deal with the matter. 'Abduh stressed that the implication of the *Qur'ān*ic statement, "but if you have

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[64] *Ibid.*, 118-119.

reason to fear that you might not be able to treat them with equal fairness, then [only] one...."[65] was clearly in favor of monogamy, while it left the possibility for polygamy open for those few who could be equitable. This means, 'Abduh reasoned, that the aim of the *sharī'ah* was to promote monogamous marriages.

'Abduh, therefore, declared that polygamy was *ḥarām* (unlawful), except in cases of the extreme necessity (*al-ḍarūrat al-quswā).* He restricted the possibility of polygamy to certain conditions, such as when the wife was not able to conceive (*'aqīm/'āqir*).[68] He did not allow the husband who already had a wife and child to have another wife. He said that this kind of sensual desire was *ḥarām* for a man whose wife was fertile.

In case there was a polygamous marriage, however, *'adl* was to be the most important condition regulating it. The husband had to assure the judge that he had the capacity to be just to all his wives.[69] 'Abduh asked, is it possible for a Muslim to realize this condition? God himself, he said, has answered this question negatively: "And it will not be within your power to treat your wives with equal fairness, however much you may desire it...."[70] In other words, although polygamy is permitted in the *Qur'ān*, it is only a concession to the social conditions of the time, and the permission is given with the greatest reluctance.

'Abduh did not deny that the Prophet himself and his companions practiced polygamy. It was a basic reason why polygamy had been allowed in Islam. Polygamy was no longer

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[65] Sūrat al-Nisā': 3

[68] Muḥammad 'Imārah, *Al-Imām Muḥammad 'Abduh: Mujaddid al-Islām* (Beirut: Al-Mu'assasah al-'Arabīyah lil-Dirāsāt wa al-Nashr, 1981), 240.

[69] *Ibid.*, see also 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 78-83.

[70] Sūrat al-Nisā': 129.

practiced but was justified in situations of war where there were fewer men than women. In such conditions, polygamy was practiced to protect women, not to abuse them. However, in modern times, where conditions of life had improved and many of its hardships eliminated, continuation of polygamy was no longer necessary.

The historical circumstances in which the verses on polygamy were revealed are relevant here. The verses were revealed to the Prophet after the battle of *Uḥud* in which many Muslim males lost their lives leaving behind a large number of young Muslim girls as orphans in need of protection. The situation demanded a solution and, therefore, the surviving males were commanded to seek their partners in life from among the orphan girls, or from among other women who seemed appropriate as brides, or from among the maids in their service. The pre-Islamic Arabs used to marry orphan girls against their will with a view to obtaining possession of their belongings. The *Qur'ān* forbade this custom and directed that no injustice should be done to orphans by reason of marriage, and if one fears committing injustice to orphans, he should seek a wife from among other suitable women. The Qur'ānic injunction undoubtedly reflects a humane spirit in this regard.

As well, in the time of the *jāhilīyah*, Arab men used to have many wives simply for pleasure and to show how powerful they were. Then, with the advent of Islām, polygamy was restricted to four wives.[71] For example, Aslam Ghaylān had ten wives; the Prophet asked him to keep only four wives and to divorce the rest.

On the basis of the above examples, 'Abduh claimed that someone who is really intelligent would realize that monogamy is the ideal choice for it accords with *fiṭrah* (innate

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[71] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 91.

disposition).[72] It is also by *fiṭrah*, according to 'Abduh, that every woman must be honored. She would feel saddened by her husband's establishing a relationship with another woman. She would think that her husband no longer has any love for her. This situation would only make her jealous.[73]

Therefore, for 'Abduh, monogamy is the basic law for marriage. If the husband has only one wife, he can more easily perform his *sharī'ah* duties and honor the rights of his wife and children with respect to *nafaqa*, education, and love. Polygamy is not an "*'azīmah*", but only a "*rukhṣah.*"[74]

'Abduh believed that even though the *Qur'ān* has allowed the practice of polygamy, there are many factors that support the prohibition of polygamy. All of them are based on human reason. Firstly, psychologically speaking, polygamy is degrading to women, as no woman would want to share her husband with other women in marriage. It is part of human nature (*ṭabī'ī*) to have these feelings. Secondly, according to 'Abduh, polygamy results in hostilities between the children of different mothers. There would be no peace among them; each mother would want herself and her children to prosper at the expense of the other wives and their children.[75] Strife in the family could result in divorce, which divorce, according to 'Abduh, has promoted unhealthy familial conditions in Islamic countries.

In view of the above reasons, 'Abduh believed that polygamy was not the best way to

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[72] *Ibid*, Vol. II, 84-85.

[73] *Ibid.*, 85.

[74] 'Abduh, *Tafsīr al-Manār*, Vol. IV, 358.

[75] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. II, 86.

promote healthy family life, because happiness cannot be achieved in that situation.[76] As he could see little reason for husbands to practice polygamy, he suggested that the judges prohibit polygamy on the basis of public interest (*al-maṣlaḥah al-mursalah*).[77] For him, the existing regulations on polygamy did not belong to the essential teachings of Islam, and thus were subject to modification in accordance with changing needs and circumstances.[78]

Polygamy, according to 'Abduh, is only allowed if there are good reasons for it. One such reason could be that a wife is sick and cannot perform her duties. Another reason might be that she is infertile, while one of the purposes of marriage is procreation (*tanāsul*). If so, the husband has to give to the court an account of his property and his income before he can take another wife.[79]

'Abduh's legal opinion on polygamy was closely linked to his opinion on the position of women in Islam. He believed that nothing entitled Islam to be considered a modern world religion more than the high honor it accords to women. In all essential aspects, women are on an equal basis and worth with men. In making this point, 'Abduh quoted the following *Qur'ānic* verse: "And their Lord hath accepted of them, and answered them: 'never will I suffer to be lost the work of any of you, be he male or female: Ye are members, one of another."[80] He interpreted this verse to mean that men and women are equal before God in the matter of reward

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[76] *Ibid.*, 87.

[77] *Ibid.*, 88.

[78] 'Abduh, *Tafsīr al-Manār*, Vol. IV, 349-350.

[79] Al-Jindī, *op. cit*, 120.

[80] Surāt Āl 'Imrān:195.

when they are equal in their works.[81]

However, as regards polygamy, 'Abduh's understanding of *al-maṣlahah* seems to contradict the text of the *Qur'ān* and the *Ḥadīth*. The *Qur'ān* itself has clearly declared that polygamy is permissible, while 'Abduh opposed this *Qur'an*ic regulation on the basis of *maṣlaḥah al-'āmmah* and opined that polygamy should be prohibited. Among *uṣūlīyūn*, this kind of *maṣlahah* is called *al-maṣlaḥahal- mulghat*,[82] which cannot be considered a source of Islamic law. In this case, then, 'Abduh appears to have preferred *maṣlaḥah* over the *naṣṣ*. In other words, 'Abduh accepted *al-maṣlaḥah al-mulghat* as a method of his *ijtihād*, particularly in dealing with matters of polygamy.[83]

In summary then, according to 'Abduh, Islam did not *institute* the practice of polygamy. It merely regulated and humanized the existing custom in the interest of the eradication of social evils, and the consolidation of the social fabric of society in general. In other words, polygamy was practiced only on the basis of custom, not on the basis of the *sharī'ah*.[84] In fact, the *sharī'ah* had effectively disallowed polygamy or at least made it very difficult: firstly, the husband had to be fair to all the wives; secondly, he had to give the same support to all his wives, and their children; thirdly, he had to distribute his affection or love equally among his wives and the children; and finally, if he failed to do the above and ended up divorcing one of

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[81] 'Abduh, *Tafsīr al-Manār*, Vol. II, 584-585; also see Vol. IV, 305-306.

[82] Muḥammad Muṣṭafā al-Shalabī, *Uṣūl al-Fiqh al-Islāmī* (Beirut: Dār al-Nahḍah al-'Arabīyah, 1986), 287.

[83] Aharon Layish, "The Contribution of the Modernists to the Secularization of Islamic Law," *Middle Eastern Studies* 14 (October, 1978): 266.

[84] Al-Jindī, *op. cit*, 120.

his wives, he would have violated the *sharī'ah*.[85]

In 'Abduh's view, therefore, monogamy is more characteristically Islamic than is polygamy. Polygamy is allowed by Islam, but only under the exceptional circumstances which prevailed in Muslim society at the time of the Prophet. Islam therefore neither enjoins polygamy nor allows it unconditionally.

2. Bank interest (al-fā'ida al-bankiyya)

'Abduh's use of *ijtihād* to resolve economic issues is best illustrated in his *fatwā* regarding bank interest. This was a particularly difficult problem given that the *Qur'ān* prohibits usury (*ribā*), which, according to the traditional interpretation, should be considered to encompass interest. As is well known, interest at the present time has a variety of functions. Over and above its simplest aspect, it is a premium paid to the lender; it serves as the most dependable discount factor in evaluating and comparing different investments, and it plays in this capacity a major role in determining the overall structure of investment and production.

Terminology of *Ribā* and Interest

To assess 'Abduh's opinion on bank interest, it is necessary first to understand the meaning of the word *ribā* and its classifications. The central question to be discussed here is whether bank interest can be categorized as *ribā* or not?

The *Qur'an* contains clear and unequivocal provisions on *ribā*. The word *al-ribā* (usury)

[85] *Ibid.*, 119.

in Arabic means increase (*ziyādah*) in any thing, or to give a thing in addition.[86] This means that the Arabs used the word to denote the additional amount which a debtor paid to his creditor in consideration of the time he was given to use the creditor's money. In other words, it means any addition over and above the principal sum lent and includes usury as well as interest at any rate. According to the *Shorter Encyclopedia of Islam*, "*ribā* is usury and interest; in general, any unjustified increase of capital for which no compensation is given."[87] The *Advanced Learner's Dictionary of Current English* defines usury as the "practice of lending money, especially at a rate of interest considered to be too high."[88] Transactions of money-lending with a fixed time limit and payment of interest, as well as speculation of all kinds, formed an essential element in the highly-developed trading system of Makkah.

Ribā has been understood by some Islamic jurists as "usury" or "usurious interest", while others have taken the term to mean "interest". However, the *Qur'ān* itself makes no distinction between interest and usury and condemns both by the name '*ribā*'. In the following quotations from the *Qur'an*, the term *ribā* is for convenience translated as usury. The *Qur'ān* states:

> Those who gorge themselves on usury behave but as he might behave whom Satan has confounded with his touch; for they say, "buying and selling is but a kind of usury"- the while God has made buying and selling lawful and usury unlawful. Hence, whoever becomes aware of his Sustainer's admonition, and thereupon desists [from usury], may keep his past gains, and it will be for God to judge him; but as for those who return to it- they are destined for the fire, therein to

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[86] 'Abduh, *Tafsīr al-Manār*, Vol. IV, 123; see also, Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr: Mafātīḥ al-Ghayb*, 32 Vols. (Cairo: al-Maṭba'at al-Bahīyat al-Miṣrīyah, 1935), II, 58.

[87] M. TH. Houtsma, A.J. Wensinck, E. Levi, H.A.R. Gibb and W. Heffening. *Encyclopedia of Islam*, first edition. (Leiden: E.J. Brill, 1913-1936, reprinted 1987), Vol. VI. 678-679.

[88] A.S. Hornby, *Advanced Learner's Dictionary of Current English* (Oxford: Oxford University Press, 1963), 947.

abide!.[89]

Historical Background of the practice of *ribā*

In order to understand fully the Qur'ānic prohibition of *ribā*, it is necessary to go back to the practices of the pre-Islamic pagan Arabs, especially among the town-dwellers of Tā'if, Makkah and Madīnah. Al-Ṭabarī made an interesting statement to this effect:[90]

> In pagan times the Banū Thaqīf (Ṭā'if) used to advance loans for a fixed period, at the expiry date of which the creditor demanded from the debtor either his capital or an additional sum for the extension. The debtor either repaid his debt, if he had money with him, or requested an extension in the period of the repayment, with the result that if a one year old she-camel was due at the expiry date of the extended period, he would be required to give a two-year old she-camel; and at the second extension he would return a she-camel which had passed her third year, but was not yet four years old. If this were impossible, for the third year, the creditor demanded the camel which had passed its fourth, but was within its fifth year, and so on.

The same practice prevailed in transactions of gold or silver. The debtor, on his failure to repay his debt after one year was bound to pay the principal (capital) loaned out. For instance, if a sum of 100 *dinars* (gold coins) was borrowed, in the second year the creditor demanded 200 *dinars*; in the third year 400 *dinars*, and so on, until the creditor discharged his complete debt.[91]

One may recall that the citizens of Makkah were also said to have engaged in extensive commercial activities by way of interest -based transactions.[92] The manner in which *ribā* was

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[89] Sūrat al-Baqarah:275.

[90] Ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān fī Tafsīr al-Qur'ān wa Gharā'ib al-Qur'ān, wa Raghā'ib al-Furqān li Muḥammad Ibn Ḥusayn al-Qummī al-Nīsābūrī*, 28 Vols. (Cairo: Maṭba'at al-Amīrīyah, 1905), 55; see also *Tafsīr al-Manār*, Vol. IV, 124.

[91] *Ibid.*, Vol. IV, 55

[92] Al-Rāzī, *op. cit.*, 58, Vol. III.

acquired in Makkah in pagan days was similar to that prevailing in Ṭā'if.[93] Madīnah, being a town long under the influence of the Jewish merchant community, also suffered a great deal as a result of the practice of *ribā*. Sa'īd Ibn Abī Burdā narrates on the authority of his father that when he went to Madīnah, he met 'Abdullāh Ibn Salām who asked: "Why do you not come so that we may feed you and be counted amongst influential people?" He replied: "You live in a town where the practice of interest transaction is greatly in vogue."[94]

As regards *Qur'ān*ic injunctions on *ribā*, verses: 278-279 were revealed, according to Rashīd Riḍā, because of 'Abbās Ibn 'Abd Muṭallib, the uncle of the Prophet Muḥammad, and another man from the clan of al-Mughīrah, both of whom practiced *ribā* in their dealings with the people of Ṭā'īf from the tribe of 'Umar ibn 'Amīr. Thus, Allāh revealed the verse: "What remains of your demand for usury?"[95] Riḍā also quotes the traditionist Ibn Jurayj as follows:

> "the people of Thaqīf told the prophet that their money came from engaging in *ribā* transactions. At the time of the conquest for Makkah (*fatḥ Makkah*) 'Itāb ibn Asīd and the clan of 'Umar ibn 'Amīr ibn 'Awf took *ribā* from the tribe of al-Mughīrah. Thus 'Itāb sent a letter to the prophet, and then Allāh revealed the verse in question."[96]

One contemporary historian has written that "the ordinance against usury was, evidently, directed against Medinese Jews at a time when Muḥammad surely needed financial support while they insisted on describing the mechanism of usurious transaction."[97] Muḥammad al-Khuḍarī

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[93] Anwar Iqbal Qurayshi, *Islam and the Theory of Interest* (Lahore: Ashraf, 1946), 45.

[94] Jalāl al-Dīn al-Suyūṭī, *al-Durr al-Manthūr fī al-Tafsīr al-Ma'thūr wa bi hāmishih al-Qur'ān al-Karīm*, 6 Vols. (Beirut: Dār al-Ma'rifah lil-Ṭibā'at wa al-Nashr, n.d.), I, 365.

[95] Sūrat al-Baqarah:278; see, 'Abduh, *Tafsīr al-Manār*, Vol. III, 103.

[96] *Ibid.*

[97] Philip Khūrī Hitti, *Islam: A Way of Life* (Minneapolis: University of Minnosota Press, 1970), 23.

says that the pagan Arabs advanced loans for a fixed time. When the due time had elapsed the creditor demanded repayment of his loan or interest thereon from his debtor. If the debtor was unable to pay, the amount of the loan would be doubled; for instance, if a one-year-old she-camel was due the creditor demanded a two-year-old one, or if one measure of corn was due, it was increased to two, and so on.[98] They used to practice *ribā* as part of trading,[99] and considered it to be as lawful as trading. But, according to Riḍā, the difference between the two is basic: *ribā* requires "additional payment" on the due date, while in trading there is benefit, but not because of a late repayment.[100]

Riḍā's distinction between trade and *ribā* deserves special attention, and is essential to understanding the true nature of *ribā* (usury). Following a widely accepted criterion, trade simply means the exchange of heterogenous items, such as money against wheat, and implies furthermore that the earns a profit only by subsequentiy reselling at higher prices the merchandise he has bought cheaper. *Ribā*, on the other hand, denotes the surplus that arises out of a single act of exchanging homogenous items (wheat against wheat, or money against money). Thus we have a pure act of *ribā* if a person gives a certain amount of wheat to his neighbor, for whatever purpose, with the understanding that a surplus or addition will be added on the return. This is unjust simply because the borrower will have consumed the wheat in the meantime, so that no surplus which can be transferred to the lender would have accrued to him. In other words, consumer goods, over and above their capacity to satisfy a need, do not have any additional value

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[98] Muḥammad al-Khuḍarī, *Tārīkh al-Tashrī' al-Islāmī*. Cairo: Maṭba'at al Sa'āda, 1964.

[99] Sūrat al-Baqarah:275.

[100] 'Abduh, *Tafsīr al-Manār*, Vol. III, 97.

for which a price may reasonably be charged. For a long time money was also considered a consumer good. In fact, as long as it was spent for consumption rather than for productive purposes, no one could expect any increase or surplus.[101]

Classification of *Ribā*

Ibn al-Qayyīm al-Jawziyya divided *ribā* into two categories: *ribā jalī* (clear ribā) and *ribā khafī* (hidden *ribā*).[102] *Ribā jalī* is prohibited because it involves great harm (*al-ḍarar al-'āẓīm*). It is also called *ribā al-Nasī'ah*, which was practiced in the pre-Islamic age of *jāhilīyah*, in which the borrower had to pay an additional amount if he was late. It is disadvantageous to other people, for it allows the lender to seize the properties of other people (*akl al-amwāl*), which means spending from idle principal and not from the profits generated by such principal. It will be injurious to other people, so it is argued.[103]

Ribā khafī was prohibited in order to block the way (*sadd al-dharī'ah*)[104] to *ribā jalī*. This kind of *ribā* is also known as *ribā al-faḍl*. Allāh prohibited *ribā al-faḍl* to prevent *ribā jalī* and not for its own sake. As Abū Sa'īd al-Khudry reported: "The Prophet Muḥammad said: "Do not sell one *dirham* (silver coin) with two *dirhams* because I am afraid that would involve *ribā*." This means that the Prophet prohibited *ribā al-faḍl* in order to block the way to *ribā al-nasī'ah*.

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[101] This can be seen in the *Qur'ān*, sūrat al-Rūm, 39: "That which ye lay out for increase through the property of other people, will have no increase with Allāh."

[102] 'Abduh, *Tafsīr al-Manār*, Vol. III, 115-116.

[103] *Ribā jalī* is clearly mentioned in the *Qur'ān* (2:275-276, 3:130).

[104] *Sadd al-dharī'ah* means "blocking the way" even if the method involved is otherwise legal.

But in necessity and public welfare (*al-maṣlaḥah al- ammah*), it is *mubāḥ* to indulge in it.[105] For it is one of the principles of Islamic law that "anything which was prohibited because of blocking the way, was allowed for necessity and public welfare." (*wa mā ḥurrima li sadd al-dharī'ah, yubāḥu lil-ḥājah wa al-maṣlaḥah*).

The '*ulamā*' had different opinions on this matter. Some Companions (*ṣaḥābah*) of the Prophet and their successors *Tābi'ūn* allowed *ribā faḍl* absolutely, such as 'Abdullāh ibn 'Umar who referred to ibn 'Abbās, 'Uthāmah ibn Zayd and ibn Zubair, Ibn Zayd ibn Arqām, and Sa'īd. They said that the only *ribā* is *ribā al-nasī'ah. Ribā faḍl* is mentioned only in the *Ḥadīth Aḥād*,[106] while the *fuqahā'* said this was not in the *Qur'ān*.[107]

Why does the *Qur'ān* Prohibit *ribā?*

As 'Abduh saw it, the *Qur'ān* prohibits *ribā* for the following reasons:[108]

First, to prevent greed. According to the *Qur'ān*ic view,[109] the sole object of money is to facilitate exchange for the fuller satisfaction of human needs. Since exchange is the only natural purpose of money, the latter cannot be allowed to increase by usury or interest. Islam only tolerates profit on the basis of a legal joint stock company or through private enterprise which is without any exploitation.

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[105] 'Abduh, *Tafsīr al-Manār*, Vol. III, 116; see also Vol. VII, 182. This argument was used by 'Abduh in supporting his opinion on bank interest.

[106] These are traditions which have only a single chain of transmission.

[107] 'Abduh, *Tafsīr al-Manār*, Vol. III, 117; see also Vol. VII, 180.

[108] What follows is a summary of Riḍā, *Tafsīr al-Manār*, Vol. III, 106-113.

[109] Waqar Masood Khan, *Towards an Interest-Free Islamic Economic System: A Theoretical Analysis of Prohibiting Debt Financing* (Leicester, UK: The Islamic Foundation, 1985), 25-26.

Second, there is no mutual aid and benefit between lender and borrower. This means that the benefit will accrue only to one side (the lender), unlike trading, in which both sides benefit. In the latter case, no coercion is involved, rather it is mutual agreement. On the other hand, in *ribā*, it is obligatory to give or to ask for an additional amount if the borrower is remiss in repayment. Therefore, it can be said that all kinds of usury or interest-bearing transactions are based on a one-sided risk, which ultimately makes the rich richer and the poor poorer.[110] This causes the breakdown of the social balance.[111] The interests of the money lender are secured in usury while no provision is made for the debtor. This is sheer injustice.

Third, money transactions on usury impede legal investments for the advancement of industries and the public utility.[112] Usury is a great hindrance to the natural movement of money and thus hinders trade and commerce.[113]

Fourth, loans are taken and used primarily for purposes of consumption.[114] The borrower, having thereby no feasible addition to his income, is very likely to be in difficulty even for the repayment of the principal. Therefore, paying a surplus over and above the capital would easily undermine his economic well-being and force him to a sub-marginal position where insolvency and bankruptcy are inevitable. That is why the *Qur'ān* explicitly urges: "If the debtor

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[110] Quoted by Afzal-ur Rahman from Imām al-Rāzī, *Economic Doctrines of Islam*, Vol. III (Lahore, Pakistan: Islamic Publications Limited, 1976), 61.

[111] Khan, *Towards an Interest-Free*, 26.

[112] Qurayshi, *op. cit.*, 53.

[113] Some scholars have pointed out that in modern times usury: (i.e. 50-100 % charge on the principal or more) is no longer practiced, instead we have interest which varies from 1 to 15 percent or higher. This is the case in most countries of the world today, including Muslim countries. See the discussion in Afzal-ur Rahman, *Economic Doctrines*.

[114] Rahman, *Economic Doctrines*, 101.

is in difficulty, grant him time till it is easy for him to repay."[115]

Fifth, the lender for his part instead of acting in accordance with the *Qur'ān* as cited above, would consider himself justified in charging the highest possible interest that would increase at a progressive rate, "increasing manifold" (to use the words of the *Qur'ān* sūrat Āl 'Imrān 130, *aḍ'āfan muḍā'afah*), so as to make up for any loss incurred because of the insolvency of the borrower.

Sixth, *ribā* is also spent on consumption rather than for productive purposes, or to use again the terminology of the *Qur'ān*, "swallowed and eaten up" (akl amwāl), so that the surplus, although apparently growing at a progressive rate, diminishes and finally disappears. And here again the *Qur'ān* is in perfect accordance with what actually takes place, "God shall blot out usury.".[116] Translated into the terminology of modern economic theory, this would read pretty much as follows: usury makes no addition whatsoever to the stock of wealth and to the productive capacity of the business community as a whole.

A final reason is that *ribā* makes people insensitive towards other people, especially the poor. There is no mercy for them.

For the above reasons, it is reasonable to argue that *ribā* was prohibited in Islam because it is a form of unlawful gain derived from the quantitative inequality of the counter-values (*'iwaḍ*) in any transaction which purports to effect the exchange of two or more species (*anwā'*) which belong to the same genus (*jins*) and are governed by the same efficient cause (*'illa*). Deferred efficient completion of the exchange of such species, or even of species which belong

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[115] Sūrat al-Nisā:278.

[116] Sūrat al-Baqarah: 275.

to a different genus but are governed by the same *'illa* (cause), is also *ribā*, whether or not the deferment is accompanied by an increase in any one of the exchanged counter-values (*'iwaḍ*).[117]

The prohibition of *ribā* applies principally to the six articles (gold, silver, wheat, barley, dates, and salt) mentioned in the *Ḥadīth*, but also, by analogy (*al-qiyās*) to other related commodities.[118] The *Ahl al-qiyās* held different opinions on the *'illa* of *ribā* as regards the six prohibited articles. For example, for wheat, barley, dates, and salt, Abū Ḥanīfah argued that the cause of *ribā* was that these articles were weighed or measured when they changed hands. Others, such as Sa'īd al-Musayyab and Imām al-Shāfi'ī argued that the *'illa* of *ribā* for wheat, barley, dates, and salt, was their property of being a nourishment for mankind. Ibn al-Qayyīm called them *qūt al-nās*.[119] In the case of gold and silver, according to Abū Ḥanīfah and Aḥmad ibn Ḥanbal the cause of *ribā* is the fact of their being measurable by weight. This applies to all kinds of metals which are weighed and measured. According to the majority of *fuqahā'* (*jumhūr al-fuqahā'*), however, including Imām al-Shāfi'ī, Mālik and Imām Aḥmad ibn Ḥanbal, the cause of *ribā* is monetary value (*thamanīyat*). Thus *ribā* is based on the price of each commodity mentioned above.

Generally speaking, the scholars of the different schools of law agreed that exchanging goods of the same genus (*jins*), such as gold or silver, involves *ribā al-faḍl*. However, they disagreed on cases involving more than one genus (*jins*) such as gold and silver, wheat and barley, and so on. For his part, Rashīd Riḍā did not identify any cause of *ribā*, such as weight

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[117] 'Abduh, *Tafsīr al-Manār*, Vol. VII, 181; see also in Vol. III, 117.

[118] *Qiyās* is a process of analogical reasoning by which a ruling is extended, on the basis of a common efficient cause (*'illa*), to a case not expressly governed by sacred texts.

[119] *Tafsīr al-Manār*, Vol. VII, 181.

or measure, but insisted only that Allāh wanted mankind to avoid difficulties and *ribā* was a cause of hardship.[120]

Savings Banks and Interest Acquisition

We have already mentioned that 'Abduh called for the reopening of the gate of *ijtihād* as a way to confront modern problems. Basing himself on the principle of public interest (*al-maṣlaḥah al-mursalah*), which was employed by all four *madhhab*s and especially by that of Imām Mālik, ("whenever there is *maṣlaḥah*, that is *shari'ah*"), 'Abduh applied this principle in a *fatwā* which allowed postal savings banks and the taking of interest.[121] *Ribā*, according to 'Abduh, has been prohibited in Islam because it leads to human exploitation (*istighlāl wa al-ẓulum*). The reason (*al-ḥikmah*) why *ribā'* was not allowed in Islam was to avoid "exploitation" and the wrongful acquisition of the property of other people, for the *Qur'ān* says: "And devour not one another's possession wrongfully,...."[122] This means that practicing *ribā* is similar to what the *Qur'ān* calls *akl al-amwāl*.

Bank interest, 'Abduh asserted does not entail exploitation and has no similarity to what the *Qur'ān* calls *akl al-amwāl*.[123] The *Qur'ān* itself, 'Abduh said, has prohibited only *ribā' jāhilīyah*, which was a kind of exploitative compound of interest (*aḍ'āfan muḍā'afat*), but not

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[120] 'Abduh, *Tafsīr al-Manār*, Vol. VII, 184.

[121] Riḍā, *Tārikh al-Ustādh*, Vol. II, 647.

[122] Sūrat al-Baqarah:188; see *Tafsīr al-Manār*, Vol. II, 195.

[123] Bayyūmī, Zakarīyyā Sulaymān, *Al-Tayyārāt al-Siyāsīyyah wa al-Ijtimā'īyyah bayna al-Mujaddidīn wa al-Muḥāfiẓīn: Dirāsah Tārikhīyyah fī Fikr al-Shaykh Muḥammad 'Abduh* (Cairo: Al-Hay'ah al-Miṣrīyah al-'Āmmah lil-Kitāb, 1983), 110-111.

other kinds of *ribā*.[124] Following the distinction between *al-muṭlaq* and *al-muqayyad* in *uṣūl al-fīqh*, he concluded that there is no *ribā'* but *ribā' aḍ'āfan*. He called it *ribā' al-fāḥish*.[125] His opinion is not accepted, however, by most Muslim jurists. For them *ribā*, whether it is compound or not, is prohibited.

To deposit money in a postal savings bank, then, was not *ribā* for 'Abduh. *Ribā*, according to him, is unlawful (*harām*) because it oppresses the needy and involves injustice. *Ribā* had been made unlawful in order to prevent injustice and to preserve the virtues of mutual aid (*ta'āwun*) and mercifulness (*tarāḥum*) among people. As 'Abduh rhetorically asked: "Do not the rich people benefit from the needy (through *ribā*)?"[126] Relating this statement to the *Qur'ānic* verse: "for if you do it not, then know that you are at war with God and His Apostle. But if you repent, and you shall be entitled to [the return of] your principal: you will do no wrong , and neither will you be wronged."[127] Therefore, the right *mu'āmalah* in Islam is mutual aid and benefit.

Another reason why 'Abduh allowed postal savings banks was because he hoped that they would encourage prudence in the economic sector. "'Abduh distinguished between usury and investment. As long as the financial regulations permitted investments, but prevented exploitation, the Islamic reservations about interest taking would be satisfied."[128] 'Abduh was aware that

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[124] *Ibid.*

[125] *Ibid.*

[126] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. I, 677.

[127] Sūrat al-Baqarah:279.

[128] Khoury, *Islam and Modernization in the Middle East*, 210.

investment activities in Egypt were developing slowly and he wanted to encourage them. But 'Abduh also wanted that the interest rates be controlled with strict regulations by the government.[129]

'Abduh's ruling on saving banks was given in answer to a question addressed to him by Muṣṭafā Efendī.[130] Savings in banks aimed, he argued, at giving benefit to the government and the public, and there was no oppression on either side. This was a kind of just partnership:[131] people deposited their money in the banks and the banks used it to help other people through loans and so on. Allowing this sort of interest did not mean applying a legal stratagem (*ḥīla*) to circumvent the rulings of the *sharī'ah*. Rather, it was a kind of right (*ṣaḥīḥ*) or just partnership (*muḍārabah*) between people who had money and the bankers. This answer came after an analysis of *fiqh*, i.e. of the *ḥikmat al-tashrī' wa sirrihi* (the wisdom and secret of the *sharī'ah*).[132]

According to Al-Jindī, 'Abduh allowed depositing money in the post offices was was an analogy to how the government administered its property through *muḍārabah*.[133] What 'Abduh

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[129] *Ibid.*

[130] The Egyptian government united the *'ulamā'* of al-Azhar as a council in 1903. This council studied the question on depositing money in postal savings banks. As a *Muftī*, 'Abduh gave his own answer. After the council discussed it carefully, they decided the matter was allowed, according to (*madhhab* of Abū Ḥanīfa), and stated so in a *fatwā*. See 'Amārah, *al-A'māl al-Kāmilah*, Vol. I, 676, and Riḍā, ed, *Majallat al-Manār*, Vol. 16 (Cairo: Maṭba'at al-Manār, 1315 A.H.), 717-718, at the heading "*Ṣundūq al-Tawfīr fī Idārat al-Barīd.*"

[131] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. I, 679.

[132] *Ibid.*

[133] The term *muḍāraba* is derived from the expression 'making a journey' (*al-ḍarb fī al-arḍ*), and it is called this because the agent (*al-muḍārib*) is entitled to the profit by virtue of his effort and work. And he is the investor's partner in the profit and in the capital used on the journey and in its dispositions. Abraham L. Udovitch uses term *commmenda* to designate some kinds of contract in medieval Islam. He maintains that there were three Arabic terms

meant by *muḍārabah* was a kind of insurance (*ta'mīn*).[134] For example, a man might agree with other people (*jamā'ah*) to give a certain amount of money for a specific time and at a certain rate, for purposes of commerce, when the allotted time lapsed, they would profit from it. Even if one of them died, the heirs would get the money together with the profit. This kind of transaction, according to 'Abduh, was lawful (*jā'izah*).[135] Islam does not prohibit people from benefitting themselves through business. Conducting *muḍārabah* with money, 'Abduh reasoned, was to apply the principle of mutual aid (*ta'āwun)* mentioned in the *Qur'ān*: "... Help one another in furthering virtue and God-Consciousness, and do not help one another in furthering evil and enmity ...,"[136] and in the *Ḥadīth* which states that: "The Muslims are free to set their stipulations except when a stipulation makes unlawful what is lawful or lawful what is unlawful" (*al-muslimūna 'inda shurūtihim illa sharṭan ḥarrama ḥalālan aw aḥalla ḥarāman*). As long as there was no deterioration and depravity (*al-fasād*), everything was allowed. And savings banks were also a rather safe method of developing the economy.[137]

Rashīd Riḍā was asked about 'Abduh's allowing the depositing of money in postal savings

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used to designate the *commenda*: *qirāḍ*, *muqāraḍa*, and *muḍāraba*. The terms *qirāḍ* was adopted by the Mālikī and Shāfi'ī schools and to a lesser degree, *muqāraḍa*, while the Ḥanafī adopted the term *muḍāraba*. 'Abduh did not, however, elaborate on this subject. For a detailed discussion of the legitimacy of *muḍāraba*, see Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 170-248.

[134] Al-Jindī, *op. cit.*, 115-116.

[135] *Ibid.*, 116.

[136] Sūrat al-Mā'idah:2.

[137] Al-Jindī, *op. cit.*, 116.

banks and the taking of interest on it. Was it against the *Qur'ān* and the *Ḥadīth*?[138] Riḍā attempted to answer by referring to 'Abduh's opinion in the question of savings accounts is dealt with in the collection of 'Abduh's *fatwās* in the *wizārat al-Ḥaqqāniyyah*. Riḍā also related the instruction of the Khedive, who said that the government needed to establish a postal savings bank (*ṣundūq al-tawfīr*) to help needy people increase their income. It had been observed that more than 3000 poor people had deposited their money in the post office,[139] bdid not get any benefit from it. Therefore, the government decreed that profit (interest) be given to the people who deposited their money in the banks. Riḍā also asked the government about the *sharī'ah* basis for taking interest from the banks, if it was *ḥalāl*, and whether people should feel guilty about taking interest.

The decree of the government was based on the view that bank interest was a form of partnership (*muḍāraba*) which allows one to derive benefit from depositing one's money in banks.[140] This argument, however, was not accepted by the Egyptian people.

With respect to "doubled *ribā*", 'Abduh tried to interpret the *Qur'ān*ic verses by looking at the historical conditions of the time they were revealed. According to him, there is no doubt that the transaction (*al-mu'āmalah*) that gives benefit to both the "taker" and the "giver", is not exploitation.[141] He argued that the "postal savings bank" is not based on *maṣlaḥah* either as its

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[138] Actually, this question arose in *Majallat al-Manār*, Vol. 19, No. 9, pp. 527-529, 22 February, 1917, and was addressed to Rashīd Riḍā. Riḍā in his answer referred to 'Abduh's opinion on this matter, as if this answer came from 'Abduh himself. See, 'Amārah, *al-A'māl al-Kāmilah*, Vol. I, 677.

[139] In Egypt at the time of 'Abduh, people used to put their money in the post office, which had the same function as the bank.

[140] 'Amārah, *Al-A'māl al-Kāmilah*, Vol. I, 679; see also Riḍā, *Majallat al-Manār*, Vol. 16, 718.

[141] 'Amārah, *op. cit.*, 677.

benefits accrue to both the government and the people. In modern times, there is no perfect Islamic economic system based on the principles of Islamic law: "do not inflict injury nor repay one injury with another" (*lā ḍarar wa lā ḍirār*). Therefore, there is no exploitation with respect to need and circumstances when one is dealing with the bank.[142] According to 'Abduh, the interest from postal savings banks is not *ribā*, and is therefore *mubāḥ*, a view he believed was based on the *"ḥikmat al-tashrī' wa sirrihi"*. Whoever rejected this *fatwā*, he declared, was "narrow minded" in matters of *mu'āmalah*, and such narrow-mindedness would only weaken the Muslim community as a whole.[143]

In the light of 'Abduh's foregoing arguments, it is reasonable to say that there are a number of guidelines for the practice of *muḍāraba*. Nejatullah Siddiqy describes them as follows:[144]

> [1]. No supplier of capital can escape his liability for the loss on his proportion of the total capital, [2] Profit will be distributed among the partners in business in proportions settled by them. The share of every partner in profits must be settled as a proportion or perecentage, [3] Any party may terminate the *muḍārabah* agreement at any time, [4] A *muḍārabah* agreemnet can also be concluded for a fixed term, [5] The *muḍārabah* agremeent ends with the death of any of the parties. Where there are more than two parties, the agreement may be continued by the remaining parties.

In reviewing 'Abduh's opinion on bank interest, Nabil. A Saleh has summarized the views of 'Abduh and Riḍā on *ribā* as follows:

[a] The only disallowed *ribā* is *ribā al-jāhilīyyah* (pre-Islamic *ribā*), which is

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[142] Bayyūmī, *op. cit.*, 111.

[143] 'Amarah, *op. cit.*, Vol. II, 677. Also see Majid Khadduri, *Political Trends in the Arab World: The Role of Ideas and Ideals in Politics* (Baltimore: Johns Hopkins Press, 1970), 62.

[144] Nejatullah Siddiqy, *Partnership and Profit-Sharing in Islamic Law* (Leicester, UK: The Islamic Foundation, 1985), 16-18.

> manifest (*jalī ribā)* and consequently is prohibited not as a way of performing an usurious transaction but as an usurious transaction in itself. As for the two other sorts of *ribā*, namely *ribā al-faḍl* and *ribā al-nasī'ah* (both provided for in *Ḥadīth* and not in the *Qur'ān*), their prohibition tends to close the loopholes which otherwise might permit manifest *ribā* (*ribā jalī*). Thus *ribā al-faḍl* is under a presumption of prohibition and this presumption is not conclusive but rebuttable. Thus again the sale of any of the six articles mentioned in the *Ḥadīth*, with an increase, and whether in a hand-to-hand transaction or in a deferred one, is disallowed only if it is intended to lead to manifest *ribā* (*ribā jalī*), which takes place when interest accrues on interest already accounted by the time the transaction was concluded, **[b]** As a result, the first increase on the termed loan is lawful, even though agreed in consideration of the delayed term of payment. But if, at the maturity date, it is decided to postpone that maturity date against a further increase, that is the unlawful *ribā al-nasī'ah*, **[c]** The consequence which comes to mind is that whereas *ribā jalī*, the manifest *ribā*, can be deemed lawful only in case of pressing necessity, such as the one which allows the eating of carrion, the two other sorts of *ribā*, namely *ribā al-nasī'ah* and *ribā al-faḍl* (both provided by *Ḥadīth* and not by the *Qur'ān)* are regarded with aversion (*karāhiyya*) but not as under a rule of prohibition, **[d]** Finally, it is attributed to Shaykh Muḥammad 'Abduh that he found ways to show that under Islamic law both interest generated by savings bank accounts and that generated by insurance policies were admissible.[145]

Thus, it can be said that interest deals with a surplus that seems to move in a circular way, bringing us back to the same stage of unproductive consumption. In other words, it is a surplus that, while consuming itself, causes innumerable difficulties and frictions. Therefore, it is quite understandable that, as long as the disadvantages outweigh the prospective benefits, such a surplus should be suspended or prohibited.

'Abduh permitted the earning of interest on accounts in postal savings banks (*ṣundūq al-barīd*), while other *fuqahā'* did not. He believed that the interest derived from banks such as these should be regarded as *muḍārabah*, i.e. a transaction between people and the government; and it should be controlled by the government in order to avoid corruption and cheating in the

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[145] Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar and Islamic Banking* (Cambridge: Cambridge University Press, 1986), 28.

banks.

In conclusion, it can be said that 'Abduh's attempt at reformation of the religious courts was successful. As Jamal Ahmed put it, "'Abduh was immediately successful in attempting to reform the workings of the religious courts."[146] As discussed earlier, he also contributed to the reform of civil laws. In addition, although, 'Abduh gave no clear guidelines about how his proposed reforms would actually function, his principal contribution lies in his willingness and his efforts to reinterpret Islamic law according to his *ijtihād* and through the method of *maslahah*. His *fatwās* are a major expression of such an effort.

[146] Mohammad Ahmed, *op. cit.*, 38.

CONCLUSION

'Abduh was an *'ālim* who held *'aql* in high regard while *taqlīd* he deprecated in the strongest terms possible. Revelation, according to him, revelation conveys a religious message which requires the use of *'aql*. *Qur'ān*ic teachings do not oppose *'aql*, and where they seem to do so an interpretation will yield the meaning which is in conformity with *'aql*. 'Abduh believed that *'aql* was the basis of civilization, it could provide any number of improvements, not the least of which would be a rise in knowledge and the sciences. 'Abduh's reformation was directed towards aspects of *mu'āmalah* only, especially in the area of the relationship between an individual and society; it did not extend to matters of *'aqīdah*.

'Abduh sought to reform the rules of application of Islamic law. 'Abduh's reform appeals to an understanding of true Islām which has been freed of superstitions. Such freedom would be achieved by going back to Islam's original sources, by acquiring the courage to think and see things as they are, by unshackling the mind of prejudices and preconceived ideas, by keeping human intelligence independent of passions, by submitting it only to truth, and finally by understanding the distinction between the right of obedience that a government may expect from a people and the right to justice that a people may expect from a government.

'Abduh's ideas on Islamic reform were influenced by his contacts with Europe, yet he did not approve his society's indiscriminate imitation of European culture. To do so, he believed this would be detrimental to their Islamic values based on the *Qur'ān* and the *Ḥadīth*, and lead to *bid'ah*, *khurāfāt* and *takhayyul*. As a corrective to both the negative influences from the West and the spirit of blind imitation so pervasive in the Muslim world,

he advocated the use of *jtihād* as opposed to slavishly following the received opinions of earlier *'ulamā'*. According to him, Islamic law is both elastic and flexible. Therefore, reason, in the form of *ijtihād*, should be used to face the challenges of modern society, a society that is progressive while still remaining grounded in Islamic teachings.

Among the methods advocated by 'Abduh to reform Islamic law was the doctrine of *maṣlaḥah al-mursalah* (public interest), often also called as *maṣlaḥah al-'āmmah*. This method represented a "re-opening of the gate" of *ijtihād* which had been closed since the formation of the four schools of law almost a millennium ago. This method was originally introduced by Imām Mālik, whose religious opinions were mostly based on reason and guided by the *Qur'an* and *Ḥadīth*.

Inspired by the doctrine of public interest, 'Abduh went on to select religious opinions from the repertoire of existing views which were relevant to the issues of contemporary society. This exercise in Islamic legal reform theory came to be known as *talfīq* (eclecticism), which informed 'Abduh's form of *ijtihād*. 'Abduh considered *ijtihād* to be valid only if practiced by Muslims who qualified as the *ūlū al-amr*, i.e. *ahl al-ḥall wa al-'aqd* of the Muslim community. Such qualified Muslims included *umarā'*, jurists, *'ulama'*, army leaders and all the other leaders who would act with justice and conserve the *maṣlaḥah al-mursalah*. According to 'Abduh, where there is *maṣlaḥah*, there is *shari'ah*.

Viewing 'Abduh the reformer within a broader perspective, we can say th he was a humanist and pragmatist, a person who sought to derive the laws from the *Qur'ān* and *Ḥadīth* and to apply them according to the needs of society. His humanism and pragmatism never strayed far from the *Qur'ān*ic spirit and Islamic principles as he understood them. A

few examples below will suffice to illustrate the point.

'Abduh's controversial (to his fellow *'ulamā'*) rulings are best seen in his *fatwās* on polygamy and bank interests. Some of his *fatwās* are evidence of the impact of his thought on Islamic law in his time. He believed that polygamy was allowed in Islam although he considered monogamy to be the best way to ensure stability in married life. In case of the postal savings bank (*ṣundūq al-tawfīr*), 'Abduh sanctioned the taking of interest on accounts in this bank, whereas other *fuqahā'* did not. He believed that bank interest in analogy to *muḍārabah*, represents a transaction between people and government, and therefore it does not involve *ribā*. *Muḍārabah*, a method for the distribution of profits and losses is now being championed by a considerable number of contemporary Muslim economists who see it as the principal substitute to interest. A number of Islamic financial institutions have emerged which consider profit sharing as the foundation of their operations.

Although 'Abduh did not provide a detailed description of the principle of *muḍārabah*, or how, a banking system would be established on its basis and how that become an "interestless banking system", yetit is clear that he did introduce ideas which would help make change and development possible in Muslim society. The reforms and the political structure he envisaged for Egypt remained firmly anchored in the teachings of Islam with respect to morality, society and order. His reforms took the form of *ijtihād* on the principle of *al-maṣlaḥah al-mursalah*. *Ijtihād* for him, was the only way to solve modern problems. While he did not contribute new ideas on *ijtihād* to Islamic law, he nevertheless inspired a generation of liberal thinkers who came after him with a legacy of questioning the relationship between Islam and modern society.

'Abduh was one of those thinkers who brought spiritual values into bold relief. More specifically, he gave reason its due place in the Islamic scheme of things. He affirmed the rights and requirements of the moral conscience. By his constant efforts to resist the separation of thought from action or science from religion, he raised philosophy to its highest level and opened for it unlimited perspectives in the East.

In his active career he was involved in Egyptian politics down to the elementary level. The social basis of his thought is derived from the Muslim experience; although he directed his recommendations for reform to his Egyptian audiences, the vision he drew on was that of the ideal Muslim community. The ultimate authority he spoke of was that of the *Qur'ān*. Drawing his principles from this source and the *Ḥadīth*, 'Abduh hoped to rouse Muslims to the better future he felt they were capable of achieving.

There is no doubt, therefore, as to the existence of a broad -based social orientation of 'Abduh's thought. In the reformation of Islam, his inspiration was derived from his love for both truth and good. He should be considered a model and a guide, and his works deserve further scholarly scrutiny by researchers not only in Egypt and the rest of the Muslim world, but in the Western world as well.

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