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By Hashim Bata

Exploring the Mind of God

An Introduction to Shiʿite Legal Epistemology

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Preface

Shiʿite Muslims advocate that knowledge of Sharia (normally translated as Islamic law) can only be disclosed to believers by an infallible (*maʿṣūm*) being. The condition of infallibility (*ʿiṣma*) ensures that Sharia knowledge is communicated in an accurate manner without any distortion. This is important because Sharia lays down guidance and instructions that ensure order and regulation in all spheres of a believer's life. If diligently followed, Sharia ensures that believers can attain prosperity and perfection in both spiritual and socio-communal aspects of their lives, together with being granted salvation in the hereafter. Shiʿites accept God, the Prophet Muḥammad (d. 632), and the Twelve Imams as infallible Divine Lawgivers (*shāriʿ*), who can never err in disclosing Sharia knowledge to believers. However, around the late 9th and early 10th century CE, Twelver Shiʿites lost direct access to infallible individuals. Since then, and until the present day, knowledge of Sharia is predominantly provided to the majority of Shiʿite Muslims by a clerical class of Shiʿite jurists-cum-theologians.[1]

Modern, or post-19th century, legal discourse of Shiʿite clerics emphasises that all human actions are governed by Sharia precepts (*aḥkām*) that exist in objective reality (*wāqiʿ*) or in the Mind of God.[2] As such, actions are categorised as either being obligatory (*wājib*), prohibited (*ḥarām*), recommended (*mustaḥabb*), disliked (*makrūh*) or permissible (*mubāḥ*) by Sharia (or by God). For example, without considering any extenuating circumstances, the action of 'lying' is normally categorised as being prohibited by the Sharia, whereas the action of 'giving charity' is obligatory. These categorisations can be found in the works of *fiqh*, wherein learned clerics (also known as *fuqahāʾ*) present their deductions of Sharia knowledge in the form of edicts (*fatāwā*).

The process undertaken to deduce Sharia knowledge is known as *ijtihād*. The term *ijtihād* can be described as a fallible human endeavour of exploring the Mind of God (or objective reality) in the absence of an infallible guide. The practitioner of *ijtihād*, i.e., the cleric, is recognised as a *mujtahid* – a jurist, who

1 By jurists-cum-theologians I refer to Shiʿite scholars who, in addition to teaching and producing works in jurisprudence and/or legal theory, are also recognised for teaching and producing dogmatic and authoritative works in theology. Their juristic disposition is shaped by their theological commitments.

2 For instance, see Momen, *An Introduction to Shiʾi Islam*, 187; al-Anṣārī, *Farāʾid al-Uṣūl*, 4 vols., 1:25.

is typically a male person that has the necessary qualifications to deduce Sharia knowledge. He receives this recognition after graduating from traditional Shiʿite seminaries known as *Ḥawza ʿIlmīyya*. As a seminarian, he is exposed to a range of Islamic disciplines (*al-ʿulūm al-Islāmiyya*) that aid and shape his exploration and deduction of Sharia knowledge. Some of the more common disciplines that are studied across different Shiʿite seminaries include, theology (*ʿilm al-kalām*), Arabic morphology and grammar (*ṣarf wa nawḥ*), logic (*manṭiq*), and a study of juristic deductions (*fiqh*) of past clerics. Amongst these, an important seminarian discipline that has immense relevance in influencing and determining the outcome of juristic deductions is *ʿilm uṣūl al-fiqh*.

Uṣūl al-fiqh, which I hereon refer to as legal theory, is defined as a study of general principles that provide a systematic framework for deducing Sharia knowledge. In other words, it is a discipline whose study provides clerics/jurists with a rationalist method of 'how' to deduce Sharia knowledge – or more specifically knowledge of Sharia precepts (*aḥkām al-Sharia*) – in the absence of an infallible guide. Muḥammad Bāqir al-Ṣadr (d. 1980), an illustrious Shiʿite legal theorist, famously compares the function of legal theory to the function of logic. He explains that just as logic (or the seminary study of *manṭiq*) provides general principles whose application ensures a correct way of thinking and rational deduction, legal theory provides general principles whose application ensures correct juristic deduction of Sharia.[3] Saying this, Shiʿite legal theorisers (also referred to as Uṣūlīs), such as Ṣadr, usually position themselves as fallibilists (*mukhaṭṭiʾa*).[4] By subscribing to the notion of fallibility (*takhṭiʾa*), they maintain that although it is epistemologically possible to know or deduce knowledge of Sharia precepts as they ontologically exist in objective reality or in the Mind of God through the process of *ijtihād*, the *ijtihād* of a jurist can either be accurate or inaccurate. If accurate, then a jurist's deduction corresponds to that which is in the Mind of God, and a jurist is rewarded for his efforts. However, if inaccurate, whereby a jurist's deduction fails to correspond with (or even contradicts) that which is in the Mind of God, then God has the right to hold him accountable for erring and possibly even subject him to chastisement in the hereafter. To be absolved from this accountability, the fallibilist position deems that a jurist must operate within stipulated boundaries of a rationalist legal theory. Since Shiʿite fallibilists theologically acknowledge God to be Just and Rational (or the Head of all rational beings), they propound that

3 al-Ṣadr, *Durūs fi ʿilm al-uṣūl*, 2 vols., 1:42–43.

4 See Damad, "The Reception of Factuality (*taṣwīb*) Theories of *Ijtihād* in Modern Uṣūlī Shīʿī Thought", 10–13, 16; Ṣadr, *Durūs*, 2:14.

if a jurist errs by following a legal theory whose assumptions and underpinnings are established with sound logical demonstration and rational reasoning, then he is not held accountable by God.

Considering the emphasis placed on having a sound legal theory, and the influence it has in shaping juristic deductions, I wish to introduce readers to the legal epistemology that is propounded within the modern Shiʿite disclosure of legal theory. My study presents what I term 'fundamental epistemological underpinnings' that are upheld by Shiʿite jurists-cum-theologians. These underpinnings include, 1) the non-authoritativeness of conjecture (*ẓann*), 2) the authoritativeness of certainty (*qaṭʿ*), and 3) the authoritativeness of substantiated conjecture (*ẓann al-muʾtabar*). Based on these underpinnings, Shiʿite legal theorisers examine the evidentiary nature of different evidence (whether they are independent sources of evidence or hermeneutical methods of interpretation) and evaluate whether they are authoritative in disclosing Sharia knowledge. Only after evidence is determined to be authoritative can a jurist utilise it in *ijtihād*. My study, therefore, offers readers a critical presentation of how in the works of legal theory (*uṣūl al-fiqh*), prominent modern Shiʿite legal theorisers argue for, and justify, these fundamental epistemological underpinnings.

I believe that this introduction is important because several commentators on Islamic or Muslim law, whether they be Muslim or non-Muslim academics, activists, journalists etc., often allude to its incompatibility (or the non-compatibility of Sharia) with several facets of modernity. They mostly claim that Sharia, or at least its orthodox interpretation, is responsible for creating fundamentalist tendencies that prevent Muslims from enjoying complete privileges of modernity that generally range from freedom of expression and thought to advancements made in areas of technology, science, politics, society, culture, and academia. Moreover, these tendencies feed the rise of terrorism and violence amongst Muslims, and escalate issues of sectarianism, poverty, ignorance, gender inequality, cultural segregation, and unaccountable political structures.[5]

For instance, an archetypal illustration of incompatibility between 'Islamic Law' and 'modernity' can be found in the orthodox understanding of Sharia precepts relating to apostasy. Muslim jurists normally describe an apostate as a Muslim who renounces or abandons Islam, irrespective of whether they subsequently embrace another faith. They assert that Sharia (or God) ordains a

5 For similar criticisms see Khan, "The Reopening of the Islamic Code: The Second Era of Ijithad", 341–85; Lewis, *What Went Wrong*.

fixed penalty (*ḥadd*) of death for a male apostate, and stipulates that it is the responsibility of a sovereign to execute it.[6] Accordingly, the praxis of death penalty for apostasy is included as part of civil law in many majority-Muslim nation states.[7] This praxis, however, contravenes ethical values and standards promoted by modern conventions and institutions that – at least in theory – propound that all human beings are entitled to fundamental freedoms and basic human rights. For example, the post-World War II construction of the Universal Declaration of Human Rights categorically stipulates that every human has the autonomy and freedom to choose or change his or her religion or belief.[8] Although the notion of 'universal' human rights is sometimes criticised for being overly western/eurocentric,[9] it, nevertheless, is adopted by many modern nation-states that are home to many Muslims. This highlights that the irreconcilability between Sharia and modernity not only has repercussions for believers who reside in Muslim nation states, but also for those who reside in non-Muslim states, as it creates a dichotomy between religious law and secular/civil law.

6 It must be noted that Shiʿite law forbids that a female apostate be executed by the death penalty; instead Shiʿite *mujtahids* have claimed that she should be punished with solitary confinement during which she should be beaten during the hours of prayer (*ṣalāt*). For a comprehensive overview of how laws of apostasy have been deduced by Muslim jurists and implemented by Muslim states, see Griffel, "Apostasy". For authoritative work on Shiʿite juristic deductions (*fiqh*) regarding the law of apostasy see al-Najafī, *Jawāhir al-Kalām fi Sharḥ Sharāʿi al-Islām*, 14:637–65. For a general overview of Shiʿite juristic opinions regarding apostasy see Azizan, *Thoughts on 'Apostasy in Islam'*.

7 For countries that continue to criminalise apostasy see the 2014 report by The Law Library of Congress retrieved 19th June 2018, from https://www.loc.gov/law/help/apostasy/apostasy.pdf.

8 See Article 18 of the Universal Declaration of Human Rights, which states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." The law of apostasy also opposes Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and the 1981 Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion and Belief. See Garces, "Islam till death do you part: rethinking apostasy laws under Islamic law and international legal obligations".

9 See Ignatieff, "The Attack on Human Rights"; regarding how the modern discourse of human rights has been criticised to be incompatible with the Muslim tradition, see An-Naʿim, *Toward an Islamic Reformation*, 162; Bennett, *Muslims and Modernity*, 65; regarding the critique on how the philosophical foundations of the modern discourse of human rights are Western and Eurocentric in nature, see Almond, "Rights."

Progressive Muslim thinkers often assert that the gulf between Sharia and modernity is created by the orthodox juristic process of *ijtihād*.[10] Specific access to progressive Shiʿite scholarship that carefully untangles the relationship between orthodox *ijtihād* and modernity in English language is scarce. Since Shiʿism has been adopted as the official state religion of Iran since around the 16th century, the majority of Shiʿite progressive thought, as one might expect, originates from Iran and/or is intertwined with Iranian politics. Nevertheless, some ideas of certain progressive Shiʿite public intellectuals, such as Abdolkarim Soroush, Mohsen Kadivar, Mohammad Mojtahed Shabestri, Abolqasem Fanaei, and Arif Abdul Hussain (who is not Iranian, though he studied in Qum, Iran) go beyond Iranian politics. In essence, their central point of contention with orthodox jurists is that in their process of *ijtihād* they overly rely on deducing Sharia knowledge from textual or revelatory sources of evidence (such as the Quran and *sunna*) and interpret them in their apparent literal meaning. For progressive Shiʿites, the literalist approach favoured by orthodoxy is perhaps the major factor that hinders their dynamism in finding adequate Sharia responses to challenges of modernity. As such, in their attempt to reconcile values promulgated by Sharia and modernity, progressive Shiʿites generally propose that jurists must deduce Sharia knowledge by utilising a wider range of rational (*ʿaqlī*) evidence and hermeneutical methods of interpretation that promote reading textual sources in the context in which they were revealed.[11] However, because orthodox Shiʿite legal, social and authority structures have for centuries been embedded and justified with the traditional method of *ijtihād*, the opinions of progressive thinkers are perceived to challenge the existence of orthodox structures and the overall influence orthodox clerics enjoy over the Shiʿite laity.[12] The heterodoxic ideas of

10 For a comprehensive survey of the Progressive Muslim thought see Duderija, *Constructing Religiously Ideal "Believer" and "Woman" in Islam*; Esack, "In Search of Progressive Islam Beyond 9/11"; Moosa, "The Debts and Burdens of Critical Islam". Johnston, "A Turn in the Epistemology and Hermeneutics of Twentieth Century uṣūl al-fiqh"; Kalanges, "Sharia and Modernity"; Dahlen, *Islamic Law, Epistemology and Modernity*.

11 For instance, see Cooper, "The Limits of the Sacred"; Vakili, "Abdolkarim Soroush and Critical Discourse in Iran"; Soroush, "Intellectual Autobiography: An Interview", ix–xix; Vahdat, "Post-revolutionary Islamic modernity in Iran: the intersubjective hermeneutics of Mohamad Mojtahed Shabestari"; Hussain, *Islam and God-Centricity*; Kadivar, "Revising Women's Rights in Islam: 'Egalitarian Justice' in Lieu of 'Deserts-based Justice'"; Kadivar, "From Traditional Islam to Islam as an End in Itself"; also see Wielandt, "Main Trends of Islamic Theological Thought".

12 For a close study of how social, political, legal, and authority structures are embedded and justified within orthodox Shiʿite jurisprudence see Mavani, *Religious Authority and Political Thought in Twelver Shiʿism*.

progressive Shiʿite thinkers (including progressive seminarian insiders) have in many instances resulted in their excommunication or defrocking by the force of orthodox clerics.[13] Whilst a critical study of the opinions and reception of progressive thinkers is both important and interesting, it nevertheless falls outside the scope of my study. Rather, by introducing readers to the orthodox discourse of legal epistemology, my study specifically focuses on how and why Shiʿite clerics justify their preference towards a literalistic approach in the process of *ijtihād*.

I maintain two important assumptions in my study. Firstly, I assume that the clerical class of Uṣūlī jurists represent Shiʿite orthodoxy. I understand that many writers claim that, unlike Christianity, Islam lacks the notion of orthodoxy; it does not devise official structures of religious authority, hierarchy, or an ecclesiastical office that oversees 'correct beliefs' or the 'official creed' of Islam. Despite this, however, many heterodox ideas, including those promulgated by Muslim progressives, are usually downplayed, or not adopted by Muslims.[14] This has led some academics to rightly assert that Islam has a tacit notion of orthodoxy that is somewhat connected to the notion of authority and power.[15] In the specific case of Shiʿism, it is found that in recent decades, due to the overwhelming centrality of Shiʿite majority countries in what may be described as the Middle Eastern Turmoil, there has been a significant inflow of important English-language works that critically describe its orthodox authority structures. These works rather unanimously place the clerical class of Shiʿite Uṣūlī (rationalist) jurists as respected political and/or religious leaders of a large portion of approximately two hundred million Twelver Shiʿite Muslims. They show that the continued bestowal of esteemed titles such as *marjaʿ al-taqlīd* (Grand Ayatollah), *walī al-faqīh* (Guardian Jurist), *ḥujjat al-Islām* (Authority of Islam), *nāʾib al-imām* (Representative of the Hidden Imam) etc. signifies that Shiʿites around the world identify members of the clerical class as the voice of Shiʿite orthodoxy.[16] Secondly, I assume that the discourse of legal theory (*uṣūl al-fiqh*) has relevance in determining the juristic outcomes of clerics.

13 As defrocking is officially recognised in Iranian law, we find many reports of cases where progressive Muslims have been defrocked from the clerical class, for instance see Amanat, *Iran*, 808; Parsa, *Democracy in Iran*, 77, 174.

14 See Langer and Simon, "The Dynamics of Orthodoxy and Heterodoxy"; Dnis MacEoin, "Orthodoxy and Heterodoxy in Nineteenth-Century Shiʾism"; Asad, "The Idea of an Anthropology of Islam".

15 For instance, see Asad, "The Idea of an Anthropology of Islam," 22–3; Langer et al. "The Dynamics of Orthodoxy and Heterodoxy", 281.

16 See Said Amir Arjomand, *The Shadow of God and the Hidden Imam Religion*; Sachedina, *The Just Ruler in Shiʿite Islam*; Moussavi, *Religious Authority in Shiʿite Islam*; Stewart, *Islamic Legal Orthodoxy*.

I am aware that some academic studies render the relevance of Muslim legal theory as being nominal. They claim that since its inception, Muslim legal theory never had a real impact upon determining juristic outcomes. Rather, it came into existence merely to offer systematic justifications to pre-occurring juristic deductions and prominent social practices of the formative Muslim society.[17] Although this may be true, orthodox Shiʿite Uṣūlīs (such as the aforementioned Muḥammad Bāqir al-Ṣadr) continue to describe legal theory as a discipline that provides general principles whose application ensures the correct juristic deduction of Sharia knowledge.[18] Moreover, as a graduate of a Shiʿite-seminary programme, I have personally witnessed numerous classes, seminars, and workshops wherein clerics make reference to concepts discussed in legal theory to support and justify their juristic opinions.

In chapter 1, I trace the origins and major developmental stages of Shiʿite legal theory across its formative, medieval, and modern periods of history. By largely focusing on secondary English literature, I examine how, after the major occultation of the Twelfth Shiʿite Imam, Shiʿite jurists-cum-theologians constructed a systematic discourse of legal theory that countered essential questions of how Sharia knowledge is accessed in the absence of infallible leadership, and who has the authority to access it. This chapter attempts to show that the creation of a sophisticated, yet reasonably comprehensive, legal theory has been a key feature that ensures that the clerical class of rationalist jurists continues to represent the voice of Shiʿite orthodoxy. In the final part of this chapter, I underline some prominent modern jurists-cum-theologians whose works on legal theory shape the orthodox discourse of Shiʿite legal epistemology. Using their respective works as primary sources, I explain how they understand the remit of legal theory (or the subject matter of *uṣūl al-fiqh*) and conceptually describe the important notion of authoritativeness (*ḥujjiyya*). Based on this, they effectively construct a legal epistemology that determines the evidence that can be utilised in the juristic deduction of Sharia knowledge (or *ijtihād*).

I present the first epistemological underpinning, known as '*adam al-ḥujjiyyat al-ẓann*' or 'the non-authoritativeness of conjecture,' in chapter 2.

17 For instance, see Schacht, *An Introduction to Islamic Law* 60; Sherman A. Jackson, "Fiction and Formalism: Towards a Functional Analysis of *Uṣūl al-Fiqh*" in Bernard G. Weiss (ed.) *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 178. Hallaq, "*Uṣūl al-fiqh*: Beyond tradition".

18 For instance, see Ṣadr, *Durūs*, 1:42–43; Rūḥallāh al-Khumaynī, *al-Rasāʾil al-ʿAshra*, 3–4; Abū Qāsim al-Khūʾī, *Mabānī al-Istinbāṭ*, 1:4–9; Muḥammad Riḍā al-Muẓaffar, *Uṣūl al-Fiqh*, 2 vols. (Qum: Maktab al-Aʿlām al-Islāmī, 1964), 1:15–19, 2:15–18; Muḥammad Ḥusayn al-Iṣfahānī, *Nihāyat al-Dirāya fī Sharḥ al-Kifāya*, 1:39–40.

In accordance with this underpinning, it is impermissible for a jurist to utilise any evidence that generates conjectural (*ẓannī*) knowledge of Sharia in *ijtihād*. This underpinning is normally upheld as a distinctive core pillar of modern Uṣūlī legal theory. I start this chapter by explaining that modern Uṣūlīs understand the nature of conjecture in relation to their understanding of certainty. Thereafter, I examine the range of scriptural and contrasting rational arguments they offer to prove the non-authority of conjecture and thereby the impermissibility of the juristic utility of evidence that generates conjectural Sharia knowledge.

In chapter 3, I present the second epistemological underpinning of Shiʿite legal theory, known as '*ḥujjiyyat al-qaṭ°*' or 'the authoritativeness of certainty.' In accordance with this underpinning, a jurist must utilise any evidence that generates certainty-bearing or definitive (*qaṭʿī*) knowledge of Sharia in the process of *ijtihād*. I divide this chapter into three parts. In the first part, I uncover how modern Uṣūlīs generally define certainty (*qaṭʿ*) and describe its epistemological relationship with knowledge (*ʿilm*). In the second part, I critically evaluate the philosophical or epistemological justifications modern Uṣūlīs present to defend their claim that certainty (or evidence that generates definitive knowledge of Sharia), by its very existential nature, accurately reflects that which is in the Mind of God or objective reality (*wāqiʿ*). Based on their understanding of the existential nature of certainty, in the final part of this chapter, I present the range of arguments modern Uṣūlīs offer to formulate the authoritativeness of certainty (or definitive forms of evidence) in the deduction of Sharia and the obligatory nature (*wujūb*) of its juristic utility in *ijtihād*.

The final epistemological underpinning, known as '*ḥujjiyyat al-ẓann al-muʾtabar*' or 'the authoritativeness of substantiated conjecture,' is presented in chapter 4. In accordance with this underpinning, a jurist can deduce Sharia knowledge from conjectural forms of evidence whose authoritativeness is substantiated or sanctioned by God. In this chapter, I illustrate that despite upholding the general non-authoritativeness of conjecture, Uṣūlīs profess to two distinct theories that they claim, if applied correctly, can substantiate the authoritativeness of some conjectural forms of evidence and reveal that God approves their juristic utility in *ijtihād*. I divide this chapter into two parts. The first part introduces readers to the theory of *insidād*. According to this theory, unless proven prohibited by a definitive evidence, a jurist is permitted to utilise any form of evidence that generates conjectural knowledge of Sharia. In the second part, I introduce readers to the contrasting theory of *ẓann al-khāṣṣ*. According to this theory, unless proven permissible by definitive evidence, a jurist is prohibited to utilise any form of evidence that generates

conjectural knowledge of Sharia. Since the latter theory is profoundly advocated amongst modern Uṣūlīs, in the final section of second part I demonstrate how Muḥammad Riḍā Muẓaffar (d. 1964) in his *Uṣūl al-fiqh* attempts to substantiate the juristic utility of one of the most important and wildly utilised conjecture-generating forms of evidence – *al-khabar al-wāḥid*, or the 'isolated report' – that conveys the tradition (*sunna*) of the Prophet and Shiʿite Imams.

As a Shiʿite Muslim brought up in the West, I have been fortunate enough to receive two forms of education: orthodox Shiʿite seminary (*Ḥawza*) and western academic. I have also directly experienced many theoretical and practical instances that emphasise the dichotomy between the orthodox understanding of Sharia and values promoted by, and within, western standards of modernity. Coming from an insider's perspective, in chapter 5 I critically evaluate the central epistemological assumption which modern Uṣūlī legal epistemology hinges upon. I explore whether there is space and precedence within the rationalist discourse of Shiʿite legal theory to adopt an alternative epistemological assumption (or epistemology) that facilitates Shiʿite orthodoxy to display greater dynamism in the way it responds to inevitable challenges of modernity and analyse the potential impact this can have on the future of *ijtihād* and Shiʿite authority structures.

Acknowledgements

As I mention in the book, by the grace of the Almighty, I have been fortunate enough to receive two forms of education. I completed a traditional seminary (*ḥawza*) programme at Al-Mahdi Institute in Birmingham, UK, and I also undertook my postgraduate studies at the University of Warwick. The training I received from both these institutions enabled me to gain invaluable insights into how to analytically read and write about classical Islamic texts, particularly in the fields of Islamic legal studies (*uṣūl al-fiqh* and *fiqh*), theology, and philosophy. The book is closely based on my doctoral research, which I conducted under the supervision of Professor Shaheen Sardar Ali at the University of Warwick. In the book, I attempt to critically present the seminarian discourse of Islamic legal epistemology using an academic framework of writing and analysis.

It would not have been possible for me to embark on this project without the unwavering support and assistance that was provided to me at Al-Mahdi Institute. I am indebted to all my teachers and colleagues, both for encouraging me and for equipping me with the skillset required to understand classical Arabic seminary texts. I am exceptionally grateful to my uncle and mentor, Shaykh Arif Abdul Hussain, who spent numerous nights sitting by my side to teach me complicated excerpts from *Kifāyat al-uṣūl* and *Farāi'd al-uṣūl*. This endeavour would also have not been possible without the help and guidance I received from Professor Mohammad Ghari Seyed Fatemi, Dr Abolqasem Fanaei, and Dr Ali-Reza Bhojani. I would also like to acknowledge the librarians at Al-Mahdi Institute, Mohsen Najafi and Adam Ramadhan, for finding and providing me with access to rich resources. A special thanks to Mr Sajjad Ebrahim, for patiently bearing with me over the many years it took for this book to be published.

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CHAPTER 1

Introduction to Islamic Legal Theory

After the demise of the Prophet in the 7th century, a young and expanding Muslim community was left without a leader. The charismatic personality of the Prophet coupled with his divinely bestowed ability to receive direct revelation from God naturally made him a trusted and authoritative source of spiritual, ethical, legal, and political leadership. The Arabic term used to embody the totality of Prophetic teachings is Sharia. In its broadest sense, Sharia refers to divinely ordained 'path' or 'way' of life that a Muslim is required to follow and act in accordance with. In a more restricted manner, it is popularly referred to as divinely ordained rules or precepts (*aḥkām*) that lay down instructions that can direct proper conduct in all spheres of a human being's life. In other words, it refers to God's law, or legal normativity.[1] Till today, Muslims accept Prophet Muhammad as the vessel through which God communicated His law to mankind. The Prophet is thus identified by Muslims as a Divine Lawgiver (*Shāriʿ*), or the appointed representative of God who conveys His Sharia. The immediate socio-political upheavals and uncertainties that surrounded the Muslim community after the death of the Prophet[2] forced a range of devout theologians and jurists to ask and respond to perhaps the most pertinent question of their time: how can God's Sharia be known in the absence of a Divine Lawgiver?

The epistemological question of how Sharia (in both its broad and restricted usage) is known in the absence of the Prophet necessarily leads to the question of who has the authority, legitimacy, and qualifications to deduce and promulgate Sharia knowledge. The vast range of responses historically given by Muslim scholars can perhaps be explained as one of the major contributing factors that shaped socio-political and theological schisms and sub-schisms within the Muslim community. Scholars and community leaders, whether they are theologians, hadith experts, jurists or even caliphs, held different opinions on how and who can arrive at Sharia knowledge. Differences in opinions were caused by the disparity of sources, methods, and foreign influences

1 See Peters and Bearman, "Introduction: The Nature of the Sharia", 1–3; Mallat, *The Renewal of Islamic Law*, 1–5.

2 For a thorough narrative of the immediate socio-political upheavals after the demise of the Prophet see Madelung, *The Succession to Muhammad*; Modarressi, *Tradition and*; Momen, *An Introduction to Shiʿi Islam*, 11–23; Hallaq, *The Origins and Evolution of Islamic*, 1–29.

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that scholars and community leaders were exposed to. This in turn brought about inconsistency and contradiction in their deduction of Sharia precepts, which provoked further division (and confusion) within an already fragmented Muslim community.

It was in the 9th century when mainstream Sunni-Muslim jurist-cum-theologians began to first conceive of a single systematic framework that could bring about consistency and agreement in the deduction of Sharia knowledge. The urgency of constructing a systematic framework was deemed paramount for two reasons. Firstly, since Sharia was accepted as having divine origin, whereby ordained Sharia precepts represented God's will for humankind, it was essential that contradictions between God's ordinances were resolved and minimised. The imperfection stemming from contradicting legal Sharia precepts raised theological concerns over the perfectness (or the perfect nature) of God. Accordingly, the objective of creating a systematic framework not only had legal ramifications (of bringing about consistency in God's Sharia), but was also a theological exercise that had theological ramifications.[3] Secondly, western commentators on Islamic law commonly suggest that the creation of a single systematic framework was deemed paramount as it ensured that the authority of Sharia, together with the authority of its promulgators and enforcers, was maintained across an expanded Muslim empire.[4] Indeed, having consistent and uniform legal norms was a step towards ensuring a better regulated empire that could be smoothly governed.

The drive for creating a single consistent systematic framework witnessed the emergence of a distinct genre of literature called *uṣūl al-fiqh* (literally, "the roots of understanding"), commonly glossed as the principles of Islamic jurisprudence or Islamic legal theory. In 1950, Joseph Schacht presented Muḥammad Idris al-Shāfiʿī (d. 820) as having played a central and decisive role in the embryonic development of Islamic legal theory.[5] Western scholarship on Islamic law after Schact continued to recognise Shāfiʿī as the founder or the 'master architect' of Islamic legal theory.[6] His work, *al-Risāla*, came to be

3 For works that describe how *Uṣūl al-fiqh* was largely shaped by theology see Zysow, "Muʿtazilism and Māturīdism in Ḥanafī Legal Theory"; Zysow, *The Economy of Certainty*, 1–5; Young, *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law*, 491–551; Gleave, "Deriving Rules of Law, 66–67; – Reinhart, *Before Revelation* –.

4 See Hallaq, *The Origins and Evolution of Islamic Law*, 203–4; Gleave, "Deriving Rules of Law," 57–60; – Calder, "Doubt and Prerogative –; Stewart, *Islamic Legal Orthodoxy*, 15.

5 Schacht, *The Origins of Muhammadan Jurisprudence*, 1–20.

6 For a comprehensive study on whether Shāfiʿī was the founder of *uṣūl al-fiqh* see Hallaq, "Was al-Shāfiʿī the Master Architect of Islamic Jurisprudence?"; Makdisi, "The Juridical Theology of Shāfiʿī: Origins and Significance of Uṣūl al-fiqh"; Lowry, "Does Shāfiʿī have a Theory of Four Sources of Law?".

acknowledged as the first treaty on the discourse of legal theory that influenced the production of subsequent literature in the genre. Western scholarship commonly asserts that the principal contribution of Shāfiʿī in *al-Risāla* was his innovative four-fold hierarchal categorisation of forms of evidence from which Sharia knowledge could be deduced. The four sources propounded by Shāfiʿī included the Quran, tradition (*sunna*) of the Prophet, consensus (*ijmāʿ*) and analogical reasoning (*qiyās*), which Shāfiʿī used interchangeably with the term *ijtihād*. However, the centrality of Shāfiʿī's role in discovering the Islamic discourse of legal theory was called into question in 1993 by W. B. Hallaq. Hallaq's examination of early and medieval Islamic historical sources leads him to conclude that it is "seriously flawed" to concede that Shāfiʿī was the founder of Islamic legal theory. Instead, he asserts that the image of Shāfiʿī as the master architect of Islamic legal theory was a later creation, and that his *al-Risāla* had no major influence during his lifetime or immediately after.[7] Like Hallaq, other western scholars have increasingly denied the centrality of Shāfiʿī in founding the discourse of legal theory and have therefore cast doubt over its historical origins. For instance, in his extensive study of *al-Risāla*, Joseph Lowry attempts to prove that it is inaccurate to suggest that Shāfiʿī innovated the four-fold hierarchal categorisation of Sharia evidence. Instead, he argues that Shāfiʿī's principal objective was to establish the overriding authority of the Quran and the *sunna* of the Prophet as the fundamental sources of Sharia knowledge.[8]

The emergence and origins of legal theory as a distinct genre of Islamic sciences remains subject to ongoing research and academic scrutiny. Perhaps the most fitting explanation is given by Jonathan Brockopp, whose research on early Mālikī scholars enables him to conclude that the seed of creating a single systematic framework of deducing Sharia knowledge may have been sown as early as the 8th century, but remained at a rudimentary level.[9] Nevertheless, it was Shāfiʿī's inchoate articulation of legal theory that gained significant traction by the 10th century, as many scholars produced works that were dedicated to commenting and criticising *al-Risāla*. This period therefore witnessed the emergence of new literature on the study of legal theory. Authors of this genre, who were now generally recognised as Uṣūlīs, were jurists-cum-theologians who not only devoted their intellectual prowess to propose theories of how Sharia knowledge ought to be deduced or accessed, but also professed their

7 Hallaq, "Was al- Shāfiʿī the Master Architect of Islamic Jurisprudence?," 588. For a similar stance see Brockopp, "Competing Theories of Authority in Early Mālikī Texts"; Also see Gleave, "Deriving Rules of Law," 59–60.

8 Lowry, "Does Shāfiʿī have a Theory of Four Sources of Law?," 45.

9 Brockopp, "Competing Theories," 4.

theological perspectives on pertinent theological questions, such as the nature and purpose of Sharia and the Divine Lawgiver.[10] They developed a systematic framework that synthesised the role of revelation and reason.[11] Although they admitted that reason played a major role in the discovery of Sharia knowledge, they tended to agree that it cannot transcend the injunctions of revelation. By generally accepting the four-fold hierarchal categorisation of Sharia evidence (Quran, *sunna*, *ijmāʿ*, and *qiyās*), they thus managed to achieve a fine balance between the scope of human reasoning and a carefully categorised body of revealed texts. Moreover, since they accepted that human reason was dependent on revelation, Uṣūlīs expended great effort in developing interpretive techniques or hermeneutical mechanisms that allowed them to consistently analyse every revelatory statement to gain a coherent understanding of the intent of the Divine Lawgiver.[12]

By the middle of the 10th century, the major components of the Islamic discourse of legal theory were crystallised and this went hand in hand with the consolidation of Sunni legal schools (*madhāhib*, singular. *madhhab*). Hallaq explains that a legal school refers to a cluster of individual jurists who are loyal to a distinct and collective legal doctrine in accordance with an established

10 For post-tenth century development of Sunni *uṣūl al-fiqh* and its interrelationship with theology see Zysow, *The Economy of Certainty*, 4–5; Hallaq, *The Origins and Evolution of Islamic Law*, 128–32; Melchert, *The Formation of Sunni Schools of Law*, 68–83.

11 A synthesis between reason and revelation was paramount in the pre-*uṣūl al-fiqh* scholarly milieu, as two broadly distinctive camps of jurists existed; namely, the partisans of rational opinion (*ahl al-raʾy*) and the partisans of revelation (*ahl al-ḥadīth*). The partisans of revelation stressed that knowledge of Sharia precepts could be only deduced from revealed sources of evidence such as the Quran and sound reports (*ḥadīth*) of the tradition (*sunna*) of the Prophet. Accordingly, they devoted most their time in collecting and transmitting reports of the Prophet that elucidated Sharia precepts and theological articles of faith. On the other hand, the partisans of reason were highly critical of the partisans of revelation and accused them of collecting and accepting reports that contradicted reason, verses of the Quran, and the consensus (*ijmāʿ*) of the Muslim community. Instead they stressed that knowledge of Sharia precepts was deduced by reason, and accordingly professed the utility of sources such as *qiyās* (analogical reasoning) and *istiḥsān* (personal juristic preference) in the juristic deduction of Sharia precepts. They were, however, criticised by the partisans of revelation for not only abandoning the revelatory sources, but also because their undue reliance on reason led to contradictions and absurdities. See Hallaq, *The Origins and Evolution of Islamic Law*, 122–28; – Osman, *The Ẓāhirī Madhhab*, 92–3; Melchert, *The Formation of Sunni Schools of Law*, 1–13; Brown, *Hadith*, 150–84; Blankinship, "The Early Creed"; Coulson, *A History of Islamic Law*, 60–1.

12 For a detailed study of the sources of evidence and hermeneutical methods propounded in Sunni *uṣūl al-fiqh* see Hallaq, *The Origins and Evolution of Islamic Law*, 129–49; Zysow, *The Economy of Certainty*, 7–277; Kamali, The *Principles of Islamic Jurisprudence*; Weiss, *The Spirit of Islamic Law*.

methodology that is exclusively attributed to an eponym or a master-jurist.[13] The eponymous founders of the four presently surviving mainstream Sunni legal schools are Abū Ḥanīfa (d. 772), Mālik ibn Anas (d. 795), Muḥammad ibn Idrīs al-Shāfiʿī (d. 820), and Aḥmad b. Ḥanbal (d. 855).[14] These figures have historically been acknowledged by mainstream Sunnis as absolute jurists (*mujtahid*) or Imams who are due high reverence for their tremendous knowledge of the Quran, the *sunna*, and theology. Although historically suspicious, these figures were presented as axis of authority who laid down the systematic general principles of legal theory, which were subsequently adopted and developed by the cluster of jurists belonging to their respective schools as foundations for deducing Sharia knowledge.[15]

Although mainstream Sunni legal schools largely agree that knowledge of Sharia precepts is primely deduced from the four-fold hierarchal categorisation of Sharia evidence, they hold subtle variations in their works on legal theory on the basis of their theological persuasions. Western scholarship has produced some exceptional works on the interplay between Islamic theology and legal theory.[16] For instance, Aron Zysow elucidates that the major schools of Islamic theology, such as the Muʿtazilite, the Ashʿarite, the Māturīdī, and the Ahl al-Hadith (Traditionalist)[17] played a substantial role in shaping the formation and development of legal theory and legal schools.[18] We find that the theological discourse of the Muʿtazilite Schools of Baghdad and Basra had strong leanings towards reason and as such they justified many of their doctrinal positions regarding God, His nature and attributes, and His relationship with the world through rational axioms.[19] Although there were differences between the Ashʿarite School and the Māturīdī School,[20] they generally sought to justify

13 Hallaq, *The Origins and Evolution of Islamic Law*, 152.

14 Although there were other Sunni legal schools, they were weeded out by the 11th century. See Stewart, *Islamic Legal Orthodoxy*, 15.

15 For a comprehensive understanding of the formation of Sunni legal schools see Hallaq, *The Origins and Evolution of Islamic Law*, 163–4.

16 For instance, see Zysow, "Muʿtazilism and Māturīdism in Ḥanafī Legal Theory," 235–65; Zysow, *The Economy of Certainty*; Young, *The Dialectical Forge*; Gleave, "Deriving Rules of Law," 66–7; Reinhart, *Before Revelation*.

17 Also referred to as Aṣḥāb al-Ḥadīth or the Partisans of Traditions.

18 See Zysow, *The Economy of Certainty*, 1–5.

19 For a thorough study of the historical development of the Muʿtazilites and the theological doctrines they profess see el-Omari, "The Muʿtazilite Movement (I): The Origins of the Muʿtazila"; Bennett, "The Muʿtazilite Movement (II): The Early Muʿtazilite; Schmidtke, "The Muʿtazilite Movement (III): The Scholastic Phase"; Hourani, *Reason and Tradition in Islamic Ethics*, 57–118.

20 For an analysis of the difference between Ashʿarite and Māturīdī theological doctrines and how they historically converged see Berger, "Interpretations of Ashʿarism and Māturīdism in Mamluk and Ottomon Times", 693–703.

their theological doctrines by primarily utilising revelatory sources (Quran and *sunna*), and thus utilised reason as subordinate to revelation.[21] In contrast, the Ahl al-Hadith generally sought to justify their theological doctrines by strictly adhering to a literalist interpretation of revelatory sources and thus they adamantly denied the utility of reason, considering it as an innovation against God. Accordingly, during the consolidatory period of legal schools, the Shāfiʿī and Mālikī Schools adopted Ashʿarite theology;[22] the Ḥanafī School, who had previously upheld Māturīdī theological doctrines in North-Eastern Iran and Transoxiana, also started to adopt it in central lands of the caliphate;[23] and the Ḥanbalī School continued to uphold affiliation to traditionalist theology.[24]

When it came to the practical juristic process of deducing Sharia precepts (*ijtihād*), adherents of the Shāfiʿī, Mālikī and Ḥanafī Legal Schools generally had no issues (or relatively fewer issues) in accepting the utility of rational sources such as analogical reasoning (*qiyās*), personal juristic preference (*istiḥsān*), social interest (*istiṣlāḥ*) etc.[25] Whereas adherents of the Ḥanbalī School generally only accepted the utility of textual sources of Quran and *sunna*, and very reluctantly referred to 'secondary' sources in cases when the primary textual sources were silent.[26] It is important to note that the Ashʿarite and Māturīdī theological doctrines are today recognised as part of Islamic legal orthodoxy.[27] Perhaps an overarching reason for their continued success over time may be attributed to the fact that they profess doctrines that provide a theological backbone to the juristic agenda of subordinating the scope of reason to revelation.

Nevertheless, despite variations between the mainstream Muslim legal schools, the cluster of jurists belonging to them upheld that they had the

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21 For a thorough study of the Ashʿarite and the Māturīdī school see *ibid*, Thiele, "Between Cordoba and Nīsābūr: The Emergence and Consolidation of Ashʿarism"; Rudolph, "Hanafī Theological Tradition and Māturīdism"; Shihadeh, "Theories of Ethical Value in *Kalām*: A New Interpretation".

22 See Thiele, "Between Cordoba and Nīsābūr," 225–37.

23 *Ibid.*, 280–1.

24 For a thorough study of the Traditionalist theological doctrines see *ibid.*, 263–80; also, for a study of the interplay between the Ḥanbalī Legal School and Traditionalist theology see *ibid.*, 625–48.

25 Not all schools always agreed on what sources of law should be given preference to in the deduction of Sharia precepts, for instance Hanafi jurists displayed a preference for using *istiḥsān* (personal juristic preference), whereas the Maliki jurists displayed a preference for using *istiṣlāḥ* (social interest), see Hallaq, *The Origins and Evolution of Islamic Law*, 120–46; Makdisi, "Legal Logic and Equity in Islamic Law"; Kayadibi, *Istiḥsān*, 57–99.

26 See Jon Hoover, "Ḥanbalī Theology".

27 See *ibid*., 225; Hughes, *Muslim Identities*, 193; Saeed, *Islamic*, 43–73; Halverson, *Theology and Creed in Sunni Islam*, 12–33; Brown, *Hadith*, 180; Hourani, *Reason and Tradition*, 9.

relevant qualifications and legitimacy to speak on behalf of the Divine Lawgiver (or effectively, God). They possessed the aptitude and skillset to deduce Sharia precepts from a convincing systematic method that they themselves created. Their ability to exert maximum effort in using reason within the stipulated boundaries of legal theory allowed them to credibly deduce Sharia knowledge and find sound solutions for legal issues encountered by a relatively large Muslim empire. Their intellectual prowess in systematising the Muslim legal discourse in the absence of the Prophet was perhaps the main factor that enabled them to command authority and obedience from the Muslim masses, whereby they became respected social leaders of the Muslim populace. Apart from the Muslim masses, their profound social influence was also recognised by elite ruling political authorities, who chose to patronise and promote the juristic brand of Islam, as it conceivably protected the stability of the Muslim empire. Devin Stewart, in *Islamic Legal Orthodoxy*, elucidates that the consolidation of the mainstream Sunni legal schools went hand in hand with jurists becoming recognised as the clerical class amongst Muslims. He accurately points out that since their consolidation up to the present day, legal schools (or the overall juristic discourse) continue to dominate the interpretation of Islam and Muslim intellectual circles.[28]

It therefore becomes clear that the epistemological question of how God's Sharia (in both its broad and restricted usages) can be accessed or known in the absence of the charismatic Prophet Muḥammad, has most convincingly been answered by the clerical class of jurists. Their production of a systematic framework of legal theory and their access to primary sources of Sharia knowledge enabled them to appropriately fill the gap left behind by the Prophet. This in turn led to the creation of Islamic legal orthodoxy. The opinions of scholars that operated outside the orthodox Sunni legal schools were immediately shut down and considered as being heretical, as they were based on non-stipulated methods. Instead, only opinions, or consensus, of clusters of jurists that operated within recognised Sunni legal schools were deemed to hold authoritative value.[29] As such, Stewart points out that groups such as the Shiʿites and Muʿtazilites had to struggle for survival in front of the force of Sunni legal orthodoxy, which he claims, "became a structural or institutional feature of Islamic societies that would remain in force and indeed change very little until the twentieth century."[30]

28 See Stewart, *Islamic Legal Orthodoxy*, 15.
29 *Ibid.*, 65.
30 *Ibid.*, 66.

1 The Emergence of Shiʿism and the Twelvers

In relation to works dedicated to the study of Sunnism and Sunni jurisprudence, works on Shiʿism and Shiʿite jurisprudence have received less academic attention within western scholarship. An observable reason for this scarcity is perhaps due to the fact that Shiʿites only constitute between ten and twenty percent of the reported 1.8 billion Muslim population.[31] It was only around ten years prior to the 1979 Iranian revolution that independent works dedicated to the exclusive study of Shiʿism began to emerge.[32] Primarily led by Shiʿite jurists, the Iranian revolution replaced a pro-western monarchy with a theocratic Islamic Republic.[33] The popularity of the revolution and the relatively non-violent manner in which it occurred made the world aware of the power and importance of the Shiʿite juristic establishment. This was probably a major factor that promoted a renewed interest in the study of Shiʿite jurisprudence, its origins and historical development, and its past and present authoritarian structures.

The fundamental doctrinal difference that distinguishes Shiʿism from mainstream orthodox Islam (or more specifically, Sunnism) is its doctrine of Imamate, which developed (or at least came to light) after the demise of Prophet Muḥammad when Muslims started to dispute who would succeed him in leading the community.[34] Amongst the Muslims, a group, which eventually became recognised as the Shiʿite ʿAlī (lit. supporters of ʿAlī) professed that all spiritual, ethical, legal, and political affairs of the community (*umma*) were entrusted to the cousin and son in-law of the Prophet, ʿAlī b. Abī Ṭālib (d. 661). Being from the family of the Prophet, ʿAlī's supporters upheld that he, by nature and nurture, possessed the necessary qualities of being the Prophet's rightful heir. In support of their claim, the Shiʿites made numerous references to traditions and historical events, which they believed attested that the Prophet designated ʿAlī as his successor.[35]

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31 See Michael Lipka et al., *Why Muslims are the World's Fastest Growing Religious Group*, retrieved 23rd June 2018, from http://www.pewresearch.org/fact-tank/2017/04/06/why-muslims-are-the-worlds-fastest-growing-religious-group/.

32 This is also shown by Stewart, *Islamic Legal Orthodoxy*, 38–42; Newman, *The Formative Period of Twelver Shīʿism*, xv.

33 For a comprehensive understanding of the Iranian Revolution see Hoveyda, *The Shah and the Ayatollah*; Parsa, *Social Origins of the Iranian Revolution*); Zahedi, *The Iranian Revolution Then and Now*.

34 Ṭabāṭabāʾī, *Shiʿite Islam*, 33; Goldziher, *Introduction to Islamic Theology and Law*, 202–3; Stewart, *Islamic Legal Orthodoxy*, 28–37.

35 See Momen, *An Introduction*, 11–22; Moezzi, *The Divine Guide in Early Shiʿism*, 6–12; Modarressi, *Crises and Consolidation in the Formative Period of Shiʿite Islam*, 1–8.

Despite the case put forward by his supporters, ʿAlī did not immediately take charge of the Muslim community. Instead, he was endowed with the reigns of successorship, or caliphate, around twenty-six years after the death of the Prophet. ʿAlī's tenure as a Caliph lasted for five years and not only witnessed an immense expansion of his circle of supporters, but also a fierce civil war that was instigated during the reign of his predecessor, Caliph ʿUthmān b. ʿAffān (d. 656).[36] After the demise of ʿAlī, Shiʿites continued to uphold the belief that the rightful successorship belonged to male decadents from the family of the Prophet, through his daughter Fāṭima (d. 632) and ʿAlī. By the middle of the 8th century, Shiʿite fractions had formulated the doctrine that mankind was and will always remain in need of guidance on all worldly (*dunyawī*) and religious (*dīnī*) affairs, which can only be provided by a divinely appointed Imam.[37] The authority and influence of an Imam on the Shiʿite community was immediately recognised by the ruling Umayyad and early Abbasid monarchies. Since Shiʿite Imams were strong contenders to the throne of caliphate, both Umayyads and Abbasids recognised the potential pejorative implications of Shiʿite political rebellions, in particular if the Shiʿite Imams spurred their supporters to question the legitimacy of their monarchical governance. As such, most Shiʿite Imams faced threats of (or at times were sentenced to) death, imprisonment, or forced exile. Their dire situation forced them to play a passive political role and reportedly practise precautionary dissimulation (*taqiyya*). However, despite their political passivity, their supporters continued to rally around them to attain insights into their spiritual, ethical, and legal knowledge. Unlike mainstream Muslims, Shiʿites did not face the same urgency to immediately entertain the epistemological problem of losing access to Sharia in the absence of the Prophet. For them, the Imams, being representatives of God, were also Divine Lawgivers who had access to Sharia knowledge and were divinely endowed with the responsibility of teaching and promulgating the Sharia in absence of the Prophet.

Western scholarship's examination of the emergence of Shiʿism finds that two tendencies coexisted within the Shiʿite community after the death of ʿAlī: an extremist tendency and a moderate tendency.[38] The extremist fraction of the Shiʿite community, who became known as the *ghulāt* (exaggerators) or

36 *Ibid*., 3.

37 *Ibid*., 6; Moezzi, *The Divine Guide*, 6; Stewart, *Islamic Legal Orthodoxy*, 23–4; Also, for an overview of how the early Shiʿite concept of Imamate compared with the Sunni socio-political concept of Caliphate see Crone and Hinds, *God's Caliph*, 1–6.

38 See Momen, *An Introduction*, 65–71, Modarressi, *Crises and Consolidation*, 20–5; Moezzi, *Divine Guide*, 129–31; For a thorough study on the Shiʿite Extremists see Moosa, *Extremist Shiʿites*.

the *mufawwiḍa*, persistently ascribed Imams with superhuman, and at times, godlike, attributes and characteristics. They instigated the formulation of doctrines such as the Imams possessing knowledge of the unseen (*ʿilm al-ghayb*) and possessing infallibility (*ʿiṣma*) from committing sins and mistakes.[39] On the other hand, the moderate fraction of the Shiʿites denied and rejected any extremist tendencies that elevated Imams from human beings to supernatural beings. Instead, moderate Shiʿites considered Imams to be impeccable individuals who were virtuous learned men (*ʿulamāʾ al-abrār*).[40] In essence, a faction amongst Shiʿites pledged allegiance to Imams through professing that they naturally possessed supernatural charismatic personalities, whilst another faction among them professed that the Imams deserved allegiance because they were nurtured within the household of the Prophet, and therefore were the most suited candidates for leading the Muslim community. The stark doctrinal difference between these two factions raises the pertinent question of what is, or was, the religious philosophy of Shiʿism. Did individuals ascribe to Shiʿism because they disagreed with the mainstream Muslim community, and instead insisted on paying allegiance to descendants of the Prophet who they claimed were his rightful heirs to lead and guide the Muslim community? And as such, did Shiʿism start off as essentially a political movement, which over time took on an independent religious identity as a sect within the mainstream Muslim community that had its own theological and jurisprudential systems? Or was Shiʿism, from its very outset, a religious movement, in which Imams were central figures that provided Shiʿites – or those people who rallied around them – with unique esoteric insights into theology, jurisprudence, and spirituality?

In recent years, western scholarship has witnessed the appearance of several scholarly monographs that attempt to unravel the religious philosophy of Shiʿism through examining its early formative period. Such scholarly monographs include Hossein Modarressi's *Crises and Consolidation* (1993), Amir-Moezzi's *The Divine Guide in Early Shiʿism* (1994), Meir Bar-Asher's *Scripture and Exegesis in Early Imāmī Shiʿism* (1999), Arzina Lalani's study of the fifth Shiʿite Imam, Muḥammad al-Bāqir (d. 743) in *Early Shīʿī Thought* (2000), Andrew Newman's *The Formative Period of Twelver Shiʿism*, and Maria Dakake's study of Shiʿite identity in early Islam in *The Charismatic Community* (2007). By taking recourse to early Shiʿite literature, including Shiʿite hadith collections, works on Shiʿite Quranic exegeses (*tafsīr*), and works of early Shiʿite theologians, many of these monographs illustrate that, despite its apparent political origins, Shiʿism represented a genuine religious/spiritual perspective on Islam

39 Modarressi, *Crises and Consolidation*, 21.
40 *Ibid*., 29.

in which the centrality of Imams remained fundamental for both worldly and spiritual guidance. For instance, Amir-Moezzi's study of early Shiʿism, which he refers to as early 'Imamism', leads him to assert:

> Early Imamism, what from the beginning of this study was called "the early esoteric suprarational tradition," is not a theological-political doctrine *with* a "theory of the Imamate"; on the contrary, this Imamism *is* a "theory of the Imamate" in which, and in regard to which, all other aspects of the doctrine are developed: theology, cosmogony, ethics, politics, the practical aspects of worship, mysticism, law, eschatology, and so forth.[41]

A thorough study of whether Shiʿism started as a political or a religious movement is undoubtedly an important enquiry that may potentially have astounding implications for the Shiʿite discourses of theology and jurisprudence. However, it falls outside the remit of my study, as I specifically focus on the already existent modern orthodox legal discourse of Shiʿism. For the purpose of my study, it is vital to note that modern Shiʿite theology, or more precisely, theology advocated by orthodox Shiʿite jurists-cum-theologians, presents Imams (together with the Prophet) as divinely appointed infallible (*maʿṣūm*) individuals who, by their very nature, possess knowledge (*ʿilm*) of the Sharia, and it therefore regards them as authoritative figures who must be followed as a source of guidance.[42]

Despite the centrality of Imams within Shiʿism, the Shiʿite community did not always agree on which exact descendant from the household of the Prophet was eligible to take the reins of the Imamate. Over the course of history, this inevitably led to the creation of schisms and sub-schisms within Shiʿism. In the present day, Shiʿite Islam is generally divided into three broad groupings: Zaydi, Isma'ili, and Imami.[43] Amongst the three groups, Imami Shiʿites, who later become distinctively recognised as Ithnāʿasharī "Twelvers", form a majority 85% of the total Shiʿite population[44] and it is their modern discourse on legal theory that forms the subject of my study. Twelver Shiʿites – who from now on I will refer to only as Shiʿites – believe that the charismatic personality and leadership of the Prophet was inherited by ʿAlī; from ʿAlī, it passed

41 Moezzi, *Divine Guide*, 125–126.

42 See Ṭabāṭabāʿī, *Shiʿite Islam*, 172–3; Sobhani, *Doctrines of Shiʿi Islam*, 96–120; Muẓaffar, *The Faith of the Imāmiyyah Shiʿah*, 20.

43 For a comprehensive study of the numerous sub-schisms within Shiʿism, including Zaydi, Ismaili and Imami see Momen, *An Introduction*, 45–60; Heinz Halm, *Shiʿism*.

44 See Guidere, *Historical Dictionary of Islamic Fundamentalism*, 319; also see Newman, *Twelver Shiism: Unity and Diversity in the Life of Islam, 632–1722*, 2.

on to his elder son Ḥasan b. ʿAlī (d. 670) and then to his younger son Ḥusayn b. ʿAlī (d. 680). From the lineage of Ḥusayn, the reigns of Imamate passed down another nine generations of his descendants. Orthodox Shiʿite theology upholds that each Imam was divinely appointed and chosen through designation (*nass*) by the previous Imam.[45]

In the late 9th century, Shiʿites faced major turmoil when the eleventh Imam, Ḥasan al-ʿAskarī (d. 874), passed away without explicitly designating an undisputed heir who would take the seat of Imamate after him. Shiʿites eventually came to allege that the rightful heir to Ḥasan al-ʿAskarī was his young son Muḥammad al-Mahdi (b. 869) who, because of his life being endangered by the Abbasid Caliphate, was forced to go into hiding from the world.[46] For over sixty years, the Shiʿite community maintained limited access to the Hidden Imam through four individual deputies who claimed that they had access to him. These deputies were known as the ambassadors (*safīr*) or the agents (*wakīl*) of the Hidden Imam. A deputy assumed the responsibility of mediating between the Shiʿite community and the Hidden Imam, by taking questions and concerns of the community to the Imam and returning with his signed replies (also termed as *tawqiʿat* 'receipts'). This period became known as the 'Minor Occultation' (*ghaybat al-ṣughrā*). In 941, the fourth deputy of the Hidden Imam passed away without appointing a successor. The end of deputyship meant that the Shiʿite community lost all access to the Hidden Imam. By the middle of the 10th century, prominent Persian Shiʿite scholars, Muḥammad ibn Yaʿqūb al-Kulaynī (d. 941) and ibn Bābawayh al-Qummī, commonly known as Shaykh al-Ṣadūq (d. 991), travelled around the Muslim empire to collect reports that conveyed the traditions of the Shiʿite Imams. Their perpetual efforts resulted in them coming to the forefront of influencing the formulation of theological doctrines relating to the period which became, and is still, known as the 'Major Occultation' (*ghaybat al-kubrā*). Since the middle of the 10th century up till the present day, Shiʿites hold that during the period of major occultation, God has prolonged the life of the Twelfth Imam and has kept him in hiding. He will only reappear (or end the occultation) when the world is ready to accept his reign, in which he will combat evil and corruption and establish peace and justice.[47]

45 Ṭabāṭabāʾī, *Shiʿite Islam*, 174–82; Sobhani, *Doctrines*, 101; Muẓaffar, *The Faith of the Imāmiyyah*, 73.

46 See Ṭabāṭabāʾī, *Shiʿite Islam*, 184–5; Momen, *An Introduction*, 43–5; Modarressi, *Crises and Consolidation*, 89–91; Halm, *Shiʿism*, 34–8. For a comprehensive study see Sachedina, *Islamic Messianism*; Hussain, *The Occultation of the Twelfth Imam*.

47 Ṭabāṭabāʾī, *Shiʿite Islam*, 211–5; Sobhani, *Doctrines*, 115–20; Muẓaffar, *The Faith of the Imāmiyyah*, 75–8.

The major occultation of the Twelfth Imam meant that Shiʿites had no choice but to accept the fact that they had lost all access to a charismatic divine guide. It was no longer possible for the Shiʿite community to directly, or via intermediary deputies, refer to the Hidden Imam to continue seeking guidance on Sharia matters. The emphasis and centrality of the concept of Imamate within Shiʿism, coupled with the formation of the doctrine that the living Imam is in major occultation, meant that Shiʿites had no choice but to find solutions and justifications to the same questions and issues that the mainstream Muslim community was faced with after the demise of the Prophet. Post-major occultation, Shiʿite intellectuals were forced to decide 1) *how* Sharia knowledge can be accessed in the absence of the Hidden Imam and 2) *who* had the authority and qualifications to legitimately access it. To sufficiently respond to these questions, we find that during the period of the major occultation, Shiʿite jurist-cum-theologians escalated their legal discourse and, like their Sunni counterparts, made diligent efforts in presenting a coherent legal theory.

2 Formative Period of Shiʿite Legal Theory

One of the most important works produced within western scholarship that examines the formation and historical development of the Shiʿite legal discourse is Hossein Modarressi's *An Introduction to Shiʿi Law*. Modarressi's introduction consists of two parts; the first part discusses the general structure of the Shiʿite legal discourse and its historical development, and the second part produces a comprehensive bibliographical list of some of the major works within the field of Shiʿite law, including works relating to Shiʿite legal theory (*uṣūl al-fiqh*) and works relating to Shiʿite juristic deductions (*fiqh*). Although Modarressi enlists Shaykh al-Mufīd's *Tadhkira bi-uṣūl al-fiqh* as the oldest extant work on Shiʿite legal theory, he claims that the inauguration of the Shiʿite legal discourse emerged as early as during the presence of the Imams.

> It can clearly be seen from religious traditions that Shīʿī Imāms had persistently urged their followers to reason and use their minds. In the case of *Kalām* theology they praised and encouraged Shīʿī theologians of their time. In the case of legal problems, the Imāms stated explicitly that their own duties lay in explaining general rules and principles; whereas inferences in details and minor precepts for actual cases were left to the learned followers of the Imāms … On some occasions, the Imāms themselves followed what they advised as the correct method of reasoning

> and thus instructed their followers on the proper procedure for inference of legal precepts.[48]

Modarressi's study gives the impression that scholars belonging to the extremist fraction of the Shiʿite community, which commonly ascribed supernatural abilities to the Imams, generally upheld that knowledge of Sharia could only be sought directly from the Imams or via their transmitted tradition (*sunna*). On the other hand, scholars belonging to the more moderate fraction of the Shiʿite community, which commonly considered Imams to be pious scholars (*ʿulamāʾ abrār*), took keen interest in using Aristotelian analytical rationalistic methods when it came to participating in dialectic theology and further deducing, or interpreting, knowledge of Sharia from the general principles given by the Imams or via their transmitted traditions.[49] Due to the scarcity of primary material, the dynamics between the Imams and what may loosely be described as 'traditionalist' extremist scholars and 'rationalist' moderate scholars is not known in detail. A significant factor that muddles such dynamics is that early Shiʿite hadith literature contains traditions of Shiʿite Imams that are narrated by both their extremist and moderate companions. This not only depicts contradicting narratives of the attributes and qualities of the Shiʿite Imams, but also of the overall nature of the Shiʿite tradition. Having said this, it is important to note that early Shiʿite scholars who specialised in the study of biographies of hadith transmitters (or *ʿilm al-rijāl*), including Muḥammad b. ʿUmar al-Kashshī (d. 951–2) and Aḥmad b. ʿAlī al-Najāshī (d. 1058), meticulously critiqued and rejected the reliability of many traditions that were transmitted by narrators who had extremist tendencies and instead largely favoured traditions that were transmitted by moderate narrators. Using the renowned biographical works of both Kashshī and Najāshī, Modarressi explains:

> The theologians [or rationalists] that were appreciated and favoured by the Imāms, strongly resented the reproaches directed against them by the traditionalists, and the Imāms consoled the accused by saying that they should tolerate and act moderately towards their adversaries since the latter's capacity for understanding subtle points and minute nuances was extremely limited. Some of the traditionalists of Qum too squabbled with the theologians, fabricated traditions in condemnation of the latter and attributed them to the authority of the Imām, and wrote books in

48 Tabātabāʿi, *An Introduction to Shīʿī law*, 24–5.

49 *Ibid.*, 26–7; Modarressi, *Crises and Consolidation*, 29.

> this vein. On the other hand, the Imāms recommended their followers to refer to theologians and read their books.[50]

Nevertheless, post-Iranian revolution western scholarship has made a concerted effort in its attempt to unravel and clarify the distinction between traditionalists and rationalists in the formative period of Shiʿite legal discourse, in particular by examining the socio-political, theological and intellectual milieus in which they originated and developed.[51] Western works on the formative period of Shiʿite legal discourse elucidate that during the minor, and just after the major occultation of the Twelfth Imam, the traditionalist tendency prevailed within Shiʿite academic circles.[52] During this period, an overwhelming majority of Shiʿite scholars upheld that Sharia knowledge was only accessible from (or could be deduced using) the reported traditions of the Imams. This period witnessed compilations of major Shiʿite canonical works that contained reports of the tradition (*sunna*) of the infallible Prophet and Imams. Notable Shite traditionalists of this period included Kulaynī and Shaykh al-Ṣadūq, who both complied extant canonical works, respectively entitled *Kāfī fī ʿilm al-Dīn* ("What is Sufficient in the Knowledge of the Faith") and *Man lā Yaḥḍuruh al-faqīh* ("Whoever that does not have Access to a Jurist"). Their compilations seem to have been inspired by the 9th canonical works of Sunni hadith scholars as, like Sunni canonical works, both Kulaynī and Shaykh al-Ṣadūq categorise reports of the Prophet and Imams in accordance with their legal subject matter for ease of reference.[53] Despite the prominent traditionalist tendency, Andrew Newman, in *The Formative Period of Twelver Shiism*, finds that during the minor occultation, the influential Banu Nawbakht family from Baghdad, who claimed that they had access to the Hidden Imam, maintained close ties with Muʿtazilite theologians and thus retained a somewhat rationalist outlook.[54] This raises an interesting question (which remains unexplored) of why and how the traditionalist tendency prevailed within Shiʿite academic circles during the minor occultation, when individuals that claimed access to

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50 See Modarressi, "Rationalism and Traditionalism in Shīʿī Jurisprudence: A Preliminary Survey" 147–8.

51 For a comprehensive list of these works, in particular a brief survey of the history of western scholarship on post-Iranian revolution Shiʿism see Newman, *Twelver Shiism*, 1–10.

52 See Modarressi, *An Introduction to Shīʿī Law*, 27–36; Modarressi, *Crises and Consolidation*, 40–45; Newman, *The Formative Period of Twelver Shīʿism*, 1–26.

53 See Stewart, *Islamic Legal Orthodoxy*, 50; Gleave, *Scripturalist Islam*, xvii; Makdisi, *The Rise of Humanism in Classical Islam and the Christian West*, 19–20.

54 Newman, *The Formative Period of Twelver Shīʿism*, 17–26; also see Ansari and Schmidtke, "The Shīʿī Reception of Muʿtazilism (11): Twelver Shīʿīs".

the Hidden Imam maintained a rationalistic outlook. Although providing a response to this question requires a dedicated study in itself, it can be said that one obvious factor that may have led to the prevalence of the traditionalist tendency over the rationalist tendency were the reported traditions of the Shiʿite Imams that categorically rejected the use of rationalist methods of investigation that were commonly used by Sunni jurists in their deduction of Sharia precepts, including evidence such as analogical reasoning (*qiyās*) and personal juristic opinion (*raʾy*).[55]

The traditionalist stronghold over Shiʿite academic circles lasted until the second half of the 10th century. During the last few decades of the 10th century, traditionalists were met with heavy criticism by the emergence of rationalist jurist-cum-theologians. The pioneers of this rationalist tendency (and the forefathers of present-day Shiʿite orthodoxy) were Shaykh al-Mufīd and his student al-Sharīf al-Murtaḍā (d. 1044). Mufīd received education from a variety of illustrious scholars, including the traditionalist Shaykh al-Ṣadūq and the rationalist ibn Junayd al-Iskāfī (d. unknown), and thus he was well acquainted with both Shiʿite legal tendencies that existed during his time.[56] Furthermore, both Mufīd and Murtaḍā received education by Sunni Muʿtazilite and Shāfiʿī teachers, and therefore were also acquainted with Sunni legal tendencies and doctrinal positions.[57] The profound rationalist Muʿtazilite influence on Mufīd and Murtaḍā was highlighted in their formation of doctrinal positions in Shiʿite theology and jurisprudence.[58]

It is important to note that with regards to the formation of the Shiʿite doctrinal position, M. A. Amir-Moezzi in *The Divine Guide in Early Shiism* interestingly argues that a comprehensive review of Shiʿite hadith literature reveals that, initially, Shiʿism had an esoteric nature, in which Shiʿite Imams emphasised the pursuit of knowledge (*ʿilm*) through using reason (*ʿaql*) in the sense of "hiero-intelligence."[59] However, instead of interpreting *ʿaql* as hiero-intelligence, Shiʿite scholars of Būyid Baghdad (including Mufīd and Murtaḍā) fell under the influence of Sunni Muʿtazilite theologians and thereby interpreted *ʿaql* as "dialectical reasoning." According to him this shifted the

55 For Shiʿite refutation of *qiyās* (analogical reasoning) see Gleave, "Imāmī Shīʿī Refutation of Qiyās"; Moezzi, *Divine Guide*, 55; Modarressi, *An Introduction to Shīʿī Law*, 28–9.

56 Modarressi, *An Introduction to Shīʿī Law*, 35–6.

57 See Stewart, *Islamic Legal Orthodoxy*, 310–2; Sachedina, *The Just Ruler*, 85–6.

58 For a thorough study of the reception and impact of Muʿtazilite theology with the Shiʿite tradition during the time of the Imams, across the minor occultation, and just after the major occultation see Ansari, "The Shīʿī Reception of Muʿtazilism," 181–95.

59 See Moezzi, *The Divine Guide*, 12–3.

doctrinal position of Shiʿism from an "esoteric non-rational" tradition to a "theological-juridical rational" tradition.[60] He points out that:

> From the time of the Occultation, around the middle of the fourth/tenth century, in a time profoundly marked by theological, and especially Muʿtazilite, rationalism, Imamite theologians and traditionists appear to have seen themselves confronted by "nonrational" teachings for which they had great difficulty finding theological as well as Qur'anic bases of justification. No longer having a "visible" imam to lead them, living in a socially hostile and politically unforeseen milieu, and in a time that intellectually tended toward rationalism, Imamite thinkers appear to have felt forced to make a compromise between safeguarding the original doctrine and their concern for not brutally clashing with the dominant ideologies.[61]

Although there may be differences on whether the early doctrines of Shiʿism were originally esoteric in nature or not, there is no doubt that during the Buyid period, the works of Mufīd and Murtaḍā presented and established Shiʿism (and its doctrines) as a theological-juridical tradition. Western scholarship generally alludes that the reason for presenting Shiʿism as a theological-juridical tradition was because formative (or Buyid) Shiʿite scholars felt that the vacuum in guidance and leadership during the major occultation could only be accomplished by creating (if not further developing) a single consistent systematic framework for deducing Sharia knowledge that was specific to the Shiʿite tradition.[62] Accordingly, it was during this period that Shiʿite jurists-cum-theologians made a concerted effort in producing literature that was specifically devoted to creating a legal theory that aligned with their theological doctrines.

In *Islamic Legal Orthodoxy*, Devin Stewart interestingly highlights the remarkable influence orthodox Sunni jurisprudence had on the Shiʿite legal discourse. He contends that Shiʿites had to struggle for survival in front of the force of Sunni orthodoxy, and as a result, to avoid being branded as a heterodoxy, formative Shiʿites adopted similar concepts and terms that were dominant within the Sunni legal discourse. He specifically argues that one concept

60 *Ibid.*, 12.

61 *Ibid.*, 18.

62 For instance, see Eliash, "Misconceptions regarding the Juridical Status of the Iranian ʿUlamā'"; Sachedina, *The Just Ruler*, 57; Madelung, "Authority in Twelver Shiism in the Absence of the Imam", 173; Calder, "Judicial Authority in Imāmī Shīʿī Jurisprudence", 104–8; Kohlberg, "From Imāmiyya to Ithnā-ʿashariyya".

that Shiʿites imitated from the Sunni legal discourse was that Sunnis categorised consensus (*ijmāʿ*) as an independent source of Sharia knowledge, and by doing this they prescribed to themselves the status of a legitimate parallel school of jurisprudence (*madhhab*).[63]

Nevertheless, regardless of whether the development of Shiʿite legal theory was due to a vacuum in leadership felt by the absence of the Twelfth Imam, or due to the sheer force of Sunni legal orthodoxy, formative Shiʿite scholars, under the patronage of Buyid sovereigns, found tremendous success in disseminating their rationalist trend within Shiʿite academic circles. The rationalist polemic of Mufīd and Murtaḍā against orthodox Sunnis and fellow Shiʿite traditionalists was largely epistemological in nature. Their works on legal theory essentially maintained that only they (or the Shiʿite rationalist camp) had an accurate framework of deducing Sharia knowledge, as they, unlike other legal schools or trends, never relied on deducing it from evidence that generated mere conjecture (*ẓann*). As such, they typically condemned the juristic utility of any form of evidence that required a jurist to exercise his personal fallible opinion (*raʾy*) in deducing Sharia precepts, and hence they outright rejected conjecture-generating forms of evidence that were usually utilised by orthodox Sunni jurists, including analogical reasoning (*qiyās*) and the discretionary opinion of a jurist (which during the Buyid era was referred to as *ijtihād*).[64] In addition, they also rejected the juristic utility of isolated reports (*akhbār al-āḥād*) that relayed the tradition (*sunna*) of the Prophet (and for the Shiʿites, the infallible Imams). Although for both orthodox Sunnis and Shiʿite traditionalists isolated reports were a major source of Sharia knowledge, Mufīd and Murtaḍā rejected them by arguing that they were extremely prone to being erroneous and at times even fabricated, and therefore they too only generated mere conjecture of Sharia.[65] Mufīd and Murtaḍā characteristically pioneered the non-authoritativeness of conjecture as a primary axiom, or what I term the first epistemological underpinning, of Shiʿite legal theory. According to them, Sharia could only be deduced from evidence that generated knowledge (*ʿilm*), including the Quran, traditions of the Prophet and infallible Imams that are

63 See Stewart, *Islamic legal Orthodoxy*, 49–67; The influence of the Sunni legal thought on the Shiʿites is also pointed out by Coulson, *A History of Islamic Law*, 104–5 and 108; Cole, "Imami Jurisprudence and the Role of the Ulama", 35–6.

64 Modarressi, *Introduction to Shīʿī Law*, 40–3; Calder, "Doubt and Prerogative," 58–60; Zysow, *The Economy of Certainty*, 282–91; Stewart, *Islamic Legal Orthodoxy*, 541–2; Also see ʿAlam al-Hudā al-Murtaḍā, *al-Dharīʿā ila Uṣūl al-Sharīʿa*, 2:792–804.

65 Calder, "Doubt and Prerogative," 59; Stewart, *Islamic Legal Orthodoxy*, 375–88; Shaykh al-Mufīd, *al-Tadhkira bi-uṣūl al-fiqh*, 44; Murtaḍā, *al-Dharīʿā*, 2:481–4.

conveyed through widely recurrent reports (*mutawātir*), unanimous consensus of Shiʿite jurists (*ijmāʿ*), and reason (*ʿaql*).[66]

The presence of a diverse range of Muslim scholars, including Shiʿite rationalists, traditionalists, and other various groups of Muslim theologians, made Baghdad an intellectual hub for Shiʿite learning during the Shiʿite-friendly Buyid era.[67] By the early 11th century, the scholarly authority of the rationalist camp became solidified within Shiʿite intellectual circles. This was primarily due to the remarkable scholarly efforts made by Mufīd and Murtaḍā's student Shaykh Muḥammad b. Ḥasan al-Ṭūsī, who is more famously known as Shaykh al-Ṭāʾifa (d. 1067). In comparison to his teachers, Ṭūsī in *ʿUdda fī uṣūl al-fiqh* presented Shiʿite legal theory in a clear, comprehensive, and precise manner which effectively marked an era of maturity of the Shiʿite legal discourse.[68] One of his most significant contributions to legal theory was that he accepted the authoritativeness and hence the juristic utility of isolated reports in the deduction of Sharia knowledge. He did this despite accepting the first epistemological underpinning coined by his teachers Mufīd and Murtaḍā, and therefore he admitted that Sharia knowledge can only be deduced from evidence that generates knowledge (*ʿilm*) as opposed to conjecture (*ẓann*). However, by using textual and non-textual sources, Ṭūsī argued that the juristic utility of conjecture generated from isolated reports that are transmitted by narrators who belong to the "True Sect" of Twelver Shiʿite Islam, is sanctioned by God Himself and thus such reports generate sufficient knowledge of Sharia precepts.[69] By accepting the juristic utility of isolated reports, Ṭūsī offered a reconciliatory position between the rationalists and traditionalists and this was perhaps one of the key factors that led the seminary of Baghdad to extensively promote the rationalist legal discourse and become the centre of Shiʿite scholarly discourse.[70] In 1056, the pro-Sunni Seljuq empire invaded Baghdad and this event forced Ṭūsī (who by then had gained immense popularity within the Shiʿite community) to migrate to Najaf, Iraq. In Najaf, where the holy shrine of the First Shiʿite Imam is situated, Ṭūsī established a religious seminary, which till today remains one of the major centres of Shiʿite education.[71]

66 Calder, "Doubt and Prerogative," 59.

67 See Sayyid Abbas Radawi, "Baghdad" in Haddad Adel et al. (ed.) *Hawza-yi ʿIlmiyya: Shīʿī Teaching Institution* (London: EWI Press, 2012), 91–7.

68 Baqir al-Sadr, *Principles of Islamic Jurisprudence*, 33–4.

69 See Zysow, *The Economy of Certainty*, 284–285; Calder, "Doubt and Prerogative," 60–1; See Muḥammad Ḥasan al-Ṭūsī, *al-ʿUdda fī uṣūl al-fiqh*, 1:63–143.

70 Radawi, "Baghdad," 111–12.

71 I. C. Ardihayi et al., "Najaf" in Haddad Adel et al. (ed.) *Hawza-yiʿIlmiyya: Shīʿī Teaching Institution* (London: EWI Press, 2012), 113–5.

Western scholarship highlights that Ṭūsī was perhaps one of the first Shiʿite jurists to openly suggest that during the absence of the Twelfth Imam, a jurist is entrusted with taking control of all his essential clerical functions.[72] It can be said that the transmission of power between the Shiʿite friendly Buyids and the pro-Sunni Seljuqs was a considerable factor that may have influenced Ṭūsī to comment on the wider socio-political functions of a jurist. It is important to note that Aron Zysow points out a positive correlation between the acceptance of conjecture (or different forms of evidence that generate conjecture) and the level of authority a jurist or a legal school possesses. In *The Economy of Certainty*, he categorises formative Muslim legal schools (both Shiʿite and Sunni) as either materialist or formalist. He explains that the former represents schools that adamantly uphold that Sharia knowledge can only be deduced from evidence that generates knowledge or certainty; whereas the latter represents schools that tolerate the deduction of Sharia knowledge from evidence that generates mere conjecture or probability.[73] He argues that to ensure the survival of the Shiʿite rationalist legal school, it was rather necessary for Ṭūsī to accept the juristic utility of conjectural isolated reports, and thereby move the rationalist legal discourse from a staunch materialist position (as was expounded by Mufīd and Murtaḍā) to a somewhat formalist position.[74] This is probably true, as Ṭūsī's efficacious legal theory prevailed over the Shiʿite discourse and remained unchallenged for more than a century. Hossein Modarressi refers to other Shiʿite jurists during this period as 'imitators' (*muqallida*) who reverently quoted, explained, and utilised Ṭūsī's legal theory as opposed to further developing it.[75]

3 Medieval Period of Shite Legal Theory

The protagonists of the next phase of developments made in the Shiʿite legal discourse were scholars from Ḥilla, Iraq. The fall of the Abbasid empire due to the Mongol invasion in the 13th century brought about an era of perdition for the Shiʿite seminaries. During this era, the only Shiʿite seminary that flourished

72 See Stewart, *Islamic Legal Orthodoxy*, 553–55; and Sachedina, *The Just Ruler*, 9–12. For a thorough study of how the Buyid Scholars took over the functions of the Hidden Imam see Calder, "The Structure of Authority in Imāmī Shīʿī Jurisprudence".

73 Zysow categorises the four main Sunni Schools of jurisprudence, Ḥanafī, Mālikī, Shāfiʿī and Ḥanbalī as formalists, whereas he categorises the Ẓāhirī and the Shiʿite Schools of jurisprudence as materialists. See Zysow, *The Economy of Certainty*, 1–3.

74 *Ibid.*, 282–286.

75 See Modarressi, *Introduction to Shīʿī Law*, 45.

to become a distinguished centre of scholarship was the seminary of Ḥilla. This was because the Shiʿite scholars of Ḥilla supported the Mongol overthrow of the Abbasid empire, and consequently held high positions within the Mongol ruling ranks which they used to further their influence.[76] In spite of their influence, it is important to note that the scholars of Ḥilla never enjoyed the same level of political security as the Buyid Scholars, as there was much tension and hostility that was created during this period by the complex relationship that existed between the Shiʿites and the Seljuqs.[77]

One of the most radical opponents of Shaykh Ṭūsī's legal theory in Ḥilla was Ibn Idris al-Ḥillī (d. 1201). Ibn Idris challenged Ṭūsī's acceptance of isolated reports in the deduction of Sharia knowledge and more astoundingly slated the state of Shiʿite scholarship for its intellectual stagnation, whereby he criticised post-Ṭūsī Shiʿite scholars for uncritically imitating him for over a century. Modarressi claims that Ibn Idris's critical approach towards Shiʿite scholarship (or more specifically its legal discourse) paved the path for its further advancements and improvements.[78] For instance, after Ibn Idris we find that Jaʿfar b. Ḥasan al-Ḥillī, more famously known as Muḥaqqiq al-Ḥillī (d. 1277) modernised how legal topics are presented in the works of juristic deductions (*fiqh*). In his *Sharāʾiʿ al-Islām*, Muḥaqqiq classified legal topics into four sections which related to 1) devotional duties (*ʿibādāt*), 2) bilateral contracts (*ʿuqūd*), 3) unilateral obligation (*īqāʿāt*), and 4) regulations (*aḥkām*). This classification enabled him to refine the disorder and inconsistencies that were found in Ṭūsī's work on juristic deductions entitled *Mabsūṭ fi fiqh al-Imāmiyya*. Moreover, he also introduced many important topical issues that were not previously rigorously classified within the works of juristic deductions of Shiʿite Buyid scholars.[79]

During this period, the most significant development made in the discourse of Shiʿite legal theory was by Muḥaqqiq's student and nephew Ḥasan b. Yūsuf b. al-Mutahhar al-Ḥillī, who is more famously known as ʿAllāma al-Ḥillī (d. 1325). ʿAllāma studied the Shiʿite legal discourse under the auspices of Muḥaqqiq. In addition, he also studied rational sciences, such as theology, logic, and philosophy under the illustrious Shiʿite theologian Khawaja Naṣīr al-Dīn al-Ṭūsī (d. 1274). Furthermore, under the patronage of his Sunni teachers, ʿAllāma was introduced to the legal works of renowned Sunni scholars, including Abū Ḥāmid al-Ghazālī (d. 1111), Fakhr al-Dīn al-Rāzī (d. 1209), Sayf al-Dīn al-Āmidī (d. 1233), and Jamāl al-Dīn ibn al-Ḥājib (d. 1248). One of the

76 See Mazinani, "Ḥilla", 149; Sachedina, *The Just Ruler*, 13–4.

77 Sachedina, *The Just Ruler*, 14.

78 See Modarressi, *Introduction to Shīʿī Law*, 46–7; Mazinani, "Ḥilla," 150–1.

79 See Sachedina, *The Just Ruler*, 14–6.

most impressive features of their works that appealed to ʿAllāma was how they integrated peripatetic[80] logic and epistemology within the discourse of legal theory.[81] According to W. B. Hallaq, this integration was originally initiated by Ghazālī in the 12th century, which was a period that witnessed a profuse emergence of Arabic commentaries on Greek philosophy. For instance, Hallaq illustrates that, according to Ghazālī, the integration of logic with legal theory was described as "the only meaningful tool by which all [legal] inferences can be tightly moulded according to a rational design."[82] Nevertheless, ʿAllāma's wide range of knowledge in various discourses of his time, including Sunni and Shiʿite legal theory, theology, and peripatetic logic and epistemology, seems to have been the major factor that led him to bring the discourse of Shiʿite legal theory closer to the discourse of Sunni legal theory.[83] Building on the works of Shiʿite Buyid scholars, the two key advancements made by ʿAllāma were that:

1. Like his Sunni predecessors, he graded isolated reports into hierarchical categories based on their degree of reliability (or their chains (*isnād*) of transmission); into sound (*ṣaḥīḥ*), dependable (*muwaththaq*), acceptable (*ḥasan*), and weak (*ḍaʿīf*). His categorisation of isolated reports points out that he probably accepted Ibn Idris's criticism against Ṭūsī, and therefore acknowledged that not all isolated reports transmitted by Shiʿite narrators were necessarily reliable. However, rather than completely rejecting their juristic utility, he upheld that isolated reports (or the conjecture they generate) can be utilised in the deduction of Sharia knowledge depending on how a jurist evaluates their reliability.[84]
2. He claimed that every human action is accompanied by a Sharia precept that determines its status in accordance with God. By this he means that

80 By peripatetic, I mean Greek philosophical thought that is derived from Aristotle and further developed by Muslim philosophers such as Abū Yūsuf al-Kindī (d. 873), Abū Naṣr al-Fārābī (d. 950) and Abū ʿAlī Sīnā (d. 1037), who is also known as Ibn Sīnā or Avicenna. For a comprehensive study of Muslim philosophers and their contribution to the development of peripatetic philosophy see Corbin, *The History of Islamic Philosophy*), 153–79; Nasr and Leaman (ed.), *The History of Islamic Philosophy*, 40–52, 89–105, 165–277; Fakhry, *A History of Islamic Philosophy*, 1–240. For a literature review of western studies in Islamic Philosophy see Nasr, *Islamic Philosophy from its Origin to the Present*, 13–31.

81 See Stewart, *Islamic Legal Orthodoxy*, 60; Madelung, "Authority in Twelver Shiism," 168; Moussavi, *Religious Authority in Shiʿite Islam*, 26, 30, 85.

82 See Hallaq, "Logic, Formal Arguments and Formalization of Arguments in Sunni Jurisprudence," 319.

83 Also pointed out by Stewart, *Islamic Legal Orthodoxy*, 197–210, 526–30; Moussavi, *Religious Authority*, 26–30, 85, 170; Madelung, "Authority in Twelver Shiism," 168.

84 See Calder, "Doubt and Prerogative," 67; Modarressi, *Introduction to Shīʿī law*, 48, and al-Ḥillī, *Foundations of Jurisprudence*, 191–7.

every day-to-day human action is either considered obligatory (*wājib*), prohibited (*ḥarām*), recommended (*mustaḥabb*), disliked (*makrūh*), or premissible (*mubāḥ*) by God.[85] As such, he advocates that the subject matter of legal theory is to search for evidence that conveys knowledge of the Sharia status of different actions. Like some of his Sunni predecessors,[86] ʿAllāma in *Nihāyat al-wuṣūl ila ʿilm al-uṣūl* accepts the general peripatetic notion that knowledge of all kinds (including Sharia knowledge) is obtained within the mind as a concept (*taṣawwur*) or a judgment (*taṣdīq*), and that each kind of knowledge is attained either in an immediate (*ḍarūrī*) manner or an acquired (*kasbī*) manner.[87] Using this philosophical jargoning, ʿAllāma specifically elucidates that knowledge of Sharia can either be attained in an immediate manner through evidence that generates certainty (*qaṭʿ*), such as evidence that generate knowledge of the obligation of praying (*ṣalāt*) and giving alms (*zakāt*); or it can be attained in an acquired manner through evidence that generates conjecture (*ẓann*).[88] In other words, ʿAllāma essentially advocates that knowledge of Sharia can be attained through certainty-bearing or definitive (*qaṭʿī*) forms of evidence as well as conjectural (*ẓannī*) forms of evidence. His epistemological distinction between certainty and conjecture effectively leads him to be the first extant Shiʿite jurist to accept the legitimacy of *ijtihād* in Shiʿite legal theory. He defined *ijtihād* as the application of one's utmost ability in their search for Sharia precepts that are known in a conjectural manner insofar as it excludes them of any blame for falling short.[89] He explains that the process of *ijtihād* must be carried out by a skilled practitioner known as the *mujtahid* (who I refer to as a jurist hereon). He explains that a jurist must be well-versed in using and accessing different forms of evidence, including the Quran, the tradition of the Prophet and the infallible Imams (*sunna*), consensus (*ijmāʿ*), and reason (*ʿaql*). Additionally, a jurist must be able to show that he can apply the use of logical demonstration and understanding of definitions (*ḥadd*); display proficiency in Arabic language, its syntax (*naḥw*) and

85 *Ibid.*, 35, 89.

86 For details of peripatetic notions accepted in Sunni discourse of *uṣūl al-fiqh* see Hallaq, "Logic, Formal Arguments," 315–58; Hallaq, *A History of Islamic Legal Theories*, 138–41.

87 See ʿAllāma al-Ḥillī, *Nihāyat al-wuṣūl ila ʿilm al-uṣūl*, 1:81–2; Ḥillī, *Foundations of Jurisprudence*, 17.

88 *Ibid.*, 88.

89 *Ibid.*, 84–93, 225–35.

morphology (*taṣrīf*); and has knowledge of the status of transmitters of hadith (*maʿrifat al-rijāl*) and the status of abrogation (*naskh*).[90]

ʿAllāma's legal understanding was widely accepted and built upon by his contemporaries and the Shiʿite rationalists that followed. However, by the end of the 14th century, the Shiʿite seminary of Ḥilla lost its zeal and began declining following the fall of the Ilkhānid dynasty. Renowned scholars who had studied under the patronage of the grand scholars of Ḥilla moved to Najaf and Jabal al-ʿĀmil in southern Lebanon, where they established small seminaries that continued to promulgate and build upon the legacy of the scholars of Ḥilla.[91] One of the most prominent works on Shiʿite legal theory that emerged during this period was entitled *Maʿālim al-dīn wa malādh al-mujtahidīn* by Ḥasan ibn Shahīd al-Thānī (d. 1602). Apart from emphatically supporting ʿAllāma's claim that Sharia knowledge can be deduced from both definitive and conjectural forms of evidence, Ibn Shahīd Thānī went further to emphasise that other than widely accepted Sharia precepts (such as the obligation of praying and giving alms), it is impossible to ever attain Sharia knowledge from evidence that exclusively generates certainty.[92]

The writings of Shiʿite scholars from Ḥilla and Jabal al-ʿĀmil gained immense popularity within the Shiʿite world. They were studied as textbooks within Shiʿite seminary circles, and a vast number of commentaries and super-commentaries were written on them with the aim of explaining and disseminating the legal epistemology of early medieval Shiʿite jurists. In practical social terms, the scholastic efforts of early medieval Shiʿite jurists resulted in dividing the Shiʿite community into two tiers: the clerical class of jurists (*mujtahids*) and the laity (*muqallids*). The former had the ability and necessary qualifications to participate in the juristic process of deducing Sharia precepts (*ijtihād*), whereas the latter were simply required to imitate the former by conforming to their Sharia deductions. Norman Calder interestingly explores that one of the main reasons for the widespread acceptance of ʿAllāma's legal theory (or more specifically his acceptance of *ijtihād*) amongst the Shiʿite rationalist jurists was because it enhanced their authority by enabling them to be situated at the centre of Shiʿite societal structures.[93] Calder's point can be evidenced in the works of leading medieval Shiʿite jurists, including Shahīd al-Awwal (d. 1384), al-Muḥaqqiq al-Karakī (d. 1534) and Shahīd al-Thānī (d. 1558), who explicitly argue that a jurist acts as a deputy of the Hidden Imam while the

90 *Ibid.*, 87.

91 See Mazinani, "Ḥilla," 154–55; also see Muhajir, "Jabal al-ʿĀmil".

92 Ibn Shahīd al-Thānī, *Maʿālim al-dīn wa malādh al-mujtahidīn*, 126.

93 See Calder, "The Structure of Authority," xx; Gleave, *Scripturalist Islam*, xviii.

Imam remains in occultation.[94] The socio-political role of Shiʿite jurists steadily increased within the Shiʿite community. During the reign of the Safavid Empire (between 1501 and 1722), Shiʿism, for the first time, became recognised as an official religion of Iran. During the early part of Safavid history, the dominance and aristocracy of the clerical class of Shiʿite jurists was very apparent. They owned land from mortmain charitable endowments (*waqf*);[95] collected and distributed religious taxes and alms; legitimised and led (previously prohibited) Friday congregational prayers (*jumuʿa*) in place of the Hidden Imam; and exercised authority over the majority of theological-jurisprudential and political matters due to their close bilateral ties with the Safavid rulers.[96]

During the course of the medieval period, the Shiʿite rationalists became recognised as the Uṣūlīs.[97] In essence, although Shiʿite Uṣūlīs had minor disputes between them regarding their exact scope and function in the absence of the Hidden Imam, they generally maintained that their ability to conduct *ijtihād* (or the process of deducing Sharia knowledge) made them the most deserved and trusted agents of the Imam.[98] After ʿAllāma, the legal legacy and stronghold of medieval Uṣūlīs lasted for around three hundred years over Shiʿite intellectual circles. However, it was met with plentiful opposition in the 17th century, which was instigated by Muḥammad Amīn al-Astarābādī (d. 1627). Astarābādī brought back and promulgated the traditionalist trend within Shiʿism. He founded what became known as the Akhbārī movement, which was principally concerned with rescinding the intellectual and socio-political

94 See Calder, "The Structure of Authority," 66–107, Sachedina, *The Just Ruler*, 18–9, 187; Modarressi, *Introduction to Shīʿī Law*, 50–1; Stewart, *Islamic Legal Orthodoxy*, 563–71.

95 See Savory, *Iran under the Safavids*, 185–6.

96 See Modarressi, *Introduction to Shīʿī Law*, 50; Sachedina, *The Just Ruler*, 18–9, 187–9, 235; Newman, "Fayd al-Kashani and the Rejection of the Clergy/State Alliance", 45–6.

97 Modarressi's study points out that the first time when rationalists were referred to as Uṣūlīs, or more specifically 'Uṣūliyya,' within Shiʿite intellectual circles was in ʿAllāma al-Ḥillī's *Nihāyat al-uṣūl* see Modarressi, *Introduction to Shīʿī Law*, 42. Saying this, it is important to note that prior to ʿAllāma the term Uṣūlī can also be traced in the writings of the 12th century scholar ʿAbd al-Jalīl al-Qazwīnī al-Rāzī (d. unknown). In his *Kitāb al-Naqḍ*, Qazwīnī refutes false claims against Shiʿites that were made by some Sunnis. In his attempt to justify the true beliefs of the Shiʿite, Qazwīnī clarifies that Sunnis should not be misled by the false views of heretical Shiʿite groups such as the extremists or the 'Akhbāriyya,' instead he propounds that they should only rely on the correct views that are given by the Uṣūlīs or the 'Uṣūliyya' (a group which he himself identifies with). For a detailed study of Qazwīnī's *Kitāb al-Naqḍ* and his distinction between Akhbārī and Uṣūlī beliefs. See Gleave, *Scripturalist Islam*, 17–25.

98 For a comprehensive study see Newman, *Twelver Shiism*, 122–138.

domination the Uṣūlīs enjoyed over the Shiʿite community.[99] Astarābādī was fundamentally disconcerted with the innovations that ʿAllāma engendered to the Shiʿite legal discourse. He criticised ʿAllāma, and medieval Uṣūlīs who followed him, for blindly imitating the legal discourse of Sunni jurists and for adopting Greek logic as a valid basis for deducing Sharia knowledge.[100] In summary, the following are perhaps the two most significant accusations that Astarābādī, or more generally the Shiʿite Akhbārī School, levelled against the Uṣūlīs:

1. Firstly, they criticised Uṣūlīs for accepting the juristic utility of evidence that generated mere conjecture of Sharia knowledge. They generally upheld that in contrast to the Sunnis, the infallible Shiʿite Imams categorically rejected and prohibited the juristic utility of any conjecture. As such, they maintained that their own legal methodology ensured that Sharia precepts are only deduced from evidence that generated certainty. In light of this, they denounced the Sunni-inspired four-fold categorisation of evidence, and they particularly criticised Uṣūlīs for using fallible (thus, conjectural) human reason to directly interpret the Quran. Instead, the Akhbārīs (as the name suggests) proposed that Sharia knowledge can only be deduced from the reported traditions (*akhbār*) of the infallible Prophet and Shiʿite Imams. The Akhbārī framework denied the Sunni-inspired categorisation of isolated reports based on their degree of reliability, and instead contended that all reports contained within Shiʿite canonical works are of equal authenticity and hence are authoritative definitive sources of Sharia knowledge.[101]
2. Secondly, the Akhbārīs criticised medieval Uṣūlīs for accepting and introducing *ijtihād* within the folds of Shiʿism and thereby dividing the Shiʿite community into the clerical class of jurists and the laity. In accordance with the earlier Akhbārī thought, jurists had no theological basis for being leaders of the Shiʿite community. They vehemently condemned them for usurping the rights of the Hidden Imam and encroaching all theological-jurisprudential, political, and economical matters of the Shiʿite society by illegitimately extending their role and function. It is important to know that Robert Gleave, in *Inevitable Doubt*, claims that it was only in the 18th century where the Akhbārī legal discourse

99 For a thorough discussion between pre-Astarābādī and post-Astarābādī understanding of Akhbārī thought see Gleave, *Inevitable Doubt*, 7–10; also see Mallat, *The Renewal of Islamic Law*, 28–35; Stewart, *Islamic Legal Orthodoxy*, 475–86.

100 Modarressi, *Introduction to Shīʿī Law*, 54.

101 See Etan Kohlberg, "Aḵbārīya," in *Encyclopaedia Iranica* (2011), retrieved 26th June 2018, from http://www.iranicaonline.org/articles/akbariya.

> reached the highest level of sophistication. He points out that rather than eschewing all notions of authority, the moderate neo-Akhbārī trend presented by Yūsuf b. Aḥmad al-Baḥrānī (d. 1772) endorsed that jurists possessed a certain level of authority not because they belonged to an elitist class, but because Sharia itself possessed authority and thus by implication those who knew how to interpret, deduce, and relay it also possessed authority.[102]

The Akhbārī movement gained immense popularity within the Shiʿite community during the later period of the Safavid rule. They maintained an intellectual stronghold amongst Shiʿite seminarians (students and teachers). Although it is beyond the scope of my study, an important question that arises is how and why the Akhbārī movement wielded so much sway within the Shiʿite seminary circles. Nevertheless, the Akhbārī dominance inevitably led to the suppression of the Uṣūlī thought, to the extent that Gleave notes that "some sources describe Uṣūlī *fiqh* being taught in secret, discrimination against Uṣūlīs and students of Uṣūlī *fiqh* having to hide their books with kerchiefs whilst walking in the streets for fear of attack."[103]

The Uṣūlī revival was once again brought about in Shiʿite seminary circles in the late 18th century. The chief protagonist who reportedly played a major role in stalling the Akhbārī momentum was Muḥammad Bāqir al-Bihbihānī, who is also known as al-Waḥīd al-Bihbihānī (d. 1792). After the death of the neo-Akhbārī Baḥrānī, Bihbihānī received acknowledgement for his triumph over the Akhbārī thought. He has been celebrated in Shiʿite Arabic and Persian biographical and historical texts as the 'renewer' (*mujaddid*) and 're-founder' (*muʿassis*) of Uṣūlī thought.[104] In his *Fawāʾid al-ḥāʾiriyya*, Bihbihānī makes a distinction between knowledge (*ʿilm*) and reality (*wāqiʿ*) and asserts that it is not necessary that what we know always accurately corresponds to reality. He elucidates that although evidence such as the Quran and the traditions of the Prophet and Imams may in themselves be sufficient in leading a person to reality (or that which is actually in the Mind of God), a jurist, due to his fallibility, will always interpret their textual indication (*dalāla*) in a conjectural manner. However, in comparison to an untrained person, a jurist's interpretation (or conjecture) is taken to be more accurate, insofar as there is more of a probability that it accurately corresponds with reality. The reason for this is that a jurist is well trained in utilising a systematic methodology of interpretation and thus his interpretation is always confined within the limits set forth by Uṣūlī legal

102 Gleave, *Inevitable Doubt*, 220–232.

103 *Ibid.*, 9.

104 *Ibid.*, 11; Momen, *An Introduction*, 186; Heern, *The Emergence of Modern Shiʿism*, 23–4.

theory.[105] In line with this argumentation, Bihbihānī asserts that Akhbārīs are wrong in criticising Uṣūlī jurists for acting in accordance with conjecture when they themselves do the same. He points out that although Akhbārīs claim that they only deduce Sharia precepts from the definitive sources of evidence, their methodology of understanding these sources is flawed, as they fail to use correct hermeneutical principles to interpret their textual indication. Therefore, for Bihbihānī it is inescapable for the Akhbārīs not to utilise conjecture and, unlike their Uṣūlī counterparts, their utility of conjecture is less likely to accurately correspond to reality.[106]

Bihbihānī's response to the Akhbārī movement attracted a lot of popularity amongst the intellectual Shiʿite (predominantly Akhbārī) seminary circles, as many students started to converge towards his Uṣūlī thought.[107] He trained a generation of prominent jurists including Sayyid Muḥammad Baḥr al-ʿUlūm (d. 1797), Shaykh Jaʿfar Kāshif al-Ghiṭāʾ (d. 1812), Mīrzā Abū Qāsim al-Qummī (d. 1816), and Muḥammad Ḥusayn Iṣfahānī al-Ḥāʾirī (d. 1838–9). These jurists not only authored influential works on Uṣūlī legal theory, but also attracted immense recognition as supreme religious figures of Iran and Iraq. It is important to note that in addition to Bihbihānī's efforts, Zackery Heern in *The Emergence of Modern Shiʿism*, highlights that other factors that may have contributed to the strong revival of the Uṣūlī thought were the 1772 plague that hit Iraq and the decline of the Safavid dynasty.[108] Bihbihānī's Uṣūlī successors operated independently of state sponsorship; rather they relied on the support of the local and global wealthy Shiʿite business community. Their influence over Shiʿite grassroots grew to such an extent that in the late 18th and early 19th century they turned out to grant legitimacy to the Qajar dynasty of Iran.[109] The post-Bihbihānī period therefore marks the phase when the Uṣūlī clerical class began to assume supreme authority once again in place of the Hidden Imam. This period would eventually lead to the unprecedented establishment of an Islamic theocracy marking the last, and present, stage of evolution of clerical authority in Shiʿite Islam.

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105 Gleave, *Inevitable Doubt*, 235–36; Also see Muḥammad Bāqir al-Waḥīd al-Bihbihānī, *al-Fawāʾid al-ḥāʾiriyya*, 31–48.

106 Gleave, *Inevitable Doubt*, 269.

107 *Ibid.*, 11; also see Cole, *Sacred Space and Holy War*, 72.

108 Heern, *The Emergence of Modern Shiʿism*, 158; Another factor that seemingly contributed towards Uṣūlī popularity was that Bihbihānī used to send out thugs to fight people who subscribed to the Akhbārī thought, see Cole, "Imami Jurisprudence," 40.

109 Heern, *The Emergence of Modern Shiʿism*, 228–229; Arjomand, "History, Structure, and Revolution in the Shiʿite Tradition in Contemporary Iran", 111–19; Sachedina, *The Just Ruler*, 235; Floor, "The Economic Role of the Ulama in Qajar Persia,"; Algar, *Religion and State in Iran 1785–1906*.

4 Modern Period of Shi'ite Legal Theory

The start of the 19th century witnessed the dominance of the Uṣūlī thought, particularly in the seminary of Najaf. The generation of eminent jurists trained by Bihbihānī authored works that not only critiqued the Akhbārī method of deducing Sharia knowledge, but also further developed nuances in the Uṣūlī method. One of the major contributions made in Shi'ite legal theory during this period was by the illustrious Shaykh Murtaḍā al-Anṣārī (d. 1864). Anṣārī travelled around Iran and Iraq (to shrine-city seminaries of Karbala, Najaf and Mashhad) to study seminarian sciences under the tutelage of prominent second and third generation students of Bihbihānī.[110] His grasp of these sciences, coupled with his experience of the Shi'ite diaspora, were perhaps the leading reasons why he began his own treatise on legal theory, entitled *Farā'id al-uṣūl* (also known as *Rasā'il*), with the chapter on 'certainty' (*qaṭ'*). In response to the heavy criticism levelled by the Akhbārīs upon the Uṣūlī utility of conjecture, Anṣārī from the very outset attempts to introduce and reinforce the pivotal role that certainty plays within the Uṣūlī thought. In his attempt, he lays out what I term the fundamental epistemological underpinnings that determine what evidence a jurist can utilise to deduce Sharia knowledge. Anṣārī's epistemological underpinnings can be described as the backbone of modern Shi'ite legal theory. Accordingly, in the forthcoming chapters of my study, I examine how Anṣārī and his Uṣūlī successors analyse these underpinnings and their impact on the juristic deduction of Sharia precepts.

A natural outcome of Anṣārī's method and epistemological discourse was that it expanded the scope of Sharia and thereby the jurisdiction of a jurist. He contributed to this expansion by devising a set of guiding procedural principles (*uṣūl al-'amaliyya*) that could be utilised by a jurist (or even the laity) to formulate Sharia precepts in cases where there was doubt (*shakk*).[111] In other words, he expressed that in cases where there is either no or limited/ambiguous access to evidence that conveys Sharia knowledge as it may be in the Mind of God, a *mukallaf* (a Muslim jurist or a lay person who is endowed with Sharia responsibilities/duties) must refer to one of the following procedural principles:

1. The principle of precaution (*aṣālat al-iḥtiyāṭ*), which is normally referred to in cases where a *mukallaf* has ambiguous knowledge that he is required to perform a Sharia duty but has doubt on what the exact duty

110 For a thorough biography of Anṣārī see Sachedina, *The Just Ruler*, 22–4; Cole, "Imami Jurisprudence," 40–6; Momen, *An Introduction*, 311; Ardihayi, "Najaf," 121–22.

111 See Momen, *An Introduction*, 187; Anṣārī, *Farā'id*, 2: 9–14.

is. In such a case, the Sharia responsibility of a *mukallaf* would be to enact the maximum duty possible. For example, a *mukallaf* has knowledge that he is obliged to pray (*ṣalāt*) but does not know the exact direction (*qibla*) he is required to face whilst praying (i.e., the direction of Mecca). In such a case, the maximum possible duty that he would be required to enact to ensure that he has fulfilled his obligation is to pray in all four directions.

2. The principle of exemption (*aṣālat al-barā'a*), which is normally referred to in cases where due to a lack of evidence, a *mukallaf* is unaware (or has no knowledge) of a Sharia duty that he may be required to perform. In such a case, his Sharia responsibility would be that he is exempted or excused from the performance of any responsibility. For example, if due to a lack of evidence a *mukallaf* does not know whether the Sharia prohibits the act of smoking or not, then the act of smoking is categorised as being permissible (*mubāḥ*) by the Sharia, and as such the *mukallaf* has a choice to either perform it or not without being held liable.
3. The principle of continuity (*aṣālat al-istiṣḥāb*), which is normally referred to in cases where a *mukallaf* starts doubting a Sharia duty that he previously knew with certainty. In such a case, the Sharia responsibility of the *mukallaf* would be to resolve his doubt by acting in accordance with his previous certainty and simply ignoring his doubt. For example, a *mukallaf* knows with certainty that he performed ritual ablution (*wuḍū'*) before leaving his house. If after some time he entertains doubt about whether he is still in the state of ablution or not, then he resolves this doubt by continuing with his previous state of certainty and thereby accepting that he is still in the state of ablution.
4. The principle of choice (*aṣālat al-takhūr*), which is largely referred to in cases where a *mukallaf* has doubt about two mutually conflicting Sharīʿa duties. In such a case, the Sharia responsibility of the *mukallaf* would be to choose to act in accordance with one of the two mutually conflicting duties. For example, if a *mukallaf* finds two conflicting isolated reports, wherein one clearly indicates that it is prohibited (*ḥarām*) to wear a black turban, and the other clearly indicates that it is obligatory (*wājib*) to wear a black turban, then the *mukallaf* has the choice to choose to act in accordance with either one of the two.

Anṣārī's legal theory and his expansion of the scope of Sharia seems to have significantly impacted his jurisprudential discourse on political theory. In his study of commercial jurisprudence entitled *Kitāb al-makāsib*, Anṣārī emphasises the potential role a jurist has in absence of the Twelfth Imam. He argues that a jurist acts as a special deputy (*al-nā'ib al-khāṣṣ*) of the Hidden Imam and is in charge of maintaining general guardianship (*al-wilāyat al-ʿāmma*) over all

affairs of the Muslim community whilst the Imam remains in occultation.[112] Anṣārī never took an official position of leadership during the lifetime of his teacher Muḥammad Ḥasan al-Najafī (d. 1849). It is important to note that Najafī, who is also famously known as al-Sahib al-Jawāhir, was one of the first Shiʿite jurists to be acknowledged as *marjaʿ al-taqlīd* (the point of reference/emulation). His success in achieving the highest form of authority, and thereby giving the position of a jurist unprecedented recognition within the Shiʿite world, probably stems from his illustrious work on juristic deductions (*fiqh*) entitled *Jawāhir al-kalām*.[113] In *Jawāhir al-kalām*, Najafī gave an extended commentary on Muḥaqqiq al-Ḥillī's *Sharāʾiʿ al-Islām* by listing opinions of prominent past Shiʿite jurists. His comprehensive work attracted a lot of scholarly attention, and this was perhaps one of the main reasons why it (and its author) became a major point of reference in the Shiʿite diaspora, insofar as most lay Shiʿites started to follow and emulate the deductions and opinions of Najafī therein. Prior to his death, Najafī himself appointed Anṣārī as his successor. Accordingly, Anṣārī became universally recognised as the second *marjaʿ al-taqlīd* of the Shiʿites. Anṣārī's most significant contribution in the development of Shiʿite authority structures was that he successfully ensured the centrality and the permanency of a single *marjaʿ al-taqlīd*. He did this by firstly asserting that a jurist can only be recognised as a *marjaʿ al-taqlīd* if he was the most learned (*aʿlam*) amongst the clerical class. Secondly, he asserted that since lay people do not hold expertise in deducing Sharia knowledge, it is incumbent upon them, as part of their Sharia responsibilities (*takālīf*), to follow and act in accordance with the opinions of a *marjaʿ*. He argued that if they failed to do this then all their ritual acts of worship (such as praying, fasting, giving alms etc.) would be null and void.[114]

Anṣārī's development of Shiʿite authority structures (or more specifically his opinion on *marjaʿ al-taqlīd*) became recognised around the Shiʿite world, including countries outside the Middle East, such as India and Turkey. To this day, his *Farāʾid al-uṣūl* and *Kitāb al-makāsib* are taught within traditional Shiʿite seminaries as advanced texts of Shiʿite legal theory (*uṣūl al-fiqh*) and legal deductions (*fiqh*). Only after rigorously understanding and completing

112 See Sachedina, *The Just Ruler*, 210–25; Murtaḍā al-Anṣārī, *Kitāb al-Makāsib*, 3: 561.

113 See Sachedina, *The Just Ruler*, 22; Cole, "Imami Jurisprudence," 40–1.

114 See Cole, "Imami Jurisprudence," 44–5; it is important to note that the legal necessity of following a *marjaʿ al-taqlīd* was first explicitly stated by Sayyid Muḥammad Kāẓim al-Ṭabāṭabāʾī al-Yazdī (d. 1919), who, in his famous work on juristic deductions (*fiqh*) entitled *ʿUrwat al-wuthqā*, based his opinions on the ideas set forth by Anṣārī, see Walbridge, "Introduction: Shiʿism and Authority," 4; Moussavi, *Religious Authority in Shiʿite Islam*, 39; Sachedina, *The Just Ruler*, 222–3.

his works can seminarians become qualified as future jurists.[115] Anṣārī's systematisation of legal theory and his impact on Shiʿite authority structures led his Uṣūlī successors to attain a very powerful and authoritative position within the Shiʿite world. The following are some of his successors, who I refer to as post-Anṣārī or modern Uṣūlīs, who not only held prominent leadership positions within the Shiʿite community but also made important contributions in furthering Shiʿite legal theory by clarifying, scrupulously examining, and building on Anṣārī's legal epistemology:

1. Akhund Muḥammad Kāẓim al-Khurāsānī (d. 1911), also known as Sahib al-Kifāya, studied directly under the tutelage of Anṣārī. Apart from authoring commentaries on Anṣārī's *Farāʾid al-uṣūl* and *Kitāb al-makāsib*, Khurāsānī authored *Kifāyat al-uṣūl*, where he innovatively built on Anṣārī legal epistemology by rigorously presenting his own take.[116] Owing to the conciseness of *Kifāyat al-uṣūl*, it received over a hundred commentaries.[117] It eventually replaced Mīrzā Abū Qāsim al-Qummī's *Qawānīn al-uṣūl* as one of the main seminarian texts of legal theory, and continues to be taught at a higher level of traditional Shiʿite seminary education to this day.[118] When his contemporary and teacher Mirza Ḥasan Shīrāzī (d. 1896) moved to Samara, Khurāsānī took charge of the seminary of Najaf and became the lead instructor of the Shiʿite jurisprudential discourse to a large cohort of students. After the demise of Shīrāzī, Khurāsānī became recognised as the sole *marjaʿ al-taqlīd* of the Shiʿite community and used his position of leadership to support the Iranian Constitutional Revolution.[119]
2. Muḥammad Ḥusayn al-Gharawī al-Naʾīnī (d. 1937) was one of the three main students of Khurāsānī who taught legal theory at the seminary of Najaf.[120] Like his teacher, Naʾīnī also supported the Iranian Constitutional Revolution. Moreover, in his lifetime, he also supported the revolt against

115 See Momen, *An Introduction*, 187, 201–3; Stewart, *Islamic Legal Orthodoxy*, 577–8.

116 Although Khurāsānī's scholarship was largely shaped by Anṣārī, there were numerous minor points, or as Ardihayi claims, 'Uṣūlī nuances,' that were contended by Khurāsānī, see Ardihayi, "Najaf," 122; For a thorough study of the minor difference between Anṣārī and Khurāsānī see Murtaḍā al-Fīrūzābādī, *ʿInāyat al-uṣūl fi sharḥ Kifāyat al-uṣūl*, 6 vols. (Qum: Fīrūzābādī, 1979).

117 See Moezzi, "Ākhūnd al-Khurāsānī".

118 Momen, *An Introduction*, 203; Stewart, *Islamic Legal Orthodoxy*, 577; Litvak, *Shiʿi scholars of nineteenth-century Iraq*, 92, 181.

119 For a broader study of the impact of Khurāsānī's scholarship and leadership in the Shiʿite world see Moezzi, "Ākhūnd al-Khurāsānī"; Momen, *An Introduction*, 246–250; Litvak, *Shiʿi scholars of nineteenth-century*, 91–2; Mottahedeh, *The Mantle of the Prophet*, 218–9.

120 Ardihayi, "Najaf," 123; Mahdī ʿAlīpūr, *al-Madkhal ilā tārīkh ʿilm al-uṣūl*), 329–35.

British colonialism and imperialism and the Russian invasion of Iraq. Rather than being completely anti-western, Naʾīnī believed that there was no problem in taking the good from the West, such as legal institutions and infrastructures, knowledge and technology.[121] Although Naʾīnī himself never authored a work on legal theory, his pioneering lectures and ideas on the subject were transcribed and complied by his eminent students. For example, some of his major transcriptions include, *Ajwad al-taqrīrāt* by Abū al-Qāsim al-Khūʾī and *Fawāʾid al-uṣūl* by Muḥammad ʿAlī al-Kāẓimī al-Khurāsānī.

3. Ḍīyaʾ al-Dīn al-ʿArāqī (d. 1942) was the second of the three main students Khurāsānī taught legal theory to at the seminary of Najaf. ʿArāqī's postgraduate (*khārij*) seminary classes had significant attendance. The was because he was widely acknowledged by his peers and students as possessing comprehensive knowledge of legal theory, and he allowed his postgraduate students (or future jurists) to freely express and discuss their ideas during his classes.[122] Although his lectures on legal theory were transcribed by some of his students, ʿArāqī authored his own treatise on legal theory entitled *Maqālāt al-uṣūl*.

4. Muḥammad Ḥusayn al-Gharawī al-Iṣfahānī (d. 1942), also known as Ayatollah Kumpānī, was the third main student of Khurāsānī. Like his contemporaries (Naʾīnī and ʿArāqī) he too taught legal theory at the seminary of Najaf. One of his major contributions was that he wrote an astute commentary on Khurāsānī's *Kifāyat al-uṣūl*, entitled *Nihāyat al-dirāya fī sharḥ al-Kifāya*. In this work, he took recourse to philosophical jargon to explain and clarify many subtle philosophical concepts found in *Kifāyat al-uṣūl*.[123] Furthermore, he attempted to refine the Shiʿite discourse on legal theory by asserting that its general format of presentation needed to be rearranged so that its students could grasp its content more efficiently. Accordingly, he proposed that issues discussed within legal theory ought to be divided into four sections: 1) a section on linguistic principles, 2) a section on reason and rational principles, 3) a section on authority

121 For a broader study of Naʾīnī, in particular his views on constitutionalism and modernity see Hairi, *Shīʿīsm and Constitutionalism in Iran*, 109–89; Hunter, "Constitutional and Ideological Barriers to Reform in Iran: Is Change Possible within the Existing System", 165–6; Nouraie, "The Constitutional Ideas of a Shi'ite Mujtahid: Muhammad Husayn Na'ini", 234–47; Ansari, *The Politics of Nationalism in Modern Iran*, 245–48; David Thurfell, "The Ambiguities of Islamism and a Century of Iranian Opposition", 196–7.

122 See Ardihayi, "Najaf," 123; Momen, *An Introduction*, 315. ʿAlīpūr, *al-Madkhal*, 336.

123 See Ardihayi, "Najaf," 126; ʿAlīpūr, *al-Madkhal*, 340, 344.

of evidence, and 4) a section on procedural principles (*uṣūl al-ʿamaliyya*). However, Iṣfahānī died before he could author a rearranged work.[124]

5. Muḥammad Riḍā Muẓaffar (d. 1964) studied legal theory under the tutelage Naʾīnī, ʿArāqī, and Iṣfahānī. Although Muẓaffar did not enjoy the status of being a *marjaʿ al-taqlīd*, he nevertheless played a major role at the seminary of Najaf. Apart from teaching legal theory at the seminary, his pioneering efforts allowed him to be at the forefront of reforming the traditional method of studying seminary education. Muẓaffar appreciated that the material taught during the preliminary and intermediary stages (also known as the stages of *muqaddima* and *suṭuḥ*) of seminary education was not comprehensive enough to allow students to become well-rounded scholars. He was insistent that students had to be introduced to, and become well-versed in, modern methods and experimental knowledge. Accordingly, as part of a special committee, he proposed to Iraq's Ministry of Education establish and officially recognise a college of jurisprudence, whose purpose was to teach students the traditional seminarian jurisprudential discourse with the addition of modern subjects. His proposal was successful and was granted approval in 1957. Muẓaffar's other great accomplishment was that he set up a publishing house called Muntada al-Nashr. The purpose of the publishing house was that it allowed traditional seminarians (or jurists) to present and share their scholarly output and research with a wider academic community.[125] Having proficiency in literature and a modern style of writing, Muẓaffar rewrote several complicated seminarian texts into simple language. In the discourse of legal theory, his greatest contribution was his book entitled *Uṣūl al-fiqh*, as it was written with the purpose of explaining complex Uṣūlī discussions in a clear and comprehensible manner. To this day, his *Uṣūl al-fiqh* continues to be taught as a textbook at the intermediate level

124 His attempt to rearrange issues discussed in *uṣūl al-fiqh* are apparent in the work of his student Shaykh Muḥammad Riḍā Muẓaffar (d. 1964), see Abd al-Karim al-Kirmani, "Introduction" in *The Faith of the Imāmiyyah Shiʿah by ʿAllamah Muhammad Riḍā Muẓaffar*, translated by Badr Shahin (Tehran: ABWA Press, 2012), 24–26.

125 For Muẓaffar's impact on education see Muhammad Qasim Zaman, "Competing Conceptions of Religious Education" in Robert W. Hefner et al. (ed.) *Schooling Islam: The Culture and Politics of Modern Muslim Education* (Princeton: Princeton University Press, 2007), 243–244; Rodger Shanhan, "The Islamic Da'wa Party: Past Developments and Future Prospects" in *Middle East Review of International Affairs* 8:2 (2004) 16–25; Ardihayi, "Najaf," 45–46; for an extensive biography of Muẓaffar see Kirmani, "Introduction," 13–39; Keiko Sakai, "Modernity and Tradition in the Islamic Movement in Iraq: Continuity and Discontinuity in the Role of Ulama" in *Arab Studies Quarterly* 23:1 (2001) 37–53.

in leading Shiʿite seminaries.[126] It seems that from all his teachers of legal theory, Muẓaffar was most inclined towards Iṣfahānī.[127] For instance, following Iṣfahānī's proposal, Muẓaffar in his *Uṣūl al-fiqh* rearranges issues debated in legal theory into the following sections or discussions:

a. Discussions on Linguistics (*mabāḥith al-alfāẓ*): in this section of legal theory, Muẓaffar examines hermeneutical methods that can be utilised to deduce, understand, and interpret the linguistic indication of textual sources of evidence. For example, a typical issue discussed in this section is regarding the indication of verbal commands (*al-awāmir*). Do verbal commands indicate obligatory (*wājib*) Sharia duties? Or do they indicate recommended (*mustaḥabb*) Sharia duties? If they are obligatory, then that would imply that if a *mukallaf* abstains from enacting them, then he would be sinning and possibly subjected to chastisement; whereas if they are recommended, then that would imply that if a *mukallaf* abstains from enacting the command then he would not be sinning and cannot be subjected to chastisement. Other such discussions found under this section include studies relating to the indication of verbal prohibitions (*al-nawāhī*); indication of explicit and implicit texts (*al-manṭūq wa-l mafhūm*); indication of general and particular texts (*al-ʿām wa-l khāṣṣ*); indication of unrestricted and restricted texts (*al-muṭlaq wa-l muqayyad*); and indication of clear and ambiguous texts (*al-mubayyan wa-l mujmal*).
b. Discussions on Rationality (*mabāḥith al-ʿaqliyya*): Muẓaffar devotes this section to theologically presenting and categorising the role, function and limits of reason and the different types of judgments it makes.
c. Discussions on Authority (*mabāḥith al-ḥujja*): in this section, Muẓaffar introduces his readers to fundamental epistemological underpinnings that form the foundations of the modern Uṣūlī method. Considering these underpinnings, he examines the nature and the authoritativeness (*ḥujjiyya*) of various forms of evidence that are commonly used in the Uṣūlī juristic process of deducing Sharia precepts.

126 See Sakai, "Modernity and Tradition," 28; Mallat, *The Renewal of Islamic Law*, 40–41; Michel M. J. Fischer, *Iran: From Religious Dispute to Revolution* (Wisconsin: The University of Wisconsin Press, 2003), 12–61, 247–8.

127 Kirmani, "Introduction," 26.

d. Discussions on Procedural Principles (*mabāḥith al-uṣūl al-ʿamaliyya*): in this section, Muẓaffar introduces his readers to procedural principles utilised in the juristic deduction of Sharia precepts. These principles offer guidance to jurists on how to deduce Sharia precepts in cases when there is doubt (or insufficiency of knowledge) about them due to an inadequacy of evidence. Following Anṣārī, Muẓaffar too elucidates upon (the aforementioned) four procedural principles. Sadly, he only managed to thoroughly examine the procedural principle of continuity (*istiṣḥāb*), as he passed away before he could complete this entire section.

6. Muḥammad Bāqir al-Ṣadr (d. 1980) studied legal theory under the tutelage of Sayyid Muḥsin al-Ḥakīm (d. 1970) and Sayyid Abū al-Qāsim al-Khūʾī (d. 1992). He held an illustrious reputation amongst peers and students for his teaching abilities and his literature on different subjects. Ṣadr had a keen interest in the philosophical and economical ideas that originated in the West and how they impacted the Middle East and the broader Muslim world. He authored works such as *Falsafatuna* ("Our Philosophy") and *Iqtiṣāduna* ("Our Economy"), wherein he critically engages with and attempts to respond to Marxist, communist and western capitalist and imperialist ideas.[128] Ṣadr was known for wanting to reform the traditional educational methods of Shiʿite seminaries. He found that due to a lack of systematisation they were archaic, and as such, made it impossible to monitor the progress and academic levels of seminarians. He interestingly notes that irrespective of their level of study, all seminarians wore turbans and hence the laity normally considered them to belong to the elitist clerical class. This meant that prior to completing their studies, a lot of them attracted fine opportunities and comfortable preaching jobs. Another reform that Ṣadr proposed was regarding Shiʿite authority structures. He asserted that, to enhance the effectiveness of Shiʿite jurists and increase their function in the international Shiʿite diaspora, it was necessary that the concept of *marjaʿ al-taqlīd* went through a process of evolution. He argued that such evolution was only possible if individuals who had the capability of being *marjaʿ al-taqlīd* were replaced by institutions that collectively enacted the role of *marjaʿ al-taqlīd*.[129] Sadly, Ṣadr was unable to follow through with these reforms or even detail their specifics. His support of the 1979 Iranian revolution made him a threat to the ruling Iraqi Baʿth Party. In 1980, Ṣadr was executed by Saddam Hussein. Apart

128 See Walbridge, "Muhammad Baqir al-Sadr: The Search for New Foundations", 131–2.

129 *Ibid.*, 143–4.

from training a generation of prominent teachers, Ṣadr's major contribution to the Shiʿite jurisprudential discourse was that he authored his deliberation on legal theory in *Durūs fi ʿilm al-uṣūl*. His work became very popular amongst seminarians and the general public that was interested in gaining insights into the Uṣūlī process of deducing Sharia precepts. This was because it was written using modern Arabic and therefore successfully presented a rather complicated legal theory in a manageable and accessible manner. Ṣadr's *Durūs fi ʿilm al-uṣūl* continues to be taught at the Arabic seminary of Qum to this day.[130]

7. Rūḥallāh Mūsawī Khumaynī (d. 1989), most known in the West as Ayatollah Khomeini, was the student of ʿAbd al-Karīm al-Ḥāʾirī (d. 1937) and Ḥusayn Burūjardī (d. 1961). Both his teachers directly studied the discourse of legal theory under the tutelage of Khurāsānī in Najaf. Apart from being acknowledged as excellent teachers, both Ḥāʾirī and Burūjardī received recognition for their excellent administrative and management capabilities. In 1921, Ḥāʾirī transformed the seminary of Qum from a regional school into a major centre of learning. He did this by attracting students from around the world, including those who he had previously taught during his tenure at the seminaries of Najaf, Karbala, and Arak.[131] The seminary of Qum, which during the time of Ḥāʾirī became known as *al-Ḥawza al-ʿilmiyya*, was further developed by Burūjardī. Whilst holding the position of *marjaʿ al-taqlīd*, Burūjardī attracted a lot of grassroots influencers who directed their religious taxes towards supporting his projects. Accordingly, during his reign all budgetary requirements of the seminary of Qum were fulfilled and it was self-sufficient in its operations. One of the greatest achievements of Burūjardī was that he introduced a systematic curriculum and examinations for preliminary (*muqaddima*) and intermediary (*suṭuḥ*) levels of seminary education. He made student stipends (*shahriyya*) dependent on each student's class performance and examination results.[132] The change of educational culture brought by Burūjardī paved the path for Qum to become a major Shiʿite seminary that attracted thousands of students from around the world. Although both Ḥāʾirī and Burūjardī enjoyed the position of *marjaʿ al-taqlīd*, they played passive political roles and shared a cordial relationship with the

130 See Mallat, *The Renewal of Islamic Law*, 10.

131 See Mottahedeh, *The Mantle of the Prophet*, 228–9; Fischer, *Iran*, 123.

132 See Baghistani et al., "Qum", 46–9; Also see Algar, "Borūjerdī, Ḥosayn Ṭabāṭabāʿī".

Shah of Iran, Mohammad Reza Pahlavi (d. 1980).[133] Their political passivity was, however, overturned by their student Khumaynī. Famously recognised as the leader of the 1979 Iranian revolution, Khumaynī was successful in ousting the Shah's monarchic rule and replacing it with a theocratic government.[134] Khumaynī took the role and function of a jurist within Shiʿism to another level by insisting that whilst the Twelfth Imam remains in occultation, only a jurist has the necessary qualifications that enable him to possess absolute guardianship and authority over all religious and socio-political affairs of Shiʿite community.[135] Khumaynī's theory on the absolute guardianship of a jurist (*wilāyat al-faqīh al-muṭlaq*) was adopted as part of the post-revolution constitution of the newly formed Islamic Republic of Iran, and Khumaynī was acknowledged as the first jurist guardian or the supreme leader of the new republic. According to Linda Walbridge, Khumaynī was not recognised as the most learned (*aʿlam*) jurist of his time, but instead it was Abū al-Qāsim al-Khūʾī. Despite this, however, she points out that many Shiʿites around the world accepted Khumaynī as *marjaʿ al-taqlīd*. She adds that during his tenure, he "made *marjaʿiyya* a household a term" around the Shiʿite world.[136] After his death, Khumaynī was succeeded in his position as the supreme leader of Iran (a majority Shiʿite state) by the Grand Ayatollah Sayyid Ali Khamenei (b. 1939), who remains in place. Nevertheless, before assuming a political role, Khumaynī was an intelligent and charismatic seminarian who followed Ḥāʾirī from the seminary of Arak to the seminary of Qum, where he taught advanced classes on legal theory (*uṣūl al-fiqh*) and juristic deductions (*fiqh*). It is important to note that after the demise of Sayyid Muḥammad Ḥusayn Ṭabāṭabāʿī (d. 1981), due to whose efforts the discourse of philosophy was introduced as part of Qum's official seminary curriculum, Khumaynī became recognised as an exceptional teacher of philosophy.[137] His grasp of philosophy enabled him to occasionally critique the works of other Shiʿite scholars by drawing a distinction

133 See Baghistani, "Qum," 45, 50; it is important to note that Burūjardī never approved Khumaynī's political activism, to the extent that at one point he removed Khumaynī from his teaching position at the seminary of Qum, see Stewart, "The Portrayal of an Academic Rivalry: Najaf and Qum in the Writings and Speeches of Khomeini, 1964–78", 219.

134 For a detailed analysis see Said Amir Arjomand, *The Turban for the Crown*; Keddie (ed.), *Religion and Politics in Iran*; Dabashi, *Theology of Discontent*; Moin; Fischer, *Iran*, 181–232.

135 See Mavani, "Analysis of Khomeini's Proofs for al-Wilaya al-Mutlaqa (Comprehensive Authority) of the Jurist", 183–98.

136 See Walbridge, "Introduction: Shiʿism and Authority," 5.

137 See Medoff, "Ṭabāṭabāʿī, Moḥammad-Ḥosayn".

between questions of jurisprudence and questions of philosophy.[138] His intellectual prowess not only allowed him to follow the common trend of writing a detailed commentary on Khurāsānī's *Kifāyat al-uṣūl*, but also to author his own independent works on legal theory, entitled *al-Rasā'il* and *Manāhij al-wuṣūl ila ʿilm al-uṣūl*. Two of his most celebrated works in the field are entitled *Tahdhīb al-uṣūl*, which is a compilation of his lectures on legal theory that are transcribed by his student Jaʿfar Subḥānī (b. 1929) and *Tanqīḥ al-Uṣūl*, which was transcribed by his student Ḥusayn Taqawī al-Ishtihārdī (d. 2000). During the supreme leadership of Khumaynī, the seminary of Qum inevitably continued to thrive. He established a hierarchical order of command that clearly demarked positions of responsibility and accountability of seminarian office bearers.[139]

8. Sayyid Abū al-Qāsim al-Khū'ī (d. 1992) studied legal theory at the seminary of Najaf under Na'īnī, ʿArāqī, and Iṣfahānī. After completing his studies, Khū'ī showcased his remarkable teaching skills and enduring dedication to students by teaching at the seminary of Najaf for over fifty years. He was known for his rigorous and detailed scholarship and his distinctive opinions on different disciplines taught at Shiʿite seminaries. He authored books on a wide range of subjects, including juristic deductions (*fiqh*), biographical studies (*rijāl*), exegesis of the Quran (*tafsīr*), and even astronomy and mathematics. As mentioned, Khū'ī transcribed Na'īnī's lectures on legal theory in *Ajwad al-taqrīrāt*. His own lectures and opinions on the subject were compiled by his students. For example, Abī Qāsim al-Kawkabī transcribed Khū'ī's lectures in *Mabānī al-istinbāṭ* and Muḥammad Surūr transcribed *Miṣbāḥ al-uṣūl*. After the demise of Ayatollah Muḥsin al-Ḥakīm (d. 1970), Khū'ī became recognised as *marjaʿ al-taqlīd*. Despite Khumaynī's political activism in Iran and his overwhelming popularity, Khū'ī was recognised as the most learned Shiʿite jurist, and his authority was welcomed by Shiʿites around the world.[140] During his tenure as *marjaʿ al-taqlīd*, Khū'ī was criticised for his passivity and his quietist approach on political matters. His passivity was notably evidenced during the lead up to the Iranian revolution, in which Khumaynī wrote many letters to him and other seminarians of Najaf to seek their approval and support for the revolution. In his analysis of Khumaynī's letters, Devin Stewart finds that:

138 See Baghistani, "Qum," 62.

139 *Ibid.*, 63–70.

140 See Walbridge, "Introduction: Shiʿism and Authority," 5–7.

> Khomeini's earlier writings grant Najaf decided precedence over Qom. Later he criticizes Najaf's scholars for their inactivity and lack of involvement with the pressing political issues of the day … Finally, he entirely forsakes Najaf, convinced that it will lose its prominence as a centre of learning and that Qom will replace it as the intellectual and religious capital of the Shiʿite world.[141]

Although Khūʾī was known for his political passivity, the Iraqi Sunni-minority Baʿth Party was conscious of his senior position as *marjaʿ al-taqlīd* and therefore took all necessary measures to ensure that there was no Shiʿite uprising in Iraq. Under the same political circumstances, Khūʾī's status of *marjaʿ al-taqlīd*, his worldwide networks and followers, and his position as the head of the seminary of Najaf, were inherited by his student the Grand Ayatollah Sayyid ʿAlī al-Ḥusaynī al-Sīstānī (b. 1930), who occupies these positions to the present day.

4.1 *Prelude to Modern Legal Theory*

Prior to analysing the fundamental epistemological underpinnings and the legal epistemology propounded by modern Uṣūlīs, it is important to discuss what Uṣūlīs understand to be the remit or the subject matter (*mawḍūʿ*) of legal theory and how they define and understand what is meant by the all-important notion of authoritativeness (*ḥujjiyya*).

Deliberation on the subject matter of legal theory is of immense relevance to Uṣūlīs, as it allows them to outline what issues (*masāʾil*) fall within the remit of legal theory and how this remit differs from the remit of other seminary sciences. Before the modern period, it seems that Uṣūlīs predominantly upheld that the remit of legal theory was to evaluate the authoritativeness of the four-fold categorisation of sources. For instance, with the aid of philosophical jargon, Muẓaffar explains that in *al-Qawānīn al-Muḥkama fī Uṣūl*, Mirza Abū Qāsim al-Qummī (d. 1816) writes that the subject matter of legal theory is to evaluate the authoritativeness of evidence qua evidence (*dalīl bi-mā huwa dalīl*).[142] Therefore, for him, the subject matter of legal theory is restricted to evaluating the authoritativeness of the Quran, *sunna*, *ijmāʿ* and *ʿaql*, whose evidentiary nature is already assumed and historically accepted amongst Uṣūlī scholars.[143]

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141 Stewart, "The Portrayal of an Academic Rivalry," 221–2.

142 See Muẓaffar, *Uṣūl al-fiqh*, 2:10–13.

143 See Mirza Abū Qāsim al-Qummī, *al-Qawānīn al-Muḥkama fī Uṣūl*, 3:3–4.

The view of Qummī was, however, critiqued by his contemporary Muḥammad Ḥusayn Iṣfahānī al-Ḥā'irī (d. 1838–9). In *Fuṣūl al-Gharawiyya fi-l uṣūl al-fiqhiyya*, Ḥā'irī argued that Qummī deliberations were found on the basic assumption (*mabādī al-taṣawwuriyya*)[144] that Quran, *sunna*, *ijmāʿ* and *ʿaql* are the only forms of evidence that can generate Sharia knowledge. Instead, he proposed that rather than limiting the remit of legal theory to the evaluation of evidence that is already assumed as evidence, it is more fitting that its remit is broadened to include the evaluation of the evidentiary nature and the authoritativeness of any evidence – or evidence per se (*al-adilla bi-mā hiya hiya*) – that potentially reveals Sharia knowledge.[145]

Following Ḥā'irī, most modern Uṣūlīs agree on a broader remit of legal theory.[146] For instance, Muẓaffar asserts that the remit of legal theory is to evaluate "anything that is competent in establishing Sharia precepts and can be identified as evidence (*dalīl*) or authority (*ḥujja*)."[147] Accordingly, in his *Uṣūl al-fiqh*, he not only evaluates the authoritativeness of the commonly accepted four-fold categorisation of evidence, but also the more contentious forms of evidence that were historically rejected by Shiʿite Uṣūlīs; including *qiyās* (analogical reasoning), *istiḥsān* (personal juristic preference), and *istiṣlāḥ* (social interest). It is important to note that although modern Uṣūlīs agree with a broad remit of legal theory, unlike Muẓaffar (or Ḥā'irī), they are careful in not over-broadening it to include the evaluation of 'anything that can potentially disclose Sharia knowledge'; rather they define its remit to include the

144 In *uṣūl al-fiqh*, a basic assumption is the proposition that is assumed (or taken for granted) in one discipline because it is an issue (*masā'il*) that is analysed in another discipline. For instance, the infallibility of the Prophet and the Shiʿite Imams is something that is assumed in the discipline of *uṣūl al-fiqh* as it is an issue that is analysed in the discipline of theology (*ʿilm al-kalām*). Accordingly, when Ḥā'irī claims that Qummī's deliberations are found on a basic assumption, he means that for Qummī the authoritativeness or evidentiary nature of the Quran, *sunna*, *ijmāʿ* and *ʿaql* is not an issue that is discussed in *uṣūl al-fiqh*, but rather it is an issue that is analysed in another discipline and merely assumed within *uṣūl al-fiqh*. Therefore, in essence, Ḥā'irī is critical of Qummī for already assuming that the Quran, *sunna*, *ijmāʿ* and *ʿaql* are the only sources of evidence that can reveal Sharia knowledge.

145 See Muẓaffar, *Uṣūl al-fiqh*, 2:10–11; also see Muḥammad Ḥusayn al-Ḥā'irī al-Iṣfahānī, *Fuṣūl al-Gharawiyya fi-l uṣūl al-fiqhiyya*, 1:3.

146 For instance, see Iṣfahānī, *Nihāyat al-Dirāya*, 1:35; Rūḥallāh al-Khumaynī, *Tanqīḥ al-Uṣūl*, 1:21; Khū'ī, *Mabānī al-Istinbāṭ*, 1:27–8; Muḥammad Ḥusayn al-Na'īnī, *Ajwad al-Taqrīrāt*, 2 vols. Transcribed by Abū Qāsim al-Khū'ī (Qum: al-Irfan Press, 1973), 1:26–8; Muḥammad Kāẓim al-Khurāsānī, *Kifāyat al-Uṣūl* (Qum, Mu'assasat Al al-Bayt, 1988), 1:8.

147 See Muẓaffar, *Uṣūl al-fiqh*, 2:18.

evaluation of evidence that is commonly accepted or utilised by Uṣūlīs.[148] As such, in addition to the four-fold categorisation of evidence, they normally also evaluate the evidentiary nature and the authoritativeness of the primacy of apparent meaning (*aṣālat al-ẓuhūr*), which is the most commonly accepted hermeneutical method of interpretation, and the procedural principles (*uṣūl al-ʿamaliyya*) that are commonly used in cases of doubt (*shakk*).

After clarifying that the remit of modern legal theory is to examine the authoritativeness of different forms of evidence, it is important to elucidate what Uṣūlīs mean by authoritativeness (or *ḥujjiyya*). Muẓaffar explains that in Arabic the term *ḥujja* (authoritative) literally refers to an 'argument' that can prove or establish a point.[149] He elaborates that the party that possesses '*ḥujja*' is always considered victorious because it is a) able to completely silence and disprove the party that does not possess *ḥujja*, and b) able to convince the party that does not possess *ḥujja* of its point of view.[150] He then moves on to clarify that in the discourse of legal theory, Uṣūlīs have historically used the term *ḥujja* in two different ways: in a literal manner and in a technical manner. In its literal manner, Uṣūlīs use the term *ḥujja* to refer to evidence that generates certainty and accordingly they define *ḥujja* as "anything that discloses and reveals another thing, insofar as it establishes it." On the other hand, in its technical manner, Uṣūlīs use the term *ḥujja* to refer to evidence that generates conjecture that is substantiated or sanctioned by God and accordingly they *also* define *ḥujja* as referring to "anything that establishes its referent without reaching the level of certainty (*qaṭʿ*)."[151] At this juncture, it is important to note that Muẓaffar also clarifies that, in addition to the term *ḥujja*, Uṣūlīs also interchangeably and synonymously use terms such as *amāra* ('sign'), *ṭarīq* ('path'), and *dalīl* (evidence) to refer to evidence that generates substantiated conjecture.[152]

After distinguishing the different usages of the term *ḥujja* in Uṣūlī legal theory, Muẓaffar explains that Uṣūlīs associate the notion of authoritativeness with accountability (*munajjaziyya*) and excusability (*muʿadhdhariyya*).[153]

148 For instance, Muḥammad Bāqir al-Ṣadr asserts that the subject matter of legal theory "consists of the common evidence that are used in the process of derivation and that the purpose of its studies is to establish the evidentiary value of these common evidences." See Sadr, *Principles of Islamic Jurisprudence*, 43; for a similar definition also see Khūʾī, *Mabānī al-Istinbāṭ*, 1:27.

149 Muẓaffar, *Uṣūl al-fiqh*, 2:18.

150 *Ibid.*

151 *Ibid.*, 19.

152 *Ibid.*

153 *Ibid.*

They uphold that if a jurist deduces Sharia knowledge from non-authoritative (or non-*ḥujja*) evidence and his deduction is erroneous, insofar as it contradicts the Sharia precepts that are in the Mind of God, then the jurist can be held accountable by God and possibly even subjected to chastisement in the hereafter. Conversely, if a jurist deduces Sharia knowledge from authoritative evidence (i.e., evidence whose authoritativeness is established within the discourse of legal theory), then he is granted with the right of excusability, even if his deduction is erroneous and contradicts that which is in the Mind of God.[154]

The association formed by Uṣūlīs between the notions of authoritativeness, accountability, and excusability demonstrates that apart from being concerned with deducing accurate knowledge of Sharia that corresponds to the Mind of God, Uṣūlīs are also concerned (if not more concerned) with making sure that they deduce Sharia using a sound methodology and correct techniques of argumentation. For this reason, they stress that a jurist is immune from being held accountable for incorrect deductions of Sharia, so long as his deduction is from an authoritative evidence whose authoritativeness is established in legal theory.

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154 For instance, see Khurāsānī, *Kifāyat al-Uṣūl*, 279, 405; Ḍīyaʾ al-Dīn al-ʿArāqī, *Maqālāt al-Uṣūl*, 2 vols., 2:34–35; Iṣfahānī, *Nihāyat al-Dirāya*, 1:42, 3:284–92; Naʾīnī, *Ajwad al-Taqrīrāt*, 2:11; Khumaynī, *Tanqīḥ al-Uṣūl*, 4:691–2; Khūʾī, *Mabānī al-Istinbāṭ*, 1:104; ʿAli Ḥusayn al-Sīstānī, *al-Rāfid fī ʿIlm al-Uṣūl*, 34; Ṣadr, *Durūs*, 1:187–8.

CHAPTER 2

The Non-authoritativeness of Conjecture

The first epistemological underpinning modern Uṣūlīs uphold is that of the non-authoritativeness of conjecture (*ʿadam al-ḥujjiyyat al-ẓann*). In accordance with this underpinning, it is inadmissible for a jurist to deduce Sharia knowledge using forms of evidence (whether independent sources or hermeneutical methods of interpretation) that generate mere conjecture (*ẓann*).

In the previous chapter, I elucidated that during the formative period, forefathers of Shiʿite orthodoxy, Shaykh al-Mufīd and Sharīf al-Murtaḍā, were highly critical of mainstream Sunni Schools for accepting the juristic utility of conjecture-generating forms of evidence, such as analogical reasoning (*qiyās*) and isolated reports (*akhbār al-āḥād*). They asserted that the distinguishing feature of the Shiʿite legal discourse was that its promulgators only relied on (or deduced Sharia knowledge from) forms of evidence that generated definitive knowledge (*ʿilm*). The stringent criteria proposed by the Shiʿite forefathers, however, withered over time, as their Uṣūlī successors found it increasingly difficult to exclusively deduce Sharia knowledge from evidence that only generated definitive knowledge, and found that it effected their dynamism in responding to the needs of the Shiʿite community. Accordingly, by the medieval period, Uṣūlīs began to rely on, and accept, the juristic utility of forms of evidence that generated conjecture and were formerly abhorred within the Shiʿite legal tradition. Although this allowed Uṣūlīs to consolidate their hold over the Shiʿite community, insofar as it sealed their dominance in representing Shiʿite orthodoxy, it also, eventually, attracted severe criticism from Akhbārī counterparts. The Akhbārī onslaught on the Uṣūlī acceptance of conjecture and its implications were perhaps the key theoretical features that caused the Uṣūlīs to lose their hold and control over Shiʿite intellectual circles and the dominance they possessed in representing Shiʿite orthodoxy.

Nevertheless, by the 19th century, Uṣūlīs once again regained control of Shite intellectual circles. However, unlike the medieval Uṣūlīs, modern Uṣūlīs make a concerted effort to formulate their legal epistemology in line with the rationalist heritage of the formative Shiʿite forefathers, together with tactfully incorporating the intellectual sentiments of their medieval predecessors. As such, they carefully expound the non-authoritativeness of conjecture as a core pillar of modern Shiʿite legal theory, without letting it affect the standard of dynamism they require to practically deduce Sharia knowledge. In this chapter, I present the way modern Uṣūlīs understand the nature of conjecture

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and the range of scriptural and rational arguments they offer to establish the non-authoritativeness of evidence that generates mere conjectural knowledge of Sharia in the juristic process of *ijtihād*.

1 The Nature of Conjecture

A common trait amongst modern Uṣūlīs is that they define conjecture (*ẓann*) in relation to certainty (*qaṭʿ*).[1] As will be apparent in the next chapter, modern Uṣūlīs explain that certainty, by its very nature, provides full disclosure (*bayān al-tāmm*) of objective reality (*wāqiʿ*), and therefore it is essentially authoritative (*ḥujja*) in itself. In contrast, conjecture, by its very nature, does not provide full disclosure of objective reality and thus is not essentially authoritative. In this sense, Uṣūlīs maintain that acting in accordance with conjecture (or evidence that generates conjecture) is always prone to being erroneous and can lead a jurist to deducing Sharia precepts that may contradict that which is in the Mind of God.

However, restricting the utility of evidence to only those that generate certainty obviously limits the access jurists have to Sharia knowledge and confines their dynamism in the process of *ijtihād*, as a wide range of conjecture-generating Sharia sources become inaccessible. As alluded to in the previous chapter, the relationship between accepting conjecture and being able to portray dynamism in *ijtihād* seems to have been acknowledged relatively early on by rationalist Uṣūlī scholars. Within the formative period itself, Shaykh al-Ṭūsī was one of the first Uṣūlīs to argue that although conjecture is generally non-authoritative amongst Shiʿites, there is certain evidence (such as isolated reports that are relayed by Shiʿite narrators) whose conjecture must be accepted as authoritative.[2]

Carrying forward Ṭūsī's understanding, modern Uṣūlīs distinguish two types of conjecture: namely, conjecture qua conjecture (*ẓann bi-mā huwa ẓann*) and substantiated conjecture (*ẓann al-muʾtabar*). They deem the latter type of conjecture to be authoritative and claim that its juristic utility is sanctioned by God (this is further discussed in detail in chapter 4), whereas they regard the former type of conjecture to be non-authoritative and assert that its juristic utility is prohibited in the process of *ijtihād*. It can be said that the distinction

1 For instance, see Khurāsānī, *Kifāyat al-Uṣūl*, 315–316; Khūʾī, *Mabānī al-Istinbāṭ*, 1:101, 174; Khūʾī, *Miṣbāḥ*, 1:88, Iṣfahānī, *Nihāyat al-Dirāya*, 3:312–16; ʿArāqī, *Maqālāt*, 2:132; Muẓaffar, *Uṣūl al-fiqh*, 2:25.

2 See Ṭūsī, *al-ʿUdda*, 1:63–143.

between 'conjecture qua conjecture' and 'substantiated conjecture' allows modern Uṣūlīs to remain loyal to their formative heritage without letting it affect their dynamism in deducing Sharia knowledge. In the remainder of this chapter, I discuss scriptural and rational arguments modern Uṣūlīs offer to establish the non-authoritativeness of conjecture qua conjecture.

2 Scriptural Justifications against Conjecture

A theme found across a range of disciplines studied within traditional Shiʿite seminaries is that scholars of each discipline carefully attempt to underpin their intellectual expositions by taking recourse to the scriptural sources of the Quran and *sunna*. All Muslims theologically accept the Quran as the word of God that was revealed to Prophet Muhammad. Moreover, Shiʿites additionally accept the Twelve Imams as infallible (*maʿṣūm*) agents of God. They uphold that in matters of Sharia, the infallible Prophet and the Twelve Imams are representatives of God and therefore their reported tradition (*sunna*), in terms of their speech, actions and endorsements, is always in alignment with the will of God.[3] Due to their theological standpoint regarding the divine nature of the Quran and *sunna*, modern Uṣūlīs usually fall back on to scripture to justify and establish their epistemological position regarding the non-authoritativeness of conjecture. The following is the verse that they primarily present:

> And most of them follow nothing but conjecture. Indeed, conjecture (*ẓann*) does not take the place of truth.[4]

The literal distinction between conjecture and truth, and that conjecture does not take the place of truth, enables Uṣūlīs to interpret that the apparent indication of this verse signifies that God does not permit believers to follow and act in accordance with conjectural knowledge.[5] Muḥammad Ḥusayn Ṭabāṭabāʿī, a renowned Uṣūlī thinker who studied under Muḥammad Ḥusayn al-Gharawī al-Naʾīnī and Muḥammad Ḥusayn al-Gharawī al-Iṣfahānī, in his prolific work on the exegeses of the Quran entitled *Al-Mīzān fi tafsīr al-Qurʾān*, gives context behind the revelation of this verse. He finds that this verse was revealed in a

3 See Sobhani, *Doctrines*, 109–12.

4 Quran 10:36.

5 For instance, see Anṣārī, *Farāʾid*, 1:131–2; Khurāsānī, *Kifāyat al-Uṣūl*, 303; Khūʾī, *Mabānī al-Istinbāṭ*, 1:275; ʿArāqī, *Maqālāt*, 2:93; Muẓaffar, *Uṣūl al-fiqh*, 2:22–3; Muḥammad Ḥusayn al-Naʾīnī, *Fawāʾid al-Uṣūl*, 3:119–20; Rūḥallāh al-Khumaynī, *Tahdhīb al-Uṣūl*, 2:429.

context where non-believers (*kufār*) denied the message or the "truth" (*ḥaqq*) that was presented to them by the Prophet and instead chose to imitate conjectural knowledge that was provided by their forefathers. Ṭabāṭabāʿī claims that by "truth," God refers to verified or absolute certainty (*yaqīn*), insofar as the non-believers had no doubt regarding the veracity of the Prophet's message and the falsity of imitating their forefathers.[6] Therefore, in line with the apparent indication of this verse and the context in which it was revealed, Uṣūlīs normally conclude that God does not sanction the juristic utility of conjecture, as it fails to reveal what is true in objective reality.

Muẓaffar, however, argues that this verse is not sufficient in establishing the non-permissibility or the prohibition (*ḥurma*) of following and acting in accordance with conjecture in the juristic process of *ijtihād*. Accordingly, he supports this verse by additionally quoting the following verse:

> They follow nothing but conjecture: they do nothing but lie.[7]

Muẓaffar asserts that the apparent indication of this verse expounds that God considers following and acting in accordance with conjecture as being equal to lying. He points out that there are numerous instances in the Quran wherein God categorically explicates His contempt towards those who forge or invert a lie against Him or attribute a lie to Him.[8] In light of such verses, Muẓaffar explains that the abovementioned verse signifies that a jurist cannot deduce Sharia precepts and attribute them to God by using evidence that generates mere conjecture, as doing so would be tantamount to forgery. As such, he, together with his teacher Muḥammad Ḥusayn al-Gharawī al-Naʾīnī, claims that, just as forgery is prohibited by God, so is following and acting in accordance with conjecture. This implies that if a jurist utilises conjecture in *ijtihād*, he is effectively committing a sin and for this reason he may be subjected to chastisement in the hereafter.[9]

In support of the above verses, there are numerous reported traditions from the Prophet and the infallible Shiʿite Imams that directly or indirectly indicate the non-authoritativeness of conjecture. Amongst these reports, the following is perhaps most widely quoted by Uṣūlīs:

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6 See Muḥammad Ḥusayn al-Ṭabāṭabāʿī, *Al-Mīzān fi tafsīr al-Qurʾān*, 19:41–42.

7 Quran 6:116.

8 For instance, Quran 10:59 expresses "Say: Have you seen what Allah has sent down to you of provision of which you have made [some] lawful and [some] unlawful?" Say, "Has Allah permitted you [to do so], or do you invent [something] about Allah?"

9 See Muẓaffar, *Uṣūl al-fiqh*, 2:23; also see Naʾīnī, *Fawāʾid al-Uṣūl*, 3:120.

> [There are] four types of judges, three of them are in fire and one in paradise: A person who judges with injustice, and has knowledge (*ʿilm*) of it, then he is [destined] for fire. A person who judges with injustice, and has no knowledge of it, then he is [destined] for fire. A person who judges truthfully, and has no knowledge of it, then he is [destined] for fire. A person who judges truthfully, and has knowledge of it, then he is in paradise.[10]

This report concerns legal arbitration that is carried out by a judge (*qāḍī*). Its apparent indication emphasises the overarching importance of arriving at a correct judgment or accurate knowledge. Apart from condemning an inaccurate judgment, this report signifies that God also condemns those who arrive at an accurate judgment by sheer coincidence. Although this report was narrated in the specific context of legal arbitration, Uṣūlīs generally understand that its apparent indication suggests that all conjecture-generating forms of evidence cannot be utilised in the juristic deduction of Sharia because their indication can be erroneous and can effectively lead a jurist to give an inaccurate judgment.[11] Uṣūlīs perhaps choose to quote this specific report because it supports their overall legal epistemology that emphasises that Sharia knowledge can only be deduced using a justified and sound methodology, which not only attempts to arrive at accurate knowledge of Sharia but also guards a jurist with immunity from being held accountable in the hereafter.

Naʾīnī asserts that the apparent indication of the scriptural sources is sufficient in proving the non-authoritativeness and the prohibition of the juristic utility of conjecture, and therefore one does not necessarily need to refer to any rational arguments to establish this.[12] However, it can be said that since the evidentiary nature and authoritativeness of apparent indication of scripture itself is evaluated in legal theory, by exclusively relying on it to prove the non-authoritativeness of conjecture overall creates a logical fallacious circular argument, wherein the non-authoritativeness of conjecture is effectively proven using conjecture. At this juncture, it is important to clarify that Uṣūlīs admit that the scriptural sources of the Quran and *sunna* can be interpreted in several different manners, as each verse or phrase of scripture can indicate several possible meanings. Amongst the different meanings, Uṣūlīs advocate that when it comes to deducing Sharia knowledge, only the strongest or the most

10 See Muḥammad b. Ḥusayn Ḥur al-ʿĀmilī, *Wasāʾil al-Shīʿa*, 27:173.

11 For instance, also see Anṣārī, *Farāʾid*, 1:132; Muẓaffar, *Uṣūl al-fiqh*, 2:23; Naʾīnī, *Fawāʾid*, 3:120; Khumaynī, *Tahdhīb*, 2:404.

12 Naʾīnī, *Fawāʾid*, 3:120–22.

'apparent' meaning of scripture is authoritative and, thus, they advocate the primacy of apparent meaning (*aṣālat al-ẓuhūr*). Although they admit that this primacy may not always accurately reflect Sharia as it is in the Mind of God, they advocate its utility in *ijtihād* because they conclude (after extensive deliberation) that it generates conjecture that is substantiated and sanctioned by God.[13] Considering this, it can be said that the primacy of apparent meaning of scripture can only (exclusively) be taken to prove the non-authoritativeness of conjecture qua conjecture after its own authoritativeness is established. If one exclusively takes recourse to apparent indication prior to evaluating its authoritativeness, as Na'īnī seems to do, then they inevitably risk entangling themselves in a circular argument.

Nevertheless, Muḥammad Bāqir al-Ṣadr in *Durūs fi 'ilm al-uṣūl* argues that by exclusively relying on scripture, Na'īnī is inaccurately categorising scriptural injunctions against conjecture as devotional commands.[14] Uṣūlīs normally uphold that all scriptural injunctions can either be categorised as devotional commands (or *amr al-mawlawī*) or instructive commands (or *amr al-irshādī*). A devotional command, such as the injunction to perform daily prayers (*ṣalāt*) (and the details of how to perform them), can only be found in the texts of the Quran and *sunna*. It is not something that can be independently comprehended by reason. Meanwhile, an instructive command refers to injunctions that are primarily comprehended by, or deduced from, reason and are also correspondingly mentioned within scriptural sources. Their purpose is to merely reinforce injunctions that believers already comprehend through reason. For instance, Uṣūlīs normally give the example of the obligation of being just. They claim that reason, without the necessary aid of scripture, can independently comprehend the moral value or the goodness (*taḥsīn*) of being just. Yet it is found that scripture also ordains it obligation, as this reinforces and emphasises its necessity.[15] Accordingly, Ṣadr categorises scriptural injunctions against following conjecture as instructive commands. For him, as with most other modern Uṣūlīs, the non-authoritativeness of conjecture and the prohibition of

13 For instance, see *ibid*, 4:722–729; Khū'ī, *Mabānī al-istinbāṭ*, 4:405; 'Arāqī, *Maqālāt*, 1:125; Khumaynī, *Tahdhīb*, 1:85; Ṣadr, *Durūs*, 1:166; Iṣfahānī, *Nihāyat al-Dirāya*, 3:184; Muẓaffar, *Uṣūl al-fiqh*, 2:144–65.

14 Ṣadr, *Durūs*, 2:48–9; Please note that similar criticisms can also be found in the discussions of Abū Qāsim al-Khū'ī, see Khū'ī, *Mabānī al-Istinbāṭ*, 1:275, 352.

15 For a detailed exposition of *amr al-mawlawī* and *amr al-irshādī* see Muḥammad Ṣanqūr, *Mu'jam al-Uṣūl*, 2 vols. (Beirut: Mu'assasat al-Tarīkh al-'Arabī, 2011), 1:330–4, 1:337–8: Also see Murtaḍā al-Ḥusaynī al-Shīrāzī, *Mabāḥith al-uṣūl: al-Awāmir al-Mawlawiyya wa-l Irshādiyya*, (Beirut: Dār al-'Ulūm, 2010).

following it is something primarily comprehended by reason and only supplementarily reinforced within scripture.[16]

3 Rational Justifications against Conjecture

As noted, modern Uṣūlīs normally compare the nature of conjecture with the nature of certainty. As it will be shown in the next chapter, they argue that certainty is authoritative by its very nature because it generates absolute knowledge or full disclosure (*bayān al-tāmm*) of that which is in objective reality (*wāqiʿ*) or in the Mind of God. In line with this understanding, Uṣūlīs assert that if a person fails to follow something they believe certainly corresponds with the Mind of God, then reason dictates that God reserves the right to hold such a person accountable in the hereafter. For example, if there is certainty that God ordains believers to punish an apostate, but despite this they choose not to, then God inevitably (or rationally) has the right to hold them accountable and possibly even subject them to chastisement.

In contrast to certainty, Uṣūlīs assert that conjecture qua conjecture, by its very nature, does not provide full disclosure of objective reality or that which is in the Mind of God. As such, they conclude that if a person does not follow an ordinance that is only conjecturally known, then God does not reserve the right to hold them accountable or subject them to chastisement in the hereafter. For example, if the ordinance of punishing an apostate is only conjecturally known (or known through evidence that generates conjecture) then a believer cannot be held accountable for not following it because there always exists a possibility that it may not accurately correspond with (or may contradict) that which – in reality – is in the Mind of God. Uṣūlīs usually derive this understanding by taking recourse to the rational principle of '*qubḥ al-ʿiqāb bi-lā bayān*' ('the blameworthiness of chastisement without disclosure'). In accordance with this principle, reason dictates that it is repulsive and immoral for a rational master to hold their subordinate accountable for failing to enact (or incorrectly enacting) a duty or a responsibility (*taklīf*) that is not sufficiently disclosed by the master. Rather, a rational master can only hold their subordinate accountable for not enacting a duty that is ordained with full disclosure. Likewise, modern Uṣūlīs commonly maintain that since God is theologically accepted as the Head of all rational agents (*raʾīs al-ʿuqalā*), He too agrees and

16 See Ṣadr, *Durūs*, 2:49; also, for instance see Khumaynī, *Tahdhīb*, 2:382–3; Khūʾī, Abū Qāsim al-. *Miṣbāḥ al-Uṣūl*, 2 vols. Transcribed by Muḥammad Surūr (Qum: Makataba al-Dāwirī, 2001), 1:114.

abides with the definite rational moral judgments of rational people and therefore abides with the principles of *qubḥ al-ʿiqāb bi-lā bayān*.[17] In this sense, by analogising the mastership possessed by God with the mastership possessed by rational humans, Uṣūlīs conclude that the extent of God's right over His subordinates is equivalent to the extent of the right a human master possesses over his subordinates. The same way as it is repulsive for a human master to hold his/her subordinate accountable without clearly disclosing an ordinance, it is repulsive for an unflawed, just and rational Divine Master to hold His subordinates (or believers) accountable without clearly disclosing Sharia ordinances. Accordingly, Uṣūlīs conclude that because non-clear or conjectural disclosure does not bring about accountability, evidence that generates mere conjecture cannot be categorised as being authoritative (*ḥujja*). This means that a jurist is not required (or rather, is prohibited) from following evidence that generates mere conjecture, for if a jurist follows it and thereby errs in his deduction of Sharia, then he can be held accountable and rightfully be subjected to chastisement by the Divine Master.[18]

The idea that conjecture by its very nature is non-authoritative prompts the majority of modern Uṣūlīs to profess the primacy of exemption (*aṣālat al-barāʾa*).[19] In accordance with this primacy, a jurist is exempted from following the indication of any evidence that generates conjecture qua conjecture of Sharia in the process of *ijtihād*, even if there is possibility that its indication may accurately reflect Sharia that exists in the Mind of God. A jurist cannot be held accountable, or even be subjected to chastisement, in the hereafter for not following or acting in accordance with such conjecture.

3.1 *Ṣadr's Critique of the Rational Justification*

In *Durūs fi ʿilm al-uṣūl*, Muḥammad Bāqir al-Ṣadr dismisses the popular rational justification offered by modern Uṣūlīs to establish the non-authoritativeness of conjecture. He elucidates that by formulating the principle of 'blameworthiness of chastisement without disclosure,' some Uṣūlīs fall into the trap of falsely analogising the mastership possessed by God as being univocally parallel to the mastership possessed by a human master. Ṣadr attempts to prove the falseness of this analogy by arguing that, in Shiʿite theology, the property of

17 For a detailed study of how the relationship between reason and morality is presented in the modern Shiʿite Uṣūlī discourse see Bhojani, *Moral Rationalism and Sharīʿa*, 80–91.

18 For instance, see Khūʾī, *Mabānī al-Istinbāt*, 1:377; Khūʾī, *Miṣbāḥ*, 1:438; ʿArāqī, *Maqālāt*, 2:16, 136; Iṣfahānī, *Nihāyat al-Dirāya*, 2:6; Anṣārī, *Farāʾid*, 2:282; Khumaynī, *Tahdhīb*, 2:406, Muẓaffar, *Uṣūl al-fiqh*, 2:37–8.

19 For instance, see Khurāsānī, *Kifāyat al-Uṣūl*, 338; Khumaynī, *Tahdhīb*, 2:392; Iṣfahānī, *Nihāyat al-Dirāya*, 4:20, Khūʾī, *Miṣbāḥ*, 1:456.

mastership attributed to God is accepted as an essential part of His essence. Whereas, in contrast, the mastership possessed by a human master is not essential to their essence, but instead is merely accidental. In this sense, it is possible to conceptualise a human being without possessing the property of mastership, whereas it is impossible to conceptualise God without the property of mastership. Based on this distinction, Ṣadr expounds that the principle of 'blameworthiness of chastisement without disclosure' is only rationally sound when applied to a human master. It is not appropriate to apply it to God, for His divine mastership contrasts significantly with the rationally comprehensible mastership of the human master. As such, Ṣadr asserts that those who apply the rational principle of 'blameworthiness of chastisement without disclosure' are effectively restricting God's absolute right of obedience (*ḥaqq al-ṭāʿa*), or the mastership He enjoys over his subjects, to only those instances in which He gives full disclosure.[20]

Alternatively, Ṣadr proposes that the extent of God's mastership cannot be proven by logical or rational demonstration, but rather it is something that is intuitively known. According to him, a believer intuitively recognises that since God is the Creator (*khāliq*) of all things, He, by His very essence, is the Master (*mawla*) and the Proprietor (*mālik*) of all things, and due to Him possessing such attributes, He necessarily possesses the absolute right of obedience (*ḥaqq al-ṭāʿa*).[21] This means that his subjects not only have to be obedient to, or abide by, instances of God's Sharia that are fully disclosed, but also instances that are not fully disclosed, whether they are conjectural or doubtful (*shakk* or *iḥtimāl*). For Ṣadr, God thus possesses the right to not only hold a person accountable for acting in a way that is contrary to an ordinance that is fully disclosed, but also for acting in a way that is contrary to ordinances that are disclosed with conjectural or doubtful disclosures. For Ṣadr, every disclosure (*inkishāf*) of Sharia, whether it is issued through evidence that generates certainty or evidence that generates conjecture or mere doubt, is deemed authoritative (*ḥujja*). In other

20 See Ṣadr, *Durūs*, 1:188, 2:35–8; a more detailed explanation of Ṣadr's view on this is explained in the lecture notes taken by his student Sayyid Maḥmūd Hāshimī al-Shāhrūdī, see Shāhrūdī, Maḥmūd Hāshimī. *Buḥūth fi ʿilm al-uṣūl*, 7 vols. (Beirut: Muʾassasat Dāʾira Maʿārif al-Fiqh al-Islāmī, 2005), 4:186–187; Also see Kamāl Ḥaydarī, *Al-Ẓann: Dirāsat fi ḥujjiyyati-hi wa aqsāmi-hi wa aḥkāmi-hi* (Qum: Dār al-Farāqid, 2008), 26–32.

21 Ṣadr, *Durūs*, 2:221. It is important to note that another argument that Ṣadr gives to prove that God possesses absolute right of obedience (*ḥaqq al-ṭāʿa*) is that of *wujūb al-shukr al-munʿim*. In accordance with this argument, it is rationally praiseworthy, and therefore obligatory, upon rational people to show gratitude towards a person who bestows. As God is recognised as the ultimate Bestower of all things, reason recognises that He must be shown gratitude and that the best way of showing it would be to be obedient to all his ordinances. See Shāhrūdī, *Buḥūth*, 4:28.

words, unless stipulated otherwise, a believer is required to follow and act in accordance with every disclosure, even if there is only a slim possibility that it (in reality) corresponds to the Sharia that is in the Mind of God.[22]

Therefore, in contrast to the primacy of exemption, Ṣadr's understanding leads him to give preference to the primacy of preoccupancy (*aṣālat al-ishtighāl*).[23] In accordance with this primacy, a believer is required to be 'preoccupied' with, or undertake, every possible Sharia injunction. Believers can only be exempted from performing conjecturally disclosed injunctions if they possess certainty that God permits their non-performance.

Kamāl al-Ḥaydarī (b. 1959), a contemporary Uṣūlī *marjaʿ* who studied under the tutelage of both Ṣadr (who subscribes to the primacy of preoccupancy) and Abū Qāsim al-Khūʾī (who, like other Uṣūlīs, subscribes to the commonly accepted primacy of exemption),[24] published a book entailed *al-Ẓann*, wherein he provides a synopsis of the lectures he delivered on the Uṣūlī understanding of conjecture in its utility in the juristic process of *ijtihād*. In his book, Ḥaydarī admits that Ṣadr is accurate in criticising the rational justification that is popularly offered by Uṣūlīs to justify the non-authoritativeness of conjecture. Like his teacher, Ḥaydarī too asserts that it is false to univocally analogise the mastership possessed by God to the mastership possessed by a human master. However, he interestingly points out that it is inaccurate to suggest that God's absolute right of obedience is because of Him being the Creator and the Proprietor of all things. Rather, he argues that, in addition to these attributes, God is also recognised through other Divine names and attributes. As such, Ḥaydarī notes that apart from intuition recognising that God can hold a believer accountable for not following conjecture because of Him being the Creator and the Proprietor of all things, intuition is also able to recognise that God can grant a believer the right of excusability through His attributes of being All Merciful (*raḥmān*) and All Just (*ʿādil*).[25] Ḥaydarī exemplifies this point by noting:

> It is possible to consider that God can recompense a sinner in two distinct ways; if we look at God as being the Most Decisive Judge (*ḥakīm*), then it is more than likely to conclude that God would punish the sinner. However, if we look at God as the Most Merciful (*raḥmān*), then it is more than likely to conclude that God would pardon the sinner. Effectively, it

22 See Ṣadr, *Durūs*, 2:36–7.

23 *Ibid.*, 2:304; also see Ḥaydarī, *al-Ẓann*, 31.

24 For instance, see Khūʾī, *Mabānī al-Istinbāt*, 1:377; Khūʾī, *Miṣbāḥ*, 1:438.

25 Ḥaydarī, *al-Ẓann*, 31.

> is found that there is somewhat a conflict between the respective names and attributes of God.[26]

This passage illustrates that Ḥaydarī considers there is no definite rule regarding how God chooses to deal with a believer. For instance, if a believer, or more precisely a jurist, opts not to follow evidence that generates conjecture, and as a result fails to deduce a Sharia precept that exists within the Mind of God, then it is possible for God, being the Creator and the Proprietor, to hold him accountable; likewise, it is also possible for God, being the Most Merciful, to grant him the right of excusability for opting not to follow something that is merely conjecturally disclosed. Consequently, Ḥaydarī rather pragmatically concludes that the extent of God's mastership over believers only extends to a point where His divine names and attributes do not convene and contradict (or cancel out) the effects of one another. He asserts that the only time this is possible is when God (or the divine master) discloses or explicates a Sharia injunction with full disclosure.[27] Accordingly, if a believer possesses full disclosure of a duty, and yet acts contrary to it, then God – through being the Creator and the Proprietor – can hold him accountable, and in such an instance His other names and attributes would not have any contradictory effects. Therefore, by building on Ṣadr's argument, Ḥaydarī clearly supports the popular Uṣūlī conclusion, which is that the mastership of God only reaches the extent of when He provides full disclosure of Sharia and thus gives the impression that he opts to choose the primacy of exemption over the primacy of preoccupancy.

3.2 *Implications of Ṣadr's Epistemology*

A key implication of Ṣadr's proposed epistemology is that, in theory or, as he says, 'in the realm of possible occurrence' (*fi-l maqām al-thubūt*), all evidence that generates Sharia knowledge is authoritative. At the outset, his understanding impresses that for him, other than the commonly accepted four-fold categorisation of evidence, a jurist can utilise sources and hermeneutical methods that are not normally utilised in the process of *ijtihād*. However, Ṣadr is quick to point out that:

> Indeed, the subject matter of accountability (*munajjaziyya*) unrestrictedly includes all kinds of disclosed duties, even if the disclosure is conjectural. This is because of the vastness of the right [God has] of obedience. However, this right of obedience and accountability is based on there

26 *Ibid.*
27 *Ibid.*, 32.

> being no consent from the [Divine] Master Himself [that permits a believer] to act contrary to the [disclosed] duty. This [consent] is issued by Him as a serious amnesty (*tarkhīṣ jādd*) that allows acting contrary to the disclosed duty.[28]

In this passage, Ṣadr clarifies that although any evidence that generates Sharia knowledge can be utilised in *ijtihād*, God can issue an amnesty (*tarkhīṣ*) that allows a believer (or a jurist) to not follow particular types of evidence. He suggests that the authoritativeness of evidence is not dependent on the amount of disclosure it provides, but rather it is dependent on the postulation of God.[29] Due to the vastness of God's mastership, He possesses the right to postulate or abstain from postulating the property of authoritativeness to any evidence (or disclosure, whether it is full or partial) that He wants. This means that if God wants, He can issue an amnesty that undermines the default authoritativeness of evidence, in which case its juristic utility must be discarded in the process of *ijtihād*.

Ṣadr moves on to assert that in practice, or as he says, 'in the realm of physical occurrence' (*fi-l maqām al-ithbāt*), it is only logically possible for God to issue a believer (or a jurist) with an amnesty to follow forms of evidence that generate mere conjecture (or partial disclosure) of Sharia as opposed to certainty (or full disclosure). This is because God can only issue an amnesty by providing another disclosure that is epistemologically superior to the conjectural disclosure that is already possessed by the believer. According to Ṣadr, God has issued amnesties in the form of practical principles (*uṣūl al-ʿamaliyya*).[30] These principles enable jurists to deduce a practical standpoint in cases where they only have conjectural knowledge of Sharia. For instance, if a jurist has access to conjectural evidence that indicates that Sharia ordains that 'it is obligatory to perform supplication (*duʿā*) each time one witnesses the moon,' then although in theory a jurist is required to follow it, in practice God has issued an amnesty that allows him not to follow the conjectural indication of such evidence. The amnesty in this case may be issued, for example, in the form of the practical principle of exemption (*aṣālat al-barāʾa*), which due to its epistemological superiority rules that a believer is exempted from following a duty that is not fully disclosed. Uṣūlīs tend to regard practical principles as being epistemologically superior to conjecture because they claim that the

28 See Ṣadr, *Durūs*, 2:35.
29 *Ibid.*, 36.
30 *Ibid.*

juristic utility (or the authoritativeness) of practical principles is rationally and scripturally sanctioned (or substantiated) by God.

Meanwhile, Ṣadr claims that in practice it is logically impossible for God to issue a believer (or a jurist) with an amnesty that permits him to act contrary to a duty that is fully disclosed, or he has certainty of. He justifies this by taking recourse to the Uṣūlī distinction between real and apparent Sharia precepts. A real precept (*ḥukm al-wāqiʿī*) refers to a Sharia precept that is in the Mind of God and can be deduced from evidence that generates either certainty or substantiated conjecture. Whilst an apparent precept (*ḥukm al-ẓāhirī*), refers to a Sharia precept that provides a jurist with a practical standpoint when the real precept is unknown and is deduced using the practical principles. Uṣūlīs uphold that in the process of *ijtihād*, a jurist must endeavour to primarily deduce real Sharia precepts, and only when access to them is limited, or ambiguous, can he, secondarily, take recourse to practical principles to deduce apparent Sharia precepts. Nevertheless, considering this distinction, Ṣadr asserts that if God issues a jurist with an amnesty to not follow evidence that fully discloses a duty by issuing a real precept, then this implies that the jurist is confronted with two conflicting duties at the same time. For instance, if a jurist has access to evidence that fully discloses the obligatory duty of performing Friday congregational prayers (*ṣalāt al-jumuʿa*), then, as far as he is concerned, this represents the real Sharia precept. If God then issues another contradicting real precept that indicates (or fully discloses) the non-obligation of performing Friday congregational prayers, then a jurist is effectively faced with two contradicting certainties. On one hand, he possesses certainty of performing the duty of Friday congregational prayers. On the other hand, he also possesses certainty of not preforming the duty of Friday congregational prayers. According to Ṣadr, this occurrence is logically impossible, as two contradictory things cannot exist at the same time. He emphasises this point by demonstrating that something cannot be both 'hot' and 'cold,' or 'black' and 'white,' at the same time. Likewise, there cannot be two contradicting real precepts that are both fully disclosed with certainty.[31] In addition, Ṣadr also elucidates that the criterion (*milāk*) by which God ordains any act (or a Sharia precept) is that He loves its performance, whilst the criterion of Him prohibiting an act is that he detests its performance. Accordingly, if God issues two contradicting precepts, whereby one indicates an obligation and the other indicates a prohibition, then this evidently implies that there is confusion within the Mind of God, as

31 *Ibid.*, 2:40–2.

He both 'loves' and 'detests' the same action at the same time.[32] According to Ṣadr, it is indeed impossible for an omnipotent God to be confused and thus he once again elaborates that it is logically impossible for God to issue two conflicting real precepts as the same time.

Ṣadr then moves on to consider whether God can issue an amnesty that permits a believer to act contrary to full disclosure by issuing an apparent precept (*ḥukm al-ẓāhirī*). He maintains that this too is not possible, because an apparent precept is only taken recourse to in cases when the real precept is undisclosed or is disclosed in an ambiguous manner.[33] For instance, if a jurist has full disclosure of the duty of performing Friday congregational prayers, then he knows the real Sharia precept. He cannot, therefore, take recourse to, for example, the practical principle of exemption, and deduce that believers are exempted from the duty of performing Friday congregational prayers, as there is no need to refer to an apparent Sharia precept when the real Sharia precept is known with full disclosure.

In essence, although Ṣadr theoretically (or *fi-l maqām al-thubūt*) gives preference to the primacy of occupancy, and thereby upholds that a jurist must utilise every evidence that generates conjecture qua conjecture of Sharia, in practice (*fi-l maqām al-ithbāt*), or when it comes to the practical juristic process of *ijtihād*, he acknowledges that there are epistemologically superior forms of evidence that prevent a jurist from utilising conjecture generating evidence. Ṣadr's practical epistemological outlook is summarised in the following statement:

> If evidence generates certainty, then it is authoritative based on the [self-evident] authoritativeness of certainty (*ḥujjiyyat al-qaṭʿ*). If this is not the case, then one must take recourse to evidence that generates certainty to substantiate the authoritativeness [of other forms of evidence that do not generate certainty in themselves]. And as for those cases when there is no [access to] evidence that generates certainty [at all], then there is doubt (*shakk*) on whether [or not] God has postulated the authoritativeness of a particular evidence. [In such cases,] the primary principle (*al-aṣl*) is of non-validity (*ʿadam al-ḥujjiyya*). What we mean by this primary principle is that when there is doubt over authoritativeness

32 Ṣadr's deliberations here are further clarified by his student Kamāl Ḥaydarī, see Ḥaydarī, *al-Ẓann*, 33–4.

33 See Ṣadr, *Durūs*, 2:41–2.

> [of a particular evidence] then it cannot be practically utilised [in juristic process of deducing Sharia].[34]

This statement demonstrates that, in practice, Ṣadr's epistemology is reminiscent of the popular Uṣūlī position. Like most modern Uṣūlīs, he effectively upholds the epistemological underpinning of the non-authoritativeness of conjecture qua conjecture in the practical juristic process of *ijtihād* and insists that a jurist can only take recourse to forms of evidence that generate either certainty or substantiated conjecture of Sharia.

34 *Ibid.*, 47.

CHAPTER 3

The Authoritativeness of Certainty

The second, and perhaps the most pivotal, epistemological underpinning modern Uṣūlīs uphold is that of the authoritativeness of certainty (*ḥujjiyyat al-qaṭʿ*). As alluded in the previous chapter, Uṣūlīs normally assert that certainty is authoritative by its very essence, and thus expound that a jurist must follow and act in accordance with its indication in the process of deducing Sharia knowledge (or *ijtihād*). To the extent that if a jurist deliberately ignores to follow authoritative evidence that generates certainty, then he can be held accountable in the hereafter and possibly even subjected to chastisement.

As shown in chapter 1, during the formative development of Shiʿite legal theory, the main polemic upheld against mainstream Sunni scholarship was epistemological in nature. Buyid scholars, Shaykh al-Mufīd and Sharīf al-Murtaḍā, compellingly advocated that Shiʿite rationalist Uṣūlīs had access to true knowledge of Sharia, as they, unlike Sunnis or Akhbārīs, only took recourse to evidence that generated knowledge (*ʿilm*) and refrained from deducing Sharia knowledge from evidence that generated conjecture. The formative simplistic distinction between knowledge and conjecture seems to be first modified during the medieval period by the illustrious ʿAllāma al-Ḥillī. Ḥillī, who studied theology, logic, and philosophy under the auspices of Khawaja Naṣīr al-Dīn al-Ṭūsī and was reportedly immensely impressed with Sunni scholars in their attempt to amalgamate legal theory with peripatetic logic, was perhaps the first rationalist Uṣūlī to make a distinction between knowledge (*ʿilm*) and certainty (*qaṭʿ*). This distinction effectively led him to advocate that a jurist can deduce Sharia knowledge in an immediate manner through evidence that generated certainty; or in an acquired manner through evidence that generated conjecture.[1] Although the acceptance of conjecture by Ḥillī and his successors inevitably attracted Akhbārī criticism, we find that the medieval distinction between definitive (*qaṭʿī*) and conjectural (*ẓannī*) Sharia knowledge is nevertheless located within the modern Uṣūlī discourse. In *Farāʾid al-uṣūl*, Anṣārī commences his thesis on legal theory with a chapter entitled, *al-Qaṭʿ*, wherein he, perhaps in response to the Akhbārī accusations levelled against Uṣūlīs, immediately reinforces the centrality of certainty in the Uṣūlī process of *ijtihād*. He starts by asserting:

1 See Ḥillī, *Foundations of Jurisprudence*, 35, 89.

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> There is no problem with regards to the obligatory nature (*wujūb*) of following certainty and acting upon it if it is existent; for indeed it by itself is a path (*ṭarīq*) towards objective reality (*al-wāqiʿ*), and its path cannot be affirmed or negated by the Divine Lawgiver.[2]

Modern Uṣūlīs have taken the onus upon themselves to further elaborate and justify what Anṣārī means in the abovementioned passage. They expound much effort in their works of legal theory in trying to define certainty and its relation to knowledge, and through this they attempt to explain its essential authoritativeness in disclosing objective reality and the obligation of its juristic utility in *ijtihād*.

1 Definition of Certainty

The term *qaṭʿ* is from the Arabic root *qa-ṭa-ʿa*, which is literally translated as 'to cut off' or 'to chop off.'[3] In legal theory, it is used in a technical sense and hence the Uṣūlī definition of *qaṭʿ* notably differs from its etymological literal meaning. ʿAbd al-Hādī al-Faḍlī (d. 2013), a student of Abū Qāsim al-Khūʾī and Muḥammad Bāqir al-Ṣadr, devotes a large section in *Durūs fī uṣūl fiqh al-Imāmiyya*, wherein he critically analyses how Uṣūlīs technically define the term *qaṭʿ* or certainty. He demonstrates that Uṣūlīs have a tendency to define certainty interchangeably with terms such as knowledge (*ʿilm*), conviction (*jazm*), and correct belief (*yaqīn*).[4] However, he notes that, from amongst these terms, most Uṣūlīs define certainty as conviction (*jazm*).[5] For instance, Muẓaffar categorically defines certainty in the meaning of conviction. He describes conviction as being a psychological state of utmost belief that a person attains after acquiring knowledge (*ʿilm*) about a thing, whereby all other contradictory possibilities that go against a person's acquired knowledge are eliminated or "cut off." He explains that, for example, if a person acquires knowledge of the proposition that 'a whole is greater than a part,' and is convinced of it being true, then such a person attains a psychological state of utmost conviction, whereby they cannot entertain any doubt regarding it.[6] Likewise, if a jurist has access to evidence that he believes generates certainty

2 Anṣārī, *Farāʾid al-uṣūl*, 1:29.
3 See Hans Wehr (ed.), *A Dictionary of Modern Written Arabic: Arabic*, 774–8.
4 ʿAbd Hādī al-Faḍlī, *Durūs fī uṣūl fiqh al-Imāmiyya*, 1:261.
5 *Ibid.*
6 See Muẓaffar, *Uṣūl al-Fiqh*, 3:27.

of a Sharia precept, then he has utmost conviction that its indication is true (insofar as it discloses that which is in the Mind of God), to the extent that he cannot entertain any doubt regarding its indication.

Faḍlī notes that Uṣūlīs are mindful of the fact that, although a jurist may attain a psychological state of conviction, it is not necessary that his conviction is accurate in disclosing objective reality or the Mind of God. As such, he draws a distinction between correct belief (*yaqīn*) and compound ignorance (*jahl murakkab*). He expands that when a jurist's utmost conviction or belief corresponds to objective reality, it is understood as correct belief; whilst when it does not, it is understood as compound ignorance, where a jurist is not only ignorant about reality but is also ignorant about his ignorance.[7] Considering this distinction, Faḍlī asserts that it is unfitting for anyone to purely equate the Uṣūlī understanding of certainty to utmost conviction or belief. He elaborates on this by illustrating that when Anṣārī says that "certainty is a path towards objective reality," his statement implies that certainty always accurately discloses objective reality, insofar as there is no scope for compound ignorance. As such, Faḍlī explains that although Uṣūlīs usually define certainty as conviction, when it comes to discussing its authoritativeness in *ijtihād*, they concurrently describe it in the meaning of knowledge (*ʿilm*) and correct belief (*yaqīn*).[8] He categorically concludes that:

> We understand that their intention by definitive indication (*dalāla al-qaṭʿī*) is indication that gives us knowledge (*ʿilm*) about the reality of a thing, insofar as we acquire correct belief (*yaqīn*) from it.[9]

The conflation between concurrently defining certainty as conviction and knowledge or correct belief is clearly witnessed by Muẓaffar. As mentioned, although Muẓaffar defines certainty as conviction, when it comes to discussing its authoritativeness in the juristic process of *ijtihād*, he states that:

> Indeed, the truth of certainty (*qaṭʿ*) is that it discloses reality (*inkishāf al-wāqiʿī*), for it is nothing but enlightening, and there is no bewilderedness in [following or acting in accordance with] it, and there is no possibility of erring by associating with it. [Like certainty], only knowledge

7 See Faḍlī, *Durūs*, 1:260–1.

8 See *ibid.*, 1:262–3; also, for instance, see Ṣadr, *Durūs*, 1:186, 2:357; Khūʾī, *Miṣbāḥ*, 1:37, 1:5; Naʾīnī, *Fawāʾid al-uṣūl*, 3:21; ʿArāqī, *Maqālāt*, 2:131; Khumaynī, *tahdhīb*, 2:42; Muẓaffar, *Uṣūl al-fiqh*, 2:29.

9 Faḍlī, *Durūs*, 263.

> (*ʿilm*) is light by its essence and light for other things, and thus it by its very essence [can] disclose (*inkishāf*).[10]

In this passage, Muẓaffar clearly asserts that certainty is like, if not the same as, knowledge, as both certainty and knowledge share the essential feature of enlightening a person by disclosing to them the objective reality. As such, certainty (or any evidence that generates certainty) must be followed, as it leads to the attainment of correct belief that accurately corresponds with that which is in the Mind of God. This shows that, when Muẓaffar defines certainty as conviction, he means conviction in the sense of correct belief as opposed to compound ignorance. Nevertheless, Muẓaffar's understanding of certainty, together with the deliberations offered by Faḍlī, appropriately illustrates that by upholding an association between the concepts of certainty, knowledge, and correct belief, Uṣūlīs tend to define certainty synonymously with the meanings of 1) knowledge, insofar as the person who possesses certainty is disclosed with the knowledge of objective reality, and 2) correct belief, insofar as the possessed certainty accurately corresponds with objective reality.

2 Nature of Certainty

Apart from defining certainty in the meaning of knowledge and correct belief, modern Uṣūlīs also tend to discuss, or at least mention, its existential nature within their discourse of legal theory. They normally do this because discussion on the existential nature of certainty allows them to justify their claim that certainty (or evidence that generates certainty) accurately discloses and corresponds to objective reality, and elaborate upon what Anṣārī means when he says that "certainty is a path towards objective reality" and that it "cannot be affirmed or negated by the Divine Lawgiver."[11]

A survey of Uṣūlī discussions centred around the existential nature of certainty can be found in Kamāl Ḥaydarī's *al-Qaṭʿ*. Ḥaydarī notes that Uṣūlīs concur that the nature of certainty consists of two salient properties. The first property is of disclosure (*kashfiyya*), according to which, certainty qua certainty always discloses objective reality (*inkishāf al-wāqiʿ*). The second property is of correspondence (*ṭarīqiyya*), according to which, certainty qua certainty always

10 Muẓaffar, *Uṣūl al-Fiqh*, 2:29.
11 Anṣārī, *Farāʾid al-uṣūl*, 1:29.

corresponds with, or paves a path (*ṭarīq*) to, objective reality.[12] He explains that Uṣūlīs regard the relationship between certainty and its salient properties as being essential (*dhātī*).[13] To explain this further, he cites the fact that Muslim logicians and philosophers normally define a human being (*insān*) as a rational animal (*al-ḥaywān al-nāṭiq*), whose existential nature consists of the salient properties of rationality (*nāṭiqiyya*) and animality (*ḥaywāniyya*). These properties establish the actual existence of a human being, and thus when a human qua human is created, the properties of rationality and animality are inescapably created with it, to the extent that if one of the two properties supposedly ceases to exist then a human being cannot be defined as a human being. Likewise, he explains that as soon as (or whenever) certainty is created, it is created with its essential properties of disclosure and correspondence. Its existence can never be devoid of these properties, for if it is then certainty cannot be defined as certainty qua certainty.[14] In line with this understanding, Ḥaydarī suggests that Uṣūlīs process what Anṣārī means when he states that certainty's "path cannot be affirmed or negated by the Divine Lawgiver." They maintain that due to its existential nature, if it is supposed that God (or the Divine Lawgiver) negates even one of its two essential properties, then it would mean that certainty ceases to exist altogether. At this juncture, it is important to clarify that in contrast to certainty, Uṣūlīs uphold that the properties of disclosure and correspondence are not essential to the existential nature of conjecture.[15] As such, they maintain that if God wants, He can affirm or negate these properties to conjecture. If He negates them (i.e., through scripture and reason) then, as shown in the previous chapters, conjecture cannot be deemed authoritative. Whereas if He affirms them then, as it will be shown in the next

12 See Kamāl Ḥaydarī, *al-Qaṭʿ: Dirāsat fi ḥujjiyyati-hi wa aqsāmi-hi wa aḥkāmi-hi*, 110; for instance, also see Khurāsānī, *kifāya*, 263; Na'īnī, *Fawā'id*, 3:10–18; ʿArāqī, *Maqālāt*, 2:24; Iṣfahānī, *Nihāyat al-dirāya*, 3:18, 392; Muẓaffar, *Uṣūl al-fiqh*, 2:28.

13 Ḥaydarī, *al-Qaṭʿ*, 110.

14 It is important to note that apart from claiming that the relationship between certainty and the properties of disclosure and correspondence is essential, Ḥaydarī points out that it is also possible for one to say that these properties are necessarily correlated to the essence of certainty (*lawāzim al-dhāt al-qaṭʿ*). This sort of relationship implies that the properties of disclosure and correspondence always come into existence whenever certainty exists, but they do not define the very existence of certainty. For instance, it is like the relationship that exists between the number four and evenness or the relationship that exists between a human being and laughter. Although the properties of evenness or laughter do not respectively define the existence of number four or a human being, whenever 'four' exists, it exists with the property of 'evenness'; likewise, whenever a 'human' exists, it exists with the property of 'laughter.' *Ibid.*

15 *Ibid.*, 11.

chapter, conjecture (or evidence that generates conjecture) can be deemed authoritative, for according to God it discloses and corresponds with objective reality.

Based on the abovementioned analysis, it is possible to contend that it is incorrect to analogise the realm of creation (*ʿālam al-takwīnī*) with the realm of legalisation (*ʿālam al-tashrīʿī*). In other words, just because it is not conceivable to separate the properties of disclosure and correspondence from certainty in the realm of creation, it does not mean that they cannot be separated in the realm of legislation. It is plausible that in the realm of legislation an omnipotent Divine Lawgiver (or God) has the power to exploit laws of legislation irrespective of how they are created in the realm of creation. Accordingly, in the way He can affirm or negate the properties of disclosure and correspondence from conjecture, He can also affirm or negate them from certainty. This implies that if God wants, then in the realm of legislation, He can annul the existential authoritativeness of certainty and instead ordain believers (or jurists) to not follow or act in accordance with its indication. Ḥaydarī illustrates that Uṣūlīs normally respond to this contention by taking recourse to a philosophical typology between simple creation (*al-jaʿl al-basīṭ*) and composite creation (*al-jaʿl al-taʾlīfī*).[16] Simple creation refers to a thing that is created with both its essential and accidental properties. Uṣūlīs categorise certainty as a simple creation, and thus claim that it is created with its essential properties of disclosure and correspondence. Meanwhile, they categorise conjecture or, more specifically, substantiated conjecture (*ẓann al-muʾtabar*) as a composite creation, and thus claim that in addition to the essential properties of conjecture, it is something that is also created with the accidental properties of disclosure and correspondence. Considering this, they expound that in the realm of legislation (or even in the realm of creation) it is possible for God to negate the accidental properties of a composite creation without affecting its actual existence. However, God cannot negate the essential properties of a composite or a simple creation, for if He did so, that would be tantamount to negating the entirety of its existence. Therefore, if supposedly, in the realm of legislation, an omnipotent God negates the essential properties of disclosure and/or correspondence from certainty, then that certainty becomes non-existent in its entirety, and as such the question of whether God can affirm or negate these properties becomes redundant altogether.

Nevertheless, although Uṣūlīs expound that the existential nature of certainty comprises the properties of disclosure and correspondence, they do not always consider instances when it fails to accurately disclose and correspond

16 *Ibid.*; For instance, also see Muẓaffar, *Uṣūl al-fiqh*, 2:21–3; Iṣfahānī, *Nihāyat al-dirāya*, 3:19.

to objective reality. It can be said that most people experience scenarios in life where they come to realise that their sense of certainty does not, in fact, accurately disclose or correspond to objective reality. For example, a person may initially possess certainty that the colour of grass is brown, but later finds out that he/she is in fact colour blind and that in reality the colour of grass is green. These scenarios shed doubt over the Uṣūlī understanding of certainty and inevitably lead one to query that if properties of disclosure and correspondence are essential to the existential nature of certainty, then how can it, at times, fail to accurately depict objective reality. This point is clearly encapsulated in *Tahdhīb al-uṣūl* in which Khumaynī elucidates that:

> Those who say that correspondence (*ṭarīqiyya*) and disclosure (*kāshifiyya*) are from the essentialities (*dhātiyāt*) of certainty (*qaṭʿ*) and not through the postulation (*jaʿl*) of a postulator (*jāʿil*), [do so] because there cannot be a real synthetic [or composite] postulation (*al-jaʿl al-tālīfī*) between an object and its essentialities … [Therefore,] an object cannot be removed or be separated from its essentialities. [However,] it is found that certainty is sometimes accurate and sometimes inaccurate. Thus, how is it possible to assert that [properties of] correspondence and disclosure are amongst the essentialities of certainty? It can be said that this [i.e., disclosure and reflection being essential properties of certainty] is only true from the [subjective] perspective of a person who possesses certainty (*qāṭiʿ*).[17]

Khumaynī asserts that disclosure and correspondence are not essential properties of certainty. He clarifies that Uṣūlīs usually only describe them as essential to justify Anṣārī's claim that it is obligatory to follow certainty so long as it is existent.[18] In his discussion, Khumaynī gives the impression that even though his Uṣūlī predecessors and contemporaries have sometimes utilised philosophical jargoning and typologies to explain concepts specific to legal theory, they have not delved deeper to consider their complete ramifications. Khumaynī opines that the discussions pertaining to the existential nature of certainty thus fall outside the remit of legal theory. Instead, he reminds readers that its remit only sanctions discussions that concern the evaluation of the authoritativeness of certainty (or evidence that generate certainty) in the juristic process of *ijtihād*.[19] Accordingly, as opposed to claiming that disclosure

17 See Khumaynī, *Tahdhīb*, 2:8.
18 *Ibid.*, 2:7–8.
19 *Ibid.*, 2:8–9.

and correspondence are essential properties of certainty, Khumaynī simply explains that when certainty exists, a rational person who possesses it necessarily follows and acts in accordance with it because they believe with utmost conviction that it discloses and corresponds to objective reality.[20] Like Khumaynī, it is found that Khūʾī in *Miṣbāḥ al-uṣūl* also opines that the remit of legal theory is exclusively concerned with establishing the authoritativeness of certainty in *ijtihād*, as opposed to discussing its existential nature. He thus proposes that issues (*masāʾil*) related to its existential nature are debated in another discipline and are merely taken as basic assumptions within the discourse of legal theory.[21] However, it is important to note that Khūʾī does not identify what exact discipline Uṣūlīs borrow, or ought to borrow, their assumptions regarding the existential nature of certainty from.

Nonetheless, in response to Khumaynī, Ḥaydarī in *al-Qaṭʿ* attempts to take on the laborious task of justifying the prominent Uṣūlī stance regarding the existential nature of certainty. He dwells deeper within the discourses of philosophy and logic and uses categorisations and typologies discussed therein to establish that certainty comprises the essential properties of disclosure and correspondence and thereby always accurately depicts objective reality. He starts by making a distinction between two types of knowledge, present knowledge (*ʿilm al-ḥuḍurī*) and acquired knowledge (*ʿilm al-ḥuṣūlī*).[22] The former refers to knowledge a person attains without any mediation, such as the knowledge of their own being or the knowledge of 'I am,' whilst the latter refers to knowledge a person attains through mediation after they cognise the external world. Ḥaydarī then explains that acquired knowledge is grasped by the mind of a person as 1) a concept (*taṣawwur*), wherein the mind simply captures the immaterial form (*ṣūra*) of an external object without its material or physical properties, or 2) an assent (*taṣdīq*), wherein the mind assigns a judgment or a truth-value to the immaterial form of the external reality that it has captured.[23] To further clarify the difference between concept and assent and how they are used within the Muslim discourses of logic and philosophy, Deborah L. Black articulates that:

> Conceptualization is the act of the mind by which it grasps singular (though not necessarily simple) essences or quiddities, such as the concept of 'human being'. Assent [*taṣdīq*], by contrast, is the act of the

20 *Ibid.*, 2:9.
21 Khūʾī, *Miṣbāḥ al-uṣūl*, 1:4.
22 Ḥaydarī, *al-Qaṭʿ*, 114.
23 *Ibid.*

> intellect whereby it makes a determinate judgment to which a truth-value can be assigned; in fact, conceptualization is defined in Islamic philosophy principally by contrast with assent. Thus, any act of knowledge that does not entail the assignment of a truth-value to the proposition that corresponds to it will be an act of conceptualization alone, not assent. More specifically, the Islamic philosophers link assent to the affirmation or denial of the existence of the thing conceived, or to the judgment that it exists in a certain state, with certain properties. Thus, assent presupposes some prior act of conceptualization, although conceptualization does not presuppose assent.[24]

The distinction between concept and assent allows Ḥaydarī to assert that acquired knowledge (or our knowledge of anything external to ourselves) can only be ascribed with a judgment of accuracy or inaccuracy at the level of assent and not at the level of concept.[25] He elaborates by giving an example of a proposition 'a thief entered into a house,' which he points out is built of two components, a subject (*mawḍūʿ*) – 'a thief' – and a predicate (*maḥmūl*) – 'entered into a house.' He claims that the mind primarily grasps the subject and predicate as individual concepts through its faculty of sense perception, wherein sensory organs send messages to the mind enabling it to individually cognise the immaterial form or attributes of 1) a 'thief,' and 2) the action of 'entering into a house.' At this stage, because knowledge of the subject and the predicate exist as individual concepts, the mind cannot assent to them and thus assign a judgment of accuracy or inaccuracy.[26] In other words, the mind cannot judge whether a 'thief' qua 'thief' is accurate or inaccurate, and likewise it cannot judge whether the action of 'entering into a house' qua 'entering into a house' is accurate or inaccurate. Ḥaydarī notes that because the mind repeatedly grasps the individual immaterial attributes of the subject and the predicate, they become present within it in an unmediated exact manner (or as *ʿilm al-ḥuḍurī*), whereby a person no longer needs to grasp the external world to know their immaterial forms. For example, if someone repeatedly perceives a chicken through their sensory organs, then their mind starts to acquire knowledge of the chicken, whereby its attributes (such as its appearance, smell, sound etc.) become immaterially present within their mind. Once present, they have unmediated knowledge of the concept of a chicken, insofar as even

24 Deborah L. Black, "Logic in Islamic Philosophy" in Edward Craig (ed.) *Routledge Encyclopedia of Philosophy*, 10 vols. (London: Routledge, 1998), 5:706–13.

25 Ḥaydarī, *al-Qaṭʿ*, 114–15.

26 *Ibid.*, 119–20.

if they do not physically perceive the chicken again, their mind possesses an exact depiction of it. Therefore, Ḥaydarī claims that because knowledge of the subject and the predicate (or for that matter, anything that is conceptualised through sense perception) exists within the mind in an unmediated manner, it can never be prone to error. Instead, he suggests that judgments of accuracy and inaccuracy only occur when the mind forms an association between two and more concepts it possesses by formulating a mental proposition that it can assent to. As such, the mind can form an association between its conception of a 'thief' and its conception of the act of 'entering into a house' by formulating the proposition 'a thief entered into a house.' Once it forms this mental proposition, it can assent or assign a judgment (or a truth-value) of how accurate or inaccurate the proposition is.[27]

Ḥaydarī then expounds that if it is found that in objective reality the mental proposition 'a thief entered into the house' is in fact inaccurate, and instead the accurate proposition is 'your brother entered into the house,' then in such a case the error specifically relates to the subject as opposed to the predicate of the proposition. He explains that this happens because the mind mistakes the 'brother' to be the 'thief,' as it fails to differentiate between the attributes of the 'brother' and the attributes of the 'thief,' due to them being the same.[28] For instance, they may both have the same height and built, wear the same clothes, have the same style or manner of entering the house etc. Considering this, Ḥaydarī points out that at the level of conception, the mind possesses accurate knowledge of 1) the 'thief,' 2) the 'brother,' and 3) the act of 'entering into the house.' However, at the level of assent, the mind falsely formulates a mental proposition in which it conjoins the concept of a 'thief,' instead of a 'brother,' with the concept of 'entering into the house.' Ḥaydarī explains that this happens because its faculty of imagination intervenes with, and thereby, overpowers, its faculty of sense perception.[29]

Nevertheless, by citing this example, Ḥaydarī concludes that the mind (or knowledge/disclosure that we possess in our minds) always accurately corresponds to the external world (or objective reality) at the level of conception.

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27 *Ibid.*, 121.

28 It must be noted that the inaccuracy cannot only come in the mind with regards to the subject (*mawḍūʿ*). It is possible for one to be mistaken about the predicate (*maḥmūl*) as well. For instance, in the example of "a thief entered the house," in such a case a person can make a mistake with regards to the predicate, and thus conclude that "a thief entered the house," whereas in objective reality the true proposition is that "a thief passed by the house." Therefore, the subject in this case is accurate, rather it is the predicate that is mistaken. *Ibid.*

29 *Ibid.*, 122.

The possibility of inaccuracy only occurs when it imaginatively formulates mental propositions at the level of assent. Considering this, he counters the criticism raised by Khumaynī by responding that when Uṣūlīs claim that certainty accurately discloses and corresponds to objective reality, they do so at the level of conception, where the mind is able to acquire accurate knowledge through its faculty of sense perception.[30] Therefore, if, for example, a person has certainty that 'grass is brown,' then although this may not be accurate in objective reality, at the level of their conception it is, because their mind possesses accurate knowledge of the concept of 'grass' and the concept of 'brown' and both correspond to objective reality.

2.1 *Ḥaydarī's Assumption*

It is apparent from Ḥaydarī's defence of the majority Uṣūlī position concerning the existential nature of certainty, that it itself relies on the epistemological assumption that the mind's faculty of sense perception is always accurate in cognising external reality (or objective reality) at the level of conception. However, it is important to know that the accuracy of sense perception and its reliability as a source of knowledge has been subjected to much scrutiny within western philosophy. In a recent publication entitled *Epistemology: contemporary readings*, Michael Huemer and Robert Audi provide a comprehensive anthology that surveys classical and contemporary positions on epistemology. The publication presents perception as one of the significant themes of epistemology and shows that renowned western philosophers, including John Locke (d. 1704), George Berkeley (d. 1753), David Hume (d. 1776), Bertrand Russell (d. 1970), and A. J. Ayer (d. 1989) have thoughtfully raised important questions that downplay its ability in accurately disclosing the external world.[31] Although the epistemological discussions therein are outside the depths of my expertise, a common problem presented concerns errors in perception caused by the phenomena of perceptual illusions and hallucinations. For instance, the problem with sense perception is perhaps most candidly articulated in the following passage:

> Most people have noticed that vision can play tricks. A straight stick submerged in water looks bent, though it is not; railroad tracks seem to converge in the distance, but they do not; and a page of English-language print reflected in a mirror cannot be read from left to right, though in all other circumstances it can. Each of those phenomena is misleading in

30 *Ibid.*, 123.

31 Huemer, *Epistemology*, 27–31.

> some way. Anyone who believes that the stick is bent, that the railroad tracks converge, and so on is mistaken about how the world really is.
>
> Although such anomalies may seem simple and unproblematic at first, deeper consideration of them shows that just the opposite is true. How does one know that the stick is not really bent and that the tracks do not really converge? Suppose one says that one knows that the stick is not really bent because when it is removed from the water, one can see that it is straight. But does seeing a straight stick out of water provide a good reason for thinking that when it is in water, it is not bent? Suppose one says that the tracks do not really converge because the train passes over them at the point where they seem to converge. But how does one know that the wheels on the train do not converge at that point also? What justifies preferring some of those beliefs to others, especially when all of them are based upon what is seen? What one sees is that the stick in water is bent and that the stick out of water is straight. Why, then, is the stick declared really to be straight? Why, in effect, is priority given to one perception over another?
>
> One possible answer is to say that vision is not sufficient to give knowledge of how things are. Vision needs to be "corrected" with information derived from the other senses. Suppose then that a person asserts that a good reason for believing that the stick in water is straight is that when the stick is in water, one can feel with one's hands that it is straight. But what justifies the belief that the sense of touch is more reliable than vision? After all, touch gives rise to misperceptions just as vision does. For example, if a person chills one hand and warms the other and then puts both in a tub of lukewarm water, the water will feel warm to the cold hand and cold to the warm hand. Thus, the difficulty cannot be resolved by appealing to input from the other senses.[32]

This passage clearly establishes the shortcomings of sense perception. As such, it is possible to contend that if the first step involved in cognising the external and attaining knowledge of it can be flawed, then this necessarily implies that concepts (or the immaterial forms) of things present in our minds cannot always be relied on. Accordingly, this sheds doubt on Ḥaydarī's claim regarding the accuracy of certainty at the level of conception. Although Ḥaydarī does not provide a response to, nor does he consider, the problems with sense perception, it is possible to take recourse to the seminarian discourse of philosophy

32 Martinich and Stroll, "Epistemology".

to get an idea of how Muslim philosophers may respond to the problems of sense perception.

It is important to emphasise at this juncture that from the medieval period of ʿAllāma Ḥillī up to the present day, Uṣūlī scholars have continually shown a keen interest in the study of philosophy and logic. Most traditional Shiʿite seminaries insist on completing an intermediary course in these disciplines prior to taking advanced classes in legal theory. At an intermediary (*suṭuḥ*) level, students are usually required to complete Muẓaffar's treatise on logic, entitled *al-Manṭiq*; together with Muḥammad Ḥusayn al-Ṭabāṭabāʿī's treatise on philosophy, entitled *Bidāyat al-Ḥikma* and *Nihāyat al-Ḥikma*. After completing these texts, students who wish to pursue further and specialise in Islamic philosophy normally take a course in *al-Asfār al-Arbaʿa fi'l-Ḥikmat al-Mutaʿāliyya* of Ṣadr al-Dīn Shīrāzī (d. 1640). Situated in Safavid Iran, Ṣadr al-Dīn Shīrāzī (more famously known as Mullā Ṣadrā) is described as the single most important and influential Muslim philosopher in the last four hundred years.[33] His major contribution to Muslim philosophy was his instigation of transcendent theosophy (*Ḥikmat al-Mutaʿāliyya*), wherein he attempted to fuse together the discourses of philosophy, theology, mysticism, and scriptural exegesis. Recent academic works highlight that Mullā Ṣadrā's holistic approach to philosophy, together with his rather successful synthesis between the different discourses, has had a significant influence in shaping the ontological and epistemological assumptions of the orthodox Shiʿite Uṣūlī thought.[34] For instance, Ṭabāṭabāʿī, who, apart from being an Uṣūlī jurist and an astute teacher of philosophy, is also renowned for his voluminous commentary on Mullā Ṣadrā's *al-Asfār*, upholds that the denial of sense perception effectively leads to scepticism and the denial of the possibility of ever acquiring any kind of knowledge. In his *Bidāyat al-Ḥikma*, Ṭabāṭabāʿī responds to sceptics who fault the erroneous nature of sense perception by asserting:

> if perception is assumed to be incapable of revealing the reality transcending it, where does this knowledge come from that there does exist such a reality beyond perception, a reality which perception fails to reveal? Who has cognized that external sound consists of vibrations of a certain frequency and visible light has such and such a frequency in external reality? Does man discover the real external facts except through

33 For instance, see John Cooper, "Mulla Sadra (Sadr al-Din Muhammad al-Shirazi)", 6:595–9; Ziai, "Mullā Ṣadrā: His Life and Works", 1125.

34 Paya, *Islam, Modernity and a New Millennium*, 175–84; Rizvi, "Only the Imam Knows Best: The Maktab-e Tafkīk's Attack on the Legitimacy of Philosophy in Iran" 487–503.

> the faculties of perception, the same external facts in perceiving which the senses make errors? In view of what has been said above, the suggestion that perception may not conform absolutely to what lies beyond it only amounts to a denial of the possibility of knowledge.[35]

Ṭabāṭabāʿī impresses the notion that by denying the accuracy of sense perception one denies the possibility of acquiring knowledge, and if a sceptic admits that the acquisition of knowledge is impossible then they end up entangling themselves in a fallacious argument. This is because by admitting to being a sceptic, one admits to having knowledge of some kind (i.e., knowledge of their scepticism) and thus such a person ends up contradicting themselves.[36] Therefore, it can be suggested that Ṭabāṭabāʿī's (or the seminarian-Sadrian) philosophical outlook justifies Ḥaydarī's assumption that sense perception is always accurate in cognising the external world and defends his assertion that at the level of conception acquired knowledge via our sensory organs always discloses and corresponds to objective reality.

3 Justifications for the Authoritativeness of Certainty

As mentioned earlier, according to Khumaynī and Khūʾī the remit of legal theory is exclusively concerned with evaluating and establishing the authoritativeness (or *ḥujjiyya*) of certainty (or evidence that generate certainty) in the juristic process of *ijtihād*. In *Mabānī al-Istinbāṭ* Khūʾī points out that some Uṣūlīs mistakenly interpret Anṣārī's statement "There is no problem with regards to the obligatory nature (*wujūb*) of following certainty and acting upon it …," to indicate that, according to Anṣārī, certainty is authoritative by the virtue of its existential nature. According to Khūʾī, they fail to make a distinction between the realm of creation (*ʿālam al-takwīnī*) and the realm of legislation (*ʿālam al-tashrīʿī*). He explains that even if one accepts that in the realm of creation the existential nature of certainty consists of the properties of disclosure and correspondence and thereby it always accurately depicts objective reality, this does not mean that it is authoritative (or obligatory to follow) in the realm of legalisation.[37] Indeed, if an omnipotent Lawgiver (or God) desires then He can choose to either affirm or retract its authority in the realm of legalisation. Considering this, Uṣūlīs offer a variety of arguments to justify that certainty is

35 Ṭabāṭabāʿī, *The Elements of Islamic Metaphysics*, 128.
36 *Ibid.*, 126.
37 Khūʾī, *Mabānī al-Istinbāṭ*, 1:43.

authoritative and obligatory to follow in the realm of legalisation. These arguments can generally be grouped into the following three categories:

3.1 *Existential Authoritativeness of Certainty*

According to most modern Uṣūlīs, the property of authoritativeness is necessarily correlated to the existential nature or essence (*lawāzim al-dhāt*) of certainty.[38] This means that whenever certainty exists, the property of authoritativeness comes into existence. For instance, it is like the relationship that exists between the number four and evenness. Although the property of evenness does not define the existence of number four, whenever 'four' exists, it always exists with the property of 'evenness.' One of the first post-Anṣārī Uṣūlīs to offer this justification was Muḥammad Kāẓim al-Khurāsānī, who in his *Kifāyat al-uṣūl* explains that:

> Rationally, there is no doubt in the obligatory nature (*wujūb*) of acting in accordance with certainty, and the undoubted necessity of being impelled to act with it. It verifies the immediate duty (*taklīf*), whereby it actualises the blameworthiness and chastisement for acting in contradiction with it, and [grants] excusability if you are mistaken [when acting in accordance with it]. This efficacy of certainty is necessary (*lāzim*).[39]

With the aid of metaphysical jargoning, Khūʾī also advocates that the property of authoritativeness is necessarily correlated to the existential nature or essence of certainty. He attempts to unpack Khurāsānī's above passage by explaining that the essence (*dhāt*) of all things conceivable subsists through existence, irrespective of whether they exist in the realm of the physical external world or not. For instance, this can be demonstrated in the relationship that exists between the number four and its property of evenness. Even though the property of 'evenness' does not define the very existence of 'four,' whereby it is an integral part of its essence, the mind is able to necessarily comprehend 'evenness' every time it comes across 'four.' This shows that 'evenness' of 'four' is something that exists in the realm of the mind (or is something that is always rationally comprehended). Likewise, Khūʾī explains that although the property of authoritativeness does not define the very existence of certainty (i.e., it is not an integral part of its essence), it does not mean that it does not exist at

38 For instance, see Khumaynī, *Tanqīḥ al-uṣūl*, 3:18; Khūʾī, *Mabānī al-Istinbāṭ*, 1:43–6; Ḍīyaʾ al-Dīn al-ʿArāqī, *Nihāyat al-Afkār*, 2:7; Naʾīnī, *Fawāʾid al-Uṣūl*, 3:7; Muẓaffar, *Uṣūl al-fiqh*, 2:28.

39 Khurāsānī, *Kifāyat al-uṣūl*, 258.

all or is something that needs to be additionally created or postulated by God in the realm of legislation. Rather, it exists in the realm of the mind (or is rational), for every time one encounters certainty, their reason necessarily dictates that it is authoritative, insofar as its indication must be followed, and if not then one can be held liable.[40] In *Dirāsāt fī ʿIlm al-Uṣūl*, Khūʾī further explains that, because reason necessarily dictates that certainty is authoritative, it rationally arrives at the notion that it is obligatory (*wājib*) to follow. This is because it naturally comprehends the praiseworthiness (*ḥusn*), or the moral value, of following it; and the blameworthiness (*qubḥ*), or the moral reprehensibility, of acting contrary to it. Moreover, it also naturally comprehends that the Divine Master (or God) has the right to hold a believer accountable if they fail to follow certainty and thereby fail to enact a Sharia ordinance; and the impossibility of the Divine Master to hold a believer accountable if they do follow certainty, even if its indication contradicts that which is intended by God.[41]

Accordingly, if a jurist has access to definitive evidence that, for example, explicitly indicates that God ordains Friday congregational prayers, then even though such evidence (by its very existential nature) discloses (and may even correspond with) what God intends, it by itself does not suggest that a jurist is obliged to follow it and that it is authoritative. Rather, its authoritativeness, and the obligation of following it, is something that is necessarily comprehended by reason. As such, whenever definitive evidence exists, reason naturally judges that 1) it is moral to follow its indication, and 2) God can hold us accountable for not following it. Therefore, if a jurist fails to deduce the Sharia ordinance of praying Friday congregational prayers, then it is rational that according to most Uṣūlīs that he would be deemed immoral and held accountable in the hereafter for not following something he knows certainly reveals that which is in the Mind of God.

3.2 *Postulated Authoritativeness of Certainty*

In contrast to most modern Uṣūlīs, Muḥammad Ḥusayn al-Iṣfahānī argues that authoritativeness is not an existential feature of certainty, but rather it is something that is additionally postulated to certainty by the convention of rational people (*banāʾ al-ʿuqalāʾ*). In his *Nihāyat al-Dirāya fī Sharḥ al-Kifāya*, he asserts:

> It should be known that the actualisation of chastisement is not causational or due to the necessary existential nature of acting contrary to a duty that is known with certainty. Rather, it is necessarily due to the

40 Khūʾī, *Mabānī al-Istinbāṭ*, 1:45; Abū Qāsim al-Khūʾī, *Dirāsāt fī ʿIlm al-Uṣūl*, 3:15.

41 *Ibid.*; also see, Khūʾī, *Miṣbāḥ*, 1:16.

> postulation of rational people (*al-jaʿliyyat al-ʿuqalāʾ*). In a little while, by the will of God, it will become clear that the judgment of reason (*ḥukm al-ʿaql*) that actualises chastisement is not something that is dictated by proof (*burhān*) or axiomatic propositions (*al-qaḍāyā al-ḍarūriyya*); instead, it is dictated by popularly acknowledged propositions (*al-qaḍāyā al-mashhūra*) that are generally followed by the convention of rational people on a variety of issues. On this [conventional] basis, acting contrary to the command of the Master (*Mawla*) is doing injustice (*ẓulm*) to Him, and doing injustice is blameworthy (*qabīḥ*), and thus rational people agree that it necessitates blame and chastisement.[42]

In this passage, Iṣfahānī makes a distinction between two types of rational judgments; those which are discerned by axiomatic propositions and those which are discerned by popular propositions. In the seminarian discourse of logic, axiomatic judgments are self-evident (i.e., the mind can immediately assent to their truth-value or accuracy) and have an objective existence. An example of an axiomatic judgment is the proposition that 'a whole is greater than a part' or 'a thing cannot, at the same time, be and not be.' On the other hand, popular judgments do not have an objective existence, rather they are formed by the convergence of rational people who come to agree on (or assent to) their truth-value. An example of a popular judgment is the proposition that 'jeering at an animal serves no purpose.'[43]

At this juncture, it is important to note that, according to Iṣfahānī and (his student) Muẓaffar, another example of a popular judgment is 'justice is praiseworthy, and oppression is blameworthy.'[44] They explain that it is rational people who postulate the property of praiseworthiness (*taḥsīn*) to justice (*ʿadl*) and the property of blameworthiness (*taqbīḥ*) to oppression (*ẓulm*). This opinion is in contrast with the more prevalent opinion amongst post-Anṣārī Uṣūlīs, according to which the properties of praiseworthiness and blameworthiness are intrinsic moral properties of justice and oppression and thus are necessarily a part of their existential nature. As such, whenever instances of justice or oppression exist (or are created), they are existent (or are respectively created) with the properties of praiseworthiness and blameworthiness and it is not possible to ever separate them. In contrast, by upholding that these properties are

42 Iṣfahānī, *Nihāyat al-Dirāya*, 3:22.

43 For a thorough discussion on how axiomatic and popular propositions are understood within the seminary discourse of logic see Muḥammad Riḍā al-Muẓaffar, *al-Manṭiq* (Beirut: Dār al-Taʿārif li-l Maṭbūʿāt, 2006), 282–4 &. 293–5.

44 See Iṣfahānī, *Nihāyat al-*Dirāya, 3:18–23, 2:103; Muẓaffar, *Uṣūl al-fiqh*, 1:222.

postulated by the convention of rational people, Iṣfahānī and Muẓaffar imply that they are not necessary to the existential nature of justice and oppression, rather, if rational people choose to, they can collectively negate the properties of praiseworthiness to the essence of justice and blameworthiness to the essence of oppression. However, because they instead choose to affirm these properties, Iṣfahānī and Muẓaffar opine that the convention of rational people judges that a person must always be just and must always refrain from being oppressive.

Nevertheless, with regards to certainty, Iṣfahānī explains that the convention of rational people affirms the property of authoritativeness to the essence certainty because this ensures, regulates, and preserves the proper functioning of social order (*ḥifẓ al-niẓām*).[45] If it is supposed that a person has full disclosure or certainty that their master (whether it is a Divine Master, a human master, or a form of government) ordains them to enact a particular duty (such as paying taxes or giving alms), then failing to enact it would have an adverse effect on society and can cause major social disruption. According to rational people, causing such disruption is blameworthy and an extension of oppression (*ẓulm*), as it wrongfully prevents the society from receiving the proper right it deserves. Meanwhile, the enactment of such duty would ensure the safeguarding of society and social constructs of human life. This, according to rational people is praiseworthy and an extension of justice (*ʿadl*), as it provides society with the proper right it deserves. Therefore, Iṣfahānī clarifies that rational people, and their convention, judges that whenever certainty is accessible it is required to be followed, insofar as if it is not followed then a person who has access to it is held accountable and subjected to chastisement for doing something that is considered as blameworthy, whereas, if it is followed then that person is granted with the right of excusability for doing something that is considered as praiseworthy. Iṣfahānī opines that this judgment (or convention) of rational people corresponds with the judgment of God, as 1) God is theologically accepted as the Head of all rational beings (*raʾīs al-ʿuqalāʾ*), and thus He too – by priority – judges in a rational manner, and that 2) there is no counter evidence to suggest that God disapproves of this rational convention.[46] As such, Iṣfahānī concludes that the convention of rational people demonstrates

45 Iṣfahānī, *Nihāyat al-Dirāya*, 3:18. It is important to note that for Iṣfahānī, praiseworthiness of justice and blameworthiness of oppression is also postulated by rational people to preserve social order.

46 *Ibid.*, 3:344, 4:28. Please note that Iṣfahānī's take on the property of authoritativeness being postulated to certainty by the convention of rational people is also discussed in detail by Ḥaydarī see Ḥaydarī, *al-Qaṭʿ*, 129–32, 146–51.

that it is obligatory (*wājib*) to follow evidence that generates certainty and the Divine Master has the right to hold a jurist accountable for not following it.

3.3 *Rational Authoritativeness of Certainty*

Muḥammad Bāqir al-Ṣadr, in *Durūs fi ʿilm al-uṣūl*, advocates that God, being the Divine Master, possesses absolute mastership and that it is incorrect to analogise his mastership to the mastership that is possessed by a normal human master. Considering this, he argues that God possesses an absolute right of obedience (*ḥaqq al-ṭāʿa*) and thus reason necessarily dictates that every possible ordinance (*iḥtimāl*) of His, whether it is conveyed by evidence that generates certainty or not, is authoritative and must be followed.[47] In other words, if one accepts that God possesses absolute mastership and thus possesses an absolute right of obedience, then their reason immediately recognises that they are obliged to follow every ordinance of His and that His ordinance, irrespective of whether it is conveyed by definitive (*qaṭʿī*) forms of evidence or not, is authoritative.

In contrast to the abovementioned justification for the authoritativeness of certainty, Ḥaydarī in *al-Qaṭʿ* seems to favour and further expound his teachers Ṣadr's opinion. He clarifies:

> The popular opinion (*mashhūr*) amongst the Uṣūlīs is that they maintain a relationship between the authoritativeness of certainty (*ḥujjiyyat al-qaṭʿ*) and the principle of the praiseworthiness of justice and the blameworthiness of oppression (*ḥusn al-ʿadl wa-l qubḥ al-ẓulm*). The truth is that there is no such relationship between them. This is because it is obligatory to follow and act in accordance with certainty for the one who possesses certainty irrespective of whether one accepts that praiseworthiness and blameworthiness can be [existentially attributed to actions] by reason (*ʿaql*) or by [the stipulation of the] rational convention (*ʿaqlī*); or denies it, as is the persuasion of some theologians who claim that the praiseworthy [action] is that which is decided to be praiseworthy by God, and the blameworthy [action] is that which He decides to blameworthy.[48]

After clarifying how Ṣadr's justification for the authoritativeness of certainty, as advanced in his theory of *ḥaqq al-ṭāʿa*, differs from the other Uṣūlī justifications, Ḥaydarī refers to a critical discussion found in Maḥmūd Hāshimī

47 Ṣadr, *Durūs*, 2:35–44.
48 Ḥaydarī, *al-Qaṭʿ*, 136–7.

al-Shāhrūdī's compilation of Ṣadr's lectures entitled *Buḥuth fi ʿilm al-uṣūl*.[49] The discussion considers whether God's absolute right of obedience is something that is essential or something that is postulated by reason or the convention of rational people. This discussion is important because if God's right of obedience is postulated, then it necessarily implies that the authoritativeness of certainty is effectively also postulated, and thus it can fluctuate depending on how reason and rational people conceive God's mastership and His right of obedience. Conversely, if God's right of obedience is essential, then it necessarily implies that the authoritativeness of certainty is also essential, insofar as so long as certainty is existent, it is always authoritative. Shāhrūdī notes the following two prevailing arguments that Ṣadr expounds to establish God's absolute right of obedience:

1. The first argument is known as '*wujūb shukr al-munʿim*' (or 'the obligatory nature of showing gratitude to the bestower').[50] In accordance with this argument, reason or the convention of rational people judges that it is obligatory to express gratitude to anyone who bestows favours or beneficence towards them. According to Ṣadr, God's revelation of Sharia ordinances is His great favour upon mankind and always leads them to benefit. Accordingly, he argues that reason and the convention of rational people judges that it is obligatory (*wājib*) to express gratitude to God, and that the best form of expressing gratitude is being obedient to Him and following anything He possibly ordains. According to this argument, God's right of obedience is therefore contingent on Him being a bestower. Consequently, if God does not bestow, or stops bestowing, then reason or the convention of rational people would not judge that there is a need to express gratitude towards Him and would not feel compelled to follow and act in accordance with His ordinances.
2. The second argument asserts that God possesses the absolute right of obedience because He is the Creator (*khāliq*) and Proprietor (*mālik*) of all things.[51] His creatorship and proprietorship cannot be compared to the creatorship and proprietorship of human beings. Moreover, because of His creatorship and proprietorship, He possesses absolute dominion and sovereignty over all things and His sovereignty cannot be compared to the sovereignty of a human being. To explain this further, Shārūdī elucidates that, in the physical realm, human beings are proprietors of their body parts, and hence they have sovereignty over their hands, legs,

49 *Ibid.*, 140–42; Shāhrūdī, *Buḥūth*, 4:27–30.

50 *Ibid.*, 4:29.

51 *Ibid.*, 4:28.

face etc. However, since they do not create them, their sovereignty over their body parts is limited. For example, a human being can only partially rotate his/her wrist at 180° and is unable to fully rotate it at 360° without causing any damage. In contrast, in the realm of thinking, human beings can create thoughts and ideas and possess proprietorship over them. Accordingly, they possess absolute sovereignty, wherein they can modify their thoughts and ideas (or even cause them to not exist) at their will. Considering the limited scope of a human being's sovereignty and the absolute scope of God's sovereignty, according to this argument, God's right of obedience is essential, and thus His ordinances must be obeyed by His creation, irrespective of whether they are conveyed with full disclosure (or certainty) or not.

Both Shārūdī and Ḥaydarī give the impression that their teacher, Ṣadr, preferred the latter argument over the former.[52] As such, for him, God's right of obedience is essential and thus it can be said that for him, the authoritativeness of certainty (or for that matter any evidence that coveys any knowledge of Sharia) is essential and a jurist is obliged to follow it in the juristic process of *ijtihād*. Ḥaydarī interestingly also notes that the limitation of the first argument is that although it states that according to reason and rational convention it is blameworthy for a person to not show gratitude towards God, this does not imply that such a person becomes worthy of chastisement in the hereafter. According to Ḥaydarī, therefore, there is no rational correlation between failing to show gratitude and becoming worthy of chastisement and thus the argument is not sufficient in proving the absoluteness of God's right of obedience. In fact, Ḥaydarī expounds that the first argument is subsumed within the second argument. This is because, if one accepts God as the absolute Creator, Proprietor and Sovereign of all things, then they accept that He continually bestows benefit to mankind by nourishing and sustaining life, and thus, by priority, it becomes incumbent on them to express gratitude to Him.[53]

At this juncture, it is important to clarify that, although Ṣadr claims that authoritativeness is an essential property of certainty, this does not mean that it is necessarily correlated to its essence. This implies that it is theoretically possible (*fi-l maqām al-thubūt*) for God – being the Creator and Proprietor of all things – to deny the authoritativeness of certainty and thereby issue an amnesty (*tarkhīṣ*) that permits a believer to discard following and acting in accordance with full disclosure. However, as elucidated in chapter 2, in practice (*fi-l maqām al-ithbāt*), it is only possible for God to issue such an amnesty by

52 See *ibid.*, 4:44, and Ḥaydarī, *al-Qaṭʿ*, 152–53.

53 Ḥaydarī, *al-Qaṭʿ*, 136.

revealing another epistemologically superior disclosure that undermines the authoritativeness of the disclosure that is already possessed by the believer. Indeed, if a person already possesses full disclosure, then it is practically impossible for God to issue an amnesty, as there cannot be a disclosure that is epistemologically superior to full disclosure (or certainty).[54] This highlights the critical difference between conjecture and certainty in Ṣadr's theory of *ḥaqq al-ṭāʿa*. Although he considers both as authoritative possibilities (*iḥtimāl*) that indicate that which is in the Mind of God, he accepts that when a person possesses conjectural (*ẓannī*) knowledge of Sharia, it is theoretically and practically possible for God to issue an amnesty that permits them to discard their conjectural knowledge. Whereas when a person possesses definitive knowledge of Sharia, then, while it may be theoretically possible for God to issue an amnesty that permits them to discard their certain knowledge, in practice such amnesty does not exist, as it is practically impossible to have anything superior to certainty that permits a person to discard their already-possessed certainty. Therefore, in both theory and practice a believer (or more specifically, a jurist) is obliged to follow certainty and if he does not, then he can be held accountable by God.

54 See Ṣadr, *Durūs*, 2:40–2; also see Shāhrūdī, *Buḥūth*, 4:31.

CHAPTER 4

The Authoritativeness of Substantiated Conjecture

The third epistemological underpinning modern Uṣūlīs uphold is the authoritativeness of substantiated conjecture (*ḥujjiyya al-ẓann al-muʾtabar*). In accordance with this underpinning, some forms of conjecture (or conjecture-generating evidence) are authoritative because their juristic utility in *ijtihād* is substantiated. As such, Uṣūlīs opine that substantiated evidence, which they interchangeably refer to as *amāra*, *ṭarīq*, *dalīl*, or *dalīl al-muʾtabar*,[1] is on the same epistemological pedestal as evidence that generates certainty. This means that a jurist must follow its indication; and if he deliberately ignores it, then he can be held accountable in the hereafter and even possibly subjected to chastisement.

For Uṣūlīs, one of the most important forms of evidence that generates substantiated conjecture are isolated reports (*akhbār al-āḥād*, sing. *Khabar al-wāḥid*) that express the tradition (*sunna*) of the infallible (*maʿṣūm*) Prophet and the Shiʿite Imams. As shown in chapter 1, during the formative development of Shiʿite legal theory, Mufīd and Murtaḍā initially rejected the utility of isolated reports in the deduction of Sharia knowledge and deemed them conjectural due to their erroneous nature and the possibility of them being prone to fabrication. Their viewpoint was, however, short-lived. Their student Ṭūsī was the first rationalist Uṣūlī to argue that God sanctions the utility of conjecture generated from isolated reports that are transmitted by reliable Twelver narrators. The acceptance of isolated reports was further advocated during the medieval period by ʿAllāma al-Ḥillī. Ḥillī proposed that, irrespective of whether isolated reports were transmitted by Twelvers or non-Twelvers, they could be utilised in the deduction of Sharia at the discretion of individual jurists based on how they graded their reliability. Although Ḥillī's stance attracted cynicism from the Akhbārīs, it is found that from the medieval up till the modern period, Uṣūlīs have unanimously concurred on the juristic utility of graded isolated reports. Perhaps an overarching reason for this is that the Quran only contains around five hundred verses relating to Sharia precepts and hence the majority of Sharia knowledge is deduced from traditions of the Prophet and Shiʿite Imams that are transmitted through isolated reports.[2]

1 See prelude to modern Shiʿite legal theory in chapter 1.

2 It is important to note that within the Uṣūlī thought the Quran is the primary source of Sharia knowledge. However, because it only contains around five hundred verses related to Sharia

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Therefore, rendering them as being non-authoritative would imply that a vast majority of already procured Sharia knowledge (as contained within the works of *fiqh*) would become redundant.

In their bid to avoid the redundancy of Sharia, Uṣūlīs have historically demonstrated various theories which, according to them, if applied correctly, can substantiate the authoritativeness of certain conjectural forms of evidence (including isolated reports) and reveal that God sanctions their juristic utility in *ijtihād*.[3] Amongst them, the two most comprehensive theories modern Uṣūlīs usually allude to are the theory of *insidād* and the theory of *ẓann al-khāṣṣ*. The former advocates that, by default, all forms of conjecture-generating evidence are authoritative, except those whose juristic utility is prohibited by God. Meanwhile in contrast, the latter advocates that by default all forms of conjecture-generating evidence are not authoritative, except for those whose juristic utility is explicitly sanctioned by God.

1 The Theory of *Insidād*

Insidād (or *dalīl al-insidād*) is a rational theory that conveys that in the era of the occultation of the Twelfth Shiʿite Imam, a wide range of conjecture (or evidence that generates conjecture) is authoritative because there is limited, or no, access to certainty (or evidence that generates certainty) that conveys Sharia knowledge. The theory of *insidād* ('closure') seems to be the most dominant argument advocated by Uṣūlīs prior to the advent of Anṣārī to justify the authoritativeness of isolated reports and other conjectural forms of evidence normally utilised in *ijtihād*. Many renowned pre-Anṣārī Shiʿite Uṣūlīs, including Ibn Shahīd al-Thānī, ʿAbd Allah al-Fāḍil al-Tūnī (d. 1660), Abū Qāsim al-Qummī, and al-Waḥīd al-Bihbihānī relied on it to substantiate different

precepts (*aḥkām al-Sharīʿa*), the majority of Sharia knowledge is acquired using the *sunna* of the Prophet and Shiʿite Imams. To explain the indispensable relationship between the two sources, Faḍlī succinctly elucidates that in relation to the Quran, *sunna* has a threefold function; 1) it legislates (*tashrīʿ*) that which is not legislated by the Quran, 2) it emphasises (*taʾkīd*) that which is already legislated by the Quran, and 3) it explains (*bayān*) the legislation of the Quran, whereby it respectively specifies (*takhṣīṣ*), restricts (*taqīd*) and clarifies (*tafṣīl*) the general (*ʿām*), unrestricted (*muṭlaq*) and ambiguous (*mujmal*) verses of the Quran. See ʿAbd Hādī al-Faḍlī, *Mabādī al-uṣūl* (Beirut: Markaz al-Ghadīr, 2006), 83–4.

3 For instance, these theories are extensively discussed by Anṣārī see Anṣārī, *Farāʾid al-Uṣūl*, 1:368–383; for further explanation see Hashim Bata, "Towards the Utility of a Wider Range of Evidence in the Derivation of Sharīʿa Precepts: Paradigm Shift in Contemporary Uṣūlī Epistemology", 262–82.

forms of evidence that generated conjecture of Sharia.[4] In the widely taught seminary text of *Maʿālim al-dīn wa malāḍ al-mujtahidīn*, Ibn Shahīd al-Thānī expresses that:

> Apart from the necessities of religion (*ḍarūriyyāt al-dīn*) and [the necessities of] the School of Ahl al-Bayt, definitive knowledge (*ʿilm al-qaṭʿī*) of Sharia precepts in our era is closed [or inaccessible] (*munsad*). For, that which is found in the evidence [of Sharia] only generates conjecture … if it is granted that the door of [definitive] knowledge is closed (*insidād bāb al-ʿilm*) regarding Sharia precepts, then [Sharia] duty (*taklīf*) must be based on conjecture (*ẓann*).[5]

Ibn Shahīd al-Thānī affirms that the only Sharia knowledge that is known with certainty in the absence of the Prophet and the Shiʿite Imams is that of the necessary aspects of religion (*ḍarūriyyāt al-dīn*) that are unanimously agreed by all Muslims; and the necessary aspects of the Shiʿite School (*ḍarūriyyāt al-madhhab*). These include, for instance, the belief in One God, the prophethood of Muḥammad, the obligation of performing daily prayers, fasting in Ramadan etc.; or the belief in the Divine appointment of the Twelve Imams, the Divine justice of God, the rational intelligibility of praiseworthy and blameworthy actions (*ḥusn wa-l qubḥ al-ʿaqlī*) etc. Other than this, most Sharia knowledge (including details of the necessary articles) is only accessible from forms of evidence that generate conjecture. As such, in an era where the door of Sharia knowledge is 'closed,' Ibn Shahīd al-Thānī upholds that the only way it is possible to know Sharia is by relying on conjecture.[6]

In *Farāʾid al-uṣūl*, Anṣārī alludes that in their bid to justify the authoritativeness of conjecture (or evidence such as the isolated reports), many of his predecessors used various forms of the theory of *insidād*. Amongst these, he critically analyses three different theories.[7] His analysis leads him to conclude that the theories presented by his predecessors are not conclusive in themselves or coherent and hence they do not convincingly justify or substantiate the authoritativeness of conjecture. Instead, he proposes that the authoritativeness of conjecture can only be substantiated if all such theories are combined

4 This is something that is clearly noted by the student of Bihbihānī, Shaykh Muḥammad ʿAlī al-Anṣārī (d. 1889), see ʿAlī al-Anṣārī, *al-Mawsūʿa al-fiqhiyya al-muyassara*, 5:469; also see Litvak, *Shiʿi scholars of nineteenth-century Iraq*, 62.

5 Ibn Shahīd al-Thānī, *Maʿālim al-dīn*, 192.

6 *Ibid.*, 192–3.

7 As mentioned, see Anṣārī, *Farāʾid al-Uṣūl*, 1:368–383; also see Bata, 'Towards the Utility of a Wider Range of Evidence,' 262–82.

under the banner of a single theory, which he terms *dalīl al-insidād*.[8] Anṣārī demonstrates this by formulating his version of the theory of *insidād* upon four fundamental premises (*muqaddimāt*). Each premise is reminiscent of the individual arguments that were presented by his predecessors. Although, as I discuss near the end of this section, it is rather difficult to decipher what Anṣārī's actual take on *insidād* is, we find that his successors have continued to present, comment on, and at times even formulate their own versions of it in their works on legal theory.[9] In what follows, I present the four fundamental premises upon which Anṣārī constructs his theory of *insidād*.

1.1 *The First Premise of* Insidād

According to Anṣārī, the first premise of the theory of *insidād* is that in the era of occultation the door of knowledge and substantiated knowledge of Sharia is closed (*insidād bāb al-ʿilm wa-l ʿilmī*). Anṣārī explains that when the advocators of *insidād* say that the 'door of Sharia knowledge is closed,' they mean that 1) there is no access to the infallible Prophet or Shiʿite Imams who can directly convey Sharia knowledge, and 2) there is no access to definitive forms of evidence, such as explicit verses (*naṣṣ*) of the Quran, widely recurrent reports (*mutawātir*) of the *sunna*, definitive consensus (*ijmāʿ*) of scholars etc. that provide adequate knowledge or guidance on Sharia. Moreover, he clarifies that when the advocators of *insidād* say that the 'door of substantiated knowledge is closed,' they mean that there is no definitive evidence that conveys that God affirms the authoritativeness (or sanctions the utility of) some forms of conjecture-generating evidence, such as the isolated reports.[10] Anṣārī mentions that:

> This is the most important premise of the theory of *insidād*, rather some have explicitly mentioned that the establishment of this premise is [in itself] sufficient in proving the authoritativeness of a wide range of conjecture (*ẓann al-muṭlaq*). This is because there is a consensus that if the door of definitive and substantiated knowledge is closed (*insidād bāb al-ʿilm wa-l ʿilmī*) then a wide range of evidence is considered as authoritative.[11]

8 Anṣārī, *Farāʾid al-Uṣūl*, 1:382.

9 For instance, see Khurāsānī, *Kifāyat al-uṣūl*, 311–5; Naʾīnī, *Fawāʾid al-uṣūl*, 3:225–94; Iṣfahānī, *Nihāyat al-dirāya*, 3:270–307; ʿArāqī, *Maqālāt al-uṣūl*, 2:127–30; Khūʾī, *Miṣbāḥ al-uṣūl*, 1:215–35; Muẓaffar, *Uṣūl al-fiqh*, 2:32–34; Ṣadr, *Durūs*, 2:170–1.

10 Anṣārī, *Farāʾid al-Uṣūl*, 1:386–7.

11 *Ibid.*

In this passage, Anṣārī elucidates that there is a consensus amongst his Uṣūlī predecessors that if there truly is no access to any definitive or substantiated knowledge of Sharia, then a jurist has no choice but to deduce Sharia knowledge from evidence that generates mere conjecture. As I will show later, this premise demarks a major theoretical divide between pre-Anṣārī and post-Anṣārī Uṣūlīs. Nevertheless, at this juncture it is important to note that for the advocators of *insidād*, this premise serves a central role, as the rest of the following premises are contingent on its correctness.

1.2 *The Second Premise of* Insidād

If it is accepted that the door of Sharia knowledge and substantiated knowledge is closed, then according to Anṣārī's second premise of *insidād* there is only access to ambiguous knowledge (*ʿilm al-ijmālī*) of Sharia that is emanated from conjectural forms of evidence.[12] One possible solution to deal with this ambiguous knowledge is to take recourse to the principle of exemption (*aṣālat al-barāʾa*). The application of exemption would rule that a believer is excused from performing Sharia duties (*takālīf*) that they have inadequate knowledge of and hence they would not be held accountable or subjected to chastisement in the hereafter for discarding them. Anṣārī explains that although his predecessors, including Qummī and ibn Shahīd al-Thānī, theoretically proposed the suitability of taking recourse to the principle of exemption as a possible solution, in practice they abstained from applying exemption to discard ambiguous Sharia duties.[13] He clarifies two reasons for this abstention:

Firstly, Anṣārī mentions that there is a definitive consensus (*al-ijmāʿ al-qaṭʿī*) amongst Shiʿite jurists (or his predecessors and contemporaries) that relays the impossibility of discarding Sharia duties just because they are known in a conjectural manner. He explains that this consensus can be acquired from a detailed examination of their works on juristic deductions (*fiqh*) wherein they categorically demonstrate that they deduce most Sharia knowledge by taking recourse to conjectural forms of evidence, such as isolated reports. In fact,

12 *Ibid.*, 1:388.

13 *Ibid.* It important to note that the second premise is built upon two parts. The first part explicates that in the era of occultation there is only ambiguous or conjectural knowledge of Sharia precepts. The second part considers the viability of applying the principle of exemption to deal with (or to dissolve) the ambiguous knowledge of Sharia. Considering this, some modern Uṣūlīs opine that the theory of *insidād* is built on five premises, and as such they present both parts of this premise as individual premises. Whereas others (like Anṣārī), combine both parts together and present them as one premise. For example, Khurāsānī in *al-Kifāyat al-uṣūl* constructs his version of the theory of *insidād* upon five fundamental premises and upholds the inappropriateness of Anṣārī amalgamating the abovementioned two parts into one premise. See Khurāsānī, *Kifāyat al-uṣūl*, 311–315.

Anṣārī asserts that the majority of Shiʿite scholars (*ʿulamāʾ*) explicitly uphold that in cases where a jurist cannot access definitive evidence, he must deduce Sharia knowledge from evidence that generates conjecture.[14] Therefore, in the absence of certainty conjecture becomes authoritative.

Secondly, Anṣārī elucidates that according to "all great teachers," anyone who takes recourse to the principle of exemption, and thereby discards acting in accordance with all ambiguous or conjectural knowledge of Sharia, necessarily exits the folds of religion (*khurūj ʿan al-dīn*). Such a person cannot be considered a Muslim or as belonging to Shiʿism.[15] According to Anṣārī, since there is no explicit evidence (or scripture) that explicitly supports this notion, it shows that the great teachers arrived at it because they acknowledged that only a handful of Sharia precepts can be known with certainty, whilst most of them are only known in an ambiguous conjectural manner. To support his claim that "all great teachers" agree with this notion, Anṣārī surveys the works of prominent Shiʿite scholars, including Shaykh al-Ṣadūq, Sharīf al-Murtaḍā, Shaykh al-Ṭūsī, ʿAllāma al-Ḥillī, Muḥaddith Yūsuf al-Baḥrānī and others.[16] For instance, he highlights:

> And amongst them is ʿAllāma [al-Ḥillī], who in *Nahj al-mustarshidīn*, in the topic of establishing the infallibility (*ʿiṣma*) of the Imams, mentions that: Indeed, they [i.e., the Imams] are the guardians (*ḥāfiẓ*) of Sharia precepts (*aḥkām*). This is because the indication from the book (*al-kitāb*) [i.e., the Quran] and the [Prophet's] tradition (*al-sunna*) does not convey details [of Sharia precepts], whilst [the application of] exemption (*barāʾa*) leads to nullifying all Sharia precepts.[17]

Through integrating the discourses of theology and legal theory ʿAllāma attempts to put forward the notion that there is a lack of evidence that sufficiently conveys definitive knowledge and details of Sharia. As such, a person must accept the infallibility of the Shiʿite Imams and appreciate them as legitimate lawgivers, for only after doing so can they utilise their traditions, which are mainly transmitted in a conjectural manner via isolated reports, to deduce details of Sharia. If a person objects to this and instead applies exemption to discard most Sharia knowledge, then such a person exits the folds of the

14 Anṣārī, *Farāʾid al-uṣūl*, 1:388.
15 *Ibid.*, 1:388–389.
16 *Ibid.*, 1:390–402.
17 *Ibid.*, 1:392.

religion of Shiʿite Islam, as it is impossible to identify anyone who rejects the authority of the Imams as a Shiʿite Muslim.[18]

1.3 *The Third Premise of* Insidād

After accepting that the door of knowledge and substantiated knowledge of Sharia is closed and that ambiguous or conjectural knowledge of Sharia cannot be discarded by taking recourse to the principle of exemption, Anṣārī's third premise of *insidād*[19] conveys that a believer can either:

1. Choose to imitate (or do *taqlīd* of) a jurist who denies the notion of *insidād,* and instead insists that during the era of occultation the door of Sharia knowledge is open (*'infitāḥ bāb al-ʿilm'*). Such a jurist would uphold that in the absence of the Prophet and Shiʿite Imams, Sharia knowledge can be deduced from, or accessed through, definitive or substantiated forms of evidence.
2. Choose to take recourse to the principle of precaution (*aṣālat al-iḥtiyāṭ*) and thereby enact all ambiguously or conjecturally known Sharia ordinances and prohibitions, to an extent where they have utmost conviction that they have performed every possible Sharia duty that may be required by God.

Anṣārī explains that a believer cannot choose to act with the first option. This is because reason necessarily dictates that a person who possesses certainty that the door of knowledge is closed cannot follow a person who possesses certainty that it is open, because the former knows that the latter is epistemologically flawed in upholding such a belief. As such, it is irrational for anyone to follow or imitate a person (or a jurist) who they know is fundamentally wrong.[20] In addition, Anṣārī also claims that there is a definitive consensus (*al-ijmāʿ al-qaṭʿī*) that demonstrates that Shiʿite scholars unanimously concur that it is impermissible for a person who believes that there is no access to Sharia knowledge to imitate a person who believes there is.[21]

Anṣārī then moves on to discuss that a believer cannot also resort to the second option, as taking recourse to the principle of precaution brings about immense hardship (*al-ḥaraj*) and difficulty (*al-ʿusr*).[22] He explains that one of the first Uṣūlīs to argue this was Bihbihānī's student Sayyid Muḥammad ʿAlī

18 *Ibid.* Also, a thorough discussion on Ḥillī's opinion can be found in a commentary on *Nahj al-mustarshidīn* written by the medieval Uṣūlī theologian-cum-jurist, Fāḍil al-Miqdād (d. 1423). See Fāḍil al-Miqdād, *Irshād al-Ṭālibīn ila Nahj al-mustarshidīn*, 333.

19 See Anṣārī, *Farāʾid al-uṣūl*, 1:403–30.

20 *Ibid.*, 1:428–29.

21 *Ibid.*, 1:429.

22 *Ibid.*, 1:404–7.

al-Ṭabāṭabāʿī (d. 1816), who is famously acclaimed for his work on *fiqh* entitled *Riyāḍ al-masāʾil fi bayān al-aḥkām bi-l dalāʾil*. Anṣārī explains that according to Ṭabāṭabāʿī, the nature of conjecture is such that when a person possesses it, they also possess doubt (*shakk*) of its opposite.[23] For example, if one has conjecture (or 70% surety) that God ordains the performance of Friday congregational prayers (*ṣalāt al-jumuʿa*), then this necessarily implies that they also possess doubt (or 30% probability) that He does not, and instead ordains believers to pray the daily noon prayer (*ṣalāt al-ẓuhr*). Considering this, if one takes recourse to precaution and thereby performs the maximum duty, they will need to pray both the Friday congregational prayer and the daily noon prayer. Only by performing both the 'conjectural' and the 'doubtful' duties, would they be convinced that they have performed the Sharia duty that is required by God. Ṭabāṭabāʿī, however, mentions that due to the vastness of ambiguous or conjectural Sharia knowledge, in practice it is not possible to take recourse to the principle of precaution and enact all possible duties, as this brings about immense hardship and difficulty. He justifies this stance by referring to juristic maxims (*qawāʿid al-fiqhiyya*), such as 'there is no hardship in religion' (*lā ḥaraj fi-l dīn*) or 'there is no difficulty in religion' (*lā ʿusr fi-l dīn*), which are normally derived from scripture.[24] Moreover, he elaborates that legal maxims are always preferred over practical principles (such as the principle of precaution) because they stem directly from God (i.e., from scripture) and hence convey that which is in the Mind of God (or *al-ḥukm al-wāqiʿī*).[25] Whereas the practical principles are only resorted to to deduce apparent outcomes (or *al-ḥukm al-ẓāhirī*) when that which is in the Mind of God is unknown. Accordingly, for Ṭabāṭabāʿī, juristic maxims that condemn hardship and difficulty supersede and override the application of the principle of precaution. In any case, after asserting that it is not possible to act in accordance with precaution and thereby enact all possible Sharia duties, Ṭabāṭabāʿī opines that during the era of occultation a believer is left with no choice but to follow and act in accordance with a wide range of conjecture and consider it to be authoritative.

It is important to clarify that, although Ṭabāṭabāʿī proposes the above argument as a standalone argument to prove the authoritativeness of a wide range of conjecture, according to Anṣārī, whilst the argument is conceiving, it only holds weight if it is presented as one of the fundamental premises of the theory of *insidād*. As such, we find that Anṣārī and his successors usually present

23 *Ibid.*, 1:382–4.

24 For example, Quran 2:286 mentions that "God does not place burden on a soul greater than it can bear".

25 See Anṣārī, *Farāʾid al-uṣūl*, 1:408–10.

Ṭabāṭabāʿī's argument of the impracticality of taking recourse to precaution as a fundamental premise in their formulation of the theory of *insidād*.[26]

Nevertheless, in addition to Ṭabāṭabāʿī's argument, Khurāsānī, in his formulation of the theory of *insidād* in *Kifāyat al-uṣūl*, asserts that taking recourse to the practical principle of precaution to deal with ambiguous knowledge of Sharia is outright dismissed by reason, not only because it leads to hardship and difficulty, but also because it negatively impacts and disrupts social order. He elaborates that if believers are always preoccupied with being cautious and making sure that they enact every possible Sharia duty, then this inevitably disrupts their day-to-day social life.[27]

1.4 *The Fourth Premise of* Insidād

The fourth and final premise of Anṣārī's theory of *insidād* concludes that a believer (or more precisely a jurist) has no choice but to rely on conjectural forms of evidence to deduce Sharia knowledge.[28] It only becomes active when the first three premises are accepted. Therefore, if one accepts that during the era of occultation there is 1) no access to definitive or substantiated evidence of Sharia, 2) the ambiguous or conjectural knowledge of Sharia cannot be discarded by taking recourse to the principle of exemption, and 3) it is not possible to enact Sharia duties by either taking recourse to another jurist or to the principle of precaution, then they are left with no choice but to accept the authoritativeness of a wide range of conjecture.

As mentioned earlier, the nature of conjecture is such that when a person possesses it, they also possess doubt (*shakk*) at the same time. Considering this, Anṣārī asserts that conjecture has two sides (*aṭrāf*); a more preferred (*rājiḥ*) side and a less preferred side (*marjūḥ*).[29] For instance, if one possesses conjecture that God ordains the performance of Friday congregational prayers, then this naturally implies that they also possess doubt that He may instead ordain the performance of the daily afternoon prayer (*ẓuhr*). Their possession of conjecture is epistemologically superior to their possession of doubt, insofar as from amongst the two possibilities, there is greater possibility that God ordains believers to perform the Friday congregational prayers over the daily afternoon prayer. As such, the former is considered as the more preferred side of conjecture, whereas the latter is considered as the less preferred side of conjecture. Anṣārī emphasises that a believer cannot – with precaution – follow both

26 *Ibid.*, 1:384.
27 See Khurāsānī, *Kifāyat al-uṣūl*, 313, 315.
28 Anṣārī, *Farāʾid al-uṣūl*, 1:431.
29 *Ibid.*, 1:434.

sides of conjecture. Moreover, he explains that reason judges that it is morally reprehensible to ever give preference to something that is less preferred over something that is more preferred (*tarjīḥ al-marjūḥ ʿalā ʾl-rājiḥ qabīḥ*). He therefore concludes that ambiguous knowledge of Sharia can only be dealt with by always taking recourse to the more preferred side of conjecture.[30]

Although Anṣārī's fourth premise rules that a jurist must follow a wide range of conjecture to deduce Sharia knowledge, he clarifies that some forms of conjecture are excluded from this general rule. He explains that this is because there is access to certainty or definitive evidence that conveys (through the teachings of the Prophet and Shiʿite Imams) that God disallows or abhors the juristic utility of some forms of evidence, such as *qiyās* (analogical reasoning), *istiḥsān* (personal juristic preference), *istiṣlāḥ* (social interest) etc. that are normally used by Sunni jurists.[31] Accordingly, Anṣārī's formulation of *insidād* upholds that except for forms of evidence that are definitely excluded by God, all other Sharia conjecture-generating forms of evidence are deemed as authoritative in *ijtihād*. Anṣārī further clarifies that in situations where there is a lack of conjecture or mutually conflicting conjecture, and thus a jurist cannot deduce Sharia as it is in the Mind of God (or *al-ḥukm al-wāqiʿī*), he must take recourse to practical principles (*uṣūl al-ʿamaliyya*) to deduce apparent Sharia knowledge (or *al-ḥukm al-ẓāhirī*).[32]

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In their presentation of the theory of *insidād*, modern Uṣūlīs, including Anṣārī, concede that if its fundamental premises are all proven to be correct, then it ultimately leads to justifying the authoritativeness of a wide range of conjecture in *ijtihād*. However, the dominant position amongst them is that the first premise of *insidād* is incorrect. Most modern Uṣūlīs uphold that in the era of occultation the door of knowledge and substantiated knowledge is not closed, but rather is open.[33] This signifies that they believe there is enough access to definitive evidence that can disclose Sharia knowledge and can substantiate God's approval of some forms of conjectural evidence.

Amongst modern Uṣūlīs, Mūsā Shubayrī al-Zanjānī (b. 1928) is perhaps the most influential orthodox cleric who contrastingly expounds that in the era of

30 *Ibid.*, 1:434–5.

31 *Ibid.*, 1:465.

32 For a thorough discussion see *ibid.*, 1:465–70.

33 For instance, see Khurāsānī, *Kifāyat al-uṣūl*, 466; Iṣfahānī, *Nihāyat al-dirāya*, 3: 391& 397; Naʾīnī, *Fawāʾid al-uṣūl*, 4:759; ʿArāqī, *Maqālāt al-uṣūl*, 2:500; Ṣadr, *Durūs*, 2:170; Khūʾī, *Miṣbāḥ al-uṣūl* 1:98; Muẓaffar, *Uṣūl al-fiqh*, 2:32.

occultation, the door of Sharia knowledge and substantiated knowledge is closed. In his criticism of the modern orthodox position, he asserts that there is a lack of scholastic effort amongst seminarians in critically discussing the theory of *insidād* and most of them assume that Anṣārī only constructed his version of it as an intellectual exercise so that he could present the opinions of predecessors in a clear and coherent manner. In Zanjānī's opinion, however, Anṣārī's personal take on *insidād*, particularly its first fundamental premise, remains unclear and under researched. He opines that a thorough reading of Anṣārī's work, including his juristic deductions in *Kitāb al-Makāsib*, gives the impression that he more than likely upheld that the theory of *insidād* was the only appropriate means by which the authoritativeness of some forms of conjecture, such as the isolated reports, could be substantiated.[34] Nevertheless, barring the eccentric opinion of Zanjānī,[35] it is clear that the one significant point of difference between pre-Anṣārī and post- Anṣārī Uṣūlīs is that the former predominantly advocates that in the era of occultation the door of (or access to) Sharia knowledge is closed, whereas the latter predominantly advocates that it is open.

2 The Theory of *Ẓann al-Khāṣṣ*

The theory of *ẓann al-khāṣṣ* ('extraordinary conjecture') is most widely used by modern Uṣūlīs to substantiate the authoritativeness of some conjecture-generating forms of evidence. In accordance with it, in the absence of the Prophet and Shi'ite Imams, Sharia knowledge can be accessed from

34 See Mūsā Shubayrī al-Zanjānī, "Insidād az Dīdgāh-i Ayatullah al-'Uẓmā Shubayrī Zanjānī," retrieved 12th February 2019, from http://zanjani.net/index.aspx?pid=99&articleid=70681&itemid=70536.

35 It is important to note that the student of Khū'ī, Sayyid Muḥammad Ḥusayn al-Ruwḥanī (d. 1997) gives the impression that he accepts the premises of the theory of *insidād*, but he does not explicitly mention that he accepts the authoritativeness of a wide range of conjecture (*ẓann al-muṭlaq*). He suggests that there is no access to definitive evidence that substantiates that God sanctions the authoritativeness of isolated reports, as such he opines that – out of precaution (*iḥtiyāṭ*) – all isolated reports must be accepted as being authoritative (*ḥujja*). It is interesting to also note that both Zanjānī and Ruwḥanī opine that if evidence generates confidence (*iṭm'ināan*) it can be utilised by a jurist in *ijtihād*. However, neither explain the epistemological value of forms of evidence that generate surety in comparison to forms of evidence that generate certainty or conjecture. see *Ibid*; Muḥammad Ḥusayn al-Ruwḥanī, *Muntaqā al-uṣūl*, 7 vols. Annotated by 'Abd al-Ṣāḥib al-Ḥakīm (Qum: Office of Ayatollah Sayyid Muḥammad Ḥusayn al-Ruwḥanī, 1992), 4: 32–6, 186, 232, & 361.

authoritative conjecture that is sanctioned by God through definitive forms of evidence. For instance, after emphasising that Uṣūlīs generally deny the authoritativeness of conjecture qua conjecture (or *ẓann bi-mā huwa ẓann*), Muẓaffar in *Uṣūl al-fiqh* explains:

> If conjecture is established by a definitive evidence (*dalīl qaṭʿī*) whereby there is authoritative certainty (*ḥujja yaqīniyya*) that the Lawgiver (*Shāriʿ*) [or God] postulates (*jaʿl*) it as extraordinary conjecture (*ẓann al-khāṣṣ*), then such conjecture is an exceptional path (*ṭarīq*) to His precepts that He considers to be authoritative. Therefore, He is content with such conjecture being a substantiated form of evidence (*amāra*), which can be referred to; and He permits us to utilise it even though it is conjectural, as such conjecture is excluded from the primary [or first epistemological] underpinning … At this point, the answer to the slander from a group of Akhbārīs towards the Uṣūlīs is apparent, regarding [the point] that they [i.e., the Uṣūlīs] utilise some evidence that are specifically conjectural, such as the isolated report and its like. They have slandered them for taking recourse to conjecture that does not reveal the truth of a thing.
>
> They have overlooked the fact that when Uṣūlīs take recourse to forms of conjecture, they do not do so from the perspective that they are merely conjectural, but rather they take recourse to them from the perceptive that their authoritativeness is known through certainty. Therefore, taking recourse to them is like taking recourse to certainty, and not like taking recourse to conjecture, guesswork and speculation.[36]

Muẓaffar clarifies that Akhbārī accusations levelled against Uṣūlīs for following mere conjecture (like Sunnis) are unfounded, as Uṣūlīs do not use conjecture in *ijtihād*. Rather, he explains that Akhbārīs fail to make a distinction between conjecture and substantiated conjecture. For Muẓaffar, together with most other modern Uṣūlīs, substantiated conjecture (*ẓann al-muʾtabar*) is extraordinary conjecture (*ẓann al-khāṣṣ*) that is sanctioned by God.[37] Muẓaffar explains that the sanctioning of God is relayed by definitive forms of evidence,

36 Muẓaffar, *Uṣūl al-fiqh*, 2:19–20.

37 *Ibid.* Also for instance, see: ʿArāqī, *Nihāyat al-Afkār*, 2:143; Iṣfahānī, *Nihāyat al-Dirāya*, 3:385; Naʾīnī, *Fawāʾid al-uṣūl*, 3:287–8; Khūʾī, *Mabānī al-istinbāṭ*, 1:352; Khūʾī, *Miṣbāḥ al-uṣūl*, 1:235–39; Ṣadr, *Durūs*, 2:170, Khumaynī, *Tahdhīb*, 2:61. It is important to note that sometimes Uṣūlīs also refer to this notion by claiming that the door of substantiated knowledge is open (*infitāḥ bāb al-ʿilmī*), and by this they mean that there is access to definitive knowledge that can substantiate the authoritativeness of some forms of evidence that generate conjecture.

which clearly indicate that God Himself postulates the authoritativeness of some forms of conjecture. He explains that the sheer weight, or epistemological superiority, of certainty that is generated from the definitive evidence can modify (or override) the generality of the scriptural and rational arguments against the authoritativeness of conjecture.[38] Accordingly, Muẓaffar opines that following evidence that generates substantiated or extraordinary conjecture is the same as following evidence that generates certainty. The only difference between the two is that the authoritativeness of the former is postulated by God, whereas the authoritativeness of the latter is rational.[39] Considering this, Muẓaffar reminds readers that as per the function of legal theory, the authoritativeness of a wide range of conjecture-generating evidence that is normally used in *ijtihād* must be evaluated. Therefore, in his *Uṣūl al-fiqh*, Muẓaffar not only analyses the authoritativeness of the four-fold categorisation of evidence, but also the authoritativeness of conjecture-generating evidence such as the hermeneutical primacy of apparent meaning (*aṣālat al-ḥujjiyyat al-ẓuhūr*), analogical reasoning (*qiyās*), personal juristic preference (*istiḥsān*), social interest (*istiṣlāḥ/maṣlaḥa*) etc.[40]

In what follows, I present how Muẓaffar analyses conjecture generated from isolated reports. I illustrate how he uses definitive forms of scriptural and rational evidence to substantiate their authoritativeness and show that they generate 'extraordinary' conjecture sanctioned by God. This analysis provides a representation of how modern Uṣūlī advocators of the theory of *ẓann al-khāṣṣ* use the theory to justify the authoritativeness of perhaps one of the most dominant scriptural forms of evidence used in the juristic process of *ijtihād*.

2.1 *Authoritativeness of Isolated Reports from Definitive Scriptural Evidence*

Definite scriptural evidence generates certainty and is accepted to authentically convey that which is in the Mind of God. The reason for this is because it is widely recurrent (*mutawātir*). This means that it is transmitted across different generations by so many narrators that it becomes impossible for anyone to claim that so many people could ever be erroneous or collude together in fabricating it.[41] Uṣūlīs technically express that widely recurrent reports,

38 These arguments are presented in chapter 2.

39 Muẓaffar, *Uṣūl al-fiqh*, 2:21.

40 *Ibid.*, 2:144–72, 184–207.

41 The authenticity of the Quran and *sunna* are respectively discussed in the seminarian discourses of Quranic Science (*'Ulūm al-Qur'ān*) and Hadith Science (*'Ulūm al-Hadith*). For a seminarian exposition of these sciences in English and how they discuss matters of authenticity see Abū Qāsim al-Khū'ī, *The Prolegomena to the Quran*, translated

whether they are the verses of the Quran or some reports of the *sunna*, are scriptural sources whose chain of transmission (*sanad*) generates certainty (whereby there is no doubt) that they originate from the Divine Lawgiver (i.e., God or His appointed Prophet and Imams).[42] Considering this, Uṣūlīs appreciate them as being epistemologically superior forms of evidence that can substantiate the authoritativeness of inferior forms of evidence that generate mere conjecture.

The first definitive scriptural evidence that Muẓaffar takes recourse to substantiate the authoritativeness of isolated reports is the Quranic verse that is commonly known as the verse of *naba'* (or *ayat al-naba'*). It reads:

> If a miscreant (*fāsiq*) brings you a piece of news (*naba'*) then scrutinise (*fatabayyanū*) [it] so that you do not harm others through ignorance and then have to repent for what you have done.[43]

According to Muẓaffar, the word "news" (*naba'*) in its absolute usage (*iṭlāq*) refers to all types of news, including news that is relayed from isolated reports of the *sunna* of the Prophet and Shi'ite Imams.[44] In his explanation of the verse, Muẓaffar asserts that it explicitly sets forth a condition, wherein its protasis indicates "if a miscreant brings you a piece of news" and its apodosis indicates "then scrutinise it." He then asserts that the implicit indication (*dalālat al-mafhūm*) of this verse conveys that the non-actualisation of the protasis leads to the non-actualisation of the apodosis. Therefore, if the protasis of the verse is rendered to "if a non-miscreant brings you a piece of news" then the apodosis is rendered to "then do not scrutinise it." For Muẓaffar, a 'non-miscreant' is a person who is just and reliable (*'ādil*). As such, he claims that the implicit indication of this verse indicates that if a person whose moral probity is established brings news (or an isolated report), then their news does not need to be scrutinised. For him, this verse thus shows that God sanctions the authoritativeness of isolated reports that are narrated by reliable and just individuals.[45]

It is important to note that Khumaynī in *Tahdhīb al-uṣūl* contends that the implicit indication of this verse can be interpreted in two ways. On one hand, it

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by Abdulaziz A. Sachedina (Oxford: Oxford University Press, 1998), 25–69; 'Abd al-Hadi al-Fadli, *Introduction to Hadith: including Dirayat al-Hadith by al-Shahid al-Thani*, translated by Nazmina Virjee, (London: ICAS Press, 2011).

42 For instance, see *ibid*, 79–91; Muẓaffar, *Uṣūl al-fiqh*, 2:71–2.

43 Quran 49:6.

44 Muẓaffar, *Uṣūl al-fiqh*, 2:76.

45 *Ibid.*, 2:78–9.

can be interpreted as 'if a non-miscreant brings a report, then do not scrutinise it.' On the other hand, it can also be interpreted as 'if a non-miscreant does not bring a report, then there is no need to scrutinise anything [as there is nothing to scrutinise].'[46] Khumaynī asserts that although the former interpretation is normally preferred by Uṣūlīs, the latter interpretation is more apt according to the common custom (*'urf*) of linguists.[47] Considering this, he opines that this verse does not provide sufficient certainty that God sanctions the authoritativeness of isolated reports.[48]

Perhaps due to his awareness of the common custom amongst linguists, Muẓaffar also presents the following verse of '*nafara*' (or *ayat al-nafara*), as another definitive scriptural evidence in his attempt to substantiate the authoritativeness of isolated reports. The verse reads:

> And it is not for the believers to go forth all together. Of every group (*firqa*) from them, a sect (*ṭā'ifa*) should go forth (*nafara*), that they may obtain understanding (*tafaqqhu*) in religion, and that they may warn (*indhār*) their people (*qawm*) when they return to them, so that they may be aware.[49]

Muẓaffar interprets that the apparent meaning of this verse conveys that it is obligatory for sects, or groups, of believers who live far away from the Prophet to come to him to seek knowledge of religion (or Islam/Sharia) and then go back to their towns or villages to 'warn,' or convey, this knowledge to their people (*qawm*).[50] He argues that because this verse elucidates that God ordains people to listen to, and follow, believers who have sought knowledge from the Prophet, it indicates that He sanctions their isolated reports and deems them authoritative. To further justify his point, Muẓaffar asserts that when the verse says, "it is not for the believers to go forth all together," it grammatically uses the negative particle (*ḥarf al-nafī*) as opposed to a prohibitive particle (*ḥarf al-nahī*). The use of the negative particle indicates that the verse is not declaring a prohibition, but instead is informing believers of something that they already rationally accept. According to Muẓaffar, all rational people accept that it is impossible for every person belonging to a particular town or village

46 See Khumaynī, *Tahdhīb*, 2:109–18.

47 *Ibid.*, 2:110.

48 *Ibid.*, 2:118; also, for a detailed exposition of Khumaynī views on the verse of *naba'* in English see Robert Gleave, "Modern Shīʿī Discussion of *Khabar al-wāḥid*: Ṣadr, Khumaynī and Khūʾī" in Tottoli, Roberto (ed.) *Oriente Moderno: Hadith in Modern Islam* (Roma: Istituto per L'Oriente C. A. Nallino, 2002), 182.

49 Quran 9:122.

50 Muẓaffar, *Uṣūl al-fiqh*, 2:80–1.

to go to the Prophet to seek knowledge. Instead, rational people accept that the responsibility of obtaining knowledge falls on a sect or a group whose objective is to learn from the Prophet (or obtain certainty) and then return to their respective towns and villages and relay what they have learnt to others.[51] Muẓaffar, therefore, asserts that this verse conveys two separate obligations. Firstly, it conveys the obligation of a sect travelling to the Prophet to obtain knowledge. Secondly, it conveys the obligation of a sect returning home to "warn" (*indhār*) its people. Regarding the second obligation, Muẓaffar elaborates that there is a correlation between warning and accepting a warning. If a person or sect is obliged to warn, then it is necessary (or obligatory) for others to accept and follow their warning. Considering this, Muẓaffar claims that the verse of *nafara* not only substantiates the authoritativeness of isolated reports, but it also demonstrates that it is obligatory on believers to accept the conjecture that isolated reports generate.[52]

Muẓaffar highlights that he is aware that the term 'sect' in Arabic is defined as a group of three or more people, and thus he accepts that it is possible for one to argue that this verse, at the most, only sanctions the authoritativeness of isolated reports that are transmitted by three or more narrators across different generations. In his response to this argument, Muẓaffar claims that although the verse conveys the obligation of a sect going to the Prophet to seek knowledge, it does not specify whether it is obligatory on them to come back and collectively warn their people or individually warn them. As such, he concludes that since this verse does not specify how many people are required to 'warn,' reason dictates that it must be read and interpreted in an unrestricted (*muṭlaq*) manner, and thereby it indicates that the obligation of warning can either be carried out by the whole sect combined or by single individuals from the sect.[53]

Again, it is important to note that Muẓaffar himself admits that not all Uṣūlīs interpret this verse in the way he does. In fact, he suggests that there are two camps amongst them. The first camp, which includes himself, reads this verse in an atomistic manner without considering the context in which it was revealed. As shown, for this camp, the atomistic reading of the verse is sufficient in substantiating the authoritativeness of conjecture generated from isolated reports. However, the second camp approaches this verse in a contextual manner. Although Muẓaffar does not specify who exactly makes this

51 *Ibid.*, 2:81.
52 *Ibid.*, 2:82.
53 *Ibid.*, 2:82–4.

argument, he claims that members of the second camp assert that the verse of *nafara* was specifically revealed in the context of warfare (*jihād*), particularly if one reads the verses before and after it, and thus it cannot be read in an atomistic manner to justify the authoritativeness of isolated reports.[54]

Nevertheless, despite quoting the verses of *naba'* and *nafara* to substantiate the authoritativeness of isolated reports, Muẓaffar clarifies:

> It cannot be hidden that the noble verses [of the Quran] that validate the authoritativeness of isolated reports cannot be claimed as being explicit (*naṣṣ*), because they do not provide a definitive indication (*qaṭʿī al-dalāla*). Rather, the maximum that they provide is an apparent (*ẓāhir*) indication. This issue poses a problem, for as mentioned, the evidence that is used to establish the authoritativeness (*ḥujjiyya*) of [anything] that has authority must be definitive. It is not correct to establish [the authoritativeness of] anything by verses that generate conjectural indication (*ẓannī al-dalāla*), as this is tantamount to proving the authoritativeness of conjecture with conjecture, which is not sufficient, even if [a textual source] has a definitive origin [or chain of transmission].[55]

Muẓaffar admits that since the apparent indication of Quranic verses (*ẓāhir al-Qur'ān*) is conjectural, it itself needs substantiation. It therefore cannot be relied upon as definitive evidence to substantiate the authoritativeness of isolated reports and does not convey that God sanctions their utility. Muẓaffar gives the impression that by exclusively relying on these verses, Uṣūlīs entangle themselves in a circular argument of using conjecture to justify the authoritativeness of conjecture. Muẓaffar explains that these verses can only be used if the authoritativeness of their apparent indication is assumed beforehand.

Nevertheless, apart from the verses of the Quran, the other definitive scripture Muẓaffar refers to is the widely recurrent reports of the *sunna*. He admits that there are no widely recurrent reports that substantiate the authoritativeness of isolated reports in a verbatim (*al-mutawātir al-lafẓī*) manner. However, he points out that Anṣārī in *Farā'id al-Uṣūl* mentions five groups of non-verbatim widely recurrent reports (*al-mutawātir al-maʿnawī*) that convey the sentiment that the Prophet and Shiʿite Imams accepted the authoritativeness of isolated reports.[56] These include:

54 *Ibid.*, 2:80.
55 *Ibid.*, 2:75.
56 *Ibid.*, 2:86–89; also see, Anṣārī, *Farā'id al-Uṣūl*, 1:297–310.

1. Reports that convey prescription from the Prophet and Shiʿite Imams on what ought to be done in cases where believers come across contradicting narration of their tradition (or *sunna*). These reports provide guidelines on how to choose, or prefer, one contradicting report over another.[57] In his analysis, Muẓaffar asserts that, since these reports convey what ought to be done when a believer comes across contradicting reports, they imply that the Prophet and Imams sanctioned believers to follow and utilise isolated reports, otherwise they would have not given preferential criterions.[58]
2. Reports in which the Prophet and Shiʿite Imams convey that their followers are permitted to directly seek knowledge of Sharia from their trusted companions. For instance, Muẓaffar expresses that there are many reports from the Sixth Imam, Jaʿfar al-Ṣādiq (d. 765) that indicate the appropriateness of seeking Sharia knowledge from his companion Zurāra b. Aʿyan (d. 767). Muẓaffar analyses that because the Imam sanctions believers to take recourse to the isolated reports transmitted by Zurāra b. Aʿyan, it implies that he accepts the general authoritativeness of isolated reports, so long as they are transmitted by people who are trustworthy.[59]
3. Reports in which the Prophet and Shiʿite Imams convey the necessity of referring to scholars and people who report their traditions. For instance, Muẓaffar elucidates that there are many reports wherein the Prophet and Shiʿite Imams categorically express that "When new situations arise, refer to narrators (*ruwā*) of our reports, for indeed they are my authority (*ḥujja*) upon you, and I am the authority of God upon them."[60]
4. Reports in which the Prophet and Shiʿite Imams stress the importance of memorising, writing, and conveying their reported tradition. For instance, Muẓaffar provides the example of the Prophet saying, "Whoever from my community memorises (*ḥafaẓa*) forty reports, Allah will raise him on the day of judgment as a knowledgeable person." Muẓaffar analyses that this report indicates that the Prophet sanctions the authority of isolated

57 It is worth noting that in *Durūs fī ʿilm al-uṣūl*, Ṣadr is critical of Uṣūlīs who accept that this group of reports substantiate the authoritativeness of isolated reports. He claims that they incorrectly assume that the subject matter of these reports relates to conjectural isolated reports. Instead, he argues that their subject matter relates to reports whose authenticity is already recognised as being definitive (*qaṭʿī*). He justifies this by illustrating that a person would only consult the Prophet or Shiʿite Imams about what to do with two conflicting narrations when they have no doubt regarding their authenticity. See Ṣadr, *Durūs*, 2:159–66.

58 See Muẓaffar, *Uṣūl al-fiqh*, 2:87.

59 *Ibid.*, 2:87–8.

60 *Ibid.*, 2:88.

reports, otherwise he would have not stressed on the importance of preserving his reported tradition.[61]

5. Reports in which the Prophet and Shiʿite Imams warn their followers about falling prey to narrations that have been fabricated. Again, Muẓaffar analyses that this group of reports implies that the Prophet and Shiʿite Imams sanction the authoritativeness of isolated reports, otherwise they would have not found it necessary to warn their followers about fabricated reports.

After analysing these five groups of reports, Muẓaffar does not further elaborate on this point. Instead, in his final analysis he directly quotes Anṣārī, who claims that:

> Even though these [reports] do not generate certainty, other than them, there are reports that collectively [or in groups] express that the Imams were satisfied with [their followers] acting in accordance with isolated reports. It has also been claimed in *al-Wasāʾil* [*al-Shīʿa*] that there are widely recurrent reports which indicate [the Prophet and Shiʿite Imams sanction] acting in accordance with trustworthy isolated reports.[62]

It seems that Muẓaffar quotes this passage because, like Anṣārī, he deems that the abovementioned reports do not generate sufficient certainty to substantiate the authoritativeness of conjecture generated from isolated reports. However, instead of outright denying the existence of any such reports, the passage of Anṣārī elucidates that according to the highly reputable hadith scholar, Shaykh al-Ḥurr al-ʿĀmilī (d. 1693), there are some widely recurrent reports that in a verbatim manner convey that the Prophet and Shiʿite Imams sanctioned the utility of isolated reports and thus substantiate their authoritativeness.

2.2 *Authoritativeness of Isolated Reports from Definitive Consensus*

According to Uṣūlīs, definitive consensus is one that all Shiʿite scholars unanimously agree on a particular religious matter. They elaborate that when such agreement occurs, it reveals that the Hidden Imam is also amongst the scholars who concur.[63] Muẓaffar upholds that one way of acquiring a definitive

61 *Ibid.*

62 *Ibid.*, 2:89; Anṣārī, *Farāʾid al-uṣūl*, 1:309.

63 For Muẓaffar's deliberation on consensus (*ijmāʿ*) as an independent form of evidence of Sharia see Muẓaffar, *Uṣūl al-fiqh*, 2:103–20; It is important to note that Mohammad Ali Shomali explains that some Shiʿite scholars express that whenever there is a definitive consensus amongst Shiʿite scholars, it indicates that the Hidden Imam endorses the consensus; this is because he is duty bound to save the community from holding a mistaken

consensus is by analysing a wide range of works attributed to individual jurists. If in them it is found that many jurists convey that there is a consensus on a particular religious matter, then such consensus is authoritative and generates certainty that the Hidden Imam also concurs with it.[64] Muẓaffar surveys that when it comes to the question of the authoritativeness of isolated reports, Shiʿite jurists widely report to contrasting consensuses.[65]

On one hand, a large group of jurists assert that there is a consensus amongst Shiʿite scholars that reveals that isolated reports from the Prophet and Shiʿite Imams are authoritative and can be relied on in the process of *ijtihād*. According to Muẓaffar, some notable jurists who report this consensus include Shaykh Ṭūsī, Sayyid Raḍī al-Dīn b. Ṭāwuṣ (d. 1266), ʿAllāma Ḥillī, ʿAllāma Muḥammad Bāqir al-Majlisī (d. 1698), and Shaykh al-Anṣārī. On the other hand, another large group of Shiʿite jurists assert that there is a consensus amongst Shiʿite scholars that demonstrates that isolated reports are not authoritative and cannot be relied on in *ijtihād*. According to Muẓaffar, some notable jurists who report this consensus include Sharīf al-Murtaḍā, Ibn Idrīs al-Ḥillī, and Shaykh Faḍal ibn Ḥasan al-Ṭabarasī (d. 1153). Muẓaffar admits that contrasting consensuses reported by two camps of Uṣūlī jurists cause great confusion regarding the authoritativeness of isolated reports. As a solution, he offers a summary of three arguments that Shaykh Anṣārī presents in *al-Farāʾid al-uṣūl* to reconcile the contradicting claims of Shaykh Ṭūsī and Sharīf al-Murtaḍā.[66]

1. It is possible that Murtaḍā and Ṭūsī define isolated reports in different ways. Anṣārī explains that when Murtaḍā claims that there is a consensus on the non-authoritativeness of isolated reports, he is referring to those that are reported by non-Shiʿite narrators. Meanwhile, when Ṭūsī claims that there is a consensus on the authoritativeness of isolated reports, he is referring to those that are exclusively reported by Shiʿite narrators. Therefore, because the subject matter of both claimed consensuses is different, it can be said that there is no contradiction between the consensus of Murtaḍā and the consensus of Ṭūsī.
2. It is possible that when Murtaḍā claims that there is a consensus on the non-authoritativeness of isolated reports, he is referring to isolated reports that are not contained within reliable Shiʿite canonical collections.

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position. According to Shomali, the Hidden Imam can intervene by placing an idea into the mind of one or more of the scholars, so that they would never agree on forming an erroneous consensus. See Mohammad Ali Shomali, *Principles of Islamic Jurisprudence* (London, Centre for Cultural and Ethical Studies, 2006), 67–8.

64 Muẓaffar, *Uṣūl al-fiqh*, 2:120–5.

65 *Ibid.*, 89–90.

66 *Ibid.*, 91–3.

Meanwhile, when Ṭūsī claims that there is a consensus on the authoritativeness of isolated reports, he is referring to isolated reports that are exclusively contained within reliable Shiʿite canonical collections.

3. It is possible that when Ṭūsī claims that there is a consensus on the authoritativeness of isolated reports, he is not referring to isolated reports that merely generate conjecture. Rather, he is referring to isolated reports that are accompanied by other forms of evidence (*maḥfūẓ bi-l qarā'in*) that enable it to generate knowledge. This understanding reconciles the difference between Ṭūsī and Murtaḍā, as Murtaḍā too agrees on the authoritativeness and thereby the permissibility of relying on isolated reports that are accompanied by other forms of evidence.

Other than these reconciliations, Anṣārī extensively discusses other arguments that have historically been put forward by Uṣūlīs to reconcile the contradictory claims of Murtaḍā and Ṭūsī.[67] It remains unclear from Anṣārī's discussion the exact reconciliation he prefers and deems most plausible in reflecting reality. Muẓaffar, like Anṣārī, also refrains from stating a clear preference of one reconciliation over another. Instead, he claims that:

> Yes, Murtaḍā has acted contrary to what he has claimed and so has Ibn Idrīs who has followed him in this opinion. This is because he has mostly taken recourse to reliable isolated reports that are narrated in the canonical books of our people. It is difficult for him, or anyone else, to claim that all these reports are widely narrated (*mutawātir*) or are accompanied by other forms of evidence (*maḥfūẓ bi-l qarā'in*) that give certainty of their authenticity.[68]

Muẓaffar highlights that despite Murtaḍā and Ibn Idrīs claiming that there is a consensus on the non-authoritativeness of isolated reports, in their works of juristic deductions (*fiqh*), they both take recourse to a vast number of isolated reports that are transmitted by Shiʿite narrators. As such, he offers a possible way in which the paradox between their theoretical and practical works can be resolved. He argues that because both Murtaḍā and Ibn Idrīs belong to the Shiʿite tradition, they are aware (as admittedly shown in their works of legal theory) of the impermissibility of taking recourse to any evidence that generates mere conjecture of Sharia. Their practical utility of isolated reports, therefore, demonstrates that they do not view them as forms of evidence that generate mere conjecture. Rather, it shows that they view them

67 See Anṣārī, *Farā'id al-Uṣūl*, 1:311–50.

68 Muẓaffar, *Uṣūl al-fiqh*, 2:93–4.

as authoritative forms of evidence that generate substantiated conjecture. Accordingly, Muẓaffar concludes that there is no contradiction between the consensuses claimed by Murtaḍā and Ṭūsī. When Murtaḍā claims that there is a consensus against the authoritativeness of isolated reports, he is referring to non-substantiated isolated reports. Meanwhile, when Ṭūsī claims that there is a consensus for the authoritativeness of isolated reports, he is referring to substantiated isolated reports.[69]

To further strengthen his argument, Muẓaffar notes that Anṣārī in *Farā'id al-uṣūl* also reports consensuses claimed by two renowned Shiʿite biographers, Najāshī and Kashshī.[70] According to Najāshī, there is consensus amongst Shiʿite scholars that whenever Abī ʿUmayr narrates an isolated report that has a missing link in its chain of transmission (*mursal sanad*), it must be accepted as being authentic, as it is well known that Abī ʿUmayr only accepts reports from narrators who are considered trustworthy. Similarly, according to Kashshī there is consensus amongst Shiʿite scholars that whenever a renowned Shiʿite scholar narrates an isolated report, its chain of transmission does not need to be scrutinised. By implication, both of these reported consensuses necessarily imply that Shiʿite scholars unanimously agree on the authoritativeness of isolated reports.

In his final remarks, Muẓaffar elucidates that according to Anṣārī, other than the necessary articles of religion (*ḍarūriyyāt al-dīn*), the authoritativeness of isolated reports is amongst one of the very few matters upon which all Shiʿite jurists agree.[71] It can be said that Muẓaffar's overdependence on Anṣārī suggests that he perhaps lacks conviction that a definitive consensus can be found within the Shiʿite jurisprudential discourse that can substantiate the authoritativeness of isolated reports.

2.3 *Authoritativeness of Isolated Reports from Definitive Rational Convention*

The final definitive evidence that Muẓaffar takes recourse to substantiate the authoritativeness of isolated reports is the convention of rational people (*banā al-ʿuqalā*). He expresses that it is known through inductive reasoning (*istiqrāʿ*) that rational people, in their daily lives, uphold a convention in which they rely on information that is conveyed by people or sources they deem reliable, and ignore the possibility of it being erroneous even though it falls short of

69 *Ibid.*, 2:94–5.

70 *Ibid.*, 2:95.

71 *Ibid.*, 2:95–6; also see Anṣārī, *Farā'id al-uṣūl*, 1:343.

providing certainty.[72] Muẓaffar clarifies that since all rational people accept and follow this convention, God, being the Head of all rational agents (*ra'īs al-ʿuqalā*), also accepts it. In addition, Muẓaffar expounds that there is no proof to suggest that God prevents believers from following or taking recourse to it. Accordingly he considers the convention as a definitive form of evidence that most aptly substantiates the authoritativeness of isolated reports.[73] Muẓaffar clarifies his understanding by illustrating the following syllogism:

> **Minor Premise:**
> All rational beings conventionally follow isolated reports or news they deem as being reliable.
>
> **Major Premise:**
> God, being the Head of all rational agents, by default consents to rational conventions except when He explicitly prevents believers.
>
> **Conclusion:**
> Therefore, God consents to the rational convention of acting in accordance with isolated reports and does not prevent rational people from doing so.

Muẓaffar underlines that, although rational people conventionally accept and follow isolated information or reports of reliable individuals in their daily lives, one can contend that their convention holds no value in the realm of legislation. This is because the Quran categorically prohibits following any type of conjecture. In response to this contention, Muẓaffar points towards the following two arguments from his teachers Iṣfahānī and Na'īnī:

1. According to Iṣfahānī, Quranic verses that prohibit conjecture are instructive (*irshādī*) as opposed to devotional (*mawlawī*). By categorising them as instructive, Iṣfahānī implies that the prohibition on following conjecture is primarily inferred from reason and only secondarily (re)confirmed within scripture.[74] Considering this, Iṣfahānī claims that it is impossible for reason to give two contradicting judgments, whereby on one hand it judges the prohibition of following conjecture, and on the other hand, it judges the permissibility of following conjecture generated from isolated

72 Muẓaffar, *Uṣūl al-fiqh*, 2:96.

73 *Ibid.*, 2:96–8.

74 For more details on the categorisation between devotional (*mawlawī*) and instructive (*irshādī*) scriptural injunctions see chapter 2.

reports.[75] Accordingly, he asserts that conjecture generated from isolated reports is excluded from the general Quranic prohibition of following conjecture. Although neither Iṣfahānī nor Muẓaffar details how conjecture generated from isolated reports differs to other forms of conjecture, Iṣfahānī's analysis appears to suggest that rational beings find conjecture generated from day-to-day isolated reports more reliable than conjecture generated from other forms of evidence.

2. According to Na'īnī, the Quran only prohibits taking recourse to conjecture because anything conjectural fails to generate knowledge (*'ilm*) or certainty (*qaṭ'*). However, rational people do not consider day-to-day isolated reports a source of conjecture, rather they believe that they generate knowledge and certainty because they normally ignore the 'very slim' possibility of them being erroneous. In essence, Na'īnī proposes that because day-to-day isolated reports generate knowledge/certainty, they are excluded from the general Quranic prohibition of following conjecture.[76]

To further convince his readers of the fallacy of this contention, Muẓaffar takes recourse to the Uṣūlī categorisation of general (*'ām*) and particular (*khāṣṣ*) indications. He explains that Uṣūlīs uphold the hermeneutical primacy of general indication (*aṣālat al-'umūm*). In accordance with this primacy, general indication of scripture is always given preference in absence of any particular indication that can limit or modify its generality. However, as soon as a particular indication is found, the primacy is overridden, and preference is given to it over the general indication. This is because particular indication is more precise in indicating that which is in reality (or in the Mind of God) than general indication.[77] Accordingly, Muẓaffar argues that the general indication of the Quran that prohibits following conjecture is limited or modified by the particular indication emanated from rational convention and the common practice of the adherents of Sharia (*sīrat al-mutasharʿia*), which more 'precisely' indicates that the conjecture produced from isolated reports is excluded from the general Quranic prohibition of conjecture.[78]

Muẓaffar opines that rational convention is the best definitive evidence that most sufficiently substantiates the authoritativeness of isolated reports.[79] To support his opinion, he quotes the following statement of Na'īnī:

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75 *Ibid.*, 2:99; also see, Iṣfahānī, *Nihāyat al-dirāya*, 3:248–55.

76 Muẓaffar, *Uṣūl al-fiqh*, 2:99–100; also see, Na'īnī, *Fawā'id al-uṣūl*, 3:195.

77 For a detailed understanding of Muẓaffar's opinion on the relationship between general and scriptural indications see Muẓaffar, *Uṣūl al-fiqh*, 1:190–221.

78 *Ibid.*, 2:98–9.

79 *Ibid.*, 2:98.

> As for rational convention, it is the best of evidence [presented to substantiate the authoritativeness of isolated reports], in the sense that even if it is supposed that other forms of evidence [normally presented to substantiate isolated reports] are disputed, there is no way to dispute the rational convention that manifests dependence on trustworthy isolated reports and day-to-day reliance upon them.[80]

Although the convention of rational people may perhaps be the strongest evidence presented to substantiate the authoritativeness of conjecture generated from isolated reports, it is possible for one to challenge that it is inaccurate to analogise the reliance of rational people on day-to-day isolated reports from reliable individuals to isolated reports that relay the tradition of the Prophet and Shiʿite Imams. This is because information conveyed by day-to-day isolated reports carries a slim possibility of error, as they are transmitted by people whose reliability is personally known. Meanwhile, information conveyed by the isolated reports of the Prophet and Shiʿite Imams carries a higher possibility of error, as they are verbally transmitted over generations by people whose reliability is not personally known.[81]

In essence, Muẓaffar's analysis highlights that using the theory of *ẓann al-khāṣṣ* to substantiate 'extraordinary' authoritativeness of conjecture generated from isolated reports is an arduous task, as he painstakingly refers to several definitive forms of evidence to prove that God sanctions its utility. It is plausible to assume that one reason why Muẓaffar, and most other post-Anṣārī Uṣūlīs, insists on and prefers using the theory of *ẓann al-khāṣṣ* over the less arduous theory of *insidād* is because of the immense impact of the Akhbārīs. As shown in chapter 1, Akhbārīs were highly critical of medieval Uṣūlīs and accused them of falling prey to Sunni innovations that made them recklessly accept conjecture and go against the formative jurisprudential heritage of Shiʿite scholars. The impact and influence of Akhbārīs and their subsequent reign over Shiʿite intellectual circles was perhaps a significant contributing factor that led post-Anṣārī Uṣūlīs to reassess how conjecture is accepted and defined within Uṣūlī legal theory. Accordingly, as opposed to accepting the authoritativeness of a wide range of conjecture, modern Uṣūlīs carefully, and rather defensively, assert that in their process of *ijtihād* they only accept the authority of conjecture that is approved by God.

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80 *Ibid.*, 2:99; also see, Naʾīnī, *Fawāʾid al-uṣūl*, 3:194–95.

81 See Abolqasem Fanaei, *Akhlāq dīn Shināsī* (Tehran: Nigah-e Muʿāsir, 1969), 275–80.

CHAPTER 5

Implications of Legal Epistemology on *Ijtihād*

The objective of my study has been to introduce readers to the legal epistemology that is propounded by modern Shi'ite orthodoxy. After situating the modern orthodox legal discourse as a continuation of the rationalist Uṣūlī discourse that was found during the latter part of the 10th century and further refined during the medieval period, chapters two, three and four of my study focus on three fundamental epistemological underpinnings this discourse upholds to determine the authoritativeness of evidence that can be utilised in orthodox *ijtihād*. These underpinnings essentially reveal that modern Uṣūlīs (or jurists-cum-theologians who work within the systematic framework of Uṣūlī legal theory) can only deduce Sharia knowledge from forms of evidence that generate certainty or substantiated conjecture; and cannot deduce it from forms of evidence that generate mere conjecture.

My analysis reveals that, as opposed to arriving at an 'accurate' understanding of Sharia, the primary concern of modern Uṣūlī legal epistemology is to grant jurists immunity from being held accountable and possibly subjected to chastisement in the hereafter. This is evidenced by the fact that modern Uṣūlīs stress the importance of utilising evidence that generates certainty or substantiated conjecture, even after admitting that such forms of evidence can sometimes lead jurists to deduce Sharia knowledge that does not accurately correspond to that which is in the Mind of God. Meanwhile, they stress the importance of not utilising evidence that generates mere conjecture, even though they admit that conjectural forms of evidence can sometimes lead jurists to deduce Sharia knowledge that accurately corresponds to that which is in the Mind of God. This feature of legal epistemology ensures that, so long as fallible jurists operate within the stipulated boundaries of Uṣūlī legal epistemology, they are protected with the right of excusability in front of God in instances when they erroneously make mistakes in *ijtihād*.

The effect of what can be described as a rather defensive legal epistemology is that it forces Uṣūlī jurists to rely on a literalist approach in deducing Sharia knowledge. As it shall become apparent in the following section, orthodox jurists primarily deduce Sharia knowledge (or explore the Mind of God) from the scriptural evidence of the Quran and *sunna* (mainly in the form of isolated reports) using the hermeneutical primacy of apparent meaning (*aṣālat al-ẓuhūr*). In instances when they do not find sufficient guidance from the

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scriptural sources, they turn to the practical principles (*uṣūl al-ʿamaliyya*).[1] Their legal epistemology prevents them from taking recourse to a wider range of rational evidence that can potentially reveal Sharia knowledge. This can perhaps be explained as the key impediment that hinders orthodox jurists in displaying dynamism in *ijtihād*.

As mentioned in my preface, the method of *ijtihād* professed by Shiʿite orthodoxy has been criticised for failing to provide adequate solutions to numerous challenges that are posed by modernity. Many commentators on Islamic law maintain that the orthodox clerical deduction and interpretation of Sharia is incompatible with several facets of modernity. The works of many Muslim reformists imply that it is only possible to reconcile Sharia with modern values and institutions if it is deduced and interpreted using a progressive non-literalistic method of *ijtihād* or an epistemology that enables a jurist to take recourse to rational/contextual approaches. To illustrate the practical outcomes of different approaches (or legal epistemologies), in the following section I present a case study of how orthodox Shiʿite jurists and Muslim reformists deduce and interpret Sharia precepts concerning apostasy.

1 The Case of Apostacy

The effects of operating within the boundaries of Uṣūlī legal epistemology and thereby giving preference to a literalistic approach are clearly noticeable in the juristic deductions (*fiqh*) of notable Shiʿite jurists. In 2002, under the auspices of the supreme leader of Iran, the Grand Ayatollah Ali Khamenei, a research institution in Qum known as Muʾassasat Dāʾira Maʿārif al-Fiqh al-Islāmī compiled a twenty-volume encyclopaedia of juristic deductions by prominent Shiʿite clerics from early, medieval, and modern periods entitled *Mawsūʿat al-fiqh al-Islāmī ṭibqa li-madhhab ahl al-bayt*. Under its entry on apostasy (*irtidād*), the encyclopaedia surveys that according to Shiʿite jurists the action

1 It is important to clarify that as indicated in chapter 1, Shiʿite orthodoxy rules that there is a Sharia percepts for every human action. Accordingly, it maintains that when real knowledge of Sharia precepts, as they are in the Mind of God (or *ḥukm al-wāqiʿ*), cannot be deduced from authoritative forms of evidence (or scripture), then a jurist must take recourse to procedural principles (*uṣūl al-ʿamaliyya*) of precaution, exemption, continuity, or choice to deduce apparent knowledge of Sharia precepts (*ḥukm al-ẓāhirī*). This method guards a jurist with immunity from being held accountable in the hereafter, even if the indication of an apparent Sharia precept is contrary to the real Sharia precept that is in the Mind of God.

of apostasy is prohibited (*ḥarām*).[2] It explains that apostasy occurs when a person either outright denies the fundamental theological articles of Islam (*ḍarūriyyāt al-dīn*) or opts to join another faith whose essential articles contravene those of Islam. It clarifies that orthodox Shiʿite jurists make a distinction between two types of apostates; an apostate that is born into the religion of Islam (*murtadd al-fiṭrī*), and an apostate who previously converted to Islam from another religion (*murtadd al-millī*). The Sharia punishment prescribed to either type of apostate differs depending on their gender. A male *murtadd al-fiṭrī* is immediately prescribed the death penalty and is not given an opportunity to repent for his disbelief or conversion. In other words, once he turns away from the folds of Islam, he is not allowed to enter back. Meanwhile, a male *murtadd al-millī* is not immediately prescribed the death penalty, but instead is first given a chance to repent. If he repents, then he is welcomed back within the folds of Islam and if not, then he is met with the death penalty. A female, whether she is categorised as a *murtadd al-fiṭrī* or *murtadd al-millī* is given a chance to repent and return to Islam, and if she fails to repent then she is either flogged or imprisoned.[3]

The abovementioned understanding of worldly punishments associated with apostasy are normally presented as archetypal instances of how the orthodox interpretation of Sharia opposes modernity and its values of autonomy and freedom. In their process of *ijtihād*, orthodox jurists deduce these precepts by primarily referring to the Quran, which contains verses such as "and whoever denies their faith – then his work has become worthless, and he, in the hereafter, will be among the losers."[4] Or, "Indeed, those who have believed then disbelieved, then believed, then disbelieved, and then increase in the disbelief – never will Allah forgive them, nor will He guide them to a way."[5] Or "And whoever of you reverts from his religion and dies while he is a disbeliever – for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the fire, they will abide therein eternally."[6] Orthodox jurists analyse that the apparent (*ẓāhir*) meaning of these verses conveys that God despises anyone who chooses to turn away from

2 Muʾassasat Dāʾira Maʿārif al-Fiqh al-Islāmī. *Mawsūʿat al-fiqh al-Islāmī ṭibqa li-madhhab ahl al-bayt*, 20 vols. (Qum: Muʾassasat Dāʾira Maʿārif al-Fiqh al-Islāmī, 2002), 8:354.

3 For a complete discussion on apostasy and Sharia precepts related to it see *ibid.*, 354–457; it is important to note that these precepts can also be found in the juristic deductions of the highly prominent Grand Ayatollah Sīstānī, see ʿAlī Ḥusayn al-Sīstānī, *Minhāj al-Ṣāliḥīn*, 3:323–4.

4 Quran 5:5.

5 Quran 4:137.

6 Quran 2:217.

being a Muslim (or a believer) towards being a disbeliever. They admit that although these verses indicate that such people are met with punishment in the hereafter, they do not relay any worldly punishments.

Worldly punishments associated with apostasy are deduced from isolated reports that convey the *sunna* (tradition) of the Prophet and Shiʿite Imams. Within the Uṣūlī framework, because the Prophet and Shiʿite Imams are accepted as infallible individuals, one key function of their *sunna* is that it can legislate (*tashrīʿ*) Sharia precepts that have not been legislated in the Quran. Orthodox jurists refer to several isolated reports that indicate the different Sharia punishments an individual is charged with for committing apostasy. For instance, in *Mawsūʿat al-fiqh* the following reports are found: Prophet Muḥammad said, "kill anyone who changes their religion,"[7] and the fifth Shiʿite Imam, Muḥammad al-Bāqir (d. 732) said, "after accepting Islam, whoever wishes to turn away from Islam and disbelieve in what has been revealed to Prophet Muḥammad, then there is no repentance for him, instead it is necessary that he is killed."[8] With the aid of these and other such isolated reports, orthodox jurists deduce different categories of apostates (i.e., *murtadd al-fiṭrī* and *murtadd al-millī*, as well as male and female) and the different types of worldly Sharia punishments they are charged with.[9]

Orthodox jurists deduce specificities of worldly Sharia punishments associated with apostasy from isolated reports despite acknowledging that they can possibly be erroneous or fabricated. As explained in chapter 4, they justify and defend their utility by upholding that the authoritativeness of isolated reports is substantiated by God's sanction. As such, even if there is a possibility that the abovementioned isolated reports are erroneous (and instead God, as indicated in the Quran, only intends to charge an apostate in the hereafter and not in this world), this possibility is ignored by orthodox jurists. Their legal epistemology compels them to take a literalistic approach whereby they do not pay much heed (if any) to other forms of evidence or hermeneutical methods of interpretation to deduce alternative Sharia precepts concerning apostasy.

Contrastingly, Shiʿite Muslim reformists, in their endeavour to bridge the gulf between Sharia and modernity, directly and indirectly contend against the literalistic approach favoured by orthodox jurists concerning apostasy

7 See Dāʾira Maʿārif, *Mawsūʿat al-fiqh*, 8:354.

8 *Ibid.*

9 It is important to note that, apart from the death penalty, similar isolated reports also indicate on other implicatory or circumstantial Sharia precepts (*ḥukm al-waḍʿī*) that are only brought into existence after a person commits the act of apostasy. These reports have implications on an apostate's matrimonial status, their right of inheritance, their ritual purity etc. For juristic deductions based on these reports see *ibid.*, 385–394.

(and other such Sharia precepts). For instance, Mohsen Kadivar, a seminarian graduate, and a student of renowned Ayatollah Hussein Ali Montazeri (d. 2009),[10] in *Majazat murtadd wa azadi madhhab* condemns Khumaynī's student Ayatollah Fazel Lankarni (d. 2007) for issuing an edict (*fatwa*) declaring an individual named Rafiq Taqi an apostate for writing an article in which he was critical of Islam and Prophet Muhammad.[11] Coming from a seminarian background, Kadivar attempts to respond to Lankarani by pointing out that the four-fold categorisation of the commonly accepted evidence (including the Quran, *sunna*, consensus, and reason) does not prescribe the death penalty for apostasy.[12] Saying this, he accepts that there are certain isolated reports that do indicate the death penalty for apostasy. However, he opines that they must be read and interpreted within the situational context in which they originated. He explains:

> The situational context of apostasy found in the traditions or juridical works is wider in scope than just changing religion or exiting from Islam, because it was closely linked with joining hands with the opponents of Islam (i.e., the polytheists and unbelievers). The "apostates" of that period, in addition to exiting from Islam, engaged in a propaganda campaign against Islam and united with the enemy's army. This constituted a form of political, cultural, and military war against the Muslims. However, the present-day usage of "apostate" is restricted to exiting from the religion of Islam without taking into account any other conditions and motives. In other words, the subject of "apostasy" is associated with religious and cultural freedom by contemporary people, whereas the same term in the

10 It is important to note that Montazeri was a cleric that was tipped to become the successor of Khumaynī as the Supreme Leader of Iran but was later denied of this position due to his dissent with some of Khumaynī's policies. See Siavoshi, *Montazeri*, 139.

11 Kadivar notes that the edict issued by Lankarani eventually led to Taqi's execution in 2011. He states that the execution was applauded by Lanakari's son, who expressed joy that his father's edict was carried out. Kadivar states that apart from this case, there are several others where orthodox jurists have issued edicts of apostasy against writers, political activities, artists etc., who have either spoken out against their authority or their understanding and interpretation of religion (or Sharia). See Kadivar, "Apostasy, Blasphemy & Religious Freedom in Islam".

12 It is important to note that in addition to pointing out that there is no proof for the death penalty within the four-fold categorisation of evidence, Kadivar also demonstrates the juristic deductions of his teacher Ayatollah Montazeri. He explains that although Montazeri does not deny the death penalty for apostasy, the practical outcome of his deduction effectively renders the application of the death penalty as being difficult and very rare to implement. See *ibid.*

> religious judgments of Islam is linked to political crimes that are akin to a belligerent (*muharib*). Undoubtedly, these two are different and distinct from each other.[13]

In this passage, Kadivar demonstrates that Sharia originally only prescribed the death penalty for apostasy because it was akin to treason.[14] He adopts a hermeneutical approach that proposes that in the present-day context, isolated reports associated with apostasy (or at least those concerning the death penalty) should only be interpreted through the lens of the situational context in which they were revealed. He believes that they cannot be read in their apparent meaning (or the hermeneutical approach preferred by orthodox jurists), as the notion of apostasy has changed over time and is no longer linked with treason.

A similar contextual approach towards Sharia is favoured by Abdolkarim Soroush, an intellectual theologian who, due to his criticisms of the Iranian clerical regime, has been in exile for nearly two decades. Although Soroush does not directly deal with the issue of apostasy, his theory on 'contraction and expansion of Sharia' (or '*Qabż va basṭ-i tiʾūrīk-i sharīʿat*') is applied to the case of apostasy in a recently published article by Ali Akbar.[15] Akbar demonstrates that the correct application of Soroush's theory renders the death penalty for apostasy null and void in the present-day context and allows for religious freedom. He explains that central to Soroush's theory is the distinction between religion (*dīn*) and understanding of religion (*maʿrifat-i dīnī*). The former is divine, sacred, and unchanging, whilst the latter is a product of human understanding and hence it constantly changes and is always open to questioning and criticism. In this sense, our (or the human) understanding and interpretation of religious scripture is always fallible and reflective of our personal presuppositions. As we evolve, so too does our understanding and interpretation. As such, for Soroush, religious knowledge, like any other branch of knowledge, always has the potential to adapt to different contexts.[16] Considering this, Akbar opines that, in line with Soroush's theory:

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13 *Ibid.*

14 The relationship between apostasy and treason is also found in other works, for instance see Jordan, "The Dark Ages of Islam"; Shah, "Freedom of Religion: Koranic and Human Rights Perspectives"; Rahman, *Punishment of Apostasy in Islam*, 108.

15 Akbar, "The Classical Islamic Laws of Apostasy in the Present Context", 666–71.

16 For a dedicated study of Soroush's theory of 'contraction and expansion of Sharia' in English, See Fletcher, "The Methodology of Abdolkarim Soroush: A Preliminary Study"; also see Akbar, "Abdolkarim Soroush".

> The notion of killing an apostate must be explored within its proper context in the early days of Islam, and should not be de-contextualized, being viewed as a precept that could be applied at all times and in all places. This argument has been made in two steps. First, the facts that the Quran does not prescribe any earthly punishment for apostasy and that the apostates are only destined for the Fire in the afterlife from the Quranic perspective, show that there is nothing sacred about the medieval Islamic laws on apostasy. This provides a strong basis for rethinking the classical laws of apostasy developed by Muslim jurists, since we should make a distinction between the Quran and any human understanding of it (as Abdolkarim Soroush's theory of expansion and contraction of religious knowledge argues). In the second step, the paper focused on the historical context, in which the Prophet ordered prosecution of the apostates, in order to examine whether the same rules can be implemented in the present context. The paper has argued that during Muhammad's lifetime, the act of apostasy was often linked to an act of political betrayal of the Muslim community, treason, sedition and joining forces to the enemy, and it is not surprising that such matters were sensitive for the Prophet. In addition, such decisions were made centuries before the development of modern notions of religious pluralism and human rights. Since today's context is different from the Prophet's historical context and by its extension from the medieval world, neither the Prophet's decisions nor the classical Islamic laws on apostasy are applicable in the present world, which is to say that modern Islamic discourse should move in the direction of abolition of all earthly punishment, be it death penalty or imprisonment, for apostasy.[17]

Giving preference to a contextualised reading and interpretation of scripture is also advocated by Arif Abdul Hussain, who is a progressive theologian and the founder of a Shi'ite seminary in Birmingham, UK. Although Hussain does not directly write on apostasy, his discourse in *God Centricity* compellingly promotes that religious scripture must be hermeneutically interpreted in a manner that ensures that context-appropriate Sharia precepts are generated.[18] Through observing the general ontological nature of the world, Hussain upholds that existence, or human beings, are in a constant state of evolutionary flux.

17 Akbar, "The Classical Islamic Laws of Apostasy in the Present Context," 670–1.

18 See Hussain, *Islam and God-Centricity*; Hussain, "The Conflict between the Actual and Apparent Regulations".

They are always growing towards an upwards trajectory that enables them to actualise their human potential. This existential phenomenon, which he terms 'the existential property of growth,' allows human beings to liberate themselves from physical, mental, and spiritual shackles, enabling them to positively (or at times, even negatively) arrive at profound levels of self-realisation. Hussain's ontology inevitably leads him to accept an epistemology in which he maintains that there is 'no-finality' in knowing and understanding existence. He explains that as human beings experience and learn new realities, their comprehension of objective reality (*wāqiʿ*) evolves. As such, their comprehension is always dependent on the context in which they exist. Therefore, as human beings evolve in their relative contexts, their knowledge and appreciation of Sharia also evolves.

In line with Hussain's ontology and epistemology, he proposes a hermeneutical method of interpretation that distinguishes between essence and form of scripture. He explains that the essence of scripture conveys the sacred and fundamental values that assist the evolution and liberation of mankind. The efficacy of the essence is not limited to the original context of revelation, but rather it is universally applicable across different contexts. On the other hand, the form of a text conveys contextual values that assist the evolution and liberation of individuals who specifically existed during the era of revelation. The efficacy of the form is limited to the context of revelation and can only transcend beyond it in cases when another context shares similarities with the original context. Hussain admits that during the era of revelation, it was not possible to make a distinction between essence and form of scripture, as there existed full synchronicity between the values carried by them. However, in the present-day context, the distinction between essence and form is incredibly pertinent due to advances made in technology, research, and general socio-political life. The change in context implies that some values carried within the apparent form of scripture are no longer in keeping with its essence. Considering this, Hussain suggests that, rather than deducing Sharia precepts by being overly reliant on the apparent form (or the apparent meaning) of scripture, it is more appropriate that present-day jurists exert effort in deducing fundamental values found in the essence of scripture and apply them to solve challenges of modernity. He clarifies that the key step involved in deciphering the essence (or the fundamental values) of scripture is that a jurist must attain a thorough understanding of the context in which scripture was originally revealed. Although Hussain does not directly deal with the issue of apostasy, it can be said that according to his hermeneutical method, isolated reports that prescribe the death penalty for apostasy must be read in

the context in which they were revealed. It can be surmised that he would assert that the Prophet and Shiʿite Imams only prescribed the death penalty for apostasy because, during their period, apostasy was linked with treason and the death penalty was the most appropriate form of punishment that ensured the protection of Muslims. However, since apostasy is no longer linked with treason and Muslims no longer require protection from apostates, the death penalty cannot be deemed an appropriate or effective form of punishment. Indeed, if the present-day context changes back, whereby the act of apostasy once again becomes linked with treason, then only at that point might Hussain conclude that is it possible to reinstate the death penalty for apostasy.

Nevertheless, the case of apostasy exemplifies the different approaches taken by Shiʿite scholars who work within and outside the bounds of orthodox legal theory (orthodox legal epistemology). For those working within, their primary concern is to be protected from accountability and thus they effectively take a literalistic approach to Sharia even in important matters of life and death. Meanwhile, for those working outside, their primary concern is to narrow the gulf between traditional Sharia and challenges of modernity, and thus they display no issues in deducing Sharia knowledge from wider forms of evidence and dynamic hermeneutical approaches, wherein instead of relying on interpreting scripture in its apparent meaning, they give preference to interpreting it contextually.

At this juncture, it is important to clarify that present-day orthodox jurists are aware that their preferred literalistic approach towards Sharia knowledge leads to outcomes that can sometimes be perceived as non-egalitarian by some of their devout followers (particularly those who reside in the West and are familiar with western standards of modernity and ethics). Haider Ala Hamoudi interestingly explains that, to avoid offending their followers, orthodox jurists practise what he terms 'strategic juristic omission.' He states that, instead of refuting their own – or their predecessors' – inept Sharia deductions, orthodox jurists simply avoid mentioning them in newer editions of their published works. On this, Hamoudi elaborates that:

> The matter seems to work well enough, in that it enables the jurists to avoid answering uncomfortable questions or advancing positions on *fiqh* that come near to contradicting ethical precepts and political commitments that they are simultaneously propounding. However, it comes at some cost. Specifically, strategic juristic omission only works for as long as rules are unapplied. Thus it is, in a sense, an admission of failure in the *fiqh*. Moreover, it prevents the sensible re-evaluation of juristic rules in a

manner that might render them more palatable in the modern era. This is dangerous, particularly in our times, when extremists seem all too willing to hijack Islam through the tendentious use of older texts.

Examples of strategic juristic omission abound. For example, traditionally, Shīʿī jurists describe marriage as being of three types – permanent marriage, temporary marriage, and the right of masters to the sexual enjoyment of their female slaves. Grand Ayatollah ʿAlī al-Sīstānī (b. 1930), however, describes *two* types of marriage, permanent and temporary. He thus does not lay out the rules respecting sex and female slaves, nor does he even explain why he has omitted them. Other examples exist as well – it is rare to find a contemporary jurist suggesting that it is recommended for a husband to imprison the wife in the home so that she only leaves when necessary, another traditional rule recounted as recently as the middle of the twentieth century by the late Muḥsin al-Ḥakīm (d. 1970). A final, notable example concerns female genital mutilation (FGM). Where earlier Shi'i texts clearly describe FGM as recommended at the age of sixteen, reference to the practice is so reduced in al-Khū'ī's (d. 1992) account that a lay reader would know little more than that "curtailing" female slaves is recommended, and al-Sīstānī omits mention of the matter altogether. Again, in each case, whether it is women leaving the home or the practice of FGM, the ethical precepts that contemporary jurists expound seem in tension with, if not directly contradictory to, deeply established rules of the *fiqh*, thereby causing them to rely on omission to manage the gap.[19]

By practising strategic juristic omission, prominent orthodox jurists implicitly express a degree of embarrassment at some of their historical deductions. However, instead of dealing with them, or rejecting their applicability in the modern-day context, they simply hide their existence. This shows that they are mindful that their preferred literalistic approach at times restricts them in providing adequate responses to the challenges of modernity. However, they are theoretically bound by a legal epistemology that does not allow them to venture into a wider range of evidence or alternative (or contextual) hermeneutical approaches whose applicability enables them to display the extent of dynamism that is displayed by Muslim reformists. As emphasised, although they are aware that their preferred literalistic approach may not always lead them to Sharia knowledge that corresponds to the Mind of God, they maintain

19 Hamoudi, "Strategic Juristic Omission and Non-Muslim Blood Price", 129–31.

that it, unlike reformist approaches, is substantiated within legal theory and its juristic utility in the process of *ijtihād* is sanctioned by God. Therefore, abiding by it protects a jurist from accountability in the hereafter.

Nonetheless, for a significant cohort of Shiʿite Muslims, and probably most of the world, orthodox jurists represent the most authentic and authoritative voice of Shiʿism. Their respect within, and influence over, the Shiʿite community potentially puts them in a position where they can provide acceptable solutions to challenges that are posed by modernity to Muslims worldwide. An interesting question that arises is whether there is space to revise orthodox Uṣūlī legal epistemology, or more specifically, the fundamental epistemological underpinnings of legal theory, so that it can provide a framework which allows jurists to utilise more dynamic approaches in exploring the Mind of God and deducing Sharia knowledge. As an insider, in the remainder of this chapter I examine the key epistemological assumption upon which modern orthodox Uṣūlī epistemology hinges, and explore the impact reinventing it would have on the future of *ijtihād* and Shiʿite authority structures.

2 Space for Reformation

As shown in chapter 3, the most pivotal underpinning of modern Shiʿite legal theory is that of the authoritativeness of certainty. For Uṣūlīs, certainty, or any evidence that generates definitive Sharia knowledge, is authoritative by virtue of its very existential nature. The Uṣūlī concept of certainty is pivotal for two reasons. Firstly, as shown in chapter 1, based on it, Uṣūlīs assert the non-authoritativeness of conjecture qua conjecture. Secondly, as elucidated in chapter 4, most Uṣūlīs opine that only evidence that generates certainty can substantiate some conjectural forms of evidence, such as isolated reports, to reveal that God sanctions their utility in *ijtihād*. The Uṣūlī understanding of the function of certainty thus prevents orthodox jurists from effectively taking recourse to a wider range of evidence or more dynamic approaches to Sharia. The centrality of certainty in Uṣūlī legal epistemology is nevertheless found on the important assumption that its existential nature is composed of the essential properties of disclosure and correspondence. In other words, Uṣūlīs only assert that certainty is authoritative because they assume that whenever it exists, or is accessible, it *accurately* discloses and corresponds to objective reality or the Mind of God. I present this Uṣūlī understanding of certainty as an assumption because most Uṣūlīs do not find it necessary, as Khumaynī suggests, to delve deeper into the discourses of epistemology or philosophy to explain and justify how disclosure and correspondence are essential properties

of certainty, particularly in instances when they realise (with hindsight) that their perceived sense of certainty does not, in fact, always accurately disclose or correspond to objective reality. To avoid delving deeper into philosophy, the likes of Khumaynī and Khūʾī simply opine that the discussion surrounding the existential nature of certainty falls outside the remit of legal theory and instead is debated in another discipline and merely assumed within legal theory. Although neither Khumaynī nor Khūʾī identify what exact discipline they are referring to, they both give the impression that the exclusive function of legal theory is to determine the authoritativeness (or *ḥujjiyya*) of certainty in the process of *ijtihād* after its existential nature is assumed from another discipline. As noted, the only Uṣūlī who takes on the laborious task of delving deeper into the discourse of philosophy is Kamāl Ḥaydarī. He expands much effort in trying to provide a rationale that justifies the Uṣūlī assumption regarding the existential nature of certainty. However, although Ḥaydarī deserves to be applauded for his efforts, his rationale suffers from the fact that it too relies on the epistemological assumption concerning the infallibility of sense perception. Considering the shortcomings of sense perception highlighted within western philosophy, and the problem of illusions and hallucinations, it can be said that Ḥaydarī's justification is itself in need of further justification. Therefore, in essence, my study contends that Uṣūlīs argue for the authoritativeness of certainty in the juristic process of *ijtihād* after assuming its existential nature. However, they struggle to 1) offer an adequate epistemological rationale within the discourse of legal theory to justify their assumption, or 2) make explicit reference to any other discipline(s) from which they borrow their assumption, or 3) offer an underdeveloped justification (as does Ḥaydarī) which is itself in need of further justification.

A thorough study of orthodox legal theory emphatically reveals that the method of argumentation Uṣūlīs use to establish the framework they propound is rational. They make use of rational and logical methods of demonstration to present novel opinions or to refute pre-existing notions of their predecessors. This is something that is clearly witnessed in the way Uṣūlīs generally argue for and justify their fundamental epistemological underpinnings. My study highlights several rational arguments they employ to demonstrate and justify the non-authoritativeness of conjecture or the authoritativeness of certainty and substantiated conjecture. Emphasis on employing rational methods of argumentation is also amplified by the fact that at preliminary (*muqaddima*) and intermediary (*suṭuḥ*) stages of seminary education, seminarians are required to complete a full course in logic (*manṭiq*) before they can partake in advanced studies of legal theory and juristic deductions (*fiqh*). Considering the emphasis placed on rational methods of argumentation, it can be said that since

certainty plays such a pivotal role in the overall construction of Uṣūlī legal epistemology, sidestepping discussions on its existential nature, or not identifying the exact discipline(s) that discusses it, goes against the rationalist spirit of Uṣūlī legal theory. Nevertheless, the rationalist spirit of legal theory highlights that it, in theory, has space to reform its assumption regarding the existential nature of certainty and consequently reform its legal epistemology, in favour of another epistemology that not only is rationally justifiable or defendable, but also equips jurists with a method that provides adequate solutions to the challenges of modernity.

A facet of modern Uṣūlī legal theory that becomes very apparent from my study concerns its relationship with the discourse of philosophy. The juxtaposition between legal theory and philosophy within the Shiʿite tradition has been prevalent since the medieval period. For several centuries, Uṣūlīs have attempted to integrate their legal theory with Aristotelian and Sadrian philosophical systems and the comparable epistemological and ontological arguments they propound.[20] As alluded to in chapter 3, Ṣadrā's holistic approach to philosophy found in Safavid Iran has a distinct Shiʿite flavour to it and has had a significant impact in shaping the current orthodox Uṣūlī discourse of legal theory, together with the legal epistemology it propounds. There are numerous instances where Uṣūlīs make reference to philosophical jargon used by Ṣadrā and his contemporaries to explain complicated concepts within legal theory.[21] Considering this, when Khumaynī and Khūʾī assert that discussions surrounding the existential nature of certainty are borrowed from another discipline, they are most likely referring to Ṣadrā's discourse of theosophy. Nevertheless, since neither the Aristotelian nor the Sadrian philosophical systems can be said to be divinely revealed, or endorsed within scripture, it can be said that present-day Uṣūlīs have no theological or dogmatic impediments that could hinder them in accepting alternative philosophical systems or epistemological assumptions.

The precedence of reassessing epistemological assumptions is not entirely novel within Shiʿite orthodoxy. For instance, John Walbridge in *The Most Learned of the Shiʿa* explains that after engaging with western philosophical ideas of Marxists and Imperialists, Muḥammad Bāqir al-Ṣadr explored how some of them could be incorporated within his religious system. This

20 For instance, see also Paya, *Islam, Modernity and the New Millennium*, 169–84; Walbridge, "Muhammad Baqir al-Sadr," 132 & 134.

21 For example, this is clearly highlighted in chapter 3 in the way Kamāl Ḥaydarī defends the Uṣūlī understanding of the existential nature of certainty. By taking recourse to several philosophical categorisations and typologies he shows that certainty, at the level of conception, always accurately discloses and corresponds to objective reality.

exploration led him to publish *al-Usus al-manṭiqiyya li-l istiqrāʿ* (*The Logical Bases for Induction*) wherein, contrary to popular Uṣūlī-Aristotelian belief, Ṣadr proposes that induction or inductive reasoning (*istiqrāʿ*) can lead to the attainment of certainty.[22] In this work Ṣadr subtly demonstrates that he has no problem moving away from an epistemology that asserts knowledge can only be attained by certainty in favour of an epistemology that asserts knowledge can be attained by assurance or high probability.[23] It is important to note that indications of Ṣadr breaking away from traditional orthodox legal epistemology are also found in his discourse on legal theory. As discussed in chapter 2, he argues that in theory (or in *maqām al-thubūt*), any evidence that generates any possibility (*iḥtimāl*), even if it is conjectural, is authoritative and must be utilised in the discovery of Sharia knowledge. Unfortunately, due to his execution by Saddam Hussain at the young age of forty-five, it seems that Ṣadr was unable to fully develop or explicate the complete ramifications of an alternative epistemological system. Accordingly, Walbridge points out that our knowledge of Ṣadr's system and his general intellectual heritage is incomplete, as his system was continually undergoing development the more he interacted with other (or more precisely, western) philosophical ideas.[24]

Apart from Ṣadr, the precedence of reassessing epistemological assumptions within Shiʿite orthodoxy is also expounded by the advocators of the *tafkīkī* movement (also known as *maktab-i tafkīk*). The movement was found over fifty years ago by scholars belonging to the seminary of Najaf and has since continued to attract many seminarians. Its central premise is that traditional Uṣūlī methodology and understanding of Sharia is distorted because of it being closely intertwined with foreign philosophical and mystical ideas. Its advocators reject the utility of Aristotelian and Hellenic logic and are particularly critical of the immensity of Sadrian influence in Uṣūlī legal theory. Instead, they assert that authentic knowledge of Sharia, and the methodology by which it can be deduced, can be directly retrieved from the Quran and *sunna* of the Prophet and infallible Imams without the need for foreign philosophical inquiry.[25]

As opposed to rejecting philosophical inquiry altogether, or the entirety of Sadrian theosophy, some insider Shiʿite academics have proposed that for Shiʿite orthodoxy to provide adequate solutions to modern challenges it must

22 *Ibid.*, 135–6.

23 Ṣadr's aspiration of moving away from traditional Uṣūlī epistemology is also alluded to by Ali Paya. See Paya, *Islam, Modernity and the New Millennium*, 181–3.

24 Walbridge, "Muhammad Baqir al-Sadr," 138.

25 For a more detailed study of *maktab-i tafkīk* in English see Gleave, "Continuity and Originality in Shiʿi Thought"; Rizvi, "Only the Imam Knows Best," 487–503.

adopt an alternative epistemological framework that can be better justified and defended. For instance, Ali Paya, a British Iranian philosopher who was urged to travel to London to complete a PhD in Philosophy of Science by Khumaynī's esteemed student Murtaḍā Muṭahharī (d. 1979), in his *Islam, Modernity and a New Millennium* asserts that subscription to Sadrian theosophy has led orthodox Shi'ite philosophers and seminarians to give a central position to certainty in any type of epistemological inquiry. In his analysis, Paya categorically elucidates that the epistemological centrality of certainty prevents Muslim, or more specifically Shi'ite, orthodoxy from taking recourse to dynamic approaches that are utilised by Muslim reformists.[26] Accordingly, in his discussion on the 'future of Islamic philosophy,' he asserts that Muslim orthodoxy must discard its Sadrian-influenced epistemology and instead adopt epistemological ideas of critical rationalists.[27] He explains that in accordance with critical rationalism that is propounded by British philosophers Karl Popper (d. 1994) and David Miller (b. 1942), human knowledge is not absolute, infallible, or certain. Rather, it is always conjectural, and as such no matter how accurate it is, it will never be able to fully capture objective reality. This is because objective reality is infinite, and it cannot be captured by finite fallible beings who possess limited cognitive abilities. As such, the method of acquiring knowledge involves constantly analysing conjecture about objective reality and refuting it by means of other conjecture.[28] Paya interestingly presents several Muslim reformists, including Abdolkarim Soroush, as representatives of critical rationalism. He claims that their acceptance and utility of conjecture better equips them to respond to numerous modern challenges that face Muslims.[29] It is evident from my analysis of the case of apostasy that, as well as Soroush, Shi'ite reformists such as Kadivar and Hussain may also be categorised as critical rationalists, as they too advocate the utility of conjectural-contextual hermeneutical approaches in the deduction of Sharia.

Likewise, Abolqasem Fanaei, a seminarian instructor, and the Head of Department of Philosophy at Mofid University in Qum, is another Shi'ite academic who stresses that orthodoxy's requirement for certainty in obtaining knowledge is a major epistemological impediment that hinders their progress. In his *Akhlāq dīn Shināsī*, Fanaei, like the critical rationalists, argues that it is not epistemologically possible to attain certainty or certain knowledge of the external world. Instead, he claims that ordinary people in everyday life

26 Paya, *Islam, Modernity and the New Millennium*, 176–8.
27 *Ibid.*, 185–7, 199–209.
28 *Ibid.*, 15–20.
29 *Ibid.*, 14, 41–62.

conventionally and intuitively rely on conjecture to obtain knowledge of anything. As such, he proposes that Sharia knowledge must be deduced using a defeasible method of argumentation. Fanaei explains that, according to this method, a jurist must deduce Sharia knowledge from any evidence that generates conjecture. In instances when he finds conflicting indications between two or more conjecture-generating forms of evidence, a jurist must follow and act in accordance with the evidence that generates stronger conjecture i.e., the evidence whose indication a jurist feels most probably corresponds to objective reality.[30]

3 The Future of *Ijtihād* and Shiʿite Orthodoxy

This study shows that the juxtaposition between seminarian discourses of legal theory and philosophy has led to the construction of a legal epistemology that provides a central position to certainty in the deduction of Sharia knowledge. This results in orthodox clerics giving preference to a literalistic approach in *ijtihād* and hinders their recourse to more dynamic, albeit conjectural, approaches. However, the literalistic approach fails to adequately address challenges of modernity, and at times even coerces orthodoxy to practise strategic juristic omission of Sharia deductions that are deemed non-egalitarian. Considering this, and that the rationalist discourse of orthodox legal theory has space and precedence for continual epistemological reformation, it can be concluded that future Uṣūlīs, or the future discourse of orthodox legal theory, may be inclined towards adopting justifiable epistemologies (or epistemological assumptions), such as critical rationalism or the theory of defeasibility, which downplay the centrality of certainty and admit to its unattainability. Orthodox legal theory can therefore potentially modify its fundamental epistemological underpinnings so that it can construct a newer legal epistemology that, in theory, allows clerics to take recourse to conjecture (or conjecture-generating forms of evidence and hermeneutical methods) in the juristic process of *ijtihād*.

It is important to note that, as shown in chapter 4, the precedence of recognising the authoritativeness of a wide range of conjecture (*ẓann al-muṭlaq*) is present within the pre-Anṣārī discourse of legal theory. However, if future Uṣūlīs expound the unattainability of certainty, then, unlike their predecessors,

30 Fanaei, *Akhlāq dīn Shināsī*, 259–285; for Fanaei's thought and hermeneutical approach in English see Akbar, *Contemporary Approaches to the Qur'ān and its Interpretation in Iran*, 112–19.

they would have to admit that there is no access to definitive evidence (*al-dalīl al-qaṭʿī*) that can exclude the authoritativeness or the juristic utility of any evidence that generates conjecture. Therefore, they would not only be required to recognise the authority of traditionally accepted forms of evidence, such as isolated reports or the hermeneutical primacy of apparent meaning, but also non-traditional forms of evidence, ranging from 'Sunni' sources, such as *qiyās* (analogical reasoning), *istiḥsān* (personal juristic preference), *istiṣlāḥ* (social interest); to discoveries made in areas of natural and social sciences; to alternative reformist hermeneutical methods of scriptural interpretation.

The theoretical recognition of the authority of a wide range of conjecture, without being able to exclude any kind, can practically transpire as being an extremely difficult endeavour in the juristic process of *ijtihād*. This is because to obtain accurate understanding (or deduction) of Sharia, a jurist must not only specialise in traditional seminarian disciplines such as theology, logic, Arabic language, Arabic grammar etc.; but also specialise in, or at least have some awareness of, disciplines taught outside the seminarian curricula. As this may prove to be difficult, if not an impossible task, for a single jurist to accomplish, it is conceivable that adopting an alternative epistemology that deposes the centrality of certainty may force orthodox jurists to share their intellectual dominion with a range of specialists from different fields of knowledge, including those who specialise in natural and social sciences.

Again, the precedence of orthodox jurists admitting to sharing their intellectual dominion with other specialists is not entirely novel. After the death of the Grand Ayatollah Sayyid Ḥusayn Burūjardī (d. 1961), a prominent *marjaʿ al-taqlīd*, an Iranian organisation held a series of talks where senior Iranian clerics presented papers on the selection and function of grand Ayatollahs or *marjaʿ al-taqlīd*.[31] Amongst the papers presented, perhaps the two most relevant to this study were delivered by Maḥmūd Ṭāliqānī (d. 1979) and Murtaḍā Muṭahharī, who both, alongside Khumaynī, had an influential role in the Islamic revolution of Iran. Ṭāliqānī presented that the process of deducing Sharia knowledge (or *ijtihād*) should not be centralised to, or dependent on, a single individual, as it is rather difficult to find a solo jurist who is accepted, as inaugurated by Anṣārī, as 'the most learned' (*aʿlam*) in all aspects of religion. He defends his position by referring to numerous scriptural indications from the Quran and *sunna* that underline the undesirability of extreme centralisation. On the flip side, he also argues that decentralisation can be disadvantageous for Muslims, as it can cause their dispersal and promote a lack of understanding

31 See Ann Lambton, "A Reconsideration of the Position of the Marjaʿ Al-Taqlid and the Religious Institution," in *Studia Islamica*, 20 (1964) 115–135.

and cooperation amongst religious scholars. He therefore attempts to offset the problem between centralisation and decentralisation by suggesting that the future of *ijtihād* requires the creation of a consultative commission. This commission may be charged with the responsibility of providing a platform that brings different jurists together to discuss and deliberate upon modern challenges that affect Muslims and to respond to these challenges by collectively issuing religious edicts.[32] The notion of consultative *ijtihād* is also hinted by Muṭahharī who, after listing numerous human limitations, asserts the improbability, if not the impossibility, of there ever being a single individual (or a single jurist) who can specialise in several different fields of knowledge. He proposes that for individual jurists to respond to modern challenges, they must acquire specialisms in different fields of knowledge and current affairs and that the laity should only follow them in their areas of specialisation. In other words, he suggests that the future of *ijtihād* is not reliant on individual jurists, but instead is reliant upon creating good organisations and institutions that provide individual jurists with platforms for specialisation.[33]

Outside the context of Iran, the precedence of sharing intellectual dominion is also presented in the lectures and writings of Muḥammad Bāqir al-Ṣadr, who advances the notion of consultative *ijtihād*. For instance, Talib Aziz in *The Most Learned of the Shiʿa* explains that Ṣadr's main contention with Shiʿite juristic orthodoxy was that it lacked adequate institutional foundations even though it was a thousand years old.[34] In his analysis of some of Ṣadr's lectures, Aziz expresses that:

> the *marajiʿ* [jurists] have traditionally conducted their policies and made their decisions on the basis of their own individual styles, depending on an inner circle of close associates and family members who gather information, make political statements, and commonly make important decisions. Thus, there was no fundamental pattern either for the process of making decisions or for the content of those decisions. The resulting inconsistencies have caused, according to al-Sadr, social confusion that has weakened the relationship between the *marjaʿiya* [or Shiʿite authority structures] and the people. Furthermore, there is little or no carryover of trained ulama who could remain "in office" from one *marjaʿiya* to another. Each *marjaʿ* has his own entourage; i.e., his own hand-picked

32 *Ibid.*, 125–126.

33 *Ibid.*, 127, 131: also see Hamid Dabashi's introduction in Motahhari, "The Fundamental Problem in the Clerical Establishment", 161–63.

34 Aziz, "Baqir al-Sadr's Quest for the Marjaʿiya", 145.

representatives and advisors, some of whom are close relatives. In other words, each *marjaʿ* starts from "square one" to conduct the course of his business. Therefore, each *marjaʿ* differs from all others in his leadership capacity, crisis-management ability, and experience in political affairs.

In order to enhance the power of the *marjaʿiya* in society and to heighten their effectiveness, al-Sadr wanted to transform what he called the "individualistic *marjaʿiya*" into an "institutional *marjaʿiya*." The *marajiʿ*, according to Sadr, must preside over a well-defined organized institution. It is only through transformation of the *marjaʿiya* into a complex institution that it can influence events and guide people effectively.[35]

Ṣadr's model of consultative *ijtihād* is arguably the model that is most conducive to adequately responding to modern challenges. This is because it propounds that to deduce accurate knowledge of Sharia, traditional jurists must be informed by subject matter experts (or specialists from other fields of knowledge). According to Aziz, Ṣadr was waiting to become a grand *marjaʿ al-taqlīd* before he could inaugurate an institutional structure of religious authority (or *marjaʿiya*), as at that point he would have had the necessary financial and religious power to carry out the changes required.[36] However, due to his premature death, he never got an opportunity to become a grand *marjaʿ al-taqlīd*, and hence his theory of consultative *ijtihād* never came to fruition. At this juncture, it may be correct to assume that it was Ṣadr's novel epistemology, and his theoretical acceptance of evidence that generates any possibility (*iḥtimāl*) of Sharia, that drove him to conceive a consultative model of *ijtihād*.[37]

Nevertheless, a cynical reading of the Uṣūlī discourse suggests that orthodox clerics are generally resentful towards reassessing their epistemological assumption regarding the existential nature of certainty, as they are aware that doing so can have adverse repercussions for current authority structures. They acknowledge that by accepting an epistemology that downplays

35 *Ibid.*, 144.

36 See Aziz, *The Role of Muhammad Baqir al-Sadr in Shi'a Political Activism in Iraq from 1958 to 1980*.

37 It is important to note that although Ṣadr never got a chance to set up a consultative model of *ijtihād*, attempts to form such models continues by Shiʿite seminarians. For instance, Shiʿite seminarian and academics have recently formed a consultative model known as the International Centre for Collective Ijtihad (ICCI). The centre brings together a body of jurists (or *mujtahids*) who in consultation with subject-matter experts (such as doctors, scientists, economists etc.) claim to provide "a more accurate understanding of Sharia than the endeavours of an individual *mujtahid*" see ICCI, *Most Frequently Asked Questions*, retrieved 9th September 2021, from https://www.collectiveijtihad.org/faq.

the centrality of certainty, and instead propounds that knowledge (or Sharia knowledge) can be obtained through conjecture, would naturally entail them in sharing their intellectual dominion with scholars and specialists from other, non-seminarian, fields of knowledge. This affects the stronghold orthodox clerics enjoy over the Shiʿite community worldwide and their overall status as the sole representatives of the Twelfth Hidden Imam.

In contrast, a more sympathetic reading of the Uṣūlī discourse may suggest that orthodox clerics (including Anṣārī, his contemporaries, and successors) constructed a legal epistemology with the primary objective of solidifying their stronghold over Shiʿite intellectual circles against rival Akhbārīs. Accordingly, their immediate concern was never to deal with modern challenges or to approach Sharia in a manner that is compatible with modern, albeit largely western, values and institutions. In fact, it can be said that due to decades of Shiʿite-majority countries being immersed within Middle Eastern socio-political turmoil, orthodox Shiʿite scholars generally maintain an anti-western outlook and are suspicious of philosophical and intellectual innovations found and promoted by western scholars. As such, western works in the areas of epistemology and natural and social sciences, together with numerous issues that affect Shiʿite Muslims living outside Middle East, are not made easily accessible to scholars and students to learn or critique within traditional seminarian structures. It can be suspected that, as relations between Shiʿite majority countries and western countries become more affable, orthodox scholars may obtain greater access to the intellectual heritage of the West. Access to a larger pool of philosophical ideas can indeed compel rationalist Uṣūlīs to reassess their current epistemological assumptions in favour of assumptions that are more defendable or justifiable.

In essence, it can be concluded that, for Shiʿite orthodoxy to continue its dominance over Shiʿite intellectual circles, and for orthodox clerics to continue being authoritative representatives of the Hidden Imam, their opinions (or their *ijtihād*) must remain relevant to their followers amidst an array of reformist, albeit non-orthodox, opinions that are increasingly easily available due to advancing technology. Instead of advocating a legal epistemology that leads orthodox clerics to give preference to a literalistic approach that is criticised for creating fundamentalist tendencies, the rationalist discourse of legal theory has space to be reinvented so that it adopts an alternative justifiable legal epistemology that effectively allows orthodoxy to approach Sharia knowledge in a dynamic manner and equips it to provide adequate solutions to modern challenges.

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Studies in Islamic Law and Society

Hashim Bata, Ph.D. (2012), University of Warwick, is Lecturer in Islamic Legal Studies at Al-Mahdi Institute and Associate Lecturer at University of Birmingham. He has published several articles in the fields *Uṣūl al-fiqh* and *Fiqh*.

This book introduces readers to the legal epistemology that is advocated within Twelver Shiʿite *uṣūl al-fiqh* (legal theory). It critically surveys the epistemological underpinnings upheld by post-19th century Uṣūlī clerics that impel them to mainly deduce and interpret Sharia using scripture and literalist hermeneutical methods. An evaluation of these underpinnings uncovers the important juxtaposition that exists between the seminarian discourses of *uṣūl al-fiqh* and philosophy. The book hypothesises that *uṣūl al-fiqh* has both space and historical precedence to accept alternative epistemological theories that may enable orthodox Shiʿite clerics to display greater dynamism in deducing and interpreting Sharia.

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