

Islamic Law in Theory

Studies on Jurisprudence in Honor of Bernard Weiss

Edited by

A. Kevin Reinhart and Robert Gleave

With an Appreciation by

Peter Sluglett



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“ISTAFTI QALBAKA WA IN AFTĀKA AL-NASU WA AFTŪKA:”^{*}
THE ETHICAL OBLIGATIONS OF THE MUQALLID BETWEEN
AUTONOMY AND TRUST^{**}

Mohammad Fadel

In the theological tradition of *kalām*, epistemology and dogma are fused. The fusion between epistemology and dogma is evidenced by the claim of Muslim theologians that theological dogma must be based on knowledge (*‘ilm*), which by definition is accessible to all rational persons.¹ This emphasis on epistemology is also evidenced in the many works of Sunni jurisprudence (*uṣūl al-fiqh*), whether Ash‘arī or Mu‘tazilī, which adopt the distinction between knowledge and considered opinion (*ẓann*). In contrast to *kalām*, for example, which demands certainty for its conclusions,² *uṣūl al-fiqh* was generally satisfied if the conclusions its methods supported were merely probable (*rājiḥ*).³

One can also distinguish *kalām* from *uṣūl al-fiqh* in another important respect: all individuals, in their individual capacities, are required to have knowledge of the truth of *kalām*’s theological propositions,⁴ while in the domain of jurisprudence individuals are generally not obliged to reach a substantive conclusion regarding the judgments produced in jurisprudence.

^{*} Part of a hadith in which the Prophet Muḥammad, when asked about the meaning of righteousness (*al-birr*), replied by saying: “Seek the opinion of your heart, even if the people give you opinions to the contrary.”

^{**} I would like to thank the participants in the ALTA II conference held between September 26–29, 2008 for the valuable comments I received on a draft version of this paper.

¹ See, e.g., 9 *Nafā’is al-Uṣūl fī Sharḥ al-Maḥṣūl*, Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfi, ed. by ‘Adil Aḥmad ‘Abd al-Mawjūd and ‘Alī Muḥammad Mu‘awwad 4026 (Maktabat Nizār Muṣṭafā al-Bāz: Riyāḍ, 1997) (quoting Fakhr al-Dīn al-Rāzī as saying, with regard to the fundamentals of religion (*al-uṣūl*), that “God, may He be glorified, has laid out for these [foundational] requirements certain proofs (*adillah qāṭi‘ah*), and He enabled rational persons to know them”); see also, Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī, *al-Mustasfā* 347–348 (Dar al-Kutub al-‘Ilmiyyah, Beirut: 1993) (linking the possibility of sin to the possibility of knowledge); and Aron Zysow, *The Economy of Certainty* 1 (unpub. Ph.D. Diss., Harvard University, 1984).

² Mohammad Fadel, “The True, the Good and the Reasonable: the Theological and Ethical Roots of Public Reason in Islamic Law,” 21 *Can. J. L. & Juris.* 1, 21–23 (2008).

³ Zysow, *supra* n. 1 at 4.

⁴ See, e.g., al-Faḍālī, *Kifāyat al-‘Awāmm min ‘Ilm al-Kalām*, trans. Duncan B. MacDonald in *Development of Muslim Theology, Jurisprudence, and Constitutional History* (Unit Printing House, Lahore: 1964) 323–324.

Instead, most individual Muslims were non-specialists (*muqallid*) who were obliged to identify an appropriate scholar-specialist—one who has mastered the tools of jurisprudence (*mujtahid* or *muftī*)—and to follow the jurisprudential opinions of that scholar-specialist without affirming or rejecting that scholar-specialist's reasoning (*ijtihād*) in support of that opinion (*taqlīd*). As Professor Weiss has suggested, this task is itself a type of *ijtihād*, but unlike the *mujtahid-muftī* who sought a probative opinion regarding a rule of conduct, the *mujtahid-muqallid* “was trying to arrive at a sound opinion as to who might be truly qualified to interpret the law for him.”⁵ This task, however, was complicated by the range of views expressed by *mujtahid-muftīs*, thus giving rise to the problem of how a *muqallid* could determine his ethical obligations in the face of divergent, even contradictory opinions of *muftīs*.⁶

In this chapter, I will survey the views and arguments of various pre-modern scholars of *uṣūl al-fiqh* on the ethical dilemma facing *muqallids* as a result of the ethical pluralism generated by *uṣūl al-fiqh*'s individualist ethical paradigm. I will begin with a general discussion of the epistemological context (or the domain) in which *taqlīd* is operative and its relationship to moral obligation. I will then take up the different views expressed on the question of how the ethical obligation of an individual is to be determined in a context of moral controversy. I will then argue that the pre-modern solutions to this problem, because of their focus on epistemology, are highly unsatisfactory. I instead suggest that a better way to understand *taqlīd* is as a relationship of trust in which an otherwise autonomous individual gives up aspects of his own autonomy for rational self-regarding reasons, but only because that other is morally worthy of receiving that trust. On the account of *taqlīd* I propose, the *muqallid* plays a central role in maintaining the integrity of Islamic law by monitoring would-be *mujtahids* to ensure that they conform to Islamic ethical ideals.

I. INDIVIDUAL OBLIGATIONS AND THE DOMAIN OF *TAQLĪD*

Islamic theology and ethics adopted an epistemological approach rooted in theoretical reason's ability to discover the truth of God's commands (the basis of moral obligations according to the Ash'arīs), or the ethical

⁵ Bernard Weiss, *The Spirit of Islamic Law* 128 (University of Georgia Press, Athens: 1998).

⁶ *Id.* at 129.

content of good and evil (the basis of moral obligations according to the Mu'tazilis) in contrast, for example, to a Kantian approach to ethics which is grounded in the practical reason of autonomous persons.⁷ Indeed, al-Ghazālī goes so far as to say that a *mujtahid* can commit sin only in those areas where it is possible to attain epistemological certainty.⁸ The theological propositions to which one must subscribe are claimed to be rational and therefore individuals may know them to be true, in the same manner they can know other rational propositions, e.g. that an object cannot be in two places at once, or that parallel lines never meet, are also true. Accordingly, despite the fact that theologians oblige non-*mujtahids* to follow the legal opinions of *mujtahids* in matters of substantive law (*furū'*), they prohibit *taqlīd* with respect to theological dogma, *uṣūl al-dīn*.⁹ This seems to suggest that all Muslims must be *mutakallimūn*, and indeed, the theologian al-Faḍālī states that theology must be the first object of study, for without an understanding of this subject, one could not even make a judgment as to whether one's prayers were valid.¹⁰

But is it really the case that all Muslims must become *mutakallimūn* in order for their faith to be valid? It turns out that for many, if not most theologians, the answer is clearly not: it is sufficient if a person has a general proof (*ijmālī*) as to the truth of Islamic dogma, rather than the detailed (*tafṣilī*) proofs of *kalām*. This distinction was popular for at least two reasons: first, it answered the palpable skepticism that was expressed by opponents of *kalām* when theologians claimed that rational understanding of the Islamic creed was a condition for the validity of faith; and second, it also provided a counter to dissidents within the theological tradition, e.g. the Baghdadi Mu'tazilites, who rejected *taqlīd* in its entirety, whether in theology or in law.¹¹

For opponents of *kalām*, the claim that rational proof was required for faith to be valid was not only contrary to the experience of the Muslim community, it was also absurd on its face, insofar as it inevitably led to

⁷ For an introduction to Kantian ethics, see J.B. Schneewind, "Autonomy, obligation, and virtue: An overview of Kant's moral philosophy," in *The Cambridge Companion to Kant*, ed. by Paul Geyer (Cambridge University Press: New York, 1992), 309–341.

⁸ Al-Ghazālī, *supra* n. 1 at 347–348.

⁹ For a summary of various theologians' views on the necessity of individuals' holding a rational belief in God, see Fadel, *supra* n. 2 at 31–33 (2008).

¹⁰ Al-Faḍālī, *supra* n. 4 at 327.

¹¹ See, e.g., Abū al-Ḥusayn Muḥammad b. 'Alī al-Baṣrī, 2 *al-Mu'tamad fī Uṣūl al-Fiqh* 360 (Dar al-Kutub al-'Ilmiyyah, Beirut: 1983) and Sayf al-Dīn 'Alī b. Abī 'Alī al-Āmidī, 4 *al-Iḥkām fī Uṣūl al-Aḥkām* 306 (Beirut, Dar al-kutub al-'ilmiyyah: 1983).

the conclusion that the vast majority of professing Muslims—given the undeniable fact that most Muslims did not understand theological argument and probably never could—were in fact unbelievers.¹² The notion of a general proof responded to both of these objections: while it was no doubt true that the early community did not develop sophisticated theological proofs of God's unity, for example, there was ample evidence that they had general proofs for the existence of God, and that even the rude Bedouin were capable of apprehending such proofs.¹³

The notion of a general proof also answered the Baghdadi Mu'tazilites who criticized the doctrine of *taqlid* in substantive law as being inconsistent with the notion that knowledge was required in theological matters: a prohibition of *taqlid* in matters of substantive law is tantamount to one of two things, either *muqallids* are not subject to moral obligation, or *muqallids* are obliged to undertake *ijtihād* when faced with a situation not covered by an express rule. While all agree that *muqallids* are subject to moral obligation even when there is no express text of revelation, nonetheless forcing *muqallids* to become *mujtahids* would be absurd because it would lead to the end of civilization—all productive activities would grind to a halt because people would become preoccupied with learning the tools of *ijtihād* rather than, for example, cultivating the soil. Theological matters, however, are relatively easy to grasp, because they are rational propositions, especially if all that is needed is a general proof. Accordingly, for the Basran Mu'tazilites and the Ash'arites generally, it appears that *taqlid* in matters of substantive law is akin to a special dispensation—a kind of *rukḥṣah*—that is necessitated by the deleterious consequences to collective human life should everyone attempt to be a *mujtahid* in matters of substantive law.

The distinction between a general proof—which is assumed to be within the reasonable grasp of all rational individuals—and the detailed proofs of theology does not solve the problem, however, so much as dissolve it. Fakhr al-Dīn al-Rāzī criticized this distinction as meaningless because it misconstrues the nature of a proof: a proof must include only those propositions that are necessary to demonstrate the truth of the

¹² Indeed, during the Saljuk era, this led to the scandalous issue known as *taḳfīr al-ʿawāmm*, which was used to discredit Ashʿarī theologians before the Saljuk sultans. See Wilferd Madelung, *The Spread of Maturidism and the Turks*, Actas IV congresso de estudos árabes e islâmicos 109, 129 n. 52 (describing persecution of Ashʿarites by Tughrulbeg as a consequence, in part, of the Ashʿarī doctrine of *taḳfīr al-ʿawāmm*) (1968).

¹³ Fadel, *supra* n. 2 at 33. (quoting al-Jurjānī's *Sharḥ al-Mawāqif* for the proposition that the early Muslim community, including the Bedouin, had general proofs of divine unity).

proposition being asserted. If, in the course of the proof, a proposition is added, or is deleted, or is accepted without proof, the proof is not a simplified version of the “real” proof: it is simply no longer a proof and can only be accepted on the basis of *taqlīd*.¹⁴ And in fact, this is the case of general proofs in al-Rāzī’s opinion: they are insufficient to save the generality of Muslims from the charge that their religious faith is simply the result of opinion and not based on knowledge.¹⁵

Al-Rāzī also pointed out that the conventional anti-*ijtihād* argument used by both the Basran Mu‘tazilites and the Ash‘arites to refute the Baghdadi Mu‘tazilites—that it is a social impossibility for everyone to be a *mujtahid*—is only true if one accepts other controversial epistemological premises, specifically, the obligation to act in accordance with the requirements of solitary reports (*khavar al-wāḥid*) and analogy (*qiyās*). Otherwise, if one rejects the authority of solitary traditions and analogy, ethical reasoning would not require years of specialized training because in areas of life where revelation is either silent or ambiguous, individuals would be left to the judgment of reason, which is accessible to all without great effort, and in cases where an individual is unable to discern what reason requires, it would be a relatively simple matter for the *mujtahid* to point out to the *muqallid* what the rational principles governing the issue are.¹⁶

Given Islamic theology’s epistemological preference for knowledge, and its general condemnation of *taqlīd*, it is unsurprising that the obligation to perform *taqlīd* was somewhat of an embarrassment. All things being equal, a *mujtahid* could not, for example, rely on the conclusions of another *mujtahid*, but instead had to engage in his own *ijtihād* when faced with an issue that he had heretofore not considered. Indeed, it was a controversial matter as to whether a *mujtahid*, having once pondered a question of law, was then required to reconsider his earlier reasoning if the issue came up later or whether he could simply rely on his previous

¹⁴ Fakhr al-Dīn al-Rāzī, 2 *al-Maḥṣūl fī ‘Ilm Uṣūl al-Fiqh* (Dar al-Kutub al-‘Ilmiyyah, Beirut: 1988) 529–530.

¹⁵ In an apparent criticism of al-Ghazālī, al-Rāzī rejected the argument put forth by al-Ghazālī that knowledge of the truth of the Prophet—by virtue of his miracles—is sufficient to absolve a Muslim of the charge of *taqlīd*. According to al-Rāzī, knowledge of the Prophet’s miracles does not necessitate by itself that Muḥammad was a prophet who was truthful in his claims unless a host of other propositions are also demonstrated to be true. *Id.* at 530–531.

¹⁶ *Id.* at 528–529.

reasoning.¹⁷ There was no general agreement on this point, however. Al-Qarāfī, for example, argued that the passage of time is relevant to the reasoning of a *mujtahid*—presumably because of new learning and new experience—and accordingly, in most cases, it would be erroneous to assume that the *mujtahid* would give the same opinion at the end of his life that he gave in its beginning, as evidenced by the multiple opinions attributed to the historical *mujtahids*. Accordingly, a *mujtahid* is obliged to reconsider issues even when he recalls his original analysis of the question.¹⁸

The disrepute of *taqlīd* also led to a line of argument that denied that the obligation of a *muqallid* to defer to the judgment of a *mujtahid* counted as *taqlīd* at all. According to this argument, *taqlīd* is accepting the opinion of another without proof, but the kind of *taqlīd* that Sunnī theologians countenanced did not suffer from this defect: the legitimacy of the Sunnī institution of *taqlīd* was grounded in objective proof (or so it was claimed). This argument goes back at least as far as al-Ghazālī who stated that, unlike the *taqlīd* of the *ḥashwiyyah* and the *Ta'limiyyah*, his call for *muqallids* to adhere to the opinions of *mujtahids* is grounded in certain proof. Because it is not self-evident that the authority whom a person takes as a source of moral instruction is truthful, a rational personal demands proof from such an authority that he is truthful before he would agree to defer to his teachings. In the case of the Prophet Muḥammad, that proof lies in the various miracles he wrought. Because we know that the Prophet Muḥammad is truthful, al-Ghazālī argued, we know that what he reports about God is also truthful. We also know that the consensus of the Muslim community is truthful because the Prophet informed us that the consensus of the Muslim community is immune from error. Accordingly, following the command of the consensus of the Muslim community does not constitute *taqlīd* because it is justified by our knowledge that consensus is an infallible source of moral truth.

¹⁷ See, for example, al-Qarāfī, *supra* n. 1 at pp. 4098–4099 (quoting Fakhr al-Dīn al-Rāzī as permitting a *mujtahid* to rely on his previous analysis of a legal issue only to the extent that he recalls his previous reasoning, but if he has forgotten his previous reasoning, he is obliged to reconsider the issue). See also, Bernard Weiss, *The Search for God's Law* (University of Utah Press: Salt Lake City, 1992) 723 (noting that al-Amīdī described this issue as controversial among *usūlīs*).

¹⁸ Al-Qarāfī, *supra* n. 1 at p. 4101 (arguing in favor of an absolute obligation to engage in *ijtihād* each time the issue comes up, even when the *mujtahid* recalls his previous reasoning).

The institution of *taqlīd*, according to al-Ghazālī, can be analogized to judicial procedure which requires a judge to accept the testimony of upright witnesses, despite the possibility that they may be lying. In this case, the judge cannot be accused of having engaged in *taqlīd* because he is giving effect to a rule derived from consensus, and is thus acting on proof. The same principle applies to the *muqallid*: when he follows the opinion of the *mujtahid*, he is acting in accordance with the command of an infallible source, in this case, consensus. This infallible source obliges him to follow the opinion of the *mujtahid*, whether or not the *mujtahid* is truthful, just as consensus obliges the judge to rule in accordance with the testimony of upright witnesses despite the possibility that they may be lying. *Taqlīd*, on al-Ghazālī's account, is a therefore a *procedure* for satisfying the ethical obligations of a *muqallid*; the legitimacy of this procedure is established with certainty, even if its results may be erroneous in particular circumstances. The Sunnī practice of *taqlīd* cannot, therefore, be compared to the *Ta'limīyyah*'s version of *taqlīd* because the latter cannot provide a rational justification for why individuals should submit to the teachings of their Imam.¹⁹

Taqlīd, therefore, for the Ash'arites and Basran Mu'tazilites, was limited to rules of conduct (*fiqhiyyāt*) (provided of course that the issue was not covered by an express text, e.g. the prohibition of *khamr* (grape wine), or fornication). It did not apply to dogma or even the rational matters of *uṣūl al-fiqh* (*al-'aqliyyāt*), such as whether a solitary tradition or analogy constitutes proofs of a divine rule, or whether every *mujtahid* is correct or only one. *Taqlīd* in matters of conduct was tolerable in part not only because of the epistemological uncertainty that characterized *ijtihād*, but also because, from a theological perspective, not much was at stake: while theological error involved blasphemy insofar as it entailed affirming statements about God that were false, controversies regarding matters of conduct all revolved around affirming or denying the positive commands or prohibitions of God, any of which, from a rational perspective, God might conceivably have decreed.²⁰ Because errors in rules of conduct do not carry the risk of blasphemy, there is no harm in deferring to the views of others.

¹⁹ Al-Ghazālī, *supra* n. 1 at 371.

²⁰ Al-Qarāfī, *supra* n. 118 at 4136.

II. TAQLĪD AND MORAL CONTROVERSY: THE MUQALLĪD'S VIEW

According to the *uṣūlīs*, the *muqallid* is as much a moral agent (*mukallaf*) as the *mujtahid*. Both are subject to the same obligation of having true knowledge of God. Both are required to affirm the truth of the prophets when confronted by evidence that they are truthful in their claims. Both are required to conform their conduct according to prophetic teachings to the extent such teachings are indisputable (the so-called *ma 'ulima min al-dīn bi-l-ḍarūra*).²¹ Their obligations only differ when it comes to determining the scope of moral obligation for acts that are not subject to an express rule of revelation. When faced with such a circumstance, the *mujtahid* reasons to a rule using the texts of revelation as a basis for forming his rule. The *muqallid*, however, is subject to another duty: to find a *mujtahid* and ask him what to do.²²

It is important to keep in mind that the obligation to perform *taqlid* is contingent upon the inability of the *muqallid* to investigate the texts of revelation himself to arrive at an answer. More importantly, the *muqallid*, given his theological knowledge, knows that he is not in a position to resolve any ethical dilemmas that might arise as a result of events not subject to an express revelatory rule. He also knows that he could escape the obligation of *taqlid* were he to devote himself to becoming a *mujtahid*. On the other hand, while he has no ethical obligation to become a *mujtahid*, he does have the choice to devote himself to learning and become a *mujtahid* or continue living a life unconnected with learning and scholarship. For a person uninterested in religious scholarship, then, *taqlid* offers a practical solution to the general problem that ethical knowledge—other than the basic ethical obligations that are a necessary part of revelation—is specialized knowledge. *Taqlid* seems to offer the *muqallid* the opportunity to have his cake and eat it too: the chance to live an ethical life without having to master the various obscure sciences required of a *mujtahid*.

But, if something is too good to be true, we may have reason to be skeptical. *Taqlid* is no exception. Less dramatically, *taqlid* is really only

²¹ This follows simply from the fact that such are rules are established with certainty so there is no room for disagreement with respect to such an obligation.

²² See, e.g., al-Āmidī, *supra* n. 11 at 275–276 (a *mujtahid* always engages in independent *ijtihād* when faced with a novel question) and at 299 (a *muqallid* is obliged to follow the opinion of a *mujtahid* with respect to matters of *ijtihād*); see also, al-Ghazālī, *supra* n. 1 at 368–369 (same with respect to the *mujtahid*) and at 362–363 (same with respect to the *muqallid*).

helpful to a *muqallid* when he is lucky enough to know the views of only one *mujtahid*. In this case, his ethical life is greatly simplified: whenever he has a question, he simply asks the *mujtahid* and acts in conformity with what the *mujtahid* tells him.²³ But how does a *muqallid* know that someone is a *mujtahid*, i.e. possesses that combination of learning and moral integrity that permits him to serve as a source of ethical knowledge for the *muqallid*? For most *uṣūlīs*, a *muqallid* can ascertain whether someone is a *mujtahid* by consideration of certain objective social facts. For example, if the person in question gives fatwas publicly, the public accepts him as an authority (as evidenced by the fact that they seek out his fatwas), the public generally accepts that person's fatwas, and no one challenges his credentials, then a *muqallid* in that case has a sufficient basis to believe that such person is in fact a *mujtahid*.²⁴

If he comes to know about more than one *mujtahid*, his ethical life becomes more complicated, but only slightly: so long as he is ignorant of any disagreements between or among the *mujtahids* that he knows, he is free to question any of the *mujtahids* he knows for advice.²⁵ When the *muqallid* comes to know that *mujtahids* disagree, however, matters become complex. The solution to this problem, moreover, does not turn on one's stand with respect to the fallibility of *mujtahids*: in the absence of an institutional mechanism whereby one of the many proposed solutions to an ethical problem could be declared to be correct and the others mistaken, the fact that one *mujtahid* is correct and the others are mistaken is irrelevant from the perspective of a *muqallid*. Because Islamic ethical theory does not provide an objective perspective from which anyone (whether a *mujtahid* or *muqallid*) could conclude which of the competing opinions is the one that ought to be implemented, all opinions of *mujtahids* from the perspective of the *muqallid* seem to have a *prima facie* claim to validity. In short, when faced with ethical controversy, it is not at all clear what the *muqallid* should do, or even whether it makes sense to speak of the *muqallid* in this context as having an ethical obligation at all.²⁶

²³ See, for example, Abū al-Walīd Sulaymān b. Khalaf al-Bājī, *Iḥkām al-Fuṣūl fī Ahkām al-Uṣūl*, ed. 'Abdallāh Muḥammad al-Jabūrī (Mu'assasat al-Risālah: Beirut, 1989) 644; al-Ghazālī, *supra* n. 1 at 373.

²⁴ See, e.g., al-Baṣrī, *supra* n. 11 at 363; Abū Ishāq Ibrāhīm b. Musā al-Shāṭibī, 4 *al-Muwāfaqāt fī Uṣūl al-Sharī'ah* 262 (Dār al-Ma'rifah, Beirut: n.d.); al-Āmidī, *supra* n. 11 at 311.

²⁵ See, e.g., al-Ghazālī, *supra* n. 1 at 373; 4 al-Shāṭibī, *supra* n. 24 at 132–133.

²⁶ See *infra* n. 41.

Disagreement among *mujtahids* creates numerous potential ethical problems for the *uṣūlī* tradition.²⁷ To be clear, this uncertainty also had the potential to undermine the efficacy and integrity of the entire legal system derived from Islamic jurisprudence.²⁸ As I have argued elsewhere, the institutionalization of *taqlīd* in courts and public-fatwa giving served to mitigate substantially the political problems arising out of indeterminacy.²⁹ Here, however, I wish to focus on another problem: the ethical obligations of the *muqallid* when faced with conflicting opinions of *mujtahids*, and whether the *uṣūlīs* proposed a workable solution for a *muqallid* who is assumed to be acting with moral integrity (*‘adl*).

Looming large in the discussions of the *uṣūlīs* was whether an irresolvable dispute among *mujtahids* meant that the *muqallid* was free to choose among any of the positions advanced by a qualified *mujtahid*, a position known as *takhyīr*. It would be tempting to suppose that those who advocated *takhyīr* also endorsed the doctrine of the infallibility of *mujtahids* with regards to their moral reasoning. While this was the case for the infallibilist Abū Bakr al-Bāqillānī,³⁰ not all *uṣūlīs*’ views on *takhyīr* were derivative of their position on infallibilism. Some *uṣūlīs* who endorsed infallibilism, al-Ghazālī, for example, nevertheless rejected *takhyīr* in favor of imposing an obligation on the *muqallid* to engage in a process of *tarjīḥ*, weighing the competing opinions, although as we shall see below, no jurist who advocated *tarjīḥ* suggested that *muqallids* could weigh the *substantive* merits of the different views expressed.³¹ Likewise, some *uṣūlīs* who rejected infallibilism, al-Āmidī, for example, nevertheless endorsed *takhyīr*,³² albeit on the grounds of consensus rather than rational ones.³³

²⁷ For a summary of these problems, see Zysow, *supra* n. 1 at 479–483.

²⁸ See, e.g., al-Shāṭibī, *supra* n. 24 at 135–136 (discussing the deleterious impact of *takhyīr* upon the integrity of the legal system).

²⁹ See Mohammad Fadel, “The Social Logic of Taqlid and the Rise of the Mukhtaṣar,” 3,2 *Islamic Law & Society* 193 (1996).

³⁰ Zysow, *supra* n. 1 at 464.

³¹ Al-Ghazālī, *supra* n. 1 at 352 (endorsing infallibilism) and at 374 (rejecting the doctrine of *takhyīr*).

³² Al-Āmidī, *supra* n. 11 at 247 (rejecting infallibilism) and at 318 (endorsing *takhyīr*); Weiss, *Search*, *supra* n. 17 at 728.

³³ *Id.* at 318 (stating that but for the consensus of the companions on this point, the position rejecting *takhyīr* would be the better argument). The Mālikī jurist al-Bājī shared al-Āmidī’s views, endorsing *takhyīr* on historical grounds even as he rejected infallibilism. Al-Bājī, *supra* n. 23 at 623 (rejecting infallibilism) and at 644–645 (endorsing *takhyīr*).

Despite the association of infallibilism with subjectivism, and fallibilism with objectivism,³⁴ jurists such as al-Ghazālī and al-Shāṭibī, despite their differences on fallibilism,³⁵ each endorsed an obligation of *tarjih* for *muqallids* in controversial matters rather than *takhyir* because of what was, essentially, a subjectivist view of moral obligation. The advocates of *takhyir*, for example al-Qarāfi and al-‘Izz b. ‘Abdassalām, by contrast, took an ethical position that was indifferent to the subjective views of the *muqallid*; accordingly, they judged the conduct of that person solely from the objective perspective of whether it conformed to a valid opinion of any *mujtahid*.³⁶ For al-Ghazālī and al-Shāṭibī, *takhyir* was immoral *precisely* because it was indifferent to the subjective motivation of the individual *muqallid*. This indifference subverted what to them was one of the highest purposes of revelation: to subject human beings to law. *Takhyir* was inconsistent with this goal because it functioned as a *de facto* means of broadening the category of the permissible to all things that were in dispute among the jurists. Al-Shāṭibī, for example, complained that jurists of his time had gone so far as to take the existence of a controversy among jurists as evidence that the conduct at issue was morally indifferent (*ibāḥah*).³⁷

In making his case, al-Shāṭibī argued that there was a categorical difference, on the one hand, between the right of a *muqallid* to follow the view of one among the many *mujtahids* he happened upon without ascertaining which was the most qualified, and on the other hand, arbitrarily following one among the many opinions expressed by various *mujtahids* after the *muqallid* became aware of their disagreement.³⁸ The failure to distinguish these two scenarios led many to make the erroneous analogy between the practice of the early Muslim community—which allowed *muqallids* to ask the opinion of any of the companions who were *mujtahids* without requiring them to identify which of them was the most reliable in his reasoning—and the practice of *takhyir* which gives the *muqallid* the right to *choose* arbitrarily among the various *mujtahids*’ opinions.

³⁴ See Zysow, *supra* n. 1 at 466–467 (“Fallibilism in its various versions holds that the result of *ijtihad* can be tested against an objective measure.”) and at 469 (“Essentially, infallibilism is a doctrine of solipsism.”).

³⁵ Al-Shāṭibī, *supra* n. 24 at 118–131.

³⁶ Al-Qarāfi, *supra* n. 1 at 4134 (quoting with approval Ibn ‘Abdassalām’s position that it was permissible to follow any opinion so long as it was a valid rule, meaning, were a judge to rule on the basis of that rule, his ruling would not be overturned).

³⁷ Al-Shāṭibī, *supra* n. 24 at 141.

³⁸ *Id.* at 132–133.

The reason these two scenarios is different is that in the first case—where the *muqallid* is ignorant of the controversy—he is giving effect to the reasoning of the *mujtahid*, and by hypothesis, the *mujtahid* has engaged in a good faith effort to understand what God wants in this particular situation. Accordingly, the *muqallid* is acting in concert with some good faith understanding of God's will. In the second case—where the *muqallid* is given the freedom to choose which opinion he will follow—the *muqallid* is not giving effect to the relevant revelatory text which the *mujtahid* had relied upon, but is rather giving effect simply to his own ends. As a consequence, he is acting out of desire (*hawá*) rather than in compliance with the teachings of revelation. *Takhyir* in al-Shāṭibī's view severs the nexus between subjective apprehension of probability born out of good faith interpretation of revelation and moral obligation, and therefore subverts one of the primary goals of revelation: to replace desire as the motive for human behavior with obedience to God.³⁹

While al-Ghazālī suggests a weak epistemological argument in favor of *tarjih* (that there is a chance that a *mujtahid* made an error by failing to identify an express text that applies to the case), his primary objection to *takhyir* is ethical, not epistemological. Like al-Shāṭibī, he complained that *takhyir* has the effect of relieving *muqallids* of the burdens of moral obligation. Indeed, he identified the asymmetry between the ethical obligations of the *mujtahid*—who is subject to a categorical obligation to exercise his judgment in matters for which there is no express revelatory text and to follow his probable judgment that results from the exercise of that duty in virtually all cases—and the obligations of the *muqallid* under a rule of *takhyir*—in which the requirement of having a probable judgment is abandoned—as being fatal to *takhyir*. The principle of *takhyir*, moreover, contains within it the threat that it would subvert the need for *ijtihad*: in all cases where there is no explicit revelatory text, a *mujtahid* could conclude that he can do whatever he wants because whatever he chooses will conform with the view of one *mujtahid*, and therefore will be permissible. In short, *takhyir* not only freed the vast majority of Muslims from firm ethical obligations, it also had the potential to subvert the incentives of *mujtahids* and thereby threaten the continuing viability of the activity of *ijtihad* itself.⁴⁰

³⁹ *Id.* at 132–135.

⁴⁰ Al-Ghazālī, *supra* n. 1 at 373–374.

That the advocates of *tarjih* were more concerned with the moral integrity of the individual Muslim, whether a *mujtahid* or a *muqallid*, than the objective coherence of the ethical system, is evidenced by their discussion of what happens when it is impossible for a *muqallid* to determine which of the competing *mujtahids*' views is weightier. In theory, the *muqallid* was to treat the different opinions of the *mujtahids* in the same manner a *mujtahid* would treat conflicting texts of revelation. While a *mujtahid* would apply substantive criteria to determine which text ought to be given greater weight in such a circumstance, the task of the *muqallid* was limited to determine which *mujtahid* was more virtuous, virtue being measured along an index of two variables: piety and learning. Accordingly, the *muqallid* should adopt the opinion of that *mujtahid* whom he believes to be the most learned and most pious. The numerous possible combinations of piety and learning, and whether piety is weightier than learning, are not important in this context except to the extent that they reveal the difficulty of discharging such a task. Nevertheless, the point for those *uṣūlīs* who demanded *tarjih* was that the *muqallid* make this attempt, and if he reaches a conclusion, then he is bound to accept the opinions of that *mujtahid* without engaging in "fatwa-shopping." If, however, after having engaged in this process, he is unable to reach a probable judgment regarding which *mujtahid* is more virtuous, he is relieved of moral obligation with respect to that particular issue, at least with respect to God, *in toto*.⁴¹

Al-Qarāfi, and his teacher al-‘Izz b. ‘Abdassalām, by contrast, are indifferent to the nexus between the conduct of the actor and the actor's subjective understanding of his action in light of revelation. Because of al-Qarāfi's commitment to the notion that legal obligation is tied to some benefit to the actor (*maṣlaḥah*), he rejected the argument that imposition of *taklīf*—simply for the sake of imposing obligation—was a goal of revelation. Indeed, he dismissed this argument on the grounds that it imposed hardship (*mashaqqah*) upon individuals simply for the purpose of hardship

⁴¹ Al-Shātibī, *supra* n. 24 at 291 (stating that where a *muqallid* is unable to know what his obligation is, the *muqallid* is in a position akin to that which exists prior to the advent of revelation and were the *muqallid* to be subject to some obligation in such circumstances, it would be impossible for him to discharge it); Abū al-Ma‘ālī ‘Abdalmalik b. ‘Abdallāh al-Juwaynī, 2 *al-Burhān fī Uṣūl al-Fiqh* 884 (stating that when a *muqallid* cannot determine which *mujtahid* is more virtuous, he is like someone on a deserted island who only knows the foundations of Islam, and accordingly, has no obligations toward God with respect to that issue). Al-Ghazālī, however, in this circumstance permitted *takhīr*. Al-Ghazālī, *supra* n. 1 at 16.

rather than furthering their own good, a principle that he believed the Shari'a denied. Accordingly, al-Qarāfi understood ethical controversy as creating a kind of "freedom for the actor (*tawsi'ah 'alā al-mukallaf*).⁴² Al-Qarāfi limited this qualified ethical freedom in two respects: first, the *muqallid* must not choose among the various *mujtahids*' positions in such a manner as would produce a violation of consensus; and second, he must not follow an opinion which, if it were the basis of a judicial ruling, could be overturned by a subsequent judge (a "pseudo-rule").⁴³ Both of these limitations, moreover, are objective, meaning they do not depend upon the *muqallid*'s subjective appreciation that he violated consensus or acted on the basis of a pseudo-rule.

Al-Qarāfi gave the following example (apparently from his own experience) of how the first limitation could become relevant. A follower of al-Shāfi'i asked him whether it would be permissible for him to follow Mālik's view regarding the purity of clothes stitched with pig hair. Al-Qarāfi replied in the affirmative, but cautioned that if the questioner intended to follow Mālik's view on the purity of his garment as opposed to the rule of al-Shāfi'i, then he had to take care to follow Mālik's views on the requirements of valid ablutions, paying particular attention to those rules in which Mālik differed from al-Shāfi'i. Accordingly, if the Shāfi'i followed Mālik regarding the purity of his garment, but followed al-Shāfi'i with respect to the permissibility of rubbing only a portion of the head during ablutions, both Imām Mālik and Imām al-Shāfi'i would declare that man's prayer to be invalid. Thus, *takhyir* poses a risk to the *muqallid* that following the doctrine of one school does not: inadvertently nullifying the validity of one's acts of devotion, and for that reason, al-Qarāfi suggested to his Shāfi'i questioner that he might be better off sticking to the teachings of his own school.⁴³

As for the second limitation on *takhyir*, a pseudo-rule is one that is contrary to consensus (*ijmā'*), a legal principle (*al-qawā'id*), an explicit text (*al-naṣṣ alladhī lā yaḥtamīl al-ta'wīl*) or an *a fortiori* analogy (*al-qiyās al-jalī*). An example of such a pseudo-rule is the Ḥanafī rule giving neighbors a right of first refusal (*shuḥ'at al-jiwār*) in connection with the sale of adjoining real property. Because a judge who ruled in accordance with that rule would have his ruling overturned (at least according to the Mālikīs), *a fortiori* it is impermissible for a *muqallid* to act upon that rule

⁴² Al-Qarāfi, *supra* n. 18 at 4148.

⁴³ *Id.* at 4149.

in his private life.⁴⁴ Other than these two objective limitations, however, al-Qarāfi is unconcerned about the consequences of *takhyīr* on the moral life of *muqallids*. In fact, he denied that it is impermissible for *muqallids* to seek out, consciously, the dispensations (*rukhaṣ*) of the various *mujtahids*, on the condition that in so doing the *muqallid* takes care not to violate consensus or follow a pseudo-rule.⁴⁵ Unlike al-Ghazālī and al-Shāṭibī, who viewed imposing moral obligation on human beings as one of the most important functions of revelation, al-Qarāfi denied that revelation came simply to impose obligations on people willy-nilly; rather, he understood the purpose of revelation as being to assist individuals achieve various beneficial ends.⁴⁶ Unlike al-Ghazālī and al-Shāṭibī, then, al-Qarāfi's strand of soft infallibilism, combined with *takhyīr*, operated to produce an objective method by which a *muqallid*, presumably in consultation with a scholar, could know whether his conduct was consistent with the demands of Islamic normativity. This objective account of the *muqallid's* ethical obligations, however, resulted in a fundamentally different standard of behavior for a *muqallid* relative to a *mujtahid*: while the latter was obligated to conduct his life in accordance with his understanding of revelatory evidence (*al-adillah al-shar'iyyah*), the *muqallid* was free to pursue the ends of his life without considering the implications of revelatory evidence, directly or indirectly, except insofar as they produced incontrovertible rules.

III. TRUST AND AUTONOMY

The *mujtahid*, at least with respect to those areas of life which are unregulated by an express revelatory norm, appears to be a law unto himself: answerable only to God, his ethical life is governed only by universal norms that are either true in themselves, i.e. such rules that constitute the *ma'lūm min al-dīn bi-l-ḍarūrah*, or particular rules that he has formulated for himself based on his considered opinion using the interpretive techniques of *uṣūl al-fiqh*. The *muqallid's* ethical life, as we saw from the previous section, is more (e.g. under al-Ghazālī's or al-Shāṭibī's reasoning) or less (e.g. under al-Qarāfi's or Ibn 'Abdassalām's reasoning) derivative of

⁴⁴ *Id.* at 4148.

⁴⁵ *Id.* at 4149.

⁴⁶ *Id.* (*al-sharī'ah lam tarid li-maqṣid ilzām al-'ibād al-mashāqq bal bi-taḥṣīl al-maṣāliḥ al-khāṣṣah* [sic: read *al-khālīṣah*] aw *al-rājiḥah*).

the *mujtahid*'s ethical reasoning. The *muqallid* does not, as discussed previously, defer to the *mujtahid* because he lacks the capacity for independent moral reasoning. Presumably, he chooses to be a *muqallid* because, given the various options available to him in his life, he would rather spend his time doing something, e.g. farming or trading, other than becoming a theological/ethical/legal specialist, a task that could very well be quite burdensome.⁴⁷

To choose the option of *taqlīd*, however, a *muqallid* must have some basis on which he can distinguish a genuine *mujtahid* from a mere pretender. In other words, a *muqallid* must have a basis to *trust* the judgment of the would-be *mujtahid*. In this context the term trust is probably a more accurate translation of the term *ẓann* than probable belief, despite the fact that the *uṣūlīs* claim that the *muqallid* is responsible to confirm that he has a reasonable belief that the person whom he is asking for a fatwa is in fact a qualified *mujtahid*. *Ẓann*, of course, is literally different from trust insofar as it denotes a particular subjective state of mind that entails the belief that A, for example, is more likely to be true than B.

Trust, as some contemporary moral philosophers have argued, cannot be reduced simply to a determination that some particular fact has a more likely existence than not. It involves a relationship between one party, A, and another party, B, in which A reaches some subjective assessment as to the likelihood that B will act in a certain way, but in circumstances where A cannot directly observe B's conduct. In addition, in a relationship of trust the manner by which B conducts himself will have an important effect on A.⁴⁸ There is also an important asymmetry in trust: "it cannot be given except by those who have only limited knowledge, and usually even less control, over those to whom it is given,"⁴⁹ and while there may be an accounting of sorts, the accounting is usually deferred sometime into the future.⁵⁰ Trust also connotes something different than merely obeying commands; instead, it is "to take instruction or counsel, to take advice, to be patient and defer satisfying one's reasonable desire to understand what is going on, to learn some valuable discipline, or to conform to authoritative laws which others have made."⁵¹ As a consequence, a trust relation-

⁴⁷ For a discussion of the topics someone must master in order to qualify as a *mujtahid*, see, e.g., al-Ghazālī, *supra* n. 1 at 242–244 (noting in particular the difficulties of mastering knowledge of the *sunnah*).

⁴⁸ Annette Baier, "Trusting People," 6 *Philosophical Perspectives, Ethics* 137–153, 138.

⁴⁹ *Id.* at 139.

⁵⁰ *Id.* at 140.

⁵¹ *Id.* at 144.

ship can be viewed as an investment by A whose returns, if successful, will increase with time, thus benefitting A, but if B turns out to be untrustworthy, the relationship will prove detrimental to A. Trust accordingly always involves risk to A that B will abuse the relationship to A's loss.⁵²

In my view, the relationship of the *muqallid* to the *mujtahid* is better understood as a relationship of trust rather than one of epistemological dependence. Weiss has suggested that the enterprise of *ijtihād* is, in an important sense, a cooperative relationship, at least in the sense that the *mujtahid* depends upon a steady stream of questions from *muqallids* to provide him with the opportunity to develop legal rules.⁵³ I would suggest, however, that the cooperative nature of the enterprise of *ijtihād*, and hence the development of Islamic ethics and law through the interpretation of revelation, requires a much thicker notion of cooperation and trust than that which would be required if the only function of the *muqallid* were to provide the questions necessary for the development of the *mujtahid*'s thought. Indeed, such a conception of the role of the *muqallid* reduces him to a mere instrument of the *mujtahid*: the *muqallid* would be at once the occasion for the development of the law and its object, but would have no role whatsoever in its development.

If the *muqallid-mujtahid* relationship were understood to be a relationship of trust, on the other hand, it may be the case that the *muqallid* necessarily would play a more active role in the development of Islamic law than that accorded to them by *uṣūlīs*. This is especially so for *uṣūlīs* such as al-Ghazālī, al-Shāṭibī and al-Juwaynī who reject *takhyīr* in favor of *tarjīḥ*. *Tarjīḥ* is only possible on the assumption that *muqallids* are responsible to choose their moral advisors carefully, by monitoring their objective characteristics—such as learning and (outward) piety—to confirm that they are persons of moral integrity. Indeed, even for those *uṣūlīs* who accept *takhyīr*—whether with diffidence in the example of al-Āmidī,

⁵² *Id.* at 147. Note that one might raise the objection that the relationship between the *mujtahid* and the *muqallid* does not need trust because the *muqallid* does not suffer any moral injury if he mistakenly, but in good faith, relies on someone who is not a genuine *mujtahid*, or if the *mujtahid* fails to carry out his duty in investigating the *muqallid*'s question. Even though the *muqallid* does not bear the risk of sin arising out of misplaced trust, he does face the risk that he will suffer worldly injury in terms of regret with respect to choices made vis-à-vis others. In certain cases, he might also suffer a tangible economic loss if he relies on the advice of an incompetent *mujtahid*. The profitable side of the ledger is easier to grasp: the *muqallid* is able to obtain valid opinions on God's law if he successfully identifies a *mujtahid*.

⁵³ Weiss, *supra* n. 5 at 128.

or embrace it in the example of al-Qarāfi—the concept of the moral integrity (*‘adālah*) of the *mujtahid* is central to the functioning of the system.⁵⁴

The judgment that a particular person possesses moral integrity, of course, is an ongoing one: unlike a judicial determination ruling that the property in dispute belongs to A and not B, a judgment of moral integrity is always provisional and thus is always subject to revision based on future experience. The responsibility to monitor prospective *mujtahids*’ moral integrity is a burden that falls on everyone, not simply *mujtahids*. Tellingly, virtually all of the *uṣūlīs* surveyed for this essay agree that a *muqallid* can rely on the collective judgment of his contemporaries regarding the moral credibility of a prospective *mujtahid* as evidenced by the fact that this person is in fact engaged in public fatwa-giving without censure. While these authors did not explain why this is sufficient evidence, one could justify this assumption if one believes that individual members of society have had sufficiently lengthy and ethically significant interactions with that figure to have allowed them to conclude, independently of one another, that he is a person of moral integrity. Here, the logic of *tawātur* seems to be implicit in the justification of this kind of evidence for moral integrity. In the absence of an assumption of active independent monitoring by large numbers of persons of those who publicly give fatwas, the right to rely on such a fact could not justify a *muqallid* placing his trust in that person.

Indeed, the one dissenter on this point—al-Juwaynī—confirms the argument developed here that the *mujtahid-muqallid* relationship is one of trust rather than knowledge. For al-Juwaynī, collective judgments regarding the qualifications of a person who engages in public fatwa-giving cannot justify a *muqallid*’s conclusion that such a person is in fact a *mujtahid*. Al-Juwaynī denied the probative force of this collective report on the grounds that the determination of whether a person is, or is not, a *mujtahid*—and hence qualified to give fatwas—cannot be resolved by reputation evidence, no matter the number of witnesses.

But, al-Juwaynī’s solution to this problem is even more radical in exposing the trust that is at the core of this relationship: he proposed that the only way for a *muqallid* to reach a probative judgment as to whether someone is a *mujtahid* is simply to ask the would-be *mujtahid*.

⁵⁴ Moral integrity, while not strictly speaking a condition of *ijtihād*, is a condition for the validity of a fatwa. See, e.g., al-Ghazālī, *supra* n. 1 at 342.

Al-Juwaynī's argument cuts to the heart of the matter: we have no way of knowing that a person is in fact a *mujtahid* because the most critical element of the vocation—moral integrity—is not amenable to outside verification, but is only something that can be discovered over time. At the beginning of the relationship, all a *muqallid* can do is ask, and hope that the person answering is trustworthy. At its beginning, however, the *muqallid* would lack any basis upon which he could objectively justify his relationship with the *mujtahid* at issue. It is only over time, as a result of repeated interactions between him and the *mujtahid* (and perhaps other encounters between other *muqallids* known to him and that *mujtahid* as well) that the *muqallid* can determine whether the trust he had reposed in the *mujtahid* was justifiable. Given this, asking seems like an obvious way to begin.

But, does the *uṣūlī* discourse on the *muqallid* justify the belief that a *muqallid* is in a position to engage in the monitoring activity that is arguably necessary in order to generate the trust required for the relationship between *mujtahids* and *muqallids* to succeed? Indeed, one of the principal objections to the *tarjih* position was that *muqallids* are incapable of determining which *mujtahid* is “the more learned and the more pious” with any competence. Indeed, one could take as further evidence of *muqallids*' incompetence the fact that advocates of *tarjih* refused to permit *muqallids* to engage in *tarjih* based on the substance of the different opinions. Al-Ghazālī and al-Rāzī, for example, dismiss the possibility that *muqallids* could engage in substantive *tarjih* on the grounds that it would constitute moral negligence: just as a parent would be held negligent and liable if he medicated his sick child using his own judgment, even after consulting with doctors, so too a *muqallid* would be negligent and morally culpable if he took it upon himself to judge which of the two contradictory positions is substantively stronger.⁵⁵ In both cases, he simply lacks the *competency* to engage in the judgment. Al-Juwaynī was even more blunt in rejecting this possibility, which he described as “giving reign to intuition and idiocy (*ittibāʿ al-hawājis wa al-ḥamāqāt*).⁵⁶

Al-Shāṭibī, unlike al-Juwaynī, al-Ghazālī and al-Rāzī, did not even raise the possibility of the *muqallid* engaging in his own substantive *tarjih*. While he accepted the notion of *tarjih* based on piety and learning—which al-Shāṭibī called referred to as “general weighing (*tarjih ʿāmm*)”—he

⁵⁵ Al-Ghazālī, *supra* n. 1 at 374; al-Rāzī, *supra* n. 14 at 534.

⁵⁶ Al-Juwaynī, *supra* n. 41 at 883.

introduced another technique for giving precedence to one *mujtahid* over another which he called “particular weighing (*tarjīḥ khāṣṣ*).” This method of selection explicitly incorporates the notion of the *mujtahid* as a moral exemplar, someone whose life—and not just his learning or outward piety—represents an outstanding model of moral excellence (*quḍwa*). The most important feature of such a *mujtahid* is his moral integrity as evidenced by the consistency between his private actions and his public pronouncements.⁵⁷

That *muqallids* are incompetent to judge the substantive reasoning of a *mujtahid* is somewhat of a puzzle, however, at least to the extent that *muqallids* are endowed with the attributes given to them in *uṣūl al-fiqh*. After all, the *uṣūlīs*’ conception of *taqlīd* assumes that the *muqallid* has full rational capacity, something that allows him to recognize the theological and ethical truths of Islam. One might have expected that, given this reservoir of true theological and moral knowledge, *muqallids* might have a legitimate basis upon which they could evaluate the substance of different fatwas. Indeed, one of the hadiths included in al-Nawawī’s popular 40 Hadiths suggests that even the most ordinary individuals carry within them the capacity for moral discrimination between virtue and vice. According to that hadith, Wābiṣah, a companion of the Prophet Muḥammad asked him about righteousness (*al-birr*), to which the Prophet was said to have replied, saying: “Ask the opinion of your soul! Ask the opinion of your heart,” repeating that three times. Then, the Prophet continued, saying: “Righteousness is that in which the soul and heart find tranquility and sin is that which pricks the soul and bounces back and forth in the breast, even though the people may you give opinions [to the contrary].”⁵⁸

For al-Shāṭibī, and perhaps al-Ghazālī, the implicit answer seems to be that even if the *muqallid* has substantial theological and moral knowledge, when it comes to matters of moral controversy, he is too self-interested to behave morally: he will consistently choose that which pleases him and serves his interest (*hawā*) rather than engaging in an objective moral analysis of what God requires of him. It could therefore be argued that it is precisely because a *muqallid* has theological and ethical knowledge that he comes to be conscious of how his ethical decision making can be tainted by his self-interest, and therefore that he ought to defer to the

⁵⁷ Al-Shāṭibī, *supra* n. 24 at 270–271.

⁵⁸ See ‘Abdarrahmān b. Aḥmad Ibn Rajab, *Jāmi’ al-‘Ulūm wa-l-Ḥikam* 272 (Dar al-Jil, Beirut: 1987).

views of a trustworthy third-party, the *mujtahid*, who can judge the ethical consequences of the situation objectively. Accordingly, the fact that the moral knowledge of a *muqallid* is inoperative when it comes to his own conduct does not negate the fact that he is in fact a bearer of moral knowledge; it could be that it is the problematic element of self-interest that precludes him from relying on that self-knowledge in morally controversial matters. Conversely, he would be capable of serving as a monitor of *mujtahids* because in that case there would not be a conflict between judgment and desire. It is the *muqallid's* capacity for disinterested moral judgment that allows for the relationship of trust that is at the heart of the *mujtahid-muqallid* relationship to form and be sustained over time.

IV. CONCLUSION

The relationship of epistemology to obligation in Islamic theology and ethics ultimately led to the recognition of a limited kind of moral pluralism. This fact in turn generated political as well as ethical problems. With respect to the problem of how to maintain a sense of ethical obligation in morally controversial areas of life, Sunnī Muslim theologians split into two camps, those advocating *takhyīr* and those advocating *tarjīh*. While both sides of this debate understood that *muqallids'* moral obligations in controversial areas were derived from *mujtahids'* reasoning, each camp had a fundamentally different view of what moral obligation entailed in the case of a *muqallid*. For at least some of those who advocated *takhyīr* like al-Qarāfī and his teacher al-ʿIzz b. ʿAbdassalām, moral obligation was objective: as long as a *mukallaf* did not violate the objective boundaries of Islamic ethical norms, his conduct was both legal and moral. For at least some of those who advocated *tarjīh*, moral obligation was much thicker: it required the *muqallid* to justify his conduct by reference to some revelatory source (*dalīl*). It was the role of the *mujtahid* to provide the nexus between a *mukallaf's* conduct and revelation. For them, it ultimately did not matter what the conduct was, so much that it was grounded in a good faith interpretation of revelation. For either system to work, however, *muqallids* need to have sufficient moral judgment to identify trustworthy authorities. The theological tradition of *uṣūl al-fiqh* surveyed in this article, however, under-theorizes this problem by failing to explain how a *muqallid* may be able to identify trustworthy authorities. I suggest that the answer (if there is one) must lie in the notion that *muqallids* do in fact possess a robust—even if incomplete—set of moral data provided by

the moral truths of Islam which is sufficient to permit them to distinguish between genuine *mujtahids* and mere pretenders. A fully determined theory of *taqlid* would require an explanation of how the moral truths in the possession of the *muqallid* enable him to process, critically, the performance of would be *mujtahids* as a condition for the trust implicit in the relationship to arise. Such a theory, however, at least as far as I know, has yet to be developed.

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