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Drawing upon Other Schools of Islamic Law in Contemporary Fatwā: A Study in Method and Application

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Abstract:
This article investigates the practice of drawing on other schools of Islamic law (madhāhib) in the context of contemporary fatwā, treating it as an ijtihād-based orientation aimed at addressing unprecedented issues arising from the rapid transformations of the modern world. The study is guided by a binary methodological framework and is organized into an introduction, two main sections, and a conclusion. The first section examines the conceptual framework of inter-madhhab borrowing, while the second presents selected examples of its application in contemporary juristic practice. The study concludes that drawing on other madhāhib does not signify a rupture with one's own madhhab affiliation; rather, it reflects an expansion of the horizons of juristic reasoning. It further argues that this orientation has recognized roots in the classical fiqh tradition and has become increasingly necessary in relation to contemporary issues marked by complexity and composite structures. The study emphasizes that the effectiveness of this process depends on maintaining a balance between fidelity to the foundational principles of one's own madhhab and a disciplined openness to other schools of law.

Keywords: Juristic borrowing; contemporary fatwā; methodology; application.

Introduction:

The topic of iftāʾ (issuing fatwās) is among the most subtle and most eminent topics of uṣūl al-fiqh, because of what it requires in terms of firmly connecting the ruling with its application to its proper case, by verifying its operative cause (taḥqīq al-manāṭ) and fulfilling the conditions of its validity. With the development of events, confining oneself to a single madhhab is no longer sufficient or adequate for the new cases (nawāzil) of our age, and this has produced a contemporary uṣūlī orientation expressed as "drawing upon other schools" (al-istimdād al-madhhabī). This research paper therefore approaches the subject from an analytical uṣūlī perspective. It seeks to establish the foundations of the concept of drawing upon other schools, to set out its uṣūlī pillars, and to survey its applications in contemporary fatwā, together with a critical assessment that weighs the requirements of ijtihād against its controls, so as to contribute to rationalising the process of fatwā and to realising the objectives of Islamic Sharia in a changing reality.

I have been keen to reinforce the pages of this research with evidence drawn from the statements and reports of the imams, so that the ideas are supported by their testimonies and the meanings strengthened by their examples. Citing these testimonies thus reinforces the critical discussions, for "when we let the witness speak and refer to the example, the dispute is then between them and it."[1] Be that as it may, I do not claim to have exhausted the facts, but it is hoped that the research contains what may attract attention and stimulate thought; and it is for God to show the right way.

1 – The research problem and its questions:

The problem centres on one pivotal question: to what extent may the muftī depart from his own school of law without slipping into talfīq (patching together opinions) or contravening the principles of inference?

The following questions branch out from this main question:

- What is meant by drawing upon other schools? What are its juristic and uṣūlī limits? And how can it be distinguished from deviation from the school?

[1] Al-Jāḥiẓ, al-Ḥayawān, ed. ʿUyūn al-Sūd (Beirut: Dār al-Kutub al-ʿIlmiyya, 2nd ed., 2003), 6:326.

- What are the real-world factors that have necessitated this expansion? And what methodological difficulties accompany it?
- How can methodological mechanisms be established to regulate this borrowing in a way that guarantees juristic discipline and realises the legitimate interest (maṣlaḥa sharʿiyya)?

2 – Objectives of the research: This research paper aims first to explain the nature of drawing upon other schools in contemporary ijtihād and to set out its limits and motives, and secondly to survey some contemporary applications, with analysis and evaluation.

3 – Methodology of the research:

The nature of this research required adopting a composite method that combines several complementary methodological approaches, as follows:

- **Induction:** by examining multiple examples of contemporary fatwās, while reviewing the juristic heritage of the Mālikīs and of the other schools on similar issues.
- **Analysis:** by analysing the manifestations of drawing upon other schools.
- **Critique:** by assessing and evaluating the reality of drawing upon other schools in contemporary ijtihād; the critique also includes identifying the methodological and practical risks that may result from its undisciplined expansion.

4 – Structure of the research: In order to contain the various aspects of this subject within a unified systematic structure, I have divided this research paper into an introduction, two sections and a conclusion. The introduction covers the importance of the topic, its novelty, its contribution to knowledge, its structural plan and the chosen method. The first section is devoted to the conceptual framework of drawing upon other schools; in the second I refer to contemporary applications and examples; and I close the work with a conclusion in which I set out the final evaluation of the subject and a summary of reflection on its overall features and future prospects.

I ask God the Exalted, and seek His favour through His names and attributes, to make all my work sincerely for Him (Glorious and Exalted is He); He is the Granter of success and the Guide to the right path, He is sufficient for us, and He is the best Disposer of affairs.

Section One: The Conceptual and Methodological Framework of Drawing upon Other Schools

The first part of this research paper seeks to examine the concept of drawing upon other schools, to set out its uṣūlī foundations, and to reveal its motives and causes in contemporary ijtihād, through an analytical approach that clarifies its conceptual limits and highlights its methodological pillars, as a prelude to surveying its applications in the following section.

First: The concept of drawing upon other schools and its limits:

1 – The concept of drawing upon other schools: Adherence to a school (iltizām madhhabī) takes two forms: the first is complete adherence to the school; the second is adherence to it in general, while departing from its authoritative opinion (al-muʿtamad) for a valid justification required by ijtihād.[2] It is through this second form that the concept of drawing upon other schools in fatwā takes shape, as a methodological mechanism that balances preserving one's affiliation to the school with benefiting from the juristic wealth of the other schools when a valid Sharia reason requires it.

Strict adherence and complete fidelity to the school bind the muftī to refer exclusively to the texts and opinions of his own school. However, the complexity of contemporary events, the continual emergence of new cases and the widening of their domains may require departing from the opinion on which fatwā is given in the school to an opinion from outside it, whenever this rests on valid evidence, a preponderant interest, or a recognised necessity or need, while affiliation to the school remains the governing principle, which is set aside only to the extent required by disciplined ijtihād.

On the basis of the foregoing, the concept of "drawing upon other schools" may be defined as: **"the muftī's employment of the opinions or methods of the other schools of law in the making of a fatwā, whether in constructing, characterising, deriving or preferring a ruling, for a valid Sharia justification, and within the framework of disciplined ijtihād."** This concept may be analysed as follows:

– **The muftī's employment:** a qualifier emphasising that the process is one of guidance, not of conversion; that is, the muftī does not deal with the opinions and methods of the schools by way of a bare move from one school to another, but exercises scholarly reflection based on examination, comparison and preference, according to what the evidence, the interest and the consequences require, so that the fatwā is built on a disciplined basis of ijtihād, and not on a mere change of school affiliation without justification.

– **The other schools:** a qualifier intended to define the source of borrowing as the recognised Islamic schools of law whose principles have been established and which scholars have received through study and circulation, such as the four schools and other schools of ijtihād that have completed the elements of juristic reasoning. Accordingly, this excludes anomalous (shādhdh) opinions, statements lacking a valid basis, and ijtihād not governed by the principles and rules of ijtihād.

– **Constructing, characterising, deriving or preferring:** a qualifier showing that drawing upon other schools is not confined to transferring a ready-made juristic opinion, but varies according to the stages of making a fatwā: it may consist

[2] See: Khālid al-Ruwaytiʿ, al-Tamadhhub: dirāsa naẓariyya wa-naqdiyya (Riyadh: al-Dār al-Tadmuriyya, 1st ed., 2013), 87.

in invoking an opinion or a principle of a school in constructing the ruling; in benefiting from the methods of the schools in characterising the case (takyīf) and fitting it to the appropriate juristic description; in deriving rulings for new cases on the basis of established principles and issues (takhrīj); or in relying on the opinions of the schools in the process of preference (tarjīḥ) and comparison between them. The qualifier thus covers benefiting from the schools at the level of both results and tools of ijtihād, not merely moving between opinions.

– **For a valid Sharia justification:** a qualifier showing that benefiting from the opinions or the methods of ijtihād of the other schools is not unrestricted, but takes place when a valid reason justifies such employment, such as the strength of the evidence, the realisation of a legitimate interest, the removal of a recognised hardship, taking account of changing circumstances and customs, or dealing with a new case in which confining oneself to a single opinion is not sufficient. This excludes adopting opinions merely for the sake of leniency, pursuing concessions (tatabbuʿ al-rukhaṣ) or following one's desires; the qualifier here performs the two functions of affirmation and exclusion.

– **Within the framework of disciplined ijtihād:** a precautionary qualifier showing that drawing upon other schools is neither an unrestricted movement between the opinions of the schools nor an uncontrolled combination of them, but an ijtihād-based practice governed by the principles of inference, the rules of preference, the objectives of the Sharia and the controls of fatwā. This excludes from its concept the prohibited talfīq, which leads to composing an opinion held by none of the people of ijtihād; it also excludes the pursuit of concessions based on caprice and seeking the easiest option without a Sharia basis, and moving between schools merely out of desire or for personal interest; for the purpose of this borrowing is to realise the Sharia ruling in accordance with the evidence and to apply it to the case as valid ijtihād requires.[3]

2 – The limits of drawing upon other schools: The limits of drawing upon other schools can be defined by setting out the elements of which the process of borrowing is composed: the one who draws upon other schools, i.e. the person who carries it out (competence); the determination of its scope (partiality); and its method (evidence and preference). They are as follows:

- **With regard to the one who draws upon other schools:** this expansion may be exercised only by one who possesses the capacity and competence, and among his most important characteristics is that "he considers consequences before answering questions…"[4] Given the differing ranks and standing of muftīs, Ibn Rushd the Grandfather (d. 520 AH) divided those who issue fatwās into three categories:[5] the first is the muftī capable of independent reasoning (al-naẓẓār), who is able to establish the Sharia rulings and extract them from the Book, the Sunna, consensus and analogy; the second is the muftī who follows a school (al-muqallid), who has mastered the issues of his imam's school and grasped its principles and sources in a way that enables him to do so soundly, although the permissibility of this category has been disputed; and the third is the muftī lacking competence and ability, who has not acquired the acumen, intelligence and breadth of understanding that would enable him to distinguish between what is general and what is explained in the school, and between the kinds of disagreement among the reports; this category is forbidden to issue fatwās because it lacks the required tools.

Accordingly, the independent reasoner (al-naẓẓār) and those close to him in competence are the most capable of drawing upon other schools, as opposed to those whose tools of reasoning and preference are incomplete. On this basis, differences in competence entail differences in authority. Given the difficulty of attaining this rank, we find an alternative in collective ijtihād, exercised by a group rather than by a single individual, after consultation, examination of ideas and discussion of opinions. The need for this collaborative work is reinforced by the complexity that new issues carry within them and by the intertwining of the sciences, which has made it necessary to rely on experts and specialists in order to guard against the chaos of individualism in issuing Sharia rulings.[6]

- **With regard to determining the scope:** it must be partial, not a complete adoption, limited to what need requires, so as not to lead to the dismantling of the school's structure; it is a functional borrowing, not an absolute affiliation by imitation. The warning given by al-Māzarī (d. 536 AH) about the danger of opening the door to contravening the school[7] should not be understood as prohibiting drawing upon sources outside the school; rather, what is intended is to block the path to unrestrained departure from it. Borrowing is therefore acceptable within its partial and disciplined scope, not by way of an unlimited expansion that would lead to the loss of the school's standing and the undermining of its structure. The people of al-Andalus departed from the Mālikī school on several issues, out of independence of opinion and reasoning; among them, they did not accept the oath together with one witness and did not give judgement on its basis, on the grounds of the corruption of the times and the change of circumstances, and they took cover in this behind the opinion of al-Layth ibn Saʿd (d. 175 AH), as expressed by the ḥāfiẓ Ibn ʿAbd al-Barr (d. 463 AH).[8]

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[3] See: Khālid al-Ruwaytiʿ, al-Tamadhhub, 998–1027.

[4] Al-Shāṭibī, al-Muwāfaqāt, ed. Mashhūr Āl Salmān (Saudi Arabia: Dār Ibn ʿAffān, 1st ed., 1997), 5:233.

[5] See: Ibn Rushd al-Jadd, al-Fatāwā, ed. al-Mukhtār al-Talīlī (Beirut: Dār al-Gharb al-Islāmī, 1st ed., 1987), 1274.

[6] See: Wassila Khelfi, Fiqh al-tanzīl: ḥaqīqatuhu wa-ḍawābiṭuhu (Algeria: Dār al-Waʿy, 1st ed., 2009), 88.

[7] See: al-Shāṭibī, al-Muwāfaqāt, 5:101.

[8] See: Ibn ʿAbd al-Barr, al-Kāfī fī fiqh ahl al-Madīna, ed. Muḥammad Uḥayd (Riyadh: Maktabat al-Riyāḍ al-Ḥadītha, 2nd ed., 1980), 2:909.

- **With regard to method:** it must be based on the universal rules of the Sharia, not on mere selection and caprice. It must necessarily rest on valid Sharia evidence, follow the recognised methods of preference, and take account of the principles and general rules of the school even when departing from some of its particulars, and in all this it must not commit talfīq or the pursuit of concessions.[9]

The basic principle in this matter is that borrowing is exercised only within the framework of the universal rules of the Sharia and its general objectives, because these rules constitute the governing framework that prevents slipping into an unmethodical fragmentation of rulings. When the jurist benefits from sources outside his school, he does not regard the issue as a detached opinion, but as part of an integrated legislative structure, so that particulars are referred back to their universals and branches are understood in the light of their roots.

Hence the sound method of borrowing rests on relying on valid Sharia evidence, whether from the Book, the Sunna, consensus, analogy or the other proofs established by the uṣūlīs. The mere existence of a juristic opinion in another school does not make it suitable for adoption until its basis, its strength and its degree of validity in the scale of inference have been examined.[10]

Methodical borrowing likewise requires adopting the uṣūlī methods of preference when opinions are multiple and conflicting, such as considering the strength of the evidence, taking account of the practice of scholars, having regard to the objectives, and considering general affliction (ʿumūm al-balwā) or the change of times, and other rules used to regulate the choice between opinions. The matter is not a choice of taste, but a process of preference with its own tools and criteria.[11]

One of the most important things this method emphasises is also the necessity of adhering to the principles and general rules of the school even when benefiting from outside it. The purpose of borrowing is not to dismantle the school's structure from within, but to benefit from others within a framework that preserves methodological consistency. Departing from some particulars therefore does not mean separation from the school's overarching authority, but submission to an uṣūlī logic that balances constancy and development. It thus becomes clear that the method of drawing upon other schools is not merely a mechanism for benefiting from multiple opinions, but an integrated system of knowledge based on verifying the evidence, applying the universal rules, using the tools of preference and adhering to the uṣūlī structure of the school, while preventing a slide into unmethodical selection or the arbitrary dismantling of the juristic structure.

Second: The uṣūlī foundations of drawing upon other schools (why borrowing is permissible):

1 – Consideration of interests and objectives: Every departure from the authoritative opinion of the school should serve a recognised Sharia objective. For this reason Ibn Qayyim al-Jawziyya (d. 751 AH) says: "The rule of the Sharia, which may not be demolished, is that intentions and beliefs are taken into account in transactions and expressions just as they are taken into account in acts of devotion and worship…"[12] Among the recorded juristic applications in this area is the view of Aḥmad ibn Naṣr al-Dāwūdī al-Mālikī (d. 402 AH) that a child born of fornication should be affiliated to his biological father, because of the rights this secures, such as financial rights like inheritance, and establishing the person's social identity and his right to know his origin.[13]

Al-Dāwūdī's ijtihād reveals the presence of objectives-based reasoning in constructing the fatwā, by taking into account the practical consequences of rulings and linking them to what realises the interests of those subject to the law and preserves their rights. The aim is not merely to contravene the authoritative opinion of the school, but to employ ijtihād to realise the objectives of the Sharia in safeguarding rights, preserving human dignity and limiting the negative effects that certain real situations may entail. This confirms that drawing upon sources outside the school, whenever it is founded on a recognised interest and governed by the principles of the Sharia, remains a legitimate path of ijtihād in harmony with the spirit and objectives of Islamic jurisprudence.

2 – The requirement of necessity: Necessity is a compelling situation. If adherence to the school on a given issue were to lead to grave harm, and no valid way out were to be found within the school, the muftī may draw from another school what brings about benefit and wards off harm. In this regard we preserve from our recorded jurisprudence the fatwā of Ibn Sirāj al-Gharnāṭī al-Andalusī (d. 849 AH) on the permissibility of hire for an unknown consideration, relying explicitly on the school of Imam Aḥmad (d. 241 AH). He thus leaned on Aḥmad's school in this borrowing out of a desire to ward off harm, and he expressed the reason for adopting it in words indicating the severity of the need, such as "what is unavoidable" and that "there is no escaping it at all", meaning that it cannot be dispensed with or avoided.[14]

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[9] See: al-Shāṭibī, al-Muwāfaqāt, 4:511.

[10] See: Yūsuf al-Qaraḍāwī, al-Ijtihād fī al-sharīʿa al-Islāmiyya maʿa naẓarāt taḥlīliyya fī al-ijtihād al-muʿāṣir (Kuwait: Dār al-Qalam, 1st ed., 1996), 115.

[11] See the criteria and tools of preference in: al-Bājī, al-Ishāra fī maʿrifat al-uṣūl wa-l-wajāza fī maʿnā al-dalīl, ed. Muḥammad ʿAlī Farkūs (Algeria: Dār al-ʿAwāṣim, 2nd ed., 2014), 374–395.

[12] Ibn Qayyim al-Jawziyya, Iʿlām al-muwaqqiʿīn ʿan Rabb al-ʿĀlamīn (Riyadh: Dār ʿAṭāʾāt al-ʿIlm, 1st ed., 2019), 3:577.

[13] See: al-Dāwūdī, al-Amwāl, ed. Riḍā Shaḥḥāda (Beirut: Dār al-Kutub al-ʿIlmiyya, 1st ed., 2008), 178.

[14] See: Ibn Sirāj al-Andalusī, al-Fatāwā, ed. Muḥammad Abū al-Ajfān (Beirut: Dār Ibn Ḥazm, 2nd ed., 2006), 198–200.

3 – Consideration of recognised juristic disagreement: This principle rests on the fact that when disagreement is recognised among mujtahids, and each opinion rests on valid evidence or reasoning, it opens the door to a disciplined movement between opinions and prevents confining what is correct to a single school as an obligation in fatwā.

Among the applications of taking juristic disagreement into account among the Mālikīs is that they may hold a contract to be void in principle according to their school, but after it has been concluded they take into account the disagreement of the jurists who held it valid, and so they give effect to some of its consequences out of regard for recognised juristic disagreement, such as taking the disagreement into account in upholding the shighār marriage contract,[15] and in upholding a secret marriage.[16]

Third: The motives for drawing upon other schools in contemporary fatwā (why borrowing is needed):

The motives for borrowing constitute the basic entry point for understanding its essence and reality, since embarking on it is inconceivable without valid motives that take it from narrowness to breadth and from a lower to a higher level. The aim of all this is to achieve legislative stability and to serve the interests of those subject to the law in a changing context. The sources of all this are as follows:

1 – Factual motives (change of circumstances, events and customs):

Changes in ways of life require searching for opinions more suited to reality. The muftī may therefore be compelled to choose what achieves harmony and removes hardship without undermining the general principles of the school. There is no doubt that this motive is based on the rule that ijtihād changes with the change of time, place and circumstance. Ibn Qayyim al-Jawziyya (d. 751 AH) devoted a chapter in Iʿlām al-muwaqqiʿīn to the change and variation of fatwā according to the change of times, places, circumstances, intentions and customs.[17] Undoubtedly, reflection in this area belongs only to one who has fully grasped the Sharia and drunk deeply from its sources, and who possesses a great measure of piety and God-consciousness. Ibn Khaldūn (d. 808 AH) perceived this social reality in his Muqaddima, saying: “The conditions of the world and of nations, their customs and their creeds do not persist in one manner and a stable course; rather, there is difference over days and times and transition from one state to another…”[18] On this basis, al-Qarāfī (d. 684 AH) warned against applying rulings whose basis is custom to cases other than their proper ones.[19]

2 – Organisational motives (unifying the judiciary and fatwā):

These are the motives imposed by the state’s need for order, such as unifying the judiciary, stabilising the fatwā process and taking account of general customs. One of the most important foundational bases of this motive is the rule that “the judgement of the ruler removes disagreement” (ḥukm al-ḥākim yarfaʿ al-khilāf): if the ruler gives judgement on a matter of ijtihād, his judgement becomes binding and the disagreement is removed at the level of practice, even if it remains at the level of scholarly reflection. This rule does not abolish disagreement at its root, but ends it with regard to practical application. Al-Qarāfī (d. 684 AH) discussed at length in his Furūq the ruler’s removal of disagreement and the resulting obligation to comply with the ruler and not to oppose him, and he gave a number of examples, such as the case of the endowment (waqf) of an undivided share: if the ruler rules that it is effective and valid, then one who holds it to be void, when the case is brought before him, has no way to oppose or contradict it, and he is necessarily bound to rule that it is effective and to uphold it.[20]

3 – Civilisational motives (globalisation, migration and interaction between societies):

The civilisational transformation witnessed by the contemporary world has produced a number of new issues that transcend the geographical, doctrinal and cultural boundaries within which the juristic compendia arose. The Muslim now lives, deals, contracts and communicates in environments in which cultural, legal and social frames of reference are multiple. This reality has created new issues in which divergent systems, customs and interests overlap, and which are sometimes difficult to accommodate through the authoritative local opinion of the school alone.[21]

For this reason the muftī may find in a juristic opinion outside his school a greater capacity to deal with these issues in the light of their civilisational and legal particularities, and he may draw from it what achieves harmony between the Sharia ruling and the environment in which it is to be applied, while preserving the principles and objectives of the Sharia and the controls of ijtihād. This does not mean subjecting the Sharia ruling to civilisational reality or to prevailing systems, but benefiting from the breadth of the juristic heritage in offering Sharia solutions capable of dealing with a changing reality.

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[15] See: al-Khirshī, Sharḥ Mukhtaṣar Khalīl (Beirut: Dār al-Fikr, n.d.), 3:268.

[16] See: al-Mawwāq, al-Tāj wa-l-iklīl li-Mukhtaṣar Khalīl (Beirut: Dār al-Kutub al-ʿIlmiyya, 1st ed., 1994), 5:80.

[17] See: Iʿlām al-muwaqqiʿīn, 4:337.

[18] See: al-ʿIbar wa-dīwān al-mubtadaʾ wa-l-khabar fī tārīkh al-ʿArab wa-l-Barbar wa-man ʿāṣarahum min dhawī al-shaʾn al-akbar (Beirut: Dār al-Fikr, 1st ed., 1981), 1:37.

[19] See: al-Iḥkām fī tamyīz al-fatāwā ʿan al-aḥkām, ed. ʿAbd al-Fattāḥ Abū Ghudda (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2nd ed., 1995), 231.

[20] See: al-Qarāfī, al-Furūq, ed. Khalīl al-Manṣūr (Beirut: Dār al-Kutub al-ʿIlmiyya, 1st ed., 1998), 2:103.

[21] See: Yūsuf al-Qaraḍāwī, Fī fiqh al-aqalliyyāt al-Muslima (Egypt: Dār al-Shurūq, 1st ed., 2001), 57.

Section Two: Applications of Drawing upon Other Schools in Contemporary Fatwā

The second part of this research paper seeks to discuss the contemporary juristic applications of drawing upon other schools, while questioning and interrogating the reality of ijtihād, through the following subdivisions:

First: Examples of drawing upon other schools in acts of worship:

– Drawing upon the opinion permitting the early payment of zakāt during the Covid-19 pandemic:

- **Depiction of the issue:** The issue concerns the permissibility of paying zakāt before its usual time, in consideration of the exceptional circumstances imposed by the Covid-19 pandemic, both for zakāt al-fiṭr (zakāt on persons) and zakāt on wealth, in order to provide social relief and support the groups affected by the pandemic.[22]
- **The authoritative opinion in the original school:** Juristic reasoning in the Mālikī environment starts from a restrictive position on the early payment of zakāt. With regard to zakāt al-fiṭr, the Mālikīs do not permit paying it long before its time, unlike the Ḥanafīs and the Shāfiʿīs, who were broader in permitting early payment. As for zakāt on wealth, the well-known (mashhūr) position of the Mālikīs is that early payment is not permitted except within narrow limits, whereas the majority of jurists hold that it may be paid before it falls due when the conditions are met. On this basis, there was a departure from the authoritative Mālikī opinion to the opinion of those who permitted early payment, for a valid justification.[23]
- **Identifying the locus of borrowing:** The locus of borrowing in this issue consists in adopting the opinion of the Ḥanafīs and the Shāfiʿīs permitting the early payment of zakāt (on wealth and on persons), contrary to the authoritative opinion of the Mālikī school, which restricts early payment or permits it only within a limited scope. The borrowing here appears in a particular juristic issue (the early payment of zakāt), not in the basic obligation of zakāt, which shows that the borrowing occurred in an applied branch within the chapter of zakāt.
- **The Sharia justification for borrowing:** The Sharia justification in this new case lies in realising the interest, removing hardship and meeting the general need arising from the Covid-19 pandemic, which caused widespread economic and social harm that called for easing matters for those subject to the law and enabling them to give zakāt to those entitled to it at the time of need. This justification also falls under the consideration of general affliction and changing circumstances, which justifies departing from the restrictive position to the broader opinion that realises the objectives of the Sharia in mutual solidarity and meeting the needs of the needy.
- **The effect of borrowing on the making of fatwā:** This borrowing widened the scope of the juristic ruling in contemporary fatwā by moving from the narrower Mālikī opinion to the broader opinion of the majority, achieving flexibility in applying the ruling to reality. It also strengthened the objectives-based dimension of fatwā by linking the ruling to its social and economic circumstances, and highlighted the role of institutional fatwā in responding to public crises without departing from the principles of valid ijtihād. Its effect is also seen in transforming juristic disagreement from a theoretical matter into a practical tool for managing new cases.

– Drawing upon the opinion permitting zakāt al-fiṭr to be paid in cash:

- **Depiction of the issue:** The issue concerns the permissibility of paying zakāt al-fiṭr in its monetary value instead of in food. The need to address this issue has arisen in contemporary urban environments, where the monetary value may be more beneficial to the poor and easier for achieving the purpose of sufficing them on the day of ʿĪd.[24]
- **The authoritative opinion in the original school:** The authoritative opinion among the Mālikīs, the Shāfiʿīs and the Ḥanbalīs is that zakāt al-fiṭr is paid from the foodstuffs stipulated in the texts or what takes their place from the staple food of the country, and that paying its value is not valid except in limited cases according to some of them.[25]
- **Identifying the locus of borrowing:** The borrowing consisted in adopting the opinion of the Ḥanafīs, who hold that it is permissible to pay the value in zakāt al-fiṭr, and indeed that this may be preferable if it is more effective in realising the interest of those entitled to it.[26]
- **The Sharia justification for borrowing:** The justification here rests on taking account of changing economic conditions and patterns of exchange, while facilitating the delivery of benefit to those entitled to it.
- **The effect of borrowing on the making of fatwā:** This borrowing enabled fatwā institutions to deal with a changing economic and social reality without departing from the domain of valid ijtihād. It also strengthened the objectives-based dimension of fatwā by focusing on providing sufficiency and benefit to those entitled, while relying on a well-established juristic opinion within one of the recognised schools.

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[22] See: "Bayānāt al-Lajna al-Wizāriyya li-l-Fatwā ḥawla fayrūs Kūrūnā Kūfīd 2019", Majallat Risālat al-Masjid, no. 2 (2020): 109–123.

[23] See: Ibn Rushd al-Ḥafīd, Bidāyat al-mujtahid wa-nihāyat al-muqtaṣid, ed. Majdī Fatḥī al-Sayyid (Egypt: al-Maktaba al-Waqfiyya, 2nd ed., 2014), 1:354.

[24] See: Aḥmad al-Ghumārī, Taḥqīq al-āmāl fī ikhrāj zakāt al-fiṭr bi-l-māl (Egypt: Maktabat al-Qāhira, 1st ed., 2010), 3–6.

[25] See: Ibn Qudāma, al-Mughnī (Egypt: Maktabat al-Qāhira, n.d.), 3:87.

[26] See: Yūsuf al-Qaraḍāwī, Fiqh al-zakāt (Algeria: Maktabat Riḥāb, 20th ed., 1988), 2:953–957.

Second: Examples of drawing upon other schools in personal status:

Personal status is one of the fields in which drawing upon other schools has most clearly appeared in contemporary fatwā, because of its direct connection with the lives of individuals and families and the rapid social and legal changes it is undergoing. The following are some applied examples that embody the presence of drawing upon other schools in contemporary personal status fatwās.

1 – Drawing upon the opinion that a triple divorce pronounced in a single utterance counts as a single divorce:

- **Depiction of the issue:** The issue concerns a man who pronounces three divorces on his wife in a single utterance, such as saying "You are divorced three times", or who repeats the word of divorce three times in one sitting.[27] The importance of this issue in contemporary fatwā has become evident because of the serious family and social consequences it entails, especially given how common it is for divorce to be pronounced in anger or haste, and the final breakdown of the marital bond that results from counting a triple divorce as three.
- **The authoritative opinion in the original school:** The authoritative opinion among the Mālikīs, as well as among the majority of jurists from the Ḥanafīs, the Shāfiʿīs and the Ḥanbalīs, is that a triple divorce pronounced in a single utterance or in a single sitting takes effect as three divorces and entails the rulings of major irrevocable separation (al-baynūna al-kubrā), so that the divorced woman is not lawful for her husband until she validly marries another husband.[28]
- **Identifying the locus of borrowing:** The borrowing consisted in adopting the opinion attributed to a group of the Salaf, which was chosen by some Ḥanbalī jurists, foremost among them Shaykh al-Islām Ibn Taymiyya (d. 728 AH) and his student Ibn al-Qayyim (d. 751 AH). Some fatwā institutions and contemporary legislations have adopted this opinion when needed, because of the recognised family interests it realises.[29]
- **The Sharia justification for borrowing:** Borrowing in this case rests on a number of Sharia justifications, the most important of which are removing hardship from families, limiting the negative effects resulting from hasty divorce, and realising the objective of the Sharia in preserving the existence and stability of the family, in addition to the existence of recognised juristic disagreement on the issue on which one may rely when needed, especially in environments where cases of divorce and their social effects have become widespread.
- **The effect of borrowing on the making of fatwā:** This borrowing widened the scope of fatwā treatment of divorce cases and provided a Sharia way out in some cases in which applying the authoritative opinion leads to serious family and social harm. It also highlighted the role of drawing upon other schools in activating the Islamic juristic heritage in the service of the objectives of the Sharia and linking fatwā to people's reality, while preserving the discipline of ijtihād and not departing from the domain of recognised opinions.[30]

2 – Drawing upon the opinion of the obligatory bequest (al-waṣiyya al-wājiba) for grandchildren:

- **Depiction of the issue:** This issue arises when a person dies leaving children and grandchildren, where the father or mother of the grandchildren died during the lifetime of the deceased or is deemed to have died with him, so that the grandchildren are excluded from inheritance by heirs of a closer degree. This situation has raised social and family problems because it deprives some grandchildren of any share in the estate of their grandfather or grandmother, even though their parent died before becoming entitled to inherit.[31]

It is called "obligatory" because, whereas bequests are in principle optional, this one is executed by force of law, with no choice for either the testator or the beneficiary. It was first enacted into law in Egypt by scholars of the Sharia on 24/07/1365 AH, corresponding to 24/06/1946 CE; it was then adopted successively in the family codes of Syria, Tunisia, Morocco and Libya, and it was provided for in the Algerian Family Code issued in 1404 AH / 1984 CE, in four articles (169–172).[32]

- **The authoritative opinion in the original school:** The authoritative opinion in the Mālikī school, as in the other inherited schools of law, is that grandchildren do not inherit in the presence of closer heirs who exclude them, and that a bequest to non-inheriting relatives is recommended or commendable in general, but is not obligatory in the sense of being judicially binding.[33]
- **Identifying the locus of borrowing:** The borrowing consisted in benefiting from certain juristic opinions that widened the scope of the obligation to make bequests to non-inheriting relatives, relying on the interpretations of some scholars of the words of God the Exalted: ﴿Prescribed for you, when death approaches one of you, if he

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[27] See: Ibn Qudāma, al-Mughnī, 8:495.

[28] See: Ibn Mughīth al-Ṭulayṭulī, al-Muqniʿ fī ʿilm al-shurūṭ, ed. Ḍuḥā al-Khaṭīb (Beirut: Dār al-Kutub al-ʿIlmiyya, 1st ed., 2000), 80.

[29] See: Aḥmad Shākir, Niẓām al-ṭalāq fī al-Islām (Egypt: Maktabat al-Sunna, 1936), 60.

[30] See: Nacer Kara, Buḥūth fī al-fiqh al-muqāran (Algeria: Dār Qurṭuba, 1st ed., 2014), 93.

[31] See: Idir Mechnane, al-Mawārīth wa-l-waṣāyā fiqhan wa-qānūnan wa-ḥisāban (Algeria: Dār al-Imām Mālik, 1st ed., 2018), 357.

[32] See: Nassira Dhina, ʿIlm al-farāʾiḍ wa-l-mawārīth fiqhan wa-ʿamalan wafq qānūn al-usra al-Jazāʾirī al-muʿaddal (Algeria: Dār al-Waʿy, 1st ed., 2011), 373.

[33] See: al-Qarāfī, al-Dhakhīra (Beirut: Dār al-Gharb al-Islāmī, 1st ed., 1994), 7:7.

leaves wealth, is a bequest to parents and near relatives﴿ [al-Baqara 2:180],[34] and on the consideration of interest and family justice. This orientation has been reflected in a number of Arab personal status laws that have established the system of the obligatory bequest for grandchildren within certain limits and conditions.[35]

- **The Sharia justification for borrowing:** Borrowing in this issue rests on realising a recognised family interest, namely caring for grandchildren whose parent died before the deceased and warding off the negative social and economic effects that depriving them may entail, in addition to relying on recognised juristic opinions that allow for this direction, and on the objective of the Sharia in strengthening family ties and achieving solidarity among relatives.
- **The effect of borrowing on the making of fatwā:** This borrowing broadened the horizons of juristic treatment of inheritance and family issues and highlighted the capacity of contemporary fatwā to benefit from the diversity of schools and opinions in order to realise recognised interests within the framework of Sharia principles. It also contributed to providing practical solutions to certain social problems that did not arise in the same form in earlier juristic environments, while preserving discipline in the method of valid ijtihād and not departing from the objectives of the Sharia and its universal rulings.

Third: Examples of drawing upon other schools in contemporary financial transactions:

Contemporary financial transactions have shown an increasing need to employ drawing upon other schools, because of the new forms and contracts that were unknown in earlier juristic environments, or were not in circulation in their contemporary institutional form. The diversity of the schools and the richness of ijtihād have contributed to providing Sharia alternatives that have enabled Islamic jurisprudence to keep pace with economic and financial developments while preserving the principles and objectives of the Sharia. Examples of drawing upon other schools in this field include the following:

1 – Drawing upon the opinion permitting murābaḥa to the purchase orderer in contemporary financial transactions:

- **Depiction of the issue:** Murābaḥa to the purchase orderer consists in the client approaching the bank with a request to purchase a particular commodity; the bank purchases it and takes actual ownership of it, and then sells it to the client at a known deferred price that includes the purchase cost plus an agreed profit. This formula has spread in Islamic banks as a financing alternative to loans based on usurious interest.[36]
- **The authoritative opinion in the original school:** The authoritative opinion in the Mālikī school is that murābaḥa sale is permissible as one of the trust sales (buyūʿ al-amāna), in which knowledge of the capital and the profit, and the seller's truthfulness in stating the cost of the commodity, are required.[37] As for murābaḥa to the purchase orderer in its modern banking form, it was not known in this form in the books of the early jurists; some of its elements have therefore been examined, especially the issue of the binding promise and the extent to which the client's commitment to purchase before the bank owns the commodity is valid.
- **Identifying the locus of borrowing:** The borrowing in this issue consisted in benefiting from certain juristic opinions that held a promise to be binding when an interest or a cost has been incurred on its basis, and from the statements of jurists on regulating contracts and dispositions so as to prevent harm and uncertainty (gharar). Islamic financial institutions have also benefited from the legal maxims relating to sale, ownership and liability in order to characterise this transaction on the basis that the bank first purchases the commodity and then sells it to the client.
- **The Sharia justification for borrowing:** This borrowing rests on meeting recognised financial and economic needs, namely providing a legitimate means of financing for individuals and institutions while avoiding usurious dealings, provided that the Sharia controls are observed, the most important of which are: the bank's ownership of the commodity before selling it, its bearing the risk of ownership, clarity of the price and profit, and the absence of fictitiousness in the contract.
- **The effect of borrowing on the making of fatwā:** This borrowing led to the development of contemporary Islamic financing formulas and the creation of a practical model that combines the rulings of sale established in Islamic jurisprudence with the requirements of modern banking. It also highlighted the capacity of jurisprudence to accommodate new financial developments by employing the ijtihād of the schools and Sharia rules within a framework that realises the objectives of the Sharia, protects wealth and facilitates transactions.[38]

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[34] Ibn Ḥazm al-Ẓāhirī (d. 456 AH) said: "It is obligatory upon every Muslim to make a bequest to his relatives who do not inherit… either because there is someone who excludes them from inheritance, or because they are not heirs; so he bequeaths to them whatever he is pleased to give, with no fixed limit in that. If he does not do so, they are to be given…" Al-Muḥallā (Cairo: al-Ṭibāʿa al-Munīriyya, n.d.), 9:314.

[35] See: Nassira Dhina, ʿIlm al-farāʾiḍ wa-l-mawārīth fiqhan wa-ʿamalan wafq qānūn al-usra al-Jazāʾirī al-muʿaddal, 374.

[36] See: Muḥammad ʿUthmān Shubayr, al-Muʿāmalāt al-māliyya al-muʿāṣira fī al-fiqh al-Islāmī (Jordan: Dār al-Nafāʾis, 6th ed., 2007), 308.

[37] See: Ibn Rushd al-Jadd, al-Bayān wa-l-taḥṣīl wa-l-sharḥ wa-l-tawjīh wa-l-taʿlīl li-masāʾil al-Mustakhraja, ed. Muḥammad Ḥajjī et al. (Beirut: Dār al-Gharb al-Islāmī, 2nd ed., 1988), 7:87.

[38] See: Yūsuf al-Qaraḍāwī, Bayʿ al-murābaḥa li-l-āmir bi-l-shirāʾ kamā tujrīhi al-maṣārif al-Islāmiyya: dirāsa fī ḍawʾ al-nuṣūṣ wa-l-qawāʿid al-sharʿiyya (Kuwait: Dār al-Qalam, 2nd ed., 1984), 27–30.

2 – Drawing upon the opinion permitting lease ending in ownership (al-ijāra al-muntahiya bi-l-tamlīk) in contemporary financial transactions:

- **Depiction of the issue:** A lease ending in ownership consists in concluding a lease contract between the financial institution and the client on a specific asset, such as real estate, a car or equipment, which the client uses in return for a fixed rent during a known period, the contract being accompanied by a promise or an arrangement leading to the transfer of ownership of the asset to the lessee at the end of the lease period, whether by sale or by gift under a separate formula.[39]
- **The authoritative opinion in the original school:** The authoritative opinion in the schools of law is that lease is a lawful contract on usufruct, and that sale is a contract on assets, each having its own rulings and effects. The lease ending in ownership in this composite form was not known to the early jurists, which made it one of the new cases requiring ijtihād and juristic characterisation, especially as regards combining the lease contract with the promise of ownership.
- **Identifying the locus of borrowing:** The borrowing consisted in benefiting from the juristic rulings relating to lease, sale and promise, and from the rules permitting the sequencing of contracts and dispositions when they are independent and fulfil their conditions. Contemporary fatwā has also benefited from the opinions of jurists on the permissibility of a promise of ownership, provided that it does not lead to combining two contracts in a way that involves uncertainty (gharar) or ignorance (jahāla), while observing the separation between the lease contract and the final contract of ownership.
- **The Sharia justification for borrowing:** This borrowing rests on the need to provide means of financing that allow individuals and institutions to use assets with the possibility of owning them in the future in a lawful manner, while preserving the Sharia controls, including: specifying the lease period and its rent, the lessor's retention of ownership of the asset during the lease period, the owner's bearing the risk of the asset, and not treating the contract as a disguised sale in the form of a lease.[40]
- **The effect of borrowing on the making of fatwā:** Adopting this formula contributed to broadening the applications of the jurisprudence of lease in the contemporary financial field and provided an Islamic financing alternative in the fields of real estate, vehicles and equipment. It also highlighted the role of juristic ijtihād in reformulating contracts in a way that takes account of the needs of the modern economy, while adhering to the objectives of the Sharia in protecting wealth and achieving justice between the contracting parties.

Conclusion:

First: The main findings of the research paper:

Having completed this research, I record, praise be to God, the main findings I have reached in concise points, as follows:

1. I have used the term "istimdād" (drawing upon) and avoided the term "istinjād" (seeking rescue), which carries connotations of weakness and calling for help. Accordingly, drawing upon other schools means benefiting in a disciplined manner from the opinions of the other schools in accordance with the principles and general rules of the Sharia.
2. Drawing upon other schools of law is in principle a recognised ijtihād-based practice, and departing from the authoritative opinion of the muftī's school does not entail the loss of school affiliation or the undermining of the juristic authority to which he belongs.
3. An opinion of a school is not suitable for borrowing merely because it is attributed to a recognised school; its basis, the manner in which it indicates the ruling, its conditions, its restrictions and its suitability for the case under consideration must be examined.
4. Drawing upon other schools is governed by three comprehensive restrictions: the competence of the one who carries it out, its being within a partial scope, and its being governed by a recognised method.
5. The motives for drawing upon other schools are, in general, confined to factual motives arising from changes in people's conditions and circumstances; organisational motives connected with the organisation of fatwā and the judiciary as a matter of Sharia-oriented governance (siyāsa sharʿiyya); and civilisational motives connected with globalisation and interaction between societies.
6. The foundations of drawing upon other schools are multiple, but their overall reference goes back to two governing principles: consideration of the preponderant interest and taking necessity into account when it arises, in a way that realises the objectives of the Sharia and preserves its balance between discipline and facilitation.
7. The applications studied have shown that the need for this kind of borrowing increases as the new case becomes more complex and intertwined, especially in issues in which social, economic, legal and civilisational dimensions overlap, as is clearly seen in some contemporary financial products.
8. The study has revealed that undisciplined borrowing may lead to counterproductive results, the most prominent of which are the pursuit of concessions, selecting opinions merely because they agree with one's desires or with

[39] See: Muḥammad ʿUthmān Shubayr, al-Muʿāmalāt al-māliyya al-muʿāṣira fī al-fiqh al-Islāmī, 322.

[40] See: Professors of the Faculty of Islamic Sciences, University of Algiers 1, "Baḥth fī ḥukm shirāʾ sakanāt ʿAdl", Majallat Risālat al-Masjid, no. 1 (2015): 91–101.

immediate interest, composing rulings that do not fit into a recognised juristic structure, and overlooking the differences between opinions in their conditions, restrictions and consequences. The legitimacy of borrowing is therefore not derived from the mere existence of disagreement, but from the soundness of the method governing the process of moving between opinions and choosing among them.

Second: The main recommendations of the research paper:

On the basis of the findings of the study, it recommends the following:

1. Establishing written scholarly criteria for juristic borrowing to be adopted by fatwā institutions, so that departing from the authoritative opinion of the school is not based merely on a claimed need, but passes through clear stages including depicting the new case, identifying the authoritative opinion, invoking the opinion to be borrowed, studying its evidence, verifying its operative cause and considering its consequences.
2. Preparing comparative juristic databases that compile the opinions of the schools together with their evidence, sources, conditions and restrictions, so as to make it easier for the researcher and the muftī to access the scholarly material without being limited to the well-known or commonly circulated opinions.
3. The necessity of distinguishing in contemporary fatwās between transmission (naql), derivation (takhrīj), characterisation (takyīf) and preference (tarjīḥ), because each of these has its own methodological requirements, and they may not be combined under a single concept without detail.
4. Guarding against turning interest into a criterion independent of the Sharia proofs and rules; the recognised interest is that to which the objectives and principles of the Sharia bear witness, not merely what the muftī or the institution considers beneficial in a particular circumstance.
5. Conducting independent studies on the limits of borrowing in each field of jurisprudence, since its controls and effects may differ in acts of worship from those in personal status, financial transactions, or the judiciary and Sharia-oriented governance.
6. Working to build a standard methodological model for the making of contemporary fatwā that balances the constants of the Sharia, the principles of the schools, juristic diversity and the variables of reality, so as to prevent rigidity on the one hand and uncontrolled ijtihād on the other.

In conclusion, drawing upon other schools of law should not be regarded as a departure from the school, just as it should not be taken as a pretext for leaving it; rather, it is a path of ijtihād required by the nature and breadth of Islamic jurisprudence, whenever it is surrounded by scholarly competence, strength of evidence, soundness of characterisation, consideration of objectives and consequences, and discipline according to the rules of preference. In this way the diversity of the schools can be transformed from a mere multiplicity of opinions into a reservoir of ijtihād that contributes to the building of contemporary fatwā.

These are the most important findings and recommendations reached by the researcher. God knows best. Our final prayer is that all praise belongs to God, Lord of the Worlds, and may God bless our Prophet Muḥammad, his family and all his Companions.

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