

# The Development of *Ijmā'*: The Practices of the *Khulafā' al Rāshidūn* and the Views of the Classical *Fuqahā'*

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In the beginning, *ijmā'* (consensus) was more a pragmatic necessity than an explicit Sharī'ah principle. It was first applied to public policy considerations and was used to settle some crucial questions that had arisen (we will discuss the issue of *khilāfah* separately, where we can see how the Companions attempted to settle this issue). The event of the *Thaqīfah* of Banū Sā'idah was a great test for the ummah's social order and alerted the leaders to potential future crises. The Companions therefore gave immediate attention to the succession issue, and sincere people realized that the ummah needed a sociopolitical doctrine that would support its desired sociopolitical development and keep it united. Among the *khulafā' al rāshidūn*, particularly Abū Bakr and 'Umar, great emphasis was placed on the principle of *shūrā*, which was, in fact, a means to realize *ijmā'*. The development of *ijmā'* was an opportune and proper approach to preserve the ummah's unity and integrity. As the Companions were greatly concerned about the establishment of the *khilāfah* by means of *ijmā'*, 'Umar rejected all attempts to use other methods.<sup>1</sup>

Although the *fuqahā'* (jurists) refer to the Qur'anic *āyāt* and the *aḥādīth* as a normative basis for *ijmā'*, precedents are found in the practice the *khulafā' al rāshidūn* and the Companions, who made agreed-upon decisions in many social and religious matters. The jurists are unanimous in agreeing that the Companions' *ijmā'* is a complete and definite source of law, and some recognize it to the exclusion of all other sources.<sup>2</sup> The classical jurist al Khaṭīb al Baghdādī

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<sup>1</sup>Abd al Mālik ibn Hishm, *al Sirah al Nabawīyah*, ed. Muṣṭafā al Ṣaḡā (Cairo: Mūṣṭafā al Bābī al Halabī, 1375/1955), vol. 2, 658.

<sup>2</sup>Abū Bakr Aḥmad ibn 'Alī al Khaṭīb al Baghdādī, *al Faqīh wa al Mutafaqiqh*, ed. I. al Anṣārī (Beirut: Dār Iḥyā' al Sunnah al Nabawīyah, 1395/1975), vol. 1, 169; Abū Ḥāmid al Ghazālī, *al Mustasfā fi 'Ilm al Uṣūl* (Cairo: al Maṭba'ah al Amīriyah, 1322), vol. I, 187; Sayf al Dīn 'Alī ibn Muḥammad al 'Amidī, *al Iḥkām fi Uṣūl al Aḥkām* (Cairo: Maṭba'ah al Ma'ārif, 1332/1914) vol. I, 336.

reports Abū Ḥātim al Rāzī's opinion that knowledge is that which comes from Allah through His revealed Book (the Qur'an), what is proved to be authentic from the Prophet, and what has been agreed upon by the Companions.<sup>3</sup> All of the *fuqahā'* give particular attention to the agreement of the Companions, while others give consideration to the agreement of the *khulafā' al rāshidūn*. Although the agreement of the latter group has not been viewed as *ijmā'* in the technical sense, some *fuqahā'*, such as Ibn Ḥanbal,<sup>4</sup> do regard it as *ḥujjah* (authority).

Discussions concerning *ijmā'* can be traced back to the time of the *khulafā' al rāshidūn*. For example, a hadith reported by Mahrān ibn Maymūn states that Abū Bakr, when he could not find an appropriate ruling from the Qur'an and the Sunnah, summoned the leaders and other prominent people to ask their advice. In other words, he attempted to reach a collective decision. He then enforced whatever solution they agreed upon.<sup>5</sup> The *fuqahā'* refer to the agreed-upon decisions of the Companions to support their legal arguments and also to establish the principle of consensus.

The first actual example of *ijmā'* is the selection of Abū Bakr as the first *khalīfah*,<sup>6</sup> for the Companions tried to reach this decision by means of a unanimous consensus. Hourani, while discussing *ijmā'*, says:

There is no reason to think that he (the Messenger) discouraged his Companions from making agreed decisions during his absence or after his death. Thus it was normal that the first caliph was elected by some kind of informal consensus, and this long-remembered event set the tone for many later proceedings. Without the Prophet, the Muslims naturally reverted to a sensible procedure of their ancestors, only changing the source of public authority from the tribe to the religious community or Ummah.<sup>7</sup>

Abū Bakr was elected by an absolute majority, which was regarded as essential by those jurists who view consensus as a proper basis for determining who will lead the ummah. One man who contested this selection was Sa'd ibn

<sup>3</sup>Al Khaṭīb al Baghdādī, *al Faqīh*, vol. I, 171.

<sup>4</sup>Abd Allāh ibn Muḥammad ibn Qudāmah, *Rawḍat al Nāzīr* (Cairo: al Maṭba'ah al Salaḥīyah, 1396), 73.

<sup>5</sup>Muḥammad 'Abd Allāh al Dārimī, *Sunan al Dārimī* (Beirut: Dār al Kutub al 'Ilmiyah, n.d.), vol. 1, 58.

<sup>6</sup>Abū Ya'lā Muḥammad ibn al Ḥasan ibn al Farrā', *al Mu'tamad fī Uṣūl al Dīn*, ed. W. Zaydān Ḥaddād (Beirut: Dār al Mashriq, 1974), 225; al 'Āmidī, *al Iḥkām*, vol. 1, 379-80; Ibn Qudāmah, *Rawḍat al Nāzīr*, 74; Ibn Qudāmah, *al Mughnī* (Cairo: Dār al Manār, 1368), vol. 2, 720-1.

<sup>7</sup>G. F. Hourani, "The Basis of Authority of Consensus in Sunnite Islam," *Studia Islamica* 21 (1965): 16.

'Ubādah,<sup>8</sup> the widely esteemed leader of the Khazraj tribe who was presenting himself for the same office. Despite the regard in which he was held (i.e., the Prophet used to consult him on important matters and even appointed him *naqīb* [leader of a group] at the second gathering of al 'Aqabah),<sup>9</sup> his opposition did not affect Abū Bakr's status as having been elected *khalīfah* by means of consensus.

Other early examples of *ijmā'*, mentioned by al 'Āmidī, were the decision made by the Companions to bury the Prophet in 'Ā'ishah's room<sup>10</sup> and Abū Bakr's war against those Arab tribes who refused to pay zakah after the Prophet's death. The decision to launch this campaign was reached after a process of discussion and consultation overcame the initial disagreements and resulted in complete agreement.<sup>11</sup> This event, in the opinion of al 'Āmidī, set an example and a model decision which provided a precedent for *ijmā'*, for there was discussion and reasoning among the Companions and, ultimately, total agreement as regards the course to be taken.<sup>12</sup> It is also stated by al 'Aynī that consensus was reached on the issue, and that Abū Bakr's action against the tribes was the result of a unanimous decision.<sup>13</sup>

'Umar ibn al Khaṭṭāb assumed the leadership of the ummah with the agreement of the Companions. Ibn al Farrā' cites *ijmā'* to prove the authority of 'Umar's leadership.<sup>14</sup> 'Umar made frequent use of this practice by actively seeking the Companions' advice before making a decision. Some of the resulting decisions were regarded by the jurists as *ijmā'* by majority, such as what to do with *sawād* (public) land,<sup>15</sup> a decision opposed by Bilāl ibn Rabāḥ and therefore a true *ijmā'* according to al Ṭabarī and others, and the banning of commercial transactions of either *sawād* land or those lands conquered by force. Ibn Qudāmah says that there was consensus among the Companions on this second issue and that there is no way to achieve a stronger *ijmā'* than this one.<sup>16</sup> Al Awzā'ī mentions that it was the consensus of the Companions, who agreed with 'Umar, that this

<sup>8</sup>Muḥammad ibn Jarīr al Ṭabarī, *Tārīkh al Rusul wa al Mulūk*, ed. Abū al Faḍl Ibrāhīm (Cairo: Dār al Ma'ārif, 1961), vol. 3, 222-3.

<sup>9</sup>Ibn Hishām, *al Sirah*, vol. 1, 443-4.

<sup>10</sup>Al 'Āmidī, *al Iḥkām*, vol. 1, 396.

<sup>11</sup>Muḥammad ibn Ismā'īl al Bukhārī, *al Jāmi' al Ṣaḥīḥ* (Cairo: Dār wa Maṭābi' al Sha'b, n.d.), vol. 1, part 2, 131; Muḥammad ibn Aḥmad al 'Aynī, *Umdat al Qāri'* (Beirut: Dār Iḥyā' al Turāth al 'Arabī, n.d.), vol. 8, 243-6; 'Alī ibn Muḥammad al Māwardī, *Adab al Qādī*, ed. M. H. al Sarḥān (Baghdad: Maṭba'at al Irshād, 1391/1971), vol. 1, 454-5.

<sup>12</sup>Al 'Āmidī, *al Iḥkām*, vol. 1, 380; Ibn Qudāmah, *Rawḍat al Nāzir*, 74.

<sup>13</sup>Al 'Aynī, *Umdah*, vol. 8, 245.

<sup>14</sup>Ibn al Farrā', *al Mu'tamad*, 228.

<sup>15</sup>Yā'qūb ibn Ibrāhīm Abū Yūsuf, *Kitāb al Kharāj* (Cairo: Maktabah al Salafiyah, 1976), 26-7; al Qāsim ibn Sallām Abū 'Ubayd, *Kitāb al Amwāl*, ed. Khalīl Ḥarrās (Cairo: Maktabah Kulliyat al Azhariyah, 1395/1975), 61-2.

<sup>16</sup>Ibn Qudāmah, *al Mughnī*, vol. 2, 720-1.

land should be kept cultivated by the *ahl al dhimmah* (non-Muslim) peasants.<sup>17</sup>

During the reign of 'Umar, there were several incidents of *ijmā'* performed by the Companions on purely *fiqhī* matters. These include: a) amending, on 'Umar's initiative, the punishment for intoxication to eighty lashes. Ibn Hajar and al 'Aynī clearly state that this was a result of *ijmā'*<sup>18</sup>; b) the payment of full dowry once the husband has been given complete privacy with his wife. This decision, according to Ibn Qudāmah, was the *ijmā'* of the Companions as well as of the *khulafā' al rāshidūn*<sup>19</sup>; c) the suspension of the *mu'allafat al qulūb* (reconciling the hearts) share. This was 'Umar's judgment and, according to al Qurtubī, the Companions accepted it<sup>20</sup>; and d) amending the rule of blood money. The *dīwān* system, introduced by 'Umar to take into account changing social requirements and conditions, was made in the presence of the Companions and was not challenged. Thus, according to al Sarakhsī, it was *ijmā'*.<sup>21</sup> Perhaps this incident gave the jurists the idea of *ijmā' sukūti* (silent *ijmā'*), because there is no mention of any oral dissent.

The Companions also employed consensus on more serious matters, such as: a) 'Umar's letter to Qādī Shurayḥ instructing him to make use of *ijmā'* (the actual term used) if he could not find a ruling in the Qur'an or the Sunnah;<sup>22</sup> b) the election of 'Uthmān ibn 'Affān as the third *khalīfah*;<sup>23</sup> c) 'Uthmān's decision to compile the Qur'an in the Qurayshī dialect<sup>24</sup>; and d) the election of 'Alī ibn Abū Tālib as the fourth *khalīfah*<sup>25</sup> (in a strict *fiqhī* sense, however, this is not an example of *ijmā'*). There is one hadith, narrated on 'Alī's authority, that the Prophet said that judgment should be made according to the Qur'an and the

<sup>17</sup>Ibid.

<sup>18</sup>Ibn Hajar al 'Asqalānī, *Fath al Bārī* (Cairo: Muṣṭafā al Bābī al Ḥalabī, 1378/1959), vol. 15, 67-75; al 'Aynī, *Umdah*, vol. 23, 266.

<sup>19</sup>Ibn Qudāmah, *al Mughnī*, vol. 7, 451; *Rawḍat al Nāzir*, 74.

<sup>20</sup>Muḥammad ibn Aḥmad al Qurtubī, *al Jāmi' li Aḥkām al Qur'an* (Beirut: Dār al Kitāb al 'Arabī, 1387/1967), vol. 8, 181; Muḥammad ibn Aḥmad al 'Imādī Abū al Sa'ūd, *Irshād al Aql al Salīm*, ed. 'Abd al Qādir Aḥmad 'Atā (Riyadh: Maktabat al Riyāḍ al Hadīthah, 1391/1971), vol. 2, 566-7; Abū Bakr Aḥmad ibn 'Alī al Jaṣṣās, *Aḥkām al Qur'an* (Constantinople: Maṭba'at al Awqāf, 1335), vol. 3, 123.

<sup>21</sup>Muḥammad ibn Aḥmad al Sarakhsī, *al Mabṣūṭ* (Beirut: Dār al Ma'rifah, n.d.), vol. 27, 126.

<sup>22</sup>Muḥammad ibn Khalaf Wakī, *Akhbār al Quḍāt* (Beirut: 'Ālam al Kutub, n.d.), vol. 2, 189-90; Ibn 'Abd al Barr, *Jāmi' Bayān al 'Ilm* (Beirut: Dār al Kutub al 'Ilmiyah, 1398/1978), vol. 2, 56; Ibn Qayyim al Jawziyah, *I'lām al Muwāqī'in*, ed. M. M. 'Abd al Ḥamīd (Beirut: Dār al Jīl, 1973), vol. 1, 61-2; al Muttaqī al Hindī, *Kanz al 'Ummāl* (Hyderabad: Dā'irat al Ma'ārif al Nu'māniyah, 1374/1954), vol. 5, 481.

<sup>23</sup>Ibn al Farrā', *al Mu'tamad*, 229.

<sup>24</sup>Al Bukhārī, *al Jāmi' al Ṣaḥīḥ*, vol. 2, part 6, 225-6; Badr al Dīn Muḥammad ibn 'Abd Allāh al Zarkashī, *al Burhān fi 'Ulūm al Qur'an*, ed. M. Abū al Faḍl Ibrāhīm (Cairo: 'Isā al Bābī al Ḥalabī, 1391/1972), vol. 1, 233-6; Ibn Hajar, *Fath al Bārī*, vol. 17, 105-6.

<sup>25</sup>Ibn al Farrā', *al Mu'tamad*, 231-2.

Sunnah of the Prophet and, if there is no ruling therein, then according to what may be agreed by the people of good conduct.<sup>26</sup>

The 'ulama frequently rely on the consensus of the Companions when it comes to matters of fiqh. Al Shāfi'ī cites the *ijmā'* of the Companions when arguing that there should be only one *khalīfah* at a time, because at the time of Abū Bakr's election the idea of having two was rejected. 'Umar, having been nominated by Abū Bakr as his successor, used *shūrā* to determine the new *khalīfah*. Thus it was the agreed practice of the Companions.<sup>27</sup>

Both al Sarakhsī and Ibn Qudāmah refer to the *ijmā'* of the Companions. Al Sarakhsī, for example, discusses the issue of apostasy by a wife and her husband which, according to *qiyās*, should break the marriage bond. But, because the *ijmā'* of the Companions said that the marriage bond would remain intact in this case,<sup>28</sup> the *fuqahā'* accepted it. Ibn Qudāmah usually refers to the consensus of the Companions by saying: "Our argument is the *ijmā'* of the Companions." Similarly the consensus of the Companions is a pivotal principle of the fiqh of al Awzā'ī. Ibn Qudāmah refers to their consensus on many legal issues as an argument.<sup>29</sup> Al Awzā'ī considers *ijmā'* as valid if he has not heard any contradictory view on the issue from other Companions.<sup>30</sup>

Al 'Āmidī mentions almost a dozen issues on which, according to him, *ijmā'* was attained by the Companions. He discusses their agreement on the election of Abū Bakr; Abū Bakr's campaign against the tribes who refused to pay zakah; burying the Prophet in the same room where he died; the appointment of Khālid ibn al Walīd as commander of the army; the punishment for drinking; the prohibition of pork; the issue that sesame oil or liquid syrup is impure (*najs*) if a mouse fell into it and died (this is analogous to a similar consensus regarding impure butter); the compensation for hunting during *hajj*; the estimation for the penalty for injuries (in which *qiṣaṣ* is not possible); the estimation for the expenditures (*nafāqah*) of close relatives; and that the '*adālah* of amirs and judges is a matter of *ijtihād* (there is no calculated measurement or rules for these matters — the *ahl al ḥall wa al 'aqd* may know or decide by way of *ijtihād*).<sup>31</sup>

It is not important here whether all of these issues were resolved by *ijmā'* in the real sense of the term or not. Their oft-repeated references to the agreed-

<sup>26</sup>Zayd ibn 'Alī, *Musnad Zayd ibn Alī* (Beirut: Dār al Kutub al 'Ilmiyah, 1403/1983), 261.

<sup>27</sup>Muḥammad ibn Idrīs al Shāfi'ī, *al Risālah*, ed. Sayyid Kilānī (Cairo: Muṣṭafā al Bābī al Ḥalabī, 1388/1969), 182.

<sup>28</sup>Al Sarakhsī, *al Mabsūt*, vol. 5, 49.

<sup>29</sup>Ibn Qudāmah, *al Mughnī*, vol. 2, 99-100, 720-1.

<sup>30</sup>Ibid., vol. 7, 357.

<sup>31</sup>Al 'Āmidī, *al Iḥkām*, vol. 1, 380-96.

«إن هذه الأحاديث لم تزل ظاهرة مشهورة بين الصحابة ومن بعدهم متمسكاً بها في إثبات الإجماع من غير خلاف فيها ولا نكير إلى زمان وجود المخالفين».

وكتب ابن قدامة: «إن هذه الأحاديث لم تزل مشهورة بين الصحابة والتابعين يتمسكون بها في إثبات الإجماع».  
(روضة الناظر ص ٦٨)

upon practices of the Companions indicate that the jurists not only gave due consideration to the views and practices of the Companions, but that they also based their legal views on the precedents set by them. The procedure of *ijmā'* at the time of the Companions was simple; the Muhājirūn and the Anṣār would gather in the mosque, discuss the issue in question, and express their views. The most sound and plausible opinion was accepted (either verbally or silently) and then implemented by the *khalīfah*. Such a ruling would then become the accepted norm in the absence of any dissent or open disagreement.

## Discussions and Views of the Classical Jurists

Consensus is one of the most important secondary (dependent) sources of fiqh. A majority of jurists believe that it is a *ḥujjah shar'īyah* (decisive legal argument). The jurists of the four established schools of fiqh discuss it as the third source after the Qur'an and the Sunnah, which are regarded as the independent or original sources of the Sharī'ah.

The idea of *ijmā'*, as defined by the classical jurists, was not used during the time of the Prophet (when revelation and his words solved the issues), but rather developed during the first and second *hijrī* centuries. There is no mention of it in the hadith of Mu'ādh ibn Jabal, which mentions *ijtihad* as the third source of reaching a ruling.<sup>32</sup> Al 'Āmidī shares the view that *ijmā'* was not *ḥujjah* (authority) at the time of the Prophet.<sup>33</sup>

The concept of *ijmā'* underwent a gradual evolution, and the jurists of the second *hijrī* century developed it as a legal doctrine. Perhaps the first jurist to discuss it as a legal principle was Abū Ḥanīfah, who might have discussed it as a source of fiqh with his students or in his book *Kitāb al Ra'y*.<sup>34</sup> We assume this because Muḥammad ibn al Ḥasan al Shaybānī (d. 189 AH), who was a student of Abū Ḥanīfah, discussed it as a source of fiqh and made an attempt to find an intellectual basis for it. In his version of Mālik's *al Muwaṭṭā'*, al Shaybānī justifies *ijmā'* based on the following prophetic hadith: "Whatever the Muslims consider good is good in the sight of Allah, and whatever the Muslims regard as bad is bad in the eyes of Allah." He also states that the Muslims have agreed on it and have approved it.<sup>35</sup> It is possible that he learned this from Abū Ḥanīfah.

<sup>32</sup>Sulaymān ibn Ash'ath Abū Dāwūd, *Sunan Abī Dāwūd*, ed. 'Izzat 'Ubayd (Ḥimṣ, Syria: M. 'Alī al Sayyid, 1388/1969), vol. 4, 18-9 (# 3592); Muḥammad ibn 'Isā al Tirmidhī, *Sunan al Tirmidhī* (Ḥimṣ, Syria: Dār al Da'wah, 1385/1965), vol. 5, 8 (#1327).

<sup>33</sup>Al 'Āmidī, *al Iḥkām*, vol. 1, 300.

<sup>34</sup>Muḥammad Ḥamidullāh, *Khutbāt-e-Bahāwalpūr* (Islamabad: Islamic Research Institute, 1988), 127.

<sup>35</sup>J. Schacht, *The Origins of Muhammadan Jurisprudence* (London: Oxford University Press, 1982), 86; G. F. Hourani, "The Authority of Consensus," *Studia Islamica* 21 (1964): 19.

Unfortunately, the book written by Abū Yūsuf and al Shaybānī on *uṣūl* has been lost. Another book on *uṣūl*, written by Abū al Ḥusayn al Baṣrī, has now been published. In this, he mentions that al Shaybānī said that there are four principles of fiqh: the Qur'an, the Sunnah, *ijmā'*, and *qiyās*.<sup>35</sup> This reference makes it clear that *ijmā'* was accepted as a principle and a source of fiqh by the time of al Shaybānī.

Evidence regarding Abū Ḥanīfah's application of *ijmā'* to the resolution of legal issues is also provided by al Ṣaymarī, who relates an interesting discussion between the *khalīfah* al Manṣūr and the three great *fuqahā'* of his time: Abū Ḥanīfah, Mālik ibn Anas, and Ibn Abī Dhi'b al 'Āmirī. The *khalīfah* asked them about his rule over the Muslims, and Abū Ḥanīfah responded that "the *khilāfah* is to be established by consulting the Muslims and concluding *ijmā'* of the faithful."<sup>37</sup> This reference also supports our conclusion that Abū Ḥanīfah was the first jurist who considered consensus a legal source.

Al Ṣaymarī refers to a statement by al 'Āmirī to the effect that the *khilāfah* was to be established by the *ijmā'* of the pious people to show that the latter supported it.<sup>38</sup> However, the mention of *ijmā'* was found in the teachings of the Ḥanafī jurists, and there is a great deal of evidence that Abū Ḥanīfah and his disciples, Abū Yūsuf and al Shaybānī, relinquished *qiyās* in favor of the consensus of the Companions.<sup>39</sup>

Imām al Awzā'ī (d. 157 AH) frequently applies the word *ijmā'* to the rules upon which the jurists have agreed.<sup>40</sup> The *ijmā'* of the Companions and that of the jurists has also been referred to by Sufyān al Thawrī who, according to Ibn Qudāmah and Ibn Ḥazm, considered both of these sources.<sup>41</sup>

Imām Mālik (d. 179 AH) regards consensus as a source of the Sharī'ah. His critics point to a confusion between his two principles of *ijmā'* and the *'amal* (practice) of the people of Madīnah. While he is often alleged to uphold only the *ijmā'* of the people of Madīnah, there is no evidence that he rejected any *ijmā'* of the ummah. Al Bājī and al Shinqīṭī, both chief exponents of Mālikī thought, discuss this view clearly.<sup>42</sup> In case of a difference among the *fuqahā'*,

<sup>35</sup> Abū al Ḥusayn al Baṣrī, *al Mu'tamad fī Uṣūl al Fiqh*, ed. Ḥamīdullāh (Damascus, Syria: al Ma'had al 'Ilāmī al Faransī, 1385/1965), vol. 2, 942.

<sup>37</sup> Ḥusayn ibn 'Alī al Ṣaymarī, *Akhbār Abī Ḥanīfah* (Beirut: Dār al Kitāb al 'Arabī, 1976), 59-60; al Kandarī, *al Manāqib*, vol. 2, 4.

<sup>38</sup> Al Ṣaymarī, *Akhbār Abī Ḥanīfah*, 59-60; al Kandarī, *al Manāqib*, vol. 2, 4.

<sup>39</sup> Al Sarakhsī, *al Mabṣūṭ*, vol. 1, 56-7 and vol. 6, 210-1.

<sup>40</sup> Ibn Qudāmah, *al Mughnī*, vol. 2, 719-20, and vol. 7, 357-451; al Sarakhsī, *al Mabṣūṭ*, vol. 6, p. 26.

<sup>41</sup> Ibn Qudāmah, *al Mughnī*, vol. 2, 102, vol. 6, 540-1, and vol. 7, 292; 'Alī ibn Aḥmad ibn Ḥazm, *al Muḥallā* (Cairo: Maktabat al Jumhūrīyah al 'Arabīyah, 1387/1967), vol. 9, 444.

<sup>42</sup> Abū al Walīd al Bājī, *Kitāb al Minhāj fī Tartīb al Hijāj*, ed. 'Abd al Majīd Turkī (Paris, 1978), 21-2; 'Abd Allāh ibn Ibrāhīm al Shinqīṭī, *Nashr al Bunūd 'alā Marāqī al Sa'ūd* (published by the governments of Morocco and the United Arab Emirates, n.d.), vol. 2, 81.

Mālik has recourse to the practice of the people of Madīnah, itself a principal source of law.<sup>43</sup> Al Bājī considers it a kind of *ijmā'* and accepts the view that the consensus of the jurists of Madīnah has legal authority. Upholding this view, he argues that Abū Yūsuf also accepted Mālik's principle of the practice of the people of Madīnah. An example is cited in which Mālik and Abū Yūsuf conducted a dialogue in the presence of the *khalīfah* Hārūn al Rashīd to determine the exact measure of a *ṣā'* (a cubic measure), during which Mālik produced evidence in support of his view from the practice of the people of Madīnah. Abū Yūsuf accepted it as a valid argument.<sup>44</sup>

Imām al Shāfi'ī (d. 204 AH) discusses *ijmā'* in *al Risālah* and *al Umm* and also accepts it as a legal doctrine and a source of fiqh, based on evidence from the Qur'an, the Sunnah, and the practice of the Companions of the Prophet. His arguments come from the Sunnah, especially the hadith enjoining the Muslims to hold fast to the ummah<sup>45</sup> and the one narrated on the authority of 'Abd Allāh ibn Mas'ūd: "There are three things which a Muslim's heart should not grieve for: sincerity in action for the sake of Allah, admonition to the Muslims, and abiding by the community."<sup>46</sup>

The jurists also used *ijmā'* to determine the rules of inheritance and testamentary declaration (i.e., the principle that testamentary declaration cannot be made in favor of a direct heir was added by the Sunnah) as well as those regarding the prayers and fasts missed by menstruating women. According to al Shāfi'ī, *ijmā'* was established on this topic on the basis of a hadith that a *waṣīyah* (will or testamentary declaration) is permitted to dispose of one-third of property to one who is not a direct heir.<sup>47</sup> Another example given by al Shāfi'ī is that a woman is not allowed to say prayers or to fast during her menstrual period. But while she does not have to make up the missed prayers later, she must make up the missed fast days after her period ends. This decision was taken as a result of *ijmā'*.<sup>48</sup>

The jurists generally refer to the tradition "My ummah will never agree on deviation"<sup>49</sup> as an argument for the authority of *ijmā'*. While al Shāfi'ī does not mention it, he has the same opinion, for he says that: "We know that the common people do not agree on a thing contrary to the Sunnah of the Prophet or on error."<sup>50</sup>

<sup>43</sup>Ibid.

<sup>44</sup>Al Bājī, *al Minhāj*, 23.

<sup>45</sup>Al Shāfi'ī, *al Risālah*, 175, 182.

<sup>46</sup>Al Shāfi'ī, *al Risālah*, 173 (see article 1102).

<sup>47</sup>Al Shāfi'ī, *al Risālah*, 20-21, 39-40.

<sup>48</sup>Al Shāfi'ī, *al Risālah*, 62.

<sup>49</sup>Muḥammad ibn Yazīd ibn Mājāh, *Sunan Ibn Mājāh* (Cairo: Dār Iḥyā' al Kutub al 'Arabīyah, 1372/1952), vol. 2, 1303; al Tirmidhī, *Sunan*, vol. 4, 416; Ibn Ḥanbal, *al Musnad* (Beirut: al Maktab al Islāmī, n.d.), vol. 5, 145; al Māwardī, *Adab al Qāḍī*, vol. 1, 451; al Dārimī, *al Sunan*, see "Muqaddimah" (#8).

<sup>50</sup>Al Shāfi'ī, *al Risālah*, 204.



He cited several Qur'anic verses in *al Umm* that *ijmā'* is not subject to error.<sup>51</sup> Al Shāfi'ī upholds the idea of agreement and rejects disagreement when consensus is achieved on the basis of the following verses: "And be not like those who are divided amongst themselves and fall into disputation after receiving clear proofs"<sup>52</sup> and "Nor were the people of scripture divided until after the clear evidence came to them."<sup>53</sup> In addition, al Shāfi'ī accepts *ijmā'* if it is based on the Qur'an, the Sunnah, or a preceding *ijmā'*, but not if it is based on *ra'y* (opinion) or lacks a basis in the Qur'an or the Sunnah.<sup>54</sup> However al Māwardī, a Shāfi'ī jurist, accepts *ijmā'* based on *qiyās* or *istidlāl*.<sup>55</sup>

Aḥmad ibn Ḥanbal and the jurists of his school also accepted consensus as a source of authority. Ibn Ḥanbal had two opinions on this matter. According to one, he recognizes only the *ijmā'* of the Companions but, in the other, he views *ijmā'* in every age as a mandatory authority.<sup>56</sup> Later Ḥanbalī jurists recognize consensus as it was advocated by al Shaybānī and al Shāfi'ī. Ibn al Farrā', a great Ḥanbalī jurist, writes that *ijmā'* is a decisive imperative authority and that it therefore must be referred to in matters of *fiqh*, statements which he backed up with prophetic *aḥādīth*, such as the one that says the ummah will not agree on a deviation.<sup>57</sup> He further explains that he considers *ijmā'* decisive because it is carried out by the *mujtahidūn* of the time and because it is possible to be aware of the views of every *mujtahid* in the ummah on a certain issue.<sup>58</sup> Ibn Ḥanbal, according to one of his two opinions, and the Zāhirī jurists confine consensus to the Companions of the Prophet and consider the practical difficulties in the process of the development of *ijmā'*. Ibn Qudāmah, a Ḥanbalī jurist (d. 620 AH), however, recognizes it in every age; he does not confine it to the time of the Companions.<sup>59</sup> While discussing legal issues, he frequently refers to the *ijmā'* of the Companions.<sup>60</sup>

Ibn Ḥazm (d. 456 AH) raises the question of practical difficulties after the Companions by asserting that it became much harder to know the opinion of every *faqīh* after Muslims had spread throughout the world.<sup>61</sup> According to him, there are only three types of *ijmā'*: a) that which has been established on the fundamentals of Islam and is derived from those *aḥādīth* from the time and the

<sup>51</sup>Al Shāfi'ī, *al Umm* (Beirut: Dār al Ma'rifah, 1393/1973), vol. 7, 276-9.

<sup>52</sup>Qur'an 3:105.

<sup>53</sup>Qur'an 98:4; al Shāfi'ī, *al Umm*, vol. 7, 285.

<sup>54</sup>Al Shāfi'ī, *al Risālah*, 203-4; al Shāfi'ī, *al Umm*, vol. 7, 276-7, 279.

<sup>55</sup>Al Māwardī, *Adab al Qāḍī*, vol. 1, 455.

<sup>56</sup>Al 'Āmidī, *al Iḥkām*, vol. 1, 328; Ibn Qudāmah, *Rawḍat al Nāzir*, 74.

<sup>57</sup>Al Turkī, *Uṣūl Madhhab al Imām Aḥmad* (Cairo: Dār al Kutub al Miṣriyah, 313). Quoting from Ibn al Farrā', *al 'Uddah fī Uṣūl al Fiqh* (Cairo: Dār al Kutub al Miṣriyah, manuscript).

<sup>58</sup>Ibid., 314.

<sup>59</sup>Ibn Qudāmah, *Rawḍat al Nāzir*, 74.

<sup>60</sup>Ibn Qudāmah, *al Mughnī*, vol. 2, 99-100, 720-1.

<sup>61</sup>Ibn Ḥazm, *al Iḥkām*, vol. 4, 502; M. Bernard, "Ijma'," in *Encyclopedia of Islam*.

Sunnah of the Prophet which, based on the frequency and chains of transmission, are considered to be absolutely authentic (*ḥadīth mutawātir*); b) *ijmā'* based on the eyewitness reports of people who actually saw the Prophet do something, such as performing the prayer in a sitting position among the people and, as mentioned by Ibn Ḥazm, giving the land of Khaybar to the Jews on the condition that half of the harvest would be paid to the people of Madīnah, and other universal practices of the Prophet; and c) accounts dealing with the prophetic Sunnah which have reached us through reliable sources. Consensus was gradually established on some of them while others remained in dispute.<sup>62</sup>

Later jurists, such as Abū al Ḥusayn al Baṣrī (d. 436 AH), Abū Bakr ibn Aḥmad al Sarakhsī (d. 490 AH), Abū Ḥāmid al Ghazālī (d. 535 AH), and Abū al Ḥasan 'Alī al 'Āmidī (d. 631 AH) discuss *ijmā'* more academically, defined it in closer terms, and presented it as a complete legal doctrine.<sup>63</sup>

According to the generally accepted (although still slightly disputed) classical definition, *ijmā'* is the unanimous agreement of the contemporary jurists on a Sharī'ah ruling.<sup>64</sup> The classical jurists, as seen in their literature, confined consensus to the legal questions in the Sharī'ah. Thus, *ijmā'* sought to maintain a general agreement within the ummah on the fundamentals of Islam and also to pave the way for developing identical views (as far as possible) on particular Sharī'ah rulings. Due to its technical speciality, its practice was limited to those scholars qualified for *ijtihād* (called *ahl al ḥall wa al 'aqd* by al Ghazālī and al 'Āmidī).<sup>65</sup> However, the early scholars employ the terms '*ulamā'*' and '*fuqahā'*' interchangeably.<sup>66</sup> The change in terminology might have occurred when the ulama became more involved in politics and could claim a certain authority. The term *ahl al ḥall wa al 'aqd* has a political significance, and al Ghazālī defines it as those *mujtahidūn* whose fatwas and scholarship are accepted by the people.<sup>67</sup>

<sup>62</sup>Ibn Ḥazm, *al Iḥkām fī Uṣūl al Aḥkām*, ed. Aḥmad Shākīr (Cairo: Maṭba'ah al 'Āṣimah, 1968), vol. 4, 505-6.

<sup>63</sup>Al Baṣrī, *al Mu'tamad*, vol. 2, 457-540; al Ghazālī, *al Mustasfā*, vol. 1, 173-216; al 'Āmidī, *al Iḥkām*, vol. 1, 282-406.

<sup>64</sup>Al Baṣrī, *al Mu'tamad*, vol. 2, 457; al Ghazālī, *al Mustasfā*, vol. 1, 173; Ibn Qudāmah, *Rawḍat al Nāẓir*, 67; al 'Āmidī, *al Iḥkām*, vol. 1, 281-2.

<sup>65</sup>Al Ghazālī, *al Mustasfā*, vol. 1, 191; al 'Āmidī, *al Iḥkām*, vol. 1, p. 281.

<sup>66</sup>Al Māwardī, *Adab al Qādī*, 450 ("Ahl al 'Ilm"); al Khaṭīb al Baghdādī, *al Faqīh*, vol. 1, 170 ("Ahl al Ijtihād"); Ibn Ḥazm, *al Iḥkām*, vol. 4, 495 ("Ulama"); Ibn Qudāmah, *Rawḍat al Nāẓir*, 67 ("Ulama"); al Sarakhsī, *Uṣūl al Sarakhsī*, ed. Abū al Wafā' al Afghānī (Beirut: Dār al Ma'rifa, 1388/1973) vol. 1, 311 ("Ilm al Mujtahid"); Dāwūd Zāhirī used the word *fuqahā'*. See al Bājī, *al Minhāj*, 22.

<sup>67</sup>Al Sarakhsī, *al Mustasfā*, vol. 1, 181.

## Kinds of *Ijmā'*

There are several levels of authority for *ijmā'*. The most important is the consensus conducted by the Companions of the Prophet. The Zāhiri jurists accept only this type of *ijmā'*, and al Shaybānī views it as the most authentic. As it is based on the Qur'an and the Sunnah, no one can reject its authority. In other words, it is as authentic as that proved by the Qur'an and the Sunnah.<sup>68</sup> Al Layth ibn Sa'd (d. 175 AH) is reported to have based his decisions on the consensus of the Companions.<sup>69</sup> An absolute *ijmā'* is established when some of the Companions issued a fatwa that was accepted orally by the others. This ensures the certainty of belief and is a decisive authority to all Muslims. However, the *jumhūr* jurists accept consensus in every age and generation. Consensus established by the explicit agreement of all contemporary jurists is called *al 'azīmah* or *ijmā' al qawli*. The authority and validity of this kind of *ijmā'* is accepted by the jurists of the four schools.<sup>70</sup>

Another kind of consensus is *ijmā' sukūti* (silent *ijmā'*), which takes place when those jurists expressing their views meet with no verbal opposition from other jurists. The latter group's silence, even after the passage of enough time for reflection and the lack of force, is considered approval. The majority of the Ḥanafī jurists, some of the Shāfi'ī, and other jurists see this type of *ijmā'* as established and valid.<sup>71</sup> Al Ghazālī and Ibn Qudāmah accept this consensus provided that there is circumstantial evidence indicating that those who did so were pleased with it (i.e., tacit consent).<sup>72</sup> A *mujtahid* is not obliged to follow others' opinion blindly but may conduct his/her own *ijtihād*<sup>73</sup> due to his/her ability to examine and weigh the various legal arguments. If a *mujtahid* keeps silent after hearing what other scholars have to say, it means agreement, for scholars usually express their views when they differ.

Consensus in the form of an agreed-upon opinion arrived at by the approval of a majority of the jurists remains controversial. Most do not consider it as *ijmā'*, although a small group of scholars does accept it when it is constituted by an absolute majority (i.e., the disagreement of a few scholars does not affect its validity). Muḥammad ibn Jarīr al Ṭabarī (d. 310 AH) is the leading advocate of

<sup>68</sup>Al Sarakhsī, *al Uṣūl*, vol. 1, 318.

<sup>69</sup>Ibn Ḥazm, *al Muḥallā*, vol. 9, 444.

(نجد في فقه الليث أنه كان يعمل بما أجمع عليه الصحابة).

<sup>70</sup>Al Sarakhsī, *Uṣūl*, vol. 1, 303; 'Alī ibn Muḥammad al Bazdawī, *Uṣūl al Bazdawī* (Karachi: Nūr Muḥammad, n.d.), 239.

<sup>71</sup>Al Sarakhsī, *Uṣūl*, vol. 1, 303 (al Sarakhsī calls it *ijmā' al rukhṣah*); al 'Āmidī, *al Iḥkām*, vol. 1, 361.

<sup>72</sup>Al Ghazālī, *al Mustasfā*, vol. 1, 191-2; Ibn Qudāmah, *Rawḍat al Nāzir*, 77.

<sup>73</sup>Ibn Ḥazm, *al Iḥkām*, vol. 4, 507; al 'Āmidī, *al Iḥkām*, vol. 1, 336.

this view.<sup>74</sup> According to al-ʿĀmidī, al-Ṭabarī, Abū Bakr al-Rāzī, Abū al-Ḥusayn al-Khayyāt (a Muʿtazilī), and Ibn Ḥanbal (according to one tradition from him) all recognize consensus when it is concluded by the majority of the jurists. One group of jurists believes that the opposition of a few people does not affect the validity of *ijmāʿ* but, if the opposition reaches the level of *tawātur* (absolute authenticity), *ijmāʿ* cannot be formed.<sup>75</sup> It appears that Ibn al-Farrāʾ acknowledges the authority of *ijmāʿ* by a majority in religious and political matters for, according to him, the *khulafāʾ al-rāshidūn* derived their authority from the consensus related to their *khilāfah*. He claims that the legitimacy of Abū Bakr’s *khilāfah* was the consensus of the Companions,<sup>76</sup> as were the reigns of ʿUmar,<sup>77</sup> ʿUthmān,<sup>78</sup> and even that of ʿAlī,<sup>79</sup> who was chosen by a majority of the Muslims (even though Muʿāwiyah and his supporters opposed this decision and did not acknowledge the validity of ʿAlī’s rule). Thus a majority decision, according to him, constitutes a valid *ijmāʿ*.

It seems appropriate to divide the issues into two categories: *ibādāt* (i.e., religious values and Sharīʿah fundamentals) and *muʿāmalāt* (i.e., social, economic, and political issues). The majority’s agreement on a *muʿāmalāt* issue must constitute consensus. This view, though not very popular among the jurists, has been attractive to scholars who pursue a rational approach and a logical interpretation of the doctrine of *ijmāʿ*. Those jurists who do not accept this as *ijmāʿ* in the technical sense do recognize it as a *ḥujjah* (authority).<sup>80</sup> Those who accept consensus by the majority look at its practical aspect. Arriving at consensus in a literal sense is very difficult, particularly when it is based on analogical reasoning. There is no obstacle to accepting the consensus of the majority on social and political matters.

Supporters of *ijmāʿ* by the majority of the jurists also have some arguments. For example, the word “*ummah*” in the hadīth, “My *ummah* will never agree on a deviation,” can mean all members of the community, but literally applies to the majority of Muslims. There are many examples in Arabic literature which show that such collective nouns can be used in this way. For example, when it is said that “the Quraysh are traders” or “the Banū Tamīm respect their neighbors,” it means the majority of those two tribes have that particular characteristic. The prophetic hadīth which directs the community to follow the *jamāʿah* (interpreted to mean the overwhelming majority) is often cited to support this view.<sup>81</sup>

<sup>74</sup> Al-ʿĀmidī, *al-Iḥkām*, vol. 1, 336.

<sup>75</sup> Ibn al-Farrāʾ, *al-Muʿtamad*, 225.

<sup>76</sup> *Ibid.*, 228.

<sup>77</sup> *Ibid.*, 229.

<sup>78</sup> *Ibid.*, 231-2.

<sup>79</sup> Al-Ghazālī, *al-Mustasfā*, vol. 1, 187; al-ʿĀmidī, *al-Iḥkām*, vol. 1, 336.

<sup>80</sup> Al-Ghazālī, *al-Mustasfā*, vol. 1, 186-7; al-ʿĀmidī, *al-Iḥkām*, vol. 1, 336-44.

<sup>81</sup> Al-Ghazālī, *al-Mustasfā*, vol. 1, 198; al-ʿĀmidī, *al-Iḥkām*, vol. 1, 315, 346, 402.

## The Infallibility of *Ijmā'*

The concept of the ummah's infallibility (*'iṣmāh*) vis-à-vis *ijmā'* has caused the jurists some problems, for, according to them, if even one person questions the decision the ummah's infallibility is thrown into question. Thus, the disagreement of a sole *faqīh* undermines the infallibility which guarantees the ummah's security against errors and wrong judgments. Consensus on the basis of infallibility grants, according to the classical jurists, an assurance of certainty.<sup>82</sup>

This concept of infallibility is based on the prophetic tradition which states: "My ummah will never agree on a deviation."<sup>83</sup> Almost all of the classical jurists quote this hadith in support of the ummah's infallibility.<sup>84</sup> One exception is al Shāfi'ī but, although he does not mention it, he does believe that the ummah cannot agree on an error in the case of absolute *ijmā'*.

Let us examine a hadith which is regarded as weak by way of transmission but as sound in meaning.<sup>85</sup> Although it is not regarded as absolutely authentic (*mutawātir*), it is considered to be so in meaning (*mutawātir bi al ma'nā*) because there are several *aḥādīth* that convey the same meaning and support each other. The hadith, as reported by al Tirmidhī on the authority of 'Abd Allāh ibn 'Umar, states that the Prophet said: "Allah will not allow my ummah or the ummah of Muhammad to agree on an error, and Allah's hand is over the community. Whosoever disassociates from the community will be cast into hell."<sup>86</sup> Ibn Mājah also reports it, with a slight variation and on the authority of Abū Khalf al A'mā, as follows: "My ummah will never agree on an error. When you see differences you must follow the overwhelming majority."<sup>87</sup> Ibn Ḥanbal relates it, on the authority of Abū Dharr, as: "Two persons (together) are better than one, and three than two, and four than three. You, therefore, must hold fast to the community, for Allah never makes the community together except that they are in the right way."<sup>88</sup> These are the versions of the hadith which the jurists used to devise the concept of the ummah's infallibility.

Others do not agree with the above interpretation, but say that it only means that the ummah as a whole will not agree to contradict the Qur'an or the Sunnah (disagreement on an error is different from infallibility). Ibn Ḥazm, who is not in favor of this concept of infallibility, does not mention this hadith to prove the authority of *ijmā'*. He interprets the hadith as meaning that there will always

<sup>82</sup>Ibn Mājah, *Sunan*, vol. 2, 1303; Ibn Ḥanbal, *Musnad*, vol. 5, 145.

<sup>83</sup>Ibn Ḥazm, *al Iḥkām*, vol. 4, 496; al Khaṭīb al Baghdādī, *al Faqīh*, vol. 1, 160-2; al Māwardī, *Adab al Qādī*, vol. 1, 451; al Bazdawī, *Uṣūl*, 245; al Sarakhsī, *Uṣūl*, vol. 1, 299; al Ghazālī, *al Mustasfā*, vol. 1, 175; al 'Amidī, *al Iḥkām*, vol. 1, 313-4.

<sup>85</sup>Al Ghazālī, *al Mustasfā*, vol. 1, 175-7; al 'Amidī, *al Iḥkām*, vol. 1, 313-4.

<sup>86</sup>Al Tirmidhī, *Sunan*, vol. 3, 315 (#2255).

<sup>87</sup>Ibn Mājah, *Sunan*, vol. 2, 1303 (#3950).

<sup>88</sup>Ibn Ḥanbal, *Musnad*, vol. 5, 145.

be disagreement within the ummah, but that the entire ummah shall never fall into error.<sup>89</sup>

The *muhaddithūn* have reported this hadith in the chapter of *al fitan*, showing that they understood that it pertained to particular situations of dispute. Thus it is their opinion that this hadith only gives instructions to follow the ummah to preserve its unity and intergrity, for the entire ummah will not go against the obvious teachings and guidance of the Shari'ah. The context of the hadith also includes a warning against the consequences of differences within the ummah. The *faqīh* al Juwaynī seems hesitant to accept the doctrines of infallibility and consensus based on the hadith under discussion, which, in his opinion, says only that the ummah will neither depart from Islam nor convert to infidelity.<sup>90</sup>

Another understanding of this concept is when *ijmā'* is based on a clear *naṣṣ* (text), such as the fundamentals of Islam. The ummah is infallible in this instance because the *naṣṣ* is from God. Imām al Shāfi'ī accepts consensus based on *naṣṣ* either from the Qur'an or the Sunnah. But, according to him, consensus cannot be achieved from an *ijtihādī* opinion having no basis in the Qur'an or the Sunnah.<sup>91</sup>

Another interpretation is also possible, one which is probably more logical and acceptable: the use of *ijtihād* to reach *ijmā'*. If such decisions gain the assent of other jurists, over the course of time they become *ijmā'*. A *mujtahid* who reaches a mistaken conclusion is not, according to the Sunnah, accountable for his mistake, for he has attempted to decide a particular issue. This is regarded as sufficient for action, and such a person is rewarded by God. According to a hadith recorded by al Bukhārī, a *mujtahid* who reaches the right conclusion deserves a double reward.<sup>92</sup> The same is true of those who try to decide matters through consensus. This may be termed "condonable error" rather than "infallibility."

Ibn Ḥazm's view, as discussed earlier, seems adequate and practicable. Simply stated, the problem of infallibility does not arise with his view because he states that consensus must be based on a *naṣṣ* from either the Qur'an, the Sunnah, or both. As these sources are infallible, any resulting consensus will also be infallible. If the view of the classical jurists were adopted, it would mean that no one would be allowed to disagree or have a different opinion, as this would jeopardize the ummah's infallibility. Thus, in reality, it would seem to be a more theoretical concept.

Al Juwaynī also has an interpretation in which this problem does not arise

<sup>89</sup>Ibn Ḥazm, *al Iḥkām*, vol. 4, 496-7.

<sup>90</sup>'Abd al Mālik al Juwaynī, *al Burhān fī Uṣūl al Fiqh*, ed. 'Abd al 'Azīm al Dīb (Cairo: Maktabat Imām al Ḥaramayn, 1400), vol. 1, 687-89; *Ghiyāth al Umam*, ed. Muṣṭafā Ḥilmī (Alexandria: Dār al Da'wah, 1402/1979), 34-5.

<sup>91</sup>Al Shāfi'ī, *al Risālah*, 203-4; al Shāfi'ī, *al Umm*, vol. 7, 276-7.

<sup>92</sup>Al Bukhārī, *al Jāmi' al Ṣaḥīḥ*, vol. 3, part 9, 132-3.

and which, moreover, can make *ijmā'* a viable doctrine. In his opinion, there is no clear Qur'anic text or hadith referring to the principle or the practice of consensus. But, through his use of analogy, al Juwaynī proves the authority of consensus by arguing that there are certain issues concerning what is *ḥalāl* and what is *ḥarām* which have been agreed upon by the ulama across the generations and despite geographic location. Such an emphatic resolution by the trusted, learned, and upright scholars of the religious sciences must be based on solid *shar'ī* (legal) grounds and cannot be mistaken. Moreover, the number of scholars supporting the decision is so large that there is no reason to reject their consensus.<sup>93</sup> This interpretation of *ijmā'* seems capable of saving us from the dubious issue of infallibility which makes the doctrine impractical.

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<sup>93</sup>Al Juwaynī, *Ghiyāth*, 40-1.