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a cohesive system that addresses specific epistemic, sociopolitical, and theological needs, reflecting the adaptability and resilience of classical *fiqh*.

While *taqlīd* in al-Māwardī's thought consolidates established legal methodologies to ensure stability during political fragmentation, *ijtihād* emerges as a tool for judicial autonomy, intellectual creativity, and the defense of Sunni jurisprudence against esoteric (*bāṭinī*) hermeneutics. Al-Māwardī occupies multiple roles in this integrated system: as a jurist and theorist, he endorses *taqlīd* to preserve coherence within madhhab frameworks; as a judge, he insists on *ijtihād* for independent legal reasoning; as a reader of scripture, he refines *uṣūlī* principles to clarify ambiguities and address new challenges; and as an affiliate mujtahid within the Shāfiʿī tradition, he expands jurisprudence into uncharted areas, maintaining its relevance and comprehensiveness. By tracing these typologies, this study's central claim holds that *ijtihād* and *taqlīd* in al-Māwardī's works are complementary, constituting core elements of *fiqh* rather than static or mutually exclusive categories. By rejecting the evolutionary paradigm that casts *ijtihād* as superior to *taqlīd*, al-Māwardī's thought offers a richer vision of classical Sunni jurisprudence as a responsive and methodologically rigorous tradition.

Future research could explore how al-Māwardī's integrative approach influenced later jurists and whether similar dynamics operated across other schools and regions of Islamic law. Comparative studies might further illuminate the diverse ways classical jurists balanced the need for the integrity and responsiveness of Islamic law. Al-Māwardī's jurisprudence exemplifies a sophisticated model of legal reasoning that remains relevant for understanding how Islamic law adapted to historical contingencies while preserving its methodological coherence.

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regulate such activities in the public domain. Undoubtedly, al-Māwardī's legal option stems from theoretical commitments that are at odds with the Ismāʿīlī ideas. For instance, his instance on proof-texts as the only sources of law as well as *maqāṣid*-oriented juristic thought are sufficient to place him as an opponent of the esoteric tenets. It is within this context that we can understand his emphasis on *ijtihād*. Instead of relying on an infallibly authority, al-Māwardī reinforces the legitimacy of Sunni legal thought and its capacity to address new challenges without resorting to esoteric interpretations and the infallible authority.

In short, al-Māwardī's nuanced approach to *ijtihād* and *taqlīd* reflects a jurisprudence that is internally stable but also deeply responsive to the sociopolitical and theological demands of his time. *Taqlīd* ensures legal stability and social cohesion amidst political fragmentation whereas *ijtihād* reinforces the authority and autonomy of judges, protecting the judiciary from political manipulation. Simultaneously, *ijtihād* counters the challenges posed by esoteric hermeneutics, defending the principles of Sunni jurisprudence. By integrating these procedures, al-Māwardī's works show that *ijtihād* and *taqlīd* are not rigid opposites but interconnected elements of a dynamic legal system. Thus, the study of the structure of his legal thought work challenges the decline narrative by showing how classical Islamic jurisprudence could adapt to new realities while maintaining its methodological integrity. This understanding of *ijtihād* and *taqlīd* offers a richer and more accurate portrayal of al-Māwardī's contributions to the development of Sunni jurisprudence in the classical period and the salient features of his juristic legacy.

Conclusion

This article has revisited the long-standing narrative of decline in Islamic jurisprudence by examining the nuanced interplay between *ijtihād* (independent legal reasoning) and *taqlīd* (emulating a legal authority) in the works of al-Māwardī. Through a detailed analysis of these concepts' meanings, uses, and functions in his corpus, the study challenges the binary framing of *ijtihād* and *taqlīd* as oppositional or as successive phases in an evolutionary decline. Instead, it demonstrates how al-Māwardī integrates these procedures into

es; however, his works reflect a broader intellectual effort to defend Sunni jurisprudence. His predecessors and contemporaries, such as al-Qaffāl al-Shāshī al-Kabīr (d. 365/976) and Abū Bakr al-Bāqillānī (d. 403/1013), actively debated *ijtihād* and *taqlīd* in response to esoteric challenges. For example, al-Bāqillānī developed principles of legal theory (*uṣūl al-fiqh*) to counter the Ismāʿīlī doctrine of infallible authority.(49) Legal theory, including the principles of *ijtihād*, are then used to discredit the interpretive methodology of the esoteric trend.(50) Similarly, al-Qaffāl al-Kabīr's main interlocutors in his jurisprudential writings were the Ismāʿīlīs "who display belief in what the messengers delivered [...] then they interpret its meanings according to false symbols."(51) It is noteworthy how al-Qaffāl al-Kabīr mainly considers the limits of interpretation to protect Sunni legal reasoning from esoteric doctrines and modes of reasoning.

Unlike al-Qaffāl al-Kabīr and al-Baqillānī, al-Māwardī's works lack a direct and detailed engagement with the Ismāʿīlī trend. A rare instance of explicit mention of the esoteric school highlights this effort. It emerges in his discussion of regulations governing preaching in public. Al-Māwardī stipulates that public dissemination of esoteric views should be prohibited.(52) This instance points to al-Māwardī's awareness of the activities of the esoteric trend. But instead of engaging its tenets more theoretically, he offers practical guidance on how to

tention between the esoteric trend and their Sunni interlocutors including the Muʿtazilites such as al-Qāḍī ʿAbd al-Jabbār (d. 415/1025). Additionally, only once does al-Māwardī specify a legal ruling in the *Aḥkām* that relates to esoteric hermeneutics, stating that the *muḥtasib* (market inspector) should not allow an individual with esoteric affiliation to preach in the public space. Al-Māwardī, *al-Aḥkām*, 235–236.

(49) Abū Bakr Muḥammad b. al-Ṭayyib al-Bāqillānī, *Kashf al-asrār wa-hatk al-astār*, ed. Ibrāhīm b. Muḥammad al-Bīḥī, 2 vols. (Riyadh: Dār Ibn al-Jawzī, 1442), 1: 255. al-Bāqillānī speaks of two foundations of religion, *samʿ* (report) and *ʿaql* (reason). Elsewhere, he defines reason as necessary knowledge (*ḍarūra*) and deduction or logical inference (*dalīl*). Ibid., 1: 256. To refute the esoteric trend, al-Bāqillānī invokes the twofold definition of *ijtihād* (i.e., the apparent meaning of revealed sources and logical inferences) as follows: "All that we have reported from them [the esoteric interlocutors], regarding the interpretations of the Qur'an and forms of worship, is something that reason does not necessitate or accept by inference, nor does clearcut report [support it] [...] nor is it in the convention of language." Ibid., 1: 267.

(50) Al-Bāqillānī states, "It is necessary, despite the difference amongst the rational people in religions and sects, to resort to recognized methods, known principles, that lead to sound knowledge [...] proof and proofs two types: reason and report [..] report is narratives from a truthful prophet [...] and we have demonstrates that the [presumed] soundness of their interpretation in their religion is not known by the necessity of reason or its deduction/*dalīl*, nor is it required by language." *Kashf al-asrār*, 1: 256–257.

(51) Abū Bakr Muḥammad al-Shāshī al-Qaffāl al-Kabīr, *Maḥāsin al-sharīʿa fī furūʿ al-shāfiʿiyya* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2007), 18-19.

(52) Al-Māwardī, *al-Aḥkām*, 325–326.

what is not found in the Book (Qur'an), Sunnah or consensus.[44]

Al-Māwardī codifies the expanded authority of judges reflected in this incident. He outlines conditions under which judges can appoint deputies. If a judge is located near a legitimate ruler, both authorities share the prerogative to appoint judges.[45] However, in cases where the judge is far from the ruler, he can make appointments independently.[46] In these guidelines, chief judges can act semi-independently or independently, despite being appointed by the existing imam.[47]

This flexible approach reflects the hybrid governance of al-Māwardī's time, where judicial authority often filled the gaps left by weakened political power. By institutionalizing *ijtihād* within the judiciary, al-Māwardī ensures that judges remain resilient vis-à-vis the rapidly changing political environment around them. Their ability to exercise *ijtihād* grants them legitimacy and limits the potential for political interference. Therefore, the emphasis on judicial autonomy reinforces the stability of the legal system and should be read as a central factor that supports the broader goal of maintaining social order during a time of fragmented governance.

Countering Esoteric Hermeneutics

Al-Māwardī's emphasis on *ijtihād* also serves to counter the rise of esoteric (*bāṭinī*) hermeneutics, particularly associated with Shīʿī-Ismāʿīlī thought. Esoteric interpretations relied on the infallible authority of the imam and allegorical readings of scripture, thus challenging the Sunni emphasis on the apparent meanings of proof-texts and rational inference. Al-Māwardī does not extensively engage with the esoteric trend,[48] save for implicit referenc-

(44) Ibid., 14: 221–223.

(45) As al-Māwardī stipulates: "The first pillar is the appointer, and this a foundation (*aṣl*) and deputy (*far'*). As for the original, it is the delegated imam on the community (umma) [...] as for the deputy, it is the judge of the province [...] if he is far from the imam, the *qadi* is required to appoint, and if he is closer to him (imam), the obligation of appointment is placed on the imam and the *qāḍī*." *Al-Ḥāwī,* 16: 7.

(46) Ibid., 7–9.

(47) "We have chosen for the imam to mention in the document of appointment in his cabinet register (*nuskhat al-ʿahd fī dīwānih*), so that the activities of the judge are considered by what is included in it [...] That is why the imam appoints the chief judge to become his deputy in overseeing judiciary." Ibid., 16: 332.

(48) For instance, al-Māwardī does not state a specific purpose for penning his major scholastic treatise on the prophecy, *Aʿlām al-nubuwwa* (*Signs of Prophecy*). However, in the context of its writing, the question of prophecy was a major point of con-

Judicial Authority in a Time of Diffused Governance

The fragmentation of political authority in al-Māwardī's period elevated the role of judges (*qāḍīs*), who became key players in maintaining legal and social order. Al-Māwardī's emphasis on *ijtihād* as a prerogative of judges underscores their critical role in law-finding and governance. By reinforcing the epistemic authority of judges, al-Māwardī sought to protect the judiciary's autonomy from the interference of competing political forces.(43) In both *al-Ḥāwī* and *al-Aḥkām*, al-Māwardī argues that judges must exercise *ijtihād* to resolve cases that lack explicit proof-texts or upon which there is no consensus. In his emphasis on judicial *ijtihād*, we should not lose sight of the immediate implications of this view, particularly the broader social and political influence of judges during his time. Historical sources indicate that judges had considerable authority, including the power to appoint other judges within their jurisdictions. For example, in the year 363/973, a certain Muḥammad b. Ṣāliḥ al-Hāshimī was appointed chief judge with the authority to oversee the judiciary in Baghdad, Kufa, Mosul, Yemen, Damascus, and beyond. His appointment document granted him the right to appoint judges within his jurisdiction. One source recounts his case as follows:

> Abū l-Ḥasan Muhammad ibn Salih ibn Umm Shayban al-Hashimi was appointed as chief judge [...] rode to the house of al-Muti' until he handed him his appointment document [...]. In it [...] he invited him to the judicial jurisdiction that he will oversee in the City of al-Manṣūr [...] Kufa [...] Mosul, the Holy Sites, Yemen, Damascus, Homs [...] Egypt, Palestine, Jordan, all the regions (*aʿmāl*) of that, what accompanies that of the nobility, as he chooses for the *niqāba* of the Abbasids in Kufa [...] overseeing the normal procedures in legal rulings in all the regions [...] invest whomever he approves of their way and manner, and change whomever he loaches his demeaner and character [...] and considers consensus, follow the guided imams, and apply his *ijtihād* in

(43) Abū l-Faraj ʿAbd al-Raḥmān Ibn al-Jawzī, *al-Muntaẓam fī akhbār al-mulūk wa-l-umam*, ed. Muḥammad ʿAbd al-Qādir ʿAtā and Muṣṭafā ʿAbd al-Qādir ʿAtā, 19 vols., 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1992), 14: 221–23.

tain social order. Read through this lens, we could see how al-Māwardī treads a fine line, emphasizing both *taqlīd* and *ijtihād* and seeking to reap the benefit of each procedure. On the one hand, he asserts the need for legal methodologies (*madhāhib*) to ensure social order. *Taqlīd*, as adherence to established madhhab methodologies, becomes essential for preserving consistency and predictability in legal practice. On the other, he advances *ijtihād* in an institutional form within judgeship. This formula is designed to reinforce judicial autonomy in a time of unrest while ensuring that the legal system remains flexible and responsive.

As various scholars have argued, by the mid-fourth/tenth century, legal schools had been formally recognized and demarcated.(40) This recognition influenced jurists like al-Māwardī, who engaged in legal debates not necessarily to solve all legal problems or assert the superiority of their school, but to showcase their mastery of legal reasoning.(41) Nonetheless, whereas Melchert focuses on al-Māwardī's style of legal writing in *al-Ḥāwī*, this study extends his insights by showing how *taqlīd* serves as a stabilizing force in response to political upheaval. Al-Māwardī's emphasis on legal stability through *taqlīd* can be seen as a deliberate attempt to address the sociopolitical fragmentation of his time. By adhering to the methodologies of established *madhāhib*, jurists could promote a sense of continuity and order amidst drastic political change. In this sense, *taqlīd* functions not as a sign of stagnation, but as a pragmatic tool for preserving the integrity of Islamic law during a turbulent period.(42) As such, *taqlīd* in this sense served a vital need. But it did so as part of a responsive jurisprudential thinking that equally resorted to forms of *ijtihād* to meet the same demands of the time. This next function of both procedures illustrates this point more concretely.

(40) Christopher Melchert, *The Formation of Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1977); Wael B. Hallaq, *Authority, Continuity, And Change in Islamic Law* (Cambridge: Cambridge University Press, 2004).

(41) As discussed earlier, Melchert argues that al-Māwardī's style "marks the transition from a tradition of legal writing that aims to establish the correctness of its school's doctrine to one that aims to establish only its plausibility; to recognition that there will always be multiple choices." "Māwardī's Legal Thinking," 85.

(42) Daphna Ephrat notes that in the 5th/11th century, *madhhab* functioned as a form of "social affiliation" and "group of solidarity." *A Learned Society in a Period of Transition: The Sunni 'Ulama' of Eleventh-Century Baghdad* (New York: State University of New York Press, 2000), 75. Also see, 125–130.

taqlīd in al-Māwardī's works make this double feature of *fiqh* salient, thus defying simplistic evolutionary paradigms like the decline thesis outlined in the first section. To further substantiate these remarks, the next section will delve more deeply into the contextual functions of the concepts of *ijtihād* and *taqlīd* in al-Māwardī's thought. By treating them as two constitutive elements of *fiqh*, the responsive nature of classical jurisprudence will become more evident.

The Integrity and Responsiveness of the Legal System: The Functions of Ijtihād and Taqlīd

The integration of *ijtihād* and *taqlīd* in al-Māwardī's legal thought—as illustrated by the examination of the salient types of these concepts in his works—point to two concerns that animate his legal practice: how to ensure both the coherence and integrity, and the responsiveness of the legal system. When framed from this vintage point, we can begin to discern that taqlīd and ijtihād in al-Māwardī's works and milieu are invoked to serve distinct purposes, both of which are essential for *fiqh*, which requires a double emphasis on their equal importance for the proper functioning of Islamic law as al-Māwardī imagines it.

In the context of his discussions of *ijtihād* and *taqlīd*, as well as his remarks on the nature of *fiqh*, three functions of the legal system are pronounced in al-Māwardī's writings: ensuring legal stability and social order, reinforcing judicial authority during political fragmentation, and countering the rise of esoteric (*bāṭinī*) hermeneutics. Together, these functions require a double emphasis on *ijtihād* and *taqlīd* as constitutive elements of *fiqh*.

Legal Stability and Social Order

Al-Māwardī lived during a period of significant political fragmentation. As the Abbasid Caliphate's authority waned, regional powers vied for control. In this heated context, the institutionalization of legal schools (*madhāhib*) provided a stabilizing force that helped main-

rulings and rationally established methods of interpretation.[37] This stance balances respect for established methodologies with the need for critical engagement, reinforcing a conception of *taqlīd* as a legal practice that coexists with *ijtihād* and its various forms.

The integrated understanding of *ijtihād* and *taqlīd* in al-Māwardī's works, as laid out in the foregoing sections, aligns with recent scholarly literature that challenges the decline narrative. Scholars such as Ahmed El Shamsy and Lamīn al-Nājī offer insights that resonate with the reading advanced in this article. El Shamsy, in his study of canonization in Islamic law, argues that the process of fixing authoritative texts and methodologies emerged in response to sociopolitical crises and anxieties over religious authority during the fourth/tenth and fifth/eleventh centuries.[38] Canonization provided a stable framework for legal reasoning while still allowing for *ijtihād* within that structure. Similarly, al-Nājī highlights the hybridity of early Islamic legal practice, wherein *ijtihād* and *taqlīd* coexisted as complementary tools for juristic reasoning and application.[39] Al-Nājī then advances a hybrid story of *fiqh* that differs from the evolutionary paradigm, which reads *fiqh* as fixed stages beginning with a direct engagement with the sources and creative synthesizing of interpretive principles, to mere commentarial contributions of later generations.

Al-Māwardī's corpus exemplifies a sophisticated blend of *ijtihād* and *taqlīd*, which is at variance with this linear narrative of creativity and decline. This integrated system reflects the resilience of Islamic jurisprudence, capable of adapting to new challenges while maintaining methodological coherence and internal consistence. Owing to its established schools of interpretation, *fiqh* is an internally stable tradition; but as a discourse within a historical context, it is a deeply responsive discipline. The juxtapositions of *ijtihād* and

(37) Al-Māwardī asserts that reason is the first and foremost foundation of *ijtihād*. This shared faculty ensures that legal reasoning be accessible to any person who cultivates legal expertise through practice. *Al-Ḥāwī*, 16: 54.

(38) Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 5.

(39) Lamīn al-Nājī, "'Alāqat al-intāj al-fiqhī bi-'ilm uṣūl al-fiqh al-mudawwan: dirāsa fī mashrūʿ al-tajdīd." *Majallat al-Wāḍiḥa*, no. 2 (2004): 279–317.

al-Ḥāwī, qualified jurists can debate substantiative rulings (*aḥkām*) as well as major points of methodology (*uṣūl*). In this sense, *taqlīd* is simply an acceptance of certain legal premises which guide the jurist's participation in an accumulative tradition of legal reasoning.

Al-Māwardī's practice of *taqlīd* in this latter sense reflects certain features that deserve further elaboration. The first is the dynamism and responsiveness that characterize his practice of *fiqh* even within the confines a legal methodology. In *al-Ḥāwī*, al-Māwardī's affiliation with the Shāfiʿī school orients his legal thought; however, it never prevents him from advancing different opinions, whether of methodological or substantive nature. Invoking authorities within and beyond his school, al-Māwardī corrects old and new jurists and grants himself the right to represent and systematize his *madhhab*.(34)

The second feature is the emphasis on the institutional nature of *taqlīd* within a legal school. Al-Māwardī advocates for *taqlīd* as mechanism that provides consistency in legal interpretation. By adhering to recognized madhhab methodologies, jurists and judges can offer predictable and stable rulings. This institutional form of *taqlīd* is particularly valuable during times of political fragmentation. As will further be discussed in the next section, this feature of *taqlīd* in al-Māwardī's corpus helps maintain the integrity of the legal system amidstsociopoliticalturmoil.(35)

The third and final feature of al-Māwardī's conception and practice of *taqlīd* is the rejection of infallible authorities. Madhhab is a historical process and a practical necessity, not a matter of immutable creed. Therefore, al-Māwardī explicitly rejects the idea of *taqlīd* as blind emulation of an infallible authority as preached by the esoteric trend of the Ismāʿīlīs or reliance on divine inspiration (*ilhām*).(36) Both forms of *taqlīd* claim private knowledge while for al-Māwardī, *taqlīd* must be grounded in commonly accessible sources of legal

(34) Phrases like "This for me is incorrect" (*hādhā ʿindī ghayr ṣaḥīḥ*), or other wordings of the same idea, are recurrent expressions in his legal corpus. Ibid., 9: 267.

(35) Within this institutional focus, we will look in the final section at how al-Māwardī is concerned with the judges' law-finding processes and the nature of their authority vis-à-vis the competing political forces of their time.

(36) Abū l-Ḥasan al-Māwardī, *Aʿlām al-nubuwwa*, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1406), 6.

of knowledge. This form is prohibited; it neither establishes knowledge, validates a ruling, nor permits a fatwa to be issued.(32)

Depending on the matter at hand, *taqlīd* applies to all people, especially ordinary believers who lack the epistemic capacity to derive legal rulings independently. For this category, following the rulings of qualified jurists is both necessary and valid. This form of *taqlīd* is a practical requirement that ensures legal accessibility and guidance for the broader community. It is not exclusive to any specific stage in the history of *fiqh*; rather, it is a *taqlīd* that accompanies human endeavor as it is necessitated by the gaps in human knowledge. Conversely, any legal expert who is involved in issuing legal rulings, or judicial verdicts is required to depend on his reasoning. The question then remains whether this position conflicts with another form of *taqlīd* that al-Māwardī practiced: the affiliation and consolidation of the doctrines of a legal school.

Consolidating a Specific Legal School. Notably absent from al-Māwardī's typology of *taqlīd* is madhhab affiliations, for *taqlīd* in his adopted definition also encompasses the acceptance and elaboration of a madhhab's legal opinions. But would not this form of *taqlīd* conflict with statement that qualified jurists are prohibited from emulating "contemporaries and predecessors, whether the person being emulated is equal in knowledge or surpasses the one emulating him (*muqallid*)"?(33)

How al-Māwardī practices madhhab affiliation in *al-Ḥāwī* could shed important light on this question. Therein, al-Māwardī engages in extensive commentary and analysis, addressing juristic differences and refining the principles of the Shāfiʿī school. His elaboration of madhhab positions is not a blind conformism. As al-Māwardī presents it, madhhab is better conceived as a discursive space in which the jurists participate in legal reasoning through a shared set of methodological premises. Within this engagement, as al-Māwardī shows in

(32) Ibid., 16: 52.
(33) Ibid., 16: 52.

tion in which jurists can exercise independent reasoning to meet communal needs, without abandoning their school's foundational principles. In this type of *ijtihād*, we can discern a complex integration of *itjihad* and *taqlīd*, whereby adherence to an established legal methodology (one type of *taqlīd*, as we shall see below), allows the affiliated jurists to undertake various forms of *ijtihād*.

The types of *ijtihād* discussed in the forgoing section should begin to paint a picture in which we view *ijtihād* and *taqlīd* as integrated and constitutive categories of al-Māwardī's jurisprudential thought. This image will become gradually clearer as the concept of *taqlīd* is explored.

Taqlīd: Meanings and Types

In addition to the various forms of *ijtihād* that permeate his corpus, *taqlīd* emerges frequently in name or act in al-Māwardī's writings. Two salient types are of particular importance. Neither of these two categories of *taqlīd* is framed in al-Māwardī's works as an antidote to the earlier types of *ijtihād*.

Emulating an Epistemic Authority. As noted earlier, al-Māwardī defines *taqlīd* in its broad sense as "accepting the opinion of the other without proof."[31] The manner in which al-Māwardī conceives of the typologies of *taqlīd* already points to its interconnectedness with *ijtihād*. It is divided into major categories, the commanded and the forbidden:

> *Taqlīd* is of two kinds: one that we are commanded to follow and one that we are forbidden to follow. As for the commanded form, it is emulation in matters of information (*akhbār*) and testimony—the emulation of a layperson (*ʿāmmī*) of a scholar (*ʿālim*) in matters specific to the scholar's expertise. As for the forbidden form, it is emulation in matters that one believes to be knowledge [i.e., beliefs], or uses to affirm a legal ruling (*ḥukm*), or gives a fatwa as a report

(31) Al-Māwardī, *al-Ḥāwī*, 16: 15.

This text is an example of the juxtaposition of *ijtihād* and *taqlīd*, whereby al-Māwardī assumes the existence of distinct legal schools while also emphasizing the need for judges to exercise *ijtihād* before issuing any legal ruling. We shall examine the purposes of this juxtaposition in the final section of this article. What matters at this stage of the argument is how al-Māwardī, while being an affiliated jurist within the Shāfiʿī school, remains committed to *ijtihād* as a continuous practice, thus ensuring the responsiveness of *fiqh* to the needs of his time.

Ijtihād within and for the Madhhab. In addition to the previous type of *ijtihād*, which extends beyond specific legal schools, al-Māwardī equally speaks of *ijtihād* within a madhhab. This type of *ijtihād* deserves mention here while relegating its details to the next subsection on *taqlīd*. Within this type of *ijtihād*, al-Māwardī emphasizes the permanent need to re-organize and consolidate the doctrines inherent from previous jurisconsults. In the *Aḥkām*, for instance, al-Māwardī systematizes legal principles and addresses new areas of *fiqh*, integrating them within the established framework of his school. This form of *ijtihād* reflects his role as a systematizer, who strengthens the coherence and adaptability of the school's legal tradition. Rather than creating a new methodology, al-Māwardī refines and expands upon the Shāfiʿī legal methodology to meet contemporary needs. The rulings related to public life seem to be the area that requires this type of *ijtihad*;[30] this emphasis can be explained by the vicissitudes of politics and governance, a topic that preoccupied al-Māwardī throughout his life. However, the pronounced emphasis on re-systematizing inherited laws and ordinances, while self-identifying as a Shāfiʿī jurist, highlights the flexibility permitted within madhhab affiliations; al-Māwardī imagines *fiqh* in a permanent situa-

(30) This emphasis is evident, for instance, in al-Māwardī's statement at the beginning of one of his treatises on politics, which prepared the way for this work in the *Aḥkām* and anticipated some of his innovative legal positions in it: "Every religious community has its own way of governing (*li-kulli millatin sīra*), and for each age, there is a proper conduct (*li-kulli zamānin sarīra*). It is not enough to rely solely on what has already been established. Instead, someone must embark on the task of elucidating the principles of *sharīʿa* and the conventions of government, making sure they comply with religion and reflect reality." al-Māwardī, *Tashīl al-naẓar wa-taʿjīl al-ẓafar fī akhlāq al-malik wa-siyāsat al-mulk* (*Facilitating Administration and Hastening Success Concerning the Ethics of the Ruler and the Governance of the Realm*) (MS UPenn LJS 405), 1v–2r.

moves through the extrapolation of meanings from texts (*istinbāṭ*), to finally using analogy in cases that share *retio legis* (*ʿilal*) with the known rulings in scripture (as extrapolated through *istinbāṭ*). Al-Māwardī's emphasis on cultivating the tools of *ijtihād* stems from his unqualified insistence on the prohibition of *taqlīd* for learned jurists. Whether extrapolating legal rulings, issuing fatwas, or acting as a judge, the jurist has to rely on his interpretation of the law. This prohibition of emulating authority "applies equally to emulation of contemporaries and predecessors, whether the person being emulated is equal in knowledge or surpasses the one emulating him (*muqallid*)."[26]

In this process, al-Māwardī expects *ijtihād* from any qualified jurist;[27] however, it is noteworthy that he mostly speaks of *ijtihād* in an institutionalized form, within the judiciary. In *al-Ḥāwī* and the *Aḥkām,* his key legal texts,[28] al-Māwardī emphasizes that judges (*qāḍīs*) must exercise independent legal reasoning when dealing with cases that lack explicit proof-texts. Judges should not be bound by rigid adherence to their own school in new cases; rather, they should engage in *ijtihād* to reach sound judgments on their own. As he puts it:

> It is allowed for those affiliated with the school of al-Shāfiʿī, may God have mercy on him, to appoint as judges whoever adopts the school of Abū Hanīfa. For the judge is allowed to exert his view in issuing his verdict, and should not be required to emulate, in new cases and rulings, those affiliated with his school [...]. Some jurists prohibited the one who is affiliated with a school to rule beyond it [...]. Although political prudence (*siyāsa*) requires it, the rulings of Law does not stipulate it, for emulation in it [judiciary] is prohibited and reasoning in it is worthwhile.[29]

(26) Ibid., 16: 52.
(27) Ibid., 16: 120.
(28) A comparative study of these texts is beyond the scope and purpose of this article. As Melchert noted, the *Aḥkām* might be conceived as an "abstract" of *al-Ḥāwī*. Indeed, al-Māwardī's remarks at the beginning of the *Aḥkām* seems to indicate that he synthesized the book from *al-Ḥāwī*. See, Melchert, "Māwardī's Legal Thinking," 68.
(29) Al-Māwardī, *al-Aḥkām*, 91.

wa-l-ʿuyūn (*The Subtle and Essential Inquiries*, henceforth *al-Nukat)*, al-Māwardī himself undertakes a similar type of *ijtihād*. He advances an interpretive methodology, drawn from legal theory, clarifying the principles through which jurists can derive rulings from scripture.(21) This intervention by al-Māwardī mirrors the foundational work of al-Shāfiʿī himself, who synthesized interpretive principles that laid the foundations for the Shāfiʿī school. Even without overtly acknowledging it, through his *ijtihād* at the beginning of the *Nukat*, al-Māwardī places himself as an authority to both determine the proper methods of interpreting the canonical sources and the possible interpretations of each verse. Using his interpretive principles, al-Māwardī explains ambiguous verses (*mushkil*) and systematically providing his new interpretations of each verse.(22) Al-Māwardī's approach reflects his practice of *ijtihād* in the sense of clarifying the exegetical method and its application to furnish novel interpretations through a direct engagement with the scriptural sources.

Extrapolating Legal Rulings. Applying his earlier broader definition of *ijtihād*, al-Māwardī also speaks of *ijtihād* as the first preamble of the procedure of *istinbāṭ* (extrapolating the meanings of legal rulings from proof-texts),(23) which then prepares the jurist to apply the extrapolated meanings (*maʿānī*) in other third-rank legal mechanisms such as analogy (*qiyās*). Al-Māwardī emphasizes that *ijtihād* is not analogy. Rather, *ijtihād* is the first preamble of analogy (*al-muqaddima al-ūlā li-l-qiyās*). When he speaks of analogy (*qiyās*) in terms *ijtihād*, he means that analogy depends on *ijtihād* as its first preamble even though the two are different concepts.(24) For a jurist to undertake analogy, he needs to exercise *ijtihād* in its general sense, according to the four conditions laid out in al-Māwardī's works;(25) then, he

(21) Abū l-Ḥasan al-Māwardī, al-*Nukat wa-l-ʿuyūn: tafsīr al-Māwardī*, 6 vols., ed., al-Sayyid b. ʿAbd al-Maqṣūd b. ʿAbd al-Raḥmān (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 1: 21–42.

(22) al-Māwardī asserts that the purpose of exegesis is to explicate the ambiguous. *Tafsīr* in his view is an arena of *ijtihād* in that it requires interpretive capacity to extrapolate new meanings from scripture not simply repeating what has already been said. Ibid., 1: 21.

(23) Al-Māwardī says, "*istinbāṭ* is the second of the two preambles of *qiyās* (legal analogy); it is then the outcome of *ijtihād* and its branch, and the foundation of analogy." *Al-Ḥāwī*, 16: 130–131.

(24) Ibid., 16: 118.

(25) Ibid., 16: 118–119.

tral purpose of this section is to demonstrate that mistaken dichotomous view of *ijtihād* and *taqlīd*, showing how both concepts, in their diverse forms, are integral to al-Māwardī's understanding and practice of *fiqh*. Together, they mark his conception of *fiqh* as a stable, accumulative, but also responsive enterprise.

Ijtihād: Meanings and Types

In al-Māwardī's legal corpus as well as other treatises of ethical and sociopolitical focus, al-Māwardī repeatedly invokes the term "*ijtihād*" and its derivatives in several context. In no instance does he state that *fiqh* is simply an act of interpreting inherited compendia from earlier jurists. By contrast, he presents *fiqh* both as an accumulative tradition and an arena of required and permanent legal reasoning in its various forms. In a broad sense, al-Māwardī understands *ijtihād* as "seeking what is sound through the signs that point to it."[18] As such, *ijtihād* in his vocabulary encompasses several types, of which the following are most relevant to the focus of this article:

Synthesizing Interpretive Principles. In its highest form, al-Māwardī invokes *ijtihād* in the sense of defining or refining the foundational principles of legal interpretation. He clearly attributes this status to the eponym of his Shāfiʿī school, as we have seen at the beginning of *al-Ḥāwī*.[19] However, despite his self-identification as a Shāfiʿī jurist, al-Māwardī does not consider this form of *ijtihād* to be the exclusive prerogative of pioneering jurists like al-Shāfiʿī. In contrast, his analyses of points of legal theory (*uṣūl al-fiqh*) are marked by an omnipresence of diverse opinions from both Shāfiʿī and non-Shāfiʿī scholars. Al-Māwardī cites and assesses old and new views on legal theory, signaling the continuity of refining legal methodology as a form of permeant *ijtihād*.[20] Moreover, in his *tafsīr* work, *al-Nukat*

(18) Ibid., 16: 117.
(19) Ibid., 1: 7.
(20) See, for instance, his treatment of consensus (*ijmāʿ*) where al-Shāfiʿī's opinions are not given any special normative status despite al-Māwardī's declared adherence to the Shāfiʿī school. Ibid., 1: 30–33.

that is, limiting *ijtihād* to an earlier period of the imams like al-Shāfiʿī. Instead, *ijtihād* as a direct engagement with the sources of law is a continuous practice. As the passage has it, the scholars will always be needed to mediate the sources for the believers, by elucidating and extrapolating rulings from scripture.

The evolutionary reading, briefly outlined in this section, rests on an oppositional framework that frames *ijtihād* and *taqlīd* as mutually exclusive concepts. However, the preliminary application of this evolutionary framework is challenged by a complex integration of various forms of *ijtihād* and *taqlīd* in al-Māwardī's works. Instead of behaving as dichotomous categories, one succeeding the other in a linear fashion in the history of *fiqh*, al-Māwardī's texts present a juxtaposition of *ijtihād* and *taqlīd* as constitutive elements of his jurisprudential thought. The purpose of drawing attention to this juxtaposition is to illustrate the need for a detailed analysis of how he employs such key concepts in his legal oeuvre. This is analysis is carried out in the remainder of this article, which guides its examination of al-Māwardī's jurisprudential thought.

By delineating his uses and functions of *ijtihād* and *taqlīd*, the study challenges the evolutionary reading of al-Māwardī and classical jurisprudence. In contrast, it advances an *ijtihād*-cum-*taqlīd* reading, one that frames these categories as complementary and constitutive elements of al-Māwardī's jurisprudential thought. This central claim will be fully laid out in the next two sections.

The Integrated Jurisprudential System: The Meanings and Types of Ijtih*ā*d and Taql*ī*d

In order to consider the integration of *ijtihād* and *taqlīd* in al-Māwardī's jurisprudential thought, it is imperative to explore the different meanings and typologies of these categories in his works. This analysis will lay the foundation for an examination of the functions of the types of *ijtihād* and *taqlīd* in al-Māwardī's legal and sociopolitical context. The cen-

does not warrant confining his contribution exclusively to a final phase of mere commentary on legal canons in his school. In contrast, even while operating within the Shāfiʿī legal methodology, al-Māwardī uses *ijtihād* and *taqlīd* as permanent categories of jurisprudence. Therefore, the four "stages" outlined in the introduction to *al-Ḥāwī* are present throughout his works as constitutive features of his jurisprudence. They are not consecutive periods. For instance, in *al-Ḥāwī*, al-Māwardī provides a detailed taxonomy of *ijtihād* and *taqlīd (*and *muqallinūn* and *mujtahidūn*) without signaling that such taxonomies apply to one period in the history of *fiqh*. Instead of being the exclusive prerogative of the first period of *fiqh*, *ijtihād* is a collective duty (*farḍ kifāya*), which is incumbent upon learned scholars at any age. On this basis, al-Māwardī rejects *taqlīd* amongst scholars who cultivate the tools of *ijtihād*, except in four cases: accepting prophetic commands, narrators of prophetic reports, consensus, and Companions.(16) This permanence of the mediation of qualified jurists between the readers of scripture and the canonical sources is emphasized in various other writings. Al-Māwardī, for instance, writes:

> Then He relegated to the scholars after the Messenger of God, peace and blessings be upon him, the extrapolation of the meanings He alluded to and pointed to its foundations, so that by exertion (*ijtihād*), they arrive at the knowledge of what is intended in it [...]. Thus, the Qur'an becomes the foundation, the Sunnah the secondary source, and the extrapolation of the *ulama*, elucidation andclarification.(17)

This unqualified statement on the permanent need to directly examine the sources of legal rulings has a similar wording to how al-Māwardī describes the first "stage" of *fiqh*, in which he places the eponym of his Shāfiʿī school. On this basis, it would be inaccurate to read al-Māwardī's endorsement of established legal schools in an evolutionary sense—

(16) Al-Māwardī, *al-Ḥāwī*, 1: 21. There are exceptions in each one for these that al-Māwardī discusses, as well as dissenting voices that refused *taqlīd* even in some of these areas.
(17) Abū l-Ḥasan al-Māwardī, *Adab al-dunyā wa-l-dīn*. Edited by Muhammad Karīm Rājih. 4th ed. (Beirut: Dār Iqraʾ, 1985), 99.

mently believed that *ijtihād* ceased to exist in the fourth/tenth century. By this time, legal reasoning was limited to explaining the final opinions within legal schools.(12)

Several scholars have reexamined the decline thesis. However, scholars like Wael Hallaq, only extended the certain end of *ijtihād* up to the seventh/thirteenth century.(13) Underpinning this view is an acceptance of the *ijtihād-taqlīd* dichotomy. Therefore, a critic of the decline thesis like Mohammad Fadel, while agreeing with Hallaq and Makdisi about the delayed restriction of *ijtihād*, has crafted a counterargument against *ijtihād* as inherently superior to *taqlīd*. He maintains that *taqlīd* represents a reliable "group interpretation," thus casting the scholarly privileging of *ijtihād* as modernist bias in favor of "independent rationalthought."(14)

This dichotomous view of *ijtihād* and *taqlīd* produces what I earlier termed "an evolutionary paradigm." Within this framework, al-Māwardī could be viewed as contributing to the canonization of the *Mukhtaṣar*-focused Shāfiʿī *fiqh*, thereby presumably restricting *ijtihād*. However, upon a closer inspection, the earlier passage from *al-Ḥāwī*, and al-Māwardī's broader corpus, reveal a far more complex picture. What would be read as evolutionary "stages" in the history of *fiqh* at the beginning of his legal *magnum opus* coexist as complementary procedures in his jurisprudential thought. Certainly, al-Māwardī operates and self-identifies as a Shāfiʿī jurist;(15) yet, his adherence to the legal methodology of al-Shāfiʿī

(12) In contrast to an earlier period of jurists' liberty to exercise their *ijtihād* (in the sense of *raʾy*), up until the middle of the third/ninth century, Schacht notes: "By the beginning of the fourth century of the hijra (about A.D. 900), however, the point had been reached when the scholars of all schools felt that all essential questions had been thoroughly discussed and finally settled, and a consensus gradually established itself to the effect that from that time onwards no one might be deemed to have the necessary qualifications for independent reasoning in law, and that all future activity would have to be confined to the explanation, application, and, at the most, interpretation of the doctrine as it had been laid down once and for all." *Introduction to Islamic Law*, 70–71.

(13) Wael B. Hallaq, "Was the Gate of Ijtihad Closed?." *International Journal of Middle East Studies* 16, no. 1 (March 1984): 3–41.

(14) Mohammad Fadel, "The Social Logic of *Taqlīd* and the Rise of the *Mukhataṣar*," *Islamic Law and Society* 3, no. 2, Issues and Problems (1996), 193.

(15) Scholars consider al-Māwardī to be a school mujtahid (*mujtahid al-madhhab*). See, for instance, Muḥammad Ḥasan Hītū, *al-Ijtihād wa-ṭabaqāt mujtahidī l-shāfiʿiyya*, ed. 1 (Beirut: Muʾassasat al-Risālah, 1988), 206–208.

hād" thesis. The thesis proposes what could be dubbed "an evolutionary trajectory of *fiqh*," moving from an initial period of creativity and *ijtihād*, where jurists such as al-Shāfiʿī directly interpreted the sources and issued their reasoned opinions (*raʾy*), to a subsequent period constrained by established school texts and inherited positions. Within this framework, each section of al-Māwardī's introduction would seem to reflect different stages of *fiqh*: the era of absolute *ijtihād* and the establishment of distinct methodologies (paragraph 2); the canonization of school texts (paragraph 3); and finally, the phase of commentaries on these canonical texts (paragraphs 3 and 4). Al-Māwardī would then appear to situate himself within this last phase, which could be described as "encyclopedic commentary"—a stage aiming to exhaustively cover the tradition through the *Mukhtaṣar* of al-Muzanī and provide comparative analyses with other schools.

This reading hinges on one central question: "When did *ijtihād* end?" This framing has centered scholars' attention on trying to capture the pivotal moment in history of *fiqh* from a period of *ijtihād* to one of *taqlīd*, instead of examining the relationship between these concepts at every stage. Two bodies of literature have advanced the end of *ijtihād* thesis: the writings of Muslim reformist thinkers of the nineteenth and twentieth centuries and Orientalist scholarship. Moroccan scholar, judge, and minister of Islamic affairs, Muḥammad b. al-Ḥasan al-Ḥajwī al-Thaʿālibī (d. 1956) represents the perspective of the first category. He describes the history of *fiqh* through the metaphor of life cycles, arguing that *fiqh* entered into old age (*shaykhūkha*) and decline in the fourth/tenth century.[10] Al-Ḥajwī attributes this decline to political fragmentation, partisanship, repressive policies of rival polities, and the resulting lack of scholarly exchange and widespread illiteracy.[11] A similar line of reasoning is prevalent in Orientalist scholarship. Scholars like Joseph Schacht (d. 1969) vehe-

(10) Muḥammad ibn al-Ḥasan al-Ḥajwī al-Thaʿālibī, *al-Fikr al-sāmī fī tārīkh al-fiqh al-islāmī*, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1995), 1: 60, 2: 13–15, 77–78.

(11) al-Ḥajwī relied on a saying attributed to Jalāl al-Dīn al-Suyūṭī (d. 911/1505): "After the five-hundredth, *madhāhib* (legal schools) receded due to the death of scholars, limited ambition, and demise of the learned." Ibid., 2: 72.

1. Praise to God who clarified for us the commands of His religion, favored us by sending down His book, and handed to us the way of His messenger, so that principles have been laid down for scholars, in proof-text and reason, through which they arrive at knowledge of unprecedented cases and grasp the ambiguous and uncategorical [...].
2. Since Muḥammad ibn Idrīs al-Shāfiʿī, may God be pleased with him, adopted a middle way more worthy [of acceptance], his method is more reliable, as he combined the authority of reported proof-texts and reasoned meanings, so that his inclination toward one did not cause him to ignore the other.
3. Because the followers of al-Shāfiʿī limited themselves to the *Mukhtaṣar* of Ibrāhīm ibn Ismāʿīl ibn Yaḥyā al-Muzanī, may God have mercy on him—since expanded books elude understanding due to their breadth, and their review takes a long time for the learned—they used the *Mukhtaṣar* as a foundation that facilitates understanding for beginners and mastery for the advanced.
4. Given the importance of the *Mukhtaṣar* in the Shāfiʿī school:

a. The madhhab must be thoroughly commented upon through it [the *Mukhtaṣar*], addressing the differences among jurists related to it. Even though it goes beyond a basic commentary, which limits itself to elucidating what is commented upon, this becomes sufficient and fulfills the need for any other commentary.

b. I aim by this book of mine to explicate it [*Mukhtaṣar*] in the most measured of its commentaries, and I named it the *Comprehensive* (*al-Ḥāwī*).[9]

One way of interpreting this passage is through the lens of the "closure of the gate of *ijti-*

(9) Ibid., *al-Ḥāwī*, 1: 7.

taqlīd? How are these concepts operationalized in his works? What theological and sociopolitical concerns inform his emphasis on these procedures? And what does al-Māwardī's treatment of these concepts reveal about the broader histories of *ijtihād* and *taqlīd* and the state of classical Islamic jurisprudence?

The article addresses these questions through three parts. The first critiques the "closure of the gate of *ijtihād*" thesis, presenting al-Māwardī's legal thought as a dynamic system that integrates *ijtihād* and *taqlīd* as constitutive elements of jurisprudence. The second part delves into the meanings and typologies of these concepts within his legal corpus. While al-Māwardī acknowledges the utility of *taqlīd* in preserving the juristic legacy of a legal school, he underscores the necessity of *ijtihād* for judges, advocating for independent legal reasoning over uncritical adherence to inherited positions. The third part situates *ijtihād* and *taqlīd* within the broader sociopolitical and theological landscape of al-Māwardī's time, illustrating how these concepts address challenges such as political fragmentation and esoteric (*bāṭinī*) interpretations. It argues that *taqlīd* ensures legal stability, whereas *ijtihād* reinforces judicial autonomy and counteracts ideological contestations. Such complementary functions reinforce the framing of these concepts as interdependent elements within al-Māwardī's jurisprudence, on that is conceived to be both internally coherent and responsive. In sum, this study attempts a nuanced examination of *ijtihād* and *taqlīd* in al-Māwardī's works, demonstrating their interplay as an integrated system rather than a binary opposition. By doing so, it contributes to the conceptual histories of these categories within the evolution of Islamic jurisprudence during a formative period.

Two Possible Readings of al-Māwardī

To assess the validity of the decline narrative in capturing al-Māwardī's understanding of jurisprudence and his place within classical jurisprudence, it is useful to examine the introduction to his work *al-Ḥāwī*. At the beginning of this legal compendium, al-Māwardī writes:

ceptions to this trend are rare. One notable example is Christopher Melchert, who, based on three passages from *al-Ḥāwī al-kabīr*, highlights a distinctive feature of al-Māwardī's legal writing: a methodological plurality that prioritizes "detailed justifications of the rules" over rigid adherence to the substantive positions of the Shāfiʿī school.[5] Melchert attributes this pluralistic approach to the sociopolitical conditions of al-Māwardī's time, which was marked by the ascendancy of regional military rulers and the diminished administrative utility of legal expertise. In Melchert's view, while this shift does not imply decline resulted from an inherent aberration within *fiqh* itself, it reflects a redefinition of classical Islamic law as a commentarial tradition confined to the elaboration of school opinions.

While Melchert's observations provide an entry point into al-Māwardī's legal thought, they remain preliminary and confined to limited textual evidence. A comprehensive understanding of al-Māwardī's conceptualization and application of legal reasoning necessitates a broader engagement with his works. This article aims to contribute to rectifying this lacuna by examining the roles of the concepts *ijtihād* and *taqlīd* within his jurisprudence, particularly as they pertain to law-finding processes and judicial practice. The primary sources for this study are al-Māwardī's *al-Ḥāwī al-kabīr fī al-fiqh al-shāfiʿī* (*The Great Compendium in Shāfiʿī Jurisprudence*, henceforth *al-Ḥāwī*) and *al-Aḥkām al-sulṭāniyya wa-l-wilāyāt al-dīniyya* (*Sultanic Ordinances and Religious Offices*, henceforth *al-Aḥkām* or the *Aḥkām*). These texts reveal that *ijtihād* and *taqlīd* in al-Māwardī's thought do not function as rigid opposites; instead, they form an intricate system, each fulfilling distinct epistemic and social purposes. For instance, *taqlīd* features prominently at the beginning of *al-Ḥāwī*,[6] whereas *ijtihād* takes center stage in *al-Aḥkām*[7] and in sections on judgeship (*Adab al-qaḍī*) within *al-Ḥāwī*.[8] This interplay raises pivotal questions: How does al-Māwardī define *ijtihād* and

(5) Christopher Melchert, "Māwardī's Legal Thinking," *al-ʿUṣūr al-Wusṭā* 23 (2015): 74, 84.

(6) Al-Māwardī, *al-Ḥāwī*, 1: 15–33.

(7) Abū l-Ḥasan al-Māwardī, *al-Aḥkām al-ṣulṭāniyya wa-l-wilāyāt al-dīniyya*, ed., Aḥmad Mubārak al-Baghdādī, 1st ed. (Al-Firdaws, Kuwait: Maktabat Dār Ibn Qutayba, 1989), 90–92.

(8) Al-Māwardī, *al-Ḥāwī*, e.g., 16: 50–54.

Introduction

One of the enduring narratives in Orientalist literature on Islamic legal history is the claim of the "closing of the gate of legal reasoning" (*insidād bāb al-ijtihād*), a phenomenon commonly dated to the fourth/tenth century.(1) This thesis asserts that by this period, Islamic jurisprudence transitioned into an era of intellectual stagnation, where *taqlīd* ("accepting the opinion of another without proof"(2)) supplanted *ijtihād* (independent legal reasoning).(3) The narrative constructs a dichotomy between *ijtihād* and *taqlīd*, casting the latter pejoratively as a departure from a purported golden age of juristic creativity. Within this evolutionary framework, the development of *fiqh* is depicted as moving from an era of absolute *ijtihād* to one dominated by commentarial practices by the fourth/tenth century. However, this account often oversimplifies the complexity of classical Islamic jurisprudence, neglecting the nuanced ways in which *ijtihād* and *taqlīd* function in the works of jurists from this period.

This article revisits this debate by focusing on the case of the Shāfiʿī jurist al-Māwardī, a figure of considerable prominence yet limited scholarly attention. While his contributions to pre-modern legal history within the Shāfiʿī school are extensively referenced, academic engagement with al-Māwardī's jurisprudence has largely revolved around his treatise *Al-Aḥkām al-sulṭāniyya* (*Sultanic Ordinances*), particularly its treatment of the caliphate.(4) Ex-

(1) Joseph Schacht offered one of the first articulations of this thesis in a chapter titled: "The Closing of the Gate of Independent Reasoning and the Further Development of Doctrine;" the chapter is part of his introductory book that aimed to synthesize the state of academic knowledge on Islamic law up until the beginning of the 1960s. *Introduction to Islamic Law*, (Oxford: Clarendon Press, 1982), 69–75.

(2) Abū l-Ḥasan al-Māwardī, *al-Ḥāwī al-kabīr fī fiqh al-Shāfiʿī wa-huwa sharḥ mukhtaṣar al-Muzanī*, 18 vols., ed. ʿAlī Muḥammad Muʿawwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd, 1st ed. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), 16: 15.

(3) al-Māwardī, as we shall see later, understands *ijtihād* in a broader sense, which aligns with the argument of this paper. He states, "*Ijtihād* is seeking what is sound through the signs that point to it." Ibid., 16: 117.

(4) In this regard, Donald P. Little stated back in the 1970s, "Almost all other studies of al-Māwardī [with the exception of Hanna Mikhail's 1968 dissertation] are limited to one of his books—*al-Aḥkām*—or, what is worse, to one or two chapters of this book, from which sweeping generalizations on al-Māwardī's total outlook on political institutions and his significance in political thought have been made." Donald P. Little, "A New Look at *Al-Ahkām Al-Sultāniyya*," *The Muslim World* 64, no. 1 (January 1974): 6. While being made in the early 1970s, Little's remarks still stand today despite the many works that have been written on al-Māwardī.

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دورية نماء
فصلية محكمة متخصصة في علوم الوحي والدراسات الإنسانية

Al-Māwardī's (d. 450AH/1058CE) Jurisprudential Thought in Classical Islam: An Integrated and Responsive System of *Ijtihād* and *Taqlīd*

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Abstract:

The development of classical Islamic jurisprudence continues to raise critical questions, particularly regarding the proper framing and assessment of the establishment of legal schools. The decline narrative has held sway in much of the literature. It portrays the establishment of legal schools as a key factor in the downward trajectory of *fiqh*, especially during and post-fourth/tenth century, due to the dominance of *taqlīd* (emulating a legal authority) over *ijtihād* (independent legal reasoning). This article reexamines this narrative by analyzing the relationship between the concepts and procedures of *ijtihād* and *taqlīd* in the neglected works of the renowned Shāfiʿī jurist al-Māwardī, particularly al-*Ḥāwī al-kabīr*. Instead of interpreting *ijtihād* and *taqlīd* as oppositional or successive phases in the history of *fiqh*, the article maintains that al-Māwardī's jurisprudential thought integrates both procedures as complementary tools to address distinct methodological and sociopolitical demands. To substantiate this central claim, the article examines the meanings, uses, and functions of *ijtihād* and *taqlīd* in al-Māwardī's corpus, demonstrating how *taqlīd* provided stability during political fragmentation, while *ijtihād* upheld judicial autonomy and countered esoteric (*bāṭini*) hermeneutics. The integration of these concepts as permanent and interdependent elements of *fiqh* challenges any reading of al-Māwardī within a simplistic decline narrative. Through the case of al-Māwardī, this study aims to contribute to the historiography of Islamic legal thought, offering insights into the enduring dynamism of *fiqh* as a responsive and methodologically rigorous tradition during the purported moment of decline in the classical period (ca. 2nd/8th–5th/11th centuries).

Keywords:

Ijtihād and *Taqlīd,* Islamic Jurisprudence, al-Māwardī, the Classical Period of Islam.

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الفكر الفقهي للماوردي (ت. 450هـ/1058م) في الإسلام الكلاسيكي:
نظام متكامل وتفاعلي للاجتهاد والتقليد

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الملخص:

لا يزال تطور الفقه الإسلامي الكلاسيكي محورًا للتساؤلات الجوهرية، خاصة فيما يتعلق بالإطار النظري والتقييم التاريخي لنشأة المذاهب الفقهية. تسود في الأدبيات رواية الانحدار التي تصور نشوء المدارس القانونية كعامل أساسي في تراجع الفقه، خصوصًا في القرن الرابع/العاشر وما بعده، حيث هيمنت ثقافة التقليد (اتباع السلطة القانونية) على الاجتهاد (التفكير القانوني المستقل). لذلك تسعى هذه الدراسة إلى إعادة النظر في هذه الرواية عبر تحليل العلاقة بين مفاهيم الاجتهاد والتقليد وإجراءاتهما في مؤلفات الماوردي، الفقيه الشافعي البارز، مع التركيز على عمله "الحاوي الكبير". بدلاً من تقديم الاجتهاد والتقليد كمراحل تاريخية متعارضة أو متعاقبة، تؤكد الدراسة أن الفكر الفقهي للماوردي يدمج هذين الإجراءين كأدوات تكاملية تلبي متطلبات منهجية واجتماعية وسياسية متميزة. ولإثبات هذا الطرح، تعاين الدراسة معاني الاجتهاد والتقليد ووظائفهما كما وردت في مؤلفات الماوردي، مبرزة كيف أسهم التقليد في تحقيق الاستقرار خلال فترات التشرذم السياسي، بينما عزز الاجتهاد استقلال القضاء وتحدى التأويلات الباطنية. إن هذا الدمج بين الاجتهاد والتقليد كعناصر مستدامة ومتفاعلة ضمن الفقه الإسلامي يفند التأويلات التي تضع الماوردي ضمن سردية الانحدار التبسيطية. من خلال تناول فكر الماوردي، تهدف الدراسة إلى إثراء تأريخ الفكر القانوني الإسلامي، وتسليط الضوء على دينامية الفقه الدائمة باعتباره تقليدًا منهجيًا دقيقًا ومتجاوبًا مع لحظة الانحدار المزعومة في الفترة الكلاسيكية (القرنين الثاني/الثامن إلى الخامس/الحادي عشر).

الكلمات المفتاحية:

الاجتهاد والتقليد، الفقه الإسلامي، الماوردي، العصر الذهبي للإسلام.

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