Guiding Mankind to Act on the Basis of Telegraphic Messages

Jamal al-Din al-Qasimi

David Commins

Dickinson College

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Jamal al-Din al-Qasimi (Syria, 1866–1914) was the leading proponent of Islamic modernism in early twentieth-century Damascus. His publications numbered more than two dozen and covered religious disciplines such as Islamic law, theology, and exegesis; Muslim religious customs; and Arab history. He came from a family of minor religious functionaries and obtained his religious education from the city’s leading religious scholars. Qasimi emerged as a proponent of reformist ideas in the 1890s, but he was not able to openly publish his work until the Ottoman Constitutional Revolution created a freer political climate in 1908. He was one of a handful of liberal religious scholars in Damascus who favored constitutional government. Moreover, a younger generation of Syrians with inclinations toward Arab nationalism drew inspiration from his call for an Arab cultural and literary revival. His religious and political views made him the object of Ottoman suspicions and conservative scholars’ hostility. Consequently, he endured several episodes of persecution. His religious writings focused on two themes. One exhorted Muslims to overcome historical divisions into rival legal schools and sects by returning to the Qur’an and the practice of the Prophet as the only bases of authority. The other emphasized the rational character of Islamic beliefs and practices. In this passage, Qasimi seeks to demonstrate that Islamic law possesses methods and principles, in particular the principle of *ijtihad* (independent reasoning), that allow for the adoption of new technology. To support this view, Qasimi cites an extensive series of classical Islamic authorities and texts.1

In the name of God, the beneficent, the merciful
Praise God, lord of the worlds. Prayer and peace on our master Muhammad, seal of the prophets, and on his exemplary family and Companions, and on their sincerely believing Successors until the Day of Judgment.

A judge asked me if he may act according to well-established information in a telegraphic message from an authority, such as a governor, another judge, or another trusted source, announcing on the basis of legally acceptable evidence the start or the end of Ramadan [the month of dawn-to-dusk fasting], given that celestial bodies rise at the two places at the same time.2 I replied to him on the basis of the legal opinions of famous ‘ulama’ [religious scholars] on this issue, and I shared with him both general and detailed texts about it. I told him that ‘ulama’ of the last century and current leaders of knowledge have devoted much attention to the issue of the telegraph. They have lent it meticulous scrutiny and have taken the utmost care in understanding it. Some favor acting according to it in both social transactions and religious rituals; while others would act according to it only in certain categories of transactions; yet others favor using it in beginning and breaking the fast, depending on the conclusions they reach in undertaking *ijtihad* [independent reasoning]. I said that I have not heard of a single major scholar who has


2. [The timing is essential because Ramadan is deemed to begin and end with the appearance of a new moon.—Trans.]
issued a legal opinion against acting according to telegraphic messages in all circumstances. There is no such report from any renowned scholars whose legal opinions are followed. What kind of scholar could fall into such confusion on this matter when he knows that the telegraph is the prop of kingdoms’ vital affairs? Is it possible for the most perfect of all laws to neglect a matter of general public benefit, especially one of the greatest technical advances, when the principles of the shari’a [Islamic law] provide for every time and place? The lofty shari’a’s basic legal principles cannot invalidate the telegraph; rather, they connect it to similar matters that are well known. They remove the mask of obscurity from the face of controversy with the telegraph; rather, they connect it to similar situations on the basis of well-known principles. Every age has men who uphold God’s will with proofs. The basis for knowing the proper statute for any given case is its evidence.

The excellence of Islam includes the applicability of its principles to the laws of civilization. Islam’s magnanimity includes the way specific regulations can be derived from its basic legal principles. Ancient and modern generations have adapted to new situations on the basis of well-known principles. Every age has men who uphold God’s will with proofs. The basis for knowing the proper statute for any given case is its evidence.

The excellence of Islam includes the applicability of its basic legal principles to the laws of civilizations; the suitability of its principles to the needs of every time and place; basing its rulings on bringing benefit and preventing harm; its distinction in removing encumbrances and fetters; its opening the doors of ease and facility; and its blocking the ways of anguish and difficulty.

Its magnanimity includes the rise of the madhahib [schools of Islamic law] from its wise sources; the acquisition of its principles from the luminous niche of its lamp [the Qur’an]; and the breadth of its specific regulations to allow for the adoption of necessities and luxuries, however much inventions and discoveries multiply.

Islam’s qualities include its guidance to methods of discovering laws through extensive study and reasoning, so that experts may easily relate all beneficial inventions to Islam’s stipulations, certainties, generalities, and apparent meanings. Furthermore, Islam provides for the adoption of beneficial inventions because of its magnanimity and its agreement with ease and mercy.

Both ancient and recent jurisprudents, mercy and contentment be upon them, have adopted new conveniences and ways of life according to the basic legal principles and specific regulations of the shari’a. If that were not the case, then why are there so many huge volumes of rulings and abundant legal opinions on various cases? Are they not for novel situations that have arisen in both recent and ancient times? Of course they are. Thus it is necessary to adapt to novel situations in human society on the basis of the well-known principles of the true religion. Doing so helps people in both religious and worldly matters, and allows them to live according to firmly established customs.

The founders of the legal schools, God be pleased with them, acquired their stature and are considered exemplars of knowledge because they attained such proficiency in deriving specific regulations and such judiciousness in religious understanding that their knowledge became the standard of the religious sciences. They reached this distinction only by plunging into the details of affairs after studying the underlying rationales of existence, tracing every specific regulation to a basic legal principle, and adopting a statute on the basis of that principle. A sage once said, “The Muslims’ mujtahids [religious scholars qualified to perform ijtihad] have taken into consideration many principles of their law and adapted to the customs of various places and times, according to the Book [the Qur’an] and the sunna [the precedents and advice of the Prophet]. Therefore, the Islamic legal schools, taken altogether, suffice for the discovery of all religious laws to regulate social transactions in all parts of the world, while complying with the basic principles of religious rulings.” He supports this opinion by referring to such principles of legal extension as custom and the consideration of benefits.

The introduction of the telegraph resembles earlier innovations that did not exist in the time of the Companions or the Successors or the founders of the legal schools, but on which contemporary legal experts have issued legal opinions—innovations such
as cannons and clocks used for fasting and prayer, and countless other matters in worship and social transactions. The telegraph is but a drop in the ocean of discoveries and inventions in coming ages, including conveniences and benefits for people of all classes—as the Qur'an states, "There will be created what you do not know." [Sura 16, Verse 8] If we do not adopt the telegraph according to fixed principles of discovery through reasoning and analogy, then do we not congeal religion and block the way of ancient and recent generations, and forever constrict what God made wide through understanding and discovery?

One of the Muslims' greatest blessings is that every age has men who uphold God's will with proofs and clarify obscure issues with proper methods. This is evident from the numerous religious judges in every place who rule on issues that were not stipulated in the two noble sources [the Qur'an and the sunna]. They extract rulings from the two sources by resorting to extensive study and reasoning. The abundance of legal opinions and judges is an emblem of the survival of *ijtihad* until the Day of Judgment. Every age has men who uphold the *shari'a* with proofs. Anyone who wishes may refer to the book, "The Virtue of the Notables," by Imam [Jalal al-Din] al-Suyuti [Egyptian scholar, 1445–1505], which contains long lists of mujtahids—and that was in just one particular place. How many other men would be counted in all places? Indeed, it would be a boundless ocean.

Some worthless fellow might suspect—and it is said that suspicion is a sin—that current advocates of scholarly reform intend to use *ijtihad* to establish a special legal school and to call on believers to adhere exclusively to it, to deviate from the views of the founders of the *madhahib*, and to detract from the nobility of earlier generations. God save us from such ignorance and misunderstanding! Whoever thinks this way is more lost than a herd of cattle. What reasonable person would call for an increase in sectarianism and divisiveness? Instead, the intention is to arouse the concern of leading scholars to become familiar with issues through evidence, to research their sources, to explore the books of the ancestors and the founders of the *madhahib* on basic legal principles and specific regulations, to become familiar with the ways of extracting and discovering rulings and with the proofs of agreement and disagreement, then to aspire for the strongest evidence and to seek the firmest opinion, as was the custom of the upright ancestors and numerous later generations. Later generations depend on earlier ones for all their scholarship and for the treasures they stored. But mental faculties vary from one person to the next. Grasping the purposes of the *shari'a* and the underlying rationales for deriving specific regulations, discerning the kernel from the husk in various matters that are the subject of *ijtihad* because they are not textually stipulated—these are paths that the ancestors pursued and methods followed by prominent men to the present day. Ahmad Ibn Faris [possibly al-Qazwini, religious scholar, 10th century], God have mercy on him, said, “Who forbade later generations from contradicting earlier ones? Do not accept the view of whoever says, ‘The former left nothing for the latter.’ Leave aside the view of another who says, ‘How much did the former leave for the latter?’ Is this world nothing but changing times? Does not every time have its men? Are not the sciences after the fundamental principles anything but the fruits of understanding and reason? Who ever restricted excellence to a particular age and stopped it at a certain time? Do not later men study, compose, and see things like earlier men? What would you say to contemporary jurisprudents if they needed to know the statute for a situation that had never before occurred? Do you not know that every heart has a mind, and every mind reaches its own conclusion? Why do you constrict what is wide, forbid what is permitted, and block the clear way? If people were limited to the books of the ancients, then a great deal of knowledge would be lost, penetrating minds would go astray, articulate tongues would be blunted, and we would hear nothing but repetition. Do you urge the revival of what the ages have covered over, the renewal of what the passage of time has worn out, the relegation to files of what contemporary minds have created, and the denial of this era? Even so, if one sought that, he would miss the mark and you would still read of new discoveries that will thrill and delight you.”

The jurisprudents stipulated that the *mujtahid* must know those situations that are the subject of consensus [one of four bases of Islamic law, along with the Qur'an, the *sunna*, and analogy], so that he would not give a legal opinion in opposition to consensus. [Abu Hamid Muhammad] al-Ghazzali [major Iranian religious scholar, 1059–1111] wrote, “The desired end is that one know that his legal opinion is not opposed to consensus, either by virtue of knowing that it agrees with one of the legal schools or by
knowing that this is an unprecedented occurrence with which the authors of consensus had no familiarity; that is sufficient.”

Part Two: On the opinions of the founders of the madhahib about the essence of jurisprudence and jurisprudents.

The Imam Badr al-Din [Muhammad ibn Bahadur] al-Zarkashi [Egyptian religious scholar, circa 1344-1392] wrote, “Jurisprudence includes several meanings. First is knowledge of the rulings for cases according to a text or through discovery of rulings through reasoning. On this the masters have written extensive commentaries. Second is knowledge of combining likenesses and distinguishing between differences. On this meaning there are so many discussions among the ancestors that some say that jurisprudence consists only of difference and likeness. Third is the discussion of knotty issues for the purpose of sharpening the mind. Fourth are sophisms, quizzes, riddles, and legal fictions. Fifth is knowledge of the principles and exact rules by which specific regulations are derived. This last kind is the most valuable, the most general, the most complete, and the most perfect. By it the jurisprudent becomes prepared to undertake ‘ijtihad. It is truly the root of jurisprudence.”

The second meaning is called “the science of similarities and likenesses.” Imam al-Suyuti wrote, “It is a great science by which one becomes thoroughly acquainted with the real meanings of jurisprudence, as well as its sources and its underlying rationales. One becomes proficient at understanding it and develops a command of it. One is able to make connections and extract meanings, to know the rulings for unprecedented events that do not cease with the passage of time. Therefore, some of our masters have said, ‘Jurisprudence is the knowledge of likenesses.’”

Imam al-Ghazzali wrote, “The scholar is the heir of the Prophet, God’s prayer and peace be upon him, only if he is thoroughly acquainted with all of the shari’a’s meanings. Its meanings and underlying rationales are attained at first only by the prophets, and they are discovered through reasoning, after the prophets’ instruction about them, only by the ‘ulama’, who are the heirs of the prophets, upon them be peace.”

He also wrote, “The specific regulations are known through the basic legal principles, not on the basis of those principles’ literal meanings, but on the basis of implied meanings. For example, the saying of the Prophet, upon him be peace, ‘The judge should not issue a decision when he is angry,’ is also understood to imply that he does not judge when he is in discomfort because of hunger, pain from an illness, or a need to urinate.”

Shaykh Muhammad ‘Abduh [modernist Egyptian religious scholar, 1849-1905; see chapter 3], God have mercy upon him, wrote, “How much stubborn ignorance is removed solely by maintaining clear distinctions between categories? Who could get confused about the meaning of jurisprudence in the Prophet’s saying, prayers and peace be upon him, ‘To whomever God wishes well, He gives understanding of religion?’ One may hold the view that jurisprudence consists of cramming in one’s mind shari’a rulings issued by specialists in deriving regulations, without distinguishing between perceptive ones and those who blindly imitate precedent. You can eliminate the confusion for such an arrogant one and remove his ignorance by saying, ‘Knowledge of shari’a ordinances falls into two categories. One type consists of perceiving the intentions of the law in every ruling and understanding the underlying rationale of its ruling in every ordinance. God provided laws for his servants so that they may enjoy happiness in both worlds; that purpose does not change from one age of history to another, and it is unconditional. The perceptive individual finds application for the basic legal principles in all eventualities, however much people’s conditions change, as long as people endure. The only one who has this quality is the judicious believer who hears and hearkens to God’s call with his heart and mind, not with arrogance and pride.

“The second type takes the forms of rulings from numerous disputations and crams them with the ideas of one partisan side in a kind of battle of minds, knowing only that something came from somebody without looking at the time and place of the speaker or the opinion. This type gets the same result for both the believer and the unbeliever. A good person, a wicked person, one who suspends the law with legal fiction, one who acts according to the law, one who stands at its limit: All reach the same conclusion.”

“If the categories are kept distinct, then confusion disappears, and the meaning is made clear, even to simpletons.”

Imam Wali Allah al-Dihlawi [Indian religious scholar, 1703-1762] wrote, “Knowing the purposes on which rulings are based is an exact science. Only
an individual with a refined mind and upright understanding delves into it. The Companions [of the Prophet] who were jurisprudents learned the rules of deriving specific regulations, of making things easy, and of religion by witnessing the circumstances in which commands and prohibitions were issued, just as the doctor's students know the purposes of the medicines that he prescribes by long practice and experience. The Companions attained the highest rank in knowing the law's purposes."

Part Three: On how the Companions, the Successors, and the founders of the madhahib used analogy and reasoning to derive specific regulations for events that are not stipulated in the Qur'an or the sunna.

*Imam* [Muhammad] Ibn al-Qayyim [al-Jawziyya, religious scholar, Damascus, 1292-1350] wrote, "When one seeks to know the ruling for something, one should first consult the Qur'an. If it contains no ruling, then one consults the *sunna*. If that contains no ruling, then one consults the rulings of the rightly guided caliphs [the first four successors to the Prophet], and then the sayings of the Companions, God be pleased with them. If none of these sources contains a ruling, then one performs *ijtihad* and seeks the closest ruling in the Qur'an, in the *sunna* of God's Messenger, God's prayer and blessing upon him, and in the rulings of his Companions.

"The Companions allowed this practice, they acted on it, and they affirmed each other's practice. It is related from Abu 'Ubayda [companion of the Prophet, circa 581-639], Abu Nu'aym [religious scholar, Hijaz, died circa 813] that 'Umar ibn al-Khattab [companion of the Prophet and second caliph, 634-644], God be pleased with him, wrote to Abu Musa al-Ash'ari [companion of the Prophet, died 662], 'The office of judge is a well-established duty and an established custom. So understand that when litigants seek a decision on a matter that is not in the Qur'an or the *sunna*, you should use analogy and know like examples that are the basis for analogy. Then resolve on what you think is most beloved to God and what is most likely to be right.'"

Ibn al-Qayyim further wrote, "'Umar's instruction to use analogy for cases not covered in the Qur'an or the *sunna* is an authority for proponents of using analogy in *shari'a*. They have said, 'This letter from 'Umar to Abu Musa was not rejected by any Companion. They agreed that rulings could be issued on the basis of analogy. It is one of the basic principles of the *shari'a* and it is indispensable for the jurisprudent. God guided His servants to use it for situations not covered by His book [the Qur'an]. He compared the second generation to the first generation in various places. He made the first generation the root and the second its branch. He compared the life of the dead after death to the life of the earth after the death of vegetation. He compared all new creation, which his opponents denied, to the creation of the heavens and earth—just as the second generation followed the first. He compared life after death to awakening after sleep. He coined comparisons and used them in various instances. They are all rational comparisons by which He instructs His servants to realize that the ruling of something is the ruling of its like. All likenesses are the bases of comparisons from which are known the rulings of similar things. The Qur'an contains around forty examples that include the comparison of a thing to its like and show that they have the same ruling. God, be He exalted, said, 'These are likenesses we offer the people, but only those who are knowledgeable understand.' [Qur'an, Sura 29, Verse 43] Using analogy in coining likenesses is a property of the mind. God gave people the instinct and the mental ability to detect similarity in two similar objects, to reject the notion that they are dissimilar, to distinguish between two different objects, and to reject the notion they are similar. It is said that the axis of inferential reasoning in its entirety involves equating similar objects and keeping separate different objects."

It is well known that 'Ali ibn Abi Talib [the Prophet's son-in-law and fourth caliph] and Zayd ibn Thabit [a companion of the Prophet] used analogy for determining inheritance in the case of a grandfather and brothers. 'Ali likened their relationship to a torrent from which there branch out tributaries, then tributaries of tributaries. Zayd compared their relationship to a tree from which a limb branches off, and then limbs of limbs. Their view was that the grandfather does not preclude the brothers from inheriting. ['Abdullah] Ibn 'Abbas [619-686] compared molars to fingers and said, "Take them as an example of a comparison." Muhammad ibn al-Hasan [al-Shaybani, Hanafi scholar, circa 750-805] said, "Whoever knows the Book and the *sunna*, the sayings of the
Companions of the Messenger (God’s peace and blessing upon him and his family), and the findings of the Muslim jurisprudent—the ability to perform *ijtihad* on whatever new situation may arise, and they may judge accordingly, and practice accordingly in their prayer, fasting, pilgrimage, and indeed any religious duty or prohibition. If they perform *ijtihad* and study the case, comparing the case at hand to its most similar analogue, and they are unable to act on this, or if they err, they must say so.

The *Imam al-Haramayn* [the *Imam* of Mecca and Medina, that is, Abu’l-Ma’ali al-Juwayni, 1028–1085] said, “The basic issue in this matter is the *hadith* [saying of the Prophet] related by Mu’adh [ibn Jabal, companion of the Prophet died 627], God be pleased with him, and reported by *hadith* collectors Abu Da’ud [al-Sijistani, died 889], [Abu ‘Isa Muhammad] al-Tirmidhi [died 892], and [Ahmad ibn al-Husayn] al-Bayhaqi [994–1066]. The *hadith* concerns the time when the Prophet, God’s blessings and peace be upon him, wanted to send Mu’adh to Yemen. The Prophet said to him, ‘How would you act as judge?’ He said, ‘I would judge by God’s book.’ The Prophet then said, ‘And if you do not find a ruling in God’s book?’ He said, ‘By the *sunna* of God’s Messenger.’ The Prophet then said, ‘And if you do not find it there?’ He said, ‘I would perform *ijtihad* and spare no effort,’ and he struck his chest. Muhammad said, ‘Praise God to give success to the messenger of the Messenger of God, as he has pleased the Messenger of God.’ This *hadith* may not come from either of the two major canonical *hadith* collections [those of al-Bukhari, died 870, and Muslim ibn al-Hajaj, died 875], but it is rated as sound in another collection. It is sound indeed. Al-Haftz Ibn Hajar [al-‘Asqalani, Egyptian religious scholar, 1372–1449] wrote, ‘Abu al-‘Abbas [al-Tabari] Ibn al-Qass [jurist, died circa 946] relied in establishing the soundness of a *hadith* on studying with the leaders of jurisprudence and *ijtihad*, and he said that this is sufficient to dispense with rote learning of *hadiths* from specialists.’”

From this *hadith* it may be gleaned that the Lawgiver determined the mujtahid’s [method of] ruling. It is one of God’s laws by His decree. [Muhyi al-Din] Ibn ‘Arabi [Iberian religious scholar, 1165–1240] refers to this: “All of the mujtahids have a firm foothold in the prophetic heritage and are the heirs of the prophets in deriving specific regulations. But they do not possess the law, because if it were not for the material which the Lawgiver gave them from His law, they would not be able to derive laws.”

Part Four: On the necessity of *ijtihad* about new occurrences; that the way to know them is by *ijtihad*, not *taqlid* [imitation of a leading religious scholar].

In every age novel occurrences must inevitably come under some ruling. Whoever is asked about them must issue a legal opinion after striving to the utmost to reach the proper decision. It is well known that a religious judge either belongs to a particular legal school or is independent (as I explained at length in my book, *The Legal Opinion in Islam*). Al-Ghazzali wrote, “It is agreed that if one exhausts *ijtihad*, and a particular ruling appears to be correct, then one is not allowed to follow its contrary, act on any other opinion, and abandon one’s own opinion. But if one has not yet undertaken *ijtihad* and has not studied the matter, and if one is incapable of *ijtihad*—as commoners are—then he may resort to *taqlid*. There is disagreement, however, as to whether a scholar capable of *ijtihad* must perform it, or if he is permitted to imitate somebody else, even if the scholar has researched an issue, studied the evidence in order to reach an independent opinion, and is not deficient in learning.” The Judge [al-Ghazzali] chose to forbid a scholar from imitating anyone else. He felt this was appropriate, and he cited as evidence the Qur’anic passages:

> So take heed, O people of vision! [Sura 59, Verse 2]
> Those who ponder would have known it. [Sura 4, Verse 83]
> Do they not contemplate what the Qur’an says, or have their hearts been sealed with locks? [Sura 47, Verse 24]
> In whatever matter you disagree, the ultimate judgment rests with God. [Sura 42, Verse 10]

If you are at variance over something, refer it to God and the Messenger. [Sura 4, Verse 59]

“All this amounts to a command to ponder and investigate; it is not addressed to commoners; it is addressed only to religious scholars. The imitator abandons contemplation, reflection, and investigation.”

Al-Ghazzali goes on to say, “*Taqlid* is accepting another’s opinion with no proof; it is not a path to knowledge in either basic legal principles or specific regulations. Sophists claim that the path to knowing the truth is *taqlid*, and that *taqlid* is obligatory. The
falseness of their view is demonstrated in a number of ways. We oppose their opinion with the following passages from the Qur'an:

Do not follow that of which you have no knowledge. [Sura 17, Verse 36]

Speak lies of God you cannot even conceive.' [Sura 2, Verse 169]

We bear witness to only what we know. [Sura 12, Verse 81]

Say, 'Bring your proof.' [Sura 1, Verse 111]

"All of this is about imitation and the command to seek knowledge. Therefore, the 'ulama' have high standing. The Qur'an says, 'God will raise those of you who believe and those who have knowledge to high ranks.' [Sura 58, Verse 11] Muhammad (peace be upon him) said, 'The men of rectitude in every generation bear this knowledge, they banish from it the distortions of the excessively zealous, the interpretations of the ignorant, and the presumptions of liars. This is not attained by imitation but by knowledge.'" Thus wrote al-Ghazzali. From these words it is known that in order to discover rulings for novel occurrences, one must have recourse to the possessors of knowledge, namely, the mujtahids. There is no way to know the rulings or to assure the heart on such matters except by ijtihad, as al-Ghazzali (God be pleased with him) stated.